A CRITIQUE OF SECTION 141 OF THE ELECTORAL ACT, 2010(AS AMENDED) AND THE SUPREME COURT DECISION IN THE CASE OF ROTIMI AMAECHI V INEC & ORS (2008) 5 NWLR (Pt. 1080) 227

ABSTRACT

Before the Electoral Act, 2006, it was believed that the decision of a political party as to what persons to sponsor as candidates at elections is entirely the internal affairs of the parties and not justiciable. The political parties abused this position of the law tremendously as they substituted candidates in elections with the speed of lightning. Section 34 of the Electoral Act, 2006 sought to bring sanity into the system by imposing a requirement that a political party seeking to substitute its nominated candidate in an election must proffer a cogent and verifiable reason for doing so. The parties continued in their acts as if Section 34 of the Electoral Act, 2006 did not exist. The courts demonstrated its capacity to afford justice to the oppressed in landmark decisions, shooting down illegal substitutions, and in declaring the said substitutions null and void, declared the candidates illegally substituted to be candidates of their parties for whom the parties campaigned and secured votes and victory rather than the persons brought in illegally as substitutes. Section 33 of the Electoral Act, 2010(as amended) forbids substitution of candidates by political parties save for reasons of death or withdrawal from the election. The Electoral Act,2010 provides also in Section 141 that a court or tribunal should never under any circumstances declare as winner of an election, a person who did not participate in all the stages of an election. Whether the provisions of the Act seals the chances of a person who was illegally substituted or stopped from contesting election (but whose party eventually won the election) or not lies on the interpretation the courts will give to the said provisions. In this work, the author juxtaposes the provisions of the Electoral Act 2010(as amended)under consideration with the decisions of the Supreme Court in the cases of Amaechi v INEC, Odedo v INEC etc in an attempt to determine the current position of the law on this all important subject matter.

INTRODUCTION

The Electoral Act, 2006 allowed a political party to substitute its candidate for any election after the candidate's name has been submitted to the electoral commission. However, one of the conditions placed upon such substitution is that it must be for a cogent and verifiable reason[1]. What constitutes cogent and verifiable reason have been left subject to the interpretation of the courts in line with the circumstances of each case. However our courts have done very well in holding the balance between avaricious party leaders and helpless candidates who spend fortunes to contest and win Party Primary elections only to be uprooted and thrown out of the election at times when they could no longer seek nomination in another party. No section of the Electoral Acts, 2002 and 2006 generated as much heat as the sections that allowed for substitution of candidates. The cases of **Uba v Ukachukwu[2]**, **Offordile v Egwuatu[3]**, **Abana v Obi[4]**, **Enemuo v Duru[5]** are yet very fresh on our minds. The judiciary

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[1] See Section 34 of the Electoral Act, 2006

[2] (2004) 10 NWLR (pt. 881) 244; see also Ukachukwu v Uba (2005) 18 NWLR (pt. 956) 1

[3] (2006) 1 NWLR (pt. 961) 421 see also PDP & Anor v Haruna & ors (2004) 16 NWLR (pt 900) 597 at 612

[4] (2005) 6 NWLR (pt. 920) 183 see Rimi v INEC & Anor (2005) 6NWLR (Pt 92) 56 at pp 69 –70; Goodhead v Amachree & Ors (2004) 1 NWLR (pt 854) 352 at 370

[5] (2004) 9 NWLR (pt. 877) 75

demonstrated its resilience in landmark cases on this point such as the cases of **Rotimi Amaechi v INEC & ors**[6], **Odedo v INEC & ors**[7] and many other cases that fell for determination under this head

