

An Analysis of the Jurisprudence of Proof Beyond a Reasonable Doubt in Election Matters in Nigeria

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Abstract

Elections should reflect the people's choice, not decisions made by courts or tribunals. Electoral disputes fall into two distinct categories: those occurring before elections and those arising after elections. Pre-election disputes typically involve candidate selection processes within political parties, including primary elections, while post-election disputes stem from the general elections themselves. Losing candidates from either type of election may challenge the results by filing cases in courts or tribunals. While electoral disputes are primarily civil in nature, any case involving criminal accusations requires the petitioner to meet the higher burden of proof beyond a reasonable doubt. This research employs a doctrinal methodology. The findings reveal that requiring proof beyond a reasonable doubt in electoral cases, regardless of whether criminal allegations are involved or not, creates significant obstacles to justice, as this standard is exceptionally difficult to satisfy. The conclusion drawn is that maintaining this stringent evidentiary requirement may actually encourage electoral fraud, since candidates could manipulate elections knowing their opponents face nearly insurmountable challenges in proving wrongdoing in court. The recommendation is to amend the Electoral Act 2022 to adopt the preponderance of evidence standard for electoral disputes. Additionally, courts and tribunals should interpret electoral laws with greater flexibility, recognizing that judicial bodies should not be positioned as the ultimate arbiters of election outcomes.

Keywords: Criminal, Elections, Beyond Reasonable Doubt, Proof, Nigeria

1. Introduction

Electoral cases are typically civil matters by nature, and they are *Sui generis*, meaning they constitute special causes that differ fundamentally from standard civil and criminal proceedings. However, certain electoral cases do contain criminal elements. In Nigeria, the Electoral Act¹ establishes provisions for electoral offences. Consequently, these offences take on a criminal character, as violators face prosecution in courts of law, despite their electoral origins. This is not the primary topic of debate. Rather, the criminal dimensions of before and after the election are examined in this article. To clarify, pre-election disputes involve issues or matters stemming from primary elections or internal selection processes within political parties. Conversely, post-election disputes arise from the general election itself. Essentially, pre-election disputes constitute internal party affairs, while post-election matters concern the consequences following an election. These disputes may occur between competing political parties or between candidates representing different parties.²

Regular courts, such as the Federal High Court or state High Courts, hear pre-election cases. Post-election disputes, however, are filed in electoral tribunals created specifically for this purpose. The central concern of this work is the criminal accusations that emerge from electoral disputes, particularly in post-election matters. "Proof beyond a reasonable doubt" is the standard of proof that must be met when accusations of criminal activity during elections are made. This supports the idea that, in contrast to proof beyond a shadow of a doubt, all criminal accusations must satisfy the beyond a reasonable doubt level.³ In criminal proceedings, the highest standard of proof is proof beyond a reasonable doubt.⁴ Convincing a jury that the defendant committed the alleged offence is the prosecution's obligation in both Nigeria and the USA (United States of America).⁵ There is an ongoing debate suggesting that electoral disputes should require proof on the preponderance of evidence due to their unique characteristics. It is especially challenging to fulfil since proof beyond a reasonable doubt differs significantly from proof based on the preponderance of the evidence. This higher standard applies in electoral cases when criminal allegations arise, such as ballot box snatching and stuffing, forgery, falsification, destruction of ballot papers, and other electoral violations. In Nigeria, a troubling pattern has emerged in electoral malpractice where political parties and their supporters manipulate elections to secure power, then challenge their opponents to seek judicial redress through petitions. This

¹ Sections 114-129, Pt. VII, Electoral Act 2022, Nigeria.

² Section 285 (14) Constitution of the Federal Republic of Nigeria 1999(as Amended) for the Meaning of Pre-election matter. See also, *Monday v Odejebobo Desire Onayemefe & 5 Ors*, (Unreported) App. No. CA/A/438/2020 delivered 24 July 2020.

³ Section 135 Evidence Act Cap. 112 L.F.N 2020. See also *Nasiru v The State* (1992)2 NWLR (Pt. 589) 87.

⁴ Dmitry Gorin 'What is Proof Beyond a Reasonable Doubt?'(2023) <https://www.egattorneys.com/proof-beyond-a-reasonable-doubt> accessed 17 July 2025.

⁵ D. Liberto, 'Reasonable Doubt: Definition, How to Prove, and 3 Burdens' <https://www.investopedia.com/terms/r/reasonable-doubt.asp> accessed 17 July 2025.

strategy exploits the difficulty of meeting the proof requirement. The beyond a reasonable doubt standard has transformed from a sword into a shield, protecting those who manipulate elections into positions of power and authority while they remain confident that their opponents cannot substantiate allegations to the required degree when tested in court. Numerous pre-election and post-election cases have failed due to plaintiffs' or petitioners' inability to "prove beyond a reasonable doubt". This situation raises moral concerns, as candidates who legitimately won elections often cannot enjoy their victories because they cannot prove the malpractices committed by defendants or respondents to the required evidentiary standard, even when the election manipulation is evident.

