JUDICIAL INTERPRETATION OF STATUTES LIMITING TIME TO TAKE STEPS IN ELECTION PROCEEDINGS AND THE DOCTRINE OF *STARE DECISIS* IN NIGERIA*

Abstract

In election disputes all over the world, time is a critical factor. There is limitation of time for taking virtually every step connected with election petitions and failure to adhere to such time limitations are rarely excusable as there is always no provisions in the relevant laws for enlargement of time to take such steps. Whether such provisions in electoral laws are justifiable or not is not the subject matter of this paper, rather the concern of the author is the uncertainty that has pervaded the issue of computation of time in election proceedings to the detriment of the litigants and public interest generally. The laws that provide for limitation of time for taking steps in election matters except for few, have consistently come short of providing any guide as to the computation of such limited time. The existence of lacunae in the laws have created a great deal of uncertainty in that area of the law leading to loss of many election petitions in the confusion notwithstanding that paragraph 50 of the First Schedule to the Electoral Act, 2006 and other laws provide clear guide as to the computation of such limited time. Presently, the law on this matter is unjustifiably confused and calls for a re-examination.

Introduction

All over the Election Petition Tribunals constituted to question the validity of elections into various offices in Nigeria, at various times, the issue of competence of election petitions or other processes related to it are always canvassed on the point, among others, that such petitions were filed out of time. The regularity and tenacity of contests bothering on election petitions or other processes required to be filed during election proceedings being filed out of time stem from the fact that where the respondents succeed in establishing that an election petition or related process was filed out of time,

the petition or process is liable to be struck out as being incompetent which incompetence may rob the Election Petition Tribunal of jurisdiction to adjudicate on the matter. Election proceedings are by their very nature *sui generis* and by this, the general laws which govern ordinary civil cases are either dispensed with or modified in such a manner as to suit the proceedings.[1]

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1 Paragraph 50 of the 1st Schedule to the Electoral Act, 2006 which provides for the application of the Federal High Court {Civil Procedure} Rules, 2000 to proceedings of Election Petition Tribunals. See also PDP v Senator Haruna Abubakar (2004) 16 NWLR (Pt. 900) 485

In Nigeria there are various provisions in the Civil Procedure Rules of the various courts allowing a party who is out of time in taking a step for which time is limited to seek an enlargement of time to take such step[2]. However in election petition cases, time is of the essence of the entire proceedings. For instance, under Section 141 of the Electoral Act, 2006. "A*n election petition was to be presented within 30 days from the date the result of the election is declared"*

Section 141 of the Electoral Act, 2006 made use of the word "shall" in limiting the time within which an election petition must be presented. It was, therefore, made mandatory under the said law that an election petition must be present within 30 days of the declaration of result of the election. By the above provisions, the time of presenting any election petition becomes of essence as any petition presented outside 30 days after the result of the election was declared was rendered incompetent by the operation of time and therefore statute barred[3].

Unfortunately, however, the Electoral Act, 2006 and its predecessors[4] which made provisions for the filing of election petitions within 30 days from the date the result of

the election was declared did not provide a guide as to the computation of the 30 days period limited for filing election petitions.

The shortcomings of the electoral statutes in stating the meaning of the days limited by them for filing election petitions placed some undue burden on the judiciary to interpret and give effect to the said provisions.

That imprecision and confusion attended the interpretation of the said laws was seen from the fact that our courts, particularly, the Court of Appeal left litigants in much confusion as to what the law is on this all important subject matter as there are conflicting judicial decisions on computation of time for filing an election petition.

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2. See Order 44 of the High Court (Civil Procedure) Rules of Anambra State, 2006; Order 7 Rule 10 Court of Appeal Rules, 2007.

3 Agbai v. INEC (2008) 14 NWLR (pt. 1108) 417 at pp 430 – 434; Prince Chinedu Emeka v. Joy Emordi (2004) 16 NWLR (pt. 900) 433 at 450; Ugbane v Hussain (2009) 5NWLR [pt 1135] 530.

