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De-Democratizing Nigeria: Interrogating the Role of the Judiciary in the 2011 General Elections in Benue State

Tsuwa, John Tor^{*}

Abstract

Democracy has become a contentious issue in Africa and Nigeria in particular. This is because of the nature and character of democracy in these societies. The struggle for political offices has in many cases crippled the major tenets of participatory democracy as the people's right to vote and be voted for are crippled. This accounts to why majority of Nigerians depend on the judiciary which is considered as the "last hope" of the common man to help in instituting democracy through credible resolution of electoral disputes. This paper examines the role of the judiciary in encouraging democracy or de-democratizing the Nigerian democratic process through its ability or inability of resolving credibly electoral disputes. Using elite theory in analyzing the data collated from secondary data especially newspapers, text of judgments delivered by the courts and other documented evidence relating to the outcome of the electoral petitions in the 2011 elections in Benue State, the paper discovers that, the judiciary in its dispensation of justice in the 2011 election petitions in Benue State was highly influenced by the executive and other stakeholders and as such, majority of the cases brought before it were not concluded thereby de-democratizing the process through technicalities or pre-determines judgments without attending to the cases on their merit and substance. For the judiciary to perform its role in the consolidation of democracy in Nigeria, this paper recommends amongst other strategies the punishment of corrupt judicial officers and a procedure of reversing judgments delivered on technical ground and cases must be based on merit.

Key words: Democracy, Judiciary, Electoral petition, Electoral process, judicial process

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Introduction

Democracy accord to the individual the right to exercise his/her civic responsibility by participating in politics in three aspects. One, it may be by voting at elections, two, by being actively involved in the party process in terms of membership, contesting for elections and holding political offices and three, the person may not be in the two categories but will be interested in observing, commenting or attending political meetings without being partisan. In the Greek City state of old, political franchise was the first property of the citizen, as the citizens had the obligation to discuss public issues. (Rosen and Wolff 1999:155).

With the advent of modern liberal democracy that emphasis according to Nzongola-Ntalaja (1997:14) the right of the citizens to participate in the management of public affairs, and the right of the people to change a government that no longer serves their interests, or right to revolution, many post colonial African states were set to integrate their citizenry into the democratic process. According to Clark (1991:98), there is a causal relationship between mass participation in politics and level of human dignity, and with the provisions of the 1979 constitution which allowed for the first time female adults in the Northern part of Nigeria to vote and be voted for, Nigeria, one of the post colonial states in Africa was set to integrate its masses in the modern democratic culture. Nigeria therefore started its journey into the modern democratic culture with elections in 1979, 1983, 1991-92, 1999, 2003, 2007 and 2011.

Although the Nigerian democratic and electoral system has been marred with irregularities ranging from election rigging, thuggery, votes purchase, intimidation of opponents and other electoral weakness, the Nigerian democratic experience in the 2011 general elections revealed the inability of the Independent National Electoral Commission (INEC) to successfully conduct free, fair and credible elections. The electoral process was therefore marred by pervasive irregularities such as rigging, thuggery, violence, and bribery of electoral officials, manipulation of voters register and other electoral irregularities, Atim (2011:15). This can be explained further by the numerous petitions that arose out of the conduct of the last general elections. In most democracies, the judiciary is perceived as an impartial body that gives and restores hope to the people by passing sound judgments in both civil and electoral cases. However, the judiciary as the "last resort" of the common man in seeking redress against injustice has been a disappointment to the public thrust as emanating from the judgments of the court in the electoral issues in the 2011 general elections. This is arising from the fact that, its interpretation of the electoral law 2010, (as amended) especially in the issues of dismissing all pending petitions on the ground of the expiration of 180 days deadline attracted a lot of contradictions which left many Nigerians in doubt about their independence, impartiality and their ability to deliver sound judgments as an umpire in the dispensation of justice within approved time.

This paper will analyze the electoral petitions arising from the

conduct of the last general elections with the view of identifying those areas that the judiciary as a result of their delay and subsequent refusal to dispense justice based on technicalities have pose grave danger to the present Nigeria democratic development process. The paper also seeks to generate recommendations on how democracy can be enhanced through the independence of the judiciary and the entrenchment of the rule of law.

Conceptual Clarification

Democracy: The concept of democracy has suffered definitional precision due mainly to the varying ideas among scholars as to what constitutes its subject matter. However, we shall consider few definitions of democracy as given by scholars in order to arrive at the object of this work. Appadorai (1975:137) defines democracy as a system of government under which the people exercise the governing power either directly or through representatives that they periodically elect by themselves. It means that, democracy is a system of government which gives the people power to participate in the decision making process of their society. It is in line with this thinking that Okpaga (1999:4) conceives of democracy as "any system of government that is rooted in the ultimate authority in the government of the people rightly belonging to the people, that everyone is entitled to an equitable social and economic justice. In another dimension, Diamond (1988:4) notes that, democracy entails "meaningful and extensive competition among individuals and organized groups (especially political parties) either directly or indirectly, for the major positions of governmental power, in addition to popular participation

in the electoral process and respect for civic and political rights of the people.

