

## APPRAISING THE IMPERATIVES OF PRIMARY ELECTIONS UNDER THE NIGERIAN ELECTORAL SYSTEM\*

### Abstract

General elections are preceded by primary elections conducted by each political party as a process of nominating their candidates to contest the varying positions, using the party's platform. The election processes, including the activities of the actors and participants must be regulated with a view to ensuring a peaceful, free and fair elections. Hence, the provisions of the Electoral Act, the relevant provisions of the Constitution of the Federal Republic of Nigeria 1999 (as amended) as well as the Constitution and guidelines of a political party must be complied with in the nomination of candidates through primary elections conducted by each political party. This article is aimed at appraising the legitimacy of primary elections under the electoral system in Nigeria. The study adopted the doctrinal method of data collection to achieve the set objectives. The paper found that the Electoral Act limits the right of a person to contest in an election except on the sponsorship of a political party. Accordingly, section 84(1) of the Electoral Act, 2022 makes it mandatory for a political party seeking to nominate its candidate for a general election to hold or conduct a primary election for aspirants seeking its sponsorship. The paper submits that the said section 84(1) of the Act, no doubt impugns on the right of a person to contest election without let or hindrance by a political party, and recommends that the Electoral Act, 2022 should be amended to include provision permissive of independent candidacy. The right to vote and be voted for is an age-long human right rooted in both domestic and international laws. The uninhibited participation of every person of age is imperative in the sustenance of our democracy, which inexorably evolve a stable and vibrant economy for the wellbeing of the people.

**Keywords:** Election, Primaries, Independent, Candidacy, Democracy, Franchise and Right

### 1. Introduction

Primary election is a mini election in which a political party elects its preferred candidate to contest for an election, under its platform, into a public office. This is an elimination mechanism whereby a party trim down a pool of nominees to one candidate referred to as the party flag-bearer who represent the party at the general election. In this way, the persons eliminated from contest against their will have lose their right to participate as candidates. There are direct and indirect primary elections. In direct primary election, registered members of the party vote for the person they want as their party's flag bearer. In indirect primary election, party members elect delegates who in turn elect the party's candidate on behalf of the members of the political party. Delegates are a democratically elected group of voters elected at party congresses. A congress is a convention of members of a political party where registered members of a political party elect delegates that will represent them at the various congresses, to wit: local, state and national congresses.<sup>1</sup> Parties and their members are expected to conform to the rules in the exercise of their electoral rights. Party members are therefore, bound by the Constitution of the Federal Republic of Nigeria, the Electoral Act and their own Constitutions and Guidelines. Any act taken by members of a political party, which is contrary to the provisions of the law and the party's guidelines would be declared invalid. The power to conduct primary election resides in the Electoral Committee constituted by the National Working Committee of a party. In the All Progressives Congress (APC), for instance, the Guidelines prescribed a seven-member Legislative Election Committee (State House of Assembly, House of Representatives and Senate) for each State of the Federation and the Federal Capital Territory. The members of the Committee are to be recruited from outside of their states for the assignment, and comprises of a chairman, secretary and five other members. They are responsible for the overall conduct of the exercise in the State and in the Federal Capital Territory. However, the membership of the various Electoral Committees shall be as constituted by the National Working Committee, acting on behalf of the Independent National Electoral Commission. The Electoral Committee appoints returning officers from amongst themselves. The Returning Officer shall have the power to supervise areas where they cannot cover provided that such Returning Officer shall not hail from the Constituency, Senatorial Zone or State in question. There shall also be polling officers appointed by the Electoral Committee

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<sup>1</sup> Governance, 'Explainer: What are Direct and Indirect Primary Elections?', available at <https://www.google.com>, accessed on 30<sup>th</sup> June 2020.

for each election that shall assist the returning officer in the conduct of the exercise.<sup>2</sup> The court has held in *Akpatason v. Adjoto*<sup>3</sup> that any primary election conducted by the State Executive of a party is illegal.

