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AN EXTRAPOLATIVE APPRAISAL OF THE ROLE OF COURTS IN THE NIGERIAN ELECTORAL DEMOCRACY

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Abstract
A functional court system is sine qua non in any electoral democracy of any country. The courts not only interprete the laws, protect human rights and maintain checks and balances, but also play very pertinent roles ranging from adjudication of pre-election matters to post- election disputes. The courts are very crucial to the future and survival of any democracy. In Nigeria, the courts have been instrumental to the continuous existence of democratic rule. This study critically examined the roles of the courts in electoral democracy in Nigeria. The methodology of research employed in this study was doctrinal, while data were garnered from both primary and secondary sources. Findings revealed that courts in Nigeria have not fully lived up to expectation in their roles in electoral democracy. This is so as most judges sacrifice justice on the altar of technicalities and in some cases, assume the role of the electorates by usurping their powers either at the pre-election or post-election stages. It was recommended among other things that stiffer punishment should be meted on any judicial officer who engage in corruption and other sharp practices during pre-election or post- election matters to thwart justice and rob the electorates of their mandate. It was further recommended that the independence of the judiciary should be strengthened among other things to cub judicial interference.

Keywords: Courts, election, democracy

1. Introduction

The role of the court in electoral democracy cannot be over emphasized. The courts not only interprete the laws, protect human rights and ensure accountability but also adjudicate on pre-election matters as well as preside over post –election disputes amongst others. In Nigeria, the judiciary recently, seems to have taken or usurped the role of the electorate in deciding who govern them. The power to vote and be voted for during election no doubt clearly resides with the citizens. However, the citizens on many occasions, have not exercised this franchise either because the atmosphere on the polling booth on the day of election is tensed and manned and /or covered with violence, or that the electoral umpire is compromised in announcing the election results. Cases abound on this. More so, it is abundantly clear that the appointment of Independent National Electoral Commission (INEC) chairman is done by the executive arm of Government subject however to the confirmation by the National Assembly ie the Senate.[1]

The electoral umpire, in most cases of elections conducted, always favour the employer (ie the executive arm of the government headed by the president) especially when the employer is a candidate to an election or, when he/she has a special interest to a particular position in an election. The judges that man the courts are also not left out as they are appointed by the executive and they tend to favour the employer (the executive arm) in one way or the other in handling election matters. This sinful and unholy political interference by the executive arm of the government and by extension the legislative arm, pose a serious threat in electoral democracy in Nigeria.

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[1] Section 157 (2) of the 1999 Constitution of the Federal Republic of Nigeria (as amended)

The interferences described above always lead to judicial intervention with a view to correcting the anomalies and salvages democracy. Yet the courts which are believed to be the last hope of the common man have in many occasions displayed judicial rascality by their unjust orders, rulings and judgment and/or judicial pronouncements. No wonder the public and the electorate have lost hope and faith in voting exercise as they see and believe that their votes do not count anymore. It is against this background that this article seeks to investigate the roles of the courts in electoral democracy in Nigeria.

2. Conceptual Clarification

A. Courts

Court, simply put, is an institution with the authority to adjudicate legal disputes between parties and administer justice. A court is any person or institution, often as a government institution, with the authority to adjudicate legal disputes between parties and carry out the administration of justice in civil, criminal and administrative matters in accordance with the rule of law.[2] Courts are, in both common law and civil law legal system, the central means for dispute resolution, and it is generally understood that all people have an ability to bring their claims before a court. In the same vein, the rights of those accused of a crime include the right to present a defence before a court. The major or practical authority given to the courts is referred to as jurisdiction which is derived from the Latin word "jurisdiction." The system of courts that interprets and applies the law is however collectively referred to as the judiciary.

B. Elections

Election has been defined as the process of selecting a person to occupy an office usually a public office. It is also a choice by the major part of those who have a right to choose, and who exercise that right. It is a formed group decision-making process whereby a population chooses an individuals to hold public office[3]. Elections have been the usual mechanism by which modern representative democracy has operated since the 17th century.[4] Election process is also used in many other private and business organizations, from clubs to voluntary associations and corporations. The use of election worldwide as a tool for selecting representatives in modern representative democracies is in contrast with the practice in the democratic archetype ancient Athens, where the elections were considered an oligarchic institution and most political offices were filled using sortition, also referred to as allotment, in which office holders were chosen by lot.[5]

Elections may be used to fill the offices in the legislative, the executive and sometimes the judiciary. They are held in a variety of political organizational and corporate settings. Many countries holds elections to select people to serve in their governments, but other types of organizations hold elections as well. In many places of the world, elections into the government is usually very competitive among the contestants who have already won a primary election within a political party.[6] On the other hand however, elections within corporations and other organizations are often amenable to procedures and rules that are similar to those of governmental elections[7]. Election process determines the democratic government that is well accepted to the people. This is so in democracy; the authority of the government is derived solely from the consent of the governed.

