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THE JUDICIALISATION OF THE ELECTORAL PROCESS AND DEMOCRATIC CONSOLIDATION IN NIGERIA'S FOURTH REPUBLIC

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Abstract

Since the start of the fourth republic in 1999, transition processes have been riddled with crisis which sometimes leads to formations of factions within a party and as always, it requires the Judiciary to determine which faction is legitimate. The judiciary therefore has not only been engraved in the political process in Nigeria but to also seem to make the final decisions. The judiciary is increasingly becoming a major pillar concerning issues emanating from the electoral process since the beginning of the fourth republic in Nigeria. The involvement of the judiciary in the electoral process in Nigeria has become so perverse that most election results especially the presidential elections were decided by the judiciary since the beginning of the fourth republic in Nigeria. This situation has resulted in establishing two phases in Nigeria's electoral process, that is; the general elections phase which is overseen by the election management body and the judiciary phase which is over seen by the judiciary. It is in view of this that this study examined the judicialisation of the electoral process and democratic consolidation in Nigeria's fourth republic. The data collected principally from secondary sources was analyzed using content analysis and descriptive qualitative analysis. The theory adopted to guide the study is the institution integrity theory. The fundamental idea of this theory presupposes the existence of core values, ethics, standards and principles on which an institution is established. Findings reveal that electoral outcomes mostly announced by the electoral management body (INEC) have been reversed on several occasion by the election tribunals and later upturned by appeal courts. The study therefore, recommends that there should be stiff provisions for grounds for challenging election outcomes at the tribunal. Also, the election management body should use the off cycles election to innovate on the use of technology for a more acceptable electoral process that will reduce or eliminate altogether the judicialisation of the electoral process in Nigeria's fourth republic.

Keywords: Democracy, Democratic Consolidation, Electoral process, Fourth republic, Judicialisation.

Introduction

The history of electoral politics in Nigeria has passed through different phases but the general submission among scholars and analysts revolves around fraudulent nature of election administration in the country (Omotola, 2009, & Moveh, 2015). In every democracy, election is the essential ingredient that allows transition from one administration to the other. Elections constitute very

strong method of achieving orderly and legitimate process of changing from one regime to another. In every democracy, the judiciary occupies a central position in stabilizing the system. It is an irony that even in systems of governance that are adjudged non-democratic, the judiciary did not only has a voice but still very central. In Nigeria the Judiciary represents the court system and symbolizes justice. It is the third arm of any modern

government. This was popularized by, the French political philosopher and jurist Montesquieu, who postulated that there should be separation of judicial duties from legislative and executive functions to forestall tyranny. The Judiciary has been in the forefront in settling inter-party or intra-party disputes and other matters relating to the electoral process in Nigeria since the first republic. To Shola and Gbenga (2023), Nigeria have engaged in the rough and uncertainty of consolidating electoral democracy since the commencement of fourth republic, and as Gathii and Akinkugbe, (2022) Omotola, (2021) Kerr and Wahman, (2019) reasoned, controversial election disputes have increasingly been transferred into the legal arena. Elections as a process comprised a number of apparatuses, activities, which include the inauguration of an electoral commission, carving up the community into electoral constituencies, compilation of voter's registers, nomination of party candidates, electioneering campaigns, voting and declaration of election results (Onah, 2010).

All elections that have taken place in Nigeria since independence have been very controversial and accompanied by various levels of litigations (Gberie, 2011). The judicialization of electoral process has gained a steady and continuous trend, and has become a defining factor in both national and international arena (Omotola, 2021). The judicialization of electoral process according to Shola and Gbenga, (2023), has gone beyond preliminary party issues like the nomination of candidates but encompasses the entire "electoral process and outcome". Such that, the courts today are increasingly in the business of the administration of electoral justice, even when the electorate must have decided their preferred candidates through the ballot.

Statement of the Problem

Nigeria has conducted seven transition programmes since the beginning of the fourth republic in 1999, and each electoral transition have been characterized by anomalies like lack of party internal democracy, the process of the nomination of candidates that affected not only the transition programmes but also affected democracy and democratic consolidation. The recourse to the judiciary as a final arbiter in the electoral process has become pervasive to the extent that its involvement and the final

decision the judiciary makes is treated with suspect by Nigerians. The different pronouncements by courts of same jurisdiction on a particular case cast a dark shadow on the judiciary in Nigeria and this has some consequences on democratic consolidation.

