

THE FEDERAL CAPITAL TERRITORY AND THE QUESTION OF 25% IN PRESIDENTIAL ELECTION VICTORY*

Abstract

On the 5th of February 2023, Nigerians and the international community witnessed what is believed to be one of the biggest political events in Africa's most populated country. Over 40million people marched to the polls to exercise their civic duty and choose the right leader. In the end, the candidate of the All Progressive Congress, Bola Ahmed Tinubu emerged as the winner. It is no news that the above-mentioned candidate has many controversies tied to his name; however, his winning the election caused a greater up rise nationwide particularly among lawyers and political analyst. In a petition submitted to the Election Petition Tribunal on 25th March, 2023, one of contentions raised was that the elected candidate did not satisfy the constitutional requirements to be declared the winner of the election because he had failed to obtain not less than 25% of votes in the FCT even though he polled the highest number of votes in the election. The question though having been laid to rest by the electoral tribunal still makes for good argument especially when the Supreme Court is yet to imprint its stamp on the said question. This issue has divided the legal community into two schools of thoughts, those who believe that obtaining not less than 25% of votes in the FCT is mandatory and those who believe it is not. Based on the argument, this essay seeks to examine the question of not less than 25% and the FCT. It seeks to achieve this by firstly giving an overview of Election Petitions and the need for such in a country like Nigeria including the laws regulating it. Then, this essay shall provide an in-depth analysis of the 2023 election and the petition that arose from it examining the issue of 25% and how the court has ruled on matters analogous to the subject matter of this essay. Finally, this essay shall highlight arguments from notable learned silks in Nigeria regarding the issue before arriving at a conclusion on how such issue can be resolved.

Keywords: Presidential Election Victory, Statutory Interpretation, Federal Capital Territory, Not Less Than 25%, Nigeria

1. Introduction

Elections for years have been recognized as a key player in a Nation's democracy. It has also been held to be behind the transparency and legitimacy of any government. A free and fair election produces a successful and buoyant government while an impartial election produces anarchy and resentment towards a government. Elections serve as the bedrock of any thriving democracy, empowering citizens to exercise their constitutional right to elect leaders who will represent their interests and steer the nation forward. Ever since the Clifford's Constitution of 1922 introduced the Electoral policy, Elections have remained a crucial part of Nigeria's democracy. For a multi-ethnic nation, elections are the only events that unite Nigerians from all walks of life, which is why the outcome of the elections determines what the future of the dear country. However, there have been numerous instances where the aftermath of an election has raised many controversies hence the need for Election Petition Tribunal.

Nigeria is a country known for its vibrant democratic process. As such, the credibility and integrity of our elections are paramount. However, despite considerable efforts to ensure free and fair elections, the political landscape remains plagued by allegations of irregularities, misconduct, and fraud. To address these concerns and safeguard the sanctity of the electoral process, Nigeria's legal system incorporates the mechanism of election petitions. Election petitions provide an avenue for aggrieved parties, including candidates, political parties, and voters, to challenge the outcomes of elections through the judiciary and rectify perceived injustices by upholding the principles of transparency and accountability. The just concluded Presidential election was cloaked with drama from all ends and a crucial highlight of the election was the emergence of Bola Ahmed Tinubu as the President elect (now President). Owing to the glitches encountered during the voting process, many persons have challenged the validity of Tinubu's victory particularly on the grounds that he did not meet statutory requirements. Although he won by a landslide of 8,739,249 votes, he only secured 18.99% of votes in the FCT.¹ The issue of 25% has been a subject of debate especially among lawyers hence the focal point of this essay. However, before delving into the subject matter, it is prudent that we firstly examine the concept of Election petitions in Nigeria, the laws guiding it and the decisions of the court in the said matter.

2. Overview of Election Petitions in Nigeria

Elections in Nigeria are governed by the Constitution² and a specific electoral law³. This gives election petitions a sensitive nature. Section 288 of the Constitution and the Electoral Act 2022 regulate elections in Nigeria⁴. It must be noted that since the inception of our democracy, disputes over election results have always been settled by the court, specifically, the Court of Appeal especially for the determination of who won the Presidential election.⁵ Only the 1999 and 2015 elections were not contested. Below is a list of Presidential petitions that have been brought before the court in the last 20 years. Interestingly, a major actor in some of the petitions is no other than Former President Muhammadu Buhari.

Olusegun Obasanjo v Olu Falae (1999)⁶

After Obasanjo was declared the winner of the 1999 Elections, Falae filed a suit at the Court of Appeal, challenging INEC's declaration of Obasanjo as winner of the poll. However, the court struck out his application based on technicalities, that is, for lack of sufficient evidence on allegations raised.

