

**A LEGAL SURVEY ON SECTION 221 OF THE CONSTITUTION OF
THE FEDERAL REPUBLIC OF NIGERIA 1999**

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Abstract

Section 221 of the Constitution of the Federal Republic of Nigeria 1999 provides that no association, other than a political party, shall canvass for votes for any candidate at any election or contribute to the funds of any political party or to the election expenses of any candidate at an election. The assertive question of whether votes cast in an election in Nigeria belong to the candidates or to their political parties has come up for judicial determination in several cases in Nigeria. The latest case in which the said question came up for determination was Suit No.: FHC/ABJ/CS/920/2021 between Peoples Democratic Party (PDP) & 2 Ors. v. Engineer David Nweze Umahi & Anor. which case later went on appeal vide Appeal No.: CA/ABJ/CV/275/2022 between Engineer David Nweze Umahi & Anor. v. Peoples Democratic Party (PDP) & 2 Ors. This Paper interrogates the legal purport of the provisions of Section 221 of the Constitution of the Federal Republic of Nigeria 1999. The researchers found, inter alia, that it is high time that the position of the law relating to the said constitutional provisions became trite and settled so much so that lawyers and the Courts in Nigeria shall no longer be ‘tossed to and fro’ as long as the said constitutional provisions remain unaltered. It is the researchers’ conclusion that sponsorship of candidates and canvassing for votes for the candidates by political parties in any election does not and should not be stretched to translate into ownership by the respective political parties of the votes cast in that election. It is recommended, in the main, that the Court in Nigeria should once and for all categorically settle the aforesaid assertive question and resist any further attempt by any politician or political party to unsettle the issue again as far as the provisions of Section 221 of the Constitution of the Federal Republic of Nigeria 1999 remain unaltered.

Keywords: Election, Votes, Political Party, Canvass, Candidate, Constitution, Election.

1.0 Introduction

A political party is an association or group of people bound together by the same political ideals. It’s usually a cooperation of like-minded people who work together to achieve their political goals.

Ideally, political parties are fundamentally expected to serve as a formidable democratization force by articulating and aggregating public opinion and interests, engendering popular participation, and promoting political education and national integration.¹ By promoting these virtues, political parties can contribute overtly to the political stability of a democratic system.²

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¹ JS Omotola, ‘Political parties and the Quest for Political Stability in Nigeria’. *Taiwan Journal of Democracy*, (2010) 6 (2), p. 125 <<https://www.airitilibrary.com/Article/Detail/18157238-201012-201102230081-201102230081-125-145>> accessed on 26 July 2024.

² *Ibid.*

Every nation in the world has to evolve its own unique political party culture.³ In Europe and America, historical factors compelled the emergence of various types of party systems.⁴ They range from the multiparty, two party to single party types.⁵ In Africa and most developing societies, the party system was informed by the colonial state structures and the response of the indigenous social forces.⁶

In some countries the idea of the existence of political parties are yet to find practical expression in their political processes. In these countries organized parties and legally sanctioned opposition parties do not exist. Political leaders in such countries do not encourage the notion of popular participation as part of the process of governance⁷.

According to Neumann⁸, "political parties are the life line of modern politics", yet parties are highly misconceived for most of the time. Indeed, people take a cynical view of the political party. The party is viewed as an organization for the professional politician. On the contrary parties are of critical importance to any democratic process. For it is through the activities of political parties that the dynamic features of any political system can be understood. Regardless of the type of party that exists or dominates, parties share similar features in respect of inducing participation in the decision-making process and in mobilizing the people for political Action. Parties do control and consciously influence social and political forces. Neumann defines political party as the articulate organization of society's active political agents, those who are concerned with the control of government power and who compete for popular support with another group or groups holding divergent views.

This introduction simply sets the stage for an inquiry into the place of political parties vis-à-vis the ownership of votes cast in an election especially in the light of the provisions of Section 221 of the Constitution of the Federal Republic of Nigeria 1999.

2.0 Examining the Role and Functions of Political Parties

The basic function of political parties is to galvanize public opinion. Political parties are "brokers of ideas, constantly clarifying, systematizing and expounding the party's doctrine". They represent social groups, narrowing the gulf between individuals and the community. By educating the voter, parties help to create opportunity ties for free choice, especially in a competitive party system.

Political parties also play integrative roles. They integrate the individual into the community. Parties ensure that the individual remains within the bounds of group or community interest. For most of the times, they extract loyalties from the individual bearing in mind the survival of the whole democratic system. Parties also "represent the connecting link between government and public opinion". It is a vital element of the party's responsibility to keep open the channel of communication between the leaders and followers.

