

POWERS, DUTIES AND LIMITATIONS OF ELECTION PETITION TRIBUNALS IN NIGERIA: A SOCIO-LEGAL ANALYSIS

Akin Olawale Oluwadayisi*

Abstract

The exercise of the duties and powers of the Election Petition Tribunals (EPTs) in the democratisation process in Nigeria is imperative to producing legitimate leaders. However, there appear certain limitations to the discharge of this core constitutional duty such as corruption of Tribunal Judges and other challenges militating against the EPT. The objectives of this study were to examine the powers and duties of the EPT and the limitations. The study employed the use of mixed research methods consisting of doctrinal legal research and empirical methods. The doctrinal method consisted of primary sources of law including legislation and decided cases and the secondary sources of law used journals, texts and official reports. The empirical methodology adopted structured questionnaire administered to specific groups within the six geo-political zones of the Federation. Data obtained were analysed using multinomial logistic regression and estimated on two scenarios where the Respondents were pooled together and in each category. The results of the study from Judges and Magistrates, Legislators and Law Teachers (without categorisation) showed that the explanatory variables explain about 84%, 76% and 60% respectively of the challenges faced by the EPT and the functional statistics showed that the results were all significant. The

* LL.B(Akungba), LL.M, Ph.D (Ilorin), B.L.(Abuja) ACI Arb., FIPDM (Notary Public); Senior Lecturer, Department of Jurisprudence and International Law, Adekunle Ajasin University, Akungba-Akoko (AAUA); Visiting Senior Academic, Public Law Department, Elizade University, Ilara-mokin, Ondo State; & Fellow, Centre for Comparative Law in Africa, University of Cape Town, South Africa; akin.oluwadayisi@aaua.edu.ng; akin.oluwadayisi@elizadeuniversity.edu.ng

qualitative analysis used personal interviews with selected persons in the legal profession. The findings of the study were that variables that correlate with the study positively or inversely are finance, appointment, political influence, and bribery which constitute challenges to the adjudication of election petitions in Nigeria. The study concluded that adjudicatory powers and duties by the EPT and Courts are continually challenged by several factors that hinder the democratization process.

Keywords: Election Petition, Tribunals, Nigeria, Socio-legal, Analysis, Democratization.

1.0 Introduction

The process of adjudication of election is significant to producing credible leaders in any democratization process. However, the consequence of inconsistent decisions by the Election Petition Tribunals (EPT) including Appeal Court, complaints against tribunals' decisions, recent allegations of corruption of Tribunal Judges, and the challenges militating against the EPT call for in-depth research and analysis. This paper being a product of a research study¹ examined and analyzed legal issues in election petition adjudication. It also examined the factors that shape the independence of Election Petition Tribunals in Nigeria. The study investigated the internal and external challenges militating against the power and duties in the process of adjudication of election petitions.

The aim of the study was partly to discuss the powers, duties, and limitations of election petition Tribunals in Nigeria: using a socio-legal analysis. It is unusual for legal studies to harness the instrument of socio-legal analysis which has become relevant research too to measure the functionality of law and legal instruments in the society that is meant for.

¹Oluwadayisi, Akin Olawale, 'Legal Issues in Election Petition Adjudication in Nigeria's Democratization Process; A Socio-Legal Analysis' Being a PhD Research Study conducted and submitted to the Faculty of Law, University of Ilorin, Ilorin, Nigeria 2019).

The study therefore analyzed the limitations against the EPT with an econometric tool for in-depth research and analysis. The objectives of the study were to:²analyze legal issues in election petition adjudication, examine the factors that shape the powers and duties of EPT, and investigate the internal and external challenges militating against proper adjudication of election petitions.

2.0 Conceptual and Legal Frameworks on Powers, Duties, and Limitations of Election Petition Tribunals in Nigeria

Generally, the role of the Judiciary cannot be underestimated in that the Judiciary is most of the times called the last hope of the common man.³ While one of the core duties of the judiciary is to interpret the law and adjudicate all kinds of disputes brought by the citizens subject to its jurisdiction,⁴an election petition stands out among other cases as it is regarded as *sui generis*.⁵An electoral process that produces leaders that govern the nation is therefore fundamental to the continued existence and sustenance of democracy in Nigeria. Thus, the future of every nation like Nigeria will depend on what subsequent structure is built upon the foundation laid for its democratization through the process of adjudication anchored by the tribunal.

