

SCRUTINIZING THE STRUCTURE AND OPERATIONS OF THE ELECTION PETITION TRIBUNAL: A CASE STUDY OF THE ELECTION PETITION TRIBUNAL SECRETARIAT*

Abstract

The onerous and challenging tasks involved in dealing with election petition cases requires a very high standard of conduct in the discharge of duties especially from the Election Petition Tribunal Registry Staff (hereinafter referred to as the Election Petition Tribunal Secretariat). In this regard, staffs of the Election Petition Tribunal Secretariats are expected to possess a high level of integrity to do the job. This paper provides an insight into the standards of the discipline and etiquette expected of the staff manning the Election Petition Tribunals as well as the legal foundation for the establishment of Election Petition Tribunals in Nigeria. Furthermore, the paper adopts the doctrinal method of legal research in discussing the legal responsibilities thrust upon the shoulders of the Secretary of the Tribunal with the scope of discourse limited to election petition cases in Nigeria alone. The paper discusses the role of the Secretary of an election petition tribunal as well as the duties and responsibilities of the supporting staff of the tribunal. The paper offers recommendations as to avoidance of abuse of position and conflict of interest by both the staff and secretary of an election petition tribunal.

Keywords: Elections, Secretariat, Petitions, Tribunal, Constitution, Electoral Act.

1. Introduction

Recent elections in Nigeria have now ensured that so much scrutiny has been beamed on the Judiciary and Election Tribunals in particular. Election cases generate a great deal of public interest and serve as a referendum of sorts on the work of the Judiciary; and irrespective of the behaviour of political gladiators on the field or what the election management body does or fails to do, the public still looks anxiously to the election tribunal for justice, electoral justice. Elections in Nigeria is such that affects every aspect of the society, as such election petition cases emanating from the conduct of elections are often very contentious and seemingly stubborn with the feuding parties expressing discordant views on it. In view of the importance of election petition cases, they are said to be *sui generis*. Time is therefore of the essence in prosecuting these election petitions as they are time bound. Election petition Tribunals are indispensable as they are concerned with the political rights and obligations of political actors- especially those who consider their rights injured by the electoral process and need to ventilate their grievances. Thus any act and/or conclusion that tend to shut out an aggrieved party or a party to an election petition from the temple of justice by not hearing him on the merit is discouraged in the interest of peace and democracy; see the cases of *HDP v. INEC*¹ and *Chime v. Onyia*². This explains why the Electoral Act 2022 and other enabling laws employed in litigation are geared towards ensuring that substantial justice is done to the parties at the expense of technicalities.

2. Importance of the Election Petition Tribunals

The much anticipated 2023 General Elections have come and gone. Losing candidates are heading in droves to the various Election Petition Tribunals manned by Judges selected from different jurisdictions and constituted by the President of the Court of Appeal. Hence, in a frantic bid to reclaim alleged stolen mandates, petitions and petitioners would line up at the tribunals seeking electoral justice. It goes without saying therefore that this paper could not have come at a more auspicious moment. Election Tribunals are special purpose courts designed for the resolution of electoral disputes, and the Registry (or Secretariat), which is integral to every court, aids the effective discharge of judicial function. In the context of the Electoral Act 2022, ‘Registry’ means ‘a Registry set up for an Election Tribunal established by the Constitution or the Act or the Registry of the Court of Appeal’, whilst ‘Secretary’ means ‘the Secretary of an Election Tribunal established by the Constitution or the Act and shall include the ‘Registrar’ of the Court of Appeal or any officer or clerk acting for him.³

3. Legal Foundation for the Establishment of Election Petition Tribunals

Implementing and assuring justice for political parties, political actors/election gladiators is not only a constitutional right of fair hearing⁴ but also an international obligation to which Nigeria subscribes,⁵ noting however that significant attention

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¹ (2009) 8 NWLR (PT 143) 297 at 319 para D-H, per ONNOGHEN JSC (as he then was)

² (2009) 2 NWLR (PT 1124) 1 AT 51 -52 para F-A

³ First Schedule to the Electoral Act, 2022; in this regard, reference to ‘Secretary’ in this Paper inures as a reference to the Registrar in a regular court setting or anyone acting in the place of such a Registrar.

⁴ Fair hearing is a fundamental right guaranteed by s. 36 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)

⁵ The Protocol on Democracy and Good Governance adopted by the Economic Community of West African States in 2002 mandates that “Every accession to power must be made through free, fair and transparent elections.” Another is Article 4 of the African Union Declaration on Principles Governing Democratic Elections in Africa adopted in Durban, South Africa (“The Declaration”) in July, 2002 which prescribed a benchmark for democratic elections namely, that it should be conducted fairly, under democratic constitutions and

has been accorded to it in Part VIII of the Electoral Act 2022 (as was with its precursors), which is appropriately titled ‘*Determination of Election Petitions arising from Elections*’, whilst comprehensive ‘Rules of Procedure for Election Petitions’ are set out in the First Schedule thereto. The apparatus for attaining electoral justice are the Election Petition Tribunals (EPTs) established for the various categories of elections, namely: Presidential Election Tribunal,⁶ Governorship Election Tribunal,⁷ National and State Houses of Assembly Election Tribunal⁸, and Area Council Election Appeal Tribunal.⁹ For the record, these Tribunals are manned by Judicial Officers appointed by the appropriate authorities¹⁰; but the remit of this Paper is the support staff (Secretariat) of the Election Petition Tribunals.

4. General Ethical Standards Required of Tribunal Secretariat Staff

Generally there are six sub-themes under which secretarial staff must not be found wanting; these are: accountability; in their relationships; avoidance of abuse of office, avoidance of conflict of interest, in their decorum and comportment, and adherence to regulations and directives¹¹.

Accountability: This comes in various ways, namely: personal accountability; accountability in the use of tribunal resources; and accountability pertaining to records and official or confidential information. Personal accountability is demonstrated by honesty and transparency in the conduct of official business, avoid committing acts that could lead to his or her conviction unless for minor offences such as traffic infraction, declaration of assets upon appointment and periodically as required by the law, and declaration of any health circumstance that could affect the discharge of his or her duties and/or for which the tribunal would require to make special arrangements. Furthermore with regards to personal accountability secretariat staff must not engage in any other full time or part-time job simultaneously with the job as a court staff (particularly during the duration of the tribunal session), as well as accountability in personal financial dealings so as not to expose him or her to pressures that could affect the integrity of the staff¹².

Relationships: Relationships must be such as not to interfere with performance of his or her official duties, or adversely reflect on the operation and dignity of the Tribunal¹³. Tribunal registry staff must refrain from partisan political activities, including acting as a leader or holding any office in a partisan political organization or making speeches for, or publicly endorsing or opposing a partisan political organization or candidate or soliciting funds for or contributing to a partisan political organization, candidate or event.

Abuse of Position: Tribunal secretariat staff shall not use or attempt to use their official positions to secure unwarranted privileges or exemptions, either for himself or herself or any other person. They must therefore avoid acts of bribery, corruption, embezzlement and misappropriation, and shall not accept, agree to accept, dispense or solicit any gift or favour based on an understanding that official actions of the secretariat staff would be influenced thereby. Elections being at the core of the democratic process can only be fully perceived to be impartial and fair especially if every aspect of the electoral process remains unimpeachable¹⁴. Therefore the election petition tribunals must be manned by personnel who do not

in compliance with supportive legal instruments, under a system of separation of powers that ensures in particular, the independence of the judiciary, at regular intervals in accordance with national constitutions, by impartial, all-inclusive competent accountable “electoral institutions” staffed by well-trained personnel and equipped with adequate logistics. Article III(C) of the Durban Declaration requires State Parties to establish competent legal entities including effective constitutional courts to arbitrate in the event of disputes arising from the conduct of elections to ensure democratic elections, whilst Article iv (13) provides that – every citizen and political party shall accept the result of elections as conducted in accordance with law, and – accordingly respect the final decision of the competent electoral authorities, adjuring that those who are dissatisfied with the result can challenge the result appropriately according to law. Toeing a similar tenor, the African Charter on Democracy, Elections and Governance (2007) requires State Parties to establish and strengthen national mechanisms that redress election-related disputes in timely manner; Article 17 (4) of the Charter specifically requires State Parties to establish and strengthen national mechanisms that redress election-related disputes in timely manner; Article 17 (4) of the Charter specifically requires State Parties to put a binding code of ethics in place which shall include a commitment by political stakeholders to accept the results of the election or challenge them through exclusively legal channels. Electoral dispute resolution is not specifically provided for at the United Nations level, but it is inherent in the respective framework on dispute resolution such as the International Covenant on Civil and Political Rights (ICCPR), hence create International legal obligation (See Lydia A. Nkansah, op.cit., p.7)

⁶ Section 130 (2) (a) Electoral Act, 2022 designates the Court of Appeal as the Presidential Election Tribunal

⁷ Section 285 (2) CFRN, 1999 (as amended) (Second Alteration Act, 2011)

⁸ Section 285 (3) CFRN, 1999 (as amended) (Second Alteration Act, 2011); Sixth Schedule, CFRN, 1999 (as amended)

⁹ Sections 131 and 132 Electoral Act, 2022

¹⁰ The Chairman/Members of these Tribunals are appointed by the President of the Court of Appeal in consultation with heads of various courts; whilst appointments to the Area Council Election Tribunal and Area Council Election Appeal Tribunal are made by the Chief Judge of the Federal Capital Territory.

¹¹ Samuel E. Idhiarhi, ‘Ethics and Code of Conduct for FCT Court Staff and Miscellaneous Provisions of the JSC Regulations (Revised Edition, 2018)’ (Paper delivered at an Orientation Programme for Staff of the FCT Judiciary, held at Treasure Suites, Central Business District, Abuja on 15th and 16th March, 2022)

¹² *ibid*

¹³ *Ibid* n10

¹⁴ Electoral Justice - The International IDEA Handbook, 2010 (Preface), p. V; See generally: Peter Affen, *Electoral Justice vs. Legal Justice in Nigeria: Do the Waters Mix?* *Nigeria Current Law Review* 2020 – 2021 (Issue 1), pp. 24 – 87.

request compensation from petitioners as a precondition for performing their work. In addition to the admonition above it is sacrosanct to note that Secretariat staff must not offer legal advice or canvass, tout, and/or present himself/herself in such a manner as to give the impression of capability to influence the course of justice. During the course of the work of the tribunal they must not accept gifts except in specific circumstances; e.g. gifts from friends and relatives under custom, books from publishers, loan obtained from a financial institution or scholarship awarded on same terms as applied to others¹⁵.

Conflict of Interest: Tribunal Secretariat staff shall avoid conflicts of interest or appearance of conflict of interests in the performance of their official duties. Conflict of interest arises when a court employee has private interests that come in conflict with the interests of justice or that may impede the proper fulfilment of the court employees' duties. A conflict of interest arises when a court employee knows that the pending proceedings in the tribunal may affect his/her personal (or his/her family members') situation in such a manner that a reasonable person with knowledge of those circumstances would question the court employee's ability to perform official duties in an impartial manner. In this wise, the tribunal staff must not engage in any business or activity or any relationship which may conflict or appear to conflict with the performance of his work and they must notify their supervisors or appointing authorities once they become aware that they are a party, victim or a witness or in any other capacity connected to any case pending before the tribunal.

Decorum and Comportment: Court and Tribunal employees are required to imbibe and exhibit dignified propriety of behaviour, speech, dress, etc. in the course of their respective official duties. Acts or conducts tending towards sexual harassment or molestation of colleagues or other court users ordinarily are forbidden. Furthermore, such vices as habitual lateness to work, avoiding drunkenness and sleeping on duty among others remain proscribed.

Adherence and Obedience to Regulations and Directives: Staff of Election Petition Tribunals must avoid actions prejudicial to the security of the State, sabotage or wilful damage to public property. Directives such as displaying their identity cards, respecting constituted authority and superior officers remain sacrosanct. Staff must promptly comply with or accept an order of posting. In addition, staff of election petition tribunals must not make false claims against colleagues or any other person in the course of work, and must shun acts of sabotage.

5. Duties of Secretaries of Tribunals

(1) It is noteworthy that the Secretary of the Election Petition Tribunal has no right administratively to reject a petition presented for filing even outside the prescribed time limit, or even where it is in other respects invalid except the invalidity arose from a failure to accompany the petition with a list of the witnesses that the petitioner intends to call in proof of the petition, the written statements on oath of the witnesses and the copies or list of every document to be relied on at the hearing of the petition.¹⁶ It is therefore advisable for the Secretary to ensure that the person presenting the petition or filing any process pursuant to a pending petition makes an undertaking to the effect that he/she was advised at the Registry as to the impropriety of filing the petition out of time or in the face of observed irregularities. It is then left for the Tribunal to judicially deal with the situation in line with the provisions of the law.

(2) Another important point to note is that all filing fees; excluding the security deposit of not less than N500, 000.00 for costs and N500, 000.00 for service, shall be paid electronically via the Remita payment platform. For electronic payments, a receipt containing the Remita Receipt Number shall be generated and presented to the Secretariat which will then complete a receipt in duplicate and issue out the original to the party making the payment. The copy of the Remita receipt must be entered in the General Accounts Record Books kept by the Tribunal for the use of auditors. The security deposit of not less than N500, 000.00 for costs and the N500, 000.00 for service are to be lodged into a bank account opened for that purpose by the Secretary who shall issue receipts to that effect to the party making the payments. In view of the above, the Secretary must of course, account for the use of the monies in his custody and state the particulars in the winding up report of the Tribunal. It is sacrosanct to note here that the security deposit of N500, 000. 00 is returnable to the payer at the end of the Tribunal's jurisdiction.

(3) After effectively setting up the Secretariat, the Secretary will issue a Press Release informing the general public of the opening of the Tribunal Secretariat for business at a specified address or venue, usually in the following manner:

PRESS RELEASE

**RE: CONSTITUTION OF THE GOVERNORSHIP ELECTION
TRIBUNAL FOR.....STATE GOVERNORSHIP 2023**

This is to notify the general public that pursuant to the powers conferred on the Honourable President, Court of Appeal by the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and the Electoral Act 2022, Hon. Justice M.B.

¹⁵ Ibid n12

¹⁶ Paragraph 4 (6) of the First Schedule to the Electoral Act 2022, see also *Nkeiruka v. Joseph & Ors* (2009) 5 NWLR (Pt. 1135) 505 CA.

Dongben-Mensem, (HPCA) has constituted the Governorship Election Tribunal for State for the 2022 Governorship Election

Sequel to the above, the Honourable Chief Judge ofState, Honourable Justice has granted the use of High Court No.....,for the use of the Tribunal. For any inquiry, the Public is hereby advised to contact the Registry/Secretariat of the Tribunal at the above-mentioned Court address.

XXXXXXXXXXXXXXXXX Esq.,

Tribunal Secretary¹⁷

(4) Furthermore, the Secretary of the Tribunal must be responsible for the custody of the Court seals, stamps and files.

(5) The Secretary is to receive applications of various forms from litigants, counsel and other members of the public and equally produce certified true copies (CTC) for those that require them whether concerning court processes, record of proceedings, rulings or judgments etc.

(6) The Secretary must speedily attend to letters and all other forms of correspondences to the Tribunal, and where correspondences require the attention of the Chairman or member(s) of the Tribunal, promptly bring same to the attention of the person concerned.

