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LEGAL REGULATION OF INTERNAL PARTY DEMOCRACY IN NIGERIA

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Abstract: *The lack of internal democracy in many political parties in Nigeria has created a general loss of confidence in voters toward the electoral process and democratic consolidation. This paper examines the extent to which political parties have adhered to or deviated from the relevant Constitutional and electoral law provisions in Nigeria toward achieving internal democracy and how this has affected voters' attitudes and confidence in the electoral process and Nigerian democracy generally. To achieve this objective, the researchers utilize the doctrinal research method in examining the relevant provisions of the 1999 Constitution on internal party democracy, the relevant Electoral laws, and judicial decisions. During the work, it is observed that political party leadership in Nigeria rarely heed the relevant constitutional provisions and laws on internal party affairs. The paper finds that judicial decisions concerning this issue have not followed a similar pattern, which has greatly eroded voters' confidence. It recommended a compelling need for the judiciary to follow legally valid precedents established in earlier judgments in deciding new cases arising from intra-party affairs, especially concerning the substitution of candidates.*

Keywords: *Democracy; Political Parties; Electoral Act; Internal Party Democracy; Judicial Decisions*

INTRODUCTION

In every democratic society, one inalienable right of the citizens is to elect leaders and elected representatives through an organized voting system (Odigwe 2015). The right to elect leaders and representatives could be traced to ancient Athens and Rome, where public figures like the Pope and the Holy Roman Emperors were elected (Muhlberger and Paine 1993). In modern times, elections and voting are tied to the emergence and acceptance of democracy and representative government in developed countries such as the United States and Europe. Modern-day democracy accords citizens, also known as the electorates, the power to elect their representatives through a recognized electoral process handled by a constituted, recognized, and independent electoral umpire (Gamble-Eddington 2021). Electing a representative is initiated in political parties, which provides an opportunity to produce recognized party flag bearers who usually become representatives not only of the political parties who elected them but also of the masses. The role of internal party democracy is tied to transparency, credibility, and fairness in selecting party representatives to ensure that the best among party members are selected.

Consequently, representatives emerge whose role is to reflect the people's will. The process and procedures governing party affairs in advancing democracy are typically enshrined

in Constitutions, other bodies of law, and policy directives. These laws establish the rights and obligations of party members, particularly regarding selecting party representatives and candidates. Suppose a party member feels aggrieved by the conduct or outcome of the representative selection process. In that case, they can seek recourse through the competent court system to address their grievances. The courts possess the authority to interpret laws, ascertain legal rights, and determine instances of their violation. The approach taken by the courts in discharging this crucial duty and interpreting the conduct of party members in internal party affairs can greatly impact the confidence of the majority of party members and voters in the electoral process. A lack of confidence in the voting process contributes to voter apathy, resulting in low voter turnout, ultimately hampers the growth and consolidation of democracy as a whole.

THE CONCEPT OF DEMOCRACY

A fundamental characteristic of every human society is the presence of an organized system of public relations, commonly referred to as government. Among the various forms of government documented throughout human history, democracy stands out as the most prominent (Shuifa and Jinglei, 2008). Nigeria is one of the countries that has established its governmental structure on the foundation of democracy. The 1999 Constitution prescribes democracy and a democratic manner of governing the country in Section 14, which states that the Federal Republic of Nigeria shall be a state founded on the principles of democracy and social justice. The term "democracy" is frequently used by many individuals, although only a few truly understand its meaning. The widespread use of the term can be attributed to the fact that democracy has proven to be the only form of government that allows for the broad participation of the public in matters concerning governance and related affairs (Eruke 2012). Accordingly, Eruke (2012) posited that democracy accords citizens with a wide range of participation in governance by giving them the right and power to make the all-important choice of who governs them and who decides their affairs. Like some other important social concepts, democracy appears impossible to be subjected to one generally accepted definition; as such, it is believed that the concept can best be described than defined (Mulgan 1968).

