

AN EXAMINATION OF THE POST-ELECTORAL PROCESS IN NIGERIA¹

Abstract

Election is one of the most essential ingredients of democracy, its conduct has remained a challenge to democratic governance not only in Nigeria but also almost all over the world. Nigeria's electoral process from the first one in 1922 during colonialism to the last one has been characterized by a lot of prospects and challenges. Democratization involves the process of making democracy work in a political setting and ensuring that the core principles for democratic practice are upheld. The electoral process does not end after the results are declared. Several other post-electoral processes can mar a peaceful election if not properly taken care of. The electoral process as practised in Nigeria is both indigenous and dynamic with its localized prospects and challenges. Over the years, Nigeria has continued to search for better ways of consolidating its fragile democracy. This study, therefore, seeks to examine how the electoral process, particularly the post-election process has contributed to strengthening democratic governance in Nigeria within the period under study. A doctrinal research methodology was adopted and the findings of this study is to the effect that the Electoral process in Nigeria though developing can still adopt the recommendations as prescribed in this paper to meet up with international best standards.

Keywords: Election. Nigeria, Democracy. Governance

1.0 Introduction

Democratic governance is a process whereby democratic principles such as popular sovereignty, empowerment, political equality, majority rule, functional constitution, rule of law, independent judiciary, periodic free and fair elections and human rights and freedom are enshrined in a polity.

Democratization which is derived from democracy, essentially involves the process of making democracy work in a political setting and ensuring that the principles and guidelines for democratic practice which do not exist in other forms of government are upheld. This starts by ensuring that the people, who are the repository of power, own and participate in governance.² Democratization is aimed at substituting an existing undemocratic and autocratic rule with one that is participatory and has other democratic characteristics. The unique element of democratization is popular participation in government through social mobilization, citizens' activism, referenda, elections, and political education.³

Thus, the core of democratization is to generate opportunities for citizens, cultural background or ethnic lineage, and ideological leaning notwithstanding, to participate in the political process.

What this position entails is that democratization involves the popular participation of the people in the choice of their leaders and decision-making by those leaders. For the people to choose their leaders, therefore, frequent elections which form part of the electoral process are very necessary in the democratization process.

1.1 How and who declares the result?

By the 1999 Constitution and the Electoral Act, of 2022, the INEC has the competent authority to conduct and issue results. The competent employees of INEC who are charged with the statutory duties of announcing or declaring election results at the different levels of conduct of election and collation of election results are set out in section 25 of the Electoral Act 2022. Section 25 of the Electoral Act 2022 provides that the following categories of persons can announce or declare election results.

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² Akinyemi, S. (2019). Voter apathy: A threat to democracy in Nigeria. *Democracy in Africa*, 24 April. Available at: <http://democracyinafrica.org/voter-apaty-threat-democracy-nigeria/> Accessed on 10/7/24

³ Aiyede, E. R. (2007). Electoral laws and the 2007 general elections in Nigeria. *Issue; Nigeria's 2007 General Elections*, 6 (2)

1. *The Results of all the elections shall be announced by the*
2. *Presiding officer at the polling unit;*
3. *Ward Collation Officer at the Registration Area or Ward Collation Centre;*
4. *Local Government or Area Council Collation Officer at the Local Government or Area Council Collation Centre; and*
5. *State Collation Officer at the State Collation Centre.*

From the foregoing, the powers of INEC to declare election results by section 25(1) of the Act are vested in the appropriate Returning Officers. Section 25(2) enumerates the venue or locale for such declaration of results as follows:

“The returning officer shall announce the result and declare the winner of the election at

- (a) *Registration Area or Ward Collation Centre in the case of Councillorship election in the Federal Capital Territory;*
- (b) *Area Council Collation Centre in the case of Chairmanship and Vice Chairmanship election in the Federal Capital Territory;*
- (c) *State Constituency Collation Centre in the case of State House of Assembly election;*
- (d) *Federal Constituency Collation Centre in the case of election of the House of Representatives;*
- (e) *Senatorial District Collation Centre in the case of election of the Senate;*
- (f) *State Collation Centre in the case of election of a Governor of a State;*
- (g) *State Collation Centre in the case of a Presidential election; and*
- (h) *National Collation Centre in the case of election of the President.”*

Sub (3) of the same section stipulates that the Chief Electoral Commissioner shall be the returning officer at the Presidential election.

Although the provisions are similar, the Electoral Act, 2022 appears to have clearer provisions in this regard, that is, in carefully separating ‘who declares the results’ from ‘where the results should be declared and in what election’. Previous Electoral Acts were not that distinct and clear in their provisions. In the case of *Bagwai v. Goda*,⁴ the Court in resolving the question of who can announce the results of elections referred to the Electoral Act, 2006 in this wise-

By the provision of section 28(2) of the Electoral Act, 2006, the results of all the elections shall be announced by:

- (a) *the Presiding Officer at the Polling Station;*
- (b) *the Ward Returning Officer at the Ward Collation Centre;*
- (c) *the Returning Officer at the Local Government or Area Council;*
- (d) *the Returning Officer at the State Constituency Collation Centre;*
- (e) *the Returning Officer at the Federal Constituency Collation Centre;*
- (f) *the Returning Officer at the Senatorial District Collation Centre;*
- (g) *the Resident Electoral Commissioner Who shall be the Returning Officer at the Governorship election; and*
- (h) *the Chief Electoral Commissioner Who shall be the Returning Officer at the Presidential election.*

Despite the slight differences, the above provisions highlight the very important place of the Returning officer in elections at all levels of our federalism. In *Onugha v. Ezeigwe*⁵ the Court of Appeal noted in its decision that -

A Returning Officer is assigned with specific duties. He alone will announce the constituency results, declare the results and return a candidate to the election. It is also the Returning Officer Who signs, stamps, declares and issues the certificate of return to a successful candidate. It logically follows that an election result that was declared by any other official of INEC but the

⁴(2011) 7 NWLR (Pt. 1245) 28.

⁵ (2013) 13 NWLR (Pt. 1263) 184.

appropriate Officer is questionable for non-compliance with the provisions of the law as it concerns the administration of elections in Nigeria.