We can conclusively argue that, democracy is rooted within some basic characteristics. These include firstly, access to public offices through periodic elections. Secondly, participation of all those eligible in the democratic process which realizes the democratic character of majority rule. Thirdly, democracy must guarantee civil and political liberties of citizens against infringement by governmental apparatus. Fourthly, democracy entails and guarantees the principles of checking the excesses of those in authority and ensuring the rule of law were equality of all the citizenry is upheld. This is to ensure that citizens can freely join and establish civil associations and political groups as well as express and debate on a diversity of ideals and issues as it affects the governance process as well as choose public officials to manage their common affairs.

Judiciary: The term judiciary just like democracy suffers definitional problem, but we shall conceptualize it here to mean the court system of any state. Anifowose & Enemuo (1999:185) assert that, the judiciary constitutes the third arm of government. It entails law, judges and courts. The primary duty of the judiciary is the interpretation of laws and application of existing laws to individual cases. In the same vein, Oyeneye et al (1998:48) observes that the judiciary is the third arm of government that is responsible for the interpretation of laws and the trial of cases involving individual citizens, organizations, and the state. The judiciary ensures obedience to the law, and gives judgments as appropriate in respect of any case(s) brought before it.

According to Toluh (1998:86) the judiciary is basically the court system of a comity – the process whereby justice is dispensed. It is generally one of the arms of government, the whole gamut of personnel and the courts which are responsible for the administration of justice. In a more simple term, the judiciary has responsibility of interpreting the laws of the land. The judiciary is considered as one of the viable conditions for sustainable democracy. This is because the judiciary through its credible resolution of criminal and electoral disputes institutes and consolidates democratic governance in a country.

Theoretical Framework

Though scholars have come out with various theories to explain the issue of democracy and judicial system in Nigeria, the one that this paper adopts to best capture and explain the realities in the Nigerian judicial and democratic process is the elite theory.

The main philosophical and theoretical foundation of this theory arose out of the scholarly works of philosophers like Wilfredo Pareto, Gaetano Mosca, Roberto Michael, and Ortega Gasset, among others. It is the argument of these scholars that every society is divided into two strata, the selected few who govern the society because of their access to wealth, power and influence and the masses who are governed because they are destined to be ruled upon. The Elites theorists believe that men may be equal in the eyes of God but they are not in the eyes of man. According to the theorists, inequality is largely found in every state and society, thus making every one of them oligarchic in different degrees. Elite arises in every type of society and state

because of the traditions, wealth, physical might, economic status which becomes the major ingredient to rule (Agarwal 2000:439).

The elite theorist argue that, those in leadership sometimes become corny and mischievous in their bid to retain power, they craftily manipulate the system; they use threat, intimidation and even force to achieve their goals. Elite theory has been faulted on some grounds by many scholars. The problem of this theory According to Dahl in Olaniyi (2001:01), is that the assumption that the elite group is a homogenous group conscious of their power, that is, its assumption that the elite enjoy sanity, coherence and self-consciousness is a fallacy. This is because political elite may or may not be synonymous with military or the economic elite. Thus one cannot talk of one ruling elite but multiplicity of elites. Another ground is that, there is no way by which the elites can use power to benefit all and sundry in the society. It is therefore anti-democratic and it encourages inequality in the society.

This is why the elite theory, is adopted to explain power intrigues in Nigeria. In Nigeria, it is the few that manipulate themselves in leadership position at the detriment of the majority and as far as they are concerned they are the best to rule based on the manipulative ability they possessed. This claim by the Nigerian elites is situated in Geraint Parry's argument. Parry (1977:13) as cited in Olaniyi (2001:89), observes that the elites are small minorities who appear to play an exceptionally influential part in political and social affairs. A critical look at the nature and character of Nigerian politics shows that, the Nigerian society is ruled by a minority that possesses the

qualities necessary for its accession to full social and political power. A panoramic analysis reveals that, those who get to the top tends to influence political, social, judicial decisions and also control the distribution of wealth and economic activities to benefit them rather than the generality of the masses. The elite constantly perpetuate themselves in leadership by recycling from one position to another through their abilities to manipulate the system. The cases of persons such as Shamsudeen Usman, Adamu Chiroma, Tony Anenih, Ojo Maduekwe, Bamanga Tukur, Sule Lamido, The Saraki's and many other governors such as Danjuma Goje, Chris Ngige, Abdulahi Adamu amongst others who are now in the senate is a clear manifestation of the elite manipulation of the political and electoral system to acquire political positions. This theory is adopted here because the rulings or the non dispensation of justice within the stipulated time by the judiciary in the 2011 elections especially in Benue state was a clear case of elite manipulation of the judicial process so as to retain themselves in power against all odds.