Abraham Lincoln, a former President of the United States, attempted to define the concept of democracy. He described democracy as a government of the people, by the people, and for the people. The essence of this definition lies in the fact that "the people" - the citizens - possess the right to actively participate in selecting their leaders. This, in turn, grants citizens the right to have optimal involvement in decision-making processes related to governance. It is believed that representatives, who act as mere placeholders, cannot make decisions without considering the adverse or otherwise impact those decisions will have on those they represent (Gamble-Eddington 2021). Thus, democracy can be viewed as a system of government where the popular will of the people prevails through proper representation, ensured through periodic free and fair elections. However, in contemporary "democratic" societies, this notion of democracy is criticized due to the disconnect between citizens and their representatives, with a lack of meaningful connection, and citizens struggling in vain to establish or maintain contact with their representatives (Neuman 2002). The perceived characteristic features of democracy

deducible from the above description include (Uhwe et al. 2021), separation of powers (Kangdim et al. 2022), others include the guarantee of human rights (Payandeh 2019), the prevalence of the rule of law and supremacy of the Constitution (Glendon 2004); freedom of the press; periodic election conducted by an independent umpire (Yagboyaju 2015), independence of the judiciary (Ononye, Oguekwe, and Oguekwe 2020), political liberty and multi-party system (Stokes 1999). According to Stokes (1999), in a democratic system of government, important government decisions are taken by representatives elected through free, fair, competitive, and periodic elections participated in by adult citizens through a political party system.

THE RELATIONSHIP BETWEEN DEMOCRACY AND POLITICAL PARTIES IN NIGERIA

Nigeria became a democratic nation upon gaining independence from Great Britain on 1 October 1960. However, if we define the existence of democracy based on its characteristics, such as a voting system, the presence of a constitution, and recognition of human rights, it could be argued that Nigerian democracy existed even before 1960 (Yagboyaju 2015).

The primary Constitution of Nigeria came into effect in 1922, marking a significant milestone. The first formal general election took place in 1923, signifying the beginning of a voting system. The recognition and exercise of human rights, exemplified by events like the Aba Women's Riot in 1929, further contributed to the development of democracy. Political and interest groups, such as the Nigerian Youth Movement formed in 1934, shaped the democratic landscape. The general election of 1959 witnessed the participation of political parties such as the Northern People's Congress and the National Council of Nigeria and Cameroons (NCNC), among others. These occurrences demonstrate that certain democratic features were prevalent in Nigeria before 1960 (Yagboyaju 2015). Elections play a crucial role in a democratic government as they enable the electorate and citizens to have and maintain a certain level of control over their representatives (Mahmud 2015). Madubuegwu et al. (2020) describe elections as an influence exchange between rulers and the ruled, where voters influence the government through their decisions. Upon gaining independence in 1960, Nigerian democracy assumed a formal status with a Constitution designed after Great Britain's government style. So far, general elections have been conducted and held in Nigeria in 1964, 1979, 1983, 1993, 1999, 2003, 2007, 2011, 2019, and 2019 with 2023 already ongoing. The procedure and conduct of elections between 1964 and 1993 witnessed a disjointed procedure characterized by a series of military interference and coups (Madubuegwu et al. 2020). For instance, Madubuegwu et al. (2020) stated the incident of 12 June 1993, where the alleged winner, Moshood Abiola, was denied access to the election victory. However, they were instead incarcerated by the then-military head of state, General Sanni Abacha. However, elections in Nigeria from 1999 to 2019 have witnessed a certain degree of regularity devoid of military interruptions.