In the case of *Salik v. Idris*,⁶ the apex Court was faced with determining Whether the State Resident Electoral Commissioner could make a return of the election or alter the result. The Court, on that point held as follows-

It is a returning officer who has the responsibility to make the return of an election. The State Resident Electoral Commissioner cannot usurp the power and proceed to alter the result. He has no power to alter the result...Following this case, it was the returning officer for Dala Federal Constituency that had the responsibility to make the return but the Resident Electoral Commissioner for Kano State purportedly usurped the power and proceeded to alter the result by cancelling the 1st respondent's name and substituting it with the appellant's name and announcing the appellant as the winner of the election. He had no power to alter the result by cancelling the 1st respondent's name and inserting that of the appellant. The option opened to the appellant was to question the election of the 1st respondent under section 145(1)(d) of the Electoral Act 2006.

Accordingly, a presiding officer declares the results and returns a candidate as the winner of the election. He also signs, stamps, declares, and issues the Certificate of Return. The mode of ascertaining the election results which INEC will declare through its appropriate officers is also clearly reflected in section 66 of the Electoral Act, 2022. By this section, the results of an election to the office of the President or Governor, whether or not contested, and in any contested election, to any other elective office shall be ascertained by counting of the votes cast for each candidate, and subjected to the provisions of sections 133, 134 and 179 of the Constitution, and the candidate that receives the highest number of votes shall be declared elected by the appropriate returning officer. For emphasis, sections 133, 134 and 179 of the Constitution provide as follows:

133. A candidate for an election to the office of President shall be deemed to have been duly elected to such office where being the only candidate nominated for the election—
(a) he has a majority of YES votes over NO votes cast at the election; and
(b) he has not less than one-quarter of the votes cast at the election in each of at least two-thirds of all the States in the Federation and the Federal Capital Territory, Abuja, but where the only candidate fails to be elected by this section, then there shall be fresh nominations.

Section 134(1) &(2) further provides that:

(1) A candidate for an election to the office of President shall be deemed to have been duly elected where there being only two candidates for the election—
(a) he has a majority of the votes cast at the election; and
(b) he has 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 Federal Capital Territory, Abuja.
(2) A candidate for an election to the office of President shall be deemed to have been duly elected where there being more than two candidates for the election—
(a) he has the highest number of votes cast at the election; and
(b) he has not less than one-quarter of the votes cast at the election in each of at least two-thirds of all the States in the Federation and the Federal Capital Territory, Abuja.

Section 179 is on all fours with sections 133 & 134 above, the only difference being that it is concerned with the outcome of the gubernatorial election. Accordingly, there is the requirement that 'he has not less than one-quarter of the votes cast at the election in each of at least two-thirds of all the local government areas in the state.'

In interpreting these sections, the apex Court in *Takori v Matawalle*,⁷ confirmed that-

By the combined operation of sections 70 of the Electoral Act and 133 and 134(1) and (4) of the 1999 Constitution (as amended), the appellants have rightly pleaded that for the 1 respondent to be declared and returned the duly elected Governor of Zamfara State he must

⁶ (2014) 15 NWLR (Pt. 1429) 36.

⁷ (2020) 17 NWLR (Pt 1752) 165, 182 paras F-H.

not only score the majority of votes cast at the election but he must "further score" not less than one-quarter of the votes cast in each of at least two-thirds of the fourteen (14) Local Government Areas in Zamfara State.

Similarly, the Supreme Court in *Faleke v. I.N.E.C*⁸ held that:

By section 69 of the 1999 Constitution, in an election to the office of the President or Governor whether or not contested and in any contested election to any other elective office, the result shall be ascertained by counting the votes cast for each candidate and subject to the provisions of sections 133, 134 and 179 of the Constitution, the candidate that receives the highest number of votes shall be declared elected by the appropriate returning officer. A declaration as to who received the highest number of votes cast and who should be declared elected is to be made by the appropriate returning officer after the results have been ascertained by counting the votes cast for each candidate.

It is important to note that, the decisions of the Returning Officer on any question arising from or relating to the declaration of scores of candidates and the return of a candidate is final, subject only to review by a tribunal or Court in election petition proceedings under the Act.⁹ Notably, Section 65(2) of the Electoral Act, 2022 is on all fours with Section 68(c) of the Electoral Act, 2010. In interpreting the latter section, the Supreme Court in *Faleke v. I.N.E.C*¹⁰ held as follows:

Section 68(c) of the Electoral Act, 2010 (as amended) provides that the decision of any returning officer on any question arising from or relating to the declaration of scores of candidates and the return of a candidate shall be final, subject to review by a Tribunal or Court in an election petition proceeding under the Act. It refers to the "declaration of scores of candidates", which accords with the definition of "return" in section 156. It is the declaration or return that becomes the subject of an election petition. A declaration or return is a condition precedent to the invocation of sections 179(2) and 181(1) of the Constitution. Sections 179(2) and 181(1) of the Constitution are not self-executing. There must be a declaration or return of a candidate as the winner of an election before the sections become applicable. To hold otherwise would lead to a situation where anyone could declare himself as the deemed winner of an election, which would certainly lead to anarchy. The electorate is also entitled to have the results of the election formally declared by an unbiased umpire.

The law expects that a valid election result to be declared must be signed. Thus, in *Onuoha v Ubah*,¹¹ paras F-G, the Supreme Court per Kekere-Ekun, JSC stated that:

What we are left with is the appellant's exhibit E on the other side of the scale. Exhibit E can be found on page 291 of the record. It is unsigned and therefore worthless and of no evidential value. See Omega Bank Nigeria Plc v OBC Ltd. (2005) All FWLR (Pt 249) 1964 at 1993 G and 1994 C-D, (2005) 8 NWLR (Pt 928) 547. The two lower Courts were right not to place any evidential value on it.

It is pertinent to state that where the result of an election has been declared by the appropriate officer, there is a presumption of regularity of election or election returns where not challenged based on process statutorily provided.¹² By section 168(1) Evidence Act, 2011, where the validity of an election or the return made therefrom is or is not questioned by the process of election petition procedure as statutorily provided for, the election and the results or return made therefrom enjoy the presumption of regularity.

1.2. Effect of Delay in Declaration of Election Result

It is not out of place to find that election results are not declared on the day of the election. It has therefore become important to consider the legal status of a delay in announcing election results. The first point that must be made here, is that neither the Constitution nor the Electoral Act 2022 stipulate a

⁸ (2016) 18 NWLR (Pt. 1543) 61.

⁹ Section 65(2) of the Electoral Act, 2022.

¹⁰ (2016) 18 NWLR (Pt. 1543) 61, at 119.

¹¹ (2019) 15 NWLR (Pt 1694) 21.

