

## THE JURISPRUDENCE OF THE SUPREME COURT IN ELECTORAL MATTERS AND THE REALITY OF THE *SUI GENERIS* DOCTRINE

Akin Olawale Oluwadayisi\* & Omoniyi Bukola Akinola\*\*  
& Remi Peter Olatubora\*\*\*

### Abstract

*The jurisprudence of a court refers to the collective body of legal principles, doctrines, and decisions that guide the court's decisions and interpretations of the law. It encompasses the court's philosophical approach to legal issues, its methods of legal analysis, and its precedents and decisions. The jurisprudence of a court evolves over time, reflecting changes in societal values, legal scholarship, and the court's composition. It is essential to understanding the court's decisions and predicting future outcomes. The jurisprudence of the Supreme Court in electoral matters revolves around the antecedents and trends of the Supreme Court in deciding cases based on sui generis. This paper aims to critically appraise the application of the doctrine of sui generis as it applies to the adjudication of cases concerning election matters in Nigeria. It beams the searchlight on the Supreme Court and the effect of many decisions held based on the sui generis principle as it concerns electoral adjudication. The methodology of approach and appraisal is doctrinal and analytical. The findings*

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\* LL.M, PhD (Ilorin), B.L.(Abuja) ACI Arb., FIPDM (Notary Public); Ag. Head of Department, Jurisprudence and International Law, Adekunle Ajasin University, Akungba-Akoko (AAUA), 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

\*\* PhD, Professor of Law, School of Law, Kampala International University, Kampala, Uganda. Email: bukola.akinola@kiu.ac.ug

\*\*\* PhD, Senior Advocate of Nigeria and Principal, Remi Olatubora & Co, Lokogoma, Abuja. Email: aderemiolatuboraandco@gmail.com

*are that the Supreme Court of Nigeria and the election tribunals have greatly enriched electoral jurisprudence. However, the holding of some cases based on the doctrine has been criticised for the negative effect it has on the doctrine of stare decisis and 'substantial justice'. The paper makes recommendations that will assist the Supreme Court of Nigeria enhance its electoral jurisprudence, addressing criticisms, and strengthening the integrity of the judiciary in its adjudicatory role in the electoral process.*

**Keywords:** Electoral disputes, jurisprudence, sui generis, Supreme Court, democratisation, Nigeria

### **1.0 Introduction**

The process of election in any country is not complete without the role of the court. The court asserts its duty in the interpretation of the laws by establishing its jurisprudence which reflects the court's legal philosophy, its understanding of the law, and its role in shaping the legal landscape. The jurisprudence of the court is a collection of previous decisions that serve as guides for future cases, legal principles and concepts that guide decision-making, underlying philosophical and legal theories that inform the court's decisions, the court's approach to legal issues, such as its stance on individual rights or government power and court's approach to legal analysis, such as its use of stare decisis (precedent).

On the other hand, Nigeria is one of the countries that practise democracy-a representative government.<sup>1</sup> This is achieved through periodic elections.<sup>2</sup> However, to achieve a free and fair electoral process, people must be free to make political decisions without interference, fear of intimidation, or manipulation of the electoral

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<sup>1</sup> Adeyinka Theresa Ajayi and Emmanuel Oladipo Ojo, 'Democracy in Nigeria: Practice, Problems and Prospects' *Developing Country Studies* (2014) 4(2), 107.

<sup>2</sup> *Ibid.*

process through rigging *inter alia*.<sup>3</sup> The Court over the years have played an important role in ensuring that the will of the people is protected. However, the political space of the country has been soiled with corruption and delayed tactics and this is evident in the duration of the election before the extant laws.<sup>4</sup> In recent years, the court has classified electoral matter to be of its own or special kind – *sui generis*. This notion recognises that electoral issues require specialised legal analysis and tailored judicial processes, considering the unique and situation-specific nature of electoral matters. Against this backdrop, this paper addresses the relevance of *sui generis* doctrine in election matters, the Supreme Court and its jurisdiction on election disputes, landmark Supreme Court decisions on election matters decided *sui generis* and the effects of supreme court-reviewed decisions on elections and the democratic process. The paper finds that the Supreme Court of Nigeria and the election tribunals have greatly enriched electoral jurisprudence. However, the holding of some cases based on the doctrine has been criticised for the negative effect it has on the doctrine of *stare decisis* and ‘substantial justice’.

## 2.0 The Relevance of *Sui Generis* Doctrine in Election Matters

The concept of *sui generis* is a Latin phrase that connotes ‘of its own kind’.<sup>5</sup> In the legal context, it refers to things in their class. Limiting the concept of *sui generis* to election matters, it means that election matters are of a unique kind. The distinctiveness of an election petition is also striking in the fact that it is neither regarded as a criminal nor a civil matter.<sup>6</sup> The Supreme Court has expressed this uniqueness in a plethora of cases. In *Orubu v. NEC*,<sup>7</sup> the court held that the election matter is

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<sup>3</sup> Lambe Emmanuel Oyewole & Mubarak Sulaiman Jamiu, ‘Political Conflict and Electoral Violence in Nigeria: Implications on National Security’ *African Journal of Politics and Administrative Studies*, (2023) 16(2), 442.