Despite this supposed regularity in election activities in Nigeria between 1999 and 2019, voters' turnout has decreased. In other words, voters in all parts of Nigeria have exhibited some form of withdrawal, apathy, and indifference toward participating in elections (Madubuegwu et al. 2020). Voting as a right and civic responsibility is usually influenced by the need, interest, and zeal to participate in the democratic process and governance affairs. However, where the required zeal or interest is lacking, participation in the democratic election process reduces, and

voter apathy sets in (Obomanu 2020). Voter apathy occurs when eligible voters do not vote in public elections due to certain reasons and circumstances. Chief among the reasons for voters' apathy in Nigeria is a general complaint over the recycling of the same candidates by political parties due to a lack of internal democracy in political parties and a feeling of marginalization among party members (Obomanu 2020). In this paper, the effort will be concentrated on the effect of the lack of internal party democracy on voters' confidence and the judiciary's attitude towards pre and post-election petitions in Nigeria.

INTERNAL PARTY DEMOCRACY AND VOTERS' CONFIDENCE IN NIGERIAN

Political parties are makers of democracy as they serve as a medium from where the people select and elect their representatives. It has been opined that there may be no democracy or democratic societies without political parties; in other words, political parties and their positive activities consolidate democracy (Akubo and Yakubu 2014). Internal party democracy entails free and fair dealings and conduct of party affairs so that all members are given equal participation rights at all times in all party activities, such as the nomination of candidates and the conduct of party primaries, among others. Internal party democracy ensures a system of distribution and separation of powers within political parties so that all members, or the majority of members, are carried along. The concentration of party powers in the hands of a few party members breeds power abuse and corruption and a lack of confidence among party members (Godwin 2016). Lack of internal party democracy is a prevalent feature in most political parties in Nigeria, usually caused by ethnic considerations, placing personal interests above party interests, and corruption among party leaders and members generally (Odigwe 2015). The lack of internal democracy in political parties erodes party members' confidence in party affairs. It also weakens democracy, especially when a ruling party is affected, whether at the federal or state level.

THE ROLE OF LAW IN ENSURING INTERNAL DEMOCRACY IN NIGERIAN POLITICAL PARTIES

Party affairs in Nigeria are controlled by the Constitution of the Federal Republic of Nigeria (CFRN 1999) and the respective constitutions of the various political parties. The Constitution stipulates that the constitution and rules of political parties shall provide for periodic elections on a democratic basis for the principal officers and members of the executive committee or other governing bodies. Under section 223 of the Constitution (CFRN 1999), political parties are also to ensure that members of the executive committee or other governing bodies of the party reflect the federal character of Nigeria. The present reality in most political parties in Nigeria reflects a clear derogation or contradiction of this constitutional position. For instance, the internal squabble in the major opposition Peoples Democratic Party (PDP) in Nigeria today is a cumulative effect of what could be best described as a history of lack of internal democracy in the party (Ajayi 2016).

Another area where a lack of internal party democracy in political parties in Nigeria is seen is in the conduct of party primaries. For instance, the Independent National Electoral

Commission Regulation for conducting 2018 elections stipulates that before any political party can validly conduct a primary election, the party concerned should not later than 21 days before the date for conducting the election, inform or notify the Commission in writing, stating the nature and type of the primaries it intends to conduct, that is, whether direct or indirect primaries, the date, place and time the primaries are to be conducted as well as the name of the aspirants and members of the panel, party members among others (Saka, Adebiyi, and Bakare 2019). Also, where there is a cancellation, the party, through its executives, is mandated to inform the Commission not less than seven days before the scheduled date of the election, informing the Commission of the rescheduled date, time, and place the primaries are to be conducted.

That notwithstanding, cases of political parties conducting part primaries secretly, shutting out some aspirants and party members abound. For instance, considering the happenings surrounding the ruling All Progressive Congress (APC) party primaries in 2018 and 2022, Senator Shehu Sani has this to say:

> There are three sure ways through which a candidate can emerge under the All Progressive Congress (APC) – either the candidate knows someone in the presidency who can put a call across to the members of the National Working Committee to include the candidate's name, a candidate can also emerge if he is in the good book of a governor who in turn compels the party chairman to substitute some other person's name with the intending candidate; or where the intending candidate has enough money to pay his way through (Sunday Tribune 2018, 25).

