

**CHALLENGING ELECTIONS IN NIGERIA AND THE ROLE OF THE APPELLATE COURTS\***

**Abstract**

*Election is the act of choosing or electing people who will take over the control of the affairs of an institution, be it a government institution or any organization. Some elections matters are regarded as pre-election while others are post-election. Matters emanating from elections are special, different and distinct from other matters, civil or criminal. Appeals from such election matters go to the superior courts ie, the Court of Appeal and the Supreme Court depending on the category of the status of the election being questioned, just as it is with normal civil and criminal matters. However, appeal in election causes differs a bit as not all matters gets to the apex court. Appeal is a constitutional right of an individual who feels dissatisfied with the decision of a lower court in both normal civil matters and electoral matters. This study is of the utmost view that election matters ought not to linger to appellate courts so as to orchestrate quick dispensation of justice in such matters but again the litigants' rights might be trampled upon should they be denied their rights of appeal. This article examined the eligibility to of parties to institute election matters, grounds upon which such matters or causes can be instituted, the role of the appellate courts in election matters in Nigeria and its consequences. This work concluded that litigants in election matters have constitutional rights of appeal but that such rights should be tamed by the constitution in order to avoid the long period of litigation in election matters same being sui generis. It is recommended amongst other things that the qualification for contesting elections into the office of the President, Vice-President, Governorship and deputies, Senate and House of Representatives, House of Assembly and Local Government Chairmen should be First Degree; civil and public servants and political appointees should be allowed to contest elections provided they resign 90 days to the elections; there shall be established a special Tribunal and Appeal Tribunal for pre and post elections, etc. And it is hoped that the few recommendations preferred at the end of this work would go a long way to reducing the nagging problems associated with electoral matters in Nigeria.*

**Keywords:** Elections, Petitions, Appellate Courts, Nigeria,

**1. Introduction**

There has been a public cry and criticism, as to the length of time involved in the litigation process of electoral politics in Nigeria. Often times, judgments were delivered within two-three years in an election matter which normally commence at the tribunal where it is a post-election matter and the regular courts i.e, High Courts, where it is a pre-election matter. Post-election matters are such matters that emanates from an election, while pre-election matters are those matters which emanates before the election proper. Post-election matters comprise of such matters which bothers on the conduct and outcome of elections. And pre-election matters encompass all those matters relating to intra-party issues such as nomination of candidates. The Electoral Act, the Constitution and any other Act of the National Assembly regulate elections in Nigeria and their provisions are very sacrosanct and unique.<sup>1</sup> The Electoral Act has been altered or amended by the legislature over the years in order to find a lasting solution to the delays occasioned in election matters. In spite of these amendments, the legislature is yet to achieve their set goals as electoral matters are still being delayed in our courts. The judiciary has absolved itself of the blame, saying that they are doing their best in ensuring that cases before them are disposed of on time. Lawyers too refused to accept the blame, arguing that justice hurried is justice buried. There has however, been criticisms as to why electoral matters or political matters should be taken to appellate courts, such as the Supreme Court. The critics are of the view that election matters should probably commence and end at the tribunal in order to save time and costs. This article is therefore, geared towards unraveling the propriety or otherwise of taking election matters to appellate courts, ie, the apex court. The provisions of the Electoral Act and the constitution will be critically examined. Some case laws and legal pronouncements will equally be considered with a view to making recommendations. The question is whether taking electoral politics to the appellate courts is reasonable? And whether the delays inherent in these cases from the court/tribunal of first instance to the appellate courts are called for?