Objectives of the study

- i. To examine the role of the Judiciary in the electoral process in Nigeria's fourth republic.
- ii. To assess the factors that led to the judicialisation of the electoral process in Nigeria's fourth republic.
- iii. To ascertain the role of judiciary on democratic consolidation in Nigeria's Fourth Republic.

Methodology

The study adopted a qualitative research design, utilizing the documentary method of data collection, as described by Bailey (1994). This approach involves the systematic review and analysis of documents containing information relevant to the phenomenon under investigation. According to Strauss and Corbin (1990), documentary research seeks to produce findings through interpretive analysis rather than numerical quantification. For this study, data were primarily sourced from secondary materials, including textbooks, journal articles, conference papers, internet resources, newspapers, magazines, and other documents deemed relevant. This method provided a robust foundation for exploring the research questions by leveraging existing literature and archival sources. The data was analyzed using content analytical technique.

Clarification of Concepts

The Judiciary

The judiciary is the third branch of government, with the core duty of interpreting laws passed by the legislature and applying such existing law to individual cases in order to resolve disputes between two private citizens and the government (Betembiaye, Iwara & Sunday 2024). The 1999 Constitution, as amended, creates all federal and state superior courts of record, specifies their jurisdictions and establishes a hierarchy among them. The seven federal courts are the Supreme Court of Nigeria, the Court of Appeal, the Federal High Court, the National Industrial Court, the High Court of the Federal Capital Territory, the

Sharia Court of Appeal of the Federal Capital Territory and the Customary Court of Appeal of the Federal Capital Territory. At the level of states, the Constitution establishes High Court of a State for each of the thirty-six States; and for any state that so requires, it permits it to establish either or both of a Sharia Court of Appeal and a Customary Court of Appeal. Section 6 of the 1999 constitution of the Federal Republic of Nigeria (FRN) as amended specifically states the role/responsibilities of the Nigerian Courts. It states that the judicial powers shall be vested in the courts established by this Constitution. Such powers, section 6 (6b) says, shall extend to all matters between persons, or between government and authority and to any person in Nigeria, and to all actions and proceedings thereto, for the determination of any question as to the civil rights and obligations of that person. This implies that the judicial arm of the state is the body responsible for the interpretation of the constitution and expected to dispense justice without fear or favour but in accordance with the letters of the constitution. Thus, the body is the third arm of the government saddled with statutory role to determine the constitutionality or otherwise of the action of any arm of the government, individuals or groups, body/association when approached for intervention. In doing this, they protect the interests and rights of the citizens and prescribe appropriate punishment for culprits (Nwozor, 2014). These superior courts of record are as stated in section 6 subsection 5 (a-i) with the Supreme Court being the highest court in the land (Moyosore, 2019).

Democracy

Democracy has been viewed differently by scholars in the social sciences discipline. This explains the reason for a lack of convergence of a universally accepted definition of the concept by social scientist. Betembiaye, Iwara and Sunday (2024) are of the opinion that the term 'democracy' suffers from a definitional 'dilemma'. The concept has been rightly or wrongly conceptualized by different scholars from different perspectives. Atelhe and Abunimye (2021), note that "it is by no means easy to define democracy with any degree of accuracy the term democracy" Okoli and Gusau (2013) described democracy as people's rule or rule by the people. Dewey, in Mahajan (2011), defines democracy as a "form of

government in which the governing body is a comparatively large fraction of the entire nation". This means that in a democracy a significant few represent a significant many in the administration of government. In what has become a common parlance, Abraham Lincoln cited by Anyoko-Shaba, (2022) defines democracy as "government of the people by the people and for the people". Lincoln's definition of democracy is catchy but for the purpose of rigorous intellectual display, it is in deficit (Anyoko-Shaba, 2022). Democracy is a system of government that is associated with providing citizens with multiple choices in the electoral process and the winner of an election is assumed to be elected by the majority of people.