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¹ E. Ndubisi 'Nigeria Presidential Election Final Results for 2023 (updated)' (Tekedia, February 28 2023) <https://www.tekedia.com/nigeria-2023-presidential-election-result-dashboard/> Accessed 5th May 2023

² The 1999 Constitution of the Federal Republic of Nigeria (as amended)

³ The Electoral Act 2022

⁴ I. David 'Timelines of election petitions in Nigeria (1999 – 2023)' (Business Day, March 26 2023) <https://businessday.ng/politics/article/timelines-of-election-petitions-in-nigeria-1999-2023/> Accessed 26 May 2023

⁵ Constitution *supra* s.239(1)

⁶ (1999) 6 NWLR Pt 606) Pg 283

Olusegun Obasanjo v Muhammadu Buhari (2003)⁷

The 2003 presidential election was like a case of contenders against the winner of the election, Chief Obasanjo, firing from all cylinders, with the candidate of the APP, General Muhammadu Buhari and that of the All Progressive Grand Alliance (APGA), Chief Chukwuemeka Odumegwu Ojukwu, both separately challenging the results of the election at the Court of Appeal and later the Supreme Court. Obasanjo was declared the winner, and Buhari challenged his re-election. The Tribunal however dismissed the petition Buhari filed. Ojukwu had approached the court praying for five reliefs; a declaration that Obasanjo was not qualified to contest the election; an order invalidating the return of Obasanjo as president; an order directing the conduct of a fresh election; an order directing the Chief Justice of Nigeria to take over as Head of State for three months pending the conduct of a fresh election and a declaration that the announcement of Obasanjo as winner was unconstitutional. The Court of Appeal presided over by Justice Isa Ayo Salami dismissed the petition, which led Ojukwu to appeal at the Supreme Court. The apex court also upheld the dismissal of Ojukwu's petition for lacking merit and validated the Tribunal's earlier ruling.

Umaru Musa Yar'Adua v Muhammadu Buhari and Atiku Abubakar (2007)⁸

The late Yar'Adua won a highly controversial presidential election. Controversial in the sense that local and international observers stated that the election failed to meet international standards. Buhari and Atiku challenged the election. Interestingly, Buhari had stated in a press conference that he would not give up no matter the time it would take 'to pursue his matter to its logical conclusion, and uncover the truth of the result of the presidential election.' He also stated that 'So long as I am alive, I will never abandon this struggle. I will never tire in the pursuit of any right that belongs to the people of Nigeria. No doubt, Nigeria deserves more than what we witnessed in 2003.'⁹ After losing the petition filed in 2003, Buhari returned together with Atiku to challenge the outcome of the 2007 presidential election. Armed with more experience and determination, Buhari had expected that his petition against Yar'Adua's election would produce a positive result for him, having emerged the first runner-up in the election. Sadly, Justice James Ogebe led the Tribunal who gave a unanimous verdict that validated Yar'Adua's election and dismissed all the grounds of their petition.

Goodluck Ebele Jonathan v Muhammadu Buhari (2011)

Buhari returned to the court in 2011 to challenge the victory of former President Goodluck Jonathan, praying for many reliefs, including the recount of the results in several parts of the country. The election had also been trailed by widespread violence in some parts of the North, as followers of General Buhari reacted to his loss at the poll held in April 2011, resulting in deaths of several people and destruction of properties. The Presidential Election Petitions Tribunal, presided over by Justice Kummari Bayang Akaahs, dismissed the petition on the grounds that it was baseless and lacking in merit. Buhari then proceeded to the Supreme Court, where a seven-man panel of the court, again, dismissed the appeal, stating that there was no sufficient evidence to support its petition. Buhari had, however, in his response to the judgment, condemned the judgment, accusing the Supreme Court of turning a blind eye to gross irregularities observed during the election.¹⁰

Muhammadu Buhari v Atiku Abubakar (2019)¹¹

The 2019 presidential election held on February 23, 2019, and featured then President Muhammadu Buhari of the All Progressives Congress (APC) and Atiku Abubakar of the People's Democratic Party (PDP) as the main contenders. Buhari won the election with 15.2 million votes, while Atiku polled 11.3 million votes. Atiku and the PDP, however, challenged the result of the election at the Presidential Election Petition Tribunal. They claimed that the election was marred by irregularities, violence, and rigging. On September 11, 2019, the tribunal dismissed Atiku's petition and upheld Buhari's victory. What we can observe from these precedents is that the judgments of Presidential Election Tribunals seem to favor the President elect more. That said, let us examine the subject matter for today which is the 2023 Presidential Election.

