

CONTROVERSIES SURROUNDING THE DOCTRINE OF SUBSTANTIAL COMPLIANCE IN  
ELECTION PETITION CASES IN NIGERIA\*

**Abstract**

The doctrine of substantial compliance in election petition cases in Nigeria involves navigating subjective interpretations, meeting high burdens of proof, and addressing procedural irregularities. Challenges include varying judicial interpretations, political influences, and the need for consistency across jurisdictions. Case law demonstrates these issues, highlighting the complexity of determining whether election irregularities are substantial enough to affect the results of the elections. Substantial compliance doctrine in election petition cases in Nigeria often leads to debates and controversies due to its subjective nature and varying interpretations by courts/tribunals. The writer adopts doctrinal methodology in this article. This article examines the concept of challenges and controversies as well as that of substantial compliance and election petition in Nigeria. The article equally looks in details the challenges and controversies in the application of substantial compliance doctrine in election petition cases in Nigeria.

**Keywords:** Controversies, Substantial Compliance, Election Petition Cases, Nigeria

**1. Introduction**

In recent years, the doctrine of substantial compliance has been criticized for creating inconsistencies in judicial decisions. The lack of a clear definition of what constitutes ‘substantial’ has led to varying interpretations, which sometimes result in conflicting judgments at different levels of the judicial hierarchy. For example, in *Wike v Peterside*,<sup>1</sup> Nyesom Wike's election as Governor of Rivers State was challenged by Dakuku Peterside, who alleged widespread violence and voter intimidation. While the election tribunal annulled the election, the Supreme Court reversed the decision, ruling that the irregularities were not substantial enough to affect the outcome of the election. This case demonstrates the ongoing challenges in applying the substantial compliance doctrine, particularly when the judiciary is faced with significant but arguably not ‘substantial’ irregularities. In this article, the writer looks at the challenges and controversies surrounding the application of the doctrine of substantial compliance in election petition cases in Nigeria. This work will help the stakeholders in our electoral jurisprudence to know how best to apply this doctrine for the betterment of all and sundry, including our democracy.

In the context of the Nigerian legal system, challenges refer to the obstacles or difficulties that hinder the smooth functioning of legal, political, economic, or social structures. These challenges can range from systemic issues such as corruption, inefficiency in the judiciary, lack of proper legal frameworks, political instability, insecurity, and violations of human rights. Controversies, on the other hand, are disputes or disagreements, often publicly debated, that arise from conflicting opinions or actions in these areas. Controversies often manifest in disputes over legal interpretations, governance, or social justice issues. In Nigeria, challenges and controversies touch various aspects of the law, governance, and society, such as electoral disputes, human rights violations, resource control, and constitutional interpretation. The legal system is often used as a platform to resolve or mitigate these challenges and controversies, although the processes are not always straightforward and are subject to their own internal difficulties. Section 6(1)<sup>2</sup> grants judicial powers to the courts to adjudicate legal challenges and controversies. However, challenges like judicial corruption and delay in justice delivery have been controversies in the exercise of this power. Section 36<sup>3</sup> guarantees the right to a fair hearing. However, controversies often arise around the extent of this right, especially in relation to legal reforms, police brutality, and access to justice. The Electoral Act<sup>4</sup> governs electoral dispute resolution. Nigeria has faced numerous challenges and controversies in the conduct of elections, election violence, and the role of the Independent National Electoral Commission (INEC). In *Attorney General of Lagos State v Attorney General of the Federation*,<sup>5</sup> that has to do with the controversy over the allocation of federal revenues to Lagos State following the creation of local government areas. The case raised important questions about federalism, the powers of State governments, and revenue allocation. Lagos State created new local government areas, but the federal government refused to allocate funds to these local governments, citing constitutional irregularities. The Supreme Court ruled that the federal government was right to withhold funds but urged a political solution to the controversy. Also, in *Independent National Electoral Commission (INEC) v Musa*,<sup>6</sup> the case addressed the challenges related to political participation and party registration in Nigeria. The issue was the legality of INEC's refusal to register certain political parties based on its guidelines, which raised controversies around the freedom of association.

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<sup>1</sup> (2016) 7 NWLR (Pt 1512) 452.

<sup>2</sup> Constitution of the Federal Republic of Nigeria 1999 (as amended).