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\*By **Chi. Johnny OKONGWU, PhD**, Associate Professor, Department of Jurisprudence and International Law, Associate Dean Faculty of Law Chukwuemeka Odumegwu Ojukwu University, Igbariam Campus. Email : lawleviokongwu@gmail.com. Phone No: 08034850007; and

\***Samuel UGBO, BL., LL.M, Ph.D (in view)**. Phone Nos.: 08080540346; 08033815251. Email-samlegal2004@gmail.com

\***Chidinma Blessing NWAKOBY**, Lecturer, Faculty of Law, Chukwuemeka Odumegwu Ojukwu University, Igbariam Campus. Email: nwakobychidinma@gmail.com Cellphone No: +234 7062983239

<sup>1</sup> See, the CFRN 1999 (as amended) and Electoral Act 2022 (as amended)

## 2. Meaning of Election

The Black's Law Dictionary<sup>2</sup> defines an Election as 'the exercise of a choice, the act of choosing from several possible rights or remedies in a way that precludes the use of other rights or remedies.' The same Black's Law Dictionary went further to state the meaning of election as follows:

the doctrine by which a person is compelled to choose between accepting a benefit under a legal instrument and retaining some property rights to which the person is already entitled; an obligation imposed on a party to choose between alternative rights or claims; the process of selecting persons to occupy an office usually a public office or membership award or other title or status.

In *Attorney-General of Abia State & Ors v Attorney-General of The Federation*,<sup>3</sup> Mohammed JSC held that:

the constitution did not define the word 'election', but Electoral Act 2002 (now 2020 as amended) which govern elections into various political offices defines the term 'General Election' as 'all election held in the Federation at large and at all levels, a regularly recurring election to select officers to serve after the expiration of the full terms of their predecessors.

The word 'election' in the context in which it is used in the constitution means the process of choosing by popular votes, a candidate for a political office in a democratic system of government. It is a context between two or more persons for power and the control of authority. Election Petitions have been classified as '*sui generis*' and peculiar suits in their own class. The proceeding of electoral body is strict. It is often repeated that election petition and rules applicable to it and its procedure are unique. This is the reason election petitions are regarded as being different from other proceedings; they are neither allied to civil nor to criminal proceedings. Defects or irregularities which in other proceedings are not sufficient to affect the validity of a claim are not so in an election petition – *Samamo v Anka*<sup>4</sup> Election Petition requires such urgency and should be devoid of all forms of procedural defects and technicalities. Thus, in *Nwankwo v Attah*<sup>5</sup>, Uwais JSC (as he then was) held that 'as a matter of deliberate policy to enhance urgency, election petitions are expected to be devoid of procedural clogs that cause delay in the disposition of substantive disputes', hence, the relevant rules are issued in mandatory forms'. This doctrine of *Sui Generis*, like every other principle of law is not *strictu sensu*. It can be waived in some circumstances- *Muhammadu Buhari & Ors v Chief Olusegun Obasanjo & Ors*<sup>6</sup>. Here, the court stated that because of the fact that election petitions are special proceedings completely divorced and separated from civil proceedings and *Sui Generis*, this court will turn a blind eye to the defective appellant's brief and will consider the appeal as far as possible on its merits.

## 3. Who can present an Election Petition?

It has been submitted earlier that there are two types of election matters. They are: (1) Pre-election matters; and (2) Post-election matters Whereas, Pre-election matters emanates before the election proper, Post- Election matters normally emanate from the outcome of the elections. Pre-Election Matters are Civil Matters proper and are begun at regular courts, ie, High Courts of States, Federal High Courts and High Court of Federal Capital Territory, and they are subject to appeal to the Court of Appeal and eventually to the Supreme Court. Like other normal civil matters, anybody who has *locus standi* can institute a Pre-election matter. But the issue of the jurisdiction of the court must be considered. Post-Election Matters are however, begun at the election petition Tribunal put in place in various states and the Federal Capital Territory. The Presidential Election petition Tribunal is the Court of Appeal and its appeal lies to the Supreme Court. The election petition Tribunals are constituted not later than 30 days before the election<sup>7</sup>. But the Pre-election Matters are not begun at the election petition tribunal. Pre-Election Matters are usually Intra-Party matters or the issue of certificate forgery, nomination of candidate, qualification etc. The 1999 Constitution (as amended) provides that for the purposes of the constitution, pre-election matters mean any suit by:<sup>8</sup>

- (a) An aspirant who complains that any of the provisions of the Electoral Act or any Act of the National Assembly regulating the conduct of primaries of political parties and the provisions of the guidelines of a political party for conduct of part primaries has not been complied with by a political party in respect of selection or nomination of candidates for an election.