Investigating why the beyond a reasonable doubt standard applies to criminal situations, including election disputes involving criminal claims, is one of the objectives of this work. It also examines the legal framework guiding this evidentiary criterion and looks into the evolution of the proof beyond a reasonable doubt standard over time. Additionally, the judiciary's role in defining what constitutes proof beyond a reasonable doubt receives careful examination.

2. Method

The doctrinal approach for the topic "An Analysis of the Jurisprudence of Proof Beyond a Reasonable Doubt in Election Matters in Nigeria" will use a qualitative investigation of primary questions, summaries, and general commentary on the constitution, laws, court rulings, and scholarly debates involving a qualitative evaluation of legal authority. The Nigerian Constitution, the Electoral Act, and the significant findings of electoral tribunals, courts of appeal, and the Supreme Court, all of which have assessed the standard of proof in election-related cases, are all critically and morally analysed in this kind of study. To determine the standard "proof beyond a reasonable doubt" in an electoral context where the election process is questioned (allegations of some forms of common or statutory criminal conduct, such as forgery, corruption, and/or electoral fraud), this research will apply a thorough examination of these primary and secondary materials. The doctrinal approach enables observant and criterion-based reasoning, resulting in a consistent response that incorporates temporal reasoning, as developed through judicial deliberation and analysis. There is also the balancing of court trials to maintain among thresholds that might present themselves as contests for civil/post-criminal adjudication standards. The ultimate goal of this research, considering the previous and future state of inquiry, is to conceptually understand how Nigerian courts construct and utilise the investigation itself to regulate and settle the evidentiary threshold in relation to election litigation, evaluating its sufficiency and standard regarding fairness to democratic and constitutional expectations.

3. Analysis or Discussion

3.1. Conceptual and Historical Background of Proof Beyond a Reasonable Doubt

As previously mentioned, unlike civil processes where plaintiffs must simply establish their case on the balance of probability, criminal accusations resulting from election affairs must meet the legal threshold of proof beyond a reasonable doubt. This raises an important question: what does proof beyond a reasonable doubt really entail? According to Black's Law Dictionary, proof is "the establishment or refutation of an alleged fact by evidence; the persuasive effect of evidence in the mind of a fact-finder." This evidence influences a court's decision; it is a document that has been authenticated and is used as evidence in court. The same authoritative reference characterizes 'reasonable doubt' as: the uncertainty that prevents someone from being completely convinced of a defendant's guilt, or the recognition that there exists a genuine possibility of the defendant's innocence. The phrase "beyond a reasonable doubt" refers to the standard of proof juries must use in determining a criminal defendant's guilt. The jury must start with the basic presumption that the defendant is innocent unless and until proven guilty when determining whether guilt has been established beyond a reasonable doubt.

Reasonable doubt should not be confused with ordinary or mere possibility of doubt. Rather, it describes a circumstance where, following thorough consideration and evaluation of the evidence presented to the jury or Court, the decision-maker remains uncertain whether there exists sufficient moral justification or certainty to support a conviction.⁶ Reasonable doubt can also be understood as doubt for which a logical explanation can be provided. In *Victor v Nebraska*⁷ the Court explained:

It is important to understand that proof beyond a reasonable doubt refers to evidence that establishes the defendant's guilt beyond a reasonable doubt. Since absolute certainty rarely exists in any matter, criminal law does not require proof that removes every possible doubt. When the evidence before you creates a solid conviction that the defendant committed the charged crime, a guilty verdict is appropriate. However, if there remains a real possibility of innocence, the reasonable doubt principle mandates an acquittal⁸. The US Supreme Court, in *Cage v Louisiana*⁹, disapproved the use of phrases like 'substantial doubt' and 'grave uncertainty' in defining reasonable doubt. Likewise, in the United Kingdom, Lord Denning stated in *Miller v Minister of Pensions*¹⁰ that: while the standard does not require absolute certainty, it must reflect a high degree of probability. Evidence beyond a shadow of a doubt should not be confused with proof beyond a reasonable doubt. If the legal system permitted speculative or fantastical possibilities to thwart justice, it would fail in its duty to protect society. The proof beyond a reasonable doubt criterion is satisfied when the evidence against a person is so strong that there

⁶ *Commonwealth v Webster* (1850) 59 Mass (5 Crush) 295 Per Lemuel Shaw J 295.

⁷ 1511 US 1(1994) 27.

is only a distant possibility of innocence, which is defined as technically conceivable but extremely unlikely. Anything below this level, though, won't meet the requirements.