<sup>3</sup> *Ibid.*

<sup>4</sup> Electoral Act 2022.

<sup>5</sup> (2004) 18 NWLR (Pt. 904) 1.

<sup>6</sup> (2003) 3 NWLR (Pt. 806) 72.

INEC refused to register the National Conscience Party, leading the party to challenge the decision in court. The Supreme Court held that INEC's guidelines were unconstitutional, as they imposed restrictions on political association not envisaged by the Constitution.

## **2. Substantial Compliance in Election Petitions Cases in Nigeria**

Substantial compliance in the context of election petition cases in Nigeria refers to a situation where, despite minor deviations from the procedural requirements set by law, the essence of the legal requirements is met in a way that does not undermine the integrity of the electoral process. The principle emphasizes that procedural irregularities or minor errors should not invalidate an election result if the essential elements of the process have been substantially followed. The principle of substantial compliance is primarily guided by the Electoral Act, 2022<sup>7</sup> which provides that certain defects should not invalidate election. The concept of substantial compliance in election petitions in Nigeria is shaped by a combination of statutory provisions, judicial precedents, and principles of electoral law. This framework aims to ensure that minor procedural errors do not unduly disrupt the electoral process or invalidate an election result if the core requirements have been substantially met. The focus on substantial compliance emerges from judicial interpretations rather than a direct statutory provision.

## **3. Election Petition in Nigerian Jurisprudence**

An election petition is a formal legal process through which the validity of an election result can be challenged in court. Under Nigerian law, it provides a mechanism for aggrieved candidates or political parties to contest the conduct, results, or qualification of the winner in an election. Election petitions are distinct from regular lawsuits, as they are governed by special rules, timelines, and procedures due to their critical role in safeguarding the integrity of the electoral process. In Nigerian jurisprudence, election petitions serve as a vital tool in ensuring accountability and transparency in elections. Grounds for filing an election petition typically include: (1) Non-compliance with the Electoral Act: This could involve failure to adhere to election procedures, such as improper use of voting technology or irregularities in the collation of results. (2) Corrupt practices: Allegations of vote-buying, violence, or undue influence can be raised in election petitions. (3) Disqualification of a candidate: An election can be challenged if it is proven that the declared winner was not qualified to contest, based on factors such as age, citizenship, or criminal records. (4) Election malpractice or rigging: Election petitions can allege that the outcome was manipulated through ballot stuffing, multiple voting, or other forms of malpractice.

Election petitions are typically adjudicated by Election Petition Tribunals/Courts, which are established under the Nigerian Constitution and the Electoral Act. Appeals from the decisions of these tribunals/courts may be taken to the Court of Appeal, and in some instances, the Supreme Court. In *Atiku Abubakar v Buhari*,<sup>8</sup> Atiku Abubakar of the People's Democratic Party (PDP) filed an election petition challenging the 2019 presidential election, which declared Muhammadu Buhari of the All Progressives Congress (APC) as the winner. Atiku alleged that there were widespread irregularities and that INEC's failure to transmit results electronically violated the provisions of the Electoral Act. The Election Petition Tribunal and subsequently the Supreme Court dismissed the petition, affirming Buhari's election and holding that the petitioner failed to provide sufficient evidence of substantial non-compliance with the law. Section 132(7) of the Electoral Act 2022 provides that any person who is aggrieved by the outcome of an election may present a petition to an Election Tribunal or Court within 21 days after the date of the declaration of the result of the election. Also, in *Buhari v INEC*,<sup>9</sup> which is a landmark case that arose from the 2007 presidential election, where General Muhammadu Buhari of the All Nigeria Peoples Party (ANPP) challenged the declaration of Umaru Musa Yar'Adua of the People's Democratic Party (PDP) as the winner. Buhari filed an election petition, alleging widespread rigging, electoral malpractice, and non-compliance with the Electoral Act. The Supreme Court, while acknowledging some irregularities, held that the petitioner failed to prove that these irregularities substantially affected the outcome of the election. Yar'Adua's victory was upheld. Section 134 of the Electoral Act 2022 outlines the grounds upon which an election may be challenged through a petition, including corrupt practices, non-compliance with electoral laws, and disqualification of the winner. In *Fayemi v Oni*,<sup>10</sup> Dr. Kayode Fayemi of the Action Congress of Nigeria (ACN) challenged the declaration of Segun Oni of the People's Democratic Party (PDP) as the winner of the 2007 Ekiti State governorship election. Fayemi filed an election petition alleging that the election was marred by widespread irregularities, vote manipulation, and non-compliance with electoral laws. The Election Petition Tribunal ruled in favour of Fayemi, annulling Oni's election. This judgment was upheld by the Court of Appeal, which declared Fayemi the duly elected governor of Ekiti State. Election petitions play a crucial role in Nigerian electoral jurisprudence by providing a mechanism for challenging the validity of election results.