4 See Section 132, Electoral Act, 2002 and other laws providing for limited time to take steps in election proceedings.

Relevant Statutory provisions

Section 141 of the Electoral Act, 2006 under which most of the conflicting judgments were delivered provides that "*An election petition under this Act shall be presented within thirty (30) days from the date the result of the election is declared".*

It has been part of our electoral laws consistently for some time now that in election proceedings, the rules of procedure applicable to such proceedings, where there are no provisions in the Electoral Act, are the provisions of the Federal High Court (Civil Procedure Rules) in force at the relevant time[5]. In respect of computation of time in bringing petitions and proceedings thereto under the Electoral Act 2006, the relevant statute; Order 23 of the Federal High Court (Civil Procedure) Rules, 2000 provides that:

> *Where by any written law or any special order made by the Court in the course of any proceedings, limited time from or after any date*
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> *or event is appointed or allowed for the doing of any act or the taking of any proceeding, and the time is not limited by hours, the following rules shall apply-*
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> *i. The limited time does not include the day of the happening of the event, but commences at the beginning of the day next following.*
>
> *ii. The act or proceeding shall be done or taken at latest on the last day of the limited time;*
>
> *iii. Where the time is less than five days, public holiday, Saturday or Sunday shall be reckoned as part of the time.*
>
> *iv. When the time expires on a public holiday, Saturday or Sunday the act or proceeding shall be considered as done or taken in due time if it is done or*

5 See paragraph 50 of the First Schedule to the Electoral Act, 2006; Paragraph 54 of the first Schedule to the Electoral Act, 2010 (as amended). Paragraph 50 of the First Schedule to the Electoral Act, 2006 provides that the applicable Civil Procedure Rules of the Federal High Court in force then i.e. the Federal High Court (Civil Procedure Rules) 2000 shall be applicable.

taken on the next day afterwards not being a public holiday, Saturday or Sunday.

The provisions of Order 23 of the Federal High Court Rules, 2000 reproduced above are on all fours with the provisions of Section 15 (2)(a) of the Interpretation Act,1990.

Interpretation of the Relevant Statutory Provisions by the Courts

One major issue that dominated the contests regarding computation of time in election petitions and its proceedings was the import of the words "shall be presented within 30 days from …" in S. 141 of the Electoral Act, 2006 and other enactments similar to it.

One line of authorities have held on the issue that by virtue of the said provisions in Section 141 of the Electoral Act, 2006 and others like it, the 30 days allowed then for the presentation of an election petition starts running from the day the result of the election was declared. Such decisions were seen in cases like Ogbebor v Danjuma;[6] Alataha v. Asin;[7] Action Congress & anor v Jonan David Jang[8] Ugbane Hussein[9]

It is trite law that where the words used in the provisions of a statute are clear and unambiguous, a court of law must accord such words used their ordinary and grammatical meaning without any colouration because the intention of the law maker can only be found in the words used by the legislators in framing the provisions under consideration; see Ladoja v. I.N.E.C.[10]

The issue of interpretation of the provisions of Section 141 of the Electoral Act, 2006 unfortunately attracted an entirely different approach to the detriment of litigants, their counsel and the generality of the Nigerian people who would have benefited from the existence of certainty and stability in the laws on election petition. A literal interpretation of the provisions in question seemed difficult as seen in the conflicting decisions on the provisions as to time for filing election petitions.

The Position of the Supreme Court Rightly Followed in Some Other Decisions

In Alhaji Muhammed Dikko Yusufu & Anor v Chief Aremu Olusegun Obasanjo & Ors[11] The result of the election was declared 22nd April, 2003, The appellants filed their petition on 2nd of May, 2003,

6 (2003) 15 NWLR (pt. 843), 403 at 426 – 427 paras G – A;
7 (1999) 5 NWLR (pt. 601) 32
8 (2009) 4 NWLR (pt. 1132) 475 at 508 – 509 paras B – D.
9 (2009) 5 NWLR (pt. 1135) 530 at p. 544
10 (2007) 12 NWLR (pt. 1047) 119 at 187 para H

11 *(2003) 16 NWLR (pt. 847) 554 P 608 Paras G - H and 609 paras A – C see also Auto Imp. Exp v. Adebay (2002) 12 S. C. (pt. 1) 158 at 163. Where the Court held that: "It is common ground that the decision of the Court of Appeal was delivered on the 1st of July, 1996. Accordingly, in computing the period for the filing of the appeal against that*

well within time. Thereafter, the appellants brought an application to amend same on 22nd of May, also within time. The application brought within time was fixed for hearing on a date well outside time limited for filing election petitions or making substantial amendments to same. The Court of Appeal considered the application and held that it was time barred and rejected it. On appeal to the Supreme Court, the Supreme Court held on computation of time to file an election petition as follows:

> *Section 132 of the Electoral Act, 2002 provides that an election petition may be presented within 30 days*
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> *from the date the result of the election is declared". It is not in dispute that the Presidential election result in question was declared on 22nd April, 2003. The petitioners in this case had 30 days within which to petition against it. The 30 days will be calculated from 23rd April to end on 22nd May, 2003. Paragraph 50 of the First Schedule Electoral Act, provides that subject to the express provisions of the Act, the Civil Procedure Rules of the Federal High Court shall apply mutatis mutandis, in relation to an election petition. Order XII Rule I of the said Rules provides inter alia that.*
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> 1. *Whereby any enactment or any order or rule of Court, any special order of the course (sic) of the Court, any limited time from or after any date or event is appointed or allowed for the doing of any act or the taking of any proceeding, and such time is not limited by hours, the following rules shall apply.*
> a. *The limited time does not include the day of the date of or the happening of the event, but commences at the beginning of the day next following that day;*
> b. *The act or proceedings must be done or taken at latest on the last day of the limited time". Section 15(2)(a) of the Interpretation Act (Cap 192) Laws of the Federation of Nigeria, 1990 made similar provisions. See also Nnonye v. Anyichie (1989) 2 NWLR (pt. 101) 110 at pp 120- 121. The petition was filed on 2nd May well within time. Any amendment to the petition must be made not later than 22nd May which was the last day of the limited time.*

It was stated Per Uwaifor JSC in the same case that:

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judgment, the date 1st July, 1996 on which the Court of Appeal delivered its judgment must be excluded. Consequently, the calculation must commence on the 2nd of July, 1996 and three months from that date would ordinarily end at the midnight of 1st October, 1996. See also Afribank Nig. Plc v. Akwara (2006) All FWLR (pt. 404) 401 at 416.

> *The result of the election was declared on 22nd April, 2003. The election petition was filed on 2nd May, 2003 and the motion for amendment of petition was filed on 21st May, 2003. Reducing that to arithmetical details, since the result of the election was declared on 22nd April, and the motion*
> *for amendment was filed on 22nd May 2003, the motion was presented within 30 days from the date of declaration of result of the election.*

In Bertrand Nnonye v Chief D. N. Anyichie & ors[12] it was held on computation of time for filing election petitions per Uwaifo JCA (as he then was) that:

> *But even assuming that the document filed on 13 January, 1988 were a petition, the learned Judge was in error to have held that it was filed within time. The relevant paragraph 2 of the schedule 3 itself does not take the date of the election, that is, 12 December, 1987 into account for the computation of one month. So the computation starts from 13 December as the first day. Therefore taking 31 days as a month, December being a month which ends on 31st and calculating from 13 December, the last day for filing the election petition was 12 January, 1988. The same result is achieved going by the authorities. Under section 18 of the Interpretation Act, Laws of the Federal Republic of Nigeria, 1964, "month" means a calendar month reckoned according to the Gregorian calendar.*
> *Also under the Rules of Supreme Court, Order 3 Rule 1 of England, it means one calendar month unless the context otherwise requires. In Radcliffe v. Bartholomew (1892) 1 Q.B. 161, the question arose as to the interpretation to be given to section 14 of the Prevention of Cruelty to Animals Act which enacted that "every complaint under the provisions of this Act shall be made within one calendar month after the cause of such compliant shall arise". It was held that the day on which the alleged offence was committed was to be excluded from the computation of the calendar months within which the compliant was to be made and that the complaint which was laid on June, 30 in respect of an alleged offence committed on May, 30 was within time. It would have been out of time on May, 31. (Sic)*

12 (1989) 2 NWLR (pt. 101) 110 at p 120 paras. F- G, P 121, paras. A – F

In the case of the South Staffordshire Tramways Co. Ltd .v. The Sickness and Accident Assurance Association Ltd. (1891)1 Q.B. 402 the plaintiffs, a

tramcar company, effected with the defendants an insurance against "claims for personal injury in respect of accidents caused by vehicles for twelve calendar months from November 24, 1887", to the amount of £250 in respect of any one accident. On November 24, 1888, one of the plaintiffs' tramcars was overturned, forty persons were injured, and the plaintiffs became liable to pay claims to the amount of £833. it was held that in order to calculate the period of twelve calendar months, the November 24, 1887 was excluded and the date November 24, 1888 was included. In the same way in the present case, 12 December, 1987 would be excluded but 12 January, 1988 would be included, being the last day in the one month allowed after 12 December, 1987 to present an election petition under paragraph 2 of schedule 3 to Decree No. 37, Local Government Elections Decree 187 and not 13 January, 1988 which was outside the one month. On the state of the authorities, the election petition in Suit No. AA/LGE.8/88 pending at the Amawbia/Awka High Court at Awka is such as further proceedings therein should be stayed until the determination of the appeal filed against the ruling of that Court dated 21 June, 1988 now pending in this Court.

Furthermore in the case of Stewart v. Chapman[13] it was held that:

Where a period of time is specified to start coming to the appropriate place running "from" a particular date, the specified date is excluded in the computation of time, time begins to run from the following day.