Essentially, section 84(1) of the Electoral Act, 2022 makes it mandatory for a political party seeking to nominate its candidate for a general election to hold or conduct a primary election for aspirants seeking its sponsorship. It is the exclusive right of a political party to nominate or sponsor a candidate, being a domestic or internal domain of a party. In *A.P.C. v. Karfi*,<sup>4</sup> the court held that, in virtue of section 87 of the Electoral Act, 2010 (as amended) (now section 84(1) of the Electoral Act, 2022), it is the political party's legal right to sponsor or nominate its own candidate. Even a court of law lacks the jurisdiction to determine which candidate a political party should sponsor. This is the preserve of a political party. However, an aggrieved candidate is at liberty to challenge such primary election only on ground of non-compliance with the guidelines for party primaries, the Electoral Act and the Constitution. This article shall therefore appraise the legitimacy of primary elections under the electoral system in Nigeria.

## 2. Selected Theories of Election

The theory of participation in election, according to Fededersen and Sandrni models a two-candidate election in which a large population of agents may vote for candidate 1, vote for candidate 2 or abstain. According to him, voting costs vary within the population and a single vote is never pivotal. Essentially, the winner of the election is the candidate that receives majority of votes cast. Comparing a similar theory by Harsanyi, Fededersen and Sandroni assume that agents care about how they should behave. In addition, they assume that agents have preferences over the candidates and the cost of the election, but these preferences are not necessarily related to social welfare. Unlike Harsanyi, Fededersen and Sandroni allow for heterogeneous preferences.<sup>5</sup> According to Bendal, *et al*, theories of elections assume that voters and political actors are fully rational. The behavioral theory of elections is based on the notion that all actors, including politicians as well as voters, are rational. The theory posits learning through trial and error. Thus, actions that surpass a candidate's aspiration level are more likely to be used in the future, while those that fall short are less likely to be tried later. It is based on this idea of adaptation that models of party competition, turnout, and voters' choices of candidates are constructed. These models predict substantial turnout levels, voters sorting into parties, and winning parties adopting centrist platforms. In multiparty elections, voters coordinate vote choices on majority-preferred candidates, while all candidates garner significant vote shares. Generally, the behavioral theory and its models produce obvious implications consistent with the data on elections, and they use plausible assumptions about the cognitive capacities of politicians and voters.<sup>6</sup> Generally, the influence of electoral systems on party systems has become obvious. In the view of Visser, there is close association between proportional representation and multipartism on the one hand, and between single-member district elections and the two-party system on the other. Thus, the electoral system constitutes an important determinant of the type of party system.<sup>7</sup> However, this article prospects independent candidacy as a necessary fallback for effective electoral participation especially in the Nigerian democratic experiment.

## 3. Procedure for Conduct of Primary Elections by System of Indirect Primaries

There are two systems by which primary elections are conducted: direct and indirect primaries, depending on the choice of a political party. Accordingly, section 84(1) and (2) of the Electoral Act, 2022 provides that a political party seeking to nominate candidates for election under the Act shall hold primaries for aspirants to all elective positions. The procedure for the nomination of candidates by political parties for the various elective positions shall be by direct or indirect primaries. The court has held in *Ugwuegede v Asadu*<sup>8</sup> that where a political party adopts the direct primaries procedure under section 84(2) and (3) and (4) of the Act, it shall ensure that all aspirants are given equal opportunity of being voted for by the members of the party. On the other part, a political party that adopts the system of indirect primaries for the choice of its candidates shall adopt the following procedure:

(a) in the case of nomination to the position of Presidential candidate, a political party shall:

<sup>2</sup>All Progressives Congress Guidelines for the Nomination of Candidates for the 2019 General Elections – Direct Primaries, paragraph 20(c) and (d).

<sup>3</sup>(2019) 14 N.W.L.R. (Pt. 1693) p. 501 at 504. See also the All Progressives Congress Guidelines for the Nomination of Candidates for the 2019 General Elections.

<sup>4</sup>(2018) 6 N.W.L.R. (Pt. 1616) p. 479 at 486.

<sup>5</sup>T.J. Feddersen and A. Sandroni, 'A Theory of Participation in Elections', available at <<https://www.kellogg.northwestern.edu/faculty/fedderse/homepage/papers/duty4-15-02.pdf>>, accessed on 15<sup>th</sup> January, 2021.

<sup>6</sup>J. Bender, et al, 'A Behavioural Theory of Elections', Princeton University Press, available at <<https://press.princeton.edu/books/paperback/9780691135076/a-behavioral-theory-of-elections>>, accessed on 15<sup>th</sup> January, 2021.