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<sup>2</sup> B.A. Garnner, *Black's Law Dictionary* 7<sup>th</sup> edn.(U.S: West Publishing Co. 1990) 536.

<sup>3</sup> 9 NSQR 670 at 791.

<sup>4</sup> (2000) 1 NWLR (Pt. 640) 283 at 295.

<sup>5</sup> (1999) 5 NWLR (Pt. 601) 134.

<sup>6</sup> (2003) 17 NWLR (Pt. 850), 423 at 508.

<sup>7</sup> S. 130 (3) Electoral Act 2022.

<sup>8</sup> S. 285(14) CFRN 1999 (as amended).

- (b) An aspirant challenging the action, decision or activities of the Independent National Electoral Commission in respect of his participation in an election or who complains that the provision of the Electoral Act or any of the National Assembly regulating Election in Nigeria has not been complied with by the Independent National Electoral Commission in respect of the election or nomination of candidates and participation in an election; and
- (c) A political party challenging the action, decision or activities of the Independent National Electoral Commission disqualifying its candidate been participating in an election or a complaint that the provisions of the Electoral Act or any other applicable law has not been complied with by the Independent Electoral Commission in respect of the nomination of candidate of political parties for an election, timetable for an election regulation of voters and other activities of the commission in respect of preparation for election.

It follows therefore, that where a political party conducts its primaries to elect a candidate to be nominated for an election, anyone that participated in the primaries and is dissatisfied by the conduct or the outcome of the primaries or complains of non-compliance with the provisions of Electoral Act and guidelines of the party has the right to approach the court to seek redress for his grievances.<sup>9</sup> Such primaries shall be direct,<sup>10</sup> indirect<sup>11</sup> or by means of consensus<sup>12</sup> must be monitored by the Independent Electoral Commission<sup>13</sup>. An aspirant was defined in *PDP v Sylva*<sup>14</sup> as a person with a strong desire to achieve a position of importance or to win a competition. Indeed, section 87(9) of the Electoral Act now Section 84(1) (as amended) provides that ‘a political party seeking to nominate primaries for aspirants to all elective positions which shall be monitored by the commission.’ The Supreme Court has stated that ‘a person who contested an election must be someone who actually participated in the primary election he is challenging.’<sup>15</sup> It follows that before a candidate at a political party can have *locus standi* to sue on the conduct of the primaries, he must have been screened cleared by his political party and participated in the primaries. Thus, a person who did not participate in the primaries could be conveniently classified as an interloper with no interest in the primaries<sup>16</sup>. A political party shall not be allowed to change or substitute its candidate whose name has been submitted under the Electoral Act<sup>17</sup> except in the case of death or withdrawal by the candidate. Provided that in the case of such withdrawal or death of a candidate, the political party affected shall, within 14 days of the occurrence of the event, hold a fresh primary election to produce and submit a fresh candidate to the Commission for the election concerned.<sup>18</sup> Also, if after time for the delivery of nomination paper and before the commencement of the poll, a nominated candidate dies, the Chief National Electoral Commissioner shall, being satisfied of the fact of the death, countermand the poll in which the deceased candidate was to participate and the Commission shall appoint some other convenient date for the election within 14 days.<sup>19</sup> Pre-election matters encompass litigations arising from party primaries, such as issues bothering on substitution of candidates; issues on the conduct of primaries etc. In *APC v Lere*,<sup>20</sup> the court held that pre-election matters include: complaints about the conduct of primaries; false declaration on oath about particulars of a candidate; disqualification of a candidate; nomination of a candidate; wrongly substitution of a successful candidate’s name by the electoral body; double nomination of a candidate amongst others.