3. Deep Dive into the 2023 Elections

Nigeria attained democracy in 1999 and there have been series of election petitions since then. However, the society has never witnessed the fervour that was stirred up for the 2023 election. For the first time, the masses, especially the youths were resolute to choose their leader and pursue a collective national interest- to restore a lost mandate.¹² Majority of youths all over the country declined to be apathetic or be used for thuggery and there was a high increase in the number of registered voters. 96.3 million people had registered to partake in the 2023 General elections.¹³ The chart below presents an analysis;

⁷ (2003) LPELR – 813 (SC)

⁸ (SC 72/2008) [2008] 10

⁹ Nigerian Tribune, 'Presidential election petitions: The past, the present...' (March 10, 2019) <https://tribuneonline.ng/presidential-election-petitions-the-past-the-present/> Accessed 5th June 2019

¹⁰ *Ibid*

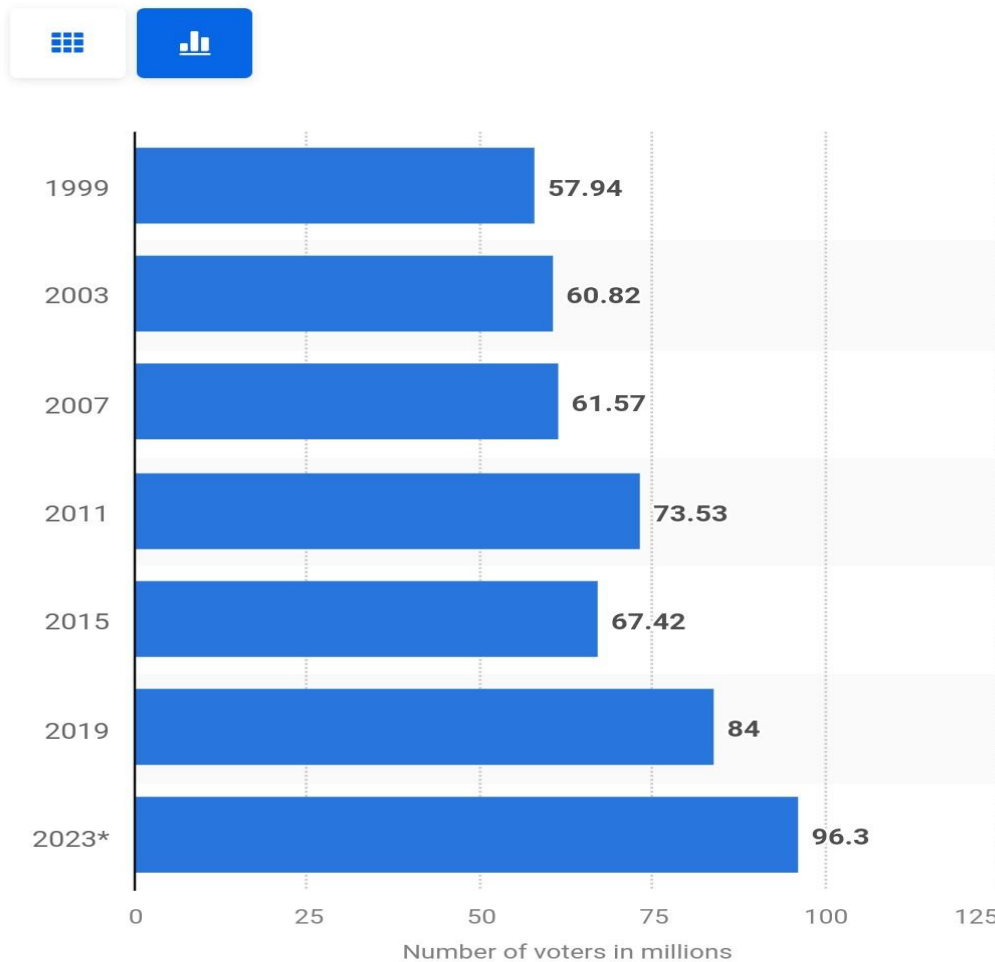
¹¹ LER [2019] CA/PEPC/002/2019

¹² U. Carl '2023 Nigeria's presidential election: Matters arising' (Business Day, April 5 2023) <https://businessday.ng/opinion/article/2023-nigerias-presidential-election-matters-arising/> Accessed 20 May 2023