<sup>4</sup> David U Enweremadu, ‘The Judiciary and the Survival of Democracy in Nigeria: Analysis of the 2003 and 2007 Elections’ *Journal of African Elections* (2011) 10(1), 114.

<sup>5</sup> TheLaw.com, ‘Sui generis’. Retrieved from <[https://dictionary.thelaw.com/sui-generis/#google\\_vignette](https://dictionary.thelaw.com/sui-generis/#google_vignette)>

<sup>6</sup> CJ Ubanyionwu, ‘Election Petition Cases and the Right to Fair Trial within a Reasonable Time in Nigeria’ *NAUJILJ* (2012) 111.

<sup>7</sup> (1988) 5 NWLR (Pt. 94) 323 at p. 347.

unique and because of its peculiarity, it cannot be treated the same way in which a typical claim will be treated. Uwais, CJN (as he then was) aptly put:

An election petition is not the same as the ordinary civil proceedings. It is a special proceeding because of the nature of elections which by reason of their importance to the well-being of a democratic society are regarded with aura that places them above the normal, day to day transactions between individuals which give rise to ordinary or general claim in court. As a matter of deliberate policy to enhance urgency, election petitions are expected to be devoid of the procedural clogs that cause delays in the disposition of the substantive dispute.<sup>8</sup>

In *Abdulahi v Elayo*,<sup>9</sup> The Court OF Appeal exposed the *sui generis* nature of the election petition. The Court per Oguntade JCA, surmised that the general civil procedural rules does not apply to election petition proceedings because it is *sui generis*, a kind of its own with special rules developed and applied by the court.<sup>10</sup>

As has been stated, election petition is of a unique nature – *sui generis*. This ensures that the area of law has its special procedures and legal framework.<sup>11</sup> The relevance of this aspect of law is of great significance, even more, in a state like Nigeria with its nascent democracy. The political terrain of Nigeria is not the smoothest, and politicians over the years have used the machinery of law to frustrate the process of the law with respect to election petition.<sup>12</sup> This is evident is the delay of electoral cases in court. Some election petition took years in court before

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<sup>8</sup> *Ibid.*

<sup>9</sup> (1993) 1 NWLR (Pt. 268) 171.

<sup>10</sup> *Ibid.*

<sup>11</sup> *Ugba v Suswam* (2012) 4 NWLR (Pt. 1345) 427

<sup>12</sup> Dentons Acas-law, 'Election Petitions in Nigeria; The 21 Days' Conundrum' (2023). Retrieved from <https://www.dentonsacaslaw.com/en/insights/articles/2023/september/29/election-petitions-in-nigeria> accessed 10 May, 2024

they are finally resolved. An extreme case of this is seen in Sokoto State election that took up to four years.<sup>13</sup>

The *sui generis* nature of electoral matters therefore, is relevant in resolving this electoral challenge caused by politicians to frustrate Nigeria's democracy. To this end, the legislature devised a timeframe within which electoral matters must be commenced and concluded. This is a monumental development in Nigeria's electoral field. Electoral matters are now resolved speedily without any form of delay. However, the strictness of the timeframe has been exploited by political parties to delay the release of evidence that may be of crucial importance.<sup>14</sup> Unfortunately, the court over the years has been handicapped in addressing this emerging issue – especially with the gathering of evidence *inter alia*.

### 3.0 Supreme Court and its Jurisdiction on Election Disputes

The Federal Republic of Nigeria's 1999 Constitution established the Nigerian Supreme Court as the highest court in the country's judicial system. (amended).<sup>15</sup> The Court exercises both original and appellate jurisdictions. The Supreme Court under the amended constitution is the final court on the determination of governorship and presidential election petition. It is now part of the appellate jurisdiction of the Supreme Court to hear and determine appeals from the Court of Appeal on the governorship election petition.<sup>16</sup>

As a result of the above, the appellate jurisdiction of the Court is exercised on appeal against governorship election tribunals and presidential election petition panels held by the from the Court of Appeal.<sup>17</sup> The Court's judgment on such appeals is final and not subject

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<sup>13</sup> CJ. Ubanyionwu, 'Strategies and Procedures for Expediting Election Petitions and Appeals' Nnamdi Azikiwe University Journal of International Law and Jurisprudence, (2011) 2, 322

<sup>14</sup> Dentons ACAS-LAW (n 12)

<sup>15</sup> CFRN 1999 (as amended), s. 230.

<sup>16</sup> CFRN 1999 (as amended), s.233(2)(e)(iv).