Another important function of a political party is the selection of leaders. The process of choosing a leader is informed by the need to choose between alternatives. Thus, democracy implies the presence of or the existence of an informed electorate and an enabling environment for these democratic principles to thrive.

A political party represents a particular social group. However, in a given situation more than one party can represent a single social group as long as they are able to mediate between the interest of their group and other groups and at the same time ensure the advancement of their group.

³ B Chizea, 'Parties and Party System in Nigeria', *The Constitution*, Vol. 4, No. 2 (2004) p. 40 <https://journals.co.za/doi/pdf/10.10520/AJA15955753_33> accessed on 19 August 2024.

⁴ *Ibid.*

⁵ *Ibid.*

⁶ *Ibid.*

⁷ This is usually described as a No-or- zero Party System.

⁸ Neumann, Sigmund, (ed.) *Modern Political Parties Approaches to comparative politics*. University of Chicago Press. Chicago 1977. 16.

As representatives of their group, they enlist the support and consent of allied groups in the process of developing their interests. Therefore, the history of a party is synonymous with the history of a given social group. But this group does not exist in isolation in society, it exists alongside friendly and hostile social forces. In other words, the history of the party can be understood in the context of the study of state and society.

All political parties play the role of guaranteeing and protecting a given political and legal order. How this policing function is executed depends on the means and procedures it employs in carrying it out. The means and procedure can be intended for reactionary or progressive ends. It could be for the purpose of subjugating social forces or advancing the interests of the masses of the people. According to Gramsci⁹, the policing function of a party can be progressive, when it tends to keep the dispossessed reactionary forces within the bounds of legality and to raise the backward masses to the level of the new legality. It is regressive when it tends to hold back the vital forces of history and to maintain a legality which has been superseded, which is anti-historical which has become extrinsic. Gramsci further argues that a party which is progressive in function is democratic in nature and operates on the basis of democratic centralism. While the regressive party functions bureaucratically and operates on the principles of bureaucratic centralism. The regressive party is “a simple unthinking executor. It is technically a policing organism. And its name of political party is simply a metaphor of mythological characters”.

At times social groups employ the political party as a vehicle for the expression of their ideological dominance over society. Parties are also the tools for performing similar functions with the state and over a wider political terrain. It brings together various tendencies within the party into a united front.

3.0 Interrogating the History of Political Parties in Nigeria

Tribal, religious, and regional differences have hindered the formation of a truly national political party in Nigeria. Before 1966, the major parties were the Northern People's Congress (NPC), overwhelmingly dominant in the Northern Region and possessing a plurality in the federal House of Representatives; the National Council of Nigerian Citizens (NCNC), dominant in the Eastern Region and junior partner in a coalition with the NPC in the federal House of Representatives; and the Action Group, the majority party in the Western Region and the leading opposition group in the federal legislature. The policies and platforms of the major parties were similar, generally supporting welfare and development programs. Following the 1959 elections, the NCNC joined in a coalition with the NPC in the federal government.¹⁰

The first national elections in independent Nigeria, held on 30 December 1964, were contested by two political alliances: the Nigerian National Alliance (NNA), led by Sir Ahmadu Bello, premier of the Northern Region, and the United Progressive Grand Alliance (UPGA), led by Michael Okpara, premier of the Eastern Region. The NNA comprised the NPC, the Western-based Nigerian National Democratic Party, and opposition parties representing ethnic minorities in the Eastern and Mid-Western regions. The UPGA included the NCNC, the Action Group, the Northern Elements Progressive Union (the main opposition party in the Northern Region), and the United Middle Belt Congress (a non-Muslim party strongly opposed to the NPC). Northerners feared Ibo domination of the federal government and sought support from the Yoruba, while the UPGA accused the Muslim Northerners of anti-Southern, antidemocratic, and anti-Christian attitudes.¹¹

⁹ A. Gramsci, *Selections from the Prison Notebooks* (New York, International Publishers: 1977) <<https://ia800506.us.archive.org/19/items/AntonioGramsciSelectionsFromThePrisonNotebooks/Antonio-Gramsci-Selections-from-the-Prison-Notebooks.pdf>> accessed on 19 August 2024.

¹⁰ Nations Encyclopedia, 'Nigeria - Political parties' <<https://www.nationsencyclopedia.com/Africa/Nigeria-POLITICAL-PARTIES.html>> accessed on 27 July 2024.