It is imperative to first decipher the perspective in which the study is conceptualized before going into detail to do the examination or analysis. A research paper and analysis of this nature involves a thorough and detailed examination of a subject, issue, or problem through a proposed

²Oluwadayisi, Akin Olawale, *Op. Cit.* at p. iv.

³Egbewole W., 'Judex: Hope for the Hopeful and the Hopeless', (139th Inaugural Lecture of University of Ilorin, Ilorin, Nigeria held on 28 November 2013).

⁴ Section 6 of Constitution of Federal Republic of Nigeria (CFRN) 1999 (as amended).

⁵*Ehuwa v. OSIEC* [2006] 10 NWLR (Pt. 1012) 544.

study that aims to provide a breakthrough with much breaking detailed explanation of the issues involved in the study and simple understanding.⁶

In the first instance, legal issues in election petitions are those main questions of law, arising from the available set of facts that require solutions or begging to be addressed in the area of election petitions. The powers and duties of the tribunal is principally that of adjudication is the exercise of judicial authority, that is, the power of the EPTs, to resolve electoral disputes. But an election petition itself refers to the procedure for challenging the result and process⁷ of any election held under an organized system of electoral law to enthrone a legitimate democratic government. It is observed that the end product of a correct and ideally conceived electoral process and adjudication is to achieve a seamless democratization process. Democratization, on the other hand, can be described as the process of transition into a democracy that will experience more democratic values and principles.⁸

The study examines the corpus of legal frameworks,⁹ theories, the practice of election petitions and courtroom experience during trial and adjudication by the EPTs to discover and address the attendant challenges to EPTs and the consequences on the Nigerian democratisation process. As

⁶Merriam-Webster Dictionary, 'Analysis' available at <<https://www.merriam-webster.com/dictionary/analysis>> accessed 22 July 2018.

⁷*Underline mine.* The definition of election petition should not be restricted to challenging the result but should also include challenging the process. This is because the process gives birth to the result and if the process is successfully challenged and negated, definitely the result will be nullified. This is the reason why the constitution, electoral laws, rules, procedures and election manuals form a cumulative fundamental standpoint upon which an election can successfully be challenged.

⁸Christopher Musacato, 'What is Democratisation-definition and Process', available at <<https://study.com/academy/lesson/what-is-democratization-definition-process.html>> accessed 22 July 2018.

⁹Oluwadayisi, Akin Olawale, *Op. Cit.* at p. 17.

Osinakachukwu and Jawan noted,¹⁰ the trend of electoral malpractice that is rather increasing has a serious negative impact on the democratization and sustenance of Nigeria's democracy and ought to be addressed by the EPTs. Nevertheless, the EPTs in the democratic dispensation appear to have made some significant developments considering notable decisions¹¹ of the Supreme Court (S.C.) and Court of Appeal (CoA) on election petitions. But can one confidently say that the EPTs are independent enough in such a way that will guarantee the democratization process? Can the EPTs administer justice with the *sui generis* nature of election petitions in the light of the obvious challenges they face? These are some of the crucial questions and issues begging for answers.

This study further investigates how the tribunals, as a pivotal institution in the democratization process, through their constitutional role of adjudicating election petitions, can be improved upon. The idea of connecting democratization to this study is desirable because of the need to understand the functioning of electoral laws, the effectiveness of EPTs as an institution and for its decisions to be properly assessed from the perspective of the practitioners, stakeholders, and academics in the legal profession who are stakeholders in electoral law and justice.

There exist different theories on democratization, after a thorough examination of the various theories of democratization, the study adopts the legal and institutional approach as the most appropriate. 'Legal' because certain rules must guide the transition to democracy such as the Constitution, electoral laws, and rules and procedures. 'Institutional' because crucial bodies serve as midwives to conduct the election in line

¹⁰Nwokeke P. Osinakachukwu and Jayum A. Jawan, 'The Electoral Process and Democratic Consolidation in Nigeria', p.129 (*Emphasis Mine*).