[2] W David, *The Oxford Companion to Law* (Oxford University Press, Oxford, 1980) 301.
[3] B A Garner, *Black's Law Dictionary* (Texas USA: Thomas Reuters, 2014) p.631
[4] M Bernard, *The Principles of Representative Government* (Cambridge University, Press, 1997)
[5] M Bernard, *The Principles of Representative Government(*Cambridge University Press, 1997) p 1-7
[6] S Giulia and S Antonella, Party Primaries in Corporative Perspective (Routledge, 2015)p.1
[7] G Amike, G Debra, G Bernard, (Cumulative voting in corporate Election, South Carolina Law Revie, 35 (2): 295-
311

The principal mechanism of translating that consent into government authority is the holding of genuine, free, fair and credible democratic election. Indeed, all modern democracy hold elections but not all election are democratic election. A democratic election would have the characteristics of a free, fair and credible election inclusive and competitive. Elections also deal with the process upon which the electorate can elect therein representative and such process includes the process of registration of voters by INEC, issuance of permit, voters card for citizen who are eligible to vote, delineation of consistuencies, accreditation of voters, voting, collation of result, recording of the result, announcing of the result, declaration of result and issuance of certificate of returns. Participating in an election, no doubt, is one of the greatest political privileges that any citizen of a country (male or female) can enjoy. This is so because it is through election that people take firm decisions on how they would want to be governed over a period of time.[8]

C. Democracy

The term "Democracy" which emanated from the greek word "demos" and "Kratia," refers to peoples' government. Abraham Lincoln, who is considered the father of democracy, defined democracy as the government of the people by the people and for the people.[9] The key features and /or elements from Abraham Lincoln's doctrine on democracy include:

i. The government is made up by the generality or representative of the people
ii. The government is formed and instituted by the people
iii. The government exists for the welfare of the people [10]

The view of Lincoln above suggests that democracy is a system of government whereby power belongs to the people. There are two types of Democracy, which are: Direct Democracy and Indirect Democracy. Direct Democracy can be defined as the system of government where all adult citizens directly participate in government, by gathering in an assembly of people to take part in the decision making process, in order to govern the city, state or society. On the other hand, indirect democracy is a system of government where the electorate choose their representative to rule on their behalf. This is the exact system of government in practice in Nigeria.

The essence of democracy has to do with the ability of the people to control decision making. Democracy, being the government of the people by the people and for the people, is attained when no one who has reached a voting age is disenfranchised on the basis of gender or any other reasons whatsoever[11]. A democratic government is the government that exercises power within the confines of the supreme law, ie the grund norm, which is the Constitution of the Federal republic of Nigeria where citizens have equal political rights to vote and be voted for.[12] Democracy encourages freedom of individuals in various aspect of political life. Equally among citizens, justice and fairness between the people and the government and the participation of the people in chosing those in government. It entails a system of government where sovereignty belong to the people.

3. The Courts' Role in the Nigerian Electoral Democracy

The courts play a very pivotal role in upholding electoral democracy in Nigeria. The courts, amongst others, serve as bulwark against electoral malpractices and also ensure that there is sanity and sanctity of the electoral process. They maintain checks and balance, uphold rule of law, protect human rights and ensure accountability and transparency. In any democratic system of setting, the

[8] F C Uwakwe and T W Nwoke, An Appraisal of the Rights of Women to Participate in an Election under the Nigeria Electoral Laws, African Journal of Law and Human Rights (AJLHR) 6 (1) 2022.
[9] A Lincoln, *Word Almanac and Book of Facts*, (New York; Press Publishing Company World, 1906) 47
[10] E Malemi, *The Nigerian Constitutional Law* (Princeton & Associates Publishing Co Ltd, 2017) 38
[11] F C Uwakwe and T W Nwoke, 'An Appraisal of the Rights of Women to Participate in an Election under the Nigerian Electoral Laws', *African Journal of Law and Human Rights* (AJLHR) 6 (1) 2022.
[12] A M Jega, Democracy, *Good Governance and Development in Nigeria*(Ibadan: Spectrum Book shops Ltd, 2007) 5

judiciary is always demonstrated in the courts, and this is not different in Nigeria. By the provision of the 1999 Constitution[13], the judicial powers of the Federation and States are vested in the courts.