¹² *Friday v. Gov., Ondo State*(2022) 16 NWLR (Pt. 1857) 585(SC)

time limit for the declaration of an election result. This is probably because the draftsman of the constitution and the Act did not envisage a delay in the declaration of results, or even if they did, they did not contemplate that any such delay should be unreasonable. The Courts have established that a Delay in announcing the result may not be fatal if it is justifiable. In *Maduekwe v Okoroafor*,¹³ the Court of Appeal held that since no time limit was stipulated in paragraph 29 (1) Schedule 3, National Assembly (Basic Constitutional and Transitional Provisions) Decree No 18, 1992 for the declaration or announcement of an election result, delay, even for a week, would not vitiate the result of such election as long as the delay does not breed suspicion and was not unreasonable.

1.3. Can election results be cancelled?

In *Adeleke v. I.N.E.C.*¹⁴ the apex Court held that Cancellation of results can be done only by the Supervisory Polling Unit Officer and not by the State Returning Officer. Also, in *Adeleke v. Oyetola*¹⁵ the Court added that-

A careful study of the provision of the relevant paragraphs of the manual will clearly show that the activities of the State returning officer do not include the power to cancel any result of election. He must compare the total number of voters on form EC40G (3) with the margin of win of the two leading candidates, and where the margin of win is not more than the total number of registered voters of the polling units where the election was cancelled or not held, decline to make a return until another election is conducted in the affected polling units.

1.4. Review of Declared Result

To effectively consider how declared results are reviewed, it is important to refer to the provisions of section 65 of the Electoral Act, 2022, which provides as follows

65(1)- The decision of the Returning Officer shall be final on any question arising from or relating to

(a) unmarked ballot paper;

(b) rejected ballot paper; and;

(c) declaration of scores of candidates and the return of a candidate.

Provided that the Commission shall have the power within seven days to review the declaration and return where the Commission determines that the same declaration and return was not made voluntarily or was made contrary to the provisions of the law, regulations and guidelines, and manual for the election.

2. A decision of the Returning Officer under subsection (1) may be reviewed by an election tribunal or Court of competent jurisdiction in an election petition proceeding under this Act.

The draftsmen of the Electoral Act, 2022 did not fail, just like its precursor statutes to make provisions for circumstances in which the declaration and return of the results of the election was not made voluntarily or was made contrary to the provisions of the law, regulations and guidelines, and manual for the election. The first point that must be made is that the decisions of the Returning Officer on any question arising from or relating to declaration of scores of candidates and return of a candidate is final. These questions may arise from or relating to unmarked ballot papers, rejected ballot papers and declaration of scores of candidates and the return of a candidate. The use of 'arise from and relating to' in couching that provision is suggestive of the fact that the list is not exhaustive. As such, matters relating to the aforementioned will also be taken care of by the Returning officer. While this is our opinion, a returning officer has no leverage to step outside the bounds of the law by taking decisions that are ultra vires its powers. For instance, it has been held that a returning officer lacks the powers to declare an election inconclusive. In the case of *Nwokolo v. Uboh*,¹⁶ the Court of Appeal in holding on the nature of decision of a returning officer in relation to election results stated that-

¹³ (1992)9 NWLR (Pt. 263) 96

¹⁴ (2020) 11 NWLR (Pt. 1734) 17, 44

¹⁵ (2020) 6 NWLR (Pt. 1721) 440

¹⁶ Supra

By virtue of Section 68(1) of the Electoral Act 2010 (as amended), the decision of the returning officer arising from or relating to:-(a) unmarked ballot papers;(b) rejected ballot papers; and (c) declaration of scores of candidates and the return of a candidates shall be final subject of Review by a tribunal or Court in an election proceeding under the Act...It is, thus clear from the foregoing provisions that the decision of a Returning Officer in relation to the matters mentioned in (a), (b), and (c) above would ensure at the conclusion of an election where he has to decide only on ballot papers used at the election as to whether they were unmarked, and/or rejected and then proceed to make a declaration of the scores of candidates at the election. These decisions are made at the end of an election and imply a concluded election. The decision under section 68(1) must as a matter of mandation relate to the matters mentioned therein and to no other matters outside it. Obviously, therefore, a decision that an election was inconclusive is outside the purview of section 68(1).

While the decision of a Returning Officer is final, it is not absolute as it is subject to review. Section 65 of the Electoral Act 2022 grants to INEC an apparent authority to, within seven days, review the declaration and return made by the Returning Officer, where it determines that the declaration and return was not made voluntarily or was made contrary to the provisions of the law, regulation and guidelines, and manual for election. Also, the return or declaration made by a Returning Officer is subject to review by a tribunal or Court in an election petition proceeding. The law prior to the enactment of the Electoral Act 2022 was different. From the provisions of section 68 of the Electoral 2010, once a return or declaration is made by the Returning Officer, only an election tribunal or the appropriate Court could review the return or declaration in an election petition. In the case of *Uba v. Ukachukwu*,¹⁷ the Court of Appeal per Akaahs, J.C.A. expressed this position in these words:

I hold the view firmly that once a return has been made even by stealth of the hand, the returning officer becomes functus officio in the same way that a judgment once delivered and the order drawn up, no error in the judgment can be corrected unless on appeal... The law envisages only one return to be made and if a returning officer is careless and allows the return he has made on form EC8E to be tampered with, that will still remain the declared result of the election until set aside by the election tribunal upon application by an aggrieved party.

In *Abana v Obi*,¹⁸ the result of the senatorial election was announced by the Returning Officer who issued Form EC8E with serial No. 0000195 to the 1 respondent on 16th April, 2003 as evidence of his victory. On 18th April, 2003, the Resident Electoral Commissioner for Anambra State withdrew the Form EC8E issued to the 1" respondent, cancelled it, and thereafter declared the appellant as the winner of the election on the basis of a High Court judgment obtained by the appellant on 11th April, 2003, which declared him the validly nominated candidate of the PDP for the same Senatorial District. The Court of Appeal held that where an error was discovered after a return had been made by the Returning Officer, following the declaration of an election result, the Returning Officer could not make a second return as any such subsequent return would be invalid. The Court further held that the proper way to question the first return was by way of petition to the appropriate election tribunal which had jurisdiction to determine all questions about the election.