The Nature of Democracy in Nigeria: A Discuss

Democracy in its mature form as practiced by the advanced countries of Europe and America entails the desiring freedom of the citizens to have certain level of responsibility and independent political judgment to determine who govern them and the nature and manner of the governance process. Nigerian democracy is described as nascent and as such, people's liberty of free political judgment is hindered by the elites through autocratic leadership. Democracy in

Nigeria is thus a system of government in which those selected to represent the people in government have the liberty to loot from the public coffers. In another dimension, democracy in Nigeria refers to allocating political offices to geo-political zones without considering the yearnings of the people in their electoral process. This policy denies the nation the opportunity of enjoying the contributions of the best of its people who are prepared for leadership and the task of national development. In the views of Joseph (1978:187) and Nnoli (1986) as cited in Agu (2009:5) democracy in Nigeria has been reduced to ethnic participation. According to them, once political power rotates between the major ethnic groups effectively, there is democracy. The consequence of this is that, it results to ethnic struggle over the control of power and resources. Therefore creating vulnerable ground for the ethnic elite to manipulate the system for their selfish interest and favour.

The process of democratic governance in Nigeria is not built on the basic principles of popular participation, honesty, transparency, accountability, rule of law and the recognition of fundamental freedom of the people to choose credible leaders acceptable by them. The annulment of the June 12, 1992 elections purportedly won by chief MKO Abiola, the series of post election violence in the Northern part of the country after the 2011 elections and the avalanche of electoral petitions after the 2011 elections shows clearly the delinking of the masses from the electoral process. Agu (2009:6) therefore asserts that, in Nigeria, our leaders see political offices as a profitable investment for self enrichment with their families, cronies and surrogates. This

explains why in Nigeria today, poverty has been on the increase and it has rendered our people powerless in challenging the unjust system. The implication of this is those wealthy mediocre's and under-educated money bags politicians have continue to use the poor masses as common fodders during elections. It is a clear indication that money politics have become part of the Nigerian political system. The elites substantially use money to buy-off votes and decide the outcome of petitions which arise from the conduct of elections. This they do to perpetuate themselves in power to satisfy what Tsuwa (2010:13) refers to as their belly politics.

Since the political elite, this is those who control state powers either by occupying government offices or through their economic links with the government that shapes the nature of public policy and decisions have succeeded in institutionalizing corruption and by extension constitutionalizing poverty and helplessness of the masses through what is called "immunity clause", the democratization process in Nigeria has been de-democratizing Nigerians as their capacity to participate and check the excesses of the democratization process has been withered away. According to Utume and Shima (2011:17), the structure of democracy in Nigeria designed by the ruling class completely disregards the people whose mandate is purported to be sought at elections. Nigerian democracy is therefore highly conscriptive of both the rights and resources of the people in favour of the ruling few. It is a democracy that the conspired criminality of ex-military dictators and their civilian compradors has reduced the participatory process of democracy to a caucus system

that is determined and executed by members of the "cabal". In this context, unpopular *cabalistic* decisions like removal of oil subsidy, privatization of the core economic sectors, and non implementation of budgets have become the major character of the Nigerian democratic system.

Nigeria: Interrogating the Electoral Process

A panoramic view of the Nigerian electoral process reveals that, since independence in 1960, Nigeria has conducted eight General Elections. The first was the 1964/65 elections during which Sir Abubakar Tafawa Balewa was elected Prime Minister. The 1979 election when Alhaji Shehu Shagari was elected President, the 1983 general election when Shagari was re-elected, the 1991/93 elections which were later annulled, the 1999 when Chief Obasanjo was elected President, 2003 election during which Obasanjo was re-elected, 2007 election during which Umar Musa Yar'Adua was elected and the 2011 elections which produced President Goodluck Jonathan.

In all these elections, only the 1979, 1993 (though later annulled) and the 1999 have been considered by observers as getting close to credible elections. Agber in Ityokaa and Hongor (eds) (2007:137) explain that the reason for their little success was that the regimes that conducted these elections were retiring military regimes and so did not present candidates for the elections. He argues that since the regimes had no over vested interests in the elections, they did not interfere with the verdict of the electorates. For instance, in the 1979 elections, the military government led by General Olusegun Obasanjo was retiring

from political leadership and he did not present candidates for the elections. Also, in 1999 General Abubakar had no vested interest in the elections and did not manipulate the conduct and results of the election.

The general elections of 1964/65, 1983, 2003, 2007 and 2011 were conducted by the politicians themselves. Consequently, their desire to either retain themselves in power or to install their candidates made them carryout several electoral misdeeds including falsification of results, harassment of electorates at polling stations, transfer of some candidates' votes to others, theft of ballot boxes etc. The report of the Conference Nigerian political Parties (CNPP) on the electoral process in Nigeria captures this thus:

The electoral process is full of premeditated vote allocation ..., forceful hijacking and diversion of election material, the use of security agents – the army, air-force, intimate, arrest, detention and even killing opposition members, all in an attempt to continue in office... (CNPP Report 3, 2003:4).