A recently passed legislation that makes for internal party democracy but which received fierce opposition is section 84(12) of the Electoral Act (2022). The section provides that "no political appointee at any level shall be a voting delegate or be voted for at the convention or congress at any political party for the nomination of the candidate for any election". This provision implies that political appointees or persons holding an appointive position, be it at the federal or state level and despite the nature or nomenclature of the appointment, be it a personal assistant or ministerial appointment, shall not act as a delegate, taking part in voting or nominating candidates nor would such appointees be qualified to be nominated or be voted in as a candidate or party flag bearer in party's convention or congress. The only option for such an appointee aspirant is to resign the appointive position before the party primaries. By section 84(3) Electoral Act (2022), contravening this provision gives INEC the right to exclude an affected political party's candidate for the political position he/she is vying for.[1]

The provision of sections 84 (12) and (13) have been applauded as being a veritable means of strengthening internal party democracy in Nigeria as it is capable of curbing the activities of some political appointees at the federal and state levels who are notorious for contesting political positions while holding unto appointments (Ogun 2022). Their motive usually tilts towards favoring their appointors for the already received favor of appointment or future anticipated favor (Ogun 2022). However, some contend that the inclusion of this section

[1]See the case of *All Progressive Congress & Ors. v. Marafa* [2017] LPELR-47024 SC

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violates some provisions of the Constitution (CFRN 1999) relating to the period of time within which a public servant is expected to resign his office and position before contesting a political position. According to them, section 84(12) contravenes certain sections of the Constitution (CFRN 1999), including sections 66(1)(f), 107(1)(f), 137(1)(g), and 182(1)(g). Combined reading and interpretation of the above provisions of the Constitution (CFRN 1999) suggests that a civil or public servant shall not be eligible to contest and or be elected into an elective position in Nigeria unless he has resigned from his employment and position in the civil or public service not later than 30 days before the day of the election in which he seeks to participate in. The perceived but erroneously construed contravention stems from the fact that while the Constitution in the above sections provides for 30 days, the Electoral Act (2022) in section 84(12) provides that a political party shall submit the name of their candidates not later than 180 days before the scheduled date of the election. To this end, the Electoral Act provides for a longer period, far more than the Constitution stipulates (CFRN 1999).

Be that as it may, section 318 of the Constitution (CFRN 1999), an interpretation section, is clear enough as to what it means to be in public service of the federation or any of the component States. The positions and offices stated under the section do not indicate or contemplate appointive positions such as minister, commissioner, and personal assistant. Therefore, political appointees are not and cannot be construed as public servants envisaged in the Constitution (CFRN 1999). Also, it is a general rule of interpretation that the express provision or mention of one thing implies the exclusion of another.[2] Thus, an express provision of who a public servant is in the Constitution depicts an express exclusion of who is not, such as political appointees in the case of *Progressive People's Alliance v. Peoples Democratic Party & Ors.* (2009), the Court of Appeal held that 'the fact that section 318(1) of the Constitution (CFRN 1999) listed those persons it classified as public servants means that others not listed are not to be regarded as public servants.[3] Similarly and more recently, in the case of *Oni v. Fayemi* (2019), the Court of Appeal held that a minister is not a public servant under the Constitution (CFRN 1999) and therefore is not bound by the 30 days resignation rule under the Constitution.

The above-examined judicial decisions have made it clear that a political appointee is not a public servant under the Constitution (CFRN 1999); as such, the provision of the Electoral Act (2022) mandating their resignation before acting as a delegate or before participating as a candidate in a party primary election which connotes their resignation not later than 180 days before a general election in which they seek to participate has not contravened any provision of the Constitution or any other law in operation in Nigeria.

