



Case Reviews: Abubakar Atiku & Ors V. INEC & Ors Mr Peter Gregory Obi & Ors V. Independent National Electoral Commission (INEC) & Ors And People's Democratic Party V. Independent National Electoral Commission & Ors

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Abstract

Election constitutes the leadership recruitment process of Nigeria and the citizenry is interested in how the governing elites are raised. Electoral process begins from the erection of electoral management institution and the concomitant actions taken by the electoral apparatus to return candidates in an election. The process spans to the ventilation of electoral grievances before an appropriate judicial temple. The pronouncements of the final appellate court in respect of a given office which declares a candidate as duly elected seals the electoral process. The 2023 Presidential election received the highest voter participation in the political history of Nigeria and it produced the candidate of the All Progressives Congress Mr. Bola Ahmed Tinubu as duly elected. The candidates of the People's Democratic Party and of Labour Party were dissatisfied with the electoral outcome and therefore invoked judicial intervention. The affirmation of the unanimous decision of the Presidential Election Petition Court by the Supreme Court declaring Mr. Bola Ahmed Tinubu as duly elected attracted the concerns of the Nigerian electorate. The paper employs the doctrinal methodological approach in appraising the constitutional provisions relating to declaration of electoral winners. Considering the position of Abuja in the electoral configuration of Nigeria and the jurisprudential thoughts of judicial benchers, some recommendations have been made. Since electoral journey terminates in the court, it is expedient that the adjudicators discharge the responsibility with utmost integrity, patriotism and impartiality. It is hoped that the adoption of the reforms proposed herein would engender public trust in the judicial system and electoral democracy.

KEYWORDS: Abubakar Atiku, Abuja, Election and Peter Obi.

I. Introduction

This paper reviews the cases of Abubakar Atiku & Ors V. INEC & Ors,¹ Mr. Peter Gregory Obi & Anor V. Independent National Electoral Commission (INEC) & Ors² and People's Democratic Party V. INEC & Ors.³ In Atiku's case, the 1st Appellant was sponsored by the 2nd Appellant, People's Democratic Party to contest the 2023 Presidential Election. The 2nd Respondent Bola Ahmed Tinubu was the Presidential Candidate of the 3rd Respondent, All Progressives Congress in that election. In Obi's suit, the 1st Appellant stood as the flag bearer of the 2nd appellant, Labour Party in the election. The Appellants proceeded against the 1st Respondent, the 2nd and 3rd Respondents Bola Ahmed Tinubu and Kashim Shettima who were the Presidential and Vice-Presidential Candidates of the 4th Respondent, All Progressives Congress.

In the case of the People's Democratic Party, V. INEC & 3 Ors which was a pre-election matter, the candidature of the 2nd Respondent, Kashim Shettima was challenged on the grounds of double nomination which the Appellant argue soiled his candidacy.

The facts of Atiku and Obi's cases are that election into the office of President of the Federal Republic of Nigeria was conducted by the Independent National Electoral Commission (INEC) on 25th February, 2023. The 1st Appellant in Atiku's case, Abubakar Atiku in the election scored a total of 6,984, 520 votes. While the Appellant in Obi's action, Peter Obi recorded 6,101,533 votes. At the conclusion of the Election, the 1st Respondent in the two suits, INEC returned the 2nd Respondent in the

¹(2023-10) Legalpedia 79478 (SC).

²(2023-10) Legalpedia 79478 (SC).

³(2019) LPLR – 48101 (SC).



two actions, Bola Ahmed Tinubu as the duly elected President of the nation having scored a total of 8,794,726 votes.

Peeved by the outcome of the election, the Appellant in the two actions filed petitions before the Court of Appeal Abuja sitting as the Presidential Election Petition Court (PEPC) challenging the election of the 2nd Respondent in their respective suits, Bola Ahmed Tinubu. The PEPC in a considered judgement, affirmed the election of the 2nd Respondent herein and accordingly dismissed the petitions. Miffed by the decision of the trial court, the Appellant in the respective suits approached the Supreme Court. The Apex Court in the morning of October 26, 2023 delivered judgment in Atiku's case dismissing the Appeal for lack of merit.

