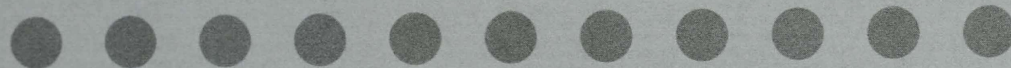




CHAPTER FOUR



APPEAL COURT AND ELECTIONS PETITIONS





Section 285 (1) of the 1999 Constitution empowers the Court of Appeal to set up Election Petitions Tribunals in all the states of the federation to hear and determine election petitions. Certainly, the election tribunals play a very significant role in determining the decisions of the electorate.

Until the amendment of Electoral Act 2010 however, it was only the presidential election petition that got to the Supreme Court. This situation created a lot of frustration and outrage as persons challenging elections other than the presidential election were unable to go further than the Court of Appeal. Also there were allegations of corruption against some justices of the court who were accused of handing down dishonest decisions knowing they would never be challenged at the apex court.

Another difficulty caused by the electoral laws was that election cases and appeals took several years before conclusion. Agitations then began to mount for their amendment. They were eventually amended; the 1999 constitution and Electoral Act 2010.

It was on account of these hardships that after the brouhaha of the 2007 elections, then unrelenting Chief Gani Fawehinmi, SAN would not refrain from lending some advice. Excerpts.

"... The Tribunals should also bear in mind that there are two sets of people who were unconstitutionally injured... First, the voters. By Article 13 of the African Charter on Human and Peoples Rights Cap. A9, Laws of the Federation of Nigeria, 2004 which became part of our laws on 17th March, 1983 and which was confirmed by the Supreme Court as part of our laws in the case of Abacha v. Fawehinmi (2000) 6 NWLR (Pt.660) 228 which provides that: "13(1) Every citizen shall have the right to participate in the government of his country, either directly or through freely chosen representatives in accordance with provisions of the law,"

The voters have a fundamental right. The voters whose votes were not made to determine who should govern them either at the centre or in the States have no locus standi to petition the tribunals. This is one instance of a wrong without a remedy. How can the voters approach the tribunals set up under the same Constitution when they are not contestants? This puts another responsibility on the tribunals to ensure that "any robber" in the electoral robbery does not profit by its corruption, abuse of power and the denial of the voters to choose their representatives or leaders.

The second set of injured Nigerians are those who contested but were robbed of victory. They have a right of access to the Tribunals to ventilate their grievances under the appropriate provision of the Constitution of the Federal Republic of Nigeria, 1999. They obviously have locus to lay their grievances before the respective Tribunals. Let it go down in history



that the Nigerian Judiciary through its tribunals in 2007 must courageously and honestly right the wrongs inflicted on the electorate of Nigeria...

"I would like to remind lawyers who will appear before these tribunals of the role and responsibility placed on them by the first indigenous Nigerian lawyer, Christopher Sapara Williams, born on 19th July, 1855, enrolled in Nigeria on 30th January, 1888 and died on 15th March, 1915 that: "The Legal Practitioner lives for the direction of his people and the advancement of the cause of his country."

TIME FRAME FOR DELIVERING JUDGMENT IN ELECTION CASES

As it relates to time frame prescribed for tribunals to determine petitions that are filed before it, Section 285(6) of the Constitution as amended provides that: "An Election tribunal shall deliver its judgment in writing within 180 days from the date of the filing of the petition." The implication of the 180 days time line is that the entire process of examination, evaluation of evidence and examination of witnesses must be concluded within 180 days. At the expiry of the time frame provided, the tribunals become incompetent to decide on a filed petition.

These Amendments were made to cure some of the ills that Petitioners endured prior to the enactment of the Electoral Act, 2010, and the amendment of the 1999 Constitution. In a plethora of cases, it took more than two or more years before final judgments were arrived at. In most instances the respondents (often the incumbents) would have nearly served out their tenures when final judgments were delivered, as witnessed in Ekiti, Anambra, Osun and other states. Peter Obi's case from pages 52 to 56 is a point of reference. In those cases it was evident that indeed justice delayed is justice denied on the part of the Petitioner.

The new Act therefore seeks to deny politicians who were not validly elected, the pleasure of continuing to enjoy the spoils of the office at the expense of the rightful winners of the office.