Courts have determined it is preferable not to instruct juries on defining proof beyond a reasonable doubt, as such instruction tends to create greater confusion.⁸ The case has not been proven when a jury in a jury trial is still unsure. According to the significant legal sources mentioned above, proof beyond a reasonable doubt necessitates the presentation of evidence in a way that leaves the court or the jury in a jury trial with no room for question. In order for the jury or judge to fully comprehend the case facts and to appropriately evaluate the evidence in front of them as arbiters of justice, all components of the case that can raise questions must be made available to them. As a result, a person's guilt must be established in the juror's mind and proven beyond a reasonable doubt. There must be confirmation that a claim or the certainty of specific facts exists. Otherwise, it would be ethically wrong for an adjudicator to convict or condemn someone whose guilt cannot be confirmed based on the evidence presented against them.⁹

The reasonable doubt standard of proof is believed to have originated in the 17th century. Some academics suggest its development aimed to protect accused defendants, while others contend it was designed to protect jurors or judges.¹⁰ According to Whitman, the reasonable doubt rule was established in 1798. At that time, it was not incorporated into the Constitution. The Court later elevated it to constitutional status in 1970.¹¹ Reasonable doubt serves to shield innocent people from punishment or conviction for crimes they did not commit. To do so would constitute an 'immortal sin' in Christian theology.¹² It should be noted that common law judges were predominantly Christian, and they began refusing to convict accused persons or defendants when any degree of doubt existed in the testimony or evidence before them. This practice ensured they acted cautiously to avoid wrongfully convicting someone for a crime they did not commit, or to guarantee that jurors or judges maintained clear consciences to keep their souls secure before Almighty God. Reasonable doubt did not begin as a legal rule but has since become recognized as such, being incorporated into various statutes. In Nigeria, it appears

⁸ Regina v Hepworth & Fearnley [1955] 2QB 600.

⁹ Miles v United States (1881) 103 US 304, 309.

¹⁰ J.Q. Whitman, 'The Origins of Reasonable Doubt', (2008) Yale University Press, https://eu.docworkspace.com/d/sl06YnV_bAdZcyLsG?sa=601.1123&ps=1&fn=whitman_origins_of_Reasonable_Doubt.pdf or <https://5.wps.com/s4KRNLOF5AFX>> accessed 4th January 2025.

¹¹ See Re Winship, 357 U.S 358 (1970); Apprendi v New Jersey, (2001) 530 U.S 466.

¹² (n)14

in the Evidence Act. It gained prominence when trial by ordeal was condemned and eliminated, leading to the establishment of jury trials during the 12th century.

Some academics, however, contend that the reasonable doubt concept emerged in the 16th century, and its origins can be traced not to legal professionals but to theologians.¹³ Others have linked the English maxim that "it is better to acquit the guilty than to convict the innocent" to the evolution of reasonable doubt.¹⁴ This raises an intriguing question: is it the law, the jury, or the judge that condemns an accused or defendant, or is it the offense the defendant committed? The submission is that it is the law, not the jury or judge, that determines sentencing, including death sentences. One might question why jurors and judges experience conscience-related concerns if criminal convictions depend on proof beyond a reasonable doubt. Despite all this, jurors and judges must recognize that any decisions they render in criminal trials are fundamentally moral in nature. They must remember that their decisions affect human dignity. Therefore, they must exercise care in their judgments when addressing matters involving criminal conduct. The fear that jurors might be reluctant to convict an innocent person to escape divine wrath in the hereafter is what gave rise to the "beyond a reasonable doubt" threshold.¹⁵

3.2. The Legal Framework for Proof Beyond a Reasonable Doubt in Election Matters in Nigeria

The highest standard of proof that prosecutors must reach in criminal proceedings to convict a defendant is proof beyond a reasonable doubt. The underlying purpose of this standard is to prevent the conviction or punishment of innocent individuals for offenses they did not commit. Essentially, the reasonable doubt rule ensures that only defendants whose guilt is proven beyond a reasonable doubt, meaning proof that they actually committed the offense, should face punishment for the charges against them. In criminal proceedings, proof of evidence differs from witness statements that the appellant will present during trial. Proof of evidence provides a summary of statements from witnesses that the appellant intends to call.¹⁶ The person making the claim has the burden of proof; thus, they must provide evidence for it.¹⁷ This means the individual alleging that another person committed an offense

¹³ Franklin, 'The Science of Conjecture: Evidence and Probability Before Pascal' (2001) Baltimore: Johns Hopkins Press 63.

¹⁴ Morano, 'A Re-examination of the Development of the Reasonable Doubt Rule', (1975) 55 B.U.L. Rev. 507 517.

¹⁵ J.O. Newman, 'Taking Beyond a Reasonable Doubt Seriously' (2019) 103 (2) Bolch Judicial Institute Duke Law School <https://judicature.duke.edu/articles/taking-beyond-a-reasonable-doubt-seriously/> accessed 16 July, 2025.

¹⁶ The Federal Republic of Nigeria v Wabara (2013) 24 WRN 70.

