

ELECTORAL ACT 2026

Equity cannot compel the impossible

Written by:

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INTRODUCTION

- Following the repeal of the Electoral Act 2022 in Nigeria and the enactment of the Electoral Act 2026 "The Act", the Independent National Electoral Commission (INEC/Commission) has resolved to hold the Presidential and National Assembly Elections on Saturday January 16, 2027, and Governorship and State House of Assembly Elections on Saturday February 6, 2027.

- A sober consideration of the provisions of the Act and previous judgments of the court interpreting the Electoral Act 2022 (and relevant electoral legislations) may lead any reasonable man to conclude that Electoral legislations in Nigeria are designed to compel the Petitioner to prove the impossible. However, a thorough review of the previous decisions of the court will reveal that it is not impossible for a Petitioner to prove its case provided the Petitioner adequately prepares to prove its case before the Court/Tribunal.

The High Presumption of Regularity of the Election Results and the challenging task for any Petitioner:

- Election results are presumed by law to be correct until the contrary is proved.[1] The law is that the results declared by INEC enjoy a presumption of regularity. In other words, they are prima facie correct. The burden is on the Petitioner to prove the contrary.[2] The Supreme Court[3] of the Federal Republic of Nigeria buttressed this position when it held as follows:

1 Buhari v INEC (2008) LPELR-814 (SC) at 174-178; (2008) 19 NWLR (Pt. 1120) 246
2 Nyesom v Peterside & Ors (2016) LPELR- 40036 (SC), (2016) 7 NWLR Pt. 1512 P. 452
3 Udom Gabriel Emmanuel v Umana Okon Umana & Ors (2016) LPELR-40037 (SC); (2016) 12 NWLR Pt. 1526 P. 179

> *Surely, the presumption of regularity enjoyed by INEC's results are not rebuttable by presumptuous postulations or rhetorical questions, but only by cogent, credible and acceptable evidence…. This must be so, for a court of law can only pronounce judgment based on credible evidence presented and properly established before it. It is thus, not at liberty to go outside the evidence and search for extraneous evidence in favour of the parties.*

Flowing from the above, it is not surprising that several Presidential candidates in Nigeria have challenged the Election results in court since 1999, but not one has been successful as of date.

We shall briefly review the mind of the court on why the last Presidential election petition was dismissed. In Obi v INEC,[4] the court made some notable findings which include:

1. *In the petition, the Petitioners merely made generic allegations of various irregularities and malpractices against the Respondents without specifying the polling units, collation centers or specific places where the alleged irregularities and malpractices occurred. Rather, the Petitioners only stated that they will rely on Spread Sheets, Inspection Reports and Forensic/Expert Analysis which was not attached and served along with the petition on the Respondents. Rather, they only listed as items 35 and 36 in the list of documents to be relied upon by the Petitioners.*

2. *With regard to the Petitioners' contention that they have incorporated into the petition by reference the Spread Sheets and Forensic Analysis Report containing details of the polling units where they alleged that irregularities and malpractices occurred, it is trite that for a document to be properly incorporated as part of the pleadings by reference, the document must not only be referred to in the pleadings by reference, but it must also be included as part of the pleadings to be served on the adverse party, so as to enable the adverse party to properly respond to the same in his defense.*

3. *In the instant case, the Spread Sheets and Forensic reports which were documents prepared by the Petitioners' witnesses, were not served along with the petition on the Respondents but were only listed as documents to be relied upon at trial.*

4 (2023) 19 NWLR Pt. 1917 P. 1. See also A.P.M v INEC P.309 (same citation); Atiku v I.N.E.C P. 450 (same citation)

4. *In a Presidential election like the one being challenged in this petition, which was held in 176, 846 polling units, 8, 809 wards, 774 Local Government Areas, 36 States and the Federal Capital Territory, it is unimaginable that averments in a petition which merely allege irregularities and or malpractices without specifying the particular polling units or particular collation centers where the irregularities or malpractices have allegedly taken place, will be regarded as proper merely because the Respondent has not requested for further particulars.*[5]

5. *In order to establish falsification of election results, the Petitioner must produce in evidence two sets of results, one genuine and the other false.*[6] *After putting in evidence the two sets of results, a witness or witnesses conversant with the entries made in the result sheets must be called by the party making the accusation of falsification or forgery of results of the election to prove from the electoral documents containing the results of the election how the results of the election were falsified or made up.*

6. *To prove their petition, the Petitioners who indicated during pre-hearing that they will call 50 witnesses, called only 13 witnesses. Of the 13 witnesses, only three had their witness statements on oath filed along with their petition. Even if the statements of all the witnesses of the petitions were to be considered, the question is are those testimonies cogent and credible to establish the Petitioners' allegation stated above?*

7. *A look at 18, 088 blurred polling unit results which the witness claimed to have downloaded from the IReV portal, shows that they were not certified by the 1st Respondent (INEC). Being secondary evidence of public documents, they are clearly inadmissible.*[7]

8. *It is clear from the pleadings that the Petitioners were from the onset engaged in a wild goose chase and inquisitorial adventure. By Paragraph 9 of the Regulation, a political party has a right to appoint one person as its polling agent for each polling unit, collation center and one representative at each point of distribution of electoral materials in the constituency where it is sponsoring candidates for an election. According to PW12,*[8] *the Petitioners exercised that right and had 133, 000 party agents in the election. I stated earlier that none of those 133, 000 polling agents was called and not one single one of the result forms' collected by any of the agents was tendered in evidence.*

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5 Belgore v Ahmed (2013) 8 NWLR Pt. 1355 P. 60
6 Kakih v. PDP & Ors (2014) LPELR- 23277 (SC) P. 51-52, Adewale v Olaifa (2012) 17 NWLR (Pt. 1330) 478 P. 516
7 Egbue v Araka (2003) LPELR-532 (SC) P. 16-17
8 Petitioners Witness number 12