¹³ Sasu, D.D. Number of registered voters in Nigeria 1999-2023

<https://www.statista.com/statistics/1343781/annual-number-of-registered-voters-in-nigeria/> Accessed 30th May 2023

Number of registered voters at the elections in Nigeria between 1999 and 2023 (in millions)



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The reason behind this increase is not far-fetched. For a long period of time, especially in the last 8 years, Nigerians have suffered unexplainable hardship due to leadership fiascos –and consistent transition from one inept, egotistic, corrupt government to another. Thus, it was hoped that the elections would bring a new dawn. Having experienced the End SARS protest, Persistent inflation, Naira scarcity, Insecurity and many other hurdles, Nigerians decided enough is enough and became aggressively engaged in the electoral process. There were 18 Presidential candidates for the elections, but only three caught the attention of Nigerians; Bola Ahmed Tinubu, Peter Gregory Obi and Atiku Abubakar. However, the first limb of the election, particularly the presidential elections were filled with hiccups and fell below all expectations. There were complaints of thuggery, voter marginalization, delay in the arrival of electoral materials and many other glitches. Even International observers too couldn't hide their discontent. The public disapproval was reported by news outlets all over the country After much deliberation, Nigerians woke up on the 1st of March 2023 to the election results announced by the chairman of the Independent National Electoral Commission (INEC), Mahmood Yakubu who also doubled as the chief returning officer for the presidential election. The candidate of the All Progressives Congress (APC), Bola Tinubu was announced as the winner while Atiku Abubakar of Peoples Democratic Party (PDP) and Peter Obi of Labour Party (LP) emerged second and third position respectively. This announcement stirred up mixed reaction from the masses, majority of which were negative. Among disturbing controversies surrounding the results, a major controversy was that Tinubu scored less than 25% votes in the FCT which is emphasized in the 1999 Constitution of the Federal Republic of Nigeria (as amended). The two runners-up firmly rejected the results despite the certificate-of-return issued to the president-elect, and accordingly, respectively filed petitions

at the Presidential Election Petition Tribunal (PEPT). The petitions were filed by Peter Obi and Atiku Abubakar on the 20th of March 2023, the petitioners raised 3 (three) grounds as follows;¹⁴

1. That Bola Ahmed Tinubu was at the time of the election not qualified to contest the election.
2. That the election of BAT (Bola Ahmed Tinubu) was invalid by reason of corrupt practices or non-compliance with the provisions of the Electoral Act 2022.
3. That BAT did not satisfy the constitutional requirements to be declared the winner of the election.

4. The Federal Capital Territory and the Question of ‘Not less than 25%’ in Presidential Electoral Victory

The issue of 25% votes in FCT has remained contentious with different interpretations. The Presidential Election Petition Tribunal is saddled with the delicate responsibility to objectively and prudently give a distinct direction on Section 134 (1) (b) of the 1999 Constitution over the status of the FCT vis-à-vis presidential election. It is important to note that by virtue of Sec 298 CFRN, the FCT is the seat of the government of the federation with liaison offices of all the 36 states operating actively with the workforce. This means that the FCT has equitable representation of all the states in the country, and therefore, a demand by the drafters of the Constitution for a meagre 25% vote for presidential election seems rational.¹⁵ The office of the President has laid down requirements owing to its sensitive nature, Section 131 (a) requires a person seeking for the office of the president to be a citizen by birth. Additionally, Section 134 (1) provides that a candidate must have obtained the highest number of votes cast in an election and must have not less than one-quarter of votes cast of at least two-third of all the states in the federation and the FCT. One of the sub-grounds of the petition is that Tinubu did not score the majority of lawful votes in the said election. Allied to this, is the claim that he did not score up to 25% of the total votes cast in 2/3 of the 36 states of Nigeria and the FCT. In support of this sub-issue, the petitioners argue that section 134(2) (b) of the 1999 Constitution makes it incumbent on a successful candidate for election into the office of the president to score 25% of 2/3 of 36 states, which is 24 states in addition to specifically and separately scoring 25% of the total votes cast in the FCT. They contend that the preposition ‘and’ in section 134(2) (b) of the Constitution should be read as a disjunctive and not conjunctive. They therefore argue that since BAT failed to score up to 25% of the total votes in the FCT, he did not fulfill the constitutional requirements and ought not to have been declared as the winner of the said election. The argument above presents one of the most pedestrian ground of the petition. This is because by virtue of section 299 of the Constitution, F.C.T Abuja is granted the status of a state in the federation. Therefore, to that extent, for the purpose of section 134(2) (b) of the said constitution, FCT is treated as the 37th state in the federation and therefore, a candidate should obtain 25% in 25 States.¹⁶