<sup>17</sup> CFRN 1999 (as amended), ss. 232 and 23.

to a further appeal to any Court including the Supreme Court itself.<sup>18</sup> So, where the court makes a decision *sui generis* and discovers it is not in the interest of substantial justice, the Court can review its judgment upon an application to do so by either party in the proceeding. The authority to approach the Court for the review of its judgment is premised on the provision of Order 8, Rule 16 of the Supreme Court Rules which states:

The Court shall not review any judgment once given and delivered by it save to correct any clerical mistake or some error arising from any accidental slip or omission or to vary the judgment or order so as to give effect to its meaning or intention. A judgment or order shall be varied when it correctly represents what the Court decided nor shall the operative and substantive part of it be varied and a different form substituted.

The Rule above of the Supreme Court is rarely used until a party, through legal representation, petitions the Court to review its decision. Additionally, all requirements are closely followed, including the need to change a ruling or order to better reflect the intent or intention or to fix any typographical errors or errors resulting from unintentional slips or omissions. The Court may review its decision regarding the application on the basis of one or both of the ground's fundamental problems, such as lack of jurisdiction or violation of the right to a fair trial or vitiating elements, such as fraud, misrepresentation, or collusion.

#### **4.0 Landmark Supreme Court Decisions on Election Matter decided *Sui Generis***

There have been several occasions since the beginning of Nigeria's present democratic experience in 1999 where the Supreme Court intervened in electoral disputes. The Supreme Court had never shied

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<sup>18</sup> *Adegoke Motors Ltd v. Adesanya* (1989) 13 NWLR (Pt. 109) 250; Bamidele Ikusika, 'The Finality of the Supreme Court: The Bayelsa Election Decision Saga and Its Imminent Considerations' (2020). Retrieved from <SSRN: <https://ssrn.com/abstract=3546623> or <http://dx.doi.org/10.2139/ssrn.3546623>> accessed 11 May, 2024.

away from playing its constitutionally mandated role in politics in any of these cases. The purposes of the Supreme Court as a Court of policy-making in the judiciary are, to among other things, foster democratic culture among the Nigerian people, to improve people's faith in the democratic process, and to promote constitutionality and due process in the political system<sup>9</sup>. However, for this discourse, this paper examines just a few of such recent interventions made by the Supreme Court after which it looked at their effects on the Nigerian electoral process.

To start with, the Supreme Court had in *APC v Marafa*<sup>19</sup> acknowledged the People's Democratic Party (PDP) as winners of the positions that INEC had earlier proclaimed the APC and its contestants to have won on May 24, 2019, the day of the Zamfara State general elections. The five-member panel concluded in a unanimous decision that the Zamfara APC had not conducted primary elections by the party charter, the Electoral Act, and the Federal Republic of Nigeria, 1999 Constitution as amended. All of the APC's votes were deemed to be "wasted votes," as per the ruling of the Supreme Court. The Court held that the APC and all of its candidates who ran in the polls were thrown out because they did not hold lawful primaries.<sup>20</sup> Consequently, the Supreme Court held that all political parties whose candidates received the second greatest number of votes and the required spread be declared winners immediately. INEC recognized PDP candidates as winners of the 2019 elections in Zamfara state resulting from the Supreme Court's decision.

Thus, the APC lost 36 seats in the legislature, comprising the positions of governor, deputy governor, three senators, seven members of the House of Representatives, and twenty-four members of the House of Assembly, to the PDP. Dissatisfied by the judgment, the APC applied to the Court for the review and eventual overturn of the judgment but same was refused by the Court. This proves that the Supreme Court has consistently explained the legal theory put forth by Lord Denning in *UAC v. Mcfoy*<sup>21</sup> that you cannot put something on nothing and expect

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<sup>19</sup> [2020] 6 NWLR 383.

<sup>20</sup> *Ibid.*

<sup>21</sup> (1961) AC 158.



it to stand. In other words, there will not be candidates without primaries. Wordings of Lord Denning in the UAC (supra) were solidified by Justice Niki Tobi JSC in *Owners and Masters of the M/V Baco Liner 3 v. Adeniji*<sup>22</sup>

One can add something to something, but one cannot add something to nothing because there will be nothing to receive the something. The something which will have nothing to support it will fall away, following Newton's law of 98 gravity or gravitation.

Next is the case of *Peoples Democratic Party (PDP) & 2 Others v Degi-Eremieoyo & 3 Ors*,<sup>23</sup> the Federal High Court sitting in Abuja, on November 12, 2019, four days to the November 16 governorship election, disqualified Degi-Eremieoyo for alleged forged certificate. Degi-Eremieoyo and the APC sought an appeal. The Federal High Court's decision was overruled by the Court of Appeal, clearing Lyon and Degi-Eremieoyo's united ticket to run for governor in November. Because of anomalies in his chosen deputy's names on his certificates, the Supreme Court stopped Lyon from being inaugurated in as Governor of Bayelsa State for 24 hours on February 13, 2020, and commanded the swearing-in of PDP's Douye Diri. The panel of the Supreme Court, led by Justice Odili JSC, reversed the ruling of the Court of Appeal and maintained the ruling of the Federal High Court. Lyon and Degi-Eremieoyo belonged on the same ticket, the court decided, so Degi-Eremieoyo's disqualification rendered the APC's candidacy unlawful from the start.