The decisions in some of these cases, commendable as they may be, have been widely criticized on the ground, among others, that the apex court in the land (the Supreme Court of Nigeria) went beyond its jurisdiction in pronouncing on the election and return of candidates when it was sitting on appeals in pre-election matters[88]. Beyond the issue of jurisdiction, there has been contentions as to whether a person who did not apparently participate in all the stages of an election could be declared winner of such election. In the judgments in **Amaechi v INEC**[9] and **Odedo v INEC**[10] the Supreme court have been emphatic in stating that the candidates declared as returned were the candidates of their political parties for the respective elections "in the eyes of the law" and it was for them that their parties campaigned and garnered votes at the election which votes were for the parties and not for the parties candidates. No one could carry the argument further, beyond the pronouncements of the Supreme Court of Nigeria whose decision is final, as to whether there can be a candidate *de-facto* and candidate *de-jury* or whether votes cast in an election is for a political party or its candidate at that election[11]. Whether or not the Supreme Court of Nigeria declared the law correctly when it stated that "votes are won and lost in an election by political parties and not their candidates, though a good candidate can improve the chance of his political party at an election" is now left to history. A new setting has however, been created by Sections 33 and 141 of the Electoral Act 2010(as amended) to the effect that a political party cannot change its candidates in an election save for a case of withdrawal or death of a candidate. On its own part, Section 141 of the Electoral Act, 2010(as amended) provides that a person who did not participate in all the stages of an election can not be declared winner thereof by any court of law under any circumstances. Whether the courts can get beyond the iron bars raised by Section 141 of the Electoral Act, 2010 depends on the level of activism which the judiciary and its officers are prepared to exhibit in the litigations that will follow from the present democratic experiment.

THE POSITIONS BEFORE AND UNDER THE ELECTORAL ACT, 2006

Before the enactment of Section 34 of the Electoral Act, 2006 which required that political parties should offer cogent and verifiable reasons whenever they desired to substitute their nominated candidates, the concept of party autonomy was believed to hold sway on matters such as who, among members of a political party, the party may want to sponsor as candidates in elections. The political parties hid behind this facade to foist a regime of tyranny and arbitrariness on its members to an extent that the said

[6] (2008) 5 NWLR (pt 1080) 227
[7] (2008) 17 NWLR (pt. 1117) 554
[8] (Supra) note 6
[9] (Supra) note 7
[10] See Muntaka Coomasee JSC in Odedo v INEC (2008) 17 NWLR (pt. 1117) 554, p. 648, paras C – G
[11]

concept of party autonomy was abused on many instances. The courts could not do so much then inspite of the objections of the entire polity to the high-handedness of party leaders because the law as at then did not favour judicial activism. Before the Electoral Act, 2003 the disposition of the courts on matters of nomination for election was as seen in the decision of the Supreme Court in **Onuoha v Okafor**[12]. Where the court held that the question of who, among its competing members, a political party will sponsor in an election is an internal affair of the party and could best be determined by the party relying on its constitution, it is therefore not justiciable. Irikefe JSC concurring with the lead judgment stated that:

> *The matter in controversy in the appeal is whether a court has jurisdiction to entertain a claim whereby it can compel a political party to sponsor one candidate in preference for another candidate of the self same political party. If a court could do this, it would in effect be managing the political party for the members thereof. The issue of who should be a candidate of a given political party at any election is clearly a political one to be determined by the rules and constitution of the said party. It is thus a domestic issue and not such as would be justiciable in a court of law.*

The law on the issue of nomination and sponsorship of candidates for elections by political parties was as laid down in the case above until the enactment of the Electoral Act, 2002 which provides in Section 23 that:

> *Any political party which wishes to change its candidates for any election under this Act may signify its intention in writing to the commission not later than 30 days to the date of the election*.

Section 23 of the Electoral Act, 2002 did not provide a respite for substituted candidates as it imposed no requirement on the parties seeking to substitute their nominated candidates. Political parties were therefore unstoppable and had a field day, substituting their candidates without sanctions even on the eve of elections[13].

The Political Parties went hay wire in the abuse of Section 23 of the Electoral Act, 2002, the much touted autonomy of political parties in choosing which candidates to sponsor in an election and the non justiciability of same. In fact until the enactment of the Electoral Act, 2006, it was believed that whatever a Political Party does with candidates it has nominated for elections is its internal affairs and was non-justiciable.

The Electoral Act, 2006 still allowed Political Parties to substitute their candidates in elections but conditionally, as it made extant provisions. Accordingly, Section 34 of the Electoral Act, 2006 provides as follows:

[12] (1983) 2 SCNLR 244. Following the decision in Onuoha v Okafor were Balonwu v Chinyelu (1991) 4 NWLR (pt. 183) 30, Doukpolagha v Ada George & ors (1992) 4 NWLR (pt. 236) 444;

[13] See the cases of Bashir Dalhatu v Ibrahim S. Turaki (2003) 15 NWLR (pt. 843), 310; Adebusuyi v Oduyoye (2004) 1 NWLR (pt. 854) 406; Senator Aniete Okon v Effiong D. Bob & ors (2004) 1 NWLR (pt. 854) 378

1. *A political party intending to change any of its candidates for any election shall inform the Commission of such change in writing not later than 60 days to the election.*

2. *Any application made pursuant to subsection (1) of this Section shall give cogent and verifiable reasons*.

Section 34 of the Electoral Act, 2006 as seen above put the requirement of cogent and verifiable reasons on the way of Political Parties seeking to substitute candidates they nominated for elections and forwarded to INEC. It is this requirement of cogent and verifiable reasons that strengthened the hands of the courts, especially the Supreme Court against erring political parties in the litigations sequel to the 2007 elections[14].

In **Odedo v INEC[15]** it was observed by the Supreme Court that:

> *Section 34 of the Electoral Act, 2006 is designed to check the excesses of the political parties arbitrarily substituting candidates who have fought for and worked hard to emerge as the party's candidates in the primary election. The Section seeks to put sanity in the political system…*[16]

The case of Rotimi Amaechi vs. INEC & Ors.[17] decided under this head is worthy of examination. The facts of the case briefly put are as follows:

The appellant emerged as the candidate of the Peoples Democratic Party (PDP) for Rivers State at the Governorship Primaries conducted by the party as he polled the highest number of votes at the Primary election. The 2nd respondent Celestine Omehia with whom the party purportedly substituted the appellant did not contest the primary election. Pursuant to the result of the primaries the PDP forwarded the appellant's name to the Independent National Electoral Commission as the candidate of the Party for the Governorship election coming up on 14/4/07. Later the appellant heard rumours that his Party was about to substitute him. He went to Court to stop the Party from substituting or disqualifying him except in accordance with the provisions of the Electoral Act, 2006. The P.D.P went ahead, while the suit was pending to forward the name of the 2nd respondent as a substitute for the appellant, offering as a reason that the name of the appellant was submitted in error. INEC accepted the substitution. The appellant continued in his case in court. The trial court set aside the substitution on the ground that though it was made within the time limited for doing so, it was made during the pendency of the suit but came short of affording any meaningful relief to the appellant. The appellant appealed against the decision to the court of Appeal and the respondents

[14] See Ugwu v Ararume (2007) 12 NWLR (pt. 1048) 367, Amaechi v INEC (2008) 5 NWLR (pt 1080 224
[15] (Supra) note 7
[16] Odedo v INEC op cit P 630, paras C-F
[17] (2008)5 NWLR (pt 1080) 227

Cross Appealed. The court of Appeal adjourned proceedings in the matter to await the outcome of the decision in **Ugwu v Ararume**[18] at the Supreme Court.

Meanwhile election was held into the office of Governor of Rivers State in which Celestine Omehia was declared as winner of the election. Every effort was made by the respondents to frustrate the continuation of the case on the ground that election has taken place and the suit could no longer be maintained by the appellant who had been sacked by the P.D.P then. The Supreme Court considered Section 34 of the Electoral Act, 2006 among other statutes and in declaring that the appellant was the candidate of the P.D.P duly nominated, campaigned for and voted for at the election, the court made these pronouncements among others:

> *"Section 221 of the 1999 constitution effectually removes the possibility of independent candidacy in our elections and places emphasis and responsibility in elections on political parties. Without a party, a candidate cannot contest, as provided in Section 221, it is only a party that canvasses for votes, it follows that it is a party that wins an election. A good or bad candidate may enhance or diminish the prospect of his party in winning but at the end of the day, it is the party that wins or losses the election*[19].