The question as to how the above mentioned statute should be read brings into cognizance the 2022 decision of *FRN v Nganjiwa*¹⁷ where the Supreme Court, while relying on some of its earlier decisions, reiterated the settled position on how to interpret provisions of the Constitution as follows:

- a) Where the words of the Constitution are clear and unambiguous, a literal interpretation will be applied.
- b) Where there is ambiguity in a literal interpretation, a holistic interpretation would be resorted to.
- c) All sections must be read together and purposively so that no section is rendered redundant or superfluous.
- d) If the words remain ambiguous, the intention of the makers of the Constitution must be discovered to determine the mischief sought to be cured.
- e) The Court is entitled to consider how the law stood when the statute was passed, what the mischief was for which the old law did not provide and the remedy which has been provided by the new law.¹⁸

Hence, the Constitution is to be interpreted purposively and holistically and where a literal reading of the Constitution leads to absurdity, recourse must be made to the mischief which the law seeks to cure.

It is important also, that we consider how the Courts have interpreted these provisions of the Constitution, although on dissimilar facts, as this will guide us on how the Courts are likely to interpret these provisions even though on a different set of facts.

4.1. Judicial Interpretation of Section 134(2) and Section 299

The Court of Appeal in *Okoyode v FCDA*¹⁹ was saddled with the responsibility to interpret Section 299 of the Constitution on whether the FCT was a State and in its decision; the court held that the FCT should be treated as one of the States in the Federal Republic of Nigeria. In essence, the question submitted to the Court was whether the Federal Capital Development Authority (FCDA) was an agency of the Federal Government of Nigeria. The Court in answer stated that the FCDA was an agency of the FCT which is a separate unit from the Federal Government and should rather be seen as a State and a separate administrative unit distinct from the Government of the Federal Republic of Nigeria. Also, in the case of *Panya v President, FRN & Ors*,²⁰ the issue before the court was whether the indigenes of the FCT are entitled to be appointed as Ministers of the Federation further to the provision of Section 147 which states that Ministers shall be appointed in line with federal character and that all areas and states of the country ought to be evenly represented. The Plaintiff argued that the FCT for the purpose of appointments of the executive is a State and appointment of persons as Ministers ought to reflect federal character which includes appointment of indigenes of the FCT. The Court agreed with him to the extent that failure to appoint indigenes of the FCT is a violation of the Constitutional rights in Section 147(3) and Section 299 of the Constitution.

¹⁴ OO Washington ‘Analysis of the grounds of the election petition filed by Peter Obi of Labour Party’ (Vanguard, March 29 2023) <https://www.vanguardngr.com/2023/03/analysis-of-the-grounds-of-the-election-petition-filed-by-peter-obi-of-labour-party/> Accessed 5 June 2023

¹⁵ A Joshua ‘Twenty-Five Percent Of The Votes In The FCT: A Requirement For Election Into The Office Of The President In Nigeria Or Not?’ (Sahara Reporters, March 3 2023) <https://saharareporters.com/2023/03/03/twenty-five-percent-votes-fct-requirement-election-office-president-nigeria-or-not> Accessed 12 May 2023

¹⁶ *Ibid*

¹⁷ (2017) LPELR-43391 CA

¹⁸ A Israel *Supra* note 10

¹⁹ (2005) LPELR-41123(CA)

²⁰ 15 NWLR (Pt. 1643) 395

Finally, it is important to note the decision of the Supreme Court in the case of *Awolowo v Shagari*,²¹ the petition that arose from the 1979 elections. The said election had 5 contenders; Shehu Shagari of the National Peoples' Party (NPN); Obafemi Awolowo of the Unity Party of Nigeria (UPN); Nnamdi Azikiwe of the Nigerian People's Party (NPP); Aminu Kano of Peoples Redemption party (PRP) and Waziri Ibrahim of Great Nigeria People's Party (GNPP). After the elections, Shagari polled 5,688,857 votes out of the over 16 million votes cast in the election. This represented 33 percent of the votes while the remaining votes were shared between the other contenders. It was agreed that Shagari had the highest votes. However, the issue before the court was the constitutional requirement that the winner of a presidential election must have 25% in at least two-third of the states of the Federation. At the time, there were only nineteen states in Nigeria and out of which Shagari recorded 25% of votes in 12 states. Shagari argued that he had received 25% of the votes in twelve states, which constituted two-thirds of the required threshold. He also claimed that his 19.9 percent votes which he got in Kano State represented the remaining 0.66 in the constitutional threshold. However, Obafemi Awolowo contended that the threshold should be rounded up to thirteen states, which meant that Shagari had fallen short of the required threshold; since mathematically rounding off 12.66 is 13. The Court had the opportunity of interpreting the provision of Section 34A (1) (c) (ii) and it was held per Obaseki JSC that there was evidence of non-compliance with the said section to enable the Tribunal declare the result invalid. The appeal was therefore dismissed.