It is therefore the sole responsibility of the various justices and judges in the various courts to protect and promote democracy by giving decisions rulings or judgments that liberate, and ensure or guarantee that justice is not sacrificed in the altar of technicality or caged with the trending phrase of "substantial compliance" especially with regards to political office holders. The independence of the judiciary has always remained a very germane and controversial issue in the process of judicial practice. However, in Nigeria electoral democracy, the judiciary and /or courts seem to have done relatively well since independence even in the face of tyranny and undemocratic military government. In the case of F*awehinmi v Abacha*[14], the Supreme Court rose to the occasion to ensure the rights of Nigerian citizens are protected no matter the government in power.

The judiciary or courts in Nigeria have over the years helped to promote human rights and by extension the growth of various trappings of democracy in the country. The courts have been used to adequately checkmate executive rascality and uphold the very serenity and santity which is the hallmark of a democratic state or setting. The Supreme Court for example, in *A.G of Kaduna State & Ors v A.G. of the Federation & Ors*[15] assumed original jurisdiction and overturned the unpopular policy of the executive arm of the government on the Naira redesigned policy.

In democracy, the courts play the role of an arbiter and final protectors of the rights of people. The courts advance the democratic culture and custom by making sure that no one is above the law of the land, and that a forum is provided in which an abuse of power can be challenged and addressed. They not only resolve election disputes but also clarify and interprete the laws. The courts have the power to take and make decisions through interpretation and application of the constitution. Constitutional interpretation by the courts help in the shaping of government and its process in democratic setting or state. The courts also ensure above other things, that there is freedom of press to investigate and impartially criticize government policies that are against the electorate.

4. Challenges to the Role of the Courts in the Nigerian Electoral Democracy

Inspite of the very critical functions or roles which the courts in Nigeria play in the country's electoral democracy, they are faced with numerous challenges. Some of the challenges include:

i. Interference by Politicians: The courts in Nigeria are faced with the challenge of political interference in the course of justice delivery. The courts, manned by the judges or justices as the case may be, are sometimes compromise thereby thwarting justice. Sometimes the courts are pressured by politicians to deliver favourable decisions and /or rulings. This very act undermines the core value and role of the courts in electoral democracy in Nigeria.

ii. Corruption and Bribery: In the Nigerian courts, corruption is another big challenge. The issue of corruption is one menace that has eaten deep into the country's judicial system. Most of the judges are corrupt and this undermines public trust and confidence in the Nigerian courts. There have been services of allegations of corruption and bribery in the Nigeria judiciary and this defeats and hamper justice delivery. The rate of bribery, corruption and undue influence in the Nigeria courts is alarming and this does not speak good of Nigeria democracy.

iii Poor Funding of the Courts: It is no longer news that Nigerian courts are inadequately funded. This poor funding always affect the courts' ability in justice delivery. The judges and /or justices are poorly paid, there is dearth of infrastructure and lack of welfare of judges and judicial staff. The

[13] Section 6 of the 1999 Constitution of the Federal Republic of Nigeria
[14] (2000) 6NWLR (Pt 666) 228
[15] Suit Number: SC.CV/162/2023

politicians during and after elections, because of poor funding, entice judges with money thereby swaying their mind to give them favourable decisions or rulings.

iv. Lack of independence: The judiciary in Nigeria seems not to be truly independent. The judiciary is mostly controlled by the executive and sometimes the legislature. The judges are appointed by the executive and we all know that "he who pays the piper dictates the tune"!

5. Conclusion

The courts are the bedrock of democracy in Nigeria and their roles cannot be over emphasized. The courts play indispensable role in the Nigerian electoral democracy, and they have been helping in the protection of people's right, maintenance of power balance, upholding rule of law among other things. However, the courts in Nigeria have been bedeviled with many challenges and these have been affecting their justice delivery and their role in electoral democracy in the country. It is recommended that stiffer punishment should be meted on judicial officers who engage in corrupt or sharp practices which undermine justice. It is further recommended that judicial independence should be strengthened in Nigeria. The courts, more so, should be provided with good infrastructure and judicial officers should be adequately funded as all these would enhance the courts and judges to play their rightful roles in electoral democracy in Nigeria.