¹⁷ Philips v Eba Odan Commercial & Ind. Co. Ltd (2013) 7 WRN 22.

has the legal obligation to demonstrate or prove that the person actually committed the offense. Simply alleging that a defendant committed an offense is insufficient. The person claiming such criminal conduct occurred must, as a legal requirement, prove the defendant's commission of the crime; otherwise, the prosecution will fail to secure a conviction. In Nigeria, defendants are not required to prove their innocence; instead, the prosecution must fulfill this burden until it shifts. The Supreme Court of Nigeria established in *Habibu Musa v State*¹⁸ that “there is no duty on the accused (defendant) to prove his innocence.” According to the Nigerian Constitution, anyone accused of a crime is entitled to the presumption of innocence unless their guilt is established through appropriate judicial processes. This clause has a disclaimer: it does not render any law unconstitutional just because it asks the accused to provide specific evidence.

Based on this constitutional provision, a defendant in criminal proceedings remains innocent until proven otherwise. The Supreme Court has also clarified in *Nasini v The State*¹⁹ that proof beyond a reasonable doubt does not mean proof to perfection. It does not require proof beyond every trace of doubt. The prosecution must provide relevant witnesses to establish the essential components of the alleged offence to prove beyond a reasonable doubt. Therefore, in *Osuagwu v The State*,²⁰ the Supreme Court of Nigeria determined that the prosecution need not call numerous witnesses on the same point. The court further noted that where corroboration is unnecessary, a single witness can sufficiently establish a case beyond a reasonable doubt.²¹ When a defendant raises an alibi defense, claiming absence from the scene when the offense occurred, the prosecution bears the burden of disproving this defense.²² If the trial produces adequate evidence to refute the defendant's alibi and confirm the defendant's presence at the crime scene, the court must accept such evidence.²³ According to the Evidence Act, criminal allegations must be proven beyond a reasonable doubt in any criminal or civil process when they are brought up.²⁴ In electoral cases involving allegations of wrongdoing, proof must exceed a reasonable doubt. However, the petitioner must also establish that the election results were properly issued to succeed.²⁵ Additionally, the prosecution can prove a crime's commission through eyewitnesses who observed the crime, voluntary admissions

¹⁸ (2013) 53 NSCQR 101.

¹⁹ (1992) 2 NWLR (Pt. 589) 87.

²⁰ (2013) 53 NSCQR 581.

²¹ *ibid.*

²² *ibid.*

²³ *ibid.*

²⁴ *Otukpo v Apa John & Anor* (2012) MRSCJ Vol. ip. 116-117 (SC); Section 138 (1) of the Evidence Act Cap. E14 Laws of the Federation of Nigeria 2011.

²⁵ *Olly v Tunji* (2013) 13 WRN 59 (CA).

made without coercion, or circumstantial evidence that establishes and indicates the defendant committed the offense.²⁶

Proof beyond a reasonable doubt means the evidence presented by the prosecution against the defendant is sufficiently persuasive that no reasonable person would harbour any uncertainty about the defendant's guilt. This is not simply a possible doubt or speculation, but rather a doubt that would influence a person in significant life decisions.²⁷ The burden of proof is fundamental to criminal justice administration in Nigeria and globally. It establishes the responsibility to prove and the obligation to support a fact or issue with evidence.²⁸ When it comes to criminality, the standard of proof in election matters is beyond a reasonable doubt.²⁹ It is not demonic to have to prove anything beyond a reasonable doubt.³⁰ It is important to remember that a strong suspicion that a person committed a crime does not establish it beyond a reasonable doubt.³¹

To secure and guarantee a defendant's conviction in the United Kingdom (UK), the prosecution must also prove its case beyond a reasonable doubt. Therefore, 'strong' and 'enough' evidence must be presented for a person to be found guilty under UK law.³² The obligation to present adequate evidence to reach the necessary conclusion (conviction) is known as the burden of proof. Elections in Nigeria are marked by corruption, bribery, violence, and a weak institutional framework.³³ An election is the process of choosing persons who will assume the role of authorities in any organisation or community.³⁴ A high level of illiteracy has bedevilled elections in Nigeria as youths are being used to disrupt elections.³⁵ Unfortunately, post-

²⁶ *Illodigiwe v State* (2013) 4 WRN 20 (SC).

²⁷ The Defenders, Criminal Lawyers in Las Vegas 2025 'Beyond Reasonable Doubt: Definition, How to Prove, Examples, and more' <https://thedefenders.net/blogs/beyond-reasonable-doubt/> accessed 4th July, 2025.

²⁸ A. Waziri, 'Justice Advocacy Initiative' <https://awjai.org/burden-of-proof-in-criminal-cases-in-nigeria/> accessed 4th July 2025.

²⁹ *Senator Air Marshal Isaac M. Alfa v Aidoko Altai & Ors* (2017) LLJR – SC.

³⁰ A.I. Taminu, 'Burden of Proof in Criminal Cases' (2023) 8 *African Journal of Criminal Law and Jurisprudence* 1.

³¹ H. Jellema, 'Reasonable Doubt, Robust Evidential Probability and the Unknown' <https://link.springer.com/articles/10.1007/s11572-023-09685-5> accessed 17 July 2025.

³² DPP Law, 'Reasonable Doubt and the Standard of Proof in Criminal Cases' <https://www.dpp-law.com/blog/reasonable-doubt-and-the-standard-of-proof/> accessed 4th July 2025.