The foregoing case law authorities must now be read against the backdrop of the proviso to section 65(1) of the Electoral Act 2022. Under this provision INEC is now vested with the power to review a declaration of result earlier made by the returning Officer under certain circumstances. The power to review in the proviso is vested in INEC as an institution and not on the Returning Officer as a person. This suggests that, the management of INEC at the appropriate level must constitute a panel to make a determination on whether the declaration and return was not voluntary or was made contrary to election law. There is no doubt that this power of administrative review is judicial or at least quasi-judicial in character and must therefore be exercised in accordance with the requirement of fair hearing.

¹⁷ (2004) 10 NWLR (Pt. 881) 224.

¹⁸ (2004) LCN/1525(CA)

Where INEC does not review the results within seven days as required by the Electoral Act, the next option available to an affected party is to institute an election petition proceeding before an election tribunal or Court of competent jurisdiction in accordance with the Act. The proceedings afford the tribunal or Court the platform to review the results and make appropriate declarations. Thus, in *Wada v. Bello*,¹⁹ the Supreme Court held that

A tribunal or Court can declare anyone a winner in an election when;

(a) the elections must have been Concluded;

(b) the Independent National Electoral Commission must have made a declaration in favour of one of the candidates;

(c) there must have been a petition or petitions filed by aggrieved candidate or candidates against the declaration of the winner by the Independent National Electoral Commission.

1.5. INEC officials and Neutrality of Election

Officers of INEC are required, under the law, to be neutral in the conduct of elections. It goes without saying that elections cannot be adjudged as free and fair if officers of INEC are enmeshed in political partisanship. To ensure the neutrality of INEC and its officers, sections 26 and 27 of the Electoral Act 2022 provide:

26. (1) All staff, electoral officers, presiding officers, returning officers and security officials taking part in the conduct of an election shall affirm or swear to an oath of loyalty and neutrality as in the Second Schedule, indicating that they will not accept bribe or gratification from any person, and shall perform their functions and discharge their duties impartially and in the interest of the Federal Republic of Nigeria without fear or favour.

(2) Any person who violates subsection (1), commits an offence and is punishable under section 120 (dereliction of duty).

27. (1) The Commission shall for the purpose of an election or registration of voters under this Act, appoint and designate such officers as may be required provided that no person who is a member of a political party or who has openly expressed support for any candidate shall be so appointed.

(2) The Officers appointed under subsection (1) shall perform such functions and discharge such duties as may be specified by the Commission, in accordance with the provisions of this Act, and shall not be subject to the direction or control of any person or authority other than the Commission in the performance of their functions and discharge of their duties.

(3) Notwithstanding the provisions of any other law and for purpose of securing the vote, the Commission shall be responsible for requesting for the deployment of relevant security personnel necessary for elections or registration of voters and shall assign them in the manner determined by the Commission in consultation with the relevant security agencies:

Provided that the Commission shall only request for the deployment of the Nigerian Armed Forces for the purpose of securing the distribution and delivery of election materials and protection of election officials.

From the foregoing, it is clear that two safeguards are provided for towards ensuring the neutrality of INEC officers charged with the responsibility of the conduct of elections. First, it is required that such officers depose to "Oath of Neutrality." Second, such officers must not be members of any political party or be persons who had openly expressed support for any candidate. Electoral officers, presiding officers, returning officers, electoral staff and security officials taking part in the conduct of an election are required to affirm or swear to an oath of loyalty and neutrality as in the Second Schedule. Through this oath, electoral officials and officers pledge to discharge their duties to the best of their ability in accordance with the Constitution of the Federal Republic of Nigeria, the Electoral Act and the Guidelines issued by the Independent National Electoral Commission; and to do right to all candidates and political parties according to law without fear or favour, affection or ill-will.

¹⁹ (2016) 17 NWLR (Pt. 1542) 374.

The oath shall be signed by the deponent and the Resident Electoral Commissioner Electoral Officer. It is a provision to ensure fairness and assure that the Nigeria will is expressed and bespeaks the choice of their leaders in the interest of Nigeria purely and transparently for all Nigerians. There is no room for a discretion in I.N.E.C. not to see that the officials took the oath. The swearing of the oath or the making of an affirmation is a precondition for the deployment of the group of the I.N.E.C. officials. It goes to their qualification to serve in the presidential election. This is a condition precedent, a sine qua non for deployment of the officials.²⁰ However, where electoral officials fail or neglect to depose to this oath, it is not a sufficient ground to nullify the result of the election except where it is proved that it substantially affected the result of the election.

In *Amadi v. Eke*,²¹ the Court of Appeal when faced with a challenge to an election on this fact relied on the provision of section 4(1) of the Oaths Act, Cap. 333, Laws of the Federation of Nigeria, 1990, which states that, nothing in the Act shall render invalid any act done by a public officer in the execution or intended execution of his official duties, by reason of omission by the public officer to take any oath or make affirmation. Similarly, the Supreme Court has pronounced on this issue in *Buhari v Obasanjo*,²² and held that:

The complaint of the appellants in this respect emanated from an allegation that some of the electoral officers, presiding officers and returning officers were not administered with the oath as required...such omission alone was not enough to justify nullification of an election in the absence malpractice on the part of the officials. I entirely agree with that stand. This is because, if such a stand is not taken, it would be totally impossible to conduct any election, let alone a presidential election in which the entire country is involved. It would mean a minor non-compliance at, for example, a polling station in a village, would result in cancelling the entire election nation-wide. Such situation is what section 135 (1) of the Act is aimed at preventing... the purpose of the inclusion of section 135 (1) in the Act is to prevent an election from being invalidated on mere failure to comply with minor provisions of the Electoral Act...

Per Nsofor, J.C.A.²³ in supporting the above question held as follows:

The Act or section requires that the class of officials of I.N.E.C. to be engaged or deployed to function in the conduct of the presidential election on the 19/04/2003, must take the oath or make an affirmation in the terms specified by the Act before ever they be deployed... This is a condition precedent, a "sine qua non" for deployment of the officials. To hold otherwise is, in my opinion, para- logical. It is para- legal. In my respectful opinion, the section does not aim at or seek to examine how the official performed. It would be like putting the cart before the horse...I have to confess for the purpose of fullness of the discussion that I am fully aware of sections 4 and 10 of the Oaths Act, 1990. Whether the I.N.E.C. officials - the Electoral Officers, Presiding Officers or Returning Officers - who were deployed to conduct the election behaved as saints or devils is besides the question. What effect their behaviour in the conduct of the election had or would have been is, non sequitor. Why? Because section 4 or 10 of the Oaths Act is not concerned with the competence of the officials. No. To talk of section 4 and/or section 10 of the Oaths Act, in relation to I.N.E.C.'s non-compliance with section 18 of the Electoral Act, with respect in my humble view, is a red-herring to re-cloud the issue raised by the parties on their respective pleadings. And we sit here to decide issues - (See Howell's case) (supra) (1915) 1 K.B. 54; Lewis Peat N.R.I. (supra). Nothing more and nothing less!"

