EXAMINING THE COMPETENCE OF POLITICAL OR PUBLIC OFFICE HOLDERS AS PARTY AGENTS IN GENERAL ELECTIONS AND AS WITNESSES IN ELECTION PETITION LITIGATION*

Abstract
It has been the practice of political parties in appointing persons holding political or public offices to act as polling agents in elections. This conduct appears to contravene the provisions of the Electoral Act 2010 and the guidelines for the conduct of elections made pursuant thereto. The courts however seem to have developed a cold attitude towards the strict enforcement of compliance with the said provisions having regard to other provisions of law. This posture of the courts constitutes the basis of this research and calls to question whether the relevant provisions of the Electoral Act 2010 (as amended) and guidelines are merely salutary or have the force of law and therefore enforceable? This research aims to critically examine the reasons stemming the posture of the courts in respect of the enforcement of the said provisions through case law. The paper will also comparatively examine the provisions of other statutes on the subject together with opinions of experts in the field as well as research papers. The paper will address and expound on the enforceability of the relevant provisions, thereby giving political parties, legal practitioners, the courts, and other stakeholders the need to strictly comply with the said provisions.

Keywords: Public Office Holders, Party Agents, Witnesses, General Elections, Election Petition, Competence

1. Introduction

The competence of a witness to testify before a court or tribunal is one regulated by law and does not lie in the discretion of a litigant. The regulation of evidence is one of the items listed in the Constitution of the Federal Republic of Nigeria 1999 in the exclusive legislative list[1] which only the National Assembly is empowered to legislate on. The National Assembly has pursuant to their constitutional powers enacted several legislations on 'evidence' but however, have a general legislation regulating dealings on evidence, which is entitled the Evidence Act 2011. In order to examine the concept of competence of witness to give testimony before a court or tribunal, reference would have to be made to the Evidence Act 2011. The Act expressly provided the parameters in defining who a competent witness is in section 175(1) & (2) and it states thus:

1. All persons shall be competent to testify, unless the court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by reason of tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.
2. A person of unsound mind is not incompetent to testify unless he is prevented by his mental infirmity from understanding the questions put to him and giving rational answers to them.

2. Competent Witness

The general view of who qualifies as a 'competent witness' is drawn from the ability to tell the truth by giving rational answers in relation to a particular set of facts or issues before a court or tribunal. Anybody can be a witness, but it is only those set of persons that have been qualified to give testimony or evidence in certain proceedings before a court, tribunal, or panel of inquiry that are deemed competent, hence 'competent witnesses'. The expression that is most important to be defined is 'competence'. The term 'competence' according to the Cambridge English Dictionary means 'the

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[1]See the Constitution of the Federal Republic of Nigeria, 1999 (as amended), item No. 23 of the Exclusive Legislative List in Schedule II.

ability to do something well'.[2] This definition properly expresses the import of competence generally but has not been the basis of determining competence to testify in court. The Supreme Court in *Uwaifo v. A-G Bendel State & Ors.*[3], while relying on the meaning of the term 'competence' in Webster's New Twentieth Century Dictionary gave a restrictive definition thus: The word 'competence' in law according to Websters' New Twentieth Century Dictionary Unabridged Second Edition means: 'legal capacity, qualification, power, jurisdiction or fitness as (a) *the competence of a witness to testify* (b) the competence of a Judge to try a case.

As can be gleaned from the above definition of the term by the apex court of Nigeria, the competence of a person to testify as a witness before a court or tribunal is restricted to his legal capacity, qualification, or fitness. The implication is that a person may have general competence[4] to tell the truth in a court of law but may be denied legal capacity to testify on a subject or set of facts which such person may not be permitted by law to give testimony on, irrespective of the truth value of same. To appreciate the concept of 'competence' in law better, it is also relevant to look at what its antonym 'incompetent' implies. The Court of Appeal, Nigeria in the case of *Ishola v Ajiboye*[5] described an act or decision as incompetent when '...the declaring authority is only stating in other words, that such an act or decision lacks the legal qualification or fitness to discharge the required duty.' What appears to be consistent in the meanings ascribed to the words by the courts is legal qualification to do something. Arguably, once a person is declared by statute as lacking capacity to do a thing irrespective of whether he or she can physically do such, the person would be said to be incompetent. That is to say, even if the person proceeds to discharge that duty *de facto*, he or she is seen in law (*de jure*) not to have discharge the said duty.[6]

The focus of this paper is on the competence of a person holding political or public office being appointed to act as a unit or collation agent of a candidate political party in an election. The statutes regulating such appointments in respect to elections will be of relevance to this study at this point. In order to determine who is competent to function as an agent to a political party during elections and to testify on what transpired, it will be necessary to review a few legislations on the point.

3. The Status of a Competent Witness under Statutes

Granted that the statutory provision of the Evidence Act[7] determines and regulates who a competent witness is in all litigations – civil or criminal, there are however specific proceedings that have special legislations regulating them. As such, once there is a legislation that specifically defines or sets parameters for who is competent to testify in such proceedings, it is only persons that meet the requirements that can be competent witnesses. It is worthy of note that the power conferred on the National Assembly to legislate on 'Evidence'[8] is never restricted to only the enactment of the Evidence Act 2011, but can contemplate the inclusion of the nature or kind of evidence that can be admitted, the relevant weight to be attached, and other considerations in other legislations they are constitutionally empowered to legislate on. There are a number of legislations enacted by the National Assembly that have also made provisions on evidence. A few of such legislations that comes to mind are the Survey Act, the Electoral Act 2010 (as amended), etc.

However, the principal focus of this paper is in respect of the competence of a candidate or political party's agent who at the material time of an election was also a political or public office holder to testify in court or tribunal with respect to such election. As it appears from the clear wordings of section 175(1) and (2) of the Evidence Act 2011, there is nothing impinging on the competence and credibility of a political office holder who is mentally sound and capable of telling the truth as to what he witnessed or

[2] See the Cambridge Dictionary. www.dictionary.cambridge.org retrieved on July 20, 2019.
[3] (1982) LPELR-3445(SC) per Obaseki, JSC (P. 84, paras. E-G)
[4] The competence envisaged in the general provisions of the Evidence Act 2011, section 175(1) and (2).
[5] (1998) 1 NWLR (pt. 532) 71 @ 79 Para A-D, per Muhammad JCA.
[6] Supra.

[7] See the Evidence Act 2011, section 175(1) & (2).
[8] See the Constitution of the Federal Republic of Nigeria, 1999, item 23 in Part I of the Second Schedule.

transpired in a polling unit or collation center in respect of an election. It is therefore not feasible to successfully question the competence of a person holding a political or public office who acted as an agent of a political party in an election under the Evidence Act 2011, only on the ground that he is holding a political or public office.

It is worthy of note that despite the above position, the courts have qualified the provisions of the Evidence Act 2011, having regards to other extant federal legislations on the point. The Court of Appeal restating the law on the criteria and qualifications of a person as a competent witness in a proceeding before a court of law stated in *Lasun v. Awoyemi & Ors*[9] thus:

> It is my view that anyone who has relevant evidence to give and *is not disqualified by any law is a competent witness to testify for either side in an election petition*. It is immaterial that the witness is not accredited to be at the polling booth at the material time. He could be a passer bye and once he is not disqualified under Secs. 77 and 155 (1) of the Evidence Act he is a competent witness to testify for either side in an election petition. See the Judgment in Aregbesola & ors. v. Oyinlola & ors. CA/I/EPT/GOV/02/2010 (unreported, delivered on 26/11/2010.

A catch expression from the above dictum is '...anyone who has relevant evidence to give *and is not disqualified by any law* is a competent witness....' Giving the literal or ordinary meaning to the words used in the above dictum is suggestive that a person may be conceptually included or excluded as a competent witness by any other competent law or legislation. Since the inquiry of this paper is in respect of the competence of candidates or political party agents holding political or public offices' to testify in an election petition proceeding, it will be necessary to scan through the Electoral Act, being the specific legislation on the subject to determine the position of the law. Keep in mind that the Electoral Act 2010 (as amended) is a legislation by the National Assembly and pursuant to its constitutional competence, can legislate on a combination of subjects it has been empowered to make laws on such as elections and evidence. This justifies the inclusion of issues of evidence in the Electoral Act 2010 (as amended). Section 45(1) of the Electoral Act requires every political party participating in an election to appoint polling agents for each unit, and collation centres which must be done by way of notice addressed to the INEC at least 7 days before the date fixed for the election. The section itself did not state any further requirements but it has a proviso which states the qualifications of such persons that can be so appointed by political parties as their agents in elections. The proviso to section 45(1) Electoral Act 2010 (as amended) provides for who will be competent or qualified to be or function as an agent of a political party thus:

> Each political party may by notice in writing addressed to the Electoral Officer of the Local Government or Area Council, appoint a polling agent for each polling unit and collation centre in the Local Government or Area Council for which it has a candidate and the notice shall set out the name and address of the polling agent and be given to the Electoral Officer at least 7 days before the date fixed for the election-
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> PROVIDED that no person presently serving as Chairman or member of a Local Government or Area Council, Commissioner of a State, Deputy Governor, or Governor of a State, Minister or any other person holding political office under any tier of Government and who has not resigned his appointment at least 3 months before the election *shall serve as a polling agent of any political party, either at the polling unit or at any centre designated for collation of results of an election.*

The proviso to the provisions of section 45(1) of the Electoral Act 2010 has given qualification to the enacting provision.[10] The said section requires the submission of political party agents to the Electoral officer but qualifies it to the extent that only persons who as at the material time are not serving as

[9] (2011) LPELR-5116(CA) at P. 35, paras. E-G per Ngwuta, JCA.

[10] *N.D.I.C. v. O Silvawax Intl. Ltd* [2006] 7 NWLR (Pt.980) Pg. 588. The purpose of a proviso is to cut down or qualify something which has gone before, usually called the enacting clause. See *Ukpe v. The Registered Trustees of the Apostolic Church of Nigeria & Anor* (2012) LPELR-19709(CA).

political office holders. And where such person was an elected office holder or appointive political or public office holder, the person would only be qualified if he or she had resigned such political office at least three months prior to the submission of the person's name as an agent of a political party in an election. The Independent National Electoral Commission (INEC) is also empowered to make subsidiary legislation for the purpose of proper conduct of elections from time to time.[11] This the INEC has always done by way of regulations and guidelines for the conduct of elections. The most recent of such subsidiary legislation is the 2019 Independent National Electoral Commission Regulations and Guidelines for the Conduct of Elections.[12] Paragraph 6 of the regulations and guidelines has a side note captioned 'Appointment of polling agents' and provides thus:

a. A political party sponsoring a candidate may by notice appoint one person as its polling agent for each polling unit, one polling agent for each collation centre and a representative at each point of distribution of electoral materials in the constituency where it is sponsoring candidate(s) for an election.
b. Where Voting Points are established, political parties may appoint polling agents for each Voting Point.
c. The notice referred to in sub-clause (a) of this clause shall be in writing, signed, addressed and delivered to the:
    i. Chairman of the Commission in the case of polling agents for collation at the Presidential election;
    ii. Resident Electoral Commissioner in the case of polling agents for collation at the Governorship election; and
    iii. Electoral Officer in all cases of polling agents for Polling Units/Voting Point Settlements/Voting Points, and polling agents for Registration Area/Ward and LGA Collation;
d. The notice shall contain the names, addresses and recent passport photographs of the polling agents and the respective polling units/voting point settlements/voting points or collation centers to which they have been assigned and to be submitted not later than 14 days before the election. Any notice sent in late will be rejected.
e. Only a Polling Agent whose name had been submitted to the Commission in the prescribed manner shall receive a copy of the result sheet at a Polling Unit or Collation Centre.

The above reproduced provisions of paragraph 6 of the Regulations and Guidelines for the conduct of the 2019 general elections are more detailed in procedure. Unlike section 45(1) of the Electoral Act 2010 (as amended), the regulations provide consequences of failure or refusal to comply with the timelines and other requirements stated therein. Failure or refusal to comply with the regulations and guidelines requirement will entitle INEC to reject such list of agents as well as deprive any such person so appointed by a political party from acting as agent in the election. These consequences are expected to be enforced administratively by the commission before and during the election and not after the election. Granted that the Electoral Act 2010 (as amended) has stated the indicia for a person to be appointed agent of a political party at an election[13], the regulations and guidelines have also made additional provisions which further restrict the class of persons that can be appointed as political party agents in an election in Nigeria.

[11] See the Electoral Act, 2010 (as amended); section 153 thereof.

[12]The regulations and guidelines were issued as a decision extract of the Commission of the 12th day of the month of January 2019. Notably, these regulations and guidelines supersede all other regulations and guidelines on the conduct of elections issued by the Commission and shall remain in force until replaced by new regulations of amended.

[13] See the Electoral Act 2010 (as amended), the proviso to section 45(1).

Paragraph 7(a) of the regulations and guidelines with a side note captioned 'Disqualification of certain categories of persons from being Polling Agents' and provides thus:

> No person shall be qualified to be appointed or serve as a polling agent of any political party if, being a person employed in the public service of the Federation or of any State or Local Government/Area Council, he/she has not resigned or withdrawn or retired from such employment at least 90 days before the date of the election.

A combined reading and application of the provisions of the Act and regulation on the set of persons not qualified to act as agents to political parties in an election, clearly excludes all elective and appointive political office holders and persons employed in the public service[14] at any level. The necessary inference that can be deducted from the above is that all other persons not expressly excluded by the said enactments or any other statute or principle of law remains eminently qualified to act as agent of a political party in an election. The rationale for this exclusion and the indicia for the appointment of political party agents at an election is yet to be made common by the drafters of the pieces of legislation under review. From a cursory look at the Electoral Act 2011 and 2019 INEC Regulations and Guidelines for the Conduct of Elections, the policy behind the exclusion of political office holders and persons employed in the public service, appears illusive.

4. Rationale behind the Provisions of Section 45 Electoral Act and Paragraphs 6 & 7 of the 2019 Guidelines

The idea in democratic electioneering process is that the people should freely conceive in themselves to choose who they want to lead them. This also constitutes the basis upon which people are appointed to act as agents of candidates or political parties in an election. A legal scholar contemplated some reasonable level of un-bias and neutrality as the basis of the policy behind the said provisions. The persons to be appointed or so appointed as agents of candidates or political parties are expected to exhibit and show the highest level of neutrality at the polling station they are assigned. This reasoning has however found support from the position expressed by the Court of Appeal in *Chief Azudibia v Ogunewe & Ors*.[15] Oshisanya agreeing with the said position stated that

> ...the need for neutral observers (ostensibly having no purpose of their own to serve) as witnesses to allegations of an election marred by acts of violence and other related malpractices.... note that police security officers and agents of political parties as well as INEC officials were in the class of such neutrals. Though it perhaps was not contended, there has always been the notorious use of the persons of the class of neutrals as agents for malpractices. Thus, their neutrality leaves much to be determined. On the whole, it appears the court possibly as a matter of practice, (hopefully not hunches), requires corroboration for the evidence of a petitioner.[16]

This reasoning correspondingly seems to have furnished the basis upon which agency relationships for purposes of elections is practiced.[17] It is therefore expected that neither the express and implied actions nor inactions of such persons appointed as agents of candidates or political parties should influence the choice of a voter or the conduct of the polling officers in the favour of their candidate or political party in an election. The voter or the polling officer should not be perceived or seen to be intimidated, unduly influenced, or his discretion fettered by the presence of certain persons acting as agents of candidates or political parties in an election as a result of a benefit they can give or forbearance they can inflict by virtue of an office they occupy as elected or appointed political office holder or public office holder.

[14]Public Service of the Federation and of the State means the service in any capacity which includes any of the respective offices specifically mentioned in section 318(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)
[15] (2004) All FWLR (Pt. 205) 289 at 301 CA.
[16]Oshisanya, 'lai Oshitokunbo, *An Almanac of Contemporary Judicial Restatement* (Civil Law) Vol ii via https://books.google.com.ng retrieved on 29 Dec 2019.
[17]This form of agency is markedly different from the agency relationships in commercial transactions wherein the agent's mandate is the protection of the principal's interest. Agency relationships in election are aimed at strict and due compliance with the rules and practices of the election with the bigger picture of ensuring that the people's votes count and are not manipulated.

For instance, where persons occupying the offices of chairman in a Local Government Area[18] or head of service[19] of the State are appointed to act as agents of a candidate or political party in an election, the electorates[20] will have their choice or discretion fettered by their presence. The necessary implication flowing therefrom is that the provisions of section 45 of the Electoral Act and the Guidelines[21] made pursuant to same were intended to protect and preserve the negligible but all-important aspect of the electioneering process. They were therefore not made for fancy or to be merely salutary in application.

5. Legal Status of Evidence given by Political or Public Office Holder as a Party Agent in Election Tribunal

A person who has been disqualified by statute from doing a thing remains disqualified even where he does that which he has been prohibited from doing. The proviso to section 45 of the Electoral Act 2010 (as amended) and paragraph 7 of the 2019 guidelines expressly prohibits the submission of the name of a person who holds an elected or appointive political or public office or has resigned such office but within a period less than three months, from participating in an election as an agent of a political party. Where a political party in breach of the clear provisions of section 45 of the Electoral Act 2010 (as amended) and paragraph 7 of the Guidelines, submits the name of a political office holder as its agent in an election to the Independent National Electoral Commission and the Commission is unable to discover such breach to enable it reject such person to function as agent, then the court must step in to reject it. In *Ahmed v. ABU & Anor*[22] the Court of Appeal emphatically underscored the consequences of non-compliance with the express and clear provisions of a statute thus:

> I consider a detailed consideration of this 2nd requirement as unnecessary in the light of the conclusion that the Respondent did not strictly comply with the prescribed procedure. The reasoning for this has earlier been explained. Compliance with only one of the two conditions or conversely, failure to comply with any of the two conditions is tantamount to non-compliance as there can be no partial or half compliance. BAMIGBOYE V. UNIVERSITY OF ILORIN (Supra), YEMISI V. FIRS (2012) LPELR CA/AK/02/2010.
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> This is because, where a statutory requirement for the exercise of a legal authority is laid down, it is expected that the public body invested with such authority would follow the requirement to the details. The non-observance in the process of reaching any decision renders the decision itself a nullity.

In essence, flowing from the above decision of the Court of Appeal, such delinquent conduct on the part of a political party will not be treated with levity by the courts whose duty it is, to give effect and enforce the legislations enacted by the legislature. Section 45 of the Electoral Act 2010 and paragraph 7 of the guidelines, from a close examination did not expressly provide for a penalty against a political party that fails or refuses to comply with it. This is where the consequences of non-compliance stated by the courts over time becomes effective and binding, even where there is no express penal sanction in the statute.[23] The consequences of non-compliance with a mandatory requirement of statute is that such act amounts to a nullity and is therefore considered that such act was never done at all. Strictly

[18]An elected political office holder as envisaged by the Constitution of the Federal Republic of Nigeria, 1999, (as amended), section 7(1).

[19]A public office holder within the meaning of the Constitution of the Federal Republic of Nigeria, 1999, (as amended), section 318(1).

[20]Some of whom may be staff or members of the Local Government Area of the Chairman acting as agent or public servants under the leadership of the Head of Service.

[21]The 2019 Independent National Electoral Commission Regulations and Guidelines for the Conduct of Elections, Paragraphs 6 and 7.

[22] (2016) LPELR-40261 (CA).

[23]See *Adesanoye v. Adewole* (2006) LPELR-143(SC); (2006) 14 NWLR (Pt. 1000) 242 (Pp. 22-23, Paras. E-A) where the apex court held per Tobi, JSC (as he then was) 'where a statute clearly provides for a particular act to be performed; failure to perform the act on the part of the party will not only be interpreted as a delinquent conduct but will be interpreted as not complying with the statutory provision. In such a situation, the consequences of non-compliance with the statutory provision follow notwithstanding that the statute did not specifically provide for a sanction. The court can, by the invocation of its interpretative jurisdiction, come to the conclusion that failure to comply with the statutory provision is against the party in default'.

applying the consequences of non-compliance to the failure or refusal of a political party to submit to the commission names of party agents that are not disqualified by section 45(1) of the Electoral Act 2010 (as amended) and paragraph 7 of the 2019 guidelines, will be treated as though the said political party never submitted such names.[24] This is because the names of such persons where already submitted to the commission, lack the legal capacity to function as agents of such political parties in an election. The corollary to the above is that, a person who lacked the capacity to act as an agent of a political party in an election would correspondingly lack the capacity to give evidence or testify in that capacity in respect of the said election. A very crucial question that calls for examination at this point is, what will be the fate of the testimony of such a disqualified person who surreptitiously acted as an agent of a political party in an election? A person who lacks capacity to do a thing cannot also be seen to be giving evidence on the doing of that which he lacks capacity. This position is firmly supported by settled principles of law such as 'a person cannot give what he lacks or does not have'. The testimony of such person as a witness in an election dispute before a tribunal cannot stand due to his lack of capacity arising from a null act of the political party he purports to represent. This is because, his testimony in respect of his acclaimed capacity as agent of the party never existed in law, hence admission and subsequent reliance on same will amount to putting something on nothing and expecting it to stand. The principle of law on this point has properly been stated a long time ago by Lord Denning in *UAC v Macfoy*,[25] that you cannot put something on nothing and expect it to stand. Therefore, the testimony or evidence given by such a political party agent that lacks the requisite capacity cannot be seen to stand before an election tribunal, as same has no foundation or basis to stand. By the nature of election petition proceedings where most objections may be raised but argued in the final addresses of parties, an objection on the competence of a particular witness and the set of evidence proffered by the witness can be taken at the address stage and where found to be sustainable, the entirety of the evidence given by the said witness be expunged from the court's record.

It must be noted that the electioneering process is not just the most important process of every democratic society but is of a special nature and kind, hence must be treated accordingly. In like manner it has been stated severally that election litigation proceedings are *sui generis*[26], hence treated with special rules and enforces strict compliance with legal requirements at every stage of it.[27]

6. Admissibility of Evidence no matter how Obtained and Evidence Procured by an Incompetent Person

It is arguable, having regard to the provisions of the Evidence Act 2011 that evidence perceived with any of the five sense organs and that is relevant to the subject of litigation is admissible in law, irrespective of how same was obtained. This provision of the Evidence Act 2011 is not without exceptions in respect of its application as envisaged in section 14(b) thereof. Irrespective of the exceptions and factors the court has to take into account in exercising its discretion, the provision of section 14 of the Evidence Act 2011 is good law. What is of utmost importance in considering the above provision of the Evidence Act 2011 is its juxtaposition with section 45 of the Electoral Act 2010 (as amended) which is also an enactment of the National Assembly. It is submitted that the provisions of the Evidence Act 2011 interpretively ought not to take precedence over the express and exclusionary provisions of the Electoral Act 2010 (as amended) which is a special enactment for elections alone. The applicable principle of interpretation is embedded in the legal maxim *generalia specialibus non derogate*.[28] It has been settled long ago that where a statute specifically enacts on a subject, it takes precedence over another statute that makes general provisions on same subject matter.[29] Granted that the courts have given effect to the provisions of section 14 of the Evidence Act 2011 in several

[24]See INEC Regulations and Guidelines for the Conduct of Elections, 2019; Paragraph 6(d) and (e) thereof.
[25] (1961) 3 ALL E.R. 1169 at page 1172.
[26]Meaning 'of its own kind or class; unique or peculiar'. See B. A. Garner (ed.) (2004) *Black's Law Dictionary*, (West Publishing Co.; United States) 1475.
[27]See Buhari & Anor v Yusuf & Anor [2003] FWLR (Pt. 174) p. 329 at 386; Action Congress & Anor v Ordu & Ors. (2008) 4 LRECN 492 at 513, paras. E – G etc. Also see A. Izinyon and C. Ndukwe, (2019) *Electoral Law Practice and Procedure*, Vol. 2 (Acavi Law Publishers Ltd; Abuja) pp. 2-3.

[28]Meaning "General words do not derogate from special". Also see A. D. Badaiki, (2011) *Interpretation of Statutes: The Letter or Spirit of the Law*, (39th Inaugural Lecture, Ambrose Ali University,) at p. 24.
[29] See *Shroader v Major* [1989] 2 NWLR (Pt. 101) 1.

decisions, it is wondered whether the courts actually have applied same in election litigations, and whether the court juxtaposed the provisions of the Electoral Act and the guidelines before reaching the respective decisions. It is worthy of note that the Electoral Act 2006 never had the express provisions excluding political or public office holders from taking up political party appointments as polling agents in elections. This probably informed the reasoning of the Court of Appeal in *Sijuade v. Oyewole*[30]

> The authorities are clearly to the effect that a Ward Supervisor of a political party, who claims to have been authorized by his party, to carry on some functions on a day of election or during election, is competent to testify on what he saw, heard, witnessed or experienced notwithstanding that his conduct conflicts with the provisions of the Electoral Act.
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> In the fairly recent case of AREGBESOLA V. OYINLOLA (supra), this Court, per OGUNBIYI, JCA held, inter alia, as follows:
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> 'In the absence of any provision in the Electoral Act 2005 which precludes officers of a political party who are not polling agents from testifying on behalf of a party the only guiding principle ought and should be section 77 of the evidence Act. In other words, the pre-occupation and concern of the tribunal should be whether the witnesses sought to testify 'are competent to give account of what they saw, heard or perceived,' in their bid to give first hand evidence.'
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> In a later case - MUHAMMED OLATUNJI IBRAHIM V. OLATUNJI ADEWALE OGUNLEYE and ORS. (APPEAL NO. CA/I/ETP/HA/93/2008) decided on Thursday the 9th day of December, 2011, I stated, inter alia, as follows:
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> 'I agree with the tribunal that a 'Ward Supervisor of a political party' is not one of the categories of persons specially mentioned in the Electoral Act (sections 45 (1) and 62 (1) and the INEC Manual for the 2007 election; however, the fact that such species of political party personnel is not permitted to be at a polling station on an election day, or during the election, would not, by that fact alone, automatically make the evidence of such a person inadmissible. *If a person breaches the law and unlawfully finds himself in a polling station during an election, when he ought not to be there, the illegality of his presence at the polling station would not automatically translate to inadmissibility of the evidence of what he saw, experienced or witnessed at polling station.* Such evidence is analogous to evidence illegally or unlawfully obtained. Even in criminal cases, except in the case of involuntary confessional statements, unlawfully obtained evidence, if relevant, is admissible. See KURUMA v. R. (1955) 1 ALL ER 236 at 239-240, where the Privy Council stated, inter alia, thus:
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> '*The test to be applied in considering whether evidence is admissible is whether it is relevant to the matters in issue. If it is admissible... the court is not concerned with how the evidence was obtained.'*

The above position has also been subsequently followed in the case of *Amosun v INEC*[31], where the Court of Appeal held thus:

> However, for the purpose of giving oral evidence of what happened at a polling station, a person does not have to be an INEC accredited polling agent, depending on the nature of the event on which he testifies before he becomes a competent witness. By the provisions of section 77 of the Evidence Act, direct oral evidence of a person who saw, heard or perceived the facts of an event or happening is admissible in evidence and such a person is a competent witness for the purpose of such event or happening.

It appears the learned Justices of the Court of Appeal in the above decisions were not confronted with the relevant provisions of the Electoral Act 2010 (as amended)[32] and the 2019 Electoral Guidelines[33] or similar provisions in any other law. Assuming the courts are entitled to apply both the provisions of the

[30] (2011) LPELR-4869(CA) per Adumein, JCA (Pp. 15-17, Paras. C-A).
[31] EPR Vol. 8, 290 at p. 407, per ML Garba JCA.
[32] Section 45.
[33] Paragraphs 6 and 7 thereof.

Electoral Act and Evidence Act on the competence of a political party's agent not satisfying the requirements of law, it is submitted that there is a world of difference between the capacity to do a thing and the substance of a thing. What the courts have held consistently overtime to be admissible is not on the capacity of the bearer of the evidence but on the evidential value of the evidence itself, which is not the contention here. It would therefore be untenable to mistake the principle of admissibility of evidence irrespective of how it is gotten with lack of legal capacity to give evidence in court.

The common denominator in all the situations envisaged in the Evidence Act 2011 as to competence of a witness, is 'the ability to tell the truth'. Once a person is denied of that capacity either by his biological or psychological disposition or by statute – it becomes immaterial if the person is saying the truth of what he saw, heard, perceived etc., on a set of facts. It is therefore contended that once a person lacks the capacity to do a thing, yet proceeds to do that which he has been deprived of by statute, such act cannot be subsequently approved or accepted by the same law that was disregarded in any guise. This is especially more forceful with the fact that election litigation is *sui generis* and requires strict compliance with every step. As the learned Justices of the Court of Appeal held in the case of *Sijuade v. Oyewole*,[34] the manner through which the evidence was obtained is immaterial, if that evidence is relevant. However, it should be different if the valid evidence is brought to court by a person the law has expressly deprived from being entitled to be in possession of such. Lack of legal capacity of a person to carry out an act automatically disentitles such a person from legitimizing such acts he is prohibited from doing in any guise.[35] Failure or refusal to comply with the mandatory statutory requirements of statute has been held to be a delinquent act that must be visited with penalty.[36] In confirming and restating this position, the Court of Appeal in *Idris v. Abubakar & Ors*[37] stated the effect of lack of capacity and held thus:

> In the instant case, the failure by the appellant to fulfil in full the conditions laid down by Order 42 Rule 5 (6) of the High Court (Civil Procedure) Rules of Kaduna State is not a mere irregularity in procedure. It impacts upon the capacity of the trial Court to entertain the action which was initiated without following due process of law.... I need to emphasize here that Rules of Court are meant to be obeyed. They are not merely made for the fun of it…. Any applicant who either purposefully or mistakenly flouts any of these rules must do so with the full consequences in mind.

It is maintained that a person who has failed or refused to meet the statutory requirements of being a legally competent political party agent in an election is a delinquent and ought to be treated as rejected and that such person was never an agent. Where it is agreed that such a person is not an agent of the political party he allegedly represented in that election, he ought not to counter-sign or be given the duplicate copy of the result sheet of a unit, or even be allowed to testify in that capacity as an agent.[38] It is only when this interpretation is given to the relevant provisions of the Electoral Act 2010 (as amended) and the guidelines for the conduct of elections that the provisions would no longer be described as a toothless bulldog that only barks but cannot bite.

7. Conclusion

The basis of this research is to inquire into the nature, status, and effect of the provisions of section 45 of the Electoral Act 2010 (as amended) and paragraph 7 of the INEC regulations and guidelines for the conduct of elections 2019, and reach a finding whether same have the force of law or are merely

[34] Supra.

[35] *Omega Bank Plc v. Government of Ekiti State* (2007) ALL FWLR (Pt. 386) 658 at 689; Paras G - H (CA), per Ogunwumiju JCA; *Adefulu & Ors. v. Oyesile & Ors*. (1989) 12 SCNJ 44; *Fawehinmi v. Akilu & Anor*. (1987) 11 - 12 SCNJ 151; *Adesokan v. Adetunji* (1994) 6 SCNJ 123.

[36] *Adesanoye v. Adewole* (supra).

[37] (2009) LPELR-CA/K/169/06 per Okoro, JCA (Pp. 21-22, paras. E-F)

[38] It would be different if the person having failed the legal requirement test of being an agent of a political party, but however functioned as one – without signing any document as agent – appears before the tribunal or court to give evidence either as a voter or non-voter that witnessed what transpired in that polling unit or point. Such evidence would qualify under section 14 of the Evidence Act 2011, and also not be caught up in the sifting provisions of section 45 of the Electoral Act 2010 (as amended) as well as paragraph 7 of the 2019 INEC Regulations and Guidelines for the Conduct of Elections.

salutary. This inquiry has been conducted within the prism of the special nature of election proceedings in Nigeria, taking into cognizance the posture of the courts in respect of the applicability of the said provisions. As at the time of this research and from materials assessed, it can conveniently be assumed that these relevant provisions have not been made subjects of contention before our courts, so that the available cases dwelt on the interpretation of the Evidence Act, 2011. However, the research has shown that the principles of law and the peculiarity of the process of election and litigation calls for the courts to take a second look at the relevant provisions of the Electoral Act 2010 (as amended) and the guidelines made therefrom whenever such facts are produced and arguments advanced on same. It is must be noted that the Nigerian electioneering process and litigation regime is still nascent when compared to the democratic electioneering processes of other advanced countries. However, one factor that appears to have firmed the democratic practices of most other democratically advanced nations is the presence and strict compliance with law and all other relevant rules applicable in democratic elections. The implication for Nigeria is that, in order for it to attain that height, it must enforce strict compliance with all relevant laws against all players and stakeholders in the democratic electioneering process. The courts as watch-dogs in the democratic electioneering process, are central to the strict interpretation of laws and application of same. They must therefore rise up to the occasion to interpret every applicable requirement of statute and give effect to same as intended by the legislature.