A political party must adhere strictly to the provisions of its constitution.<sup>21</sup> Any aspirant who participated in the primaries of his political party 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 requirements to contest the election is false, may file a suit at the Federal High Court against that candidate seeking a declaration that the information contained in the affidavit is false.<sup>22</sup> This provision has a caveat that where the court determines that any of the information contained in the affidavit is false only as it relates to constitutional requirements of eligibility, the court shall issue an order disqualifying the candidate and the sponsoring political party and then declare the candidate with second highest number of valid votes and who

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<sup>9</sup> S.84(12) Electoral Act 2022 (as amended).

<sup>10</sup> *Ibid*, s. 84(4).

<sup>11</sup> *Ibid*, s. 84(5).

<sup>12</sup> *Ibid*, s. 84(9).

<sup>13</sup> *Ibid*, s. 84(1).

<sup>14</sup> (2012) 13 NWLR (Pt. 1316), 126.

<sup>15</sup> *Eze v PDP & Ors* (2018) LPELR – 44907.

<sup>16</sup> *Maihaju v Gaidam* (2018) 4 NWLR (PT. 1610), 454 @483.

<sup>17</sup> S. 29 Electoral Act.

<sup>18</sup> S. 33 Electoral Act 2022 (as Amended).

<sup>19</sup> *Ibid*, S. 34.

<sup>20</sup> (2020) 1 NWLR (Pt. 1705) 254, 279.

<sup>21</sup> S. 29 (5) Electoral Act 2022 (as Amended). See also, *Uzodinma v Izunaso* (No2) (2011) 17 NWLR (Pt. 1275).

<sup>22</sup> *Ibid*, s. 29(6).

satisfies the constitutional requirements as the winner of the election.<sup>23</sup> Notwithstanding anything to the contrary in this constitution, any pre-election matter shall be filled not later than 14 days from the date of the occurrence of the event, decision or action complained in the suit.<sup>24</sup> A court in every pre-election matter shall deliver its judgment within 180 days from the date of filing of the suit.<sup>25</sup> The following persons may present an election petition:- (a) A Candidate in an election; (b) A political party which participated in the election.<sup>26</sup>

#### 4. Grounds upon which Elections can be questioned

An election may be questioned on any of the following grounds:<sup>27</sup>

- a. That a person whose election is questioned was, at the time of the election not qualified to contest the election.
- b. That the election was invalid by reason of corrupt practices or non compliance with the provisions of this Act;
- c. That the respondent was not duly elected by majority of lawful votes cast at the election;
- d. That the petitioner or its candidate was validly nominated but was unlawfully excluded from the election.

However, an election shall not be liable to be invalidated by reason of non-compliance with the provisions of the Electoral Act if it appears to the Election Tribunal or court that the election was conducted substantially in accordance with the principles of the Act and that the non-compliance did not affect substantially the result of the election<sup>28</sup>. Going by the provisions as to who may question an election as provided in the Electoral Act only a political party and a candidate that participated in the election can bring a petition to the tribunal. With the greatest respect to the drafters of the Electoral Act, it is submitted that individuals who go out to cast their votes are not recognized by law as those that may present a petition in an election petition Tribunal. They are the immediate people who are concerned with the elections; voters determine the winner and the loser. But on the contrary, it is again submitted that allowing voters in the elections access to bring petitions will amount to the proliferation of election petitions. In that case, all tom, dick and harry will file petitions at the tribunal, thereby leading to more time being wasted and consumed by the Tribunal or Courts. Political pundits have continually questioned the rationale behind taking electoral politics matters to appellate courts. Their reasoning is that some politicians have even reaped where they did not sow. It was argued that election matters, being *Sui Generis*, ought not to go to the appellate courts because of its nature. They are therefore, of the opinion that a special tribunal be put in place to dispose of such matters whether pre or post-election matters. Others have suggested that alternative dispute resolution mechanism should be employed to resolve electoral issues before the winners are being sworn-in for the next term of office. But with the greatest respect to the proponents of this idea, it is submitted that even if you constitute a panel and give it is time frame, aggrieved persons may still be dissatisfied with the decisions of the tribunal and may wish to go further on appeal. Denying them their rights of appeal will be a subject of criticism and yet another problem that would call for resolution. It should be noted too that some judges at the lower court err in law; they are equally not infallible and as such, could make grievous mistakes or some of the judges could be corrupt, and if Petitioners/Respondents or litigants are not given the opportunity to proceed on appeal, injustice would have been occasioned.