Democratic Consolidation

Democratic consolidation means an identifiable phase in the transition from authoritarian rule to civil rule and by extension, democratic systems that are germane and fundamental to the establishment and enthrone of a stable, institutional and enduring democracy. Furthermore, democratic consolidation is the process by which a new democracy matures, such that it is unlikely to revert to authoritarianism. According to Ademola (2011) cited in Musa, Ibieta, and Diende-Adedeji, (2020) for democracy to consolidate, it involves a process of alteration from totalitarian systems to a democratic system, which is vital for a lasting democracy and stable institutions to be established. Kwasu cited in Chukwudi and idike (2017), democratic consolidation as the process of achieving broad and deep legitimation, such that all significant political actors believe that popular rule is better for their society than any other alternative.

Literature Review

In this section, various scholarly literatures were critically reviewed on the subject matter of the study in thematic forms.

The Judicialisation of the Electoral Process in Nigeria' Fourth Republic

Several factors account for the courts' poor role in the electoral adjudications in Nigeria. Davies (2003) argues that in the process of the judiciary's fulfilling its electoral roles in Nigeria, it suffers from serious limitations, the most chronic of which is corruption. Evidence of this is

that many election-related petitions have been compromised because they have been based on financial or material gain and/or non-material gain aimed at undermining the impartiality of the court process. For instance, cases of corruption against the judges handling election cases have been divulged. In 2003, at the Akwa Ibom State Gubernatorial and Legislative Houses Election Tribunal, four out of the five tribunal members were found guilty of having accepted financial inducement, while the Akwa Ibom Chief Judge, Justice Effiong David Udo, acted as the middleman between members of the tribunal and their alleged benefactor, Governor Victor Attah (Omenma, 2019 p20). The four tribunal members received bribes and subsequently upheld the election of the then incumbent governor, Victor Atta. This was notwithstanding the avalanche of

irregularities and instances of fraud established during the voting and counting process. In another related event, the Nigeria Judicial Council (NJC) established that Justice Okwuchukwu Opene had received 15 million naira (US\$100 000) in bribes, and Justice David Adeniji had accepted 12 million naira (US\$80 000), whereas Justice Kumai Bayang Akaahs had declined to be bribed. The justices who received bribes handed down judgment in favour of Dr Ugochukwu Uba, whereas Justice Akaahs, who rejected the bribe, delivered a dissenting judgment (Fawehinmi; Ugochukwu cited in Omenma, 2019: 20). Also, Justice Egbo-Egbo's ex parte judgment handed down an order for sacking the Anambra State governor, whereas Justice Nnaji of Enugu State High Court issued counter-orders to an existing court order.

Table 1: Timelines for Presidential Election Tribunal in Nigeria's Fourth Republic

Year	Candidate Declared by INEC	Challenger	Candidate declared by the Tribunal
1999	Olusegun Obasanjo	Olu Falae	Olusegun Obasanjo
2003	Olusegun Obasanjo	Mohammadu Buhar	Olusegun Obsanjo
2007	Umaru Musa Yar'Adua	Mohammadu Buhari	Umaru Musa Yar'Adua
2011	Goodluck Ebele Jonathan	Mohammadu Buhari	Goodluck Ebele Jonathan
2019	Muhammadu Buhari	Atiku Abubakar	Muhammadu Buhari
2023	Bola Ahmed Tinubu	Peter Obi/Atiku Abubakar	Bola Ahmed Tinubu

Source: Adopted with modifications from Betembiaye, Iwara & Sunday (2024)

Table 2: Time Line of 2023 Governorship Election Petition (Tribunal, Appeal Court & Supreme Court)