Since six issues for determination in the two appeals were in the main, the same, the Apex Court in the afternoon of that same day extrapolated the judgement in Atiku's case to apply to Obi's suit. Thus, the two cases cannot be appraised distinctively but conjunctively. The only issue which was peculiar to Obi's case was the complaint of double nomination against the 3rd Respondent KashimShettima. The Supreme Court held that the issue was earlier ventilated in Peoples Democratic party V Independent National Electoral Commission & 3 Ors. Where it held that KashimShettima was properly nominated and was not soiled by double nomination. The Supreme Court therefore extrapolated the judgement in the people democratic party's case to Obi's own. It follows as a corollary that Obi's case cannot be examined in isolation but with reference to the case of People's Democratic Party herein.

The two Election cases were heard and determined by the same panel of the Supreme Court which Hon. Justice Inyang Okoro delivered the Lead Judgements. The decisions were unanimously concurred by the other six panelist of the Court who were Uwani Musa Abba Aji JSC, Mohammed Lawal Garba JSC, Ibrahim Mohammed Musa Saulwa JSC, AdamuJauro JSC, Tijjani Abubakar JSC and Emmanuel AkomayeAgim JSC.

Abubaka Atiku & Ors V. Independent National Electoral Commission & Ors

The Appellants and respondents formulated several issues but the Supreme Court opted to adopt those of the Appellant for they were also the issues donated by the respondent under different semantics. The issues are examined seriatim.

Non-transmission of Election Result Electronically

The Appellant complained that despite the assurances that the first respondents gave the voting public that it would transmit election result electronically real time from polling units to its INEC Established Result Viewing Portal, (IREV), the 1st Respondent failed to do so on the excuse that it suffered glitches. The Court held that the Appellant did not show how the failure to transmit result electronically affected the electoral outcome and resolved the issue against appellants. It is difficult for one to be at one with the Apex Court. Paragraph 39 of INEC Regulations stipulates that election result shall be transmitted from voting centres to IREV portal⁴. The grundnorm empowers the 1st Respondent to issue regulations, rules and guidelines for the conduct of elections.⁵ On the strength of the Constitutional empowerment, the 1st Respondent issued regulations and guidelines for the purpose of conducting elections which is therefore a subsidiary legislation. The non transmission of result electronically by the 1st Respondent was therefore a violation of its rules and a breach of the constitution which donated the power.

Further, there was evidence before the court that the 1st Respondent faraway at Chartam House, London declared that election result was to be transmitted electronically to its viewing portal and repeated the assurance at different fora in Nigeria. As a prominent state institution, the utterances of the 1st Respondent should be taken to the Bank as a National Chairman of the Commission and the Commission itself are expected to be person of integrity and honour. The Supreme law of the land provides that the "National ethics shall be Discipline, Integrity, Dignity of Labour, Social Justice, Religious Tolerance, Self-Reliance and Patriotism".⁶ The Non transmission of election result electronically by the Commission therefore violates the cherished integrity value of the Nigerian polity.

While the 1st Respondent claimed that it had glitches that frustrated her from transmitting Presidential Election Results to her viewing portal, the National Assembly Election Results were transmitted the same day the Presidential Election was held. It is worrisome that the Apex Court did not query this fact. The laxity was worsened by the

⁴ INEC Regulations and Guidelines for the Conduct of Elections 2022.

⁵ Constitution of the Federal Republic of Nigeria (CFRN) (1999) s 160.

⁶ Ibid, s23.



evidence of the chief promoter of Internet, Amazon, whose evidence was that the internet functioned maximally on 25th February 2023 and that there was no issue of glitches of failure throughout the whole world. The Supreme Court jettisoned that piece of evidence on the ground that the evidence was not front-loaded to Respondents.