<sup>7</sup>J.G. Gruam, 'Theories of Electoral System', *Midwest Journal of Political Science*, Vol. 2, No. 4 (1958) p. 357, also available at <https://www.jstor.org/stable/2108721>, accessed on 15<sup>th</sup> January, 2021.

<sup>8</sup>(2018) 10 N.W.L.R. (Pt. 1628) p. 460 at 464.

(i) hold special convention in each of the 36 States of the Federation and the Federal Capital Territory, and any other place within the Federation that is agreed by the National Executive Committee of the Party where delegates shall vote for each of the aspirants at designated centre, and

(ii) the aspirant with the highest number of votes at the end of the voting shall be declared the winner of the Presidential primaries of the political party, and the aspirant's name shall be forwarded to the Independent National Electoral Commission as the candidate of the party after ratification by the national convention;<sup>9</sup>

(b) in the case of nomination to the position of Governorship candidate, a political party shall where it intends to sponsor candidates hold a special congress to be held in the State Capital with delegates voting for each of the aspirants at the congress to be held on specified dates appointed by the National Executive Committee (NEC) of the party, and the aspirant with the highest number of votes at the end of the voting shall be declared the winner of the primaries of the party, and the aspirant's name shall be forwarded to INEC as the candidate of the party for the particular State;<sup>10</sup>

(c) in the case of nomination to the position of the Senate, the House of Representatives and State House of Assembly, a political party shall where it intends to sponsor candidates hold special congresses in the Senatorial District, Federal Constituency and the State Assembly Constituency respectively, with delegates voting for each of the aspirants in designated centres on specified dates. The aspirant with the highest number of votes at the end of the voting shall be declared winner of the primaries of the party, and the aspirant's name shall be forwarded to INEC as the candidate of the party.<sup>11</sup>

In event that a political party fails to comply with the provisions of the Act in the conduct of its primaries, its candidate for election shall not be included in the election for the specific position in issue. In virtue of section 84(5)(c)(i) and (ii) of the Electoral Act 2022, where a political party adopts the system of indirect primaries for the choice of its candidates who shall contest election into the Senate, House of Representatives and State House of Assembly, it shall hold special congress in the Senatorial district, Federal constituency and the State Assembly constituency respectively. The delegates will vote for each of the aspirants of their choice in designated centres on specified dates. At the end of voting, the aspirant with the highest number of votes shall be declared the winner of the primaries of the party, and as the candidate of the party, his name shall be forwarded to the Independent Electoral Commission.<sup>12</sup> An inconclusive primary election cannot produce a candidate. It suffices to state that over-voting is a serious electoral malpractice, which should not be treated with levity. Any proven case of over-voting renders such an election void. The court in *A.P.C. v. Karfi*,<sup>13</sup> has held that nomination of a candidate for an election can only be valid if it follows the statutory procedures. The courts are bound to ensure that relevant specific provisions, particularly the mandatory provisions of the Electoral Act are complied with. Accordingly, where a political party fails to comply with the mandatory provisions of the Electoral Act on nomination of candidate for general election, the court will intervene and declare such purported nomination invalid. Generally, the courts do not run the affairs of political parties. However, courts will not allow a political party to run its affairs with impunity and in total disregard of its own constitution or statutes. In *A.P.C. v. Karfi*,<sup>14</sup> the court held that political parties must obey their own constitution because the constitution is the organic instrument, which confers powers and creates rights and obligations as well as limitations in the party. Again, it regulates the affairs of the members of a party, and they are bound by its provisions. Thus, courts will never allow a political party to act arbitrarily or as it likes.

#### 4. Jurisdiction of Court over Primary Election

The conduct of primary election is an internal business of a political party, albeit subject to the supervision of the Independent National Electoral Commission (INEC). Following a complaint by a dissatisfied contestant or aspirant at a primary election about the conduct of the primary election, the courts have jurisdiction, in virtue of section 87(9) of the Electoral Act 2006 (now section 84(14) of the Electoral Act 2022) to examine if the conduct of the primary elections was in accordance with the party's constitution and guidelines. Thus, the jurisdiction of the court to entertain complaints arising from party primary election is falls within a very narrow compass. As

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<sup>9</sup> Electoral Act, 2022, section 84(5)(a)(i) and (ii).