S/N	State	Candidate declared by INEC	Challenger	Candidate declared by Court
1	Abia	Alex Otti	Kechi Emenike & Okey Achiwe	Alex Otti
2	Akwa Ibom	Umo Eno	Akanimo Udofia	Umo Eno
3	Bauchi	Bala mohammed	Sadique Abubarkar	Bala Mohammed
4	Benue	Hyacinth Alia	Titus Uba	Hyacinth Alia
5	Cross River	Bassey Otu	Sandy Onor	Bassey Otu
6	Kano	Abbar Kabir Yusuf	Nasir Gawuna	Abbar Kabir Yusuf
7	Lagos	Babajide Sanwo-olu	Gbadebo Rhodesvavour	Babajide Sanwo-olu
8	Nassarawa	Abdullahi Sule	David Omgbugadu	Abdullahi Sule
9	Rivers	Siminalayi Fubara	Patrick Tonye Cole	Siminalayi Fubara
10	Sokoto	Ahmed Aliyu	Saidu Umar	Ahmed Aliyu
11	Plateau	Caleb Mutfwang	Nentawe Goshwe Yiltwada	Caleb Mutfwang
12	Taraba	Agbu Kefas	Sani Yahaya	Agbu Kefas
13	Delta	Ovie Omo-Agege	Sheriff Obor-erwori	Sheriff Obor-erwori

Source: Adopted with modifications from Betembiaye, Iwara & Sunday (2024)

The Judiciary and Democratic Consolidation in Nigeria's Fourth Republic

The Nigerian judiciary has made its mark and contributed immensely to democratic consolidation as shown in the table above. In an attempt to balance the scorecard of the Nigerian judiciary in historical terms, particularly from the period that followed the 2003 general elections, Enweremadu (2011: cited in Chukwudi & Idike, 2017) opines:

“While the benefits of most institutional reforms have been difficult to measure, there has been significant progress in a few other key areas of national political life. One of them is the relatively successful reform of the judiciary, which has led to the institution’s gradual emergence as a courageous and impartial arbiter in intra-elite electoral disputes in this chronically unstable federation. The transformation of the judiciary is amply demonstrated by the large number of judicial pronouncements that have upturned the results of several flawed elections and restored to office elected officials, such as state governors, wrongfully removed from their positions.

The Judiciary is the only organ that deals with the administration and dispensation of justice in any democratic Society (Chukwudi & Idike, 2017). Therefore, the role of judiciary in democratic consolidation in Nigeria cannot be overemphasized, especially as it relates to offering sound judgments that guaranteed peaceful democratic processes by reconciling electoral disputes among the key political actors and between democratic institutions of the state. As Maduekwe, Ojukwu and Agbata (2016) aptly argued that for effective democratic consolidation and administration of justice, the judiciary has a definite and decisive role to play because it has the power to review the actions of both executive and legislature and indeed, the last hope of the common man and defender of democratic processes and its consolidation in Nigeria. Enweremadu, (2011) cited in Chukwudi and Idike, (2017) equally asserted that;

“Since 1999, the judiciary has been playing an increasingly assertive role as a courageous and impartial arbiter in the country’s democratic

politics in general and its electoral disputes more specifically. The clearest evidence of this fact is the increasing number of judicial decisions that have upturned the results of several rigged elections, mainly in favour of opposition parties or individuals opposed to the federal.”

However, it should be noted that as an arbiter, there are many challenges facing the judicial arm of government in Nigeria, the most disturbing one specifically is the allegation of corrupt practices among some judges at the various Courts within the judicial system. There are indeed corrupt judges and lawyers just as there are corrupt persons in all walks of life (Moyosore & Abdullahi, 2019).

The Role of the Judiciary on Democratic Consolidation

The judiciary plays a pivotal role in consolidating democracy, serving as the foundation upon which democratic institutions grow and develop. As Aver and Orban cited in Betembiaye, Iwara and Sunday (2024) aptly observed, “the judiciary is the foundation upon which democracy grows and develops.” Its independence as the third arm of government is highly critical to promoting and upholding the principle of separation of powers, which guards against dictatorship and arbitrary rule. By adhering to the principles of truth, justice, and morality, the judiciary not only ensures the administration of justice but also strengthens democratic governance thereby strengthening the electoral process. For instance, the issue of internal party democracy is very crucial in strengthening democratic values among party members thereby improving the overall democratic culture across the country. Therefore, efforts in restoring internal party democracy by Nigeria’s judiciary can be observed from the case of Dr. Chris Ngige who was illegally declared as the Governor of Anambra State in April 2003. It was the court that restored the people’s mandate freely given to Peter Obi. Also, former Vice President Atiku Abubakar would not have served out his tenure neither would he have contested the 2007 presidential election under the Action Congress (AC), if not because of the Supreme Court ruling that joint candidacy of contestants and their running mates end at the polls and does not extend to government (the Punch, 28 June 2017). This was an indication that the judiciary is ready to sanitize and deliver

a healthy electoral process through its sound judicial pronouncements capable of consolidating our democratic Process in Nigeria (Moyosore & Abdullahi, 2019).

