# Legal Provisions And Party Politics In Nigeria: Selected Empirical Cases

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## Abstract

Actions and inactions of political parties in a democratic state aid to make or mar the governance of the people. The concourse of events in various political parties determines the stability, development, security and image of the state. Factually, political parties are the life wire of democratic governance. There are both critical and central to policy formulation and implementation to all levels and organs of government. Campaign of calumny, blackmail and political violence in lieu of horse trading, negotiations, compromises and constructive criticisms undermine national interest. The crux of this paper is to engage political issues laced with legal provisions to show the aberration in the political regime of our clime. It appraises the registration, finances and nomination of candidates by political parties including the tense issue of carpet-crossing in the Nigerian polity. This paper applied qualitative method of research with content analysis and narrative technique. It is found that government institutions such as Independent National Electoral Commission, Security Agencies and even the Judiciary are weak and not adequately funded to enforce compliance with Nigerian Laws in respect of party politics. In the same vein, the statutory control on the finances and expenditures of political parties is inadequate. More importantly, most political parties are involved in non-compliance with legal requirements in the electoral process. It is recommended among others that the commission should be constitutionally empowered to conduct bye-election to fill any vacant office within ninety days upon defection of any elected political office-holder. Again, the regulatory powers of the commission should be statutorily made to cover powers to investigate the finances of political parties and deregister any political party that spends more than the statutory limit in any election.

**Keywords:** Political parties; association; defection; nomination; political office-holders

## Introduction

Party politics in Nigeria began in 1922 after the introduction of elective principle. Once a political association was formed, it transformed itself into a political party and engaged into political activities. There was no legal requirement for registration. However, the Electoral Decree of 1977 as amended introduced the requirement of registration before a political association could be recognized as a political party and thereby qualified to canvass for votes and sponsor candidates into elective political offices. The Decree established the Federal Electoral

Commission with the power to register political associations as political parties via Sections 77 and 78 of the Electoral Decree of 1977.

In the legal parlance, a political association, upon registration with the Independent National Electoral Commission (INEC) becomes political party and acquires the attributes of legal personality with the powers to sue and be sued. However, it lacks limbs, brain *etcetera.* It therefore discharges its statutory functions through her *alter ego* embedded in the national leadership of the party. And a party system could be one, two or multi -party system. Nigeria has had multi party and two party systems. The Federal Military Government through Transition to Civil Rule (Political Parties Registration and Activities) Decree of (1991) decreed two political parties into existence. These were the National Republican Convention (NRC) and the Social Democratic Party (SDP). The Government constructed offices for the parties, funded and prepared their Constitutions which imbedded the parties' ideologies (Amucheazi, 2008). In view of the past political alliances and coalitions in Nigeria, critics conceded to the two party system but contended that the political parties would have been allowed to "evolve on their own and at their pace". This argument followed the stereotyped position of political party evolution through ideological frontiers in the western countries. But Prof. EloAmucheazi sees it otherwise when he noted that "… it is this slavish adoration of the west that has robbed the leaders of new nations the initiative to think constructively about the nature and contents of development that is appropriate for their societies" (Amucheazi, 2008 p.59).

It is contended that two party system in Nigeria will foster unity of the country and provide an opportunity for a change of government specially at the centre. This can be achieved through alliances of the major opposition political parties. None of the over sixty three (63) political parties in Nigeria prior to the de-registration exercise had the capacity and wide spread strength and structure to win presidential election. The two party system suffered setback after the annulment of June 12, 1993 presidential election. The said election was shrouded in bribery, corrupt practices and undemocratic maneuvers. Chief Bashorun Moshood Abiola, the SDP candidate used money to ensure his own victory and was generally regarded as the anointed candidate of the military government at the time (Mohammed, 2008). The 1st and 2nd Republics of Nigeria witnessed multi party systems. The fourth Republic which began in 1999 is the longest in the history of democratic governance in Nigeria. Nigeria currently operates a multi party system with twenty-six (26) political parties (INEC, Election and Party Monitoring Department: 2013). The objective of this research is to bring to the fore political injustices in Nigeria through investigation of selected empirical cases.

**Formation and Registration of Political Parties**

While there is freedom of association to all citizens, the power to register any association as a political party is vested on the Commission. The Constitution provides that only a political party shall canvass for votes for any candidate at any election, contribute to political parties' fund or election expenses of a candidate that participates in election. To this end, a distinction is made between a political party and an association. A political party is a legal entity empowered by law to engage in political activities which include canvassing for votes in support of a candidate for

election into the offices of the President, Vice President, Governor, Deputy Governor and members of various Legislative Houses or Local Government Councils.

Association on the other hand means anybody of persons, corporate or unincorