STRATEGIES AND PROCEDURES FOR EXPEDITING ELECTION PETITIONS AND APPEALS*

Abstract

Justice delayed, they say, is justice denied. Delay in the dispensation of electoral disputes in Nigeria has become an albatross to the Nigerian nation. It has become a sour point in our electoral process. In this article, the writer meticulously looked at the various strategies and procedures for expediting election petitions and appeals in our electoral system.

Introduction

The general saying is that justice delayed is justice denied, and section 36 (1) of the constitution of the Federal Republic of Nigeria (as amended) gives to every person the right to have his civil rights and obligations determined by a court after a fair hearing and within a reasonable time. For clarity, the sub-section reads:

> 36 (1) in the determination of his civil rights and obligations; including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.[1]

It should be noted that for any type of democracy, sound and credible election is the most reliable means for the determination of who the representative of the people will be and Nigeria is not an exception. It is an accepted fact in Nigeria today that an average politician who goes to the poll and looses, either justly or unjustly, would turn to the election tribunals in a bid to reclaim his "stolen" mandate. Honourable Justice Pats-Acholonu JCA, had cause to worry about the habits of politicians who rush to file election petitions in **Ume v. Eneli**,[2] where he said.

> It is most unfortunate that our people have now formed the ungainly habit of rushing to the court when they are defeated in an election contest. In many cases, the parties indulge in rigging but one who is out rigged challenges the result of the election. In accusing the other and his minions of distortions he forgets to remove the bean in his eyes.[3]

As a result of this development, the number of petitions has continued to rise steadily. For example, in the general election held in 2003, a total of 574 petitions were filed. The figure rose to 1,527 petitions during the 2007 elections.[4] It was the highest in the history of Nigeria. Disposing of this large number of petitions within a limited time frame has posed a serious challenge to the available election tribunals. After judgement, the parties chose to go on appeal. The analysis of 426 judgements at first instance delivered by election tribunals that sat throughout the country after the 2007 general elections reveal that

(i) the number of petitions that succeeded was 96.
(ii) the number of petitions that failed for lack of merit was 222.[5]

In order to achieve expeditious resolution of electoral disputes, various attempts have been made using the rules of court to fast track election petitions. The most significant of all is the Practice Direction issued by the then president of the Court of Appeal relying on the provisions of section 285,[6] section 8(2)[7] and section 149.[8] The practice direction introduced the practice of frontloading of documents as a means of fast tracking matters. Unfortunately no time was specified within which to determine election petitions. In a bid to expedite the disposal of electoral disputes, the 1999 constitution has been amended.[9] The amendment has specified the period of 180 days from the date of the filing of the petition within which election petition shall deliver its judgement.[10] An appeal from a decision of an election tribunal or Court of Appeal in an election matter shall be heard and disposed of within 60 days from the date of the delivery of judgement of the tribunal or Court of Appeal.[11]

The above innovation is yet to be tested or activated. In order to avoid the problems encountered during the 2nd republic in **Unongo v. Aper Aku**[12] where the apex court held that a provision in a statute limiting the time within which the courts must hear election petitions and appeals thereon and deliver judgement is an unwarranted interference with the judicial powers and is therefore void. The writer proffers practical hints on how to expedite election petitions and appeals arising therefrom.

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Election Petition defined

In the contemporary world of today, elections have become the most acceptable means of changing leadership in any given political system. Election ordinarily, in most democratic state is usually conducted by an institution set up by law in a given society. Representative government is often referred to as democracy where the authority of government is derived solely from the consent of the governed. The principal mechanism for translating that consent into governmental authority is the holding of free and fair elections.[13] Election is the corner stone of democracy.[14] A free and fair election gives the assurance that those who emerge as rulers are the elected representatives of the people. An election is primarily a contest for the votes of the electorate by the aspirants for the political office.[15] Except in a case where an aspirant is returned unopposed; there will usually be at least two contestants to elective posts. Rules and regulations are normally put in place for the conduct of free and fair elections.

The procedure for challenging an election under the Electoral Act[16] 2010 is by way of an election petition complaining of either an undue election or undue return.[17] An election petition presupposes that an election has been held and the result announced. A petition as to who is validly elected as governor of a state, for example, can only arise after an election.[18] After the 2007 general elections, Nigerian did not only witness the challenge of the presidential election won by the late Alhaji Umaru

13. Www. Buzzles.com/articles/electoral – reform –m – Nigeria – html – 28k – accessed 18/12/2008.
14. T. Osipitan, "Problems of Proof under the Electoral Act 2002," **Judicial Excellence, Essays in Honour of Hon. Justice Anthony Iguh HSC CON**, Snaap Press Ltd, Enugu, 2004, p 289-304.
15. *Ibid,* at p 289.
16. Electoral Act 2010, Cap. E6 Laws of the Federation of Nigeria 2004 (as amended).
17. **ANPP v. PDP** (2006) 17 NWLR (pt 1009) 467

Musa Yar'Adua, but also litigations against governorship election result in states across the country.[19] The former Court of Appeal President, Justice Abdullahi Umaru said that about 1,527 petitions were lodged in respect of the 2007 general elections, saying it was the highest in the history of Nigeria.[20] Justice Abdullahi Umaru agreed with the former president of the Nigerian Bar Association (NBA) Chief Oluwarotimi Akeredolu (SAN) that the way and manner the 2007 general elections were conducted might have given room for the welter of petitions.[21]

General Nature of Election Petitions

Election petitions are neither criminal nor civil cases. On the grounds of public policy, election petitions are regarded as unique and therefore, accorded special treatment. In legal circle, it is common knowledge that election petitions are *"sui-generis"* which means special, or, put in another expression, proceedings of its own kind or class; unique or peculiar.

[239]Election petitions have peculiar features which modify the operation of certain rule of civil proceedings. Some technical defects or irregularities which in other proceedings are considered too immaterial to affect the validity of the claim, could be fatal to proceedings in election petitions. In **Obasanya v. Babafemi,**[22] the Court of Appeal held that election petitions basically complain about elections or conduct of elections. In **Orubu v. NEC**,[23] it was further held that election petitions are peculiar in nature, and because of their peculiar nature, and importance to the well-being of a democratic society they are "regarded with an aura that places them over and above normal day to day transaction between individuals which give rise to ordinary claims in court."[24] In the admirable words of Justice Uwais, CJN (as he then was) he puts it succinctly as follows:

> 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 delay in the disposition of the substantive dispute.[25]
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> This view was also expressed by Oguntade, JCA in **Abdulahi v. Elayo**[26] thus: It must be borne in mind that an election petition is not always to be treated as the ordinary civil suits in court. An election petition creates special

22. (2000) 15 NWLR (pt 689) 1.
23. (1988) 5 NWLR (pt 94) 323 at p. 347.
24. *Ibid.*
25. *Ibid.*
26. (1993) 1 NWLR (pt 268) 171.

> jurisdiction and the ordinary rules of procedure in civil cases do not always serve to effectuate its purpose.

The issue as to whether a specific time span should be stipulated within which election petitions must be concluded has always generated heated and unending debates among Nigerian legal practitioners, jurists and politicians alike. Attempts to resolve the issue have also, at best, resulted in continually shifting legal positions.
The undue delay experienced in some cases[27] became extremely embarrassing and drew so much criticism from lawyers, the media, politicians and indeed all the major players in the electoral process. To salvage the situation, the President of the Court of Appeal on 29th March, 2007, in exercise of the (presumed) powers conferred on him by section 285(3) of the 1999 Constitution of the Federal Republic of Nigeria and other powers issued new practice directions christened "Election Tribunal and Court Practices Directions 2007."[28] The practice directions were published in the federal republic of Nigeria official gazette of 4th April, 2007 and took effect retrospectively from 3rd April, 2007.[29] They were made applicable to presidential, governorship, national assembly and states assembly election petition.[30] The importance of the practice direction came under judicial scrutiny in **Dele Taiwo Ololade v. INEC**[31] where the court of appeal, per Mohammed JCA stated that:

> Practice direction therefore remains in force having been made with the intention of guiding the courts and the legal profession on matters of practice and procedure. Practice directions are overridden by the rules of court only when they are in conflict with the rules. But when practice directions as issued or co-exist harmoniously with the rules of court, a party or counsel who ignores them does so at his peril.[32]

The key aims of practice directions are:

a to ensure just, efficient and speedy dispensation of justice;
b to discourage the institution of frivolous actions in the courts;
c to afford the courts the opportunity of knowing the cases of the parties before hand;
d to ensure diligent prosecution of cases by litigants and their counsel.[33]

On the essence of the practice direction, Okoro, JCA in **Ado v. Mekara**[34] has this to say:

As the purport of the practice direction is to aid the quick dispensation of justice especially in election matters, time becomes of the essence and this makes it mandatory for the strict compliance with the directives. The court will always frown at any attempt to circumvent or treat the practice direction with levity. See **Jimoh Ojugbele v. Musemi Ltd Olamidi & ors** (1999) 9 NWLR (pt 621) 167.

The Electoral Act[35] also provides for the accelerated hearing of an election petition, giving it precedence over all other cases and matters before the tribunal or court.[36]

Judicial Resolution of Electoral Disputes in Historical perspectives

Judicial resolution of electoral disputes has proved to be a sore point in the electoral process in Nigeria.[37] We shall examine this sub-heading in various epochs of our post independent life.

The First Republic

This covers 1960 to 1966. There was 1964 federal elections schedule to hold in October/November 1964. Before the election, violence broke in the then Western Region which necessitated the re-scheduling of the election to the end of December 1964. As the election approached electoral officers were terrorized into absconding from their offices once they had received the nomination papers of the governing party candidates, leaving opposition candidates with no opportunity of filing their nomination papers. So fragrantly was the election procedure abused that at the close of nomination, some 88 out of a total of 174 Northern People's Congress (NPC) candidates into the Northern Region Parliament had their candidature unopposed, and as such were declared elected unopposed. In the west, about 30 percent of the Nigerian National Democratic Party (NNDP) candidates were supposed to have been returned unopposed. The situation in the east was not much different.

Despite the irregularities, the chairman of the electoral commission went ahead and announced the results of the election which showed that the NPC had won all but eight of the 174 constituencies in the north; the NNDP had won the majority of the seats in the west and the NCNC a majority of the mid-west constituencies. With these results, Sir Tafawa Balewa called on the President to request that he, the Prime Minister, be re-appointed to head a new government of the Federation. The President refused to accede to the request of the Prime Minister, thereby creating a constitutional stalemate.[38]

It should be noted that no election petition was filed with respect to this election. As a result of the stalemate, the judiciary stepped in. After over a week of negotiations, the President, on the intervention of the Chief Justice of the Federation, Sir Adetokunbo Ademola and the Chief Justice of the Eastern Region, Sir Louis Mbanefo, relented and agreed to invite the Prime Minister to form a "broad-based government."

From the above scenario, the judiciary would appear to have been critically weakened by the intervention of the Chief Justice of the Federation and the Chief Justice of Eastern Region during the stalemate. Their action, even though extra-judicial showed that they were unprepared to differentiate their social roles as pillars of the law from their roles as ethnic leaders and party political figures.[39] By intervening in the way they did, they foreclosed the chances of any of the key political leaders resorting to the law court as a means of resolving the constitutional crisis. The result was that the judiciary blurred with the political, and the judiciary could no longer be looked upon as an instrument of affecting adherence to rules.

There was another election during this period. The Western Region parliamentary elections of 1965 were generally marked with all sorts of malpractices, aggravated by violence. The methods of electoral fraud employed were the familiar ones, but the scale was overwhelmingly much more severe. The judiciary was not spared in the process; the native or customary courts ceased to operate as havens of

judicial impartiality. They, in reality belonged to the political rather than the judicial arm of the administration. Appointments to their benches were part of the political patronage at the dispensation of the ruling politicians.

Some of the judges themselves were personally involved in politics. Confidence in the ability of the courts to decide political issues impartially was consequently undermined, to the point that there was a general disinclination to take political complaint to them. To go to court in such matters was felt to be a vain effort, since by past experience a decision in favour of the government was considered a foregone conclusion. Convinced that they would get no justice from the courts for the rape of their right to choose who should govern them, the people naturally resorted to violence as the only remedy open to them in the circumstance. The result was that the candidates of the United Progressive Grand Alliance (UPGA) which "lost" the 1965 parliamentary elections in the Western Region did not file any election petitions.[40] They simply refused to accept the results of the election or to acknowledge the legitimacy of the government formed as a result of it. Instead, they and their millions of supporters took to the streets of Western Nigeria threatening, burning, or maiming any member of the government party they could corner in the bush or in a back-garden. Unpopular customary court presidents were slaughtered like rams. As a result of these, the military struck on the night of January 15/16th 1966, thereby culminating the end of the first republic.

The Second Republic

The second republic covers the period between 1979 and 1983. Two general elections took place during this period, that is, the 1979 and 1983 general elections which were conducted by the federal electoral commission. After the 1979 general elections, the case of **Obafemi Awolowo v. Shehu Shagari**[41] arose almost entirely because of the manner in which the Electoral Act 1977, as subsequently amended, was couched in respect of the president. Section 34(2) of the 1977 Act provides that:

> in the case of an election to the office of the president a candidate shall be declared to have been duly elected to such office if:-
>
> (a) he has the highest number of votes cast at the election, and
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> (b) he has not less than one quarter of all the votes cast at the election in each of at least two-thirds of all the states within the federation.

Those who drafted the constitution well knew that there were nineteen states in the country, and nothing would have been simpler than just saying, "not less than one quarter of all the votes cast in 13 states."[42] The Federal Electoral Commission (FEDECO) held that Alhaji Shehu Shagari of the National Party of Nigeria (NPN) had fulfilled conditions (a) and (b) set down above having scored the highest number of votes of the five Presidential candidates at the elections and had more than one quarter of all the votes cast in twelve states. In the thirteenth states he had less than one quarter of all the votes cast but more than one-quarter of one-third of the votes. Chief

Obafemi Awolowo petitioned on the basis that what was required was thirteen states. The electoral tribunal unanimously upheld Alhaji Shehu Shagari's victory.
On appeal to the Supreme Court, five of the justices decided that the appeal be dismissed. Eso, JSC, in a dissenting judgement held that the appeal should have succeeded.

It should be noted that one feature of this case was that the proceedings were concluded before the President was sworn-in.

The second general election during the second republic was in 1983. The said elections were followed by avalanche of election petitions.[43] Large number of petitions filed was evidence that many of the defeated candidates together with their supporters did not accept the election results as announced.

As the verdicts began to be pronounced, the general public often expressed shock and dismay. Allegations of corruption in high places were freely made. In **Odumegwu-Ojukwu v. Edwin Onwudiwe**,[44] one of the two justices who dissented; Aniagolu JSC made the following pertinent remark:

> This case was in my view, one in which by fraud in the election, the rightful winner was made the loser and the loser declared the winner. The respondent, Dr. Edwin Onwudiwe, clearly did not win. This court should say so emphatically and say so unmistakably.

The Third Republic

During the third republic, Decree 50 of 1991 was promulgated. The most revolutionary change that was introduced by the said decree was the composition of the membership of the tribunals. Non-lawyers or trained judicial personnel were included as members.[45]

After the work of the various tribunals had been completed, there was a general feeling of satisfaction throughout the country. True, there were complaints, in a few cases, of alleged miscarriage of justice and some allegations were made here and there. At the end of it all, there was less tension and the political atmosphere was calm and peaceful.[46]

The Fourth Republic

Nigeria's fourth republic commenced on 29th May, 1999. On that day, Nigeria's military relinguished political power after dominating the country's post-independence experience. General elections were conducted in 1999, 2003, 2007 and 2011. Of all these general elections, the 2007 general elections however, seem to have put election petitions in top gear as the influx of aggrieved candidates into the courts for reprieve greatly increased, leading to the devotion of the better part of the tenure which the election ushered in to the resolution of election disputes.

During the period under review, some of the disputes were resolved in a reasonably short space of time.[47] However, some others spanned over three years. The petition of Dingyadi against Wamakko of Sokoto State[48] is considered the longest election petition ever entertained by the judiciary in the northern part of Nigeria. It lasted for three years and eight months.

In the south eastern part of Nigeria, the case of **Dr. Chris Ngige v. Peter Obi**[49] has become a reference point in the analysis of the problems and challenges of electoral dispute resolution. Peter Obi the then governorship candidate of the All Progressive Grand Alliance (APGA) filed his case on the 16th day of May, 2003 challenging the declaration of Dr. Chris Ngige as the winner of the election. The tribunal took more than two years to hear all the witnesses and delivered judgement on the 12th day of August, 2005. The appeal came up for hearing on the 23rd day of January, 2006 and judgment was delivered on the 15th day of March, 2006. The petitioner waited for 35 months to receive justice out of a mandate of 4 years.

A most interesting scenario also played out in Delta State where after three and half years, Great Ogboru convinced the courts to nullify Delta State's 2007 governorship election.[50]

The south-west has also had its share of delayed resolution of electoral disputes in **Fayemi v. Oni**[51] and **Aregbesola v. Oyinlola**[52] for Ekiti and Osun States respectively.

