

A PAPER DELIVERED

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ON THE THEME:

**"THE ROLE OF THE JUDICIARY IN THE SPEEDY
RESOLUTION OF ELECTION CASES AND PROMOTION
OF THE RULE OF LAW"**

INTRODUCTION:

Permit me to start by thanking the Board of Trustee of the Mustapha Akanbi Foundation for inviting me to participate in this symposium. I must also seek your indulgence to amend slightly the topic of this lecture as was handed down by the organizers to accommodate the fifteen minutes I am allowed to discuss the topic. In this light, I will speak on **the Role of Judiciary in the Speedy Resolution of election Cases and the Promotion of Rule of Law.**

The Judiciary

Since the inauguration of democracy governance in Nigeria, we have all come to value its imperatives and elements, Legislative and judiciary in independent of each other. Of the three, the limb that is ever expected to shore up the credibility of our democracy and polity is the judiciary. It has always in spite of arduous challenges and bashing, been referred to as the last hope of average Nigerians.

The starting point of democratic political system is the individual and his or her rights. The constitution laid down the limits of governmental action and, by extension, the limit of control by the majority over the individual. In this light the freedom of the framers of our constitution was to ensure the creation of an independent judiciary that would be unafraid to determine the rights and liabilities of individuals and even the government. The courts have been protectors of rights and the realm. The independence of the judiciary, however, assures the electorate that the court will always base its decision on the law rather than partisan politics; Judges are as much citizens in a free and democratic society as any one of us and therefore reflect the beliefs and aspirations of their society and the law.

One obvious attribute of a democratic society is the respect of court and their decisions. Democracy ensures choice. For instance, in an election petition decision by the court, not everybody may be happy with the verdict undoubtedly, but there is near unanimity that the judgment has to be accepted. While there may be rumbling about political preferences by the losing litigant, Nigeria, no doubt, must accept that decision until otherwise overruled by an appellate or final court made quite independently of political actors. It is sufficient to say that the process of dealing with complaints and resolving election disputes is key to the survival of any democracy, particularly in Nigeria.

Democratic Society

A democratic government in a nation, state or an organization, is one in which all citizens have an equal vote or voice in shaping policy. While the term democracy is often used in the contest of political state, the principles are also applicable to other bodies, such as institutions, unions, companies, or civic organizations. A democratic society therefore is simply a community that reflects the firm belief in not only the worth and dignity of the individual but also a society in which moral values, reflections, dialogue, critical thinking and moral care are central. Democratic society remained marked by a need to have the consent of the people, a system of checks and balances, and public policy flexible and amendable to the decision of the majority and elected officials. According to Robert A. Dahl, a democratic vision offers the hope “that by engaging in governing themselves, all people and merely a few, may learn to act as morally as responsible human being”. Therefore, a democratic society guarantees the dignity of the individual, a society in which moral values, reflections, judiciary and administrative bureaucracy, and a competitive electoral system are guaranteed by the law.

Elections

By determining peacefully those who should govern them and by bestowing legitimacy on the decision they make election provide answers to crucial questions faced by any political system. Those goals are more easily achieved when the characteristics of an electoral system encourage a widely shared perception that election is free and fair. Factors encouraging this perception are a franchise and an access to the ballot that are more inclusive than exclusive; an equality of votes so that no vote counts more than

another; and election outcomes determined by rules established in advance, devoid of cheating and fraud in the casting and counting of votes. These standards for free and fair election have not been static over political history. Their revolution has reflected each generation's experience in grappling with the nature of political community, the latitude of lawful dissent, representing, and electoral structure and administration. Free and fair election lies at the bedrock of democratic process. They confer instruments of power and legitimacy; just as unfair and dishonest elections may cast doubt on any claim to office and diminish ability to govern. Elections determine who vote, who runs for office, ensures the legitimacy and latitude of votes, electoral structures and procedures restrictions on spending and a stable democratic process.

The last general elections witnessed unprecedented challenges of the election by contestants who sought legal redress for alleged infractions of electoral process. Hundreds of petitions were filed at the tribunals and courts all over the country. This no doubt was a test of judicial process. The fact that several petitions were unresolved months, even years after swearing in ceremony of the usurping officials is indicative of the need for reforms of the electoral process. However, the electorate must be assured that election dispute will be resolved by fair and independent judiciary; that there is a realistic time frame for resolving such disputes; and there is a proper enforcement procedure to implement decisions of such tribunals and courts.

Speedy Resolution of Petitions

The hallmark of any electoral process is the speedy determination of the winner of the election and for the victorious candidates to enjoy the fruits of his success. An electoral law must therefore guarantee the speedy resolution of electoral disputes. S. 132 of the Electoral Act 2002 provides; "An election petition under this act shall be presented under this 30days from the date the result of the elections is declared". Although the Act provides for a time limit within which petition must be presented, as can be observed from S.132 of the Act, there is no stipulated time limit within which a hearing must be concluded. The tribunal and court are only enjoined to proceed with dispatched, approach election matters with urgency and give such petition priority over all other cases had declared as unconstitutional and interference in the functions of the courts, for any statute to impose a time limit for the determination of matters brought before them. See Paul Unongo vs Aper Aku (1983).