However, failure to subscribe to the oath amounts to an electoral offence called dereliction of duty, and such officer shall upon conviction be liable to a maximum fine of N500,000 or imprisonment for a term of 12 months or both.²⁴ Officers of INEC are also required by law to be non-partisan. No person who is a member of a political party or who has openly expressed support for any candidate shall be so

²⁰ *Buhari v. Obasanjo supra*

²¹ (2004) 14 NWLR (Pt. 892) 10

²² (2005) 2 NWLR (Pt. 910) 241

²³ *Buhari v. Obasanjo supra*, at pages 515-516, paras. H- C; 517, paras. A-C.

²⁴ Section 120(1) Electoral Act, 2022

appointed as an electoral officer, and they are required to perform such functions and discharge such duties as may be specified by the Commission, in accordance with the provisions of the Act, and shall not be subject to the direction or control of any person or authority other than the Commission.²⁵ It appears that the Electoral Act 2022 did not stipulate any punishment or consequence for non-adherence to the requirement of political neutrality. However, any conduct, act or omission of an electoral officer in breach of his or her official duty is a triable offence under the Act. The effect on the election is that it fuels an election petition brought on the ground of non-compliance with the provisions of the Act with respect to the polling units, wards and local government areas where such officers served.²⁶

1.6. Bye-Elections

The Electoral Act, 2022 did not define what a bye-election is in its definition section. A bye-election is simply an election held to fill a vacant post. Thus, in *Labour Party v. I.N.E.C.*,²⁷ the Court of Appeal held that - A general Election is an Election that occurs at a regular interval of time or an Election for all seats as contrasted with a bye-Election. On the other hand, a bye-Election is an Election specially held to fill a vacant post. Section 28 of the Act however makes reference to the time within which the commission shall give notice of one. For emphasis, section 28(3)&(4) provide that-

(2) *In the case of a by-election, the Commission shall, not later than 14 days before the date appointed for the election, publish a notice stating the date of the election.*

(3) *There shall not be substitution of candidates in a by-election except where a candidate of a political party in a by-election dies, the party shall submit to the Commission the name of its substitute candidate within seven days of the death of the candidate in the Form prescribed by the Commission.*

Judicial authorities have established that for there to be a bye-election, there must be a vacant post to be filled; it may be that someone died or someone was removed.²⁸

It has been held that there is a difference between postponement of an election and bye-election as stated in the Electoral Act, which is in the time statutorily required to give notice. In *Aja v. Odin & Ors.*²⁹ per Oseji, J.C.A. explained this difference as follows:

In my own humble understanding, there is a world of difference between the postponement of an election as envisaged in Section 27 of the Electoral Act, 2006 and a bye-election as stated in Section 31(3) of the same Act. For example, Section 26 confers on the Independent National Electoral Commission the power to appoint dates for election into various elective offices in the Country and then goes further in Section 27 to make provision for the postponement of such election to another date in case of any likely breach of peace, or as a result of a natural disaster or other emergencies in any area or areas concerned. In other words, the INEC under any of the above occurrence has the discretion to postpone election in a particular area or areas to any date it deems proper and convenient... But in the case of a bye-election it is specifically provided in Subsection (3) that the Commission shall not later than 14 days before the date appointed for the election publish a notice stating the date of the election.

1.7. Fresh Election

Prior to the enactment of the Electoral Act, 2022, one of the instances where a fresh election is required is when an election has been nullified in accordance with law. Plethora of judicial decisions represent this position. Thus, in *Tarzoor v. Ioraer*,³⁰ the apex Court noted that-

By virtue of section 140(2) of the Electoral Act, 2010(as amended), 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, or that the election was marred by

²⁵ Section 27 Electoral Act, 2022

²⁶ *Buhari v Obasanjo* (2005) 2 NWLR (Pt. 910) 241

²⁷ (2008) 13 NWLR (Pt. 1103) 73

²⁸ *Labour Party v. I.N.E.C*(2009) 6 NWLR (Pt. 1137) 315

²⁹ (2010) LPELR-CA/E/EPT/9/2008, Pp. 33-34, paras. D-B

³⁰ (2016) 3 NWLR (Pt. 1500) 463

substantial irregularities or non-compliance with the provisions of the Act, the election tribunal or Court shall not declare the person with the second highest votes or any other person as elected, but shall order a fresh election.

In **Labour Party v. I.N.E.C.**³¹ the apex Court solidified this principle by stating that-

A nullity is a void act or an act that has no legal consequence. It is an act that is not only bad, but incurably bad. It is as if nothing happened...A nullified election is a voided election leaving a complete void. In effect, a nullified election is completely void. Thus, once an election is declared null and void, the law regards whatever was purportedly done in the name or guise of an election as not having taken place at all. In the eyes of the law, the election is void ab initio, and fresh election is conducted as if the earlier one did not take place at all. In the instant case, the re-start or re-run election ordered at the Court of Appeal after nullifying the election was in essence a general election or fresh election. And only the candidates that ran in the annulled election and the candidate excluded from that election could contest the fresh election.

Per Aderemi, J.S.C.³² added that:

I cannot agree more with the above pronouncement. When a Court makes a pronouncement that a thing that took place is null and void, the simple and only reasonable interpretation of such a pronouncement is that the thing never occurred or took place. The Court is by implication, ordering that the whole exercise must start afresh with the same dramatis personae participating. It cannot be otherwise if justice will be seen to be done in a situation like the present case where a candidate was adjudged to have been unlawfully excluded. An order of the Court commanding a re-run connotes nothing other than that the candidate so unlawfully excluded together with those who took part in the election that was voided should start again - they should have a re-run of the election and that is the general election.

However, the extant Electoral Act took a different position on this issue. By the clear provisions of section 136(1) of the Act, if the Tribunal or the Court as the case may be, 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—

- (a) decision if an appeal is not filed against the decision ; or*
- (b) nullification of the election by the Court having final appellate jurisdiction in respect of the said election.*

In other words, the only point at which nullification will require a fresh election is where the Court holds that the candidate who was returned as elected was not validly elected on any ground at all. Otherwise, fresh election will not be so ordered, as can be seen in subsections (2) and (3). These subsections provide that-

(2) 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 second 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.