Another ground on which section 84(12) of the Electoral Act (2022) has come under attack is that it violates the constitutional and fundamental right of the affected political appointees from discrimination.[4] Under the Constitution (CFRN 1999), the right to freedom from discrimination is a fundamental right. The Universal Declaration of Human and Peoples'

[2] This is expressed in the Latin maxim, *expression ius est exclusio alterius*; these maxim has been applied in a number of cases in Nigeria including *Military Governor of Ondo State v. Adewumi* [1988] 3NWLR (Pt. 82) 280*, A.G Bendel State v. Aideyan* [1989] 4 NWLR (Pt. 118) 646.
[3] See also the case of *Adamu v. Takori* [2010] ALL FWLR(Pt. 1387) CA
[4] See section 42 of the 1999 Constitution.

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Rights (UDHR 1948) under Articles 1 and 2 provides that all human beings are born free and equal, and all persons are entitled to all the rights and freedoms outlined in the Declaration. Among the rights provided for in the 1948 Declaration is freedom from discrimination. Article 7 of the UDHR provides that "all human beings are born equal and are entitled without any form of discrimination to equal protection of the law". In alignment with this perspective, the 1999 Constitution stipulates that no Nigerian citizen should be subjected, either explicitly or through practical implementation, to deprivation, discrimination, or denial of their rights based on factors such as their membership in a particular community, place of origin, sex, religion, or political opinion (*Oni v. Fayemi* 2019).

Considering the provision of section 84(12), it appears that the concept of discrimination against political appointees pertains to discrimination based on the public appointments held by the affected individuals. In simpler terms, discrimination against this group of individuals would be understood as being based on the specific type or nature of their appointments. A literal interpretation of this provision could be reasonable since those holding elective positions in the executive and the legislature are not mandated to resign under the Act. These politicians who hold elective positions cannot be completely absolved from potentially influencing delegates to gain favor for themselves or their preferred candidates. However, the rationale behind not mandating the resignation of those holding elective positions may be attributed to the significant and unfavorable economic implications of such resignations on the country. If they were to resign, it would create a void that must be promptly filled through elections. The Independent National Electoral Commission (INEC) might be required to conduct a new election within the limited timeframe between the resignation of these officials and the next general elections. It can be observed that the provision is discriminatory against these appointees, as they are excluded or limited from participating as contestants or delegates in the election process solely based on their current political office. This discrepancy becomes more apparent when comparing their situation to that of their appointing authorities in the executive branch and their counterparts in the legislature, which are not required to meet similar requirements. It is worth noting that a member of the legislature, whether at the federal or state level, is not obliged to resign from their position before running for reelection or seeking another elective position. The circumstances surrounding *All Progressive Congress v. Bashir Sheriff & 2 Ors*[5] case cannot be severed from the unfettered freedom of elective representatives to contest for the same position they occupy or another, even without resigning from their current elective offices. In this case, Ahmed Lawan, the incumbent Senate president, contested the candidacy for the president's office under the All Progressive Congress. However, before the primary election proper, the political party resolved to zone the office of the presidency to the south, which disqualified him from contesting that position. Meanwhile, during his ambition to contest the office of the president, it was opined that he sponsored one Machina to run for the office of the Senate on the agreement that should he fail to clinch the ticket for presidential position, the said Machina would resign and relinquish the senatorial ticket to him (Olumide, Ochojila, and Akubo 2023).

[5] [Unreported] Suit No.SC/CV/1689/2022 delivered in Abuja on the 6th day of February, 2023 by Justice C.C Nweze.

However, on Lawan's failure to succeed in his presidential ambition during his party primaries, Machina refused to act in line with the alleged arrangement/agreement to resign and give up the ticket for Lawan. Lawan then moved the National Working Committee (NWC) of the party to conduct what could be best described as a kangaroo primary election which, for obvious reasons, saw the emergence of Lawan as the flag bearer to the chagrin of other party members and supporters of Machina (Olumide, Ochojila, and Akubo 2023). The action of the party leaders in the above scenario is nothing but an act of imposition that sees the success of an unpopular candidate. In some cases, these unpopular candidates may be corrupt and incompetent. They struggle to do the bidding of those who helped them come to power, abandoning the interests of the people they ordinarily should represent (Adekeye 2017). These occurrences usually result in factions and split party members along interest lines, sometimes resulting in physical confrontations among these factions. In other cases, the aggrieved party members resort to more civilized conduct by approaching courts to redress their grievances.

