APPRAISING THE QUAGMIRE OF CONFLICTING JUDGMENTS OF COURTS IN ELECTION MATTERS IN NIGERIA*

Abstract

Election litigations are on the increase and the resultant conflicting judgments in some cases have been the subject of media and academic debates. Conflicting judgments rendered by courts in electoral matters pose significant challenges to the integrity of democratic processes. This may be due to inability to document judgments of courts for proper referencing as judicial precedent in similar matters. The research method adopted in this paper was the doctrinal method. This study aimed at conducting appraisal of conflicting court judgments in electoral disputes, identifying the underlying causes, examining the implications, and exploring potential strategies to promote consistency and predictability in judicial decision-making. Findings revealed several contributing factors, including inconsistent interpretation of electoral laws, lack of adherence to judicial precedents, political influences and constraints within the judiciary. It was based on the findings that the following recommendations were made to wit: for legal reforms, capacity building, adherence to precedents, and enhancing transparency in the judicial process.

Keywords: Conflicting Judgment, Courts, Election Matters, Nigeria.

1. Introduction

Election matters as one of the known pillars for sustainable democratic processes galvanizes the people for or against a particular candidate or political party who are parties in an election matter before the court. Election matters therefore cover not just the interest of the litigants but the public who also follow the proceedings and are interested in the outcome. With the advent of democracy in Nigeria, election matters have been on the increase with the resultant effect of conflicting courts judgment arising from same. This has generated public outcry that some now look the judiciary as creating confusion than it intends to solve. For instance, in 2011 when Justice Dahiru Musdapher appeared before, the Senate of The Federal Republic of Nigeria for screened for confirmation as the Chief Justice of Nigeria. The senate put the question to him and indeed set an agenda for him to address the issue of conflicting judgments in election matters.

The Nigerian Bar Association[1]also recognizes this problem as a malignant cancer. According to Akeredolu,

> The bar has noticed with increasing discomfiture the conflicting decisions emanating from our appellate courts. The court of Appeal has found itself in and embarrassing quagmire arising from the desperate pronouncements on matters which are, as lawyers will say "on all fours" with all decisions reached by the same court.[2]

Daudu also decried conflicting decisions of the Abuja, Makurdi, Calabar and Katsina Divisions of the Court of Appeal on the matter of initiating pre-hearing sessions in election matters and described them as judgments 'given on cash and carry basis.'[3] Osibanjo in his paper titled 'The Rule of Law: The foundations are Shaking', stated thus: 'Conflicting decisions of the appellate courts by themselves, though frustrating for legal practitioners, are to be expected. However, where conflicts are frequent,

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[2] Mr. Oluwarotimi Akeredolu SAN was former NBA president. In his keynote address at the Supreme Court in April 2010 he noted the decay in Nigeria judiciary.

[3] J Daudu was the President of Nigerian Bar Association.

the reliability of decisions of our courts, a vital aspect of our procedural system of adjudication is lost.'[4]

In *Nwobodo v. Onoh*[5] the Supreme Court noted thus 'election petitions are by their nature peculiar from other proceedings and are very important from the other points of view of public policy. It is the duty of the courts therefore to hear them without allowing technicalities to unduly falter their jurisdiction...' In *Abubakar v. Yar'dua*[6], The Supreme Court held thus:- 'An election petition is Sui generis. That is to say, it is in a class by itself. Surely, this is no longer a moot point. It is different from Common Law Civil action. This must be borne in mind throughout these proceedings.' The special nature of election petitions was acknowledged in *Uduma v. Arunsi*[7] thus 'Election petitions are sui generis that their very nature makes them peculiar sometimes the general statement of the law applicable in ordinary civil litigation.' The above Supreme Court's decisions emphasis the importance of election matters, the need to avoid unnecessary technicalities and build public confidence in the judiciary.

In times past, when the courts were to depart from their judgments reasons for such action given and the present case would distinguished from the earlier authority where necessary. In the present circumstance in electoral cases departure from judicial precedence has become rampant without recourse to distinguishing the facts the cases. This is against the known principle of *stare decisis* which is one of the pillars of the Rule of Law. This paper shall examine the conflicting decisions of Nigerian courts on election matters for the purpose of identifying g the causes and proffer solutions therein. In doing this, this paper shall examine the conflicting decisions of Court of Appeal and offer recommendations.