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<sup>7</sup> See section 135 of the Electoral Act (No. 15 of 2022).

<sup>8</sup> (2019) LPELR-48113(SC).

<sup>9</sup>(2008) 19 NWLR (Pt 1120) 246.

<sup>10</sup>(2010) 17 NWLR (Pt 1222) 326.

#### **4. Some notable decided Cases based on the Doctrine of Substantial Compliance in Nigerian Elections**

*Ogbuabor v Ogbu*.<sup>11</sup> In this case the appellant challenged the election results based on irregularities in the conduct of the election. The tribunal dismissed the petition, arguing that the irregularities were minor and did not affect the overall outcome of the election. On appeal to the Supreme Court, the Supreme Court held that for an election to be invalidated on the grounds of non-compliance with the Electoral Act, the non-compliance must be substantial and not merely procedural. The court emphasized that substantial compliance is sufficient to uphold the election result if the core requirements were met.

*Dare v Afolabi*.<sup>12</sup> The petitioner in this case alleged that the election process was marred by procedural flaws. The tribunal found some procedural errors but ruled that these did not substantially affect the outcome of the election. On appeal to the Supreme Court, the Supreme Court affirmed the tribunal's decision, reinforcing that minor procedural errors do not automatically invalidate an election. The court emphasized that substantial compliance with the electoral laws is enough to sustain an election result unless the errors are grave enough to impact the integrity of the election.

*Ikpeazu v Otti*.<sup>13</sup> The petitioner contested the election on the grounds of numerous procedural lapses, including issues with the conduct of the election and documentation. The tribunal reviewed whether these lapses were substantial enough to affect the result of the election. The Supreme Court held that while procedural errors were present, they did not constitute a substantial breach affecting the election's outcome. The court applied the principle of substantial compliance, affirming that the election result was valid because the core electoral requirements were observed.

*Makarfi v Sheriff*.<sup>14</sup> This case dealt with internal party elections where allegations of procedural deviations were made. The petitioner claimed that these deviations significantly affected the election's legitimacy. The Court of Appeal examined whether the deviations were substantial or merely procedural. The Court of Appeal upheld the election results, applying the principle of substantial compliance. The court determined that the deviations were procedural and did not impact the overall integrity of the election. The judgment reinforced that substantial compliance with procedural requirements is sufficient to validate the election.

*Bola Tinubu v Olusola Oke*.<sup>15</sup> The petitioner challenged the election results on grounds of procedural flaws, including issues with the recording and declaration of results. The Supreme Court reviewed whether these flaws were significant enough to affect the election's outcome. The Supreme Court upheld the election results, emphasizing that the procedural flaws were minor and did not affect the election outcome. The court applied the principle of substantial compliance, reinforcing that the election process was valid despite minor errors.

The principle of substantial compliance ensures that elections are not invalidated by minor errors or procedural lapses, thus upholding the democratic process while ensuring that the core requirements are met.

#### **5. Substantial Compliance in Nigerian Electoral Jurisprudence**

The doctrine of substantial compliance in the Nigerian electoral process refers to the standard that electoral irregularities must be substantial enough to affect the outcome of an election for the courts to nullify it. The doctrine aims to balance between technical breaches of electoral laws and upholding the will of the electorates where the irregularities are insignificant to the overall result. The doctrine of substantial compliance is rooted in the idea that elections are primarily about the expression of the will of the people. As long as the core objective of an election, that is, the reflection of the voters' will, is met, the courts may overlook minor procedural irregularities. This theory promotes electoral stability by ensuring that not every procedural flaw results in the invalidation of the election. In *Buhari v INEC*<sup>16</sup> General Muhammadu Buhari, the presidential candidate, challenged the 2007 election results, alleging massive irregularities. The Supreme Court upheld the election, stating that there was substantial compliance with the Electoral Act 2006 despite some irregularities. The court held that the petitioner must prove not just that irregularities occurred, but that they were substantial enough to have affected the result of the election. The mere existence of irregularities was insufficient to overturn an election. In this case, the doctrine of substantial compliance was affirmed by the court as essential for the stability of elections, ensuring that only significant breaches lead to nullification.