¹¹ *Ibid.*

The election results, announced on 6 January 1965, gave a large majority to the NNA (198 of 267 constituencies). Before the balloting began, the UPGA charged that unconstitutional practices were taking place and announced that it would boycott the elections, in which only 4 million of the 15 million eligible voters cast ballots. On 4 January 1965, President Azikiwe called on Prime Minister Balewa to form a new government. In the supplementary elections held on 18 March 1965, the UPGA won all 51 seats in the Eastern Region and 3 seats in Lagos. This was followed by the announcement of an enlarged and reorganized cabinet on 31 March. Ten months later the Balewa government was overthrown, the military assumed power, and on 24 May 1966, all political parties were banned.¹²

When legal political activity resumed in 1978, five parties emerged: the National Party of Nigeria (NPN), representing chiefly the North and an educated, wealthy elite; the Nigerian People's Party (NPP), strong among the Ibos and slightly to the left of the NPN; the Unity Party of Nigeria (UPN), Yoruba-led and Socialist-oriented; the People's Redemption Party, advocating radical social change; and the Great Nigeria People's Party, espousing welfare capitalism. Shagari, the NPN presidential candidate, received the most votes (33.9%) in the 11 August 1979 presidential election, with Obafemi Awolowo of the UPN a close second (29.2%). In National Assembly elections held on 7 and 14 July 1979, the NPN won 36 of the 95 Senate seats and 168 of 440 House of Representatives seats. The UPN was second with 28 and 111, respectively; the NPP was third with 16 and 78. Each of the five parties won control of at least two state governments in elections held on 21 and 28 July 1979. In the presidential election of August 1983, incumbent President Shagari of the NPN won reelection to a second 4-year term, polling 12,047,638 votes (47%). Obafemi Awolowo of the UPN placed second with 7,885,434 votes (31%). That same month, Shagari's NPN posted victories in Senate and House elections. However, there were widespread charges of irregularities in the balloting. All existing political parties were dissolved after the December 1983 coup.¹³

Two parties, the right-of-center National Republican Convention (NRC) and a left-of-center Social Democratic Party (SDP) were permitted limited activity during the transition from military rule. The two-chamber National Assembly to which they were elected never was granted genuine power. On June 12, 1993, Nigerians elected Moshood Abiola, a wealthy businessman, and president, but General Ibrahim Babangida annulled the vote over alleged corruption. Ernest Shonekan replaced him for the interim, and on November 17 General Sani Abacha took power, suspending all partisan and political activity. The May 1994 legislative elections were widely boycotted by foes of Abacha's military regime. On 1 October 1995, Abacha announced a three-year program for return to civilian rule.¹⁴

Political parties, suppressed by the military government, were allowed to form in July 1998. Three parties were registered by the Provisional Ruling Council for participation in local, state, and national elections: the All People's Party or APP led by Mahmud Waziri; the People's Democratic Party or PDP led by Soloman Lar; and the Alliance for Democracy or AD, led by Ayo Adebajo.¹⁵

In the February 1999 election Obasanjo (PDP) won 62.8% of the vote; Olu Falae (AD/APP), received 37.2%. In the Senate, the PDP claimed 66 seats, the APP 23, and the AD 19, with 1 other seat. In the House of Representatives, the PDP took 215 seats, the APP 70, the AD 66, and 9 others. International observers reported some flaws but generally approved the results.¹⁶

Since these elections, the three registered parties have suffered from leadership squabbles. Two factions have claimed leadership of the AD, which is dominant only in the Yoruba southwest. The APP elected a new chairman in December 1999, after its former chairman, Mahmud Waziri

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ *Ibid.*

defected to the PDP. The next presidential and legislative elections were due in April 2003. In December 2002, 24 new political parties registered for the elections.¹⁷

4.0 Appeal No.: CA/ABJ/CV/275/2022 between Umahi & Anor. v. PDP & 2 Ors.

The facts of this case, in the main, border on the defection of the Appellants from the 1st Respondent to the 3rd Respondent. However, the interpretation of the provisions of Section 221 of the Constitution of the Federal Republic of Nigeria 1999 was called into question. The researchers' focus is on the aspects of the case that touches on the provisions of Section 221 of the Constitution of the Federal Republic of Nigeria 1999.