*Uzodinma & Ors v. Ihedioha & Ors*,<sup>24</sup> is another case. In that case, the Supreme Court sacked Ihedioha on January 14, 2020, and proclaimed APC candidate Senator Uzodinma the rightfully elected governorship of Imo State. According to Muhammad JSC, who delivered the judgment, Uzodinma's votes were unfairly withheld from 388 polling locations. After ruling that the deletion of those ballots in his favour during the governorship election in the state was unlawful, the Supreme

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<sup>22</sup> (1993) 2 NWLR (Pt 274) 195.

<sup>23</sup> (2021) 9 NWLR (Pt. 1781) 274.

<sup>24</sup> (2020) LPELR-50260(SC) 1.



Court gave Uzodinma the victory by going the votes. Consequently, the Court declared him to be the legitimately elected Governor and mandated that he be issued the certificate of returns that was previously granted to Ihedioha.<sup>25</sup> In the case of *Ihedioha & Ors v APC and Ors*<sup>26</sup> an application was filed to have the aforesaid judgment overturned, but it was also denied.

*Atiku Abubakar v INEC*<sup>27</sup> presents another landmark decision of the Supreme Court on electoral jurisprudence in Nigeria. The petition however failed for want of evidence. The above cases were briefly reviewed just to lay a foundation for discussing their effect of *sui generis doctrine* in the court's adjudication on electoral disputes. In some of the cases decided, the application of the doctrine of *sui generis* appears to present in an inconsistent position when comparing cases previously decided by the Court and subsequent ones. An example is the Governorship Election in Plateau State,<sup>28</sup> the Supreme Court ruled that the issue of party primaries is an interior stuff for political parties and cannot be challenged by rival candidates in election petitions. Meanwhile, in the *Jegede's Case (2023)*, The Supreme Court ruled that a competing political party may file an election petition to challenge a candidate whose work did not take part in a legitimate primary.

Moreover, in *Dangana & Anor v. Usman & Ors*,<sup>29</sup> The Supreme Court decided that a candidate's eligibility to run for office is a subject that can be contested in the Federal or State Supreme Court or tribunal both before and after the election. But previously, the Supreme Court has held in *Amaechi v. INEC* that the judiciary has the power to review electoral decisions and declare a winner where INEC fails to do so even where he did not participate in the election and in *PDP v. INEC*, the court established the principle of "candidate substitution," allowing political parties to replace candidates in certain circumstances.

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<sup>25</sup> *Ibid.*

<sup>26</sup> (2020) LPELR - 50260 (SC), (2020) 5 NWLR (Pt. 1718) 529.

<sup>27</sup> (2020) 12 NWLR (Pt.1737) 37 (SC)

<sup>28</sup> *Manasseh v. Goshwe* (2024) 6 NWLR (Pt. 1934) 203

<sup>29</sup> (2013) 6 NWLR (Pt. 1349) 50.

After evaluating the cases that the high court was requested to review, the impact of the Court's rulings on Nigeria's democratic process is succinctly examined below.

### **5.0 The Challenges with *Sui-generis* Application in Election Matters**

The challenges with *sui generis* principles in election matters in Nigeria include is enormous having to affect the image of the Court and the judiciary in the adjudication of cases. In the first instance, uncertainty and ambiguity in the court's decision exist such that the Supreme Court's decisions on election matters are often criticized for being inconsistent, leading to uncertainty and ambiguity in the application of the law. Consequently, the application of the doctrine gives, the impression that *sui generis* principles give judges significant discretion, which can lead to subjective decisions and varying interpretations of the law.

Besides, without prejudice to the doctrine of *stare decisis*, election cases is now devoid of predictability. The outcomes of election cases are often unpredictable, making it difficult for parties to anticipate the consequences of their actions.

Another apparent but more distressing effect is the conflicting decisions by tribunals and the division of the high court of appeal. Different panels of the Supreme Court have equally delivered conflicting decisions on similar election matters, creating confusion and inconsistency.

Consequently, there is erosion of public trust in the judiciary due to inconsistent decisions. The perceived inconsistencies and unpredictability of the Supreme Court's decisions have eroded public trust in the judiciary and the electoral process.

Also, difficulty in distinguishing between substantial and minor irregularities leading to perceived bias by the Court is a challenge to the approach and perspective about the genuineness or otherwise of the application of the doctrine of *sui generis*. The substantial compliance doctrine can be challenging to apply, leading to difficulties in distinguishing between substantial and minor irregularities. The ruling

in Ahmad Lawan v. Bashir Machina by the Supreme Court has generated controversy and discussion recently. Overturning the rulings of the subordinate courts, the Court declared that Senator Ahmad Lawan was the legitimate APC candidate for the Yobe North Senatorial District. The majority judgment held that Machina should have initiated the action via a writ of summons instead of originating summons since his allegation involved fraud. However, two judges dissented, arguing that the use of originating summons was appropriate and that the facts showed Machina won the senatorial primary. The decision, no doubt, highlights the ongoing challenges with sui generis principles in election matters in Nigeria. The Supreme Court's decisions have oscillated between substantial compliance and strict compliance, creating tension and uncertainty and creating a serious impact on electoral integrity. The challenges with sui generis principles can undermine electoral integrity, as inconsistent decisions can lead to unjust outcomes and perpetuate electoral malpractices.