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As stated above, the Electoral Act,[53] has made a far reaching innovation by specifying the time limit for concluding electoral disputes and appeals arising therefrom.

Strategies for Expediting Election Petition Disputes

The primary aim of adjudication in election petitions should be to ensure as far as humanly possible that the choice of the electorates is given legal backing. While it is important that this should be done as quickly as it is humanly and legally possible, the aggrieved parties should not be shut out by hurrying the proceedings in the name of quick dispensation of justice. This is not to suggest that proceedings should be dragged inordinately. This will create disenchantment with the judicial process. Election petition tribunals should not be "boxed" into a tight corner, where it has to sacrifice justice on the altar of its speedy dispensation.

Under the 1982 Electoral Act,[54] election petitions were meant to be concluded not later than 30 days from the date of the elections. The ridiculous situation created by the provisions of sections 129 (3) and 140 (2) of the Electoral Act 1982 was vividly brought out by Oputa CJ, (as he then was) in **Collins Obih v. Samuel Mbakwe**[55] where his lordship stated thus:

> The Electoral Act 1982 did not seem to envisage proper hearing and scrutiny by the courts. Section 119(4) gives a petitioner 14 days after the publication of the result to file his petition. Section 135 gives the respondent 6 days to reply thus making a total of 20 days (where the result is announced on the day of election). Section 139 (1) gives the registrar at least 10 days to fix date of hearing making 30 days.[56]

51. (2011) FWLR (pt 554) 1.
52. (2011) 1 WRN 33. Judgment was delivered on 26th of November, 2010.
53. Electoral Act 2010, Cap E6 Laws of the Federation of Nigeria 2004 (as amended).
54. See Sections 129 (3) and 140 (2) of the Electoral Act 1982 (as amended).

The Supreme Court quashed these provisions in **Unongo v. Aper Aku**[57] in the following words:-

> I do not see how a reasonable person will have the impression that a party has had a fair hearing where his petition which has been instituted within the time stipulated by the Electoral Act cannot be concluded because the time available to the court for the petition to be heard will not be sufficient for either or both parties to present their case or will not allow the court at the close of the parties' case sufficient time to deliver its judgement. There can be no doubt that the provisions of section 129 subsection (3) and 140 subsection (2) of the Electoral Act neither allow a petitioner or respondent reasonable time to have a fair hearing, nor give the court the maximum period of 3 months to deliver its judgement after hearing a petition as envisaged by sections 33 subsection (1) and 258 subsection (1) of the constitution respectively.
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> Accordingly, the provisions of section 129 subsection (3) and 140 subsection (2) of the Electoral Act, 1982 which limit the time for disposing of election petitions by the courts are in my view ultra vires the National Assembly and therefore null and void.[58]

Under the military rule, whenever elections were to be conducted, there were provisions in the Electoral Decree prescribing the time limit within which election petitions must be concluded. These provisions were applied by the courts but not without protest from them. The Court of Appeal in **Maikori v. Lere**[59] expressed their dissatisfaction with the provisions of the Decrees imposing a time limit in the following words:

> We have heard three election petition appeals today. Pursuant to paragraph 1 (3) of schedule 6 of Decree No. 50 of 1991 an election petition must be heard and determined within one month from the date of filing of notice of appeal. The appeal on this matter was filed on 28 February, 1992. Judgement ought to have been delivered on 29th March, 1992 but yesterday was sunday and so today is the last day when judgement must be delivered. It seems that the justices of the Court of Appeal and election tribunals have been strained without exception. It appears the position has not improved from what Aniagolu JSC said in **Ojukwu v. Onwudiwe** (1984) 15 NSCC 172; (1984) 1 SCNLR 247 when he observed:
> During the 1983 elections and the petitions that followed all the judges in Nigeria without exception were strained to the utmost by reason of pressure of urgency which the then

> state of law set out on the judges. All courts seized with election petitions versed round the clock beat the deadline resulting in some court sitting till late hour in the night, and delivering judgement immediately after closure of address of counsel no matter how late it was in the day or in the night.