9. *Any serious candidate ought not to depend on INEC for materials to prosecute its petition. By virtue of section 167 (d) of the Evidence Act, the failure of the Petitioners to produce election result forms collected by their agents raises a presumption that if those forms had been produced, they would have been unfavorable to the Petitioners.*

10. *The European Union Election Observer Mission Report on the 2023 Presidential Election over which a mountain has been made by both sets of Petitioners was tendered before the Court. The impression given by both sets of Petitioners is that the said report, which in any case has even been ruled inadmissible by us in Petition No CA/PEPC/03/2023, is like gospel truth of what transpired in the election and so it must be accepted by this court and the conduct of the Presidential election declared corrupt or at the very least below par, regardless of whether or not its authors presented themselves in court to defend their opinions. That stance, I am afraid, is a complete non sequitur. Without the makers of that report presenting themselves in court to face cross-examination to authenticate their opinions, that report, I dare to even add, the ECOWAS report of the same election is completely valueless and inadmissible for the purpose of authenticating the opinions expressed in them by their makers.*

11. *INEC in their pleadings and evidence stated that the delay in uploading the results from the polling units to the IReV was due to a technical glitch and which was rectified within a few hours. All that the Petitioners could do was to bring a witness, a member of their political party, who claimed to be a software engineer and an employee of Amazon Web services Inc. She had the temerity and the audacity to claim authorship of a document, a word of which does not belong to her. INEC never claimed that the glitch which occasioned the delay in uploading the results to the IReV occurred on the Amazon Server. It is obvious that the Petitioners did not understand the explanation of INEC or they were just fixated on their belief that they won the election. They did not bother to place any cogent and credible evidence before the court. They expected the court to collect evidence from the market or be persuaded or intimidated by threat on social media. That is not the way of the court.*

The Court said a lot more, but we will stop here. The Act generally provides for two grounds to challenge an election, i.e. the election was invalid because of corrupt practices or non-compliance with the provisions of the Act, or the Respondent was not duly elected by majority of lawful votes cast at the election.[9]

9 Section 138 of the Act

- The challenge with the first ground of the petition is that the same Act provides that an election shall not be invalidated by reason of non-compliance with the provisions of the Act if it appears to the Court that the election was conducted substantially in accordance with the principles of the Act and the non-compliance did not affect substantially the result of the election.[10] So, a Petitioner that decides to lean on this ground must be able to not only prove the non-compliance with the provisions of the Act but how that non-compliance substantially affected the result of the election.[11]

- For the Petitioner to lean on the second ground and successfully scale any preliminary objection, the pleadings must specify the polling units, collation centers or specific places where the alleged irregularities and malpractices occurred bearing in mind that there are about 176, 846 polling units, 8, 809 wards, 774 Local Government Areas, 36 States and the Federal Capital Territory. The Petitioner must go further to determine cogent and credible witness to establish the Petitioners' allegation regarding any affected area. All witness statements and documents to be relied upon must be filed along with the petition bearing in mind that the election petition is expected to be filed within 21 days after the date of the declaration of the result and judgment delivered within 180 days.

- So where is the time for the Petitioner to start gathering the evidence in the format required by the law particularly when INEC, that is the best position to provide necessary documents, is a Respondent equipped to defend the regularity of the election? How is the Petitioner expected to prepare the witness statements and file same along with all documents with the petition?

- It would seem that the Act expects a Petitioner to start building his/her case even before the election. This essentially explains why 375 Judges were sworn-in 2 months ahead of the 2027 elections.[12] So, every potential Petitioner should resolve some questions which include-

    1. Since the election would be held in about 176, 846 polling units, 8, 809 wards, 774 Local Government Areas, 36 States and the Federal Capital Territory, do I have a legal team that will be responsible to prepare pleadings as they affect different states and witnesses?

    2. Who are the potential witnesses from each polling unit/ward/local government/state?

10 Section 139 of the Act
11 Abubakar & Ors v Yar'adua & Ors (2008) LPELR-51 (SC) at 120 (C-D) 177 (F-A); (2008) 19 NWLR (Pt. 1120) 1
12 CJN swears in 375 judges for election tribunals – Daily Trust

3. Have the potential witnesses been prepared on how to gather relevant evidence on the election day?

4. What evidence do I need from INEC before the election?

5. How would I ensure that INEC will certify necessary documents before the petition is filed?

6. Would I need witnesses from INEC?

7. What will be the scope of the evidence from each witness and why is the witness qualified to give such evidence?

8. If we intend to rely on any ECOWAS or foreign report, are the authors available to be witnesses?

9. If INEC successfully pleaded that there was a technical glitch which took some hours to resolve, what is the evidence to show that the "technical glitch" was orchestrated in bad faith to allot lawful votes to another candidate?

10. Who is responsible for collating the election result forms to be used as evidence before the Court?

The answers to these questions will serve as a litmus test on whether the Petitioner is prepared to prove his case. If a Petitioner is unable to answer these questions, the Petitioner should reconsider his decision to approach the Court. Election petitions are of their own kind or class. The slightest non-compliance with a procedural step which otherwise could be cured or waived in ordinary civil proceedings could result in a fatal consequence to the petition.

CONCLUSION:

Election Petitions are fought on pleadings, competent and credible witnesses. A Petitioner may be expected to file his election petition within 21 days after declaration of the election result. However, a Petitioner is not expected to start building his case after the election result. Start as early as possible. A Petitioner has a very challenging though not impossible task to prove its case under the Electoral Act 2026.

The content of this article is the view of the author and not necessarily that of the firm; and intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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