¹¹*Peter Obi v. INEC* [2007] All FWLR (Pt. 378) 1116; *Ameachi v. INEC* [2008] 1 M.J.S.C. 1; *Olusegun Mimiko v. Agagu* [2009] All FWLR (Pt. 462) p. 1123; *Aregbesola v. Oyinlola* [2008] All FWLR (Pt. 436) p. 2019; *Fayemi v. Segun Oni* [2011] All FWLR (Pt. 554) p. 1.

with extant laws and rules after which the judiciary plays a major role in reviewing all the processes and activities when questioned by way of election petition. The modernization theory already lends credence to this proposed approach in that it mentions some indices that determine democratization such as per capita income, literacy of the citizens, industrialization, and urbanization all of which determine people's choice during election and the citizens will have to exercise their voting right by the legal frameworks.¹²

The transition approach also has one of its ingredients for the determination of democratization as the adoption of democratic rules. According to the approach, politicians and the electorate must be able to habituate these rules.¹³ Free and fair elections, rule of law, and independent tribunals are undeniably core principles among these rules in democratization. Hence, this supports the proposal to understand democratization from the perspective of law and institutional approach. The structural approach appears to be the only one far from the view held by this study on the role of law and tribunals in the democratization process.¹⁴ The theory, which is purely based on the economic structure of the society, especially on the rule of the aristocratic bourgeoisie and the revolutionary break by Moore, appears inapplicable to the present democratic experience.¹⁵

The study, therefore, conceives that there exists an inextricable link between the exercise of legal powers, duties, and limitations on the judicial panel on election petitions and the attainment of democratization, the election process, leading up to the attainment of an ideal democracy. The

¹²See Sakwa, Richard, 'Modernisation, Neo-modernisation, and Comparative Democratisation in Russia' (28)(1) (2012) *East European Politics*, 43-57.

¹³Rustow A.D., 'Transitions to Democracy: Toward a Dynamic Model', 361

¹⁴Pop-Eleches, Grigore, and Graeme B. Robertson, 'Structural Conditions and democratization' 26 (2015) *J. Democrac*, 144.

¹⁵Bernhard, Michael, 'The Moore Thesis: What's Left After 1989?'" (23)(1) (2016) *Democratization*, 118-140.

election process encompasses the totality of the method and law for holding an election. No doubt, elections have become a major factor in the stabilization and democratization of emerging democracies and post-conflict countries.¹⁶

3.0 Research Methodology

The study employed the use of mixed research methods consisting of doctrinal legal research and non-doctrinal methods. The doctrinal method consisted of primary sources of law including legislation and decided cases and the secondary sources of law used journals, texts, and official reports. The non-doctrinal methodology adopted a structured questionnaire administered to specific groups within the six geo-political zones of the Federation which were Abuja, Anambra, Edo, Gombe, Kano, Kwara, Lagos, and Ondo States among the 36 states of the Federal Republic of Nigeria.

The study used 1242 questionnaires consisting of 219 from Judges and Magistrates, 230 from Legislators, 298 from Lawyers, 244 from Law Teachers, and 251 from Graduate Law Students.

4.0 Results, Findings and Discussion of Quantitative Data Obtained

This section presents twelve sets of results for consideration. The primary methodology of the researcher's test is the use of regression and correlation coefficients. In the first set of results, all of the respondents were merged without categorization. This is for the general case which sum all the responses from all of the categories of respondents interviewed. This is contained in table 2.3(a), 2.3(b), 2.3(c) and 2.3(d) respectively. Table 2.3(e) to 2.3(q) contained the detailed result of regression of all the categories of the respondents.¹⁷

¹⁶Winrich K., *The Role of Election in Emerging Democracies and Post-Conflict Countries Key Issues, Lessons Learned and Dilemmas*, (Friedrich Ebert Stiftung, Germany 2010) 1.

¹⁷ Appendix B contained Table 2.3(e) - 2.3(q) which the detail result of regression of all categories of the Respondents.

**Table 2.3a: A Cross-correlation Table for the Non-Categorised case
(Non-pooled Case)**

Unique variables	explanatory	Independent Election Petition Tribunal				
		Judges and magistrates	Legislators	Graduate Law Students	Lawyers	Law Teachers
Neutral tribunal		0.128	-0.103	-0.152	0.213	0.423
Funded judiciary		-0.343	0.441	0.129	0.248	0.467
Election petition pressure		-0.374	-0.381	0.223	-0.333	0.637
Justice for the rich alone		-0.366	-0.579	-0.109	0.003	-0.265
Court tribunal lawyers (SS)		-0.907	0.523	-0.105	0.035	-0.312
Court bribery (DD)		0.129	-0.463	-0.296	0.089	0.609

Source: Akin Olawale Oluwadayisi' Study Computation of field survey 2019.