Substantial compliance is necessary to uphold the integrity of elections. It emphasizes that procedural adherence guarantees fairness but allows flexibility for minor deviations that do not undermine the overall election result. In *Atiku Abubakar v INEC*,<sup>17</sup> the petitioner, Atiku Abubakar, challenged the 2019 presidential election, alleging

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<sup>11</sup>(2015) LPELR-25868(SC).

<sup>12</sup> (2018) LPELR-44359(SC).

<sup>13</sup> (2016) LPELR-40484(SC).

<sup>14</sup> (2017) LPELR-41922(CA)

<sup>15</sup> (2022) LPELR-59470(SC).

<sup>16</sup> (2008) 19 NWLR (Pt 1120) 246.

<sup>17</sup> (2019) 5 NWLR (Pt 1670) 1.

widespread non-compliance with the Electoral Act, particularly concerning the transmission of results electronically. The court ruled that despite some irregularities, the election was conducted in substantial compliance with the law, and the irregularities did not substantially affect the outcome. The court reaffirmed the need to establish that the non-compliance was of such magnitude that it affected the result. The mere presence of irregularities or procedural flaws was not enough. The judgment in this case demonstrates the importance of balancing electoral integrity with practical flexibility, ensuring that technicalities do not nullify the genuine expression of voters' will.

Materiality of the non-compliance asks whether the irregularity materially affected the result of the election. Courts focus on the outcome, and where the irregularities are proven to be minor or immaterial to the result, the election stands. In *Wike v Peterside*,<sup>18</sup> Nyesom Wike, the then governor of Rivers State, was challenged by Dakuku Peterside over alleged widespread violence, ballot snatching, and voter intimidation in the 2015 gubernatorial election. The tribunal annulled the election, but the Supreme Court reversed this decision, holding that the petitioner failed to prove that the irregularities affected the result of the election. The Supreme Court held that an election should not be invalidated for every irregularity. The petitioner must show that the irregularities were so widespread that they materially affected the outcome of the election. The decision stresses the materiality of irregularities, reinforcing that only significant breaches impacting the results can justify nullification.

Substantial compliance doctrine prevents the court from adopting a punitive approach to election petitions. Rather than focusing on penalizing every breach of procedure, the court should focus on whether justice is done, that is, whether the election outcome truly reflects the will of the electorates. In *Oshiomhole v INEC*,<sup>19</sup> Adams Oshiomhole challenged the result of the 2007 Edo State gubernatorial election, citing widespread rigging and irregularities. The tribunal found in his favour, and the Court of Appeal affirmed this, holding that the non-compliance with the electoral law was substantial enough to have affected the outcome. The Court held that the purpose of electoral law is not punitive but corrective. Thus, only when non-compliance substantially affects the result should it lead to the annulment of the election. This judgment illustrates the non-punitive perspective, affirming that courts should not annul elections based on procedural irregularities unless the breach distorts the electoral outcome.

Elections are a means to represent the will of the people, and the substantial compliance doctrine ensures that minor irregularities do not obstruct this representation. It focuses on the fairness and transparency of the overall process. In *INEC v Oguebego*,<sup>20</sup> there was a dispute regarding the authenticity of the list of candidates submitted by political parties. The Supreme Court held that where the process allowed the electorates to express their will, even if there were disputes over party nominations, the election result should stand unless there was proof of significant non-compliance that affected the outcome. The Supreme Court reinforced that the primary concern of electoral laws is to reflect the will of the electorate and that minor irregularities in the process of candidate nomination did not affect the expression of voters' will. This case highlights the significance of voter representation, underscoring that procedural flaws that do not distort the electorate's intent should not invalidate elections.

## **6. History of Substantial Compliance in Electoral Process in Nigeria**

The historical development of the doctrine of substantial compliance in Nigeria's electoral process is a response to the complexities of electoral disputes, evolving through judicial interpretations and legislative reforms. The doctrine seeks to balance the need for fairness and integrity in elections with the stability and continuity of governance. Below is an outline of its historical evolution.