JUDICIAL DECISIONS ON INTERNAL PARTY DEMOCRACY IN NIGERIA

Generally, the Constitution (CFRN 1999) empowers the judiciary to interpret legislative instruments and executive policies. According to Section 6 of the Constitution, the judicial powers of the federation encompass the courts established for the federation, while the courts established by and for the states are responsible for exercising judicial functions within their respective states. Section 6(6)(b) provides that "the judicial powers of courts under this section shall extend to all matters between persons or between government and authorities and to any persons in Nigeria, and all actions and proceedings relating to it for determination of any question as to the existence or extent of civil rights and obligation of that person".

To this end, the judiciary is responsible for inquiring into and determining the legality or otherwise of a civil right and obligation. In other words, the powers of the judiciary extend to determining issues and matters arising from or concerning individuals, constituted authorities, governments, or anybody, howsoever described or constituted, provided that the question the courts are called to resolve borders on the existence or extent of legal or civil rights (Nwocha 2017). The question of who occupies a position in a political party and who becomes a party flag bearer centers on legal rights that courts are reposed with authority to determine. Between 1999, the inception of Nigeria's Fourth Republic, and 2023, there have been behavioral shifts among Nigerian politicians from thuggery to accessing the judicial corridors in conflict resolutions (Enweremadu 2011).

This increased utilization of the judicial corridor and the wide acceptance of judicial decisions stems from increased party members' confidence in the judiciary. The confidence is restored due to modification and modernization of the judiciary towards attaining a height equal to her counterparts in the global space where advanced democracy is practiced. This struggle to achieve a renowned feat in the judiciary is evidenced in Nigeria's seeming independent nature, which has led to delivering sound and unbiased judgments irrespective of who is involved (Enweremadu 2011). This attitude of the judiciary expresses her independence, builds confidence in party members, and strengthens democracy. However, the fact that there have also been controversies over some judicial decisions cannot be ruled out. In other words,

the decisions in some cases bordering on internal party affairs are commendable. Others have been widely criticized on the ground, among others, that the apex court acted in error, closing its eyes to some vital issues and facts in reaching its decisions, especially in pre-election matters (Unachukwu 2013). For this essay, the decision of the Supreme Court in the cases of *Amechi v. INEC* (2008) and *All Progressives Congress v. Bashir Sheriff & 2 Ors* (2023) will be examined to distinguish between the two decisions.

The reason for some decision variations may not be completely severed from the fact that courts act according to and within their constitutional powers considering the peculiarity of every fact and circumstance, as any decision reached outside courts constitutionally enabled powers may amount to laboring in futility. Before the 2003 Electoral Act, the judiciary's powers did not extend to political parties' internal affairs. For instance, the 2002 Electoral Act confers on political parties the unfettered right to substitute candidates once the concerned political party notifies the INEC of the substitution not later than 30 days before the election.[6] This position was evident in some cases decided between 2003 and 2007, such as the case of *Onuoha v. Okafor* (1983), where it was held that the fact of whom a political party chooses to present or sponsor in an election is purely an internal affair of the party to be controlled by the workings of her internal mechanism and party Constitution; and as such, courts shall not delve into and or entertain any matter arising from there (Unachukwu 2013). In buttressing the non-justiciability of internal party affairs pre-2006, Irikefe JSC, whose reasoning was in line with the lead judgment in Onuoha's case above, observed that:

> The matter in controversy in this appeal is whether a court has jurisdiction to entertain a claim whereby it can compel a political party to sponsor one candidate in preference for another candidate of the self-same political party. If a court could do this, it would effectively manage the political party for the members thereof. The issue of who should be a candidate of a given political party at any election is clearly a political one to be determined by the party's rules and Constitution. Thus, It is a domestic issue and not just as justifiable in a court of law.