The above scenario is not different from the trends in the just concluded 2011 general elections in Nigeria. Many Nigerians have observed that electoral malpractices have been institutionalized in our political system. This was sufficiently captured in an official statement of the Action Congress of Nigeria (ACN) Governorship candidate in Benue State, Prof. Steve Ugbah thus:

“the people of Benue State overwhelmingly voted for us. It is the shame of the

Nigerian system, though, that our obvious victory has not survived the onslaught of the monstrous conspiracies of the Nigeria state, the Independent National Electoral Commission (INEC), the ruling People's Democratic Party (PDP) and the judiciary”(pg.2).

It is therefore interesting to note that the institutions which have been saddled with the responsibility of conducting elections in Nigeria (FEDECO, NECO and INEC) are not only weak in their structures are not free from the pressures of the executive, legislature and other stakeholders. In all the general elections conducted in Nigeria, the supremacy of the choice of the electorates is frustrated through the usage of state resources including force to deprive the citizenry from participating fully in the electoral process

The 2011 General Elections in Benue State: A prognosis

The 2011 general elections in Benue state have come to be recognized as one of the most keenly contested elections in the state. The almost conflictual nature of the 2011 elections in Benue was the cross carpeting of the former governor of the state Dr. (Sen.) George Akume and many other prominent politicians like Sen. J.K.N. Waku, Hon. (Barr) Emmanuel Orker Jev, former speaker of the State House of Assembly and a Member of House of Representative, Hon. Mdzenda Iho, Sen. Joseph Akaagerger and many others to the Action Congress of Nigeria (ACN) due to what they termed “the rascality in PDP” (The Broom Nov. 4th 2010:1-2). This cross carpeting coupled with the abysmal

performance of the incumbent Peoples Democratic Party's (PDP) government created a platform for the ACN which was popularly referred to as "*ishor chanji*" (games has change), to become more masses oriented thus receiving massive support.

As Tsuwa (2011:4) noted, the *ishor chanji* movement capitalizing on the abysmal performance of the incumbent governor, Rt. Hon. Gabriel Torwua Suswam as well as his inaccessibility used the instruments of political songs to mobilize its supporters including the illiterates to hate the PDP which was presented in these songs as anti people and anti developmental. With massive support for the opposition, the ruling party resorted to various strategies mostly negative to retain itself in power. The implication of this is that, the election was characterized in most areas by irregularities. The electoral body, INEC was accused of conniving with the state government and the Senate President David Mark to rig elections for the ruling PDP (The broom 2011:3, The Alternative 2011:1). At the end of the elections, out of the 3 senatorial seats, the ACN won one and challenged the results of the other two in court. Out of the 11 house of representative seats, the ACN won four and challenged the other seven in court. Out of the 30 house of Assembly seats, the ACN won 10 and challenged nineteen in court.

Table 1: Elected Positions/ Offices by Political Parties

S/No	OFFICE	No of office	PDP	ACN	ANPP
1	governor	1	1	0	0
2	Senator	3	2	1	0
3	House of representative	11	7	4	0
4	House of assembly	30	21*	9*	0

Source: INEC Result Sheet 2011.

*The PDP lost one out of its 21 seats to the ACN in an election petition that was held before the expiration of the 180 days deadline thereby, leaving PDP with 20 and the ACN with 10.

Table 11: List of Petitioned Election in Benue State

S/No	Office	Number of Office(s)	PDP	ACN	ANPP
1	Governor	1	0	1	1
2	Senator	3	1	2	0
3	House Representatives	11	0	7	2
4	House of Assembly	30	0	21	4

Source: Benue State Election Petition Tribunal Office 2011

The figures in table 11 above shows that, the PDP did not petition any of the elections won by ACN but the ACN petitioned all the elections won by the PDP. The ANPP also petitioned against the PDP in the governorship election and the other constituencies were they fielded candidates. The above scenario depicts the fact that, the 2011 general elections in Benue State were marred by irregularities and the manipulation of the electoral process by the ruling People's Democratic Party (PDP) against the wishes of the people. Since the electoral process had failed the people of Benue state despite the chorus of one man one vote by the electoral body, the people supported their candidates to go the court to seek justice bearing in mind that, the judiciary was supposed and expected to be impartial and as such the last hope of the common man.

The Judiciary and Electoral Judgments in the 2011 Elections in Benue State

A viable judicial system is the precondition for a sustainable democracy. The independent and impartial judicial system checks the excesses of those who

try to manipulate the electoral process inconsonance with the twin doctrines of separation of powers and the rule of law. In the view of Dauda, the Nigerian Bar Association national president in a key note address on 15th April, 2011 to his members, the judiciary has to be independent to deliver quality justice. In his words:

Judicial independence is the ability of a judge to decide a matter free from pressures of inducements. Additionally, the institution of the judiciary as a whole must also be independent by being separate from government and other concentrations of powers. The modern concept of judicial independence is the theory of separation of powers: that the judiciary should function independently of the legislative and executive arms of government. (Daudu 2011:3).

The Universal Declaration of Human Rights enshrines the principles of: (1) Equality before the law, (2) The presumption of innocence, and (3) The right to a fair and public hearing by a competent, independent and impartial tribunal established by law (Anifowose and Enemou 2005:187). It can therefore, be argued that the judicial system should be that which safeguards the people from inequality and forceful deprivation of their right to fair hearing etc.