See also (1984) 2 sc. 15 at 88/89

> That is exactly what we have done today. Aniagolu JSC says that this is an intolerable burden for the effective discharge of which the judiciary deserved. Justices of the court of Appeal have been moved all over this country, the president of the court leading the team. I am of the view that the law makers ought to look at this rush of the dispensation of justice, particularly in election petition matters afresh. There is need to give adequate time to all courts to hear case in a manner conducive to proper administration of justice without any health hazard to judges.[60]

As a result of the defect inherent in the Electoral Act 1982, the Supreme Court rose to the challenges to declare that any provision limiting the time within which election petitions must be determined is unconstitutional.[61]

It was therefore, not surprising that the provisions of the Electoral Act 1982 and the Decree became anachronistic with the coming into force of the 1999 Constitution, on the grounds of fair hearing, constitutional time frame allowed for the delivery of judgement and the fear that justice would be sacrificed on the altar of haste. Since then all the subsequent electoral legislations of 2002 and 2006 jettisoned the provisions imposing time limit for the disposal of election petitions. With the coming into effect of the Electoral Act,[62] a new paradigm shift has evolved.

Procedural Strategy for Expediting Election Cases

Various attempts have been made using the rules of court to fast track election petitions. Section 142 of the Electoral Act[63] provides for accelerated hearing of an election petition, giving it precedence over all other cases and matters before the tribunal or court.

Again, the Practice Direction issued by the then President of the Court of Appeal has now been passed into law by the National Assembly.[64] Under the said first schedule,[65] within 7 days after the filing and service of the petitioner's reply on the respondent or 7 days after the filing and service of the respondent's reply, which ever is the case, the petitioner shall apply for the issuance of pre-hearing notice as in form TF 008. Grave consequence awaits the petitioner where neither the petitioner nor the respondent filed the said pre-hearing notice. Subparagraphs (4) and (5) of paragraph 18 provides as follows:-

> (4) where the petitioner and the respondent fail to bring an application under this paragraph, the tribunal or court shall dismiss the petition as abandoned petition and no application for extension of time to take that step shall be filed or entertained.

(5) dismissal of a petition pursuant to subparagraph (3) and (4) is final, and the tribunal or court shall be functus officio.

As a result of the above paragraph, many election petitions have been dismissed.[66] In **Onokpite v. Uduaghan,**[67] the petitioner challenged the return of the respondent as governor of Delta State. The petition was dismissed outright pursuant to paragraph 3(1), (4) and (5) of the Practice Direction for non-filing of application for pre-hearing notice. The application for extension of time brought by the petitioner was equally dismissed.

Amendment of the Constitution

In a bid to expedite the disposal of electoral disputes and still act within the purview of the Constitution, the 1999 constitution has been amended. Section 285 of the Constitution has been substituted with a new one and according to section 9 of the Constitution of the Federal Republic of Nigeria (second alteration) Act 2010, section 285 (5) – (8) provides thus:

(5) an election petition shall be filed within 21 days after the date of the declaration of the result of the elections;
(6) an election tribunal shall deliver its judgement in writing within 180 days from the date of the filing of the petition;
(7) an appeal from a decision of an election tribunal or Court of Appeal in an election matter shall be heard and disposed of within 60 days from the date of the delivery of judgement of the tribunal or Court of Appeal;
(8) the court, in all final appeals from an election tribunal or court may adopt the practice of first giving its decision and reserving the reasons therefore to a latter date.

The above innovation is yet to be tested or activated. If it works out, election petitions and appeals ought to have been finally disposed of within 240 days after the declaration of election results, which is about 8 months from the date of declaration of result.

Factor responsible for the delay in election cases

The major reasons for the delay in the determination of election petition cases can be summarized as follows:-

1. Provisions of the rules of court that are exploited by lawyers to stall proceedings. Previous electoral laws[68] opened a flood gate for respondents to file all sorts of frivolous applications to challenge the petition presented by the petitioner. The said sections[69] contain similar provisions thus:

> … on the motion of a respondent in an election petition, the election tribunal or the court, as the case may be, may strike out an election petition on the grounds that it is not an election petition on the ground that it is not in accordance with the provisions of this part of this Act, or the provisions of first schedule of this Act.

In **Akingbulu v. Ogunbanjo**[70] which arose as a result of the house of representative election in the Ajeromi/Ifelodun federal constituency of Lagos, the 2nd respondent challenged the petition based on section 147(3) of the Electoral Act.[71] When the matter reached the Court of Appeal, the Court of Appeal unanimously allowed the appeal and ordered the petition to be sent back to the tribunal to be heard and determined on the merit by the election petition. It is interesting to note that more than 9 months had elapsed from the date of swearing-in of the 1st respondent and the determination of the preliminary issue, before the Court of Appeal sent the matter back to the trial court.

2. One of the factors responsible for the delay in election cases has to do with lack of seriousness on the part of litigants. Some petitioners after filing their cases at the tribunal or court will not diligently prosecute their cases. On the other hands, the respondents will do every thing humanly possible to frustrate the hearing and determination of the petitions.
3. The sheer volume of election petitions the judiciary has to attend to is another factor.
4. Weak bench. Some members of tribunal appointed to determine election petitions and appeals arising therefrom are lazy and as such they cannot expedite the hearing and determination of election petitions. Equally, some of them are not knowledgeable enough to withstand the pressure required in the determination of election petitions.
5. Dilatory practice of lawyers who employ all sorts of subterfuge to prolong trial to allow the incumbent remain in power while the trial is going on. Some lawyers engaged by the respondents to defend them in election petitions and appeals file all sort of frivolous applications in order to delay the determination of the petitions so that the incubate would remain in office while trial continues. The case of **Igbeke v. Emor**[72] is a typical example.
6. Lack of equipment for electronic recording.
7. Lack of independent and impartial electoral body in the conduct of its constitutional duties. INEC officials reportedly tampered with election materials and documents, returned losers as winners, recorded votes where there was no voting at all.[73]

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Consequences of delay in the disposal of Election matters

1. Consequence of delay in the determination of petitions is the changing of the electoral map of Nigeria. Various verdicts from the election petition tribunals and the Court of Appeal have automatically introduced staggered system into the gubernatorial elections in the country. Gubernatorial elections may never hold again at the same time in the 36 states of the Federation.
2. Heightening of political tension as election petitions drag for indeterminable periods, grievances linger, breeding anxiety and uneasiness and leading to an inevitable eruption of rage.

73. O. Nwachukwu, "Beyond Judicial Reversal of INEC Elections", **Sunday Independent**, March 23, 2008, p B6.

3. The waiting period before the disposal of election petitions dims the contesting party's hope of enjoying the fruit of his litigation, if he succeeds. While the tribunal is "taking its time," an illegitimate president, governor or legislator may be taking the rights and privileges of an office to which he has no valid claim.
4. It exposes the judiciary to negative publicity.
5. It disrupts judicial activities as serving judicial officers will be out of their routine judicial functions thereby causing the normal routine business of the courts to suffer.
6. It causes the erosion of public confidence in the judiciary.
7. It encourages the employment of self help to settle political scores.
8. It has the tendency to cause social disequilibrium.

Recommendations

In order to eliminate the above mentioned factors responsible for delay in election petitions, all stakeholders should ensure that the following mechanisms are put in place:

1. There must be credible, free and fair elections.
2. Introduction of better fast track methods.
3. Our courts should be properly equipped.
4. There must be change in the attitude and orientation of lawyers.
5. Proper orientation of the officials of the electoral body is important.
6. Curtailing of unjustifiable and unnecessary emphasis on and resort to technicalities.

Practical hints on Expediting of Election Petitions

A. For the petitioner's counsel who should be the arrow head in achieving this, the following are recommended:

i filing of petition, if possible before the expiration of the 21 days allocated by the law for filing.
ii all processes must be filed within time.
iii orderly presentation of witnesses' written statements on oath.
iv proper pleadings of relevant documents and availability of the documents.
v effective pre-trial briefing of witnesses.
vi avoidance of unnecessary technical objections.
vii advanced preparation to meet all objections at the trial.
viii summary of witnesses' evidence as the proceedings progress.
ix gradual preparation of written addresses in the course of the proceedings.
x where applicable, abridgement of time for taking procedural steps.
xi submission of relevant authorities timeously to the tribunal.
xii. comprehensive knowledge of the procedure employed at the trial and any subsequent appeal.

B. For the respondent's counsel, the following are recommended:
   (a) ensure that all preliminary objections are timeously raised and taken.
   (b) he must follow the proceedings and prepare a line of defence in advance.
   (c) he must act at all times in the interest of justice.

Conclusion

Every body has a role to play in ensuring that our budding democracy is not disparaged as a result of failure to diligently do our part in the disposal of all electoral disputes. All stakeholders and ministers in the temple of justice must reflect on this and play their parts conscientiously. The judiciary must also be reminded that its members should be ready to work harder in order to dispense justice and not deny justice by allowing delay tactics, since the saying goes "justice delayed is justice denied."