Table 2.3a-d shows the cross-correlation coefficients for each of the variables explaining the extent of independence of the Election Petition Tribunals. These estimations were done under four categories for the five chosen agents in the adjudicatory system. These unique variables that correlate with the thesis positively or inversely are finance, appointment, political influence, bribery and challenges. These variables are well represented in the Questionnaire administered from Question 1 to Question 17.18 The estimations were done for the non-categorized and the

¹⁸ Questionnaire administered. Source: Akin Olawale Oluwadayisi' Study Computation of field survey; Table 2.3b: A cross-correlation table for the categorised case (non pooled case) of PhD Research Study conducted at the Faculty of Law, University of Ilorin, Ilorin, Nigeria.

categorized situations when all the data were pooled together and when they were not pooled together. Table 2.3a shows that considering the view of the Judges and Magistrates, the neutrality of the EPT and reluctance to collect bribes were the only positively correlated variables. The implication of this is that funding, social status of litigants, political pressure, and influence on election petition tribunals and lawyers are not significant in frustrating the independence of the adjudication from the perspective of the judges and magistrates.

Also, from the perspective of the legislators, funding and political pressure on the court/tribunals are the major factors impacting the independence of the tribunals. For the graduate law students, lawyers, and law teachers, poor funding was positively correlated with the independence of the tribunal. The implication of this is that increasing the funding for the tribunal will improve the independence of the tribunal. To evaluate the relevance of each of these variables, the research work categorizes the response of each of the respondents such that only those who agreed to the apriori expected are considered. This study presented the analysis of both the categorized group and their respondents presented in tables.¹⁹

Looking at Table 2.3b, one will observe the unique similarities in the responses of the graduate law students, the lawyers, and the law teachers. The homogeneity was according to the magnitudes of the coefficients and the signs of the coefficients. Unlike in tables 2.3a, only bribery of the court was likely to impede the tribunal's independence. Funding, political pressures on the election petition tribunal, and the economic status of litigants were not significant variables to influence the tribunal's performance. Consequently, the hope reposed in it as the final resort for the common man can tangibly be realized in the democratization process.

¹⁹Source: Akin Olawale Oluwadayisi' Study Computation of field survey; Table 2.3b: A cross-correlation table for the categorised case (non pooled case) of PhD Research Study conducted at the Faculty of Law, University of Ilorin, Ilorin, Nigeria.

Table 2.3c: A Cross-correlation Table for all the Group Cases (Uncategorised)

Unique Variables	Explanatory	Independence of Election Petition Tribunal
Neutral tribunal		0.152
Funded judiciary		0.129
Election petition pressure		0.223
Justice for the rich alone		0.109
Court tribunal lawyers (SS)		0.105
Court bribery (DD)		0.296

Source: Akin Olawale Oluwadayisi' Study Computation of field survey 2019.

Table 2.3c shows the cross-correlations table for the general case when all of the responses of the agents are merged. Compared to the specific cases, political influence and bribery are the variables that significantly affect the adjudication of the Nigerian election petition tribunal system. Table 2.3c is not significantly different from that of 2.3d considering the responses concerning the strength of the variables in affecting the independence of the election petition. While politics was a dominant factor in the general case, it is insignificant in the categorized case. This means that there was a differential disposition to the strength of influence political pressure played on election adjudicatory system. However, when the views are harvested and merged as a whole, it plays a significant impact on the overall perspectives of the different groups of respondents.

Table 2.3d:

A cross-correlation table for all the group cases (Categorized)

Unique Explanatory Variables	I Independence of Election Petition Tribunal
Neutral tribunal	0.038
Funded judiciary	0.014
Election petition pressure	0.035
Justice for the rich alone	0.041
Courttribunallawyers(SS)	-0.126
Court bribery(DD)	-0.121

Source: Akin Olawale Oluwadayisi' Study Computation of field survey

Based on table 2.3d the independence adjudication of the election petition is positively related to funding and challenges facing the tribunal. As a result, the election adjudication is significantly influenced by finance and other challenges, the adjudicatory system may be well positioned to perform its duty in a growing democracy. Also, the table shows that an increase in political influence and offering bribes towards obtaining justice will necessarily increase the degree of dependency of the EPT and judiciary system on external factors in deciding the cases instituted before the EPT. A similar relationship will exist for the effect of the judicial welfare, challenges faced by the election petition tribunal, and the influence of the rich. Thus, the relationship that exists between the variable factors and the thesis may not be unconnected with the poor performance of the Nigerian democracy.