Forfeiture of Funds by the 2nd Respondent

It was an issue before the Court that the 2nd Respondent in both Atiku and Obi's cases, Mr. Bola Ahmed Tinubu was accused in the United States of America of trafficking and merchandising on narcotics. The appellants argued that in a bid to escape criminal charge, the 2nd Respondent forfeited the sum of 460,000 US dollars to the American government and that by reason of that forfeiture, the 2nd Respondent was not qualified to contest the presidential election.

The Apex Court held that the Nigerian Law recognizes the disqualification of a candidate on grounds of a criminal charge where the person was convicted and sentenced for a criminal offence, and that a certificate of conviction in that regard is necessary to prove the conviction.

The Court proceeded to say that forfeiture of money or asset targets the property while criminal conviction focuses on the criminal wrong of the person and that forfeiture of assets does not constitute a ground for the disqualification of a candidate for an election.

The Court by that reasoning, accordingly resolved that issue against the appellants.

It cannot be said by any judicial thoughts that forfeiture of monetary assets by a candidate over an act like trafficking in narcotics which is a criminal offence is an act of honour. While it is conceded that a president cannot be perfect, he is one whose course of life and destiny of the citizens are in his hands. Such a person under our law is required to be a person of honour, integrity, and discipline.⁷ Moreso, the president is required to lead the fight against trafficking in narcotics which is a global malady through the National Drug Law Enforcement Agency (NDLEA)⁸ established for that purpose.

The Supreme Court should have invited itself to section 23 of the CFRN, 1999 which recognizes the values of honesty, integrity and discipline. Can it be said that the forfeiture of

monetary asset by the 2nd Respondent epitomized these values? I think not. The Supreme Court was therefore in grave error of law to undermine these values as the act of the 2nd Respondents forfeiture of the money constitutes a breach of the provisions of section 23 of the CFRN, 1999.

Declaration of a Winner in Presidential Election

The Appellants relied on the provision that for a winner to be declared in a Presidential election contested by more than 2 candidates, the candidate must secure one quarter of the votes cast in at least two-thirds of the states and the Federal Capital Territory.⁹ The Nigerian State comprises of 36 States and a Presidential candidate must secure 25 percent of the votes in not less than 24 states and Abuja. The 2nd Respondent, Bola Ahmed Tinubu did not record 25 percent of the votes in Abuja and the Appellant contended that he did not satisfy the requirement to be returned elected. They relied on the use of the conjunction "and" to show that a candidate must secure 25 percent in Abuja in addition to recording 25 percent in not less than 24 states. The Supreme Court rejected the argument on the ground that the provision is lumped together and that if the drafters of the constitution intended so, they would have made the requirement of Abuja a distinct provision. With respect, the simple and clear word "and" in the provision is too prominent to be defeated by such interpretation of the Court as the literal canon of interpretation best suit the provision of Section 134 of the Constitution.

Evidence of Witnesses on Subpoena

The Appellant applied to the Presidential Election Petition Court to issue subpoena to certain witnesses to testify. The trial court obliged but rejected the evidence of the 13 subpoenaed witnesses on the grounds that the Appellant did not file written Statements on Oath of the witnesses. The decision of the Court of Appeal was upheld at the Supreme Court.

It is elementary law that a subpoenaed witness is one who would not ordinarily attend court at the instance of a party but for the command of the court. It was therefore impossible for the appellant to front-load the evidence of subpoenaed witnesses to the respondent.

Thus the position of the law as it were seems to be that the evidence of a subpoenaed witness cannot avail the party who initiated the subpoena. Can it be said that this position of the law is applicable to only election cases? The evidence of

⁷Ibid.

⁸ Established pursuant to the National Drug Law Enforcement Agency Act, CAP. N30, Laws of the Federation of Nigeria, 2004.

⁹ *ibid*, s134.



Amazon who was subpoenaed by the Court at the instance of the Appellants that the internet did not breakdown on the day Presidential election was conducted fell into the pigeon-hole of the nascent judicial thought. Thus, the determination of issue (3) with respect is strange to law.