In this case, the 1st and 2nd Appellants were elected on the 9th day of March, 2019 as the Governor and Deputy-Governor of Ebonyi State respectively. They (the 1st and 2nd Appellants) were accordingly sworn in on the 29th day of May, 2019. They contested election into those offices on the platform of the 1st Respondent (Peoples Democratic Party). Following some disagreements between the Appellants and the leadership of the 1st Respondent, they (Appellants) switched their membership (defected) to the 3rd Respondent (All Progressives Congress). The 1st Respondent was greatly embittered by that decision (defection) and therefore approached the Abuja Judicial Division of the Federal High Court of Nigeria vide an Originating Summons per *Suit No.: FHC/ABJ/CS/920/2021 between Peoples Democratic Party (PDP) & 2 Ors. v. Engineer David Nweze Umahi & Anor.*¹⁸ whereby the 1st Respondent (who was the 1st Plaintiff at the Federal High Court) vehemently contended *inter alia* that based on the provisions of Section 221 of the Constitution of the Federal Republic of Nigeria 1999 *et al* and the decisions of the Supreme Court in *Amaechi v. INEC*¹⁹ and *Faleke v. INEC*²⁰, votes at the election and elections are won by political parties and not their candidate or the candidates sponsored at the election by the political parties, and accordingly prayed the Court (Federal High Court of Nigeria) in the main that the Appellants be ordered to vacate office in order to give room to persons nominated by the 1st Respondent.

The learned trial Judge per Inyang Ekwo J. considered the respective Affidavits of the parties and the submissions of counsel in that regard, and found in favour of the 1st Respondent (PDP – who s the 1st Plaintiff at that trial Court). The learned trial Judge relied on the cases of *Amaechi v. INEC*²¹ and *Faleke v. INEC*²² to conclude that, the votes cast at an election are votes for the political platform or party which sponsored a candidate at an election. Therefore, that, where the candidate defects to another political party, he cannot carry with him, the votes of that party to his new party. That in such circumstance, he will be deemed to have vacated or abandoned not only the political party on whose ticket he contested the election but also the votes. That, the only remedy is for the Court to declare that he has vacated the office which he occupies by virtue of the votes secured by the political party on whose platform he contested the election. According to the trial Judge:

...the 3rd and 4th Defendants did not on their own win the election of 9th March, 2019 to become Governor and Deputy Governor of Ebonyi State respectively. They were sponsored by the Plaintiff in compliance with the provision of Section 221 of the 1999 Constitution (as amended). Therefore, it was the Plaintiff (PDP) that the electorate voted for. They cannot remain in the office of Governor and Deputy Governor respectively of Ebonyi State after their defection without the Plaintiff (PDP) that the

¹⁷ *Ibid.*

¹⁸ Judgment in *Suit No.: FHC/ABJ/CS/920/2021 between Peoples Democratic Party (PDP) & 2 Ors. v. Engineer David Nweze Umahi & Anor* is available at <<https://sabilaw.org/wp-content/uploads/2022/03/JUDGEMENT-IN-PDP-V.-INEC-2-ORS0001-1-1.pdf>> accessed on 19 August 2024.

¹⁹ (2008) 5 NWLR (Pt. 1080) 227

²⁰ (2016) 18 NWLR (Pt. 1543) 61

²¹ *supra*

²² *supra*

electorate voted for. On the other hand, the 2nd Defendant (APC) was not the party elected by the electorate in the election of 9th March, 2019 to govern Ebonyi State.

Obviously displeased by the decision of the Federal High Court, the Appellants (Engineer David Nweze Umahi and Dr. Eric Kelechi Igwe) appealed to the Court of Appeal per Appeal No.: CA/ABJ/CV/275/2022 *between Umahi & Anor. v. PDP & 2 Ors.*²³ The Respondents in that appeal were the Peoples Democratic Party (PDP – who was the 1st Plaintiff at the Federal High Court), the Independent National Electoral Commission (INEC – who was the 1st Defendant at the Federal High Court), and the All Progressives Congress (APC – who was the 2nd Defendant at the Federal High Court). The Court of Appeal of Nigeria found and held *inter alia* that the appeal had merit and it (the appeal) was thereby allowed. Consequently, the judgment of the Federal High Court of Nigeria coram Inyang Ekwo, J in Suit No: FHC/ABJ/CS/920/2021 was thereby set aside.

The Honourable Court of Appeal held *inter alia* that learned trial Judge erred grievously when he held that the votes cast at an election are votes for the political party and not the candidate who merely used the platform of the political party to contest the election. The Court of stated *inter alia* that:

...by Section 179 (1), (2), (3) (4) and (5) of the 1999 Constitution, it is a candidate for an election to the office of Governor and/or Deputy-Governor that is declared as duly elected to such office, and not the political party. See also Sections 69, 70 and 71 of the Electoral Act, 2010 (as amended). Similarly, by Section 75(1) of the Electoral Act (supra), it's the candidate who is returned elected and issued a Certificate of Return, not the political party. The learned trial Judge, therefore, erred grievously when he held that the votes cast at an election are votes for the political party and not the candidate who merely used the platform of the political party to contest the election.²⁴