Further clarification can be obtained from Table 2.3(e).²⁰ It can be concluded from the result that the explanatory variables Question 1 to

²⁰ Table 2.3(e) - **Source: Akin Olawale Oluwadayisi' Study Computation of field survey**

Question 5 of the research study (Q2 – Q5) have an inverse relationship as expected, then, it showed that the decision of the election tribunal, judicial appointment, and promotion, and other extraneous influences may not necessarily have political influence. However, the result from the table showed that the explanatory variables (Q6 – Q10) which are expected to have an inverse relationship with the dependent variable have a positive relationship. From the result, it can therefore be inferred that judicial functions have been stalled by a lack of finance because the performance of the judiciary functions still largely depends on finance. So, if adequate provision of funds is not made for the judiciary in the budget by the executive, then, the former remains independent of the political system. The same thing applies to judicial officers' welfare which needs to be adequately provided for in the budget. All of these influenced the judicial officers in the discharge of their duties.

Also, from the result, it is realized that variables (Q11 – Q13) showed a negative relationship with the exogenous variable, which means that the election tribunals face more challenges in the performance of their adjudicatory duties on election petitions compared to other court cases and that these challenges against EPT's independence have a serious impact on the future of democracy, as such one can equate democratic rule with military rule considering judicial independence. The result also showed that the justice system does not necessarily work for the rich and powerful, especially during the election petition.

Data obtained were analyzed using multinomial logistic regression and estimated on two scenarios where the Respondents were pooled together and in each category. The results of the R² for Judges and Magistrates, Legislators and Law Teachers (without categorization) showed that the explanatory variables explain about 84%, 76% and 60% respectively of the reason why current adjudication does not support democratization.

The results for Graduate Law Students and Lawyers were however not significant. The 'F' statistics showed that the results were all significant. The qualitative analysis used personal interviews with selected persons in the legal profession.

4.2. Presentation of Result and Analysis of Qualitative Data

This study was further conducted using unstructured personal interview questions to make findings about the thesis that the current adjudication of election petitions at the tribunals in Nigeria does not support the democratization process and sustainable democracy. This aspect applies the principles and theories of data gathering and analysis of qualitative research.²¹ This work adopted the process of setting up unstructured questions on variables²² that can determine or explain further the research hypothesis, administering questions and obtaining responses through recording materials such as pens and notes, typing on a computer and using of audio recording device, transcribing the manuscript, and then coding the various responses by developing thematic focus from the data obtained based on emphasis common to the interviewees and analysis/discussion of the data responses. Although, Kent Lofgren suggests a step-by-step analysis,²³ the trust of his guidelines is also built into the stages mentioned above.

The qualitative data analysis approach was based primarily on personal interviews conducted with persons with relevant expertise and experience. Among those who were interviewed were Judges who have sat on tribunals

²¹ Alan Bryman, *Social Research Methods* (Oxford University Press, London, 2015); Educational Foundations and Research, University of North Dakota, 'Writing Tip #3: Writing Qualitative Findings Paragraphs', (2014) available at <<https://www.youtube.com/watch?v=mmKuvwk8x84>> accessed 3 October 2023.

²² See Appendix B which contain Questions Used for Oral Interview on experts in the field of election adjudication and litigation.

²³ Kent Lofgrens, 'A Step-by-Step guide', Youtube, <www.youtube.com/watch?v=DRL4PF2u9xA> accesses 8th August 2017.

and have practical experience in both adjudicatory and administrative operations, Senior Advocates of Nigeria who appeared frequently at the various tribunals and learned Professors who have done relevant research on the judiciary and administration of justice. The researcher posits that the opinions of these persons will rather be balanced and instructive on specific legal issues on which the research is based. Thus, similar to the research survey, responses from these interviewees represent the judges, legal practitioners and law teachers, still on similar questions but in a different manner.