Exposition of the Rule of Hearsay Evidence

The Law empowers political parties to appoint polling agents for each polling unit and collation center.¹⁰ Consequently, the second appellant appointed polling agents in all polling units and centers in Nigeria. Some of the polling agents were given additional responsibilities as state polling agents and National polling agents. The Appellants at the PEPC called 12 states and National collation agents as witnesses to establish the perpetration of electoral malpractices in many of the polling units as were fed them by the respective polling agents. The evidence of the national and state collation agents of the second Appellant were rejected as hearsay and this issue was presented to the Supreme Court for reversal. The Apex Court after perusing the Records of Appeal on the issue endorsed the decision of the PEPC in rejecting the evidence. The position of the Law has been clearly stated that it is only agents of political parties who were present in polling units and observed any electoral malpractices that can give evidence in that regard.¹¹ This position of the law was earlier put forward by the Apex Court in *Buhari Vs. INEC & Ors*¹² & in *Goyol & Anor Vs. INEC & Ors*.¹³ The Court was right in rejecting the evidence of the national and state collation agents as they were not at all the polling units of the states they alleged the Commission of electoral irregularities. To do otherwise would have been tantamount to the creation of electoral octopus and moreso when the evidence sought to establish the veracity of the claim of the orchestration of electoral fraud which is an ingredient of hearsay evidence¹⁴ It is worrisome that the evidence of the Appellants contradicts the fourth issue which the Appellants sought a determination and which borders on the rejection of the evidence of national and state collation agents of the second Appellant. The Appellant pleaded in paragraph 4 of their petition that they had “agents in all the polling units,

ward collation centers, local government collation centers and state collation centers in all the states of the Federation and the Federal Capital Territory as well as the National Collation centers”. The Appellants did not call in witness any of the agents in the crowd it listed from the polling units. To cause their national and state collation agents to give evidence about polling units which were manned by some other agents was clearly hearsay. The Appellants could not be permitted to approbate and reprobate at the same time.¹⁵ The decision deepens the law in hearsay rule and draws attention of advocates to be more cautious of the evidence they intend to place before the Court.

Lack of Specificity in Pleadings

In the fifth issue, the Appellants prayed the Court to determine whether the lower court was not in error in striking out several paragraphs of the Petition and the replies of the Appellants on the ground of vagueness and lack of specificity and for being new issues, mere denials or being repetitive.

A perusal of paragraphs 129 and 133 of the Appellant’s petition shows that the Appellants alleged that Messrs Adejoh and Governor Yahaya Bello perpetrated electoral malpractices. However, the Appellant did not join the duo as they were necessary parties. The two paragraphs were therefore liable to be struck out for non-joinder. An appraisal of paragraphs 92, 95, 98, 121, 126, 129, 133, 143, 144 and 146 of the Appellant’s Petition indicated that they were vague, imprecise, lacked particulars and so fell short of the requirements of the law.¹⁶ The decision of the Court on this issue is unassailable.

Burden of Proof of Election Results

Issue six sought answer to whether the lower court was not in error in its evaluation of the evidence of the Appellants witnesses on the burden of proof and clear admission against interest made by the 1st Respondent.

The major plank of this issue was that the appellants pleaded in their petition that the 1st Appellant won the majority of highest votes cast and in 21 States of the Federation. The states included Adamawa, Akwa Ibom, Bauchi, Bayelsa, Borno, Delta, Ekiti, Gombe, Jigawa, Kaduna, Katsina, Kogi, Kwara, Nasarawa, Niger, Osun, Sokoto,

¹⁰ Electoral Act, 2022, s43.

¹¹ PDP & Anor V. INEC & Ors (2019) LPELR – 48101 (CA).

¹² 2009 NWLR (Pt. 1120) 244 (SC).

¹³ (2012) 11 NWLR (Pt. 1311) 207, 218 (SC).

¹⁴ Subramania V. Public Prosecutor (1956) 1 WLR 965

¹⁵ AG Nasarawa V AG Plateau State, [2012] 10 NWLR (Pt. 1309) 370 at 374 (SC).

¹⁶ Paragraph 4(1)(b) of the First schedule of the Electoral Act, 2022.