Deducing from the above, it is clear that in countries like Nigeria where

there is absence or relative judicial independence, injustice prevail. This paper shall now consider the electoral petitions in Benue State to ascertain the major role the judiciary played in the democratization process in the state and by extension Nigeria.

The role of the judiciary in the electoral process in Benue State just as it happened in states like Akwa-Ibom, Born and Taraba amongst others has resulted in the contradiction of the interpretation of the electoral law 2010 (as amended) and the Nigerian constitution. Following the April 26, 2011 governorship election, the Independent National Electoral Commission (INEC) declared Rt. Hon Dr. Gabriel Suswam of the People's Democratic Party (PDP) as winner despite the overwhelming majority of legitimate votes cast at elections in favour of Action Congress of Nigeria (ACN) candidate. The same fate befell many members of the House of Representatives and house of assembly. The ACN gubernatorial candidate, Prof. Steve Ugbah, in an official statement released on June 8, 2011 stated that:

...dissatisfied with the outrageous declaration by INEC, we have dragged Suswam, PDP and INEC to the Benue State Governorship election petition tribunal sitting in Makurdi on May 17, 2011 challenging the declaration on the grounds that the election was void in some local government areas due to non compliance with the electoral Act 2010 (as amended) and that Suswam was not qualified to contest

the election for refusing to present any certificate or presenting forged certificate(s) to INEC (The Nation Newspaper June 8, 2012 and News Waves May 20, 2011:1-2).

In a similar way, the gubernatorial candidate of the All Nigerians People's Party (ANPP) Prof. Daniel Saror also on the 17 May, 2012, relying on section 138(1) of the Nigerian constitution which states that a person's qualification can be questioned instituted legal action on INEC, PDP and Suswam on the ground that Governor Suswam presented forged certificates to INEC. He pleaded before the court that, Governor Suswam should be disqualified. In his words:

...Gov. Suswam is not supposed to be Governor of Benue State because he did not qualify to contest the election because he (Suswam) did not only forged his GCE certificate but also failed to present same to INEC to meet requisite qualification to contest the governorship election" (Famous Digest November 10-17, 2011 P. 1&4).

It is worthy to bring to note here that before the general elections, Hon. Terver Kakkih who contested the PDP primaries with Governor Suswam had dragged the Governor to court on the grounds that, he (Suswam) was not qualified to contest the election because of his failure to present his GCE certificate to INEC during screening.

With all these petitions against the re-election of governor Suswam, the legal battle and its intrigues commenced.

With the commencement of the legal battles, it must be stressed here that, the election tribunal in Benue State suffered some threats and pressure which led to the dissolution of the first tribunal headed by Justices Okorochoa and the constitution of another tribunal under the chairmanship of justices of Munir Laden. All these tribunals did not do any appreciable job in these cases. This was the same case in the National and State Assembly election tribunals in the state. In response with the above situation, Prof. Ugbah asserts that;

...“the tribunals and the courts refused to go into the merit of case, but rather concerned themselves with technicalities of process and timeliness without doing substantial justice to the constitutional issues raised in our petition” (The Nation Newspaper June, 2012:2).

The manner in which these cases were dismissed at the tribunal and the appeal courts clearly showed that the judicial system was manipulated. The manipulate nature of the tribunal was noticed early in the cases when the tribunal refused to abide by the electoral act when the PDP and governor Suswam as well as other Assembly members failed to file their response on time. It is worthy to note that, despite the fact that the respondents filed their responses outside the 14days as stipulated under paragraph 12 (1) of the 1st schedule to the Electoral Act 2010 as amended which is also tantamount to a breach of section 285 of

the Constitution, the tribunal did not dismiss their responses but allowed the cases to continue.

To insist that the tribunal obeyed these legal provisions, the ACN reminded the tribunal of a previous judgment concerning the issue of time of responding to electoral petition. The ACN presented before the tribunal that, in the case between PDP V. Eyo NSA Ekpo decided on Thursday 21st day of July, 2011, the Court of Appeal Calabar Division Per Akaahs JCA upheld the dismissal of the appellant PDP's application to file a reply out of time by the ruling of the tribunal which stated *inter alia* that:

The proceedings in election petition are essentially governed by time which ought to be judicially utilized by the parties and the courts... the court cannot be seen to be aiding the non-challance of the PDP towards the petition, and we do not have the time to waste on account of the indolence of any party. (Famons Digest August 24, 2011 Vol. 4 NO. 2:2)

The ACN insisted on the above because, the electoral Act 2010 as amended provides in Part VIII NO. 134(2) that, an election tribunal shall deliver its judgment in writing within 180 days from the date of the filling of the petition; (3) an appeal from a jurisdiction of an election or court shall be heard and disposed of within 90 days from the date of the delivery of judgment of the tribunal". Based on this, it is incumbent on the judges to dispense justice within

this period putting aside deliberate delays and technicalities by the parties to the case. However, due to their manipulation by those in power, the judges did not abide on this principle. (Ugba 2012:2)

The implication of the refusal by the tribunal to ignore the late filling of the responded defence and grant judgment to the petitioner was that, the electorates had believed that since the judges failed to invoke the electoral act 2010 as amended and the constitution in issues of the time of filling responses, they will also not invoke the provisions of the 180 days in determining cases in other to grant all the parties fair hearing. A hope that was soon to be tarnished.