<sup>10</sup> *Ibid.*, section 84(5)(b)(i) and (ii).

<sup>11</sup> *Ibid.*, section 84(5)(c)(i) and (ii).

<sup>12</sup> *Akpatason v. Adjoto* (2019) 14 N.W.L.R. (Pt. 1693) p. 501 at 507.

<sup>13</sup> (2018) 6 N.W.L.R. (Pt. 1616) p. 479 at 488.

<sup>14</sup> (2018) 6 N.W.L.R. (Pt. 1616) p. 479 at 488.

held by the court in *P.D.P. v. Ezeonwuka*,<sup>15</sup> the complainant must be an aspirant and his complaint must relate to non-compliance with the provisions of the Electoral Act and the guidelines of the political party. The rationale for this position is that the nomination and sponsorship of a candidate for an election is within the domestic affairs of a political party, and the courts have no jurisdiction to nominate a candidate for a political party. Hence, the choice of a candidate for political party is the internal affair of a political party, and the courts do not interfere in such exercise. The political party is the proper body or person to know which of the aspirants it has cleared for the primaries and general election afterwards. However, the court in *Gana v. S.D.P.*<sup>16</sup> held that an aspirant who complains that any of the provisions of the Electoral Act or guidelines of a political party have not been complied with in the selection and nomination of a candidate or a political party for election may seek redress in the Federal High Court, the High Court of a State or the FCT. This presupposes that where the constitution of a political party stipulates zoning arrangement, it must be respected, otherwise the court would interfere on the application of a member of the party. The court also observed in *Igwemma v. Obidigwe*<sup>17</sup> that in the conduct of primaries, the courts will not allow a political party to act arbitrarily or as it likes. The rationale for the non-interference of the court in the choice of a candidate by a political party is that it would rather amount to court managing the political party for the members thereof. The issue of who becomes the candidate of any political party is not only a political one but a non-justiciable domestic issue that should be determined by a political party in accordance with its guidelines, rules and Constitution. Intra-party disputes have consistently been treated by the courts as domestic affairs of a political party which the courts lack the competence to entertain and determine.<sup>18</sup> Thus, so long as the guidelines and constitution of the political party are not violated and breached, the court has no power to question the choice of a party's candidate presented for election.

### **5. Persons Qualified to Challenge the Selection or Nomination of Candidate of a Political Party**

The selection and nomination of candidates for elective office is the sole preserve of the political parties, and the courts would not usually interfere in their domestic affairs. In expounding this principle, the court in *Agi v. P.D.P.*<sup>19</sup> stated that the issue of nomination or sponsorship of a candidate by a political party to contest an election on its behalf is purely within the domain or precinct of such political party. Accordingly, the courts lack the jurisdiction to nominate or partake in the process of nomination of a candidate for any political party to represent or contest election on its behalf. However, political parties must adhere strictly to the provisions of their Constitutions and electoral guidelines in the process of selecting and nominating their candidates for election. The court has held in the cases of *Nduul v. Wayo*<sup>20</sup> and *Dahiru v. A.P.C.*,<sup>21</sup> that notwithstanding the provisions of the Electoral Act or rules of a political party, an aspirant who complains that any of the provisions of the Act and the guidelines of a political party has not been complied with in the selection or nomination of a candidate of a political party for election, may apply to the Federal High Court or the High Court of State or the Federal Capital Territory for redress. Accordingly, a claimant who challenges the nomination of another person as the candidate of his political party at an election but fails to prove that the person nominated was in breach of any of the party's guidelines for qualification to contest the primary election, is bound to fail. Thus, section 84(5) of the Electoral Act, 2022 provides for the procedure to be followed where a party adopts the system of indirect primaries for the selection of its candidates. In virtue of section 87(9) of the Act, the Federal High Court is imbued with limited jurisdiction to entertain the complaint of an aspirant who contends that any of the provisions of the Electoral Act or the guidelines of his political party was not complied with in the selection or nomination of a candidate of the party.