(3) If the tribunal or the 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 the Court, as the case may be, shall declare as elected the

³¹ (2009) 6 NWLR (Pt. 1137) 315

³² *Ibid*, at page 347, paras. D-F.

*candidate who scored the highest number of valid votes cast at the election and satisfied the requirements of the Constitution and this Act.*³³

In any of the above, the Court will not order fresh election but shall declare the next most qualified candidate. However, fresh election is expressly required in event of a tie or equal number of votes between two candidates. This is stipulated by paragraphs 64 and 80 of the Regulations and Guidelines for the Conduct of Elections, 2022. Thus,

64-Where two or more candidates score exactly equal number of highest votes, the Chief Electoral Commissioner and Returning Officer for the Presidential election shall not return any of the candidates and a fresh election shall be held for the candidates who polled the equal number of votes on a date fixed by the Commission.

80. Where two or more candidates score exactly equal number of highest votes, the Returning Officer for the Governorship election shall not return any of the candidates and a fresh election shall be held for the candidates who polled the equal number of votes on a date fixed by the Commission.

In an attempt to differentiate a fresh election from a bye-election, the Court in **Labour Party v INEC**,³⁴ held as follows:

The answer quite simply is that fresh election ordered in INEC v Action Congress (supra) cannot in any way be likened to a bye- election, which is an election specially held to fill a vacant post...There was no vacant post to be filled; no one died and no one was removed as governor before the Jos Division of this Court affirmed the decision of the lower Tribunal which nullified the election for the office of governor of Adamawa State because of "unlawful exclusion" of Action Congress and its candidate by INEC, and when something is nullified, it is rendered invalid; it is void and of no effect whatsoever. This means that the election into the office of Governor of Adamawa State that was allegedly done on 14 day of April, 2007 did not take place in law. The election never held because one of the candidates was wrongfully excluded, so it's the same candidates that were set to run in the election that must go back to run in the fresh election ordered by the lower Tribunal and affirmed by this Court. The applicant may have a right to nominate and sponsor candidates but it cannot exercise that right when an election is nullified and a fresh election is ordered because the date and period for calling for nomination has elapsed.

It is noteworthy that when a fresh election is ordered, it is the same parties and candidates.³⁵ This was confirmed by Per Okoro, J.C.A³⁶ who held as follows-

Where a general election has been held and there is a false start, for example, a candidate who ought to have been part of the election was unlawfully excluded or there was no level playing ground for all the candidates and that election is subsequently either cancelled by the regulating authority like INEC or nullified by an order of a Court or tribunal, and a re-run or re-start is ordered, it is my humble view that there-run or re-start refers to that general election cancelled or nullified, and not a bye - election. The consequence of this is that all the candidates including the one unlawfully excluded would now get back to the starting line for a fair and free contest. It does not admit of any other candidate since as it were, the period for nomination and screening of candidates would have elapsed. It is just restoring the parties to the status quo ante belum. See Honorable Mohammed Salisu A. Alwa'u & Anor v. Abbas M. Yakubu & 2 Ors CA/K/EP/SHA30/20C(unreported) delivered on 6 th November, 2003. Let me demonstrate this with a common place example. We are familiar with athletes who participate in, say, 100 metre

³³ *Supra*

³⁴ *Supra*

³⁵ *Labour Party v. I.N.E.C*(2009) 6 NWLR (Pt. 1137) 315

³⁶ *Labour Party v. I.N.E.C. Supra*, at pages 102-104, paras. E-B

race for example. They are ordered to the starting point of the race by the umpire. But before the gun is shot or the whistle is blown, there could be a false start maybe due to the mistake of one or more of the runners. The race is cancelled. They are ordered back to the starting line to repeat that same race with all the competitors who took part during the false start. At that stage no new competitor is allowed to take part. Only those who had been screened and had taken part in what is usually called “the heat” and are certified fit for the final race that is allowed in the repeat race.

1.8. Changing from Manual calculation to Electronic calculation within INEC discretion

Section 148 of the Electoral Act, 2022 empowers the Commission to issue regulations, guidelines, or manuals for the purpose of giving effect to the provisions of this Act and for its administration, subject to the provisions of the Act. Also, section 50(2) provides that, subject to section 63 of this Act, voting at an election and transmission of results under this Act shall be in accordance with the procedure determined by the Commission. These sections empower INEC to determine the procedural steps to take in effecting an election process, and transmission of results for the elections, thereby leaving the question as to the use of manual or electronic calculation of results at the discretion of INEC. The important point to note is that this discretion is not exercised in vacuum, the letters of the Act must be complied with.³⁷

On voting, section 47 of the Act requires a person who intends to vote in an election to present his voter’s card himself to a Presiding officer for accreditation at the polling unit in the constituency in which his name is registered. To vote, the presiding officer shall use a smart card reader or any other technological device that may be prescribed by the Commission, for the accreditation of voters, to verify, confirm or authenticate the particulars of the intending voter in the manner prescribed by the Commission, and where a smart card reader or any other technological device deployed for accreditation of voters fails to function in any unit and a fresh card reader or technological device is not deployed, the election in that unit shall be canceled and another election shall be scheduled within 24 hours if the Commission is satisfied that the result of the election in that polling unit will substantially affect the final result of the whole election and declaration of a winner in the constituency concerned. While INEC may have discretion over the procedures in voting, it has no discretion over the use of smart card readers and other technologies. This section leaves no discretion for INEC. The provisions are unambiguous and must be interpreted.

On transmission of results, the law expects the Presiding officer after counting the votes at the polling unit, to enter the votes scored by each candidate in a form to be prescribed by the Commission as the case may be. Section 60(5) of the Act also mandates the presiding officer to transfer the results, including the total number of accredited voters and the results of the ballot in a manner prescribed by the commission. The Presiding Officer is equally required to electronically transmit or transfer the result of the Polling Unit, direct to the collation system as prescribed by the Commission. Thereafter, the presiding officer shall after recording and announcing the results deliver the same along with election materials under security and accompanied by the candidates or their polling agents, where available to such person as may be prescribed by the commission. The Polling Agents may accompany the Presiding Officer to the RA/Ward Collation Centre.³⁸ These provisions indicate manual calculation and delivery, in addition to an upload from the BVAS to the IREV of the said results.