5.0 The Clarity of Section 221 of the Constitution of the Federal Republic of Nigeria 1999

It is the researchers' view that the provisions of Section 221 of the Constitution of the Federal Republic of Nigeria 1999 are plain and the phraseology presents no ambiguity. For the avoidance of doubt, the said Section 221 of the Constitution of the Federal Republic of Nigeria 1999 provides that "No association, other than a political party, shall canvass for votes for any candidate at any election or contribute to the funds of any political party or to the election expenses of any candidate at an election". In this section, we can glean both a benefactor or sponsor and a beneficiary. While the political party is glaringly the benefactor or sponsor, the candidate is the beneficiary.

Significantly, provisions of the Constitution which bother on the qualifications of a person for election to the National Assembly, State Houses of Assembly and certain offices including the offices of the President, Governors clearly stipulate that a candidate for any such election must be a member of a political party and must be sponsored by that political party.²⁵ Thus, as against the concept of independent candidature, the relevant Constitution of the Federal Republic of Nigeria 1999 and the Electoral Act simply provide that a candidate in any election must be a member of a political party and must be sponsored by that political party. Indeed, it is the candidate that runs for the office in question and is voted for in the election however, part of his qualifications is that he must be a member of a political party and must be sponsored by that political party. The Constitution of the Federal Republic of Nigeria 1999 only abhors independent candidature.

The tone and tenor of the provisions of Section 221 of the Constitution of the Federal Republic of Nigeria 1999 make it abundantly clear that the votes are for the candidate though the

²³ (2022) LPELR-58994(CA) pp. 1 – 87.

²⁴ (2022) LPELR-58994(CA) pp. 74 – 75 paras. F – C.

²⁵ See for example Constitution of the Federal Republic of Nigeria 1999, ss. 65(2)(b), 106(d), 130(c), 177(c), 179(2).

votes are to be canvassed by a political party. The employment of the preposition “for” abundantly supports the position and literal interpretation that the votes cast in the election are to the credit or for the benefit of the candidate. It is thus posited by the researchers that just as one does not and in fact cannot claim ownership and/or utility of a degree certificate merely because he sponsored the student through school or claim the ownership and/or utility of a visa merely because he sponsored the person to whom the visa was issued; likewise, a political party cannot claim ownership of votes cast in an election because it sponsored the candidate.

6.0 Conclusion and Recommendations

It is settled law that in the interpretation or construction of the constitution, where the words used therein are plain and clear, the Court is enjoined to give it that plain or literal meaning. No Court is allowed to stress or strain the plain words used in the Constitution in order to give the provision subject of interpretation, a meaning not intended by the lawmaker. In other words, the Court should not roam around in search of a meaning not intended or assigned to that provision by the makers of the Constitution. Thus, constitutional provisions are to be interpreted strictly in accordance with the ordinary meaning of the words used without attaching meanings to the words used so as to give it a meaning attractive to the Judge.

It is high time that the position of the law relating to Section 221 of the Constitution of the Federal Republic of Nigeria 1999 became trite and settled so much so that both the trial and appellate Courts in Nigeria shall no longer be ‘tossed to and fro’ as long as the said constitutional provisions remain unaltered.

It is the researchers’ conclusion that sponsorship of candidates and canvassing for votes for the candidates by political parties in any election does not and should not be strained or stressed to translate into ownership by the respective political parties of the votes cast in that election. It is recommended that the Courts in Nigeria should once and for all categorically settle the aforesaid assertive question and resist any further attempt by any politician or political party to unsettle the issue again as far as the provisions of Section 221 of the Constitution of the Federal Republic of Nigeria 1999 remain unaltered.

In tandem with the relevant provisions of the extant Rules of Professional Conduct for Legal Practitioners in Nigeria, it is further submitted that lawyers in Nigeria should understand that their duties to accept briefs and represent their clients must be subject to the rule of law and/or within the ambits of the law. Accordingly, a lawyer shall not knowingly advance a claim or defence that is unwarranted under existing law, although he may advance such claim or defence if it can be supported by argument in good faith for an extension, modification, or reversal of existing law. More so, a lawyer is prohibited from knowingly making a false statement of law or fact. It is further recommended that lawyers should resist the temptation of being ‘tossed to and fro’ by the political cum selfish interests of some politicians. In view of the plain provisions of Section 221 of the Constitution of the Federal Republic of Nigeria 1999, it should have by now become unwarranted for any lawyer to advance the claim in any Court in Nigeria that votes cast in an election belong to the political parties and not to the candidates.