(7) To make for smooth conduct of proceedings, the Secretary shall work closely with the Chairman/Members to ensure that the work of the Tribunal is scheduled in such a way that neither the Tribunal nor the Secretariat Staff shall be overwhelmed with the volume of work done at each session, whilst at the same time, ensuring that work shall not lag as to cause the Tribunal to overshoot the statutorily prescribed timeline for the conclusion of its work.

(8) In line with paragraph (7) above, the Secretary shall work with the Chairman to calendarise the volume of work before the Tribunal (from applications for discoveries, pre-hearing sessions, and trials to judgments) after ascertaining the total number of petitions filed at the close of period limited by law for filing petitions, taking into account likely days for public holidays and making allowance for unexpected or unforeseen delays.

(9) Where interpreters are required, the Secretary is to make provision for such facilities for the use of the Tribunal.

(10) At the resumption of each session, the Secretary shall ensure that there are sufficient clerks in open court to assist the Chairman/Members of the Tribunal with the proceedings, and ensure that every process and documentary or real evidence to be tendered is relevant to a petition coming up for consideration; and that the evidence has been sorted out ahead of time and provided for easy access by the members.

(11) The Secretary shall also ensure that there are sufficient copies of all relevant statutes within the reach of the Tribunal and where there is need to consult law reports, sufficient arrangements have been put in place for such access.

(12) Being a Tribunal of first instance whose decisions could be challenged on appeal, the Secretary should designate one or more officer (usually a competent Clerk working with a Confidential Secretary) to streamline the processes and records of the Tribunal at the end of each session, and following every decision (whether direction, Ruling or Judgment) in such a way that it will be easy for the Tribunal members to speedily apprise themselves of contending issues; and attend to applications for compilation of records of appeal with the minimum of stress or distraction to other pending matters.

(13) It is also the duty of the Secretary of the Tribunal to ensure that the Tribunal venue where sessions hold, as well as the offices of the secretariat staff are safe and always kept clean and hygienic. Equally, the Chambers where the Chairmen and Members of the Tribunals recess to are to be kept by the Secretary as a safe and hygienic space.

(14) Provision should be made by the Secretary of the Tribunal for a First Aid Kit and arrangements made with suitable health facility in a contiguous location to provide emergency health services.

(15) The Secretary must know and understand the various laws and rules governing the work of the Tribunal. These are the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the Electoral Act 2022, the Election Judicial Proceedings Practice Directions 2022, and the Federal High Court (Civil Procedure) Rules 2019. The Court of Appeal Rules, 2021 and the Supreme Court Rules, 1999 (as amended) also apply on election petition appeals¹⁸. To enable a proper assessment of filing and other fees, the Secretary must be conversant with the schedule of fees applicable to the Federal High Court as contained in the Federal High Court (Civil Procedure) Rules, 2019.¹⁹

¹⁷ Ibrahim A. Kala, *Key Legal Issues For Election Tribunal Registry*, (2022) (Unpublished)

¹⁸ Ibrahim A. Kala, *'Key Legal Issues For Election Tribunal Registry'*, (2020) (Unpublished)

¹⁹ Para. 54 of the First Schedule to the Electoral Act provides that: 'The practice and procedure of the Tribunal or Court shall be similar to the practice and procedure of the Federal High Court.'

(16) By s. 130 (3) of the Electoral Act, 2022, the election tribunals shall be constituted, not later than 30 days before the election and when constituted, open their registries for business 7 days before the election²⁰. Consequently, upon being appointed, the Secretary must work with this timeline²¹ in mind and proceed to the appropriate location to set up the Secretariat. The Secretariat must be set up with due regard to its proximity to and accessibility from the place where the election was held, which may invariably be the same location to be fixed for hearing the petition²².