The import of the guidelines in the new Electoral Act, no doubt, is to ensure that excessive time and resources are not exhausted before the tribunals arrive at their decisions. Nonetheless, it is important to note that a lot of inadvertent issues have arisen in the course of applying the new rules regarding the time limit for the determination of a petition as provided in the Constitution and the Electoral Act 2010. For example, by the judicial interpretation given to Section 285(6) of the Constitution, it is presently the case that a Petitioner, whose interlocutory appeal has been allowed by the Supreme Court with an order of hearing the petition de novo (all over), is now precluded from prosecuting his petition on merits because of the time limit. Such trial de novo can only take place within 180 days from the filing of the petition.

An interlocutory appeal is an appeal of a ruling by a trial court that is made before the trial itself has concluded.

It asks an appellate court to review an aspect of the case before the trial has concluded.

<http://definitions.uslegal.com/i/interlocutory-appeals/>



This was the case in *ANPP .v. GONI (2012)1NWLR (PT.1298) 147 at page 148*. Consequently, if an Election tribunal manifestly errs in its decision, such that it warrants a retrial, the innocent party will be left without a remedy if caught by the time limit. Indeed justice will not be done when a proper case of retrial is abandoned for no fault of the aggrieved party.

In most cases election petition tribunals can become profoundly politicized, compromised and corrupt. They can hand down frivolous interlocutory rulings designed to frustrate a Petitioner. By the time he/she returns from the Supreme Court with a proper ruling, he/she may find him/herself racing against time. Once he/she is out of time, the Petitioner's claim dies and the Respondent will become entitled to a victory that may be undeserved. Many aggrieved politicians have lost their petitions on this technical ground alone. Additionally a Respondent (the winner of the election in most cases) may adopt delay tactics such as unnecessary objections and frivolous interlocutory appeals. All these time-wasting objections and appeals must be determined within the same 180 days prescribed for hearing the petition and delivering the final judgment. The reality is that the substantive hearing of the Petition may be frustrated in most cases.

It must be noted that there are many situations that may arise that can lead to undue delay in the conduct of the proceedings within the 180 days. For example, there may be cases of sickness, political unrest, threat against the life of a judge sitting in a tribunal or even death. Furthermore, where allegations of impropriety are made against members of the tribunal, an investigation may be ordered. Where such an investigation is ordered and the tribunal is disbanded, a new tribunal will be required to be constituted.

These changes will definitely take time out of the 180 days and in a worst-case scenario the 180 days may expire without the hearing having even been concluded. In these types of situations and many more, the Petitioner's petition should not be dismissed for expiration of time.

Given all the above, it is important that our lawmakers address these issues that have arisen as the courts lack power to interpret the law in a way other than the way it has been expressed. This is because of the *sui generis* nature of election petition cases. In order to preclude the current law from becoming a medium of prejudice, it should be reviewed in the next constitutional amendment. Indeed it is trite law that there must be an end to litigation but such end must not as such, be at the peril of justice for the Petitioner.

Sui generis is a Latin word that means something in a class or group of its own. Not like anything else.

In the interim, before the law is reviewed, steps could be taken to mitigate the issues arising. For example, the Court of Appeal may reserve the right to impose hefty costs for frivolous appeals in an Election Petition case in order to discourage the delay tactics employed by counsel to frustrate the case of the Petitioner. Additionally, since section 12 (5) of the first schedule of the new electoral act confers on the election tribunals the discretion to keep all the motions that may arise in the course of any trial till the final date before ruling on such motions, the election tribunals can safeguard against the





unnecessary distractions and delay tactics if they chose to exercise their discretion in this manner.

Meanwhile Petitioners have to be more thorough and particular than they would be in regular lawsuits. At the time of filing the petition, effort should be made to curtail the possibility of unnecessary technical objections. Parties are encouraged to come together and agree on the evidence to be tendered in order to dispense with argument on admissibility at the hearing of the petition. A proper evaluation of the case before filing would also save a lot of time. This can help to narrow the dispute to what can be easily proved to sustain the case.

Indeed if something is not done, these challenges may serve as a denial of the right to fair hearing of a Petitioner as prescribed by Section 36 of the constitution which guarantees the right to fair hearing within a reasonable time. A petitioner who runs out of time within in the course of determining his appeal may bring an action to challenge the court on this basis.

APPEALS NOW TO BE DECIDED WITHIN 60 DAYS FROM DATE OF DELIVERY OF JUDGMENT AT TRIBUNAL

A similar restriction placed by subsection (7) of Section 285 of the Constitution provides that: "An appeal from a decision of the election tribunal or court shall be heard and disposed off within 60 days from the date of the delivery of judgment". The above provisions of the Constitution is also adopted verbatim by Section 134(2) and (3) of the Electoral Act 2010.