### **Early Development and the Pre-Independence Era**

Before Nigeria gained independence in 1960, the country operated under a colonial system, with elections largely conducted under British electoral laws. The idea of strict compliance with electoral procedures was predominant during this time. However, there was no formal doctrine of substantial compliance, and any significant breach of procedure could lead to the annulment of elections. In *Adegbenro v Akintola*,<sup>21</sup> though not primarily an election matter arose during the political crisis in the Western Region and highlighted the tension between legal technicalities and political realities. The Privy Council ruled that the Governor of the Western Region acted within his powers in dismissing the Premier, based on technical compliance with the Constitution. The case exemplified the strict adherence to legal formalities, which was later modified with the introduction of substantial compliance in electoral law. Before independence, Nigeria followed strict legal formalism, with little room for flexible interpretations such as substantial compliance in electoral disputes.

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<sup>18</sup> (2016) 7 NWLR (Pt 1512) 452.

<sup>19</sup> (2009) 4 NWLR (Pt 1132) 607.

<sup>20</sup> (2015) 18 NWLR (Pt 1491) 273.

<sup>21</sup> (1963) AC 614.

### **Post-Independence Era and the Emergence of Substantial Compliance**

After independence, Nigeria adopted its own Constitution and electoral laws, which gradually moved away from rigid adherence to technical compliance. The focus shifted towards ensuring that elections reflected the will of the people, even if minor irregularities occurred. This era saw the first signs of the substantial compliance doctrine taking shape. In *Awolowo v Shagari*,<sup>22</sup> Chief Obafemi Awolowo challenged the election of Shehu Shagari as President of Nigeria in 1979, arguing that Shagari did not meet the constitutional requirement of securing one-quarter of the votes in two-thirds of Nigeria's then 19 States. The Supreme Court ruled that while there were irregularities, they did not substantially affect the outcome of the election, thus affirming Shagari's victory. This landmark case marked the beginning of the substantial compliance doctrine, as the court moved away from strict legal formalism and began emphasizing the overall integrity of the electoral process over technical breaches.

### **Doctrine of Substantial Compliance Gains Prominence**

In the 1999 democratic transition, following years of military rule, Nigeria's electoral system underwent significant reforms. The 1999 Constitution<sup>23</sup> and the Electoral Act 2002 were introduced to guide elections. The doctrine of substantial compliance began to feature more prominently in judicial decisions as courts were tasked with interpreting these new laws in the context of electoral disputes. In *Buhari v Obasanjo*,<sup>24</sup> Muhammadu Buhari, the presidential candidate of the All Nigeria Peoples Party (ANPP), challenged the election of President Olusegun Obasanjo in the 2003 election, alleging widespread irregularities. The Supreme Court upheld Obasanjo's election, holding that while there were irregularities, they did not substantially affect the overall outcome. This case solidified the substantial compliance doctrine, as the court held that only irregularities that significantly impacted the election results could warrant nullification, emphasizing the will of the electorate over procedural defects.

### **Refinement of the Doctrine in the Electoral Act 2010**

With the introduction of the Electoral Act 2010, the substantial compliance doctrine was given a clearer statutory basis. The Act specified that an election would only be invalidated if non-compliance with the law substantially affected the result. This marked a significant turning point in the legal treatment of electoral disputes. Section 135(1)<sup>25</sup> provides that no election shall be invalidated by reason of non-compliance with the Electoral Act unless it is proven that such non-compliance substantially affected the result of the election. The inclusion of this provision codified the substantial compliance doctrine, shifting the burden of proof to the petitioner to demonstrate that irregularities materially impacted the election.

### **Post-2010 Period: Greater Reliance on Substantial Compliance**

Following the 2010 Electoral Act amendment, courts increasingly relied on the substantial compliance doctrine to adjudicate electoral disputes. The doctrine became a safeguard against annulling elections over minor procedural errors, ensuring the stability of the political process. In *Oshiomhole v INEC*,<sup>26</sup> Adams Oshiomhole challenged the 2007 Edo State gubernatorial election, alleging widespread rigging. The Court of Appeal annulled the election, finding that the irregularities were substantial enough to affect the outcome. Oshiomhole was declared the winner of the election. This case exemplifies the application of substantial compliance, as the court acknowledged that not all irregularities warrant annulment but determined that the irregularities in this case were substantial.