(17) Out of courtesy and to foster cooperation and synergy, customarily, upon arrival of the secretariat staff at the appropriate state capital, arrangements must be made to organise courtesy visits to the various Chief Judges of the states in order to seek the intervention of the Chief Judge in providing suitable venues for the Tribunals to sit along with other ancillary issues that need to be sorted out (such as requesting for vehicles from the Chief Registrar of the High Court or requesting for support staff from the high court).

(18) For the sake of accountability, the Secretary should ensure that proper inventory is taken of the items in the location to be used as the Secretariat and Tribunal sitting both at the beginning and the winding up of its lifespan.

(19) The Secretary should procure and place in a conspicuous part of the place chosen for the Secretariat and for the sessions of the tribunal a Notice Board of at least 45 by 30 inches²³.

(20) In addition, the Secretary should procure a mini cashbook in which entries of monies received from the Account department are made as well as records of expenditures, with balances carried forward to the beginning of another month²⁴.

6. Conclusion and Recommendations

The legal framework that will guide the effective discharge of the responsibilities entrusted to Election Tribunal Secretariat Staff is not in doubt, and this paper has attempted to highlight the specific duties of Secretariat Staff of Election Petition Tribunals as contained in the Electoral Act 2022 and the Election Judicial Proceedings Practice Directions 2022. Equally, attention has been averted to the ethical standards required of them. However, the onus lies on the Secretariat staff to remain responsible officers as laws and practice directions are not self-enforcing, there is the human factor needed to enforce same. In light of the foregoing it is expected that the Secretariat staff of Election Petition Tribunals should keep faith with their calling by observing the Laws, Rules and Regulations governing their activities and interactions with members of the public, thereby lending the much needed support to the Election Tribunal in the discharge of their onerous task of dispensing electoral justice. Electoral litigation is a critical arm of the electoral process in Nigeria as one of the major three stages namely: (i) party primary election; (ii) general election; and (iii) election petition²⁵. As such, it is clear from the deluge of pre-election litigation witnessed in the wake of primary elections that the recently concluded 2023 general elections will equally witness a lot of electoral litigation in the Election Petition Tribunals. This is why the staff of the tribunals must brace up for the herculean task that lies ahead. From the foregoing, it is clear that the duties of the Secretary of the Tribunal are wider than the duties usually expected of the registrar of a regular court. The Secretary is the liaison officer between the Tribunal and the public in general. In addition, the Secretary is the liaison between the litigating parties on the one hand and the Tribunal on the other. Finally, the Secretary is entrusted with the all-important role of liaison officer between the appointing authority on the one hand and the Chairman/Members of the Tribunal. It is therefore obvious that the Secretary of an election petition tribunal must be above board at all times and the safety and security of all secretaries and supporting staff of election petition tribunals must be made to be of utmost concern to the relevant authorities. Among other things, it is highly recommended that the Secretary of a Tribunal must ensure a high level of integrity and transparency in the rank and file of the supporting staff under his watch. It is equally important that the Secretary himself must ensure that he is not involved in any scenario that will imply a conflict of interest. Secretaries of tribunals and supporting staff must also ensure they do not abuse their positions by demanding monetary or other form of compensation from petitioners at tribunals.

²⁰ For Area Councils' Election Petition Tribunals, it shall be constituted not later than 21 days before the election and open its registry for business not later than 8 days after the election (s. 131 (5) of the Electoral Act, 2022)

²¹ Another timeline the secretary should bring to the attention of the members of the tribunal is that, by section 285 (6) CFRN 1999 (as amended) (the Second Alteration Act, 2011) 'An election tribunal shall deliver its judgment in writing within 180 days from the date of filing of the petition.'

²² Section 20(2) of the Rules of Procedure for Election Petitions, First Schedule to the Electoral Act, 2022

²³ Ibrahim A. Kala, *op.cit.*

²⁴ *ibid*

²⁵ See Chris Uche, *Electoral Litigation in the Sustenance of Constitutional Democracy* – a paper delivered at the Nigerian Law School, Abuja on 8th April 2014.