Owing to this harsh provision which did not remedy the substituted candidates, political party leaders became gods unto their members, especially those not in their good books, as they tend to substitute names of candidates at will with or without reason. However, the Electoral Act (2006) ushered in a new trend, bringing succor and respite to wrongfully substituted candidates. Under section 34 of the Electoral Act (2006), political parties are free to substitute candidates for another provided the party concerned gives a cogent and verifiable reason for the substitution. The fresh air that this provision of the Electoral Act (2006) offered to aggrieved party members and victims of illegal substitution was tested in the case of *Amaechi v. INEC & Ors* (2008). In this case, the Supreme Court was tasked with determining who the authentic candidate and Peoples Democratic Party (PDP) flag bearer for Rivers State's gubernatorial candidate in 2007 was. Some aspirants contested the party's primary election; however, one, Mr. Chibuike Amaechi, the appellant, was declared the winner, having polled the highest number of votes cast. The party leaders nevertheless substituted the appellant's name

[6] See section 23 of the Electoral Act 2003.

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with one Celestine Omehia, the second respondent on the claim that Amechi's name was submitted in error, submitted the same to INEC, who accordingly published Omehia's name as the party's candidate. Aggrieved by this, the appellant approached the court, questioning the validity of the substitution and INEC's action in publishing Omehia's name, among other issues. The trial Court found in favor of the appellant, holding that although the substitution was made on legal grounds and within the time limit, it fell short of specifying a reason for doing the same and did not afford any meaningful relief to the appellant. The appellant appealed against the decision to the Court of Appeal and up to the Supreme Court amidst a general election conducted during the pendency of the suit, and the second defendant-Omehia declared the winner and sworn in. In delivering judgment on the appeal, the Supreme Court, among other things, considered section 34 of the Electoral Act (2006) and declared that the appellant was the candidate of the PDP duly nominated, campaigned for, and voted for at the election. In reaching this position, the Supreme Court had recourse to section 221 of the Constitution (CFRN 1999) on the constitutionality of independent candidacy and held that without a party, a candidate could not contest; it is only a party that canvasses for votes, it follows that it is a party that wins an election. A good or bad candidate may enhance or diminish the prospect of his party winning, but at the end of the day, the party wins or loses the election; to this end, any vote for a party goes to the candidate sponsored by the party. As such, the appellant being the rightfully sponsored candidate of the People's Democratic Party, all votes for the party amount to votes for him.

This case of Amaechi served as a platform on which several other decisions on invalid and malicious substitution of candidates by political parties in Nigeria under the Electoral Act (2006) were decided. In almost all similar cases, the courts declared the substitution invalid, and the aggrieved person who may have taken part in almost all stages of the election was a validly nominated candidate (Unachukwu 2013). It is also believed that this decision informed the introduction of section 141 of the Electoral Act, 2010, which provides that "an election tribunal or court shall not under any circumstances declare any person a winner at an election in which such a person has not fully participated in all the stages". This has largely tamed some stubborn and carefree party leaders in substituting party candidates and would-be flag bearers. This is believed to have positively impacted and contributed to internal party democracy and democratic consolidation in Nigeria.

Notwithstanding this decision, a case with similar fact to Amaechi's case bordering on high-handedness of political party leadership and power that be in irregular but tactical substitution of party candidates received a different decision in Nigeria in 2023 in the case of *All Progressives Congress v. Bashir Sheriff* (2022). In this case, in a primary election of the APC for the office of the Yobe North senatorial candidate held on 28 May 2022, one Bashir Sheriff Machina was declared the winner, having scored the highest votes cast. However, on 9 June 2022, another primary election was allegedly conducted, which saw the Senate President, Ahmed Lawan, emerge as the winner. To this end, Machina's name, already submitted to the INEC, was substituted with Ahmed Lawan's. Aggrieved by this, Machina instituted an action in court challenging this substitution. The trial court held in his favor holding the substitution illegal. The trial court's decision was upheld on Lawan's appeal to the Court of Appeal. However, on a further appeal to the Supreme Court, the trial and Court of Appeal decision were upturned

on the technical ground that the originating process through which the matter was instituted at the trial court was defective. The nature of the claim involved some contentious issues and ought to be instituted through a writ of summons as against the originating motion through which it was instituted.[7]