### **Modern Application: Substantial Compliance and the 2019 General Elections**

The 2019 general elections saw further reliance on the doctrine of substantial compliance, particularly in the presidential election petitions. Courts used the doctrine to uphold the results of elections despite allegations of procedural breaches, focusing on whether such breaches affected the outcome. In *Atiku Abubakar v INEC*,<sup>27</sup> Atiku Abubakar challenged the victory of President Muhammadu Buhari in the 2019 election, alleging irregularities such as failure to electronically transmit results and voter suppression. The court held that while there were irregularities, they did not substantially affect the overall result. This case reaffirms the court's reliance on substantial compliance, as it dismissed the petition on the grounds that the irregularities cited were not significant enough to alter the election outcome.

### **Recent Legislative Reforms: Electoral Act 2022**

The enactment of the Electoral Act 2022 introduced several reforms aimed at addressing issues in the electoral process, including electronic transmission of results and improved safeguards against irregularities. The doctrine of substantial compliance continues to be a key aspect of resolving electoral disputes, though recent legal reforms aim to reduce the occurrence of irregularities in the first place. Section 135<sup>28</sup> emphasizes that an election will only be

<sup>22</sup> (1979) 6-9 SC 51.

<sup>23</sup> Constitution of the Federal Republic of Nigeria 1999 (as amended).

<sup>24</sup> (2005) 2 NWLR (Pt 910) 241.

<sup>25</sup> Electoral Act 2010 (as amended).

<sup>26</sup> (2009) 4 NWLR (Pt 1132) 607.

<sup>27</sup> (2019) 5 NWLR (Pt. 1670) 1.

<sup>28</sup> Electoral Act 2022.

invalidated if the petitioner proves non-compliance with the law and demonstrates that such non-compliance substantially affected the result of the election. It also introduces new guidelines for the conduct of elections and transmission of results, aiming to minimize the likelihood of procedural errors. The 2022 Electoral Act continues to uphold the doctrine of substantial compliance, but with a stronger emphasis on technological transparency and procedural integrity, reflecting the evolving nature of electoral processes in Nigeria.

The substantial compliance doctrine continues to be a crucial tool in preserving the integrity of elections while maintaining stability in governance, with courts applying it to ensure that electoral outcomes reflect the will of the electorates despite minor irregularities.

## **7. Challenges and Controversies in the application of the Doctrine of Substantial Compliance in Nigeria Electoral Jurisprudence**

### **Subjectivity in Interpretation**

The term ‘substantial compliance’ is often criticized for its subjective interpretation. Courts must decide whether non-compliance is significant enough to affect the election result, which can lead to inconsistent rulings. In *Micheal Opeyemi Bamidele v INEC*,<sup>29</sup> Bamidele's petition alleged significant irregularities in the Senatorial election. The tribunal ruled in favour of Bamidele, finding that the non-compliance was substantial and affected the result. The tribunal's decision was contested for potentially setting a precedent where minor irregularities could be deemed substantial. This case highlighted the challenges in defining what constitutes substantial non-compliance and its impact on the election result.

### **Burden of Proof**

Another controversy is the burden of proof required to establish substantial compliance. Petitioners must provide convincing evidence that irregularities significantly impacted the election results, which can be challenging. In *Ikpeazu v Otti*,<sup>30</sup> Alex Otti challenged Dr. Okezie Ikpeazu's governorship win, citing extensive irregularities. The Supreme Court agreed that the evidence showed substantial non-compliance affecting the outcome. The case underscored the challenge of meeting the high burden of proof for substantial compliance, with significant evidence required to overturn an election result. It illustrates the difficulty petitioners' face in proving that irregularities had a material impact on the result.

### **Impact of Procedural Irregularities**

The challenge of determining whether procedural irregularities are substantial enough to affect the outcome of the election is a significant issue. Courts must assess whether these irregularities are isolated incidents or part of a broader pattern affecting the election. In *Amaechi v INEC*,<sup>31</sup> Rotimi Amaechi challenged the Rivers State governorship election on grounds of procedural irregularities. The Supreme Court found that these irregularities were substantial. The case highlighted the complexity of distinguishing between minor procedural errors and those that are substantial. It demonstrates the difficulty in assessing the cumulative effect of procedural irregularities.