Flowing from the above, these challenges highlight the need for clarity, consistency, and predictability in the application of sui generis principles in election matters in Nigeria.

## **6.0 Effects of the Supreme Court Decisions on Elections and Democratic Process**

The court is in the midst of the democratisation process and determines a lot in the process of election. Democracy could mean "people's rule" or "government by the people" in its most basic sense.<sup>30</sup> Democracy, according to Udeh, is a form of government centred on the citizens' (people's) mandate, which they renew through periodic elections.<sup>31</sup> Democracy, according to Arowolo and Aluko, is a governing system that allows everyone to participate in governance and decision-

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<sup>30</sup> O.O. Nwaubani, 'The Legislature and Democracy in Nigeria, (1960-2003): History, Constitutional Role and Prospects' *Research on Humanities and Social Sciences*, (2014) 4(15), 81.

<sup>31</sup> Godwin Udeh, 'Democracy and Good Governance in Nigeria: The Imperatives of Supporting Institutions' *Asian Development Policy Review*, (2017) 5, 148.

making.<sup>32</sup> Gwunireama defined the phrase as a governmental system characterized by popular rule, in which authority is derived from and channelled through the people for the common welfare.<sup>33</sup> Democracy, according to Dibie, is a kind of representative government where people elect those who will act and govern on their behalf regularly.<sup>34</sup>

This then means that the people are at the centre of decision-making of who becomes the leader through the process of election. The role of the court therefore is to see that the desire of the people and mandate comes to stay. Electing qualified persons into the executive or legislative positions should be the absolute prerogative of the people while the court assists to ensure the mandate is restored where there have been malpractices in the process of election that have stolen the mandate.

Despite considerable dissatisfaction with the Supreme Court's performance as the last umpire of election disputes, the trend of election litigation in Nigeria suggests that it has positively impacted democracy. As a result, the Supreme Court's preceding landmark decisions will have effects on Nigeria's democratic process. The effect of the reviewed Supreme Court decisions includes deepening the internal democracy of political parties. For instance, in *APC v Marafa*,<sup>35</sup> the Supreme Court held that the Zamfara APC had no candidate at the 2019 elections since it failed to conduct primaries following the party's Constitution, the E.A and the CFRN 1999 (as amended) respectively. All votes cast in favour of the APC were deemed "wasted votes" by the supreme court. The court made a ruling about the requirement for politicians to abide by self-created rules and regulations. Galumji, His Lordship JSC, stated:

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<sup>32</sup> Dare E. Arowolo and Olukemi A. Aluko, 'Democracy, Political Participation and Good Governance in Nigeria' *International Journal of Development and Sustainability*, (2012) 1(3), 797

<sup>33</sup> I. Gwunireama, 'Philosophy and Democratic Governance' in B.S. Nnamdi, (ed), *Basic Issues in Logic and Philosophy* (Divine Technologies Press, Port Harcourt, 2008) 243-282.

<sup>34</sup> C.C. Dibie, *Essentials of Government for Schools and Colleges*, (Tonad Publishers Ltd, Lagos 2012)

<sup>35</sup> [2020] 6 NWLR 383.

The democratic system this Country adopted was borrowed from the United States of America and other Democratic Nations of Europe. Those from whom we borrowed this system are steadily forging ahead in all areas of endeavour in order to create a stress-free and economically viable nation. For this great country, some politicians either are ignorant of what party politics is, or out of mischief, have continuously dragged this nation backwards. If care is not taken this class of politicians will drag this nation to the Stone Age, where all of us will be consumed. I once again, as this court has consistently preached, urged this class of politicians to play the game according to law and guidelines which they themselves have enacted. It is only when this is done that sanity will take centre stage in the domestic and international affairs of this great nation.<sup>36</sup>

The words of Galumji JSC can hardly be faulted. Politicians have taken politics as a do-or-die affair and are desperate to have their way at the expense of law, citizens, and public interest. It is more worrisome that they will make rules themselves but yet refuse to follow the same rules. The position above is reminiscent of the one taken in a similar scenario in the case of *APC v Karfi*,<sup>37</sup> wherein the Supreme Court condemned in very strong language the acts of impunity and lack of internal democracy exhibited by the APC. According to the Supreme Court, per Coram Okoro, JSC, in the said case:

Courts do not run the affairs of political parties. However, courts will not allow a political party to run its affairs with impunity and in total disregard of its constitution and or statutes. In other words, courts will never allow a political party, political parties must obey their constitution because the constitution is the organic instrument, which confers powers and also creates rights

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<sup>36</sup> *Ibid.*

<sup>37</sup> (2018) 6 NWLR (Pt. 1616) 479.

and limitations in the party. Further, it regulates the affairs of the members of a party and they are bound by its provisions... The issue here is, even if I am to repeat myself, political parties must obey their constitution, guidelines and regulations. The era of recklessness and impunity by political parties is over. It is an aspect of corruption for a political party to impose candidates on the electorate. This court has taken a firm stand that this must stop. It is in the interest of our nation that political parties observe internal democracy for the smooth running of our democratic process. The fact that the 1st respondent asked that he be made the candidate of the party has not regularized the breach of the party's guideline. Accordingly, this issue, to my mind, does not avail the appellant at all.