At any rate, the complainant must be an aspirant who participated in the disputed election. However, a person who did not take part in the primary as a candidate or aspirant cannot invoke section 87(14) of the Electoral Act 2022 to institute a case in court. In *A.P.C. v. Karfi*,<sup>22</sup> the court held that in virtue of section 84(9) of the Electoral Act, 2022, an aggrieved aspirant who physically participated in a primary election conducted by the National Executive Committee of his party has the *locus standi* to approach either the Federal High Court or High Court of a State or FCT for redress. Thus, to qualify to complain about the conduct of a primary election of a political party, the complainant would need to show convincingly by unassailable evidence that he participated in the said primary election that formed the basis of the action. In the absence of that condition precedent, the complainant would have robbed himself of a legal right, and his suit would lack the legal potency to avail him any protection

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<sup>15</sup> (2018) 3 N.W.L.R. (Pt. 1606) p. 187 at 198.

<sup>16</sup> (2019) 11 N.W.L.R. (Pt. 1684) p. 510 at 516.

<sup>17</sup> (2019) 16 N.W.L.R. (Pt. 1697) p. 117 at 123.

<sup>18</sup> O.D. Amucheazi & C. Onwuasoanya, *The Judiciary, Politics and Constitutional Democracy in Nigeria (1999-2007)* (Enugu: SNAAP PRESS Ltd., 2008) p. 69.

<sup>19</sup> (2017) 17 N.W.L.R. (Pt. 1595) p. 386 at 395.

<sup>20</sup> (2018) 16 N.W.L.R. (Pt. 1646) p. 548 at 558.

<sup>21</sup> (2017) 4 N.W.L.R. (Pt. 1555) p. 218 at 223.

<sup>22</sup> (2018) 6 N.W.L.R. (Pt. 1616) p. 479 at 486.

under section 84(14) of the Electoral Act, 2022. The court buttresses this in *Maihaja v. Gaidam*<sup>23</sup> that before a candidate at a political party's primaries can have *locus standi* to sue on the conduct of the primaries, he must have been screened, cleared by his political party and participated at the said primaries. Accordingly, a person who did not participate in the primaries could be conveniently be classified as an interloper with no real interest in the primaries.

The right to challenge the conduct of a political party's primaries usually takes place where any provision of the Electoral Act or the Constitution and or guidelines of a political party has been breached or not complied with. This presupposes that a party who did not take part in the primaries as an aspirant has no *locus standi* to invoke the jurisdiction of the High Court in the circumstance. Accordingly, the court in *Davidson v. P.D.P.*<sup>24</sup> held that where a candidate of a political party refuses to participate in the primary election organized by his party in accordance with the rules and guidelines of the party's constitution, such a candidate will have no *locus standi* to challenge the result of the primary election. Thus, by virtue of section 84(14) of the Electoral Act, 2022), the court in both *Maihaja v. Gaidam*<sup>25</sup> and *Aghedo v. Adenomo*<sup>26</sup> held that notwithstanding the provisions of the Act or rules of a political party, an aspirant who complains that any of the provisions of the Act and the guidelines of a political party has not been complied with in the selection or nomination of a candidate of a political party for election may apply to the Federal High Court or High Court of a State or the Federal Capital Territory (FCT), for redress. In *Ugwuegede v. Asadu*,<sup>27</sup> the court observed that the import of the clear and unambiguous words of section 84(14) of the Act is that once the complaint of an aspirant is that in the selection or nomination of a candidate for election, a political party has breached any provision of the Electoral Act or the party's guidelines, the aspirant is entitled to seek redress at either the Federal High Court, High Court of a State or that of the FCT notwithstanding any provision in the Electoral Act and/or the political party's guidelines to the contrary. Thus, an aspirant is a person who has contested his party's primaries that produced the sponsored candidate. According to the court in *Maihaja v. Gaidam*,<sup>28</sup> only an aspirant who took part in the primary election for the nomination of a party's candidate for a specific election has the *locus standi* to approach the court for reliefs against the result or conduct of the said election. This means that any person who did not participate in the said primary election as an aspirant lacks the *locus standi* to challenge the result of the said election. Therefore, in order to invoke the provision of section 84(14) of the Electoral Act, 2010 (as amended), the following condition precedent must coexist:

(i) there must be a complaint that the party's guidelines or the provisions of the Electoral Act were not observed in the nomination process; and

(ii) the complainant must have participated in the primary election.