Where there is a controversy between a collated result or the result of an election from any polling unit, the collation officer or returning officer shall use the following to determine the correctness of the disputed result—

(a) the original of the disputed collated result for each polling unit where the election is disputed ;

³⁷ Supra

³⁸ *Ibid*, para. 38

(b) the smart card reader or other technology device used for accreditation of voters in each polling unit where the election is disputed to obtain accreditation data directly from the smart card reader or technology device ;

(c) data of accreditation recorded and transmitted directly from each polling unit where the election is disputed as prescribed under section 47 (2) of the Act; and

(d) the votes and result of the election recorded and transmitted directly from each polling unit where the election is disputed, as prescribed under section 60 (4) of the Act.³⁹

The Courts have noted that electronic voting or electronic transmission of election results is and ought to be part and parcel of Nigeria's voting system and the means of proving the same.⁴⁰ It is capable of eliminating voting by proxy and enables the actual tracking of the actual turnout of voters during the elections.

1.9. Use of IRev and BVAS

Section 47 of the Electoral Act, 2022 supports the use of smart card readers and any other voter accreditation technology that INEC deploys for the electronic accreditation of voters. Section 50(2) empowers INEC to determine the procedure of voting at an election and transmission of results. Recall that the commission introduced the result viewing portal in August 2020. Section 62(2) gives the commission the power to maintain a centralized electronic register of elections for e-collation. The Commission is further authorized by section 62(2) to compile, maintain, and update, continuously, a register of election results to be known as the National Electronic Register of Election Results which shall be a distinct database or repository of polling units by polling unit results, including collated election results, of each election conducted by the Commission in the Federation, and the Register of Election Results shall be kept in electronic format by the Commission at its national headquarters. All these provisions point to the fact that technology is having a positive impact on the electoral process in Nigeria.

The Bimodal Voters Accreditation System (BVAS) is a technology with the dual capability of recording fingerprints and facial authentication that is used for voter accreditation and e-transmission of results for collation. It is intended to take the place of the smart card reader that was employed during the 2015 elections. On election day, the machine can run without an internet connection. As soon as polling unit results are finalized on election day, the public can examine them on a specialized web platform, the INEC Results Viewing portal, (IReV).

The Act recognizes the use of the BVAS for accreditation of voters and transmission of votes. Thus, a presiding officer shall use the BVAS to upload a scanned copy of the EC8A to the INEC Result Viewing Portal (IReV), as prescribed by the Commission, and then take the BVAS and the original copy of each of the forms in a tamper-evident envelope to the Registration Area/Ward Collation Officer, in the company of Security Agents. These technologies also come in handy when there is a conflict between a collated result or the result of an election from any polling unit.

It is pertinent to mention that, as these technologies are used in elections, evidence from them will also be led before the Court or tribunal during election disputes. This brings to mind section 84 of the Evidence Act which must be met in proof of computer-generated evidence. In *Abubakar v INEC*⁴¹ The Court held that-

The provisions of section 84 of the Evidence Act, consecrate two methods of proof, either by oral evidence under section 84(1) and or by a certificate under section 84(4). In either case, the conditions stipulated in section 84(2) must be satisfied. However, this is subject to the power

³⁹ Section 64(2), Electoral Act, 2022.

⁴⁰ *Abubakar v. I.N.E.C.*(2020) 12 NWLR (Pt. 1737) 37

⁴¹ *Supra*

of the Judge to require oral evidence in addition to the certificate. Proof that the computer is reliable can be provided in two ways: either by calling oral evidence or by tendering a written certificate subject to the power of the Judge to require oral evidence. If a certificate is to be relied upon, it should be shown on its face that it is signed by a person who from his job description can confidently be expected to be a person to give reliable evidence about the operation of the computer. This enables the defendant to decide whether to accept at its face value or to ask the Judge to require oral evidence which can be challenged under cross-examination.⁴²

1.10. Responsibilities and Role of Presiding Officers and Polling Unit Clerks

In the conduct of elections, activities at the polling stations are very important. It is at the polling stations, on the day of the election, that the following activities namely; accreditation of voters, voting, counting of votes, filling of polling station result forms (Form EC.8A series) declaration of election results, and so on take place. The Electoral Act of 2022, from section 46 to section 66, assigns specific functions to the Presiding Officer. At the commencement of polls, it is the Presiding Officer of a Polling Unit introduces the Poll Officials, Polling Agents, and Accredited Observers present and cross-checks the adequacy of electoral materials.⁴³ He/she is required to invite Polling Agents to observe the electoral materials to be used for the elections. He shall also record the quantity, serial numbers, and other particulars of the inspected sensitive materials in the prescribed forms for the conduct of the election.⁴⁴ The presiding officer is also saddled with other duties such as explaining the accreditation and voting procedures to all present, separating the queue between men and women, where the culture does not allow the mingling of the genders, creating a separate queue for PWDs, visibly pregnant and breastfeeding mothers as well as the elderly, allow voters into the Polling Unit in an orderly queue, and declare the Polling Unit open for accreditation and voting.⁴⁵

Upon accreditation, it is the presiding officer who checks the cuticle of the finger/thumbnail of the voter (where available) to confirm that he/she has been accredited. On being satisfied that the person before him/her has been duly accredited, stamp, sign, and write the date of the election on the back of the ballot paper(s) for the respective categories of elections. He shall then request the voter to remove any cell phone or photographic device in his/her possession before proceeding to the voting cubicle and direct the voter to the voting cubicle to mark his/her choice on the ballot paper. He also must ensure that the voting cubicle and ballot box are accessible for PWD to independently complete the voting process; and ensure that the voter deposits the marked ballot paper in the appropriate ballot box.⁴⁶

At the close of polls, it is the Presiding Officer that declares that voting is closed.⁴⁷ He shall then proceed to cancel all the unused ballot papers by crossing them out, sort out the ballot papers by party, and thereafter loudly count the votes scored by each political party in the presence of the Polling Agents and Accredited Observers. In so doing, he shall endorse the word "rejected" on all rejected ballot papers or the words "rejected but objected to" if an objection to the rejection of a ballot is raised by a candidate or Polling Agent. An important duty of the PO is to enter the scores of the candidates in both figures and words in the appropriate Form EC8 series and cross-check the scores of candidates/parties and the totals.⁴⁸

The Presiding Officer shall then Sign, date, and stamp the appropriate Form EC8A and proceed to announce loudly the votes scored by each political party. He shall also request the candidates or their Polling Agents where available at the Polling Unit to countersign. The Presiding Officer is equally

⁴² See also *Dickson v. Sylva* (2017) 8 NWLR (Pt. 1567) 167referred to.] (P. 175, paras. B-E.