Taraba, Yobe & Zamfara States. The 1st Appellant who scored 6,984,520 votes relied on the results exhibited by the 1st Respondent which showed the results of the 1st Appellant as stated heretofore and that of the 2nd Respondent which was 8,794,726 votes. The contention of the 1st Appellant was that he should have been declared the winner of the election, having won in a majority of states. The Supreme Court upheld the decision of the PEPC that the 1st Appellant, having not exhibited the result he claimed he won the majority of votes cast, he could not have been declared the winner of the election. Also, S134 (2) of the 1999 Constitution provides that where there are more than two candidates in a presidential election, the candidate who scored the highest number of votes cast at the election, not majority of votes cast as propounded by the petitioners is returned. The two Courts were correct in their evaluation and affirmation of the issue. It is beyond dispute that the Constitution contemplates a winner of Presidential election scoring the highest number of votes cast in the election and not a majority of highest number of votes concocted by the Appellants. This requirement for declaration of a winner in presidential election vis-à-vis all other elections was long settled in a plethora of authorities.¹⁷

Fortunately, this issue cropped up in an earlier case between the 1st Appellant and Late President Musa Yar'Adua. Thus, the decision of the Court on this issue is consistent with the 2008 decision involving the 1st Appellant.

Allegation of Bias

The last issue that the Court resolved was whether the lower Court was right in its use of disparaging words against the Appellants in its judgment, evincing hostility and bias against the Appellants, thereby violating their right to fair hearing and occasioning grave miscarriage of justice.

Although the Supreme Court did not evaluate the allegation raised in the issue, it held the opinion that, no matter how the issue was resolved, no benefit would enure to the Appellants.

The words of the PEPC complained of by the Appellants as been disparaging was uncomfortable to them. The justices are protected under our jurisprudence for comments made by them in the performance of their judicial functions.¹⁸

¹⁷ Abubakar Vs. Yar'Adua (2008) 19 NWLR (Pt. 1120) 1 at 55(SC), CPC Vs. INEC & Ors. (2011) LPELR – 8257 (SC).

¹⁸ EVIDENCE ACT (2023), s. 188.

This position is strengthened under the criminal law as they cannot be criminally responsible for comments made by them in Court.¹⁹ The Appellants were aware of these provisions and therefore took solace in raising their discomfort before the Apex Court. Assuming the Courts reasoned that the words of the PEPC complained of were actually disparaging, it is difficult to fathom out how such decision could give them victory in the light of the appraisal above.

Some interlocutory applications were filed by the Appellants and one of them was that the PEPC should order that the proceedings of the Court be live streamed so that the Nigerian populace could watch the proceedings. The Respondents vehemently argued in opposing the application that the grant of same would assassinate the nobility of the Court, defeat its sanctity and turn the Court to a theatre. The learned Justices of the Court in a considered Ruling struck out the application on the grounds that the Appellants did not invite the Court to any provision in the Constitution, Electoral Act 2022, INEC Regulations and Guidelines for the Conduct of Elections 2022 or the National Judicial Council Policy Directions on Political and Election Related Cases 2022. That was commendable as the Appellants themselves did not cite any law to buttress their prayer and therefore the Court did not find any legal superstructure to mount and grant their application. However, the same Court live-streamed its judgment without stating the law upon which it rode to livestream the decision.

One had expected the Appellants to appeal against the Ruling to the Supreme Court, but they did not consider it worthwhile. It may be that the Appellants felt that even if the application was granted, it would not affect the substratum of the appeal which is a declaration that the first Appellant won the election and should have been returned. If the ruling was appealed against, it would have afforded the Apex Court the opportunity to lay the law on point. In the circumstance, the decision of the Court of Appeal remains the law on livestreaming electoral proceedings. In an age of information technology and open governance, it is expedient that judicial governance should exhibit transparency as that would enure to the impartiality of the Court.