The second pointer to the non independence of the judiciary in Benue state was the change in the chairman of the tribunal due to issues of insecurity. The judges had complained of harassment by forces loyal to the ruling party to the level that Justice Okorochoa disengaged herself from the case on security reasons. All these Strategies were designed to delay the time for hearing the petitions brought before the tribunal on merit. From this point, the intrigues and abracadabra in the judicial system as it concerned the 2011 general election, heightened with its contradictions and implications.

At this point, the governorship case shall be examined as it affected all the other cases that were before various tribunals in Benue state. In other to not to give room for the hearing of the case on its merit, the election tribunal and Court of Appeal sitting in Makurdi struck-out Ugba's case on the ground that he did not obtain a leave of court or tribunal before bringing his motion *ex parte*. The

judgment delivered by Justice U. Onyemenan held *inter alia* that:

“...the ACN did not actually seek the leave of the tribunal before bringing the *exparte* motion for pre-trial in accordance with section 47 of the first schedule of the Electoral Act, 2010 as amended...”

Justice Onyemenan therefore declared the ruling of June 29 delivered by the lower tribunal to hear the ACN petition on its merits as a nullity. Based on this judgment, the tribunal dismissed the petition in its entirety. After this ruling by the Court of Appeal, the tribunal had no choice than to also dismiss the case against governor Suswam on technical grounds. In the words of the chairman of the tribunal, Justice Munir Ladan;

...We are bound by the judgment of the appeal court. This tribunal can no longer continue to hear the petition. We are inclined to say that, the petition is abandoned ... This tribunal is therefore left with no alternative than to dismiss the petition.(The Alternative 22, Nov.2011).

It worthy to remind us that, the technical ground brought before the tribunal and the Appeal Court by the ACN concerning the time of filing response by the PDP was not granted as the tribunal and Court of Appeal refused and insisted that, they cannot depend on technicalities in an

election petition (New Era, June 23rd 2011 pg2). It was based on the above that Prof. Steve Ugbah approached the Supreme Court to set aside the decision of the appellate court to allow his case to be heard on merit. The Supreme Court of Nigeria while ordering for the retrial of the case of Prof. Ugbah Vs Suswam says that the tribunal and Appeal Court were in a grave error when they held that the motion *exparte* used by Prof. Ugbah required leave and extreme circumstances as stipulated in paragraph 47(2) of the first schedule of the electoral Act 2010 as amended. The Supreme Court stated that paragraph 18 of the same electoral Act, which provides for the application of pre-trial conference in electoral matters, preclude paragraph 47(2) which is contemplated for motions before tribunals outside pre-hearing session. (New Era November 16-24, 2011 p. 1, Electoral Act 2010, Pgs. 77, 93 & 89).

In its judgment, the Supreme Court held that, it is wrong for the Court of Appeal to apply more technicalities rather than going into the merit of the petition. Chief Justice of Nigeria, Justice Musdapher who delivered the judgment state *inter alia* that;

...In practicing the gospel of substantial justice, it is too early for me to start losing my head. What is the difference between letter and motion *exparte*? Everybody is watching us. I am begging in the name of Justice, matters should be decided on their merit and not on technicalities. (The Alternative 22, Nov. 2011:6).

The chief Justice stated that, there was no justice in a situation where the tribunal has fixed a date for hearing and days after, somebody shows up with an application to dismiss the matter and the court obeys. He argues that, democracy is the number of people who voted for A and B, let Justice be done. When the lead counsel to the ACN Rotimi Akeredolu SAN notified the Chief Justice of Nigeria that only four days out of the 180 days were left, he therefore appeal that the Supreme Court should deliver judgment in his clients favour. The Chief Justice however insisted that, the case of Benue should be retried *de novo*- meaning, afresh. It was therefore believed that, the petition was restored with a fresh mandate and duration as the Supreme Court reconstituted another panel to hear and determine the case.

In the case filed against the governor, INEC and PDP by the ANPP gubernatorial candidate, Prof. Daniel Saror, the tribunal and Court of Appeal also became victims of the manipulative strategies of those in power. In this case Professor Daniel Saror insisted that Suswam violated the provisions of the constitution by bringing forward a forged certificate to INEC. He argues that the Electoral Act 2010 as amended provides in Part Viii- section 138 (1) (a) that an election may be questioned on the grounds that, a person whose election is questioned was , at the time of election, not qualified to contest the election. He therefore insisted that;

It is the duty of the tribunal to ask me to prove that point beyond all reasonable doubts by asking Suswam out your own certificate that is certify

by WAEC --- but they (Court) are refusing to do that --- it is a simple matter that cannot take even half an hour for a judge to hear the evidence --- (The Alternative August 28, 2011).