In the event a political party adopts the system of indirect primaries for the choice of its candidates, and where the party, for instance intends to sponsor candidates to the Senate, House of Representatives and State House of Assembly, the party shall observe the following procedure:

(i) the party shall hold special congresses in the Senatorial District, Federal Constituency respectively and the State Assembly constituency respectively, with delegates voting for each of the aspirants in designated centre on specified dates; and

(ii) the aspirant with the highest number of votes at the end of the voting shall be declared the winner of the primaries of the party. The aspirant's name shall consequently be forwarded to the Independent National Electoral Commission as the candidate of the party.

It is trite that no party, in virtue of section 106 (d) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), can be declared winner of any general election conducted by the Independent National Electoral Commission if it had no candidate qualified to contest the election. In addition, the court in *Aghedo v. Adenomo*<sup>29</sup> has espoused that for a candidate to be *bona fide* and registered as such candidate, he must have scaled through the rigours of section 87(1) and (4) of the Electoral Act, 2010 (as amended) (now section 84(1), (4) and (5)) of the Electoral Act, 2022, and must have satisfied the mandatory sections 31 and 32 of the Act (now sections 28, 29 and 30 of the Electoral Act, 2022) in order to be placed on the ballot by the Independent National Electoral Commission. The decision of a primary election panel and an appeal committee of a political party is subject to the decision of the Federal High Court in virtue of section 84(14) of the Electoral Act, 2022. In the event there are multiple primaries for a specific elective position conducted by a political party and there is a dispute on such,

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<sup>23</sup> (2018) 4 N.W.L.R. (Pt. 1610) p. 454 at 459.

<sup>24</sup> (2019) 6 N.W.L.R. (Pt. 1668) p. 330 at 331.

<sup>25</sup> (2018) 4 N.W.L.R. (Pt. 1610) p. 454 at 459.

<sup>26</sup> (2018) 13 N.W.L.R. (Pt. 1636) p. 264 at 269.

<sup>27</sup> (2018) 10 N.W.L.R. (Pt. 1628) p. 460 at 465.

<sup>28</sup> (2018) 4 N.W.L.R. (Pt. 1610) p. 454 at 461.

<sup>29</sup> (2018) 13 N.W.L.R. (Pt. 1636) p. 264 at 269.

the court has a duty to say which of multiple primaries the authentic one is. According to the court in *P.D.P. v. Oranezi*,<sup>30</sup> this is the reason that section 87(4)(c)(i) & (ii) and (9) of the Electoral Act, 2010 (as amended) (now section 84(4), (5) and (14)) has been put in place, and to avoid arbitrariness by some officials of the political party who may want to impose their preferred candidates who probably did not take part in primaries because of the conflicting claims by the parties. The foregoing provision give any aspirant member of a registered political party, who participated in a primary election conducted by a political party to choose a candidate to contest an election under its platform, who is not satisfied with the outcome of the primary election contested with other members of the same political party, to approach the specified courts for redress.<sup>31</sup> It is only the court that could resolve the issue. Thus, the court will be abdicating its responsibility if it declines jurisdiction by declaring that such suit is not justiciable.

#### **6. False Document and Information by a Candidate for Election**

The consequence of submitting a forged document to the Independent National Electoral Commission is grave. Thus, it requires direct, sharp and somewhat precise evidence and proof. The nature of evidence required in this kind of situation should be similar that of ‘mathematical precision’. The court has held in *Maihaja v. Gaidam*<sup>32</sup> that where an allegation of presentation of forged certificate to the Independent National Electoral Commission is in issue, the accusing party must prove:

- (i) that the certificate presented to the Commission was forged, and
- (ii) that it was the candidate that presented the certificate who forged it.

These two ingredients must be proved beyond reasonable doubt.