In the case of Kamba V Bawa[14], it was held by the court of Appeal Jos Division that time started to run in an election petition which result was declared on 13th April 2003 from 14th April, 2003. The court stated that:

There being no dispute by the parties that the result of the election was declared on the 13th day of April 2003, the thirty (30) days prescribed by section 132 of the

13 (1951) 2QB 792

14 (2005) 4 NWLR (pt 914) 43 at 78, paragraph H. It is, however, a surprise that the same Court of Appeal Jos Division which made this decision also decided the cases of Jang v INEC (2009) 4NWLR [pt 1132] 530; INEC & Ors v Alhaji Ababakar hashidu & Alhaji. Danjuma Goje (unreported) judgment delivered on 15/06/2008 in CA/J/EPT/GOV/3/7/2009.

electoral Act, 2002 within which the petition must be presented started to run from 14th April, 2003 to 13th day of May, 2003 see section 15(2) (a) of the Interpretation Act.

Doctrine of *stare decisis* in Nigeria as it relates to computation of time.

There is no doubt that the sources of our laws in Nigeria include case law. Case law refers to the body of principles and rules of law which, over the years, were formulated or pronounced upon by the courts as governing specific legal situations to an extent that they are recognized as binding in such circumstances.

The fact that laws could emanate from the courts seem, (at least from the perspective of the lay person), to contradict the principles of Separation of Powers which confine the judiciary to interpretation of laws while the legislature makes laws. It is therefore understood generally that the courts simply apply the laws as provided for in the statute books. However, while the judiciary do not make laws, the Judges are not altogether, mindless robots, that are programmed to perform functions mechanically. Where a legal problem arises for which there are no adequate provisions in the existing laws, there has to be a way out, the courts are encouraged in such situations to extend the existing laws to deal with such novel cases while hiding behind the shadows of judicial interpretation. Equally, it is one of the rules of interpretation that legislative enactments should be interpreted *ut res magis valeat quam pereat,* that is to say, that where an enactment is capable of double interpretation, the court should adopt the interpretation that shall serve the purpose of the law rather than the one that shall defeat it. It is in the interest of the public that, as much as is possible, election petitions should be heard on the merits rather than be thrown away upon objections based on technicalities[15].

The existence and operation of case law is grounded on the operation of the doctrine of judicial precedents which itself depends on the hierarchy of courts. A precedent simply means taking an

15 Buhari v. Obsanjo (2003) 17 NWLR (pt. 843) 236; Balonwu v. Ikpeazu (2005) 13 N.W.L.R. [pt. 942] 479.

earlier case or decision as a guide or basis to determine later cases that are on similar facts. The doctrine of judicial precedent also called *stare decisis* implies that not only are judicial decisions binding on all the courts below the court that made the decision, it is also binding on the same court that made the decision. Courts do hardly depart from their earlier decisions on similar issues except for good reasons. This practice is considered necessary to secure the stability and certainty of the legal system.

In the present arrangements in the country, the Supreme Court of Nigeria is the highest court in the land, dating from 1963 when appeals stopped going from Nigeria to the Privy Council[16]. Section 6(5) of the 1999 Constitution (as amended) which listed the courts in Nigeria in a hierarchy places the Supreme Court as the highest court in the land and went ahead in Section 287(1) of the same constitution to provide in so many words that the decision of the Supreme Court shall be enforced all over the Federation on all authorities and persons and by courts with subordinate jurisdiction to that of the Supreme Court[17].

Immediately below the Supreme Court of Nigeria in the hierarchy of courts is the Court of Appeal. The Court of Appeal is bound to follow the decisions of the Supreme Court which are not yet overruled and which do not conflict with other decisions of the Supreme Court.

The Court of Appeal in addition to that is bound by its own past decision[18]. The Court of Appeal, though made up of several divisions is considered as one court, to the effect that every decision of a

16 See Sections 6 (5), 287(1) 1999 Constitution, See also Akerodolu v. Akinremi (1985) 2 NWLR (pt. 10) 787.

17 See Uba v Etiaba [2005] 6 NWLR (Pt 1082) 154 at 182 where the Supreme Court stated per Musdapher CJN (as he then was) that: *All courts in Nigeria area bound by the decisions of the Supreme Court of Nigeria which is the highest court in the land. This follows the doctrine of stare decisis which is fully entrenched in the Nigeria Jurisprudence to ensure certainty of the law. It is as well settled principle of judicial policy which must be strictly adhere to by all lower courts. However, the court must follow the principles of law or order upon which a particular case is binding such a principle is called 'ratio decidendi'.* See also Dalhatu v Turaki [2003] 15 NWLR (Pt 823) pg 310 at 336.