In another instance, Chibuike Amaechi of Rivers State contested and won the nomination of the People's Democratic Party (PDP) in December 2006, however, he was unlawfully replaced by Sir Celestine Omehia without due process and verifiable reasons. It was through the courts that were able to retrieve his stolen mandate. The Supreme Court on October 25, 2007, declared Amaechi the rightfully elected candidate of the PDP even though he did not campaign nor have his name on the ballot, but he was sworn in immediately based on the judgment of the by the Apex Court (Moyosore & Abdullahi, 2019).

However, the judicial pronouncements which restored state governors wrongfully removed from office in the course of disagreement with the federal government or political godfathers can be attributed to the great efforts of the judiciary towards the democratic consolidation in the country (Enweremadu, 2011). Among them were the Supreme Court overturning of the unconstitutional impeachment of former Governor Murtala Nyako of Adamawa State, Governor Dariye of Plateau State, who refused to support the 2003 re-election bid of President Olusegun Obasanjo and the Governor of Oyo State Ladoja, which were engineered by the local godfather in 2005, who was alleged to be an Obasanjo ally (Moyosore & Abdullahi, 2019). Other impeachments that were reinstated by courts include; Peter Obi, who was wrongfully impeached by the Anambra State House of Assembly and reinstated by the Court. Even when the Independent National Electoral Commission (INEC) conducted governorship election in the state in April 2007 which saw to the emergence of Andy Ubah as the new governor then, it was the same court that Obi ran to. Ubah was sacked by the court ruling that Obi's tenure started from the time he was sworn into office. To expose it all, it is still on record that former Governors like Olusegun Mimiko of Ondo State, Kayode Fayemi of Ekiti State, Adams Oshiomhole of Edo State and Rauf Aregbesola of Osun State could not have been governors if not for the judiciary pronouncement that assisted to retrieve their mandates. Not only that the judiciary has also nullified

many of these unconstitutional impeachments of many Deputy Governors by the State Houses of Assembly. Among was the nullification of impeachments of the ex-Deputy Governors like; Sunday Onyebuchi of Enugu State, Mohammed Garba Gadi of Bauchi State, and Ali Olanusi of Ondo State (Moyosore & Abdulahi, 2019). It is clear that without the active role of judiciary, Nigeria's democracy would not be flourishing as it is today. To that extent, many politicians today prefer to use judicial channels to resolve their conflicts, and more importantly, these politicians are also learning to accept the decisions of the courts as final, whether or not they are in their favour (Enweremadu, 2011).

Furthermore, when some governors were trying to elongate their tenure through the backdoor by misinterpreting Section 180 (2) of 1999 Nigerian Constitution as amended in 2010 to say that their tenure started to count from the day they were sworn in after winning a re-run election, it was the Supreme Court which in a landmark judgment on January 27, 2012 that correctly interpreted that section of the law that any governor whose election was annulled and asked to be re-conducted, should he win the re-run, his tenure will start to count from when he was initially sworn in and not the time he wins a re-run. It was through judicial activism that Nigeria now has staggered election in which case governorship elections in Anambra, Kogi, Bayelsa, Ekiti, Edo, Ondo, and Osun now hold on different dates (Moyosore & Abdulahi, 2019).