In *Ngige vs Obi* (2006) 14 NWLR (Pt 999) 1, the 1st Respondent, dr. Peter Obi was aggrieved with the return of the appellant, Dr. Chris Ngige as the candidate duly elected in the Governorship election conducted by the 2nd Respondent, Independent National Electoral Commission (INEC) on the 19th April, 2003. The Respondent filed a petition at the Governorship and Legislative Houses Election Petition Tribunal on the 16th of May, 2003. The Tribunal gave its judgment on the 12th of August 2005.

Dissatisfied, the appellant, while still retaining the disputed office, appealed to the court of Appeal which subsequently dismissed the appeal and upheld the decision of the

Tribunal on the 2nd of October, 2006. In his Judgment, Omokkri JCA on page 241 paragraph D observed:

“Secondly, there are lessons to be learnt from the facts of this appeal. This is a petition that was filed on 16/5/03 following the result of the gubernatorial elections conducted on 19/4/ 03. It hung on the balance until 12/8/05 when judgment was delivered by the lower tribunal. This appeal came up for hearing on the 23/1.06 and judgment was delivered today. It has taken all of 35 months for the 1st Respondent to receive justice in a court of law. 35 months is a very considerable portion of a 4-year term of office.” See also Buhari V. Obasanjo (2003) 11 S.C 74, where the decision was delivered two years after the filing of petition.

Considering these hurdles, it is necessary to amend the Rules of Court, Evidence and Procedure. Some suggest that the election petition are sui generic, provisions should be enacted to speed up election petition trials. New rule affection the admissibility of documents has to be enacted if trials at the tribunal are to progress faster. Such rules will also take care of the procedure by which documents are discovered, collated, inspected and subsequently admitted in court.

In an attempt to ensure speedy resolution of election cases, there is need to create the necessary infrastructure for such trials. Even Justices of the court of Appeal who sat as court of first instance in election cases, took notes in long hand from every witness. One can imagine such a situation. One can imagine such a case like the case of Mohammed Buhari V. Obasanjo supra with allegations in 294 paragraphs with 269 Respondents. A suggestion to resolve this is to conduct elections well ahead of the end of every term, say six months before the inaugural date such that election petitions are concluded well before the expiration of such term. Prompt enforcement of decisions of courts and electoral tribunals are critical to the effectiveness of resolving election disputes. An individual whose election has been nullified may refused to vacate his seat as have been noticed in recent past as the usurper may file ridiculous appeals and applications even after the final court had given its decision. The law of contempt may be insufficient to implement the tribunal decision. It is recommended that legislation should provide adequate sanctions for non-compliance by Respondents. One of such deterrent is a stipulation that such a Respondent who refuses to vacate a cancelled seat within a certain period stand disqualified from contesting any election, including the fresh election that had been ordered. This will compliment the general law of contempt, the difference being that the tribunals will also be empowered to enforce these decisions.

The Rule of Law

The Rule of Law means that no individual, public or private citizen, stands above the law. Democratic government exercise authority by way of law and are themselves subject to law’s constraints. Laws should express the will of the people, not the whims of powerful individuals. Justice is best achieved when the law established by the very people who must obey them. Under the rule of law, a system of strong, independent courts should have the power and authority, resources and the prestige to hold government officials,

even top leaders, accountable to the nation laws and regulations. For this reason, judges should be well trained, professional, independent and impartial. To serve their necessary role in the legal and political system, judges must be committed to the principle of democracy.

By determining winners or losers, elections accomplish what they are designed for. Defeated candidates and their supporters willingly, defer to the victors and acknowledge their right to rule. Such acceptance presuppose a stable political system where ultimatum values and interests are really, if ever, at risk as espoused by the rule of law. The frequency of election means that no party or faction within a party is guaranteed permanence in office. An election without opportunity for serious opposition may be trusted or respected.

Under our constitution and laws, the people elected their rulers who depend upon majority of voter to govern. The people therefore should see the elected officials as their servants, who hold their trust and who are authorized by them to act on their behalf according to their oath of office. Access to the vote and the ballot should be widely available, with no vote worth more than any other vote. High turnout s of voters in elections should be a priority and should be encouraged; a high level of political speech is crucial to democratic process; election and the system of representation must enable a majority of the people to control the government, yet safeguards must be in place to prevent the majority from overwhelming and destroying the minority, because election function effectively only if most people perceived them to be free and fair. Procedure must be in place to respond quickly to allegations of voting dishonesty or electoral malpractice. Without such remedial devices, electoral policies may quickly be perceived as a fraud and undermine civil trust.

Conclusion

The process of resolving electoral disputes will have to be constantly reviewed against certain minimum standards if confidence in the process is to be assured. Substantial resources will have to be committed to ensuring that the judiciary is in a position to confront new challenges presented in resolving election disputes. In the final analysis, the integrity and ability of the judiciary to address these issues will in turn depend on the attitude of other arms of government and the people in general. The judiciary must ensure its independence and fairness not by proclaiming it but in asserting, investing it and flaunting it. It should also robustly extend the reach of law which ultimately advances democracy, good governance and equal protection under the law.

Thank you for your attention.