18 See Fatola v. Mustapha (1985) 2 NWLR (pt. 8) 435, Bello v. N. B. N. Ltd (1992) 6 NWLR (pt. 213) 206.

competent panel in any division of the Court of Appeal is treated as a decision of the Court of Appeal.[19]

In the case of Mohammed Dikko Yusuf v. Chief Aremu Olusegun Obasanjo[20], It was held by the Supreme Court that the 30 days time limited for filling election petition starts to run from the next day after the day the result of the election was declared. It is doubtful whether that decision of the Supreme Court has been overruled or is in conflict with any other decision of the Supreme Court on the same subject matter.

With the greatest humility, it is a surprise that the Court of Appeal has consistently ignored this decision of the Supreme Court and has, in its several decisions to the contrary, held that time starts to run, for purposes of filing election petitions or taking other steps in electoral proceedings for which time is limited, from the day the result of the election was declared or the day the event occurred for which step should be taken. It is trite law that on every issue on which a decision of the Supreme Court exists, there

is law on that subject matter which ought to guide the Court of Appeal and the courts below it in their decisions on that subject matter. In the case of Ganiyu Gbadamosi & anor v. State[21], the Court of Appeal ignored the decision of the Federal Supreme Court in R v. Igwe & Ors.[22] and treated the issue of trial within trial as if it was not part of our laws. The Supreme Court did not take kindly to

19 See Section 237 of the 1999 Constitution (as amended), see also Megwalu v. Megwalu (1996) 2 NWLR (pt. 407) 104;
Senate of the National Assembly v. Tony Momoh (1983) 4 NCLR 269.

20 *Op. Cit, note 11*

21 (1991) 9 NWLR (pt 266)465

22 (1960) 5 FSC

such an attitude of the Court of Appeal when the matter got to the Supreme Court on further appeal.[23] The Supreme Court had this to say, per Uche Omo JSC:

> *...I share the views of the learned Justices of the Court of Appeal as to the problems surrounding this procedure; but secondly; that the procedure is now very much part of law vide R v Igwe (1960) SCNLR 158 that it can not be overlooked or decreed into illegality by the Court of Appeal. The learned Justices of the court of Appeal were with respect, very wrong to have done so in the face of decisions of this court which has made this procedure mandatory, and part of the law.*

The import of the decision of the Supreme Court quoted above and which accords with the doctrine of judicial precedent is that once the Supreme Court pronounces on any subject matter, there is a law on that subject matter. Assuming, however, that the Supreme Court decision in Yusufu v. Obasanjo[24] do not exist, the Court of Appeal is

yet bound by its own decision in Bertrand Nnonye v Chief D. N. Anyichie & ors[25] The Court of Appeal has not yet overruled its said decision which it indeed followed in Kamba v Bawa[26] and yet it went ahead to behave in numerous other cases as if such a

decision does not exist.

One may be tempted to argue, as is always argued against the rule of *stare decisis*, that the said decision of the Court of Appeal being archaic, may have been overtaken by time and therefore do not afford solutions to modern problems. That point may be a disadvantage in the application of the rules of judicial precedent, yet departure from judicial decisions may not be justified on ground of antiquity alone. In Okpala v. Okpu[27], Counsel described the decision of the Supreme Court that has lasted for three decades as "archaic" and urged the court not to follow it.
The Supreme Court however, held that a case does not lose its value as a judicial precedent merely on the ground of age, according to the court[28]

23 See Gbadamosi & Anor v State (1992) (supra) at pp497-498, paras G-C,

24 *Op. Cit, note 11.*
25 *Op. Cit, note 12.*
26 *Op. Cit, note 14*.
27 (1985) 3 NWLR (pt. 14) 217.
28 at Page 219.

> *As a matter of law, a case which has survived the test of judicial precedent is recognized as stable, if decided by the highest court of the land and will receive the adoration of the lower courts until overruled by the highest court. But until it is overruled, it represents the state of the law. In my humble view, the older a case, the maturer it is….*

It is therefore a surprise that the Court of Appeal and Election Petition Tribunals under it are going about deciding the question of computation of time for filling election petitions as if that decision of the Supreme Court does not exist.