Mr. Peter Gregroy Obi & Ors. V. Independent National Electoral Commission (INEC) & Ors

It has been said that the first Appellant sponsored by the 2nd Appellant, Labour Party

¹⁹ CRIMINAL CODE ACT (2020), s. 31.



contested the 2023 Presidential election against the 2nd Respondent, Bola Ahmed Tinubu. The 1st Appellant scored 6,101,533 votes while the 2nd Respondent who secured 8,794,726 votes was returned elected. Aggrieved, the Appellants filed a petition before the PEPC and same was dismissed. On appeal to the Supreme Court, the Appellants formulated seven issues for determination. Of that number, issues 1, 2, 3, 5, 6 and 7 were the same issues the Appellants in Abubakar Atiku's case canvassed. The Apex Court in the morning of October 26, 2023 delivered judgment in Abubakar Atiku's case wherein it resolved all the issues against the Appellant. Since six issues in Obi's case were the same with those in Abubakar Atiku's case, the Court extrapolated the judgement in Atiku's case to Obi's Suit in the evening of that day. Thus, the judgment of the Court in Atiku's case, in respect of the six issues became that of Obi's case. The court was faced with the obligation of resolving only the fourth issue which was not canvassed in Atiku's case. The fourth issue had to do with double nomination of the 3rd Respondent, Senator KashimShettima. The Apex Court held that the issue was settled in Appeal No. SC/CV/501/2023, PDP Vs. INEC & 3 Ors delivered on 26th May 2023 and that it was unnecessary to relitigate the matter before the Court. The decision on that issue constitutes issue estoppel with the attendant philosophy that there must be an end to litigation.²⁰ Thus, the fourth issue was resolved against the Appellants and the Appeal in its entirety was dismissed. It is expedient to uncover the facts and the *ratio decidendi* in the PDP's case, hence an appraisal of the case of PDP Vs. INEC & Ors, since the decision was extrapolated to Obi's case.

People's Democratic Party V. INEC & Ors

The Appellant in this case sued the 1st Respondent, the All Progressives Congress, Mr. Bola Ahmed Tinubu and Mr. KashimShettima as the 2nd, 3rd and 4th Respondent in that order. The 4th Respondent was nominated as the candidate for the Borno Central Senatorial District, Borno State on July 3 2022. On 14th July 2022, the 3rd Respondent nominated the 4th Respondent as his running mate cum Vice Presidential Candidate for the 2023 Presidential Election and the nomination was sanctioned by the 2nd respondent. On 15th July 2022, the 4th Respondent relinquished the Borno Central Senatorial District Nomination for the Vice Presidential Candidate Ticket Option. The Appellant

contended that the 4th respondent was soiled by double nominations and therefore unqualified to vye in the 2023 General Election as Vice Presidential Candidate. At the risk of repetition, the Supreme Court held that the 2nd Respondent was not guilty of double nomination as alleged by the Appellant. The Apex Court per Emmanuel Agim (J.S.C) said that the 4th Respondent who was earlier nominated by the 2nd Respondent as a Senatorial candidate was given another option to be the Vice Presidential candidate of the 2nd Respondent in the 2023 Presidential election.

The court further said that the prompt and diligent withdrawal as Senatorial candidate of Borno Central Senatorial District Borno State, demonstrated that the 4th Respondent had no intention, design or plan to hold two nominations. The Learned Jurist held further that the fact that the 4th Respondent withdrew his earlier nomination after being nominated as the Vice Presidential candidate was of no moment. The Court went on to say that multiple nominations do not occur simply because the 4th respondent accepted a second nomination. The fact that the 4th Respondent immediately relinquished the earlier nomination for the later option was done to pave way for another person to replace him as senatorial candidate cannot be overlooked or disregarded. The Court held the position that double nominations manifest where a person holds two nominations for an election either in two constituencies or political parties. With respect, it is reasonable that a person should relinquish the nomination he holds in hand before he gets another nomination. What injury would the electoral process or the Nigerians state suffer if a person relinquishes the nomination he holds in hand before he takes another? This decision has installed political manipulation in the primary election process of Nigeria as it constitutes case law on the point. Nonetheless, the Supreme Court was right when it took the position that the fourth issue in Obi's case relating to double nomination of the fourth Respondent in this suit was bedeviled by issue estoppel. It is inconsequential that the Appellants in Obi's case were not aware that the issue of double nominations of the 4th Respondent in this action was heard and determined by the Supreme Court. This is so for it is elementary that ignorance of the law is not a defense.