It is trite that any person who has presented a forged document to INEC shall not be qualified to contest any election.<sup>33</sup> Where a candidate for election gives false information in terms of his qualification or any of his particulars, any aspirant who participated in the primaries of his political party, and who has reasonable grounds to believe that any information given by his political party’s candidate in the affidavit or any document submitted by that candidate in relation to his constitutional requirement to contest the election is false, is empowered by section 29(5) of the Electoral Act, 2022 to institute an action before Federal High Court to seek a declaration that such information is false. The court in *Mohammed v. Wammako*<sup>34</sup> held that in virtue of section 31(5) of the Electoral Act, 2010 (now section 29(5) of the Electoral Act, 2022), any person who has reasonable grounds to believe that any information given by a candidate in an affidavit or any document submitted by that candidate is false may approach the High Court for redress. The false information referred to in section 29(5) of the Electoral Act, 2022 must relate to the 1999 Constitutional requirements for election into the office in dispute. The court has however, held in *Lawrence v. P.D.P.*<sup>35</sup> that a challenge of a candidate under this provision is not a challenge to a party’s choice of which candidate to sponsor in an election. The said section 29(5) of the Electoral Act, 2022 clearly confers *locus standi* on any person whether a member of a political party or not to invoke the jurisdiction of the High Court, and the court has the requisite *vires* to hear and determine his case. Accordingly, the court held in *Ogah v. Ikpeazu*,<sup>36</sup> that by virtue of section 31(5) and (6) of the Electoral Act, 2010 (now section 29(5) of the Electoral Act, 2022), any person not necessarily an aspirant, who participated in the primary election of the political party may approach any of the three designated courts thereunder, and on proof that the candidate has submitted to INEC any false information indicating that he has fulfilled all constitutional requirements for election into the office the candidate seeks, obtain from the court an order disqualifying the candidate. The court observed however, that not just any person can approach any of the three designated courts for the relief specifically provided for in virtue of section 84(14) of the Electoral Act. Essentially, only an aspirant in the primary election in relation to which the candidate is alleged to have supplied the false statement may approach the court to seek an order for the disqualification of the candidate. In *Agi v. P.D.P.*<sup>37</sup> the court held that to present a valid case of disqualification of a candidate on the ground of falsification of age, it must be proved that the falsification was done to circumvent the provision of section 177 of the 1999 Constitution, particularly as it relates to age qualification. Section 177(b) of the 1999 Constitution (as amended) puts the minimum age at 35 years for a candidate to qualify for election as Governor of a State.

<sup>30</sup> (2018) 7 N.W.L.R. (Pt. 1618) p. 245 at 247.

<sup>31</sup> The courts are the Federal High Court, High Court of a State and the High Court of the Federal Capital Territory.

<sup>32</sup> (2018) 4 N.W.L.R. (Pt. 1610) p. 454 at 459.

<sup>33</sup> P.A. Onamade, *Advocacy in Election Petitions* (Lagos: Philade Co. Ltd., 2007) p. 121.

<sup>34</sup> (2018) 7 N.W.L.R. (Pt. 1619) p. 573 at 579.

<sup>35</sup> (2018) 5 N.W.L.R. (Pt. 1613) p. 464 at 467.

<sup>36</sup> (2017) 17 N.W.L.R. (Pt. 1594) p. 299 at 305.

<sup>37</sup> (2017) 17 N.W.L.R. (Pt. 1595) p. 386 at 396.

The standard of proof required in any action founded on section 29(5) of the Electoral Act, 2022 is proof beyond reasonable doubt. This is because the allegation of falsification of information is criminal in nature.<sup>38</sup> The court also in *Maihaja v. Gaidam*<sup>39</sup> held that in virtue of section 31(5) and (6) of the Electoral Act, 2010 (as amended) (now section 29(5) of the Electoral Act, 2022), a person who alleges that a candidate for an election has given false information in the forms or processes filed with the Independent National Electoral Commission for the purpose of an election can approach the court for redress. In proving falsification of age beyond reasonable doubt, it is not enough for the plaintiff to demonstrate the act of falsification of age. It is also incumbent on him to establish that the act was intentional, i.e. the act was done with the intention to gain an advantage by the alleged act of criminality. Elucidating on the foregoing principle, the court in *Agi v. P.D.P.*<sup>40</sup> stated that in virtue of section 177(b) of the 1999 Constitution (as amended), the *mens rea* in falsification of age for eligibility to contest election as governor of a State in Nigeria must, of necessity relate to circumventing the age prescription of 35 year to contest election. Therefore, according to the court in *Maihaja v. Gaidam*,<sup>41</sup> to succeed on an allegation of forgery and false declaration, the complainant must prove the following:

- (i) the existence of a document in writing;
- (ii) that the document or writing was forged;
- (iii) that the forgery was by the person being accused;
- (iv) that the party who made it knew that the document or writing was false; and
- (v) that the party accused intended the forged document to be acted upon as genuine.