Section 285 (7) provides that an appeal from a decision of an election tribunal or Court of Appeal in an election matter shall be heard and disposed of within 60 days from the date of the delivery of judgment of the tribunal or Court of Appeal. This means that the Supreme Court is required to hear and determine an appeal from the tribunal or the Court of Appeal within 60 days. By implication, once an election petition is filed or an appeal is lodged against the decision of an election tribunal, both the petitioner and appellant, the respondents as well as the tribunal would be counting days because the matter should be determined on or before the expiration of the duration prescribed by, Sections 285 (6) and (7) of the Constitution and 134(2) and (3) of the Electoral Act.

Though it is probable that similar issues with the time frame that arose in the case of the Court of Appeal may occur, these issues may not be as prevalent or as detrimental at the Supreme Court. The 60-day requirement is less detrimental than the 180 days provided in section 285 (6) of the constitution because at the Supreme Court no evidence is given and the appeal is conducted on the basis of the grounds of appeal that has been set out by parties.

The Supreme Court is not a court of trial to hear a matter afresh. The cases filed on appeal to the Supreme Court are clear-cut and ironed out and their determination is more straightforward. Also, the chances of delay tactics being employed by lawyers at this stage are reduced.



The only issue envisaged is that the Supreme Court justices may have more work to do in a lesser time than the judges of Court of Appeal and if the issues before the court are very complex, 60 days may not be enough for the court to thoroughly peruse the processes filed and reach a just determination of the appeal.

In the meantime, Justice Ogunwumiju submits that while the introduction of time limit for hearing and determination of election petitions and appeals is necessary due to the scandalous delays in the determination of electoral disputes, the amendment to the constitution in respect of time limit has placed tremendous pressure on the justices of the appellate court. For Hon. Justice Peter Obiora, of the High Court of Anambra State who served as an Election Tribunal Judge in the 2015 elections, there is urgent need to readjust the time lines for taking certain steps within the 60 days granted to the Court of Appeal to hear and determine appeals. Lamenting the unfairness of the short time available for hearing of election appeals, Justice Obiora said 60 days for appeal can be amended to begin to count from the date of filing the notice of appeal.

APPEAL COURT NO LONGER THE APEX TRIBUNAL IN GOVERNORSHIP ELECTIONS

Another Constitutional provision worthy of note is Section 246 (3). This section under the 1999 Constitution as amended provides that "The decisions of the Court of Appeal in respect of appeals arising from the National and State Houses of Assembly election petitions shall be final." The provision excludes decisions from Governorship election tribunal; thereby allowing appeals from the Court of Appeal to the Supreme Court in cases that arise from this tribunal.

A welcome development this is, considering situations where a justice of the Appeal Court is compromised and there is no avenue for their decisions to be reviewed by the appeal court. Moreover, because it is possible for wrong decisions to have been delivered due to human error, it was necessary for an avenue to be made for appeals of judgments from the Governorship election tribunals to the Supreme Court. The new law allows for the Supreme Court to review the decisions of the Court of Appeal and this could guide against error of judgment and even outright compromise. The downside is that the workload of the Supreme Court is now increased by virtue of the appeals that would arise from the election tribunal aside from other appeals emanating from the Court of Appeal.

2015 GENERAL ELECTIONS TRIBUNAL

A total number of 39 petitions were received in the various Governorship Election Petition Tribunals; 79 petitions in Senatorial elections; 179 petitions in House of Representatives Election and 380 petitions in the State House of Assembly Elections. A total number of 724 appeals emanated from the decisions of the various election petition tribunals. 552 petitions were dismissed while 63 succeeded. All being said, Justices of the Court of Appeal were able to dispose of the appeals within the stipulated period required by law without a single appeal lapsing despite the inconvenience of shuttling from one division to the other.

CHAPTER 4

List of Cases

1. Abacha v. Fawehinmi (2000)6NWLR (pt.660)228
2. ANPP v. Goni (2012)1NWLR (pt. 1298)147 @ 181

Table of Statutes

1. Section 285 (1) of the 1999 constitution
2. Article 13 of the African Charter on Human and Peoples Rights Cap. A9, Laws of the Federation of Nigeria, 2004.
3. Section 285(6) of the constitution.
4. Section 285 (7) of the constitution.
5. Section 134(2) &(3) of the Electoral Act 2010.

Internet Source

1. Gani Fawehinmi, "The role of election tribunals"
<http://www.nigerianmuse.com> 2nd May, 2010.