The above clearly articulates the law that election maters are *sui generis* and should be heard without any unnecessary adherence to technicalities which only add up to further compound the situation and heat up the policy. The Court of Appeal in *Prince Nwole v. Iwuagwu*[8] allowed appellants appeal and order the petition to be struck out for non-joinder of necessary parties and to be heard on the merit by another panel at the Election Tribunal. According to the Court per Adeniji JCA,

> It is my humble view that in all election matters, the use of technicalities should be avoided. It merely helps to shut the opponent out. It never resolves the basic issues in controversy. Once it is agreed that election petitions are in a class of their own, the handling of the matter too must take a form devoid of legal technicalities that tends to leave the litigants more confused.

In the same vein Ogebe JCA held in *Abubakar v. Yar'dua*[9] thus:-

> I have given a very serious thought to the submission of counsel on all sides and it is clear that the motion paper has some lapses which counsel to the applicants should have corrected before filling the application. For example, what the relief is seeking is actually not an amendment of the petition but leave to call more witnesses with their statements on oaths. In a presidential election petition of this magnitude, it is in the interest of justice that parties are given full opportunity to ventilate their cases without the regard to technicalities. Since the list of witnesses and their statements on oath were filed in the registry of this court on the 17th of August, 2007 they are properly before the court and accordingly I grant leave to the applicants to call additional witnesses...

[4] Y Osibanjo, 'Rule of Law Foundations Are Shaking', *Vanguard News* < https://www.vanguardngr,com> accessed on Thursday 15th August 2024.
[5] (1984) 1 SC 1.
[6] (2008) 14 NWL.R of (part! 1078) 465S.C (1108) and (Pt 82) 543.
[7] (2012) 7 NWLR (Pt. 1298) 55.
[8] (2004) 88 NWL.R of (part 1078) 465S.C (1108) and (Pt. 1078) at 538.
[9] (2009) ALL FWLR (Pt.457) 543.

This paper shall appraise the quagmire of conflicting judgment of courts in election matters in Nigeria. In order to appreciate the topic under discourse the paper shall review certain decisions of Court of Appeal to unearth the areas of conflict and recommend how issue should be addressed. The paper shall draw conclusion and make recommendations.

2. Review of Conflicting Decisions of Appellate Courts

Nigeria Court of Appeal has several Divisions for the purpose of administrative convenience and in order to make access to justice easier for the litigants. Divisions of the Court Appeal have equal power and it is expected that once any division of Court Appeal renders a decision, the sister division should not depart from same in a matter of similar facts and circumstances. However, in recent time, the Court of Appeal in its various Divisions have handed down conflicting judgments and decisions in the course interpretation of the Electoral Act and other enactments on election litigations. A glaring example is the conflicting interpretation of paragraph 18 (1) of the First Schedule to the Electoral Act 2010 as Amended in respect of the procedure for initiating pre-hearing session. The Divisions of the Court of Appeal in Port Harcourt, Calabar, Kaduna, Makurdi and Ibadan have all given contradictory and conflicting judgments/decisions which resulted in the use of technicalities to defeat the cause of justice. The conflicting decisions of Divisions Court of Appeal in Lagos, Osun, Ogun and Ekiti States on election litigations on matters that the facts and circumstances appeared to be worrisome and need to checkmated if democracy in Nigeria must be sustained. Although there numerous cases of conflicting decisions of Court of Appeal in election maters, however few shall be examined herein.

In *Fayemi v. Oni*[10] the Court of Appeal nullified the Ekiti State Governorship elections in 63 out of the 177 wards in Ekiti State just because accreditation was done with a RED BIRO instead of blue stipulated by the manual for the conduct of election. The court of Appeal in this judgment also shifted the burden of proof for non-accreditation from the petitioner to the respondent. In *Amosun v. Daniel* [11] Ogun State Governorship Election Petition, the Court of Appeal held that one Tunde Yadeke was not an expert in the examination and analysis of electoral materials. But, in the *Aregbesola v. Oyinlola*[12] Osun State Governorship Election Petition, the same Division of Court of Appeal held that the same Tunde Yadeke was an expert in the examination and analysis of electoral materials. These are two cases with similar facts but on which different judgments were delivered. The irony of the matter was that some members of the Court Appeal of that Division featured in the panels of the court in these two cases but rendered different decisions.