### **Political and Public Perceptions**

The concept of substantial compliance is often influenced by political and public perceptions, which can affect the impartiality of judicial decisions. There can be pressure on courts to rule in favour of popular candidates or political parties. In *Buhari v INEC*,<sup>32</sup> Muhammadu Buhari's petition contested the 2007 presidential election results, citing widespread malpractices. The tribunal dismissed the petition, citing insufficient evidence of substantial non-compliance. The decision was controversial and perceived by some as influenced by political factors rather than strict legal standards. This case reflects how political and public pressures can impact the interpretation of substantial compliance.

### **Variability across Jurisdictions**

Different tribunals and courts may interpret substantial compliance differently, leading to variability in rulings. This inconsistency can undermine the predictability and fairness of election petitions. In *Akinlade v Ekiti State Governorship Election Petition Tribunal*,<sup>33</sup> the petition challenged the Ekiti State governorship election results based on alleged substantial non-compliance. The tribunal found that the irregularities were not substantial enough to affect the outcome. The case illustrated how different tribunals might have varying thresholds for determining substantial compliance. It underscores the challenge of achieving uniformity in the interpretation of substantial compliance across different jurisdictions.

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<sup>29</sup> (2019) 3 NWLR (Pt 1670) 485.

<sup>30</sup> (2016) 1 NWLR (Pt. 1491) 162.

<sup>31</sup> (2008) 5 NWLR (Pt 1080) 227.

<sup>32</sup> (2007) 12 NWLR (Pt. 1048) 239.

<sup>33</sup> (2019) 5 NWLR (Pt. 1678) 423.

## **8. Problems associated with the application of Substantial Compliance Doctrine in Electoral Process in Nigeria**

The doctrine of substantial compliance in Nigeria's electoral process presents several problems and challenges, particularly in the context of determining what constitutes 'substantial' non-compliance. These challenges often involve judicial discretion, inconsistent interpretations, and potential for abuse. Below are the main problems:

### **Problem of Judicial Discretion**

One major issue with substantial compliance is the wide judicial discretion involved in determining whether non-compliance is substantial enough to affect the result of an election. Different judges may apply the doctrine differently, leading to inconsistent rulings on similar electoral disputes. In *Atiku Abubakar v INEC*,<sup>34</sup> Atiku Abubakar challenged the 2019 presidential election, alleging non-compliance with the Electoral Act, particularly in the use of electronic transmission of results. The court held that there was substantial compliance, even though there were irregularities in some polling units. The wide discretion given to judges created a situation where the same irregularities could lead to different judgments in other courts. This discretionary power may erode confidence in the objectivity of judicial decisions on election matters. The outcome of this case shows that judges may interpret the concept of substantial compliance differently, potentially leading to unpredictable rulings.

### **Ambiguity in Defining 'Substantial'**

There is no clear statutory definition of what constitutes 'substantial' non-compliance, leaving it to the court to decide on a case-by-case basis. This ambiguity can result in conflicting judgments and legal uncertainty. In *Wike v Peterside*,<sup>35</sup> Dakuku Peterside challenged the election of Nyesom Wike in Rivers State, citing widespread violence and voter intimidation. While the election tribunal initially annulled the election, the Supreme Court later reversed the decision, holding that the irregularities were not substantial enough to affect the election outcome. The ambiguous definition of 'substantial' led to differing judgments at different levels of the judiciary. This lack of clarity raises the issue of predictability in electoral disputes. This case exemplifies the ambiguity in determining what level of non-compliance justifies nullifying an election.

### **Undermining of Electoral Integrity**

The substantial compliance doctrine can be perceived as undermining the integrity of the electoral process by allowing elections to stand despite irregularities. This could give room for electoral malpractice if parties know that only significant irregularities will lead to the annulment of elections. In *Oshiomhole v INEC*,<sup>36</sup> Adams Oshiomhole challenged the 2007 Edo State gubernatorial election, citing rigging and other irregularities. The court annulled the election because the non-compliance was deemed substantial enough to affect the outcome. While the doctrine protects against annulments for minor irregularities, it could allow elections marred by significant yet not 'substantial' issues to stand. This undermines electoral integrity, as technical compliance with the law may be sacrificed for perceived stability. This case demonstrates the potential for the doctrine to tolerate irregularities, which may embolden parties to engage in minor malpractices with the hope that they will be overlooked.