Having examined the precedents laid by the courts in matters analogous to our subject matter, it is important to note that although this cases do not give a final decision on how Section 134 of the constitution should be interpreted, it has served as a guiding light to arguments of renowned learned silks in the country which I shall highlight below.

4.2. Arguments by Jurists

In a bid to deepen my understanding of the subject matter, I came across a compendium of arguments by learned silks published on the This Day website.²² As such, I shall be examining this issue from two sides- those who are for the motion that securing 25% of votes in the FCT is mandatory to win the presidential election and those who are against the motion. I shall be citing two learned silks each for the two sides. For brevity sake, many of their statements have been paraphrased.

'Not less than 25%' in the FCT is mandatory to win the Presidential Election

Dr Olisa Agbakoba, SAN

Section 134(2) (b) of the 1999 Constitution (as amended) is clear and unambiguous, direct and simple. To be declared Presidential winner, a candidate must secure at least 1/4th (25%) of votes cast in 2/3rd of the entire 36 States of Nigeria (that is in 24 states). Also, the candidate must also secure not less than 25% of the votes cast at the FCT. The literal interpretation of this section is that a candidate must secure 1/4th (25%) of votes cast in 2/3rd of the entire 36 States of Nigeria and 1/4th (25%) of votes cast in FCT. This provision is so clear, direct and unambiguous, that you don't need a Professor of Constitutional Law to comprehend. The use of the word 'and' had been held by the Supreme Court to be conjunctive, which implies that the conditions in Section 134(2)(b) are conjunctive and mandatory. Also, resorting to Section 299 (which states that the FCT is to be treated as a State in Nigeria), provides a general provision that has no bearing on Section 134. A general provision cannot override a specific provision. Section 134(2)(b) is a specific provision on the conditions for declaration of a candidate and the presidential winner at the polls. In conclusion, with the result of the general elections as published by INEC, the contest is still open, as none of the candidates has satisfied the legal threshold in Section 134.

Chief Mike Ozekhome, CON, SAN

The gravamen of this discourse is the mathematical exactitude of the requirement of 25%. The wordings of the Constitution are quite clear and unambiguous. They demand for not less than one-quarter of the votes cast at the elections in each of at least 2/3 of all the States; and the Federal Capital Territory. By a judicial mathematical analysis, 2/3 of 36 States is equal to 24 States, and in addition, the FCT, Abuja. This can be better explained through this example, if I request to see 24 Corpers in my law firm And Okon, it means I want to see 25 persons in all; but Okon must be one of the 25 persons. So, if 25 persons in my law firm show up, without Okon, have I had all the persons I want to see? The answer is No. To satisfy my request, Okon must show up in addition to the 24, thus, making the 25 persons I desire to see. What the law states is that, the candidate must have 25% of votes in those States, and the FCT, Abuja. The law does not contemplate that the candidate must win those States. The jurisprudence behind this provision is to ensure that the President as the Numero Uno citizen of the Nation, enjoys a reasonable range of widespread acceptance by majority of the people he seeks to govern, including those inhabiting the seat of power where he would govern from. By virtue of the provisions of section 299 of the Constitution, it is so clear that Abuja, the Federal Capital of Nigeria, has the status of a State. It is as if it is one of the States of the Federation. ' (Pp. 36-37, paras. E-A). See also, with approval, the following authorities; *NEPA v Endegero* (2002) LPELR-1957(SC); *Baba-Panya v President, FRN* (2018) 15 NWLR (Pt.1643) 395; (2018) LPELR-44573(CA); *Ibori v Ogboru* (2005) 6 NWLR (Pt. 920) 102.