In *Obumneke v. Sylvester*[13] the issue for determination was whether the petition was incompetent in view of the fact that the petitioner failed to use the exact words used by the legislature of the First Schedule to the Oaths Act, 2004, in concluding his statement on Oath. The Court of Appeal held that failure to use the exact words or format prescribed by the legislature in the First Schedule to the Oath Act in concluding the statements on oath is fatal and rendered the statements inadmissible. However, *Ibrahim v. 1NEC*[14] the Court of Appeal held on the same issue thus:

> The clear intention of the legislature under the Oath titled Statutory Declaration' is to afford persons -who intend to make declaration such as marriage, age or assets to subscribe to that declaration. It is not the intention of the legislature that the wording of the affidavit to render it valid (Non Compliance not fatal to petition).

[10] (2010) 17NWLR Pt 1222) 543 at 326.
[11] (2018) LCN 12271.
[12] Delivered by Court of Appeal Ibadan on 2nd November 2008.
[13] (2010) All FWL (Pt 506) 1.945 at 207.
[14] (2021) LPELR-53936 (CA).

Onwuka Nkeiruka v. Dimobi Joseph[15] is another judgment of the Court of Appeal that conflicts with *Ibrahim v. INEC*[16] concerning the application of the Oath Act to a Statement on Oath. The Court of Appeal, Enugu Division held that non compliance of written statement on Oath with provisions of Section 13 of the Oath Act and Paragraph 1(1)(b) of the Practice Direction 2007 is fatal to an election petition.

The above conflicting decisions are against the clear provision of paragraph 41(1) of the Electoral Act 2010 as Amended which states thus:

> 41(1) subject to any statutory provision or any provision of these paragraphs relating to evidence, any fact required to be proved at the hearing of a petition shall be proved by written depositions and oral examination of witnesses in open court."
> 41(2) Documents which parties consented to at the pre-hearing session or rather exhibits shall be tendered from the bar or by the party where he is not represented by legal practitioner.
> 41(3) There shall be no oral examination of a witness during evidence-in-chief except to lead the witness to adopt his written deposition arid tendered in evidence all disputed documents or other exhibits referred to in the deposition.
> (8) Some with leave of the Tribunal or Court, no document, plan, photograph or model shall be received in evidence at the hearing of a petition unless it has been listed or filed along with the petition in the case of the petitioner or filed along with reply in the case of the respondent.

In the light of the above, the provisions of paragraph 53(1) of the Electoral Act 2010 as amended which states thus:

> Non compliance with any of the provisions of this schedule or with a rule of practice for the time being operative, except otherwise stated or implied, shall not render any proceeding void, unless the Tribunal or Court so directs, but the proceedings may be set aside wholly or in part as irregular, or amended, or otherwise dealt with in such manner and on such terms as the Tribunal or Court may deem fit and just.

In the Presidential Election Petition of *Congress for Progressive Change*[17] *v. INEC & Others*[18], the Court of Appeal Abuja Division held thus: 'witness statements on Oath are mere depositions.' The same *CPC v. INEC & Others*[19] the Court of Appeal held duplicate copy of election results in Forms ECS series are primary evidence requires a certified for its admissibility. However, the same set of documents was rejected in evidence in about 24 states in similar circumstances.

3. The Quagmire of Conflicting Courts Judgments in Nigeria

Osibajo noted that while addressing issue of conflicting judgment of the courts thus: 'clearly the legal process loses is credibility where it is uncertain in its outcome even in the case of clear precedents. The judicial process is being rapidly-even laymen now wonder how come the same court cannot give consistent rulings on the same issue.' He stated further that

He concluded thus:

> The troubling part of the situation is that the appellate court does not seem to recognize the grave danger for start decisis, the pillar upon which our procedural system is based of

[15] Delivered by Court of Appeal Enugu on 10th July 2010.
[16] (2007) 3 Election Petition Report 50 at 66.
[17] CPC.
[18] (2011) TNW.LR (Pt. 1280) 106.
[19] Ibid.