The court stated, Per Oguntade JSC as follows:

> *"In his argument in the brief filed for P.D.P, J.K. Gadzama SAN, senior counsel argued that Amaechi who had not contested the election could not be declared the winner. He stated that such a declaration would amount to a negation of democratic practice. With respect to counsel, I think he missed the central issue which is that it was infact Amaechi and not Omehia who contested the election. I ought not allow my approach to this to be influenced by a consideration of the fact that PDP eventually won the election. Even if Omehia had lost the election, this court would still be entitled to declare that it was Amaechi and not Omehia who was PDP's candidate for the election. The argument that a new election ought to be ordered overlooks the fact that this was not an election petition appeal before court but rather an appeal on a simple dispute between two members of the same party.*

If this court falls into the trap of ordering a new election, a dangerous precedent would have been created that whenever a candidate is improperly substituted by a political party, the court must order a fresh election even if the candidate put by the party does not win the election …. The candidate that wins the case on the judgment of the court simply steps into the shoes of his invalidly nominated opponent whether as loser or winner"[20]

It was the opinion of Aderemi JSC that:

[18] (Supra) note 14
[19] See Amaechi v INEC (Supra) pp 317 – 318, paras F- B
[20] See Amaechi v INEC (Supra) pp 318-319, paras D-E

> *… To now order a fresh election will be most unjust. The Political Parties that contested the election against the Peoples Democratic Party and lost out will now have an unmerited second bite… To now order a fresh election in the circumstances of this case will negate all notions of equitable principles and of course, true justice…."*[21]

The case of Amaechi v INEC[22] presented a platform upon which several other decisions on invalid substitution of candidates by Political Parties under the Electoral Act, 2006 were decided. In almost all the meritorious cases that came after Amaechi's, case, the courts held for not only the validation of the appellants nominations but also went ahead to declare the appellants as persons duly elected in the elections held without the appellant participating physically in all the stages thereof[23].

THE IMPLICATIONS OF THE PREVIOUS DECISIONS OF THE SUPREME COURT ON THE PROVISIONS OF SECTIONS 33 AND 141 OF THE ELECTORAL ACT, 2010 (AS AMENDED).

Section 33 of the Electoral Act, 2010(as amended) provides that:

> *A political party shall not be allowed to change or substitute its candidate whose name has been submitted pursuant to section 32 of this Act except in the case of death or withdrawal by the candidate*.

Section 141 of the Electoral Act, 2010(as amended) provides that:

> *An election tribunal or court shall not under any circumstances declare any person a winner at an election in which such a person has not fully participated in all the stages of the election.*

The implications of Section 33 of the Electoral Act, 2010(as amended) is that a political party can never change its candidate at any election except the candidate dies or elects to withdraw from the election. The provisions seem to be water-tight enough to deal a fatal blow on the excesses of Political Parties in substituting its candidates at elections arbitrarily and tyrannically as seen in the instances that led to the cases of **Amaechi v INEC,[24] Odedo v INEC[25]**, **Ugwu v Ararume[26]** However, in reality, this hope may not be realized as the issue of who is or was the proper candidate sponsored by a Political Party have come up in another different form such as in instances where Political Parties submitted the list of names of candidates they were sponsoring for elections only for INEC to purport to accept other lists of candidates of those same parties from "powerful" individuals for the same elections. This scenario is similar to what was witnessed in Anambra State in the build up to the 2003 elections that gave rise to numerous cases such as **Uba v Ukachukwu,[27] Abana v Obi,[28] Offordile v**

[21] See Amaechi v INEC (Supra) p 453, paras A-G

[22] (Supra) note 6

[23] see also Odedo v INEC (2008)17 NWLR (pt 1117) 554; Ude v Okoli (2009) 17 NWLR (pt. 1141) 571; Onyekweli v INEC (2008) 14 NWLR (pt 1107) 317

[24] (Supra) note 6

[25] (Supra) note 7

[26] (2007) 12 NWLR (pt 1048) 367; see also Odedo v INEC (2008)17 NWHR (pt 1117) 554; Ude v Okoli (2009) 7 NWLR (pt. 1141) 571; Onyekwere v. INEC & ors (2008) 14 NWLR (pt. 1107) 317.