In this analysis, the researcher found out that some of the results of the data obtained from participants have similar responses, particularly on the major themes or factors that strongly relate to the proposition of the thesis. Hence, the modality of data is the Coding/Theme emphasis, Quotations from participants relating to the subject area and discussion with previous studies published or concepts (TQD).²⁴

This research work finds certain themes and words or phrases that are common from the Respondents' comments relevant to the questions asked, hence, the need to code and develop theme emphasis for easy discussion. As opined by Anselm L. Strauss, any researcher who wishes to become proficient at doing qualitative analysis must learn to code well and easily. The excellence of the study rests in large part on the excellence of the coding.²⁵

From the responses, the coded phrases under which the discussion of this study work is done are: understanding and Experience by Some Tribunal Judges, challenges facing the Tribunal, political pressure and the question

²⁴ This is the researcher's adaptation having studies various theories and guidelines for qualitative analysis; See also Steinar Kvale and Svend Brinkman, *Interviews: Learning the Craft of Qualitative Research Interviewing* (Sage Publications London 2015).

²⁵ Anselm L. Strauss, *Qualitative Analysis for Social Scientists* (Cambridge University Press, 1987) 27

of politics, time to analyze issues, evidence and facts of cases, the effect of Tribunal's decisions on democratization process and peoples' perception on the constitutional court, inconsistent decisions, inadequate investigation and prosecution of offences.

4.2.1: Understanding and Experience by some Tribunal Judges

It was generally observed from data obtained that some of the tribunal Judges do not adequately appreciate the nature and experience of election adjudication. As a result, some felt intimidated by the array and caliber of lawyers that appeared before them. One of the Respondents who is a Senior Advocate of Nigeria observed this common trend in the tribunal panels and stated as follows: "Technically some judges do not understand the nature of election petition adjudication. Many have no experience. Some judges are easily intimidated because of the lack of understanding."²⁶ On the contrary, the response from the bench states that there are plans to mentor newly appointed Judges of the EPT. In any case, the view of the researcher is that this plan is not concrete enough to acclimatize the newly appointed members of EPT with the nitty-gritty of the adjudicatory process and uniqueness of election petition adjudication.

4.2.2: Challenges facing the Tribunal

Virtually all the interviewees agreed that the tribunals are facing some challenges that pose a great threat to their adjudicatory duties. It is interesting to know that for example, a senior Justice on the bench presents some challenges that were expository though vary from what other interviewees mentioned. Her in agreement with question No. 5 of the interview question which states: *Are there unique challenges to the adjudication of election petitions by the tribunals* she stated that:

"There are quite some challenges. For example, petitions against tribunals such as those witnessed in Anambra State, Osun State and

²⁶ Response to Author's Personal Interview conducted on Yusuf Ali, SAN on 24th April, 2017 at 8.20am at Ghali Chambers, Unity Road, Ilorin, Nigeria.

Akwa Ibom just to mention a few. The challenges of security too in the North East led to the relocation of tribunal sitting as well as in River State where the judiciary was not in place for more than two times like in Akwa Ibom...On finance also, the government does not advert its mind to make special provisions in the budget for the tribunal during an election year.”²⁷

Certain specific challenges were mentioned which fundamentally disclosed a serious lacuna in the process of adjudication and achievement of justice. It was observed and mentioned by one of the interviewees and captioned thus:

The Challenges are numerous because of time constraints. So, they are in a hurry due to time constraints and scheduling orders. They are not entitled to be at large. In the case of witnesses, you may have 1000 witnesses, how are they going to do that within the period? So, they are bound now force to reduce witnesses to the essentials. Petitioners are now faced particularly, when they may have a good case, they have to streamline their witnesses. This is not really good because if you look at the Supreme Court judgement relating to issues for example, evidence of non-voting, they said if you allege that no voting took place it must be the evidence of the voters with their voter's card seen with the register. Now, if you have like this in a state, you have about 3000 witnesses and no hearsay evidence is allowed, that is a blow to the petitioner, he cannot prove it.”²⁸

²⁷ Responses to Author's Personal and Oral Interview Conducted/Administered on the President of Court of Appeal, Justice Buckachawa on Thursday 23rd June, 2016 at the Headquarters of Court of Appeal of Nigeria at 12.00pm

²⁸ Response to Author's personal and Oral Interview Conducted Dr. Alex Izinyon, SAN on the 25th August, 2017 at 4pm at his Law Office- Itohan House, Plot 1 Kinshasha Street, Wuse Zone 6, Abuja.

Another interviewee, in his analysis,²⁹ mentioned these challenges to include technicality and understanding of election petition adjudication, proceeding not being automated, underlining fear of the panel judges where sitting Governors are respondents in a suit, and appointment of judges with a highly volatile allegation of involvement in politics.