³³ G.G. Abraham and I.O. Nwauzi, 'Electoral Reforms in Nigeria: The Challenges and Prospect' (2020) 7 (3) *Portharcourt Journal of Business Law* 1.

³⁴ A. Mohammad, A.S. Egye and P.P. Etim, 'Electoral Process and National Integration in Nigeria: An Analysis of 2019 General Election' (2023) 7 (5) *International Journal of Research and Innovation in Social Sciences* 250.

³⁵ D. Abdullahi et al 'Role of Security Agencies in Curbing Election Violence in Nigeria' (2016) 1 (1) *International Journal of Social and Administrative Sciences* 1-7.

election decisions have been jeopardized by influenced decisions.³⁶ Again, inadequate technology, poor governance, violence, judicial incompetence, a lack of public confidence, and other social ills have been attributed to the country's electoral woes.³⁷ Election petitions are very technical.³⁸ Elections are vital for democracy.³⁹ The challenges of elections in Nigeria are enormous.⁴⁰ Ethnic politics is also a significant issue in Nigerian politics.⁴¹ To achieve a standard and effective electoral system, a robust electoral framework is necessary.⁴²

3.3. Proof in Civil and Criminal Causes

According to this study, the probability of doubt or the preponderance of the evidence serves as the foundation for proof in civil trials. This means that the plaintiff wants the court to sustain his claim based on the likelihood or preponderance of the evidence presented. The justice of the case is determined by the judge's weighing of the scales. The party making the allegation or assertion of civil causes bears the burden of evidence.⁴³ In criminal matters, the proof is beyond a reasonable doubt. The Evidence Act of Nigeria⁴⁴ provides that he who asserts must prove, and the standard of proof is beyond a reasonable doubt, which is not beyond the shadows of doubt.⁴⁵ The onus of proving beyond a reasonable doubt lies in the prosecution; thus, it is not the duty of the accused or defendant to prove his innocence, as the Nigerian legal system is accusatorial.⁴⁶ As soon as the plaintiff satisfies this burden, the duty of proof in civil cases passes from the plaintiff to the defendant. As soon as the plaintiff satisfies his burden of proof, it is advantageous for the defendant to refute such evidence. The same thing applies in criminal cases. Once the prosecution has satisfied its burden of establishing the accused's guilt beyond a reasonable doubt, it becomes the accused's responsibility to refute the

³⁶ K. Ashindorbe, 'Electoral Violence and the Challenge of Democratic Consolidation in Nigeria' (2018) 74 (1) *India Quarterly* 92.

³⁷ O.G. Izevbuwa and G.O. Abdulrahman, 'The Challenges of Free and Fair Elections in Nigeria: An Appraisal of the 2023 General Elections', (2023) 6 *Edwin Clark University Law Journal* 288.

³⁸ E. I. Ogbuka, 'The Electoral Act 2022: Understanding the Legal Framework Governing Elections in Nigeria' <https://www.tekedia.com/the-electoral-act-2022> accessed 16 July 2025.

³⁹ F.O. Eberechukwu and B.H. Odealonu, 'Election and Voting Behaviour in Nigeria' (2019) 5 (1) *South-East Journal of Teacher Education* 122.

⁴⁰ O. Igwe and C. Illodigwe, *The Law and Conduct of Elections in Nigeria* (2015) Lambert Academic Publishing Germany 25.

⁴¹ M.E. Eniemeh and Sale Y. Ibrahim, 'Ethnic Politics and Nigerian Democracy: The Way Forward' (2021) 5 (2) *International Journal of Research and Innovation in Social Science* 23.

⁴² E.B. Omoregie, 'Legal Framework of Elections and Election Security in Nigerian Police Election Management' Workshop held at the International Conference Center, Abuja on the 5th August 2022. www.researchgate.net/last accessed 16 July 2025.

⁴³ *Ayomide v Soguno* (2013)1 WRN, 21. See also *Matanmi v Dada* (2013) 53 NSCQR 362 – 363.

⁴⁴ Cap. 112 L.F.N. 2004.

⁴⁵ Section 135 thereof; *Philips v Eba Odan Commercial & Ind. Co. Ltd* (2013)7 WRN, 22.

⁴⁶ Section 36 (5) CFRN 1999 (as Amended).

evidence or accusations made against them. However, as stated by Uwais JSC (CJN) Rtd, proof beyond a reasonable doubt has been deemed not to be proof to the hilt, meaning it is not proof beyond all iota of question.⁴⁷ The prosecution only has to make sure that the necessary components of the crime have been proven.⁴⁸

3.4. Proof in Election Petitions

This work had stated earlier that an election is the proper way to a change in government. It is the procedure used in a democratic system of government to select a candidate for a political position by popular vote.⁴⁹ It was also stated earlier that there are both pre- and post-election matters. Whereas pre-election matters deal with the selection of candidates for the political parties, post-election matters deal with matters emanating from elections proper.⁵⁰ The standard of proof for both criminal and civil cases was similarly stated in this work. Election causes should normally be civil in nature, but in cases where criminal accusations are made against the respondent by the plaintiff against the defendant in pre-election causes and the petitioner against the respondent in post-election causes, the standard of proof is proof beyond a reasonable doubt. In *Obi v INEC No. 1*⁵¹ The Court of Appeal thought that an election can be questioned on the grounds stipulated in the Electoral Act 2022.⁵²