Ironically, in passing judgment on the certificate forgery, Justice Ladan on the 11/08'2011 said the tribunal has no jurisdiction to handle issues of certificate forgery because it is of criminal nature. Not satisfied with this judgment, Prof. Saror approached the makurdi Division of the court of Appeal to grant judgment to him that governor Suswam was not qualified to contest elections. The Court of Appeal presided over by, Justice Mohammed Tsamiya stated in its judgment *inter alia* that;

...The presentation of a certificate to INEC, is mandatory and *prima facie* evidence that, the candidate is qualified and has met the constitutional requirement of the office he is seeking election into. This implies that, if a candidate has failed, refused or neglected to present a certificate to INEC, during screening or has presented a forged certificate, such a candidate has no business in office” (pg. 4).

Dissatisfied with this judgment, governor Suswam approached the Supreme Court requesting the court to prevent him from presenting his certificate. The Supreme Court Presided over by the Chief Justice of the federation, Justice Dahiru

Musdapher on the 28 of November 2011 the court held that;

...the issue of qualification of a candidate for the position of a governor of state is provided for in section 138 of the electoral act 2010 as amended and section 182 of the 1999 constitution...the issue of certificate is not a pre-election matter...the appeal is a waste of time of this court...it is the tribunal that will decide base on evidence placed before it...(pg2).

At this point, the tribunal had no choice than to re-commence trial from governor Suswam should tendere his certificate. Despite the fact that, the PDP and Suswam admitted that they did not submit any certificate to INEC as provided by law, the governor insisted that he was not under legal obligation to do so. (the alternative 12, Nov 2011:5).

As earlier mention, there was also another case against the governor by Mr. Terver Kakkih who contested the PDP primaries with Suswam. In the case, Kakkih petitioned that, he is the rightful candidate of the PDP as Suswam was not qualified to contest election as he has not only submitted a certificate to INEC but he is parading a forged certificate. In this case, Justice Ambrose Alagoa on the 27th of Oct 2011 held that, the case between Kakkih and Suswam was a pre-election matter that needed to be treated with urgency, warning that he will not entertain any technical academic intrigues capable of delaying the case.

Sensing the danger that, the fast dispensation of justice without technicalities will drag him in, Suswam's counsel, J.S Okutekpa SAN petitioned the Chief Justice of the federation demanding that the case be re-transferred back to Makurdi as his client was not comfortable with the presiding judge. Subsequently, the case was transferred back to makurdi for hearing. It is worthy to note that before the case was transferred to Jos where justice Alagoa presided over, it was entertained by Justice Donatus Okorowo of the Federal High Court 7 Abuja. After postponing the day of delivering judgment for three times, he appeared in court only to say that, "*I am not morally fit to deliver judgment in this case, I wish it be transferred to another judge*" (True Point 20th Nov- 15th Dec 2011. Vol 3 No. 59:2,3).

The democratizing character of democracy by the judiciary was manifest when the tribunals despite the call by the Supreme Court of Nigeria for the retrial of the election petitions did not deliver judgments before the expiration of the 180 days. After many adjournments and technical consideration typical of a manipulative judicial system, the cases where dismissed on the grounds that the constitution 180 days allocated for the determination of election petitions had elapse. The effect of the ruling on the issue of 180 days in the case of Borno was immediately felt in Awka Ibom, Anambra and subsequently Benue and all other states of the federation. Adega (2011:4) captured the quick effect of this ruling on all pending election petitions in Nigeria thus;

...The tribunal held that it has been over 180 days since

the petition was filed and given that a decision made will be a nullity in line with the principles of the Borno state decision. It is in this same manner that the Profs. Ugbah and Saror both of Benue State, The ACN Governorship candidate in Awka-Ibom state at the tribunal up to the Supreme Court were dismissed. (pg.3).

It is worthy to note that, the ACN in Benue state re-approached the Supreme Court insisting that since the Supreme Court has not set aside its judgment of November 14th 2011 asking the tribunal to trial her case *De Novo*- afresh, the ACN in a matter of freedom to fair hearing should be allowed to proceed with its case. Despite this appeal, the Supreme Court ruled against the ACN. The consequence of this ruling on Nigerian democracy is succinctly pointed out by Prof. Ugbah in an official statement on June, 2012 thus;

“the Supreme Court of Nigeria finally ruled that we cannot recover our stolen mandate because 180 days as prescribed by section 285(6) of the constitution (as amended) have lapsed since May 17, 2011 when our petition was filed at the tribunal despite a subsisting retrial order of the Supreme Court ruled by the Chief Justice of Nigeria; Justice Dahiru Musdapher on November 14, 2011 “That the petition be heard on the

merits” and be retried *de no vo*. (pg. 2).