[27] (2004) 10 NWLR (pt 881) 244; see also Ukachukwu v Uba (2005) 18 NWLR (pt 956) 1

Egwuatu[29] and a host of others. It would have been argued safely that such a scenario was only possible under the Electoral Act, 2002 that placed no hurdles on the ways of political parties that wanted to substitute their nominated candidates for elections. Unfortunately, such argument cannot stand in the face of the present debacle in many states of Nigeria (Anambra State inclusive) where INEC, hiding behind the provisions of the Constitution and the Electoral Act, 2010(as amended), has contrived controversies as to the proper candidates sponsored by Political Parties. Certainly the courts and election tribunals are having hectic times already in dealing with litigations arising from the provisions of Sections 33 and 141 of the Electoral Act, 2010. There are litigations already in various courts challenging INEC and some Political Parties as to who was properly nominated by some Political Parties for particular elections. It was only a handful of these pre- election matters that were determined before the elections. Where such litigations on pre-election matters were concluded before the general elections, not much may be heard on the interpretation of section 141 of the Electoral Act, 2010 (as amended) as there may be no difficulty in the Electoral Commission enlisting the rightful candidate in the election in compliance with the judgment of court. There will, however be some challenges where litigation were pending on any of these disputes as at the time election is conducted into the office for which nomination is being disputed. On literal interpretation of Section

141 of the Electoral Act, 2010(as amended), it seems that such pre-election matters may be defeated by the conduct of such election since the court can neither declare a litigant before it as duly nominated and elected at the election (even where his political party wins the election as was done in Rotimi Amaechi's case) because Section 141of the Electoral Act, 2010(as amended) forbids the courts from doing so. It does not equally appear possible for the court to nullify such election as jurisdiction to nullify an election does not reside in the courts hearing pre-election matters[30]. In **Odedo v INEC**[31] the decision of Niki Tobi JSC, who delivered the lead judgment in that case, to nullify the said election failed to secure the approval of the rest of the Justices of the Supreme court that heard the case with him on the grounds, among others, that jurisdiction to do so does not lie in the Supreme Court. It seems that what the apex court has got the jurisdiction to do in such a case is to nullify an improper substitution of a candidate and restore the candidate originally nominated as the candidate of the party. The Supreme Court did these in the past in the cases that came before it and went further to declare the proper candidates as elected and returned in the elections in which they never in fact participated in all the stages thereof. In the case of Amaechi v INEC & Ors. the Supreme Court justified its decision to embark on what looks like a voyage outside its province by stating that it would be a pyrrhic victory, entirely without substance for the court to merely declare the appelant (Amaechi), whose appeal succeeded, as the duly nominated candidate of his political party without more. It still

[28] (2005) 6 NWLR (pt. 920) 183

[29] (2006) 1 NWLR (pt 961) 421

[30] Section 285 of the 1999 constitution; see further the case of Odedo v INEC & ors (2008)17 NWLR (pt 1117)554 at 615 para A-E per Oguntade J.

[31] (Supra) note 7

remains doubtful whether the Supreme Court can go to that extent now in the face of Section 141 of the Electoral Act, 2011.

With utmost humility, it is arguable that the decisions of the Supreme Court in the case of Rotimi Amaechi v INEC and the host of other cases that came after it were wrong to the extent that the Supreme Court pronounced on the election and return of candidates in elections, which jurisdiction so to do, the 1999 Constitution in Section 285 vests exclusively on an election petition tribunal or appellate court sitting on appeal over an election petition. It is trite law that by virtue of our constitutional arrangement and the principles of separation of powers enshrined therein, the judiciary is entirely removed from the province of legislation. The judiciary, being circumscribed in its duty to interpret the law as it is and not to speculate on what it ought to be, cannot add to or remove from a piece of legislation. Where a lacuna is discovered by the court in the course of interpreting any law, it is still bound to interpret the law in tandem with its clear provisions and allow the legislature to take care of the lacuna through a legislative action. It is obviously this perception of the wrong exercise of jurisdiction by the Supreme Court that made the National Assembly to enact section 141 of the Electoral Act, 2010.

As the law stands presently, it seems that the Supreme Court can no longer declare persons, whom it adjudge as duly nominated candidates, elected in elections in which such candidates did not participate in all the stages thereof; except the court relies on its earlier stand that a substituted candidate can be his political parties candidate in the eyes of the law[32]

If one relies on the decision of the Supreme Court given in the cases already discussed, it seems appealing to believe that the provisions of Section 141 of the Electoral Act, 2010 (as amended) may be of little or no impact on litigations that arise as to nomination and sponsorship of candidates by political parties in the elections coming after the amended Electoral Act,2010 This line of thought is justifiable on the grounds that at any time the court nullifies a substitution by a Political Party, it is as if there was no substitution in the first place and the candidate purported to have been removed by substitution is deemed in law to have remained the candidate of the party all along without being disturbed at any time at all. When an act is a nullity, the effect is that it was never done at all in the first place. In that situation, unless the Political Party that nominated the candidate did not continue in the election and go through all the stages, the law presumes that it went through all the stages of the election with the duly nominated candidate. It is instructive to mention that the few decisions delivered by the Supreme Court so far on pre-election matters have gone along this line and it is