'Not Less Than 25%' in the FCT is not mandatory to win the Presidential elections

Femi Falana, SAN

Section 299(1) of the Constitution provides that the provisions of the Constitution shall apply to the Federal Capital Territory (FCT), as if it were one of the States of the Federation. It means that the FCT is the 37th State. As such, Section 134 of the Constitution which provides that 'not less than one-quarter of the votes cast at the election in each of at least two-thirds of All the States *and* the FCT' means 25 States or 24 States plus the FCT. Winning the FCT by a candidate is not compulsory. In *Baba-Panya v President, F. R. N.* (2018) 15 NWLR (Pt. 1643) 395 the Court of Appeal held inter alia:

It is therefore, doubtlessly clear that by virtue of Section 299 of the Constitution of the Federation, the Federal Capital Territory is in law a State. In others words, the Federal Capital Territory should be treated as one of

²¹ (1979) FNLR Vol. 2,

²²A Joshua, ' 25% of FCT Votes Required to Win a Presidential Election?' <https://www.google.com/amp/s/www.thisdaylive.com/index.php/2023/03/07/is-25-of-fct-votes-required-to-win-a-presidential-election/amp/> Accessed 12 June 2023

the States in the Federal Republic of Nigeria. It follows therefore, that bodies like the Federal Capital Development Authority are to be regarded as an agency of 'a State', independent of the Federal Government. It would appear that the only relationship existing between the Federal Government and the Federal Capital Territory is that its executive and legislative powers and duties are exercised for it by the President through the Minister of the Federal Capital Territory and the National Assembly respectively. From the provision of Section 299(a), where the President through the Minister of the Federal Capital Territory Acts, he does so as a Governor of a State, so also where the National Assembly legislates for Abuja, it does so as a State House of Assembly.

Thus, by the combined effect of Sections 134 and 299 of the Constitution, a candidate shall be deemed to have won the Presidential election if he scores the highest number of lawful votes cast at the election, and 25% of lawful votes in 37 States or 36 States plus the FCT. It is not compulsory, for a Presidential candidate to win the FCT. The FCT, is not the Electoral College of the Federal Republic of Nigeria.

Aikhunegbe Anthony Malik, SAN

It is prudent to note that the approach of the courts to the construction of the provisions of the Constitution has always been one of liberalism. Thus, the courts usually avoid a construction which will defeat the obvious ends that the Constitution itself was designed to serve. More often than not, the courts embrace the construction which accords and is consistent with words and sense. See *United Agro Ventures Ltd. v FCMB Ltd.* (1998) 4 NWLR (Pt. 547) 542 at 559. See also *Fawehinmi v IGP* (2000) 8 NWLR (Pt. 665) 481 at 528 where the Supreme Court stated that: 'In its construction, the Constitution which is a living organism must be given its natural ordinary meaning and the words must be given purposive construction'. Also, in *Buhari v Obasanjo* (2003) LPELR – 813 (SC), Belgore, JSC [as he then was] posited as follows: 'The Constitution should never be read to say what it has not provided, even though it should be liberally construed to giving meaning and effectiveness, so as not to have embarrassing anomaly that can result in vacuum of any office or cause serious crisis in the polity. The Constitution, I must point out, is a general statement of how Nigerians wish to be governed, and the real way of governing will be found in all the laws, body of laws, that comply with the Constitution' It is submitted that there is no ambiguity in the provisions of Section 134(2) of the 1999 Constitution. Accordingly, the furor that have been generated regarding the proper or correct interpretation thereof, are completely misplaced. The words used in the section are clear, lucid, unambiguous, and they clearly evince the intention of the draftsmen. The reference to the FCT in the provision, is clearly indicative of the unimpeachable fact that the territory is treated as part of the constituent units from where a candidate who is desirous of being declared the winner of the presidential election in Nigeria can amass, at the very least, one-quarter, that is, 25%, of the total valid votes cast at the election. It, therefore, imports a serious remiss, for anyone to contend that the mention of FCT in the section implies the erection of an additional constitutional hurdle that must be dismantled by a candidate. I do not see any court of law that will be persuaded by such argument. In point of fact, the provisions of Section 134(2) of the Constitution fell for consideration and determination by a full panel of the Apex Court in *Buhari v Obasanjo* (2005) All FWLR (Pt. 273) In a unanimous judgement of the court, it was held that the purport of the provisions is simply to ensure that a winning candidate should have the required majority. The court stated further that once a candidate attains such majority, the requirement of the section is/are fulfilled. In a nutshell, there is nothing in the clear, lucid and unambiguous provisions of Section 134(2) of the Constitution, which imposes a mandatory requirement of obtaining at least 25% of the total valid votes cast in the FCT on a candidate, before he can be declared the winner of a Presidential election in which he already secured the highest votes tally, and has capped it with 25% of the total votes in at least two-thirds of the 36 States of the Federation. Mathematically, therefore, the two-third stated or contemplated in Section 134(2) is, and can only mean, $\frac{2}{3}$ of $36+1$ [that is 37], and not $\frac{2}{3}$ of 36 on the one hand, plus $\frac{2}{3}$ of the FCT on the other hand. Any argument to the contrary is merely a red herring, canvassed for fanciful and sensational ramifications only.