Such is a commendable bold step by the Court. A party cannot make internal rules and turn around to flout the same rules with impunity. This position will serve as a warning to parties ahead of the 2023 elections. It shows that any argument to suggest that internal disputes of political parties are not Justiciable will not stand unless there's no evidence of the breach of the Electoral Act or the party's constitution.

The case of *Atiku Abubakar v INEC*<sup>38</sup> has been clarified in terms of evidence of educational qualification. The Supreme Court held that by sections 131(1) (d) and 318 of the CFRN 1999 (amended) all that a candidate needs is to show that he attended a school and not to show the certificate. In the words of Sanusi JSC:

It is pertinent to also stress that mere attendance of primary school or secondary school even without obtaining a certificate would satisfy the condition provided in section 318 of the same Constitution as it relates to qualification to contest election into the office of President of the Federation. Therefore, obtaining a certificate is not a condition precedent contemplated by

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<sup>38</sup> *Atiku v. INEC Supra.*

the provisions of section 318 of the Constitution (as amended).”<sup>5</sup>

In his contribution, Abba Aji, J.S.C said:

I have keenly observed the constitutional provision that made the minimum benchmark of educational qualification not to be only on non-presentation or non-submission of certificates (which is not and cannot be the basis for disqualification), but whether the candidate has possessed other qualifications to make him qualified. In clarity, the Constitution has unfortunately to my mind, made it that even where the person does not possess a Secondary School Certificate, he can be qualified by the combined effect of sections 131 and 318 of the Constitution. if. he is educated up to at least School Certificate level or its equivalent.<sup>26</sup>

The above position taken by the Supreme Court is correct and indeed in line with what the Constitution says. Section 131 of the said Constitution states: -

A person shall be qualified for election to the office of President if-

(d) He has been educated up to at least the school certificate level or its equivalent.

Nowhere is a certificate mentioned, not even in section 318 of the 1999 Constitution.

However, is just that a certificate is the easiest way of proving attendance at school. The court was also correct in his judgement to the effect that certificates must not be attached to relevant INEC forms. Thus henceforth, no candidate will be wrong if he submits his forms to INEC without attaching his credentials.

In situations where a candidate intends to submit a certificate, he or she should ensure that names tally. In a case where the names do not tally, there should be an affidavit and in serious cases, deed poll and the same



be published in the National Gazette.<sup>39</sup> In Atiku's case, it was held that a discrepancy in the spelling of the name is not fatal to one's candidature. Thus, the names “Mohammed” and “Muhammadu” were held to be the same. Per Abba Aji, J.S.C.:

To any ordinary Nigerian and the mind of the law, this mistake can easily be committed either by the owner of the name or the inscribers of the name. As to the etymology of either ‘Mohamed’ or ‘Muhammadu’ only the appellants can prove this since they want to assert that it is not the same name or meaning. But the point here is Whether the name refers to the same person as the 2nd respondent in this case or not. I have not seen anywhere that the appellants proved otherwise that the name belongs to another person that is now borne by the 2nd respondent. This is not even in the category of errors or grounds that can qualify to disqualify a candidate from the office of President. It is simply remediable by affidavit at the instance of the 2nd respondent where it is contested about his real identification and true person. If, however, the case of the appellants is that the name is also forged, I stand to declare that it is also not a ground for disqualification. Any difference as pointed out by the appellants in the name of the 2nd respondent must impact directly on his requisite qualification to contest the Presidential Election.<sup>40</sup>

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<sup>39</sup> *Supra*.

<sup>40</sup> *Supra* at p 172 paras C-G.

Another significant effect of the Supreme cases on election reiterates that members of the general public are empowered to select candidates whose personal particulars are published by the Independent National Electoral Commission, INEC, under section 31(1) of the Electoral Act by way of objection. However, whoever complains that a candidate at an election had made false declarations on oath in his form published by the INEC shall timeously, file a lawsuit in the High Court against the candidate in question before the general election, and within 14 days of the date on which the INEC<sup>41</sup> published the purported false declarations in the Form CFOO1 that the candidate submitted, seeking an affirmation that the data included in the aforementioned Form CFOO1 is false. The High Court will issue an order prohibiting the candidate from running in the election if it finds, by a subparagraph of section 31 of the Electoral Act, that any information on the form is untrue.<sup>41</sup>