[32] In **Odedo v INEC & ors** (2008) 17 NWLR (pt. 1117) 554 the Supreme Court stated per Muntaka Coomasie JSC at page 648 para C-G that: "the appellant who has acquired vested right by his victory at the primaries and the submission of his name to INEC was never removed as the PDP candidate. He was the candidate of the PDP for whom they campaigned in the April, 2007, election not "the party to be heard" … Hence Charles Chinwendu Odedo, the appellant must be deemed to be the P.D P. candidate who won the election for PDP in the eyes of the law and eagle eyes of this court. Obinna Chidioka, the party to be heard was never a candidate in the election, much less the winner

doubtful if the apex court will ever change its course in the remaining cases and begin to give decisions that accord with section 141 of the Electoral Act, 2010 (as amended).

IS SECTION 141 OF THE ELCTORAL ACT, 2010 (AS AMENDED) A DEAD LETTER WORD THEN?

It is certain that the legislature does not at any time set out to make or amend a law for the fun of such exercise. The inclusion of section 141 of the Electoral Act 2010(as amended) into our body of laws was targeted at a particular mischief, *to wit,* to put an end to situations where a political party goes through an election ostensibly with one candidate, only for the court to declare after the election that it was another person who the electorates may or may not have known about that won the election. It is submitted that this piece of legislation was born of good intentions on the part of the legislature and would have solved the problem of one political party having more than one candidate in a particular election. The problem with the said provisions of the Electoral Act, however is in its implementation as seen from the judgments of the Supreme Court that continues to go in the opposite direction in spite of the said law.

It is arguable and indeed more logical, considering the provisions section 141 of the Electoral Act 2010(as amended) and section 285(1)-(4) of the 1999 Constitution(as amended) that the Supreme Court ought to make a finding as to the nullity of a substitution, pronounce the duly nominated candidate and leave it at that point because it has exhausted its jurisdiction. The candidate adjudged as validly nominated ought to go and present a petition at the Election Petition Tribunal to canvass that he was the candidate of his party at the disputed election.

Such a candidate will have no difficulty in convincing the court that he ought to participate in the election, his candidature, having been pronounced upon by the court. How the said candidate will fare at such a tribunal, however will depend on whether his political won the election or lost same. Where his political party won the election, he will in his petition seek to be declared the rightful winner of the election. Where such election petition succeeds the court may allow the candidate to step into the shoes of his party's candidate that was declared earlier to have won the election if the court can get behind section 141 of the Electoral Act 2010. Where such candidate's political party had lost the disputed election such candidate is more likely to canvass in his election petition the nullity of the election held without him on the ground that he was validly nominated but unlawfully excluded[33]. Where the election tribunal or court agrees with such said candidate as to his valid nomination and unlawful exclusion, it may nullify the election and order for a fresh election to be conducted, in which all the parties and their candidates that participated in the earlier election will participate.

[33] This will satisfy the requirements of Section 141 of the Electoral Act, 2010(as amended) as well as Section 285 of the 1999 Constitution(this was what Tobi JSC was trying to do in Odedo v INEC & Ors. but did not succeed for want of jurisdiction in the Supreme Court when hearing an appeal over a pre- election matter to invalidate an election). But such a candidate contesting his valid nomination and unlawful exclusion seems to be liable to be defeated by the fact that his political party contested in the said election, ostensibly with a candidate as there will be no occasion for a political party to contest for an election under our laws without a candidate. Presently, our electoral laws provide remedies only where the candidate and his political party are complaining of unlawful exclusion and not when the party goes into an election with another candidate deliberately leaving behind its duly nominated candidate

A new problem will, however, arise where the decision in a pre-election matter as to the validly nominated candidate of a political party does not come until the time limited for the presentation of an election petition has elapsed[34]