Again, if the Tribunal or Court determines that a candidate who was returned as elected was not validly elected on any ground, the Tribunal or Court shall nullify the election and order the Commission to conduct a fresh election not later than 90 days after the decision if an appeal is not filed against the decision; or nullification of the election by the court having final appellate jurisdiction in respect of the said election.<sup>29</sup> The Act further provides that where an Election Tribunal or court nullifies an election on the ground that the person who obtained the highest votes at the election was not qualified to contest the election, the Election Tribunal or Court shall declare the person with the second highest number of valid votes cast at the election who satisfies the requirements of the Constitution and this Act as duly elected. Provided that the person with the highest number of valid votes cast at the election remains a member of the political party on which platform he contested the election otherwise, the candidate with the next highest number of votes in the election and who satisfies the same conditions shall be declared the winner of the election.<sup>30</sup>

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<sup>23</sup> Ibid.

<sup>24</sup> S. 285(9) CFRN 1999 (as Amended). See also *Garba v APC* (2020) 2 NWLR (Pt. 1708) 345 at 360.

<sup>25</sup> Ibid, S. 285(10) CFRN. See also *Abubakar Tuggar v Adamu Muhammed & Ors* (2019) LEOELR 47883.

<sup>26</sup> S.133 Electoral 2022 (as Amended)

<sup>27</sup> Ibid, s.134.

<sup>28</sup> S. 135 Electoral Act 2022 (as amended).

<sup>29</sup> Ibid, s.136(1).

<sup>30</sup> Ibid, s.136(2).

From the above provisions of the Electoral Act, two categories of nullification are identified. First is where a candidate returned as elected was not validly elected on any ground, where a fresh election would be conducted within 90 days. The second limb of it is where the Tribunal or court nullifies an election on the ground that the person who obtained the highest votes at the election was not qualified to contest the election, in this situation, the Tribunal shall declare the person with second highest number of valid votes cast at the election as winner, provided that such person remains in the political party. Where the person is no more a member of the political party, the next person in the election who satisfies the same conditions shall be declared winner. Also, the Electoral Act provides that if the tribunal or court determines that a candidate who was returned as elected was not validly elected on the ground that he did not score the majority of valid votes cast at the election, the Election Tribunal or Court, as the case may be, shall declare as elected the candidate who scored the highest number of votes cast at the election and satisfied the requirements of the Constitution and this Act.<sup>31</sup> It must again be noted that where the election is nullified by the court and notice of appeal against the decision is given within the stipulated period for appeal, the elected candidate shall, notwithstanding the contrary decision of the court, remain in office and enjoy all the benefits that accrued to the office pending the determination of the appeal and shall not be sanctioned for the benefits derived while in office.<sup>32</sup>

The Constitution of the Federal Republic 1999 (as amended) made provisions to the effect that an Election Tribunal or Court shall not declare any person a winner at an election in which such a person has not fully participated in all stages of the election<sup>33</sup>. The intention of the draftsmen of the said provision is to cushion the effect of the porous electoral system and politicians who cross carpet from one political association to another from time to time in order to obtain party tickets. It is a welcome development and it is submitted that this legislation would go a long way to strengthen Nigerian democracy and partisan politics.