Theoretical Framework

This study is anchored on Institutional Integrity Theory. While there isn't one definitive list of "proponents" of institutional integrity theory, key figures and scholars who have contributed to the understanding and application of this concept include James Michel (2018) Nikolas Kirby (2022), and the Satori project (2015). The fundamental idea of this theory presupposes the existence of core values, ethics, standards and principles on which an institution is established. Invariably, these established norms are expected to be the mantra on which the actions, functions, intra and inter-relational patterns of an institution are predicated (Brown & Head, 2005). Spigelman (2004) views Institutional Integrity Theory as

an ideological framework that primarily supports the existence of a body of moral creed which binds on the structural existence, as well as the human resource component of an institution. He further informs that the theory embodies a holistic objective that aims at translating the ideals of institutional integrity into functional instruments that would guarantee a maximum expulsion of the tendencies of corruption and other aspects of morally degenerate attributes from all the branches and institutions of government. In corroboration, Elster (2000), observed that the practicability of the institutional integrity theory in the business of public governance by public servants would ensure a maximum realization of the objectives, inherent in the public service. Pope (2000) cited in Nwoko and Nweke, (2021), identified three dimensions of the institutional integrity theory to include:

(a) **The Institution:** This denotes institutionalized norms and codes of behaviour or conduct that is expected to bind and regulate individual behaviour. It also anticipates shaping the context of integrity, defining and determining the moral limits of individuals as they co-relate in institutions or agencies of government. The test of the workability of institutions of integrity is mostly domiciled in governmental agencies like the Police and the Judiciary.

(b) **The Individual Integrity:** This refers to the conventional assumption of integrity as honesty or decent behavioural traits that make people behave in a generally acceptable way. Such individuals exhibit such tendencies in the public institutions they are employed.

(c) **Societal-Influenced Integrity:** This aspect presupposes the consequence of the forces of social interactions. Normally, individuals tend to be socially impacted by persons with a positive, but the ideal sense of integrity when they come in contact. However, the reverse becomes the case when individuals come in contact with persons with negative behavioural tendencies. Collier and Esteben (2000), posited that the height to which practicable institutional integrity guides official conducts in government's agencies and institutions determines the degree of public trust in the

public service. Brown and Head (2005) also asserted that an active system of institutional integrity in public institutions instills a high sense of moral discipline in public officials as they carry out their official functions. This was why Spigelman (2004) added that the judicial organ of government, being the constitutionally recognised watchdog for the observance and conscious practice of integrity in the public service should be a model for emulation. This study adopted the Institutional Integrity Theory on account of its striking relevance to the core objective of this research work which is hinged on the judicialisation of the electoral process and democratic consolidation in Nigeria's fourth republic. There is no gainsaying the fact that institutional integrity is paramount to any institution be it private or public. So, for an institution like the judiciary in Nigeria, institutional integrity must be the watch word. This is the only way that the judiciary can build trust and secure trust from the electorate and the politicians alike. Once there is trust on the judiciary and its ability to conduct free and fair elections, there is the likelihood that there would be less litigation with each transition programme further consolidating democracy in Nigeria.

Discussion/Findings

The involvement of the judiciary in the electoral process in Nigeria has become pervasive to extent that the electoral process ends only when the judiciary has made its judgment on litigations brought before it. Since the begging of the fourth republic in 1999, the politicians have made the judiciary the avenue for the final settlement of electoral process in Nigeria. In the 2023 general elections, the judiciary has to decide on party primaries, candidate nominations and up turning and upholding decisions of the tribunals and that of court of appeal. From 1999 to 2023, all the presidential election result were contested in the tribunal and the Supreme Court had to make the final decision. In 2023 alone thirteen 13 state governorship election were finally decided by either the tribunal, appeal court or the Supreme Court.

Conclusion

The study examined the judicialisation of the electoral process and democratic Consolidation in Nigeria's Fourth Republic. The judiciary as a third tier of

government is central to supporting democracy, particularly in cultivating legitimacy for democratic orders but because of the value generally placed on material wellbeing and state power ruling elites are often keen to use the state powers in a manner that will give them undue advantage and maximize their stay in government rather than advance the course of democratic consolidation. The judiciary has been able to play its role effectively in the electoral process in Nigeria's fourth republic.

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Recommendations

- i. The judiciary must stick to its roles as an uninterested arbiter in the electoral process in Nigeria's forth republic.
- ii. The Judiciary must remain apolitical and guided by work ethics and rules.
- iii. The National Judicial council must provide for stiffer penalties for judges that allowed themselves to be used by Political Investors. They should continue to deliver judgments' that cab seen as fair, and just.

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