It follows that since electronic transmission of results is not embedded in the Electoral Act, it cannot be a ground to question an election. The Court further stated that INEC only introduced electronic transmission of results in its guidelines for elections. The question is whether guidelines and Regulations for elections do not encompass an integral part of the Electoral Act.⁵³ It appears that election guidelines are interpreted as an integral part of the Act, but in the *Obi* case above, the Court thought that it does not constitute part of the Act. A petitioner who alleges that the votes cast were illegal and unlawful must, as a matter of law and facts, prove such allegation by tendering or adducing all material evidence, such as tendering documents that were used during the election and the result sheets where the result of the election is embedded or recorded.⁵⁴ In addition, the petitioner must also call or feature witnesses to testify to the effect that the votes cast are illegal or unlawful. Such witnesses must be those persons who saw it happen on the day of the

⁴⁷ *Nasiru v The State* (1992)2 NWLR (Pt. 589) 87.

⁴⁸ *Habibu Musa v State* (2013) 53 NSCQR 98-99.

⁴⁹ C.J. Ubanyionwu, 'Election Petition in Nigeria: A Legal Quagmire' being An Inaugural Lecture of the Chukwuemaka Odumegwu Ojukwu University, 21st February 2024 6.

⁵⁰ Section 285 (14) CFRN 1999 (as Amended).

⁵¹ (2023)19 NWLR.

⁵² Section 134(2) thereof.

⁵³ *Jegede v INEC* (2021) 14 NWLR (Pt. 1797) 409.

⁵⁴ Ratio 15 *Obi v INEC* (Supra).

election.⁵⁵ Additionally, he must demonstrate that the unlawful votes cast had a real or significant impact on the election's result.

The burden of proof in election matters is on the petitioner.⁵⁶ The petitioner has the authority to make sure that he calls these individuals to testify about what they witnessed and how it was carried out. This condition of the petitioner is equivalent to the Christian biblical statement that 'it is easier for a camel to pass through the eye of the needle than for a rich man to enter the kingdom of God.'⁵⁷ The same condition is required in the case of forgery and falsification.⁵⁸ On allegations of crime in election matters, as stated earlier, the petitioner is required to substantiate his allegations with cogent and verifiable facts of allegations bordering on fraud and crime.⁵⁹ Any election results announced by the electoral authority are presumed to be regular, and they stay valid until this presumption is refuted.⁶⁰ The Court found that the petitioner, Obi, did not prove his petition beyond a reasonable doubt and dismissed the petition.

The Court of Appeal's ruling in a Nigerian presidential election case was affirmed by the Supreme Court of Nigeria following an additional appeal to the Supreme Court.⁶¹ Thus, where corrupt practices are raised against the defendant or the respondent, it behoves the plaintiff or petitioner to prove his allegations beyond a reasonable doubt.⁶² Again, in *Nwobodo v Onoh*⁶³ the Court of Appeal held that the petitioner must prove the allegation of bribery and that to prove such an allegation, the name of the person bribed must be mentioned, and it must be shown that the alleged bribery affected the result of the election. The Court went on to say, "It is also contrary to the position of the law today as established by this Court and the ultimate Court in the land, the Apex Court, which is that when allegations of corrupt practices and non-compliance with the provisions of the Electoral Act are made in conjunction with allegations of crimes committed in electoral processes, an eyewitness account must be called and the allegations must be proven beyond a reasonable doubt."⁶⁴

⁵⁵ *Ibid.*

⁵⁶ F.O. Osadolor, 'Burden and Standard of Proof in Election Petitions Without Criminal Allegations' (2019) 12 (3) *Journal of Politics and Law* 156.

⁵⁷ The Holy Bible, King James Version, Matthew 19:24.

⁵⁸ Ratio 16.

⁵⁹ *Buhari v Obasanjo* (2005)13 NWLR (Pt. 941)1; *Abubakar v Yar'Adua* (2008) 19 NWLR (Pt. 1120) 7.

⁶⁰ *Abubakar v Yar'Adua* (2009) 19 NWLR (Pt. 1120)I; *Udom v Umana (NoI)*(2016) 12 NWLR (Pt. 1526) 179.

⁶¹ Appeal No. SC//CV/937/2023.

⁶² *Atiku Abubakar & Anor v INEC & Ors LER* (2019) CA/PEPC/002/2019.

⁶³ (1984)1 SCNR 1.