#### 5. The Role of the Appellate Courts in Electoral Politics

Usually, it is a cardinal principle of law that where a litigant is dissatisfied with the judgment of a lower court, it is his/her right to go further to a superior court to challenge such decision. The process of going further to challenge the said decision of the lower court is known as 'appeal.' The Supreme Court of Nigeria is the highest court of the land. Appeal lies from the court of appeal to the Supreme Court. Appeal from High Courts, including Federal High Courts and State High Courts lies to the Court of Appeal. Also, in election matters, appeals from election petition Tribunal in the States lies to the Court of Appeal. All Courts of Appeal are the same irrespective of their divisions. And appeals emanating from Court of Appeal in election matters lies to the Supreme Court. The Court of Appeal is the court of first instance in a Presidential election petition and appeals there from lies to the Supreme Court. The Appeals from the election petition tribunal for the State Houses of Assembly and National Assembly (Senate and House of Representatives) lies and ends at the Court of Appeal. Governorship election petitions are begun at the Tribunal and ends at the Supreme Court. Election Petition Tribunals shall be constituted days before elections and the registries shall be open 7 days before the elections.<sup>34</sup> The Constitution of the Federal Republic of Nigeria, 1999 (as amended) provides that subject to the provisions of the constitution, the Court of Appeal shall to the exclusion of any other court of law in Nigeria, have original jurisdiction to hear and determine any question as to whether:

- a. Any person has been validly elected to the office of the President and Vice President, under this constitution.
- b. the term of the President or Vice President, has ceased.
- c. The office of President or Vice President has become vacant.

Appeal is a constitutional right which no one can deny a citizen of this country. A person dissatisfied with the judgment of the lower court shall have an inalienable right to appeal. The same thing applies to matters involving electoral politics, whether pre-election or post-election matters. In *Prince Uche Nwole v Chief Amah C. Iwuagha And Ors.*<sup>35</sup>, Aderemi JCA held that

An appeal is an invitation to a higher court to review the decision of a lower court or tribunal with a view to finding out whether on a proper consideration of the totality of the evidence placed before it vis-a-vis the pleadings and of course, the applicable law, that court has arrived at a correct decision. In other words, an appeal is an invitation to a higher court to re-hear the case already decided by the court below.

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<sup>31</sup> Ibid, s. 136(3).

<sup>32</sup> Ibid, s.139(1).

<sup>33</sup> S. 285 (13) CFRN (as Amended).

<sup>34</sup> S.130 (3) (a) and (b) Electoral Act 2022.

<sup>35</sup> (2003) JELR 56667(A).

Also, in *Lawrence A. Oredoyin And Ors v Chief Akala Aruwulu And Ors*<sup>36</sup>, Oputa JSC had this to say:

An appeal is not the inception of a new case. No, far from that. An appeal is generally regarded as a continuation of the original suit rather than an inception of a new acting. That being so, an appeal should normally and generally be contained to consideration of the record, which came from the court below with no new testimony taken or new issues raised in the appellate court. This is the broad view of an appeal. An appeal to the court of appeal should be a complaint against the decision of the trial court.

An election petition shall be filed within 21 days after the date of declaration of result of the election.<sup>37</sup> Again, its judgment shall be delivered in writing within 180 days from the date of the filing of the petition. An appeal from a decision of an election petition tribunal or court of appeal in an election matter shall be heard and disposed of within 60 days from the date of the delivery of judgment of the tribunal or Court of Appeal.<sup>38</sup> The court in all final appeals from election tribunal may adopt the practice of first giving its decision and reserving the reasons therefore to a later date.<sup>39</sup> The essence of an appeal is to show that the decision appealed from is wrongly made and should be set aside or varied. In an election petition, the question is whether any decision made in the court of an election proceedings before the final decision is appealable or it is only the final decision on the merits that is appealable has been decided See *Senator Aniete Okon v Effiong D Bob*.<sup>40</sup> From the forgoing, it is submitted that appeal is of right, being a constitutional provision. The constitution is supreme over any other law of the land; it is the ground norm and any other law that is inconsistent with the provisions of the constitution is null and void to the extent of its inconsistency<sup>41</sup>.