Failure to complain or file suit, within 14 days from the date of publication of the candidate's forms by INEC, against the false information contained in the candidate's Forms, extinguishes the right to the cause of action arising or accruing to such person, having become statute-barred.<sup>42</sup>

Recently, the *sui generis* nature of the court's decision has touched on the reliance of the INEC server and database as evidence in proving election results as well as transmission of election results. In Atiku's case,<sup>43</sup> the appellants alleged that Buhari was not elected by a majority of lawful votes cast at the election. To buttress their assertion, they relied heavily on a server which they alleged belonged to the INEC which according to them, they used in computing the results. However, they could not prove that the server in question belonged to INEC. The court held that "he who asserts must prove" Atiku's lawyers should have led credible evidence to prove the assertion that INEC owned the server they allegedly relied on.

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<sup>41</sup> *Ibid.*

<sup>42</sup> *Ibid.*

<sup>43</sup> *Ibid.*

Perhaps, by calling some INEC staff to testify in that regard. However, the most important thing about this decision is that INEC doesn't have a server that collates results. It will therefore be foolhardy for anyone to think of using results shown in other online platforms to prove rigging. In other words, by the decision in Atiku's case, INEC has no server. All results are computed manually in relevant forms.

However, in *Peter Obi v. INEC*,<sup>44</sup> the propriety of INEC not transmitting results electronically was questioned, though, the court held that it does not affect the election process substantially as the non-compliance with the INEC regulation on transmission does not affect the entire process. The Supreme Court, in a unanimous decision, ruled in favour of INEC, stating that the failure to electronically transmit election results to the INEC Results Viewing (IREV) portal did not affect the collation of results. The court held that the Electoral Act empowers INEC to determine the mode of transmission of election results, and the petitioner, Peter Obi, failed to prove that the failure to electronically transmit results substantially affected the election.

Another implication of the Supreme decisions is that the results declared by INEC is presumed to be correct unless proven otherwise. It is a well-established legal principle that the results of an election declared by the Independent National Electoral Commission (INEC) are presumed to be correct and regular unless evidence is presented to the contrary.<sup>45</sup> In other words, except if it is proved or rebutted that such results are not correct, they are accepted for all purposes by the election tribunal or court. The burden is on the petitioner to prove the contrary.<sup>46</sup>

To prevent the erosion of democratic standards, INEC must prioritize transparency. It must ensure accountability and deploy the maximum use of technological innovations in conducting elections. This is crucial in the wake of the Supreme Court's ruling, which may be interpreted as

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<sup>44</sup> (2023) - CA/PEPC/03/2023.

<sup>45</sup> *Andrew v. INEC* (2018) 9 NWLR (Pt. 1625) 507; *Edonkumoh v. Mutu* (1999) 9 NWLR (Pt. 620) 633 at 653,

<sup>46</sup> *Atiku v. INEC Supra*.

granting INEC considerable leeway that could lead to unchecked irregularities. Electronic transmission of results is a key aspect of this, enhancing accuracy, efficiency, and credibility, and bolstering public trust and confidence in the democratic process.

One of the most significant aspects and settled positions of the *sui generis* application is that it is not enough for a candidate to have the majority of votes during an election. Rather, two-thirds of local governments in governorship elections or two-thirds of the states in presidential elections must have at least one-quarter of the total votes. Otherwise, another election will have to be conducted for a winner to be produced. For the avoidance of doubt, section 179 of the 1999 Constitution states that:

- (2) A candidate for an election to the office of Governor of a State shall be deemed to have been duly elected where there being two or more candidates -
  - (a) he has the highest number of votes cast at the election; and
  - (b) he has not less than one-quarter of all the votes cast in each of at least two-thirds of all the local government areas in the State.<sup>47</sup>

In situations where the requirement of Section 179(2)(b) above is not met, section 179(3) of the 1999 Constitution provides that there will be a second election between the two candidates with the highest votes and the said second election shall be within seven (7) days. However, the geographical spread requirement above must still be met but if it fails, another election will be held again within 7 days and this time around the candidate with the highest votes will be declared a winner. Contrary to the above provision, Hope Uzodinma was declared the governor of Imo State. Surprisingly, the Supreme Court refused to consider this point when the application was made for review of the decision. Nweze J.S.C., holding his dissenting opinion, opined the judgement of the Supreme Court on Imo governorship election was perverse and a bad

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<sup>47</sup> CFRN 1999 (as amended), s.134(2)(6).

precedent. Accordingly, it has the potential effect of on the electoral jurisprudence of in Nigeria.<sup>48</sup>

What appears the most significant effect of the Supreme Court decisions on elections is the finality of its decision that is not subject to review like the ‘rock of Gibraltar’. By the hierarchy of courts in Nigeria, the Supreme Court is ranked the highest such that its decisions and findings, whether right or wrong stands until reviewed by the court. However, the Justices of the Supreme Court are capable of making errors. This was acknowledged by the court when said: “we are final not because we are infallible; rather we are infallible because we are final.”<sup>49</sup> For instance, the Supreme Court set aside its January 8, 1999 verdict in *Olorunfemi v Asho*,<sup>50</sup> because it declined to hear the respondent's cross-appeal before accepting the appellant's appeal but in the case of *Oriker Jev & Ors. v. lyortom & Ors.*,<sup>51</sup> the Supreme Court discovered that it had in an earlier judgment directed INEC to conduct a run-off election due to erroneous interpretation of section 133(2) of the E.A. 2010 by section 141 E.A. 2022 (as amended). The Court reversed the prior order following the filing of a post-judgment application by one of the parties. The Court directed INEC to provide the claimant with a certificate of deposit in its stead.