With these challenges, can we pretend to say that the current adjudication supports a sustainable democracy? I believe that this study has exposed one to underlying thorns in the flesh of adjudication of election petitions in Nigeria intending to provide a remedy.

4.2.3: Political Pressure and Politics

The interview found out that election petitions remain a political question and this is one of the reasons that affects adjudication in that certain matters are held to be political leaving the judiciary helpless in resolving them. Also, the manner of political pressure on the tribunal is apparent, sometimes, by the supporters of a political candidate before the tribunal. One of the interviewees who was a tribunal Judge on different panels, said:

Now, because of the type of politics we play in this country, it is winner-takes-all all. Because of this, there is always pressure to win and this is what is causing problems in conducting the election when it is conducted and the petition is brought, that pressure is transferred from the field to the election petition tribunal. This is the reason for this pressure to do everything that will swing victory to your side.³⁰

Owing to this attitude of the politician and their desperation the tribunal is at the receiving end of the pressure that follows. Consequently, “the counsel

²⁹ Response to Author’s Personal Interview conducted on Yusuf Ali, SAN on 24th April, 2017 at 8.20am at Ghali Chambers, Unity Road, Ilorin, Nigeria.

³⁰ Response to Author’s Personal and Oral Interview Conducted/Administered on Justice D.I. Kolawole, Presiding Justice Ondo State High, Oka-Akoko Judicial Division on 18th October 2017 at 12pm (A Tribunal Member at Abia, Delta and Kaduna)

and nature of Nigerian politicians may not allow Alternative Dispute Resolution of pre-election cases.”³¹

4.2.4: Time to Analyse Issues, Evidence, and Facts of Cases

The question of time to analyze cases featured prominently in the data collected from experts in the courtroom of litigation and Judges alike. It calls for worry and serious diagnosis as the consequences of this affect the justice of the case. Virtually all the interviewees in their responses agree indirectly that the current adjudicatory system of election petitions is seriously affected by the inadequate time to analyze cases and this further jeopardises the achievement of true democratization which the tribunal is set up to ensure. According to a Justice Respondent interviewed:

The Judges have the right to express their opinions though expected to follow guidelines. However, time to read and analyze cases in detail is not there for the Judges. The Court of Appeal distributes decisions to other tribunals. The Court of Appeal is trying to be online but the challenge of finance is to cover the 18 divisions of the Court of Appeal. Funding is dwindling instead of increasing.³²

Again, the time constraint is a serious pressure on the tribunal Judges to meet up with their scheduling order. In cases where the number of witnesses runs into 1000 witnesses to deal with them by allowing their oral evidence within the period becomes unachievable. So, they are bound now force to reduce witnesses to the essentials. Petitioners are now faced particularly, when they may have a good case, to streamline their witnesses.

³¹ Response to Author’s Personal and Oral Interview Conducted/Administered on the President of Court of Appeal, Justice Backachawa on Thursday 23rd June, 2016 at the Headquarters of Court of Appeal of Nigeria at 12.00pm

³² Response to Author’s Personal and Oral Interview Conducted/Administered on the President of Court of Appeal, Justice Backachawa on Thursday 23rd June, 2016 at the Headquarters of Court of Appeal of Nigeria at 12.00pm

This practice as observed by one of the Senior Advocates of Nigeria who to the author's interview question is not good because if you look at the Supreme Court judgement relating to issues for example, evidence of none voting, they said if you allege that no voting took place it must be the evidence of the voters with their voter's card seen with the register.³³ Invariably, in such a situation like this, where witnesses are in thousands, in a state, and no hearsay evidence is allowed, it becomes a great impediment to the petitioner to establish or prove.

4.2.5 Effect of Tribunal's Decisions on the Democratisation Process and Peoples' Perception of Constitutional Court

The questions leading to this thematic issue are: should there be a constitutional court to resolve election petition cases? Should the mandate of the people in an election be primarily determined by the people at the election rather than the outcome of the tribunal? One of the Professors interviewed thinks that: "The peoples' vote should determine and this will reduce tribunals' election petitions. It is not healthy for the democracy if the judiciary is the determinant of people's votes."³⁴ But another expert in the courtroom of electoral litigation views that the tribunal cannot be displaced but encouraged:

If there is no opportunity of an election petition tribunal, it will lead to anarchy and chaos. Tribunals douse tension. Confidence to vote is ensured because of public confidence in the tribunal. It also helps politicians to galvanize their supporters because of trust in the tribunal. It has a calming effect on the electorates and supporters of candidates at the election. Tribunals should be encouraged.