### **Erosion of Public Trust**

The public's confidence in the electoral process may be eroded if courts repeatedly uphold elections despite irregularities, even if they are deemed 'non-substantial.' This could lead to a situation where the electorate feels disenfranchised or that their votes do not matter. In *Buhari v INEC*,<sup>37</sup> Muhammadu Buhari challenged the 2007 presidential election, alleging widespread rigging and irregularities. The Supreme Court upheld the election, stating that there was substantial compliance, even though irregularities were acknowledged. The court's decision to uphold elections despite proven irregularities led to criticism and accusations of judicial bias, eroding public trust in both the judiciary and the electoral system. This case highlights how the doctrine of substantial compliance, if applied too liberally, may undermine the public's confidence in the electoral system, as it can appear that legal technicalities are prioritized over fairness.

### **Difficulty in Proving Non-Compliance**

For an election to be annulled based on non-compliance, the petitioner must prove that the irregularities were substantial enough to affect the outcome. This burden of proof is often challenging to meet, especially in the absence of clear evidence, making it difficult for petitioners to succeed in their claims. In *INEC v Oguebego*,<sup>38</sup> a dispute arose concerning the authenticity of a list of candidates submitted by a political party. The Supreme Court held that, despite issues with candidate nomination, the overall election process substantially complied with the law. The petitioner's burden of proving that irregularities affected the outcome is extremely high, making it difficult to challenge elections

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<sup>34</sup> (2019) 5 NWLR (Pt 1670) 1.

<sup>35</sup> (2016) 7 NWLR (Pt 1512) 452.

<sup>36</sup> (2009) 4 NWLR (Pt. 1132) 607.

<sup>37</sup> (2008) 19 NWLR (Pt 1120) 246.

<sup>38</sup>(2015) 18 NWLR (Pt 1491) 273.

even where there are clear violations of the Electoral Act. This case illustrates the difficulty for petitioners in proving substantial non-compliance, as they must not only demonstrate the occurrence of irregularities but also show that those irregularities directly impacted the election result.

### **Encouragement of Election Malpractices**

The doctrine of substantial compliance can unintentionally encourage minimal levels of election malpractice. Political actors may engage in minor irregularities, knowing that courts may overlook them as long as they are not ‘substantial.’ In *Agagu v Mimiko*,<sup>39</sup> Olusegun Agagu’s election as Governor of Ondo State was challenged by Olusegun Mimiko, who alleged massive rigging. The Court of Appeal annulled the election, stating that the irregularities were substantial enough to affect the result. In cases where irregularities do not meet the threshold of substantial non-compliance, parties may be incentivized to commit smaller, less detectable infractions, confident that they will not lead to annulment. This case highlights the potential danger of fostering a culture of minimal but widespread electoral malpractice that falls below the ‘substantial’ threshold, weakening the overall integrity of the process.

### **9. Conclusion**

Section 135(1) of the Electoral Act 2022 forms the statutory basis for the doctrine of substantial compliance in Nigeria. It emphasizes that the courts must look at the overall effect of non-compliance before annulling an election. There is nowhere in the Electoral Act where the doctrine of substantial compliance was defined. The doctrine of substantial compliance in Nigeria's electoral process presents several challenges and controversies, particularly in the context of determining what constitutes ‘substantial’ non-compliance. These challenges and controversies often involve judicial discretion, inconsistent interpretations, and potential for abuse. This doctrine has whittled down the efficacy of sections 14(1)<sup>40</sup> and 2 (a)<sup>41</sup> which provides that the Federal Republic of Nigeria shall be a State based on the principles of democracy and social justice and that the sovereignty belongs to the people of Nigeria from whom government through this constitution derives all its powers and authority. This doctrine of substantial compliance has eroded the constitutional powers of the citizens of the Federal Republic of Nigeria as it relates to sovereignty belonging to the people of Nigeria. The writer has painstakingly discussed the challenges and controversies surrounding the application of this doctrine. This article will go a long way in helping the stakeholders in our electoral jurisprudence in knowing how best to apply this doctrine for the advancement of our democracy.

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<sup>39</sup> (2009) 7 NWLR (Pt. 1140) 342.

<sup>40</sup> Constitution of the Federal Republic of Nigeria 1999 (as amended).

<sup>41</sup> *Ibid.*