Public Perception of the Judgements

The judgements in Atiku & Obi's cases were very highly criticized by a cross-section of the Nigerian populace, the intelligentsia and legal scholars. Prior to the delivery of the decisions,

²⁰AG Plateau State VAG Nasarawa State (2005)9 NWLR [Pt. 930] 421 (SC).



rumours were rife that the Learned Justices of the PEPC were compromised in pecuniary terms and promised elevation to the Supreme Court upon the Jurist affirming the return of the Second Respondent in the two cases, Mr. Bola Ahmed Tinubu by the Independent National Electoral Commission. The insinuations appeared to have been genuine when the Federal Government elevated all the five Justices of the PEPC to the Supreme Court.²¹ The Learned Justices were: The Chairman of the Panel, Haruna Tsammani, Stephen Adah, Misituru Bolaji Yusuf, Boloukuoromo Ugah and Abba Mohammed.

To worsen matters, no other Justice of the Court of Appeal was elevated at that time and this lent credence to the allegation that the Court was distance from exhibiting impartiality. The allegation of corruption in the Judiciary particularly in the Court of Appeal and the Supreme Court made by some concerned citizens was affirmed by the second most Senior Justice of the Supreme Court after the Chief Justice of Nigeria, Hon. Justice Dattijo Muhammad.

The Learned Jurist, Justice Dattijo Muhammad who served the Nigerian Judiciary for forty years made damning comments about the Supreme Court. During his Valedictory Speech as he was exiting the Supreme Court upon the attainment of the mandatory retirement age of 70 years, the Learned Jurist spoke of the rot in the Supreme Court.²² The Learned Jurist condemned the corrupt practices in the Apex Court when he said in clear terms that they were kleptocratic practices in the Supreme Court. He also bemoaned the over concentration of powers on the Chief Justice of Nigeria. The Law Lord opined that the CJN who is the head of the Supreme Court and the Judicature generally is also the Chairman of the Federal Judicial Service Commission, the Chairman National Judicial Council, the Chairman National Judicial Institute as well as the Chairman Legal Practitioners Privileges Committee. The vesting of these enormous powers on the CJN alone to preside over the appointment of Federal Judicial Officers, discipline and training of Judges together with the elevation of legal practitioners into the inner Bar as Senior Advocates of Nigeria as required under the said offices is absolutist and that absolute power corrupts absolutely.

The Learned Justice observed that public perception of the Supreme Court and Court of

Appeal is scornful, detestful and withering. He frowned at the assemblage of the panel that heard and determined the 2023 presidential election litigations. The Law master noted that the panel was carefully composed to deliver a pre-determined decision. The retired Jurist in buttressing his claim of corruption in the Supreme Court alluded to the circumstances which surrounded the resignation of the then CJN, Dr. Ibrahim Tanko Muhammad. He stated that all the Justices of the Supreme Court in 2022 accused Dr. Muhammed of corrupt enrichment and denied them of their legitimate welfare packages. This accusation propelled the CJN Muhammed to resign ostensibly on the grounds of ill-health. It is commendable that Dr. Muhammed threaded the part of honour in resigning his appointment which is a strange political act in Nigeria. Nevertheless, his conduct in office black-painted the Supreme Court and belittled the Nigerian Judiciary in the estimation of right thinking persons.

By the speech of a Judicial Officer in the status of Hon. Justice Dattijo Muhammad as an insider in the adjudicative machinery of the Nigerian polity, it is beyond disputation that the Supreme Court is corrupt. One had expected the Apex Court to respond to the comments of Hon. Justice Dattijo Muhammad but that was not the case. It is settled law that silence in the face of a damning condemnation is acquiescence. The sum total of the acts stated hearing particularly the Valedictory Speech of Hon. Justice Dattijo Muhammad which came the following day the Supreme Court affirmed the decision of the Court of Appeal that Mr. Bola Ahmed Tinubu was duly elected as the President of Nigeria is that the judgement was a travesty of justice. The remedy opened to the Nigerian state lies in honest and sincere judicial reforms as another Presidential election beckons in 2027. The enlightened Nigerian public can hardly be convinced for fair and impartial judicial electoral pronouncement so long as the former Justices of the Court of Appeal and the seven Justices of the Supreme Court Panel who heard the 2023 presidential election litigations still sit on the Supreme Court bench.