⁶⁴ *Ibid.*

The burden or obligation imposed on the petitioner is not an easy one, as it is difficult to discharge. The Court may also hold that a petition is not criminal even if the petitioner makes some criminal allegations against a respondent or defendant. In *Omoboriowo v Ajasin*,⁶⁵ the apex Court of Nigeria held that the trial Court was right to have treated the case as civil rather than a criminal cause, thereby resolving the issues on the balance of probability of evidence as required by law, even if the petitioner alleges criminality. The Court ruled that a falsification accusation could not be proven beyond a reasonable doubt because it does not fit under the group of matters that need to be shown beyond a reasonable doubt.⁶⁶

The Court has also criticized the application of proof beyond a reasonable doubt in some electoral matters. In *Eruojor v Ugbmiakpor*,⁶⁷ the Court stated that not all allegations would amount to criminality to warrant the standard of proving beyond a reasonable doubt. According to the Court, an allegation of simple misconduct should be shown by the preponderance of the evidence rather than beyond a reasonable doubt. The aforementioned makes it abundantly evident that election-related issues may be considered criminal in nature, particularly when there are accusations of serious crimes like forgery, falsification, snatching and stuffing ballot boxes and papers, printing ballot papers, purchasing and selling votes, and others.

However, it must be noted that where allegations of criminality are not very serious, such matters are proved on the preponderance of evidence. Thus, the U.S. Supreme Court in *Addington v Texas*⁶⁸ stated that there is an intermediate measure of proof in criminal-related matters in civil cases. The U.S. Supreme Court held that the standard in such matters can be in the form of clarity and convincing testimony or evidence. What this means is that once the petitioner can give clear and convincing evidence in the matter, he is held to have proved the same instead of the beyond a reasonable doubt mantra that has robbed many petitioners of their chances of regaining their mandates given to them by the people.

Again, it must be noted that the election tribunals are not empowered to convict persons who are involved in election malpractices except in a regular Court for that purpose. Therefore, since their Lordships cannot imprison the culprits for electoral fraud or malpractices, it would be out of place to use 'beyond a reasonable doubt' as their basis for resolving electoral allegations.⁶⁹ It should be noted that care must be taken to avoid treating all of these accusations as criminal, which would require the petitioner or plaintiff to prove beyond a reasonable doubt. Keep in mind that this

⁶⁵ (1984)1 SCNLR 108.

⁶⁶ See *Aguode Seikagba v Kalanama Penawou & Ors* (1999) 9 NWLR (Pt. 619) 460.

⁶⁷ (1999)9 NWLR (Pt. 09).

⁶⁸ (1976) 441 U.S 418.

⁶⁹ (1999)4 NWLR (Pt. 599), 405.

standard is difficult to meet and frequently turns into a mirage. Voter indifference during elections has been caused by the persistent problem of demonstrating beyond a reasonable doubt. Because some politicians think it's better to rig elections, win them, and then face the petitioner in court or a tribunal, knowing that the petitioner cannot prove their case beyond a reasonable doubt as required by law, many voters in Nigeria have lost interest in participating in the country's periodic elections.

3.5. The Role of the Judiciary Towards Proof Beyond a Reasonable Doubt in Election Matters

Although elections are won in various units and wards, it is incumbent on the judiciary, through the Courts or tribunals, to put in place such purposes to do justice and indeed ensure that justice is done to all electoral causes when called upon to do so. Elections in Nigeria can be contested on any of the following grounds: the respondent was not duly elected by the majority of valid votes cast during the election; the election is invalid due to corrupt practices; or the person whose election is being questioned or contested is not qualified to contest such an election.⁷⁰ Note that failure to comply with the Electoral Act's stipulations will not render an election void.⁷¹ Thus, in *Ogboru v Uduaghan*,⁷² the Court of Appeal held that the inconsistencies and duplications inherent in an election are contrary to the presumption of correctness. According to the Court, it was the petitioner's responsibility to demonstrate that there was no election.

There is no gainsaying the fact that the Court plays a vital role in any democratic process by helping to shape the future of a nation and encouraging national development and nation-building. In doing this, the Courts must bear in mind that they are dealing with human beings and there is therefore a need for peace and tranquility in society. The substance of the cases should be of paramount importance rather than relying on such provisions, which indeed have acted as a clog in the wheel of progress in the Nigerian democratic processes.⁷³ The Act states that 'if originals or certified true copies manifestly disclose the non-compliance alleged, it shall not be necessary for a party who alleges non-compliance with the provisions of this Act for the conduct of elections to call oral evidence.'^{74,75}

⁷⁰ Section 134(1) a-c, Electoral Act 2022.

⁷¹ Section 135(1) Cap. C23 Laws of the Federation of Nigeria 2004.

⁷² (2009)1 NWLR (Pt. 1121) 90 149.

⁷³ A.O. Oluwadayisi and E. Olowonmi, 'Nigeria's Presidential Election Petitions and the Burden of Proof: A Review and Critique of *Atiku v Buhari* (2019)' (2021) 1 (1) International Journal of Civil Law and Legal Research 17.

⁷⁴ Section 137 Electoral Act 2022.

⁷⁵ *Ibid*, Section 138.