By virtue of the provisions of Section 134(1) of the Electoral Act, 2010(as amended), such a candidate can no longer present a petition unless the Election Petition Tribunal is able to make a finding and it is submitted, most humbly, that it should, that the cause of action arose in such a case on the day that the pre-election matter was determined finally and not the day that the result of the election was declared[35]

To apply the provisions of Section 134(1) of the Electoral Act, 2010(as amended) literally will lead to a denial of remedy where there was a wrong adjudged so by the court, after all it was on the day that he was pronounced the validly nominated candidate that his right as a petitioner accrued. The desire of a substituted candidate to avoid being time barred in presenting a petition, may still lead to a third scenario, where the candidate pursuing his undue substitution in a pre-election matter, files an election petition speculatively, believing that he will succeed in his pre-election matter and thereby avoid the incidence of Section 134 (1) of the Electoral Act, 2010. However, such speculative petition may suffer fatality for want of *locus standi* as the petitioner *will* at that stage, not be among the persons that contested the election he is challenging as to satisfy the requirement of *locus standi.*

CONCLUSION AND RECOMMENDATIONS

The issue of nomination and substitution of candidates for elections in Nigeria by political parties is evolving continually, just as the electoral process itself and litigations on elections. From the days of "no control at all" before 2002 to the days of limited or fanciful control under the Electoral Act, 2002. Under the Electoral Act, 2006, it was real and meaningful control. What the Electoral Act, 2010(as amended) sought to do, it seems, was to put a total stop to substitution after nomination except for voluntary withdrawal or death. Good as the provisions of Section 33 of the Electoral Act, 2010 are, cases have still arisen as to the contravention of same which controversy no doubt, dovetail the situation into the provisions of Section 141 of the Electoral Act, 2010 (as amended). If the provisions of Section 141 of the Electoral Act, 2010(as amended) is taken literally, it will work hardship on litigants and their parties except the word court in that section does not include election petition tribunals and courts sitting on appeals over election petitions. It is recommended that section 141 of the Electoral Act, 2010(as amended) be limited to courts hearing pre-election matters but not to election petition

[34] Section 134 of the Electoral Act, 2011 provides that an election petition must be presented within 21 days after the date of declaration of the result of the election

[35] It may not be possible for the courts or election tribunal to hold that the cause of action in an election petition arose the day the issue of who was the dully nominated candidate of a party was resolved as against the day the day the result of the election was declared. The Supreme Court put this beyond question in the case of ANPP v Alh.Mohammed Goni & Ors.(Unreported judgment of the Supreme Court delivered on 17th February, 2012 in consolidated appeal Nos.SC1/2012 and SC2/2012) where the court stated ONNOGHEN JSC that "I am compelled by circumstances beyond my control to state, without fear of contradiction as same has been settled by a long line of authorities, that jurisdiction is a creation of statute or the constitution. Jurisdiction is therefore not inherent in an appellate court neither can it be conferred by order of court" where the constitution has laid down the procedure for doing a thing as in this case, a judgment of court can do little or nothing to affect it.

tribunals and courts sitting on appeal over tribunal decisions as these are properly vested with jurisdiction to declare persons as duly elected in proper cases. To hold otherwise will lead to a situation where elections will be voided and repeated each time an undue substitution is voided after the election to which it relates has taken place. If this is allowed, political parties that see their chances as bleak in an election will use intra- party dispute arising from undue substitution of their candidate few days to an election to 'condemn' the election and sentence all the candidates and their parties involved in the election to a repeat and continuous repeat of same. In the final analysis, there may be a need for the legislature to reconsider the existence of section 141 of the Electoral Act, 2010(as amended) in our statute books as it may likely become superfluous by the exigencies of judicial decisions. It appears that the only way that section 141 of the Electoral Act, 2010(as amended) can remain relevant to the electoral or judicial systems is to amend the relevant laws to provide that pre-election matters must be heard and determined before the day of the substantive election. Sections 285(5)-(8) have succeeded in ensuring speedy hearing and determination of election petitions, to achieve the overall objective of bringing sanity to that area of our national life, there is need to tinker with the relevant laws to ensure speedy hearing and determination of pre-election matters. It is believed that such adjustments in our laws will equally eliminate the loophole being exploited presently by unpatriotic persons in the leadership of the political parties as well as the Independent National Electoral Commission which has now and then left some political parties with more than one candidate in one election with its attendant confusion.