II. Conclusion

In Nigeria, Electoral victories are not determined by the votes of the electorates but by the Court. Thus, elections constitutes the nexus upon which electoral declarations and affirmations are made by the State judicial architecture. This presupposes that the present state of our political

²¹Emmanuella Obati-Daniels, Channels Television, Abuja, 7.00pm, May 8, 2023.

²² See The Valedictory Speech of Hon. Justice Dattijo Mohammad Friday, October 27 2023.



culture requires an independent, fair and impartial adjudicative machinery. Decisions of the Court should be propelled by patriotism and integrity particularly at the Supreme Court level as the final judicial arbiter of the land. The Cases reviewed herein have bared that our judicial system has not lived above board. The Apex Court in a number of cases has correctly laid the law and this is commendable. Nonetheless, the Court faltered in not recognizing the place of integrity in electoral transactions of the Country. The 2023 presidential election witnessed unprecedented electoral participation by the Nigerian Electoral Populace and this interest was dashed in the Judicial outcome of the presidential election litigations. The Appellants in the two presidential election litigations before the Supreme Court canvassed that the 2nd respondent in the two cases, Mr. Bola Ahmed Tinubu was not qualified to vye in the 2023 Presidential election having forfeited 460,000 US dollars to American government. Forfeiture of property without doubt is an act of dishonesty, affront to integrity and an exhibition of indiscipline. The electoral law should be amended to criminalize forfeiture of property and to constitute a ground for disqualification of a candidate in an election. The most thorny issue for resolution before the Apex Court was the satisfaction of the requirements for declaration of a winner in presidential election. Section 134 (2)(b) of the 1999 Constitution received interpretation by the Court which has bamboozled many a legal scholar and practitioners of Law. The contentious interpretation could be resolved by the National Assembly Amending the Provision by clearly providing under a separate paragraph that a presidential candidate shall also muster 25% of the total votes casts in the Federal Capital Territory, Abuja. An amendment should also be reflected in our jurisprudence that a party who initiated a subpoena on a witness is not bound to front load the evidence of the subpoenaed witness to the adverse party. A judicial octopus has been created in the office of the Chief Justice of Nigeria where he heads not only the Supreme Court but the whole judicial architecture of the nation. The holder of the office also presides over four State establishments relating to the Judiciary. The absolutism created in the holder of the office should be checked. The CJN should continue to heading the National Judicial Counsel while the 2nd, 3rd and the 4th most Senior Justices of the Supreme Court should chair the Federal Judicial Service Commission, National Judicial Institutes and the Legal Practitioners Privileges Committee in that order.

From the revelations of Hon. Justice Dattijo Muhammad that the Supreme Court Panel that heard the 2023 presidential election Appeals was consciously empaneled to obtain a pre-determined outcome and that the Supreme Court is corrupt, it is necessary to address the abnormally. To that extent sincere Judicial Reforms are advocated. Furthermore, as the 2027 Presidential election approaches, it becomes a desideratum to inspire confidence in the public that the judiciary is an impartial arbiter of disputes. Judicial integrity demands that the twelve Justices who adjudicated the 2023 Presidential Election Litigations both at the PEPC and in the Supreme Court should excuse themselves from hearing subsequent Presidential election petitions. The recruitment process of judicial officers in the nation should be democratized by entrenching and enthroning merit over parochial and nepotic considerations. A situation where appointment of Judges is predicated on family ties and political grounds annihilates the nobility and impartial spirit of the judicature. The Supreme Court is invited to reconsider its position in relation to double nominations as the present state of the law provides a nursery for political intrigues and manipulations in nomination process.