However, it has been argued by political pundits that electoral politics being *Sui Generis* ought not to have risen to appellate courts, especially the Supreme Court. The delays, energy and time consumed or the cost of litigation is uncalled for and therefore, has derailed our democratic system. These pundits are of the opinion that matters of electoral politics should be settled once and for all, by a tribunal without recourse to appellate court. Their argument, no matter how porous one thinks it maybe, may not be farfetched. Pre-election matters before now took longer time than the post-election matters itself. Some pre-election matters had to linger on to the end of the tenure of the election of a candidate that is being challenged. Some courts have held such matters to be academic exercise. For example, in *Rt. Hon. Rotimi Amaechi v Inec & Ors*<sup>42</sup>, Amaechi as a member of the Peoples' Democratic Party (PDP) in his quest to be the Governorship candidate of Rivers State, contested the party Primaries against seven other members of the PDP. They competed for a total of 6,575 voters. Amaechi had 6,527 votes to emerge the winner. Omelia was not one of the candidates at the PDP Primaries. The PDP submitted Amaechi's name to INEC as its Governorship candidate. No court of law subsequently made an order disqualifying Amaechi from contesting the Governorship election PDP however, substituted Omehia's name for Amaechi without giving cogent and veritable reason for the substitution as required by the Electoral Act 2006, now 2022 (as amended). Amaechi therefore, brought his suit claiming that he is the rightful candidate of PDP in Rivers State. The Federal High dismissed the appellant's (Amaechi) suit. On further appeal to the court of appeal, the court of appeal on the 20<sup>th</sup> July, 2007 dismissed the appellant's appeal against the judgment of the Federal High Court, Abuja delivered on the 15<sup>th</sup> day of march 2007 in Suit No FHC/ABJ/CS/2007. On further appeal to the Supreme Court, it was held that the PDP has not given cogent and verifiable reasons for substituting the name of Omehia with that of Amaechi. According to the court, Omehia was never a candidate in the election much less the winner.

In *Peter Obi v Independent National Electoral Commission & Ors*<sup>43</sup> an appeal before the Supreme Court from the decision of the Court of Appeal (Enugu Division) which dismissed the appellants appeal from the Federal High Court, Enugu Division with the trial court declining jurisdiction to adjudicate in the matter placed before it. The Plaintiff in that matter Peter Obi now the Appellant at the Supreme Court, had claimed for the determination of the following questions:

- (1) Whether having regard to Section 180 (2) (a) of the 1999 constitution, the tenure of office of a governor first elected as governor begins to run when he took the oath of office of allegiance and the oath of office.

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<sup>36</sup> (2004) 4 NWLR (Pt. 854) 378 at 394.

<sup>37</sup>S. 285 (5) CFRN 1999 (as amended).

<sup>38</sup> Ibid, sub. (6).

<sup>39</sup> S. 285(8) CFRN 1999(as Amended).

<sup>40</sup> (2007) LCN/1464 (CA).

<sup>41</sup>S.1(1) and (3) CFRN.

<sup>42</sup> (2008) LCN/3642 (SC).

<sup>43</sup> (2007) NGSC 195.

- (2) Whether the Federal government of Nigeria through the defendant being its agent can conduct any governorship election in Anambra State in 2007 when the incumbent governor took oath of allegiance and oath of office on 17/3/2016 and has not served his four-year tenure as provided under Section 180 (2) (a) of the constitution.

Allowing the appeal, the Supreme Court held as follows:

- (1) That the office of governor of Anambra State was not vacant as at 29<sup>th</sup> May, 2007.
- (2) That the tenure of office of the appellant (Peter Obi) as Governor of Anambra State which is for four years certain will not expire until 17<sup>th</sup> March, 2010 for the reason of the fact that he being a person first elected as governor under the 1999 constitution took oath of allegiance and oath of Office on the 17<sup>th</sup> March, 2006.
- (3) It is hereby ordered that the 5<sup>th</sup> Respondent (Dr. Andy Uba) should vacate the office of the governor of Anambra State with immediate effect to enable the Plaintiff/appellant (Mr. Peter Obi) to exhaust his term of office.