⁴³ *Ibid*, para. 17(a)

⁴⁴ *Ibid*, para. 17(c)

⁴⁵ *Ibid*, para. 17(d)

⁴⁶ *Ibid*, para. 19(f)

⁴⁷ *Ibid*, para. 34

⁴⁸ *Ibid*, para. 35(a)

required to electronically transmit or transfer the result of the Polling Unit, direct to the collation system as prescribed by the Commission. He shall use the BVAS to upload a scanned copy of the EC8A to the INEC Result Viewing Portal (IReV), as prescribed by the Commission., and then take the BVAS and the original copy of each of the forms in a tamper-evident envelope to the Registration Area/Ward Collation Officer, in the company of Security Agents. The Polling Agents may accompany the Presiding Officer to the RA/Ward Collation Centre.⁴⁹

All of the above indicate that the Presiding Officer plays a pivotal role in the organization of elections in Nigeria. He or she does not just preside over the conduct of the election at the polling station but also doubles as the Returning Officer at that level as well. In *Doma v. I.N.E.C.*⁵⁰ The apex Court stated that- It is the presiding officer and not a collation officer who has the power to cancel the result of an election at the polling unit. Also, in *Yahaya v. Aminu*,⁵¹ the Court of Appeal in alluding to the nature of the power of the presiding officer at the polling unit during an election held that-

By the provisions of sections 39-59 of the Electoral Act, 2002 which confer on the presiding officer statutory powers as regards the regulation and management of the polling station or unit, the counting and announcement of votes at the polling station, the admission of voters and power to ensure compliance with the provisions of the Electoral Act at the polling station, the presiding officer could be likened to a "Chief Executive Officer" at each polling station or unit because he is the one charged with regulating matters at the polling station or unit.

The presiding officer has been described as the powerhouse of the polling station in whose hands lie the statutory power and duty to manage the polling, voting, counting, recording, and announcing of votes at the polling station or unit, under the provisions of the Electoral Act.⁵² Poll Clerks are also electoral officials who take part in the conduct of elections. They work together with other electoral officers, presiding officers, and returning officers, to ensure the conduct of elections. It has been held that these electoral officers act as agents of INEC for the elections and therefore under its supervision and control.⁵³

1.11. Certificate of Return

The procedure set out in the Electoral Act for the conduct and regulation of election is concluded upon the issuance of a Certificate of return by INEC.

A certificate of return cannot be issued to any contestant in an election until after an election and declaration of results of same. Such a certificate is usually issued to the successful candidate in the issue election.⁵⁴ The Certificate of return confirms the validity and conclusiveness of the election. The Certificate of return is proof that the winner of an election has met the requirements of the Constitution of the Federal Republic of Nigeria, 1999. To the extent that the issuance of the Certificate of Return, Form EC8E(1), is the act that concludes the election process.⁵⁵ It has been upheld that the result sheet is not the only document that could be used to justify or prove the results of the election or who amongst the aspirants scored the highest votes.

A Certificate of return is also, ipso facto, prima facie evidence to establish scores of candidates or the success of a candidate over the others.⁵⁶ Where two Certificates of Return are issued by a person authorized to issue the same, it behooves the trial Court to unravel the conflict and solve the problem. In *Onuoha v. Ubah*,⁵⁷ the trial Court resolved the conflict by invoking the contents of an electronically generated photograph (exhibit TQA-1) showing the appellant being presented with

⁴⁹ *Ibid*, para. 38

⁵⁰ (2012) 13 NWLR (Pt. 1317) 297, 325, paras. E-G; 328, paras. C-D

⁵¹ (2004) 7 NWLR (Pt. 871) 159

⁵² *Biyu v Ibrahim* (2006) 8NWLR (Pt. 981)1,21.

⁵³ *Nwokolo v Uboh* (2012)17 NWLR(Pt. 1330)604

⁵⁴ *Akpangbo-Okadigbo v. Chidi (No. 2)*(2015) 10 NWLR (Pt. 1466) 124, at 155

⁵⁵ *Ukpo v. Imoke*(2009) 1 NWLR (Pt. 1121) 90

⁵⁶ *Onuoha v. Ubah* (2019) 15 NWLR (Pt. 1694) 17

⁵⁷ (2019) 15 NWLR (Pt. 1694) 18

the Certificate of return by the Chairman of the 2nd respondent. It must be noted that the Federal High Court does not have jurisdiction to issue a Certificate of Return where the electoral body refuses to do so. Rather, it is the Election Tribunal that is the appropriate forum or the final appellate Court in an election petition proceeding.⁵⁸ This position has been maintained in the case of *Ikechukwu v. Nwoye*⁵⁹ wherein the Court held that-

After the conduct and conclusion of an election, it is the election tribunal that is clothed with jurisdiction to invalidate the Certificate of return issued to a candidate and direct that the same be issued to another candidate, in an appropriate case. However, the qualification is that where there was a pre-election suit against the winner of the election before the election, the regular Court has the jurisdiction to unseat the winner of the election.

In all, what must be noted is that a Certificate of Return is usually issued to the successful candidate in the issue election.

1.12 Conclusion

It can be seen from the above discourse that the post-electoral process in Nigeria though developing to meet the standards of international best practices still has room for reforms. Thus, Nigeria's democratization journey is still derailing from expectations.

1.13 Recommendations

The following recommendations are posited as a fallout of this paper. First and foremost, INEC should ensure that it plays its role in the electoral process with strict transparency, and fairness and by the electoral act and the Nigerian constitution. It should shun all acts of corruption and unconstitutional behaviors. This will ensure that the elections and their outcomes are more credible. It will also reduce the quantity of pre-and post-election litigations often witnessed in the country as well as frequent cancellation of elections by the courts and electoral tribunals.

Secondly, both the state and the federal government should play their role in providing the good atmosphere required for the smooth conduct of elections as well as adequate funds, security, and other resources to INEC.

More so, Political leaders and politicians should always endeavor to play the game of politics according to the rules and reduce the penchant for electoral manipulations and rigging. This will also help to reduce post-election litigations in the Nigerian polity.

⁵⁸ *Opia v. I.N.E.C.* (2014) 7 NWLR (Pt. 1407) 431

⁵⁹ (2015) 3 NWLR (Pt. 1446) 367