5. A Legal Response

Considering the above, we must now examine the wordings of Sections 134(2) and 299 of the Constitution, review the context under which the Courts have classed the FCT a State and interpret the relevant sections in a bid to finding an answer to our question. Going by literal interpretation of this section is that a candidate must secure $\frac{1}{4}$ th (25%) of votes cast in $\frac{2}{3}$ rd of the entire 36 States of Nigeria and $\frac{1}{4}$ th (25%) of votes cast in FCT. This provision is so clear, direct and unambiguous as the word 'and' poses a conjunction. On the other hand, many have believed that compelling a candidate who has obtained the highest number of votes to also secure a particular number of votes in the FCT renders some form of injustice. Moreover, the FCT does not possess the full features of a state and as such cannot be regarded as the 37th State. In the words of Professor Taiwo Osipitan, SAN;

FCT is like a State, but definitely not a State. FCT is the Federal Capital. It is not the capital of any State. FCT has no State or Deputy State Governor. The executive powers of FCT vest in Mr. President. FCT also has no separate legislative body. National Assembly legislates for FCT. FCT is also not one of the 36 States of the Federation listed in Section 3(1) of the 1999 Constitution. Unlike States that have Local Governments, FCT has six Area Councils. Finally, while each State has three Senatorial seats, FCT has only one. FCT is not superior to the States, as to justify being accorded separate status. Section 299 of the Constitution, is designed to bring FCT to the same level with the States. The section certainly does not confer on FCT a separate and superior status, as being argued by protagonists of separate treatment of FCT. The non-separate and non-superior status of FCT was confirmed in the case of *Ibori v Ogboru* (2005) 6 NWLR part 920 page 102, where it was held that '...the Federal Capital Territory is to be treated like a State, it is not superior or inferior to any State of the Federation'. From the foregoing, section 299 provisions could be interpreted to mean that the FCT would be considered as a state only to the extent that the President, National Assembly, and High Court of the FCT exercise executive, legislative, and judicial powers over the FCT. To ensure the governance of the FCT and that it has its own government, to this extent, the FCT is a state for this specific purpose and not for all purposes. More so, in cases where the

courts have regarded the FCT as a State, it has been solely for the purpose of furthering the executive, legislative, or judicial rights and privileges of the FCT. To assume otherwise may be unreasonable.²³

In line Osipitan's view, interpreting Section 299 of the Constitution to mean that the FCT exists as a State of the Federation for all purposes makes superfluous the wording of Section 134(2) (b), which requires the winning candidate to obtain not less than 25% of votes in each of at least two-thirds of all the states in the Federation and the FCT. This interpretation also conflicts with the provision which enumerates the states of the Federation and clearly identifies the FCT as a distinct entity. Therefore, it is my humble opinion that the candidate of the All Progressives Congress, Bola Ahmed Tinubu had met the necessary constitutional requirements as Section 134 does not mandate a Presidential candidate to secure one-quarter of votes in the FCT.

6. Conclusion

The 1979 Constitution did not specify the requirement of 25% in the FCT. It only stated that the winning candidate must have 25% of at least two-thirds of the votes cast in all the States of the Federation. Proponents believe that the drafters of the 1999 Constitution deliberately included this additional requirement for the FCT, possibly with the intention of ensuring that the winning candidate enjoys a significant level of popularity not only across a broad geographic region but also in the FCT, which serves as the nation's capital and a cosmopolitan city for all Nigerians which would truly reflect what the people's will. Since the inclusion of the provision of Section 134, this is the first time the issue as regards the interpretation of the said section has been brought before the courts for interpretation. As such, both the Bar and the Bench will have a field day in court. The PEPT has delivered its decision and made a no case for the issue. However, the Supreme Court is yet to do so. While await the decision of the court that will set an important precedent in Nigeria presidential elections, it is in my humble opinion that the Section 134 of the Constitution to give a more precise meaning to the requirements set out for a presidential candidate. In the final decision of the Supreme Court where Tinubu is found to not have been duly elected, a run-off election would be conducted in line with Section 134(3), (4) & (5) of the Constitution .

²³ A Joshua *Supra* note 19