The legislative arm of government saddled with the responsibility of law making has in one way or the other helped in checking the anomalies occasioned in the electoral process. The Senate and House of Representatives have on various occasions altered and amended the constitution and the Electoral Act. The 2002 Electoral Act was amended in 2006 and later, in 2010, it was equally amended. The 2011 Act later came into force and now amended 2022 Act. The legislature was held bent and determined to improving the electoral process thus, continually amending the Electoral Act in order to cater for the yearnings and aspirations of the citizenry and to meet international standard and best practices. Time seem to have changed in view of some innovations made in the Act and the Constitution of the Federal Republic of Nigeria 1999 (as amended). On January 23, 2018, about 14 pre-election appeals, caught by the new provisions in the constitution of Federal Republic of Nigeria 1999 (as amended) were struck out by the Supreme Court during its proceedings aimed at decongesting the court. Two panels of the supreme court headed by the former CJN, Justice Tanko Mohammed and Justice Bode Rhodes-Vivour, struck out each of the appeals, saying that the effect of the 4<sup>th</sup> alteration Act No. 21 of 2017 was that all pre-action appeals that were either not commenced within 14 days of the arising of the cause of action or determined within the stipulated 60 days had become spent (no longer valid). It must be noted that an election petition and an appeal arising there from under the Act shall be given accelerated hearing and shall have precedence over all the cases or matters before the Tribunal or court. It is submitted that all the provisions in the Electoral Act 2022 (as amended) and other provisions in the Constitution of Nigeria 1999 (as amended) are no doubt new innovations to strengthen and stabilize the electoral politics in Nigeria and indeed has improved the process even though it is not perfect or it is not without shortcomings.

## 6. Conclusion and Recommendations

It has been stated that election matters are *sui generis* – that is, they are unique and they are on their own. Election matters are different from other civil and criminal matters. Therefore, election matters must not be treated with levity. The rules governing it must be applied and adhered to *Strictu Sensu*, otherwise, the courts will throw out such matters from the back doors. It must therefore, be handled with all form of seriousness that it deserves. The Constitution of the Federal Republic of Nigeria 1999 (as amended) and the Electoral Act, 2022 (as amended) are the major legislations governing elections in Nigeria. The legislature, through the instrumentality of these laws have made provisions that would cater for and fast track electoral processes in Nigeria in order to meet modern day realities, yet more need to be done by the legislature. There is no gainsaying the fact that the amendment of the Electoral Act is poised to bring innovations to the polity in Nigeria. To this end, it is submitted that the end to election albatross is not in sight. Previous Electoral Acts were bedeviled with provisions inimical to progressive electoral system but the legislature and the courts have been up and doing. Series of amendments have yielded positive results in the electoral processes but there is need to do more. Again, appeals are of right; it is a constitutional right of a citizen to go on an appeal in any matter. Any provision of the law that negates appeal will be inimical and will offend a person's human and fundamental rights. In election matters, appeals are allowed even to the Supreme Court where it is provided for by the law. In some cases, it ends at the court of appeal. Appeal is not to re-hear the matter or petition *ab initio* but to look at the judgment by the lower court and ascertain whether the lower court evaluated the evidence before it properly or not.

The following measures may be helpful. Elections should be conducted and concluded early enough at least a year before the expiration of a tenure to enable electoral matters especially post-election matters be disposed of before the next tenure takes off. In the alternative, and in order to avoid further delay, a special Electoral Tribunal and Appeal Tribunal should be constituted to dispose of electoral matters be it pre-election or post-election matters and such tribunal should be given a reasonable time frame within which justice should be done to the matters before them. The National Assembly should further amend the provision of section 84(10) of the Electoral Act 2022 (as amended) which prohibits political appointees at any level from being a voting delegate or be voted for at the convention or congress of any political party for the purpose of nomination of candidates for any election. Such appointees should resign 90 days to the election to enable them participate in such elections. The provisions of section 62(2) of the 1999 constitution of the Federal Republic of Nigeria (as amended) should be amended to the effect that a person shall be qualified for election if he/she has been educated up to at least first degree certificate or its equivalent for the positions of the President, Senate, House of Representatives, House of Assembly and Council Chairmen whether or not he or she belongs to a political party. The provisions in the 1999 constitution of the Federal Republic of Nigeria (as amended) bothering on resignation of civil and public servants within 30 days should be amended to read 90 days within which such persons should resign before the election. It is hoped that a total adherence to the above recommendations will go a long way to improving the mechanism for conducting free and fair elections and improve electoral processes in Nigeria.