The Courts are therefore called upon to demonstrate such an attitude in this regard and give a literal interpretation of the above provisions of the Electoral Act, as elections are not won through the Courts but through the ballots which express the will of the people.⁷⁶ In *Obih v Mbakwe*,⁷⁷ the Supreme Court held that an election petition is not always treated like a normal civil matter in Court. An election legislation usually creates special jurisdictions, and ordinary rules of civil procedure do suffice in election cases.⁷⁸ Going by the *Sui generis* nature of election petitions, it is devoid of technicalities.⁷⁹ It is not like ordinary civil matters where international and regional laws, such as the African Charter on Human and Peoples' Rights, are relied upon.⁸⁰ The task of proving beyond a reasonable doubt, as stated earlier, is very onerous and arduous, and even if the petitioner tries his best to prove his petition, to make matters worse, the Courts may hold that there seems not to be a perfect election in any part of the universe.⁸¹ Instances abound where some notable politicians go to the church to render confessions that their political party did not win an election.⁸²

4. Conclusion

In Nigeria's democratic procedures, the idea of proof beyond a reasonable doubt has turned into a maze and a roadblock. Determining what qualifies as proof beyond a reasonable doubt is undoubtedly challenging because what is "reasonable doubt" to Mr. 'A' may be "unreasonable doubt" to Mr. 'B.' The votes cast by the electorate must be counted in order to establish the election's winner if the election is *Sui generis* with a special procedure and the electorate is selecting a leader or leaders. Election-related issues, where proof beyond a reasonable doubt is upheld at all costs, are not criminal causes in and of themselves. Thus, in *Brinegar v United States*,⁸³ it was held that the purpose of proof beyond a reasonable doubt was originally to prevent jurors and judges (men) from unjust convictions of accused or defendants and to avoid errors in convictions. Furthermore, proof beyond a reasonable doubt does not equate to 'proof beyond all iota or shreds of doubt,' as Lord Denning simply stated. Therefore, 'it must not be stretched beyond a reasonable limit as most lawyers

⁷⁶ K. Leke and T. Alatise, 'Burden of Proof in Election Petition in Nigeria and the Implication of Section 137 of the Electoral Act, 2022,' available on <https://www.ajol.info/index.php/nauijlj/article/view/257306/243047> accessed 5th January 2025.

⁷⁷ (1981 – 1990) LRECN 199.

⁷⁸ *Abdullahi v Elayo* (1993)1 NWLR (Pt. 268) 171.

⁷⁹ *Abubakar v INEC* (2004) 1 NWLR (Pt. 865) 215.

⁸⁰ *Falae v Obasanjo* (1999)6 NWLR (Pt. 98) 478.

⁸¹ F.O. Osadolor, 'Burden and Standard of Proof in Election Petitions without Criminal Allegations' (2019) 12 (3) *Journal of Politics and Law* 156.

⁸² C.J. Ubanyionwu, 'Appraisal of Presumption of Regularity of Election Results Declared in INEC and Electoral Violence in Nigeria' (2024) 1 *Journal of Customary and Religious Law Nnamdi Azikiwe University Awka Nigeria* 88. <https://journals.unizik.edu.ng/jocar/article/download/4193/3425/9603> accessed 5th January 2025.

⁸³ 338 US 160 (1949).

would want to do.’⁸⁴ Also, in *Arab Bank Ltd v Ross*,⁸⁵ the Court stated that if ‘A’ steals ‘B’s coat and ‘B’ finds his coat from ‘A’, ‘B’ can still recover his coat from ‘A’ even if ‘B’ cannot prove beyond a reasonable doubt that ‘A’ stole B’s coat. From the above analogy, it is submitted that the Courts should have a rethink on the way forward towards achieving the goal of elections in Nigeria.

The proof beyond a reasonable doubt mantra has become very unpopular in electoral matters. It is, therefore, high time the Courts and tribunals reconsidered their application for a more popular approach towards solving this nagging problem. In view of the foregoing, it is argued that the principle of proof beyond a reasonable doubt as adopted by the Nigerian Courts and tribunals in election cases has outlived its usefulness. Given the above adumbrations, it is suggested that proof on the preponderance of evidence, which is clear and certain that an electoral fraud or malpractice has been committed, suffices in proving electoral matters and should be adopted. Again, the Courts and tribunals should be liberal rather than rigid in interpreting electoral laws and ensure that justice is done. Additionally, the requirements of sections 137 and 138 of the Electoral Act 2022 (as amended) should be interpreted by the courts and tribunals. At all times, the courts and tribunals must make sure that votes are counted and that elections are won by ballots from different states or units rather than through the courts and tribunals. Additionally, the Evidence Act and the Electoral Act of 2022 should be amended to require proof in election-related cases to be based on the preponderance of the evidence rather than beyond a reasonable doubt.

⁸⁴ B. Nwakama and N. Olehi, ‘Laws Governing Elections and Election Petition (Cases and Commentaries)’ (2007) Edu-Edy Publications, Owerri 409.

⁸⁵ (1952)2 QB216, 229.