However, in a dissenting judgment by Justices Adamu Jauro and Emmanuel Akomaye Agim, it was held that both the Federal High Court and the Court of Appeal declared Machina the winner. According to them, Lawan never participated in the APC primaries held on 28 May 2022 as he voluntarily withdrew to contest for the APC presidential primaries held on 8 June 2022. They further held that the alleged conduct of another primary election on 9 June amounts to a violation of section 84(5) and section 285 of the Constitution (CFRN 1999) on the requirement of a political party to cancel a primary election before conducting another. More so, the Independent National Electoral Commission (INEC) claimed it never witnessed the alleged primary election of 9 June as there was no notification or invitation from the party to INEC to witness this second primary.

In examining the Supreme Court's reason for setting aside the judgment of the trial court and the Court of Appeal in this instant case, one could not question the rationale behind that line of reasoning. However, it is a long-settled legal position that court decisions are reached based on the facts and peculiarity of every case (Shulayeva, Siddharthan, and Wyner 2017), as courts cannot descend to the arena of gathering facts but are only guided by facts presented before it. In the case of *Mitchell v. Queen* (2009), it is maintained that a judge should remain all off from fray and neutral during the elucidation of evidence. This is because even if a judge gives a seemingly fair and balanced judgment, the same does not undo the seeming unfairness during the trial where he descends into the arena.[8]

This position notwithstanding, numerous cases abound on the need for courts to move away from technicalities into the realm of substance in determining issues before it. For instance, in the case of *Akeredolu v. Abraham & Ors* (2018). the Supreme Court held that "technicality in the administration of justice shuts out justice; a man denied justice on any ground grudges the administration of it; it is, therefore, better to have a case heard and determined on merit than to leave the Court with a shield of the victory obtained on a mere technicality". In the words of Niki Tobi JSC, deciding a case based on technicalities could be described as deciding a case on strict adherence to the rules of courts, paying less attention to the case's merits.[9] Also, in the *Ebere Okezie v. 3 Ors. v. Central Bank of Nigeria* (2020), the Supreme Court held that "there is a need to keep the focus on the substantiality of justice and as such, each of the originating forms is valid". The position that courts should shift away from technicalities in doing substantial justice becomes more compelling when a matter arising from pre or post-election is involved. Under the different Electoral Acts, election petitions are *sui generis*, peculiar, and independent of any other legal classification. As such, deciding a pre-election matter based on a technicality will seriously affect the concerned party's internal democracy, voter confidence, and democratic consolidation.

[7] Justice C.C Nweze who delivered the lead judgment.
[8] Lord Wilson in the case of Re G (Child) [2015] EWCA Civ 834, 52.
[9] See the case of *Yusuf v. Adegoke* [2007] LPELR 3534 (SC).

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CONCLUSION

Irregularities often plague the selection of party flag bearers and subsequent representatives. Consequently, this undermines the confidence of party members and voters in their representatives and hinders the consolidation of democracy as a whole. Despite the provisions offered in the Electoral Acts since 2006, high-handedness and political godfatherism continue to dominate Nigerian political parties, leading to frequent resort to the courts by aggrieved party members. The judiciary has displayed a commendable level of judicial activism in certain cases, while in others, unpopular decisions have been rendered due to strict adherence to technicalities, despite the unique nature of electoral matters and cases arising from political party affairs. The courts should prioritize substantive justice in all cases and end the era of excessive reliance on technicalities.

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