The implication of this on democratic consolidation in Nigeria is that, those who rigged elections and those who were not even qualified to occupy political office were able to do so after using state apparatus to capture power. The primacy that the judiciary ought to be the bastion of hope for the common man was completely eroded. Because the judiciary failed in the case examined above to dispense justice, we can categorically state here that the judiciary became an impediment to the process of democratic governance in Nigeria. Olaniyi in an editorial on May 13, 2012 asserts that;

The judiciary has failed the nation by monetizing justice... they are aware of all the senior the senior counsel and even retired judicial officers that served as conduct between election courts and parties in electoral matters. This has exposed in detail the role of the judiciary in the democratic experience in Nigeria on the negative side. (pg. 3).

In the case of Benue state, it is worthy to note here that, out of all the cases brought before the election petition tribunals, the only case that was dispensed of by the election tribunal was the case filed by ACN Hon. Avine Agbum against the speaker of the Benue state house of Assembly Hon. Terhemem Tarzoor were the case was decided in favour of Hon. Avine Agbum. (Famous Vol 4. No 7. Nov 10-17-2011:2).

De-Democratizing Nigeria: the Impact of Judicial Judgments on democracy in Nigeria

The impact of judicial interpretation of law and the adjudication of justice in Nigerian democratic development as it affects the 2011 general elections in Benue state and by extension Nigeria can broadly be analyzed under the following headings.

Political Violence and Gagstarism: In most parts of Nigeria, protests and violence erupted following the announcement of results of election by INEC or the judgments pass on electoral cases by the tribunal or courts. In Benue state, supporters of Action Congress of Nigeria (ACN) had on 29th September, 2011, protested against what they termed, "the cowed judgment" of both the election tribunal and appeal court. The protest action was stemmed from the reasons of nullification of the case by the Makurdi appeal court on contradicting and misty circumstances between the two courts. (New Era Newspaper September 29 – October 2011 p.4).

The implication of this is that, political violence will become the only means and method of capturing political power as not only that ballot that has failed to count but the judiciary which the electorates hope will dispense justice has failed to do so. Elder D. K Awuhe of the ACN state unequivocally that:

Since votes cannot count and the judiciary can also not guarantee justice, nobody should expect to go to court in subsequent elections. We shall spill our blood at the pooling units. We shall also

unleash all the arsenals of violence at our disposal to prevent those in power to rig us out. The judiciary has shown clearly that votes do not count, so we shall employ our technicalities at the pooling units. (This Broom of April 24-30, 2011:7).

Also lamenting on the consequence of the ruling by the Supreme Court on 180 days, the gubernatorial candidate of the ACN in Benue State, Prof. Steve Ugbah on June 5, 2012 said that;

...as we lost our mandate to the grand conspiracy of the state and the judiciary...we must insist that democracy must continue to have its intended meaning, our supporters must stand up to defend their votes in subsequent elections, we shall no longer depend on the workings of the corrupt electoral and judicial bodies... (The Nation June 8, 2012:10).

The above indicates that Nigerian politics shall become a battle where the end as in the Machiavellian assumption will justify the means. In this context, the participatory principle of democracy will be crippled and power capture will be instituted as the basic norm of democracy in Nigeria.

Political Apathy and Mediocrity leadership: Majority Nigerian's because of the inability of INEC to conduct credible elections and the inability of the

judiciary to dispense credible justice have declined their support to the political system and vow not to participate in the subsequent elections. The consequence of this is that, mediocre will take over politics and leadership positions. The implication will be poor political leadership and governance. Due to this, the basic tenets of democracy such as freedom of association, participatory democracy, free and fair elections and good governance which are lacking in Nigeria will be deepened. Since political leadership will not emerge from the people, the democratic principles of checks and balances will disappear and accountability and responsibility will not be found in the Nigerian democratic process. This is because the leadership that emerges does evolve from the people. This is why Adegba (2012: 3) observe that;

... the foremost concern with the decision to deny justice on technicalities is that it may have provided our nefarious politicians and their collaborators in the judiciary with the latest tool in elections rigging and the subsequent delay in getting decisions from the tribunals and the appellate courts. What this means is that, the politicians especially those in power have come to realize that, they can manipulate the electoral process without losing anything.

It is therefore clear from the above that, the judiciary has actual de-democratized Nigeria through its capitalization on technicalities to allow

unqualified and corrupt leaders to manipulate the system and to retain power against the democratic principle of participatory democracy.

Saving the Nigerian Democratic Process: Some concluding remarks and Strategies

A probe into our current democratic process shows that there are urgent measures that we need to take in order to build a virile state on the principles of equality, liberty and freedom. For these principles, the following are suggested as the strategies that will enable the judiciary to help in consolidating the Nigerian democratic process.

- i. The judiciary should be made to be an independent body in the dispensation of justice free from interference and influence of the executive and legislature. This independence should be an embodiment of their security of tenure and adequacy of remuneration and appointment process.
- ii. Corrupt judicial officers should be dismissed and prosecuted and adequate Punishment melted on them. This will serve as a deterrence to the pothers who wish to aid and albeit injustice.
- iii. There should be constitutional provisions to address the loopholes in the constitution on the issues of technicalities in issues especially election petitions with time limits. Secondary, it should provide for matters in courts or tribunals to be decided based on merit and not on technicalities. Judgments delivered

on technical bases should be reversed.

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