From the above analysis, it is obvious that the Supreme Court can make mistakes. However, allowing a review of her decision is always difficult as attempts to do so have proved abortive. The court refused to overturn its decision in *Ubah v INEC*,<sup>52</sup> for instance. Katsina-Alu CJN dismissed the application, saying that hearing it would be a “wild goose chase”. The Supreme Court has the power to make mistakes, according to a seven-member panel chaired by Katsina-Alu JSC in the case of *Omehia v. Amaechi*<sup>53</sup>. The panel invalidated the claim as frivolous and an act of judiciary forwardness and awarded costs of NI00,000. The Court insisted that Amaechi is the lawful Governor, regardless of whether it was entered incorrectly or not, and that nothing could be done about it.

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<sup>48</sup> *Uzodinma & Ors v. Ihedioha & Ors Supra*; See CFRN 1999, s.79(2)(b) & s.179(3).

<sup>49</sup> *Adegoke Motors Ltd v. Adesanya Supra*.

<sup>50</sup> (2000) LLJR-SC.

<sup>51</sup> [2014] 14 NWLR 575.

<sup>52</sup> (2015) 11 NWLR (Pt. 1472) 405 at p. 413.

In *Ogboru v Uduaghan*<sup>53</sup> "the Court also refused to overturn its verdict. The Court discharged the lawsuit and ordered Uduaghan eight million naira (N8 million) in costs against the appellant's lawyer, which he must pay to the respondents out of his pocket. Ogboru tried twice to have the decision overturned, but both times he was unsuccessful. Recently, the Supreme Court refused to set aside its decisions in *APC v Marafa*,<sup>54</sup> *Uzodinma v. Ihedioha*<sup>55</sup> and *Degi-Eremienyo v PDP*.<sup>56</sup>

## 7.0 Conclusion

The paper discusses the doctrine of *sui generis* as it applies to the adjudication of cases concerning election matters in Nigeria. It beams the searchlight on the Supreme Court and the effect of many decisions held based on the *sui generis* principle. It agrees that the Supreme Court of Nigeria and the election tribunals have greatly enriched electoral jurisprudence. However, the holding of some cases based on the doctrine has been criticised with the attendant effect of the doctrine of *stare decisis* and 'substantial justice'. The Court is also viewed from the public perspective to have compromised and lost public confidence in the Judiciary as an independent arm of government as a result of cases held, though *sui generis* but against the general expectation of the public.

The paper finds that though the Supreme Court has the finality of say in all cases including electoral matters, the doctrine of *sui generis* in election must be carefully and cautiously applied. The refusal by the Court to grant petitions and prayers that are made on the fundamental doctrine of *stare decisis* and substantial justice would hinder the growth of our democratisation process.

## 8.0 Recommendations

Improving the electoral jurisprudence of the Supreme Court of Nigeria requires a multifaceted approach, considering the criticisms against its

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<sup>53</sup> SC. 18/2012.

<sup>54</sup> *Supra*.

<sup>55</sup> *Supra*.

<sup>56</sup> *Supra*.

decisions. The paper recommends the following to guide the Supreme Court of Nigerian in the application of the doctrine of *sui generis* in the determination of election matters:

- 1) that lawyers should interpret well and present to their Clients and members of the public the right position of law upon which the Court holds its decisions.
- 2) Judicial training and capacity building; provide regular training and workshops for justices and judicial staff on electoral law, international best practices, and judicial ethics.
- 3) Ensure timely and accessible delivery of judgments, and provide clear reasons for decisions. Implement a feedback mechanism for stakeholders to engage with the Court.
- 4) Former justices of the high court and the Court of Appeal should be involved in the election process as a quality assurance team.
- 5) Educate stakeholders and electoral authorities, political parties, civil society, and the public to understand concerns and improve the Court's understanding of electoral issues.
- 6) Deploy technology in the four phases of the electoral system (Registration, Voting, Result computation and compilation and litigation process) to enhance effective and efficient case management and access to evidence.
- 7) Judicial integrity, accountability and recusal policy should be developed and enforced in the election petition tribunal judges. To complement this, the court administration should establish a complaints mechanism for judicial misconduct and ensure accountability for unjust decisions.

By implementing these measures, the Courts in Nigeria can enhance its electoral jurisprudence, address criticisms, and strengthen the integrity of the electoral process.