> not addressing issues of conflicting decisions without expressly overruling or distinguishing existing authorities.[20]

Oguntade in valedictory speech in honour of Justice Aderemi titled 'Our Supreme Court: The Past, The Present and The Future'[21] said;

> He made the Supreme Court very predictable with its principles clearly laid down. Bella's court shunned technicalities; he went for the substance. Prof Itse Sugay reported the following encounter during Bella's Swearing-in Ceremony as Chief Justice of Nigeria, on 9th of March, 1987"Presidential Ibrahim Babangida is reported to said inter alia that the Rule of Law was the ultimate guarantee of peace and stability in the country and that the judiciary remained the hope of the common man. He therefore reminded the new Chief Justice that in the spirit and letter of the Oath of Office which he had just taken, the nation expected him to administer justice in all without fear or favour. The president noted that the nation has been fortunate that Supreme Court had over the years, established a high reputation for integrity, fairness and consistence in the interpretation of the law... This is what the Supreme Court has been doing since then.

Respectfully, arguable the strongest selling point of the Supreme Court by necessary implication the courts of record, is their reputation for integrity, fairness and consistency in the discharge of their duties. The law and the Rule of Law are stabilized by consistent pronouncement of the courts and by necessary implication the society through the age honoured legal principle of *stari decisis.* It is now common knowledge that this very special role of the judiciary and the Rule of Law is not just an engine for social engineering but an indispensable tool for stability of any engine for society. This is now being eroded with conflicting judgments and people' lack of confidence in the judiciary.

Thus, the courts in Nigeria stabilized this country and prevented anarchy between the years 1999 and 2007 by its judgments and pronouncements. The bar, the bench and the public enjoyed and celebrated it. If the ship of justice sinks now, we shall all suffer it. Examples of the cases where the courts help in stabilizing polity include case of Adeleke, Dariye. Peter Obi, Ladoja among others. These are cases where sitting governors were brazenly removed from office through improper impeachment procedures. The Courts intervened by righting the wrong and nullified the impeachment for same being unconstitutional and abuse of power by House of Assemblies. *AG Federation v Atiku Abubakar*[22] there was a rift between the President and Vice President that led to the indictment of Atiku Abubakar through the panel set up to probe him by Olusegun Obasnjo in order to disqualify Atiku Abubakar from vying for the office of the president. The court quashed the indictment and held that it cannot stand in place of conviction.

It must be noted that judges are men and women of very high integrity with very good concept of honour and learning with strength of character and the ability and intellect to assimilate digest and patiently apply the facts and relevant laws. They also have capacity to fairly, fearlessly and firmly resolve all issues with benefit of the rich experience of the Court in its previous decisions. Anything short of this legacy will be derogating from the high reputation of the appellate Courts and an invitation to anarchy. It is against this background that we state without fear of any contradiction that conflicting judgments of our appellate Courts are not just an embarrassment to the Bar and Bench

[20] Y Osibanjo (no.4).
[21] Honourable Justice GA Oguntade 'An Androit & Quintessential Jurist, Biography of Honourable Justice Aderemi' JSC (Rtd) CON at page 233-234.
[22] (2007) 18 NWLR Pt. 908.

but a cancerous growth introduced into the justice system as a whole. It must be surgically removed before it consumes the judiciary. The Supreme Court, the National Judicial Council, The Senior Judges of the Court of Appeal, Chief Judges of States and other High Courts. The Bar must all rise up against this ill-wind that blows no good.

3. Conclusion and Recommendations

The spate of conflicting judgments, which we see in election litigations in the Court of Appeal are quite worrisome and a sore point in the administration of justice in the country and this has invariably made a drastic and comprehensive reform of the justice sector imperative. The reform is particularly needed in the mode of appointment of judges to the appellate Courts.

It is therefore recommended that:

1. The need to introduce ICT is now imperative to effectively co-ordinate, maintain and sustain this number of courts.
2. Judges must be specially recruited amongst legal practitioners in practice.
3. The Court of Appeal should set up Law Research Units to identify conflicting judgments and pass it on to all others on the data base of the Court.
4. The judges should be assisted with research assistants who are very good with the computer. 5. Creation of Zonal Constitutional Court of Appeal one each for the six (6) geo-political zones in Nigeria.