³³ Response to Author's personal and oral Interview Conducted Dr. Alex Izinyon, SAN on the 25th August, 2017 at 4pm at his Law Office- Itohan House, Plot 1 Kinshasha Street, Wuse Zone 6, Abuja.

³⁴ Response to Author's Personal Interview on Professor M.M. Akanbi on the 12th August 201 at 3.22pm at Department of Commercial Law, University of Ilorin, Ilorin, Nigeria relating to using Alternative Dispute Resolution to resolve of Pre-Election Disputes.

Similarly, a Respondent with INEC argued that having regard to the nature of our society, I will give the court a pass mark. An aggrieved person will likely criticise the system and many petitioners usually see at the end of the cases that they do not have a case.³⁵ While a Senior Advocate of Nigeria suggests the creation of a constitutional court where the political cases go to and thus, prevent a situation where the Supreme Court is belaboured again.³⁶ A response from the bench among those interviewed said no to constitutional court because it is unnecessary.

4.2.6: Inconsistent Decisions

The study also attested to practical cases of inconsistent decision which was identified as a bad omen for the judiciary. However, a positive report as it was observed from the Respondent that “issues of inconsistencies were more manifest in 2011 general election. The INEC made a formal presentation to the Chief Justice of Nigeria on the issue and this was addressed by Supreme Court in subsequent cases.³⁷ A Senior Advocate of Nigeria in his response to interview questions identified that inconsistent decisions were occurring as a result of some causes which he identified thus:

The reason for these conflicting decisions is ignorance. Another one is ego. Because the ego I am talking about is that where the decision of a division is cited to, if they are junior, they feel that this Justice was just called to the Court of Appeal recently, they ignore it. Even when you tell them this is the decision of a learned brother, they find one way or the other around it. The

³⁵ Response to Author’s Personal Interview on Mr. Inuwa T.M., Deputy Director, Litigation, INEC Headquarters at Plot 436 Zambezi Crescent, Maitama District, Abuja on 28th March, 2018 at 4pm.

³⁶ Response to Questions during an Exclusive Interview on Channels Television on Wole Olanipekun, SAN on 25th December 2016 at 4.30pm

³⁷ Response to Author’s Personal Interview on Mr. Inuwa T.M., Deputy Director, Litigation, INEC Headquarters at Plot 436 Zambezi Crescent, Maitama District, Abuja on 28th March, 2018 at 4pm.

ego is there when you bring the decision to them, this is what your leaned brother has decided, let us avoid this conflicting decision, they will refuse.³⁸ Another set of excuses found for why there were inconsistent decisions was mentioned by a respondent from the Bench to include the view that the;

The rights of the Judges to express their opinion although, they are expected to conform to guidelines. The time to read and analyze cases is not there. The Court of Appeals in trying to distribute decisions and be online and connect the 16 divisions of the Court, that is while we are wiring the court now. But funding is dwindling instead of increasing.³⁹

5.0 Findings

The findings of the study were:

1. variables that correlate with the thesis positively or inversely are finance, appointment, political influence, bribery and challenges;
2. election petition adjudication has progressed with trends and the legislature has been responsive to courts' decisions in making amendments to bridge gaps in the law;
3. the career pattern of some tribunal Judges do not show understanding and experience of the practice of adjudication of election petitions and there were observable inconsistent judgements that were common to the Court of Appeal but have reduced after the 2011 general elections due to the Supreme Court's intervention; and

³⁸ Response to Author's Personal and Oral Interview Conducted Dr. Alex Izinyon, SAN on the 25th August 2017 at Itohan House, Plot 1 Kinshasha Street, Wuse Zone 6, Abuja at 4pm

³⁹ Response to Author's Personal and Oral Interview Conducted/Administered on the President of Court of Appeal, Justice Buckachawa on Thursday 23rd June, 2016 at the Headquarters of the Court of Appeal of Nigeria at 12.00pm

6.0 Conclusion

The study concluded that adjudication by the EPTs and Courts are challenged by several factors that hinder the democratization process. There is a need for restructuring of electoral justice sector through monitoring, assessment, and improved funding. The study further recommended pre and post tribunal Workshops, the establishment of an Election Adjudication Monitoring Committee, coordinated prosecution of electoral crimes, and amendment of the Electoral Act.