The Departure from Judicial Precedent

The Court of Appeal in interpreting the word "within" in Ogbebor v. Danjuma[29] held that Section 132 of the Electoral Act, 2002 provides in no uncertain terms that:

> *… an election petition under this Act shall be presented within thirty (30) days from the date the result of the election is declared". To my mind, the operative words therein are "shall be presented within (30) thirty days" when used relative to time, the word "within" has been defined variously as meaning any time before; at or before; at the end of; before the expiration of; not beyond; not exceeding; and not later than see Black's Law Dictionary, 6th Ed. In other words, an election petition must be presented any time before the expiration of 30 days or more concisely put, not later than 30 days from the date the result of the election is declared.*

It is interesting that in Ogbebor's case[30] the Election Petition Tribunal had earlier relied upon the Interpretation Act, 1990 to declare the election petition competent when it held that time started running on the day following the day the result of the election was declared.

29 *Op. Cit, note 6* at page 432, paras D – E . The decision in Ogbebor v. Danjuma was followed by the Court of Appeal, Benin Division in Silas Bounwe v. Resident Electoral Commissioner, Delta State & ors (2006) 1 NLWR (pt. 961) 286

30 *Ibid.*

On appeal however, the Court of Appeal, Benin Division overruled the election petition tribunal and held that:

> *The 30 days allowed for the presentation of the petition starts running from the date the result was declared and that the petition was incompetent, the tribunal lacks the jurisdiction to try the matter, it is simply as if no petition was presented to it*.

In Alataha v Asin[31], what was under consideration was S. 82 of Decree No. 36 of 1998 which provides that an election petition under it must be presented with 14 (fourteen) days from the date the result of the election was declared. The Court of Appeal, per Salami JCA stated:

> *The time therefore began to run in this case on 7th December 1998 when Exhibit R1 was issued declaring the 1st Respondent "as being the winner of the election". The Time to sue was up on that day because from that day the petitioners could present their petition against the respondents as all the material facts required by them to prove their case had happened …*

With due humility, it cannot be reconciled that cases such as the ones above were decided under the present state of our laws and even of greater surprise are recent decisions such as the ones in cases like Action Congress & 2 ors v Jonah David Jang & 9 ors[32] which was decided in 2009.

Very instructive are the views expressed by Ngwuta JCA (as he then was) who delivered the lead judgment of the Court of Appeal in the case of Action Congress & 2 ors V Jonah David Jang & 9 ors[33]. The learned Justice of the Court of Appeal stated *inter alia* that:

> *Based on the above and the essence of time in the disposal of electoral matters, I have come to the conclusion that the use of the word "from" in S. 141 of the Electoral Act, 2006 means from the day, and includes part thereof, the result of the election was declared. The 30 days period stipulated in S. 141 of the Electoral Act started from 18th April, 2006 on which the result was declared without prejudice to*

31 (1999) 5 NWLR (pt. 601) 32 at page 43, paras D – E; See also Boni Haruna v. Modibo (2004) 16 NWLR (pt. 900).
32 (2009) 4 NWLR (pt. 1132) 475 at 508 – 509 paras B –D.
33 *Ibid.*

> *the time the result was actually declared in so far as it was declared within the 24 hours of the day in question. In the context of S141 of the Electoral Act, 2006 the word "within" contemplates the purport of the word "from" in the said section of the electoral Act. The word "within" means that an election petition arising from the April 14th 2007 election to the office of Governor of Plateau state of Nigeria must be presented any time between the 16th day of April, 2007 and 15th day of May 2007, 30 days from 16/4/07 on which the result was declared and inclusive of both dates. The trial Tribunal was right to have held that the petition was filed out of time but having determined that it has no jurisdiction same should have struck it out rather than being dismissed.*
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> *Subject to the substitution of order of dismissal with order for striking out, I resolve issue one in favour of the respondent. The election Petition presented on 16/5/07 against the result declared on 16/4/07 is statute barred, having been filed outside and not within the 30days period from the date of declaration of the result of the election.*

The Court of Appeal, Jos Division, still proceeding in perpetuating the confusion in this area of the law, held *inter alia* in the case of Barr. Mohammed Umaru Kumaila V Senator Ali Modu Sherrif & Ors[34] that:

> *In the circumstances, we hold that time began to run on 15th April, 2007 i.e the day the result of the Governorship election was declared. It is not in dispute that the result of the election was declared on the 15th day of April, 2007. It is also common ground that the petition was presented on 16th May, 2007. Since the Petition was filed on 16th may, 2007, the petition was filed 2 days outside the mandatory period stipulated by section 141 of the Electoral Act, 2006. The petition is therefore statute or time barred*

The same Court of Appeal, Jos Division, in yet another leading judgment delivered by Ngwuta JCA (as he then was) in INEC & 13 ors v Alhaji Abubakar Hashidu & Alhaji Mohammed Danjuma Goje[35] held *inter alia:*

34 (Unreported judgment) delivered in CA/J/EP/Gov/24X/2007 on 21/1/2008.

> *In view of the above, I accept the argument of the learned silk for the cross appellants that the petition No EPT/GN/Gov/1/2007 presented on the 15th day of May 2007 was presented after the expiration of the 30 days period prescribed in section 141 of the Electoral Act, 2006. It is statute – barred and Ipso facto incompetent.*

It is doubtful whether the attention of the Court of Appeal, Jos Division was drawn to the earlier decision of the same Division of the Court of Appeal in the case of Kamba V Bawa[36] which decision is totally different from the later decisions. The Court of Appeal, Jos Division would have reviewed that authority and expressly overruled itself as required by the doctrine of *stare decisis.* The court regrettably did not follow that procedure in its later decision even though the decisions were made by a full court of 5 (five) Justices while determining matters on computation of time in election proceedings brought under the Electoral Acts 2002 and 2006.

Furthermore, it is doubtful whether the Court of Appeal had adverted its mind to the provisions of paragraph 50 of the 1st Schedule to the Electoral Act, 2006 and a similar provisions in the Electoral Act, 2002. These rules expressly referred to the Federal High Court (Civil Procedure) Rules, 2000 for matters of procedure in election petition proceedings or to the provisions of Section 15 (2) of the Interpretation Act, 1990 which laws agree with each other in their provisions that time on this issue starts to run from the day after the day the result of the election was declared.

In Imerh v Okon [37] it was held that:

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35 (Unreported judgment) delivered on 15/06/2008 in CA/J/EP/GOV/317/2009: INEC & 13 ORS v. Alhaji Abubakar Hashidu & Alhaji Mohamed Danjuma Goje See particularly page 13.

36 *Loc. Cit*, note 14.

37 (2012)11NWLR [pt 13] 270, see also Orji v Ugochukwu (2009)14 NWLR [pt 1161] 207, It was held in the instant case on time within which to file an election petition that by virtue of section 285 (5) of the 1999 Constitution, (as amended) election petition shall be filed within 21 days after the date of declaration of result of the election. On computation of time that to compute the 21 days, the day election was held would be excluded. Thus, as the election was held on 26th April 2011 and the result was declared on the same day, the day of election would be excluded. Accordingly, from 27th April 2011 to 18th May, 2011 was twenty-two clear days.

> *By virtue of section 15 (2) of the Interpretation Act, a reference in an enactment to a period of days shall be construed so that where the period is reckoned from a particular event, the day on which the event occurs is excluded. The date of the happening of the event must be excluded in computing time.*

If the Court of Appeal was not aware of the provisions of Order 23 of the Federal High Court (Civil Procedure) Rules, 2000 and the Interpretation Act, then it has, with respect, fallen into a pardonable error in law. If, however, the Court of Appeal was aware of the provisions of Order 23 of the Federal High Court Rules and section 15 (R) the Interpretation Act and yet ignored them in interpreting the provisions of Sections 132 of the Electoral Act, 2002 and Sections 141 of the Electoral Act, 2006 in those cases then it does appear that the court has deliberately allowed itself to grope in the dark on a matter on which both the Electoral Acts, 2002 and 2006, the Federal High Court Rules, 2000, the Interpretation Act, 1990 and Supreme Court decisions have made clear and unambiguous provisions.

It is submitted, most respectfully, that the decision of the Court of Appeal in Kamba v. Bawa[38] and Bertrand Nnonye v Chief D. N. Anyichie & ors[39] which are in accord with the decision of the Supreme Court in Yusufu v. Obasanjo[40] and English authorities including the case of Stewart v. Chapman are correct interpretations of Section 141 of the Electoral Act, 2006 relying on the provision of Order 23 of the Federal High Court Rules, 2000 (now Order 48 of the Federal High Court (Civil Procedure) Rules , 2009. The conflicting line of authorities on this matter seem to have discarded the reference made

in paragraph 50 of the First Schedule to the same Electoral Act, 2006 to the Federal High Court (Civil Procedure) Rules as regards matters of procedure in election proceedings.

38 *Loc. Cit note 14.*

39 *Loc. Cit note 12*

40 *Loc. Cit note 13.*

It is gratifying to note however, that the National Assembly of the Federation, on realizing this seeming departure from the law, brought in an amendment to clarify the position. There is no doubt that it is the vagaries of litigants at the election tribunals and courts as a result of the seeming confusion in this area of the law that made the National Assembly to state that the 21days limited for presentation of election petitions under the electoral Act 2010 (as amended) shall start to run from the day after the day the result of the election was declared.[41] It is, however, regrettable that legislative precision was considered only necessary as regards the time limited for filing election petitions. The terrain is not yet cleared of land mines for litigants and legal practitioners that participate in election proceedings as; other provisions of the Electoral Act, 2010 (as amended) are not couched in precise language as Section 134 of the Act stated above. The imprecision still constitute land mines that blow up election petitions to their untimely death. For instance:

(a) Paragraph 12 of the first schedule to the Electoral Act, 2010 (as amended) provides that the respondent shall, within 14 days of service of the petition on him file in the Tribunal Registry his reply to the petition.

(b) Paragraph 16 (1) of the Electoral Act 2010 (as amended) provides that where the respondent raises new issues in his reply which the petition did not cover, the petitioner shall be entitled to file in the registry, within five (5) days from the receipt of the respondents' reply, a petitioners reply in answer to the new facts.

(c) Paragraph 18 (1) of the first schedule to the Electoral Act, 2010 (as amended) provides that within 7 days after the filing and service of the petitioner's reply or the respondent or 7days after the filing and service of the respondents' reply, whichever is the case, the petitioner shall apply for the issuance of pre-hearing notice as in form TF 007.

The above provisions of the Electoral Act, 2010 (as amended) including section 285 (6)-(8) of the 1999 Constitution (as amended) which provides in mandatory terms the times limited

41 See Section 134 of the Electoral Act, 2010 (as amended and Section 285 (5) of the 1999 Constitution (as amended).

for conclusion of hearing and appeals on election petitions are couched in uncertain terms. It is not clearly stated when computation should start or end. In such circumstances, one would have expected that recourse would be had by virtue of paragraph 45 of the first schedule to the Electoral Act, 2010 (as amended) to Order 48 of the Federal High Court (Civil Procedure) Rules, 2009 as well as the interpretation Act. Surprisingly, election tribunals pick and chose when to rely on the said relevant statutes. More often than not, the tribunals rely on the much touted view that election proceedings are *sui generis* and follow the decisions of the Court of Appeal which has been maligned so much for being outside the law on this subject.

It is heart-rending to discover that more than 80% of election petitions filed after the 2011 general elections in Nigeria were determined without hearing on the merits consequent upon the lack of clarity that exist in the various laws as well as the attitude of election petition tribunals that believe that justice lies in ensuring that election petitions are determined on preliminary objections.

As already stated, Section 134(1) of the Electoral Act, 2010 (as amended) is commendable for its clarity and precision in limiting the time provided for presentation of election petitions to the extent that it states clearly that time starts running for the purpose of filing election petitions from the next day after the declaration of result of the election. However, the problems created by the conflict in the interpretation of the provisions limiting time for taking steps in election proceedings is capable of being extended to other provisions limiting time for taking steps in both other areas of election proceedings and other civil proceedings in the ordinary courts. The need therefore remains compelling that the Court of Appeal should overrule its decisions that are conflicting with both the enactments, Supreme Court authorities and its own properly founded decisions on computation of time.

Bringing clarity into this area of the law would save the harrowing experience suffered by both counsel and litigants each time petitions are struck out on account of non-compliance with provisions of the law limiting time to take steps in such proceedings.

Conclusion

As a matter of public policy, election petitions should be heard on their merit rather than allow them to be defeated on mere technicalities. In the long run, it is in the interest of the public that elections are conducted in compliance with the relevant laws. Statutes bothering on computation of time ought to be construed liberally so as to allow litigants have access to court to ventilate their claims rather than shut them out upon strict or outlandish construction of such statutes. If any area of our law needs certainty more than others, it should be the very area concerned with election proceedings because of the emotions and interest that usually follow such proceedings. The present confusion has not done the image of the judiciary any good in the eyes of the public. The Court of Appeal is expected to follow the unwavering precedent laid down by the Supreme Court on the matter of computation of time.

The legislature reacted to this confusion in respect of time limited for filing election petitions by making precise provisions in section 285 (5) of the 1999 Constitution (as amended) and section 134 (1) of the Electoral Act, 2010 (as amended). This precision in legislation should be accorded to other imprecise provisions of the Electoral Act before the 2015 elections, otherwise, we shall still witness another round of technical defeat of justice as regards the collective will of the electorates expressed through their votes. Equally, we may find another saving grace in amending the relevant sections of the Constitution and the Electoral Act to allow litigants who feel aggrieved at the decisions of Election Tribunals and the Court of Appeal, terminating their election proceedings *in limine*, to file appeals to the Supreme Court to remedy such situations, particularly now that election proceedings are expected to be concluded expeditiously.