Accordingly, if, for instance, there is any discrepancy in the age of a candidate for an election, it must have a bearing on the constitutional requirement before it can have the effect of disqualifying him. Thus, a person who is qualified to contest an election in virtue of the 1999 Constitution (as amended) cannot be disqualified by the operation of any other law in force in Nigeria. The Constitution takes precedent over all other laws. Where there is a matter of alleged falsification of a document or rendering of a false statement, it must relate to a qualifying or disqualifying factor in virtue of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). At any rate, there must be evidence of an intention by a candidate who falsifies his age to circumvent the provisions of the 1999 Constitution. The court in *Maihaja v. Gaidam*<sup>42</sup> held that where there is an allegation made pursuant to section 31(5) of the Electoral Act, 2010 (as amended), that information given by a candidate in an affidavit or any document submitted by that candidate is false, the burden is on the person who makes the assertion to prove that fact. In virtue of section 131 of the Evidence Act, 2011, whoever desires any court to give judgment as to any right or liability dependent on the existence of facts which he asserts must prove that those facts exist. Hence, he who asserts must prove his assertion. Thus, the burden of proof in a suit or proceeding lies on the person who would fail if no evidence at all were given on either side.<sup>43</sup> The court further held that in virtue of section 135(1) of the Evidence Act, 2011, where the commission of a crime by a party to a civil proceeding is alleged, like forgery, the alleged criminal offence must be proved beyond reasonable doubt.

## 7. Conclusion

Elections are very decisive in determining the leadership of a country as well as the constituent states and local government areas. The election processes, including the activities of the actors and participants must be regulated with a view to ensuring peaceful, free and fair elections. Hence, the provisions of the Electoral Act, the relevant provisions of the Act as well as well as the Constitution and guidelines of a political party must be complied with both in the nomination of candidates through primary elections conducted by each political party and in general elections. It is the prerogative of a political party, not the electoral body, to conduct primary election to choose its flag bearer for any office. Any dissatisfied contestant is empowered to ventilate his complaint before the appropriate court. In the case of primary election, the court in *Olugbemi v. Lawrence*<sup>44</sup> that by virtue of section 87(9) of the Electoral Act, 2010 (as amended) (now section 84(14) of the Electoral Act, 2022), notwithstanding the provisions of the Act or rules of a political party, an aspirant who complains that any of the provisions of the Act and the guidelines of a political party has not been complied with in the selection and nomination of a candidate of a political party for election, may apply to the Federal High Court or the High Court of a State or the Federal Capital Territory for redress. It is pertinent to recall that section 84(1) of the Electoral Act, 2022 makes it mandatory for a political party seeking to nominate its candidate for a general election to hold or conduct a primary election for aspirants seeking its sponsorship. The paper submits that the said section 84(1) of the Act, no doubt impugns on the constitutional right of a person to stand in election without inhibition by a political party. It is recommended that the Electoral Act, 2022 should be amended to include provision permissive of independent candidacy not sponsored by any political party. This will establish unfettered latitude for the exercise of the citizens' franchise.

<sup>38</sup> Evidence Act, 2011, section 135(1) and (2). See also *Kakaih v. PDP* (2014) 15 N.W.L.R. (Pt. 1430) at 374.

<sup>39</sup> (2018) 4 N.W.L.R. (Pt. 1610) p. 454 at 459.

<sup>40</sup> (2017) 17 N.W.L.R. (Pt. 1595) p. 386 at 401.

<sup>41</sup> (2018) 4 N.W.L.R. (Pt. 1610) p. 454 at 464.

<sup>42</sup> (2018) 4 N.W.L.R. (Pt. 1610) p. 454 at 459.

<sup>43</sup> Evidence Act, 2011, section 132.

<sup>44</sup> (2017) 16 N.W.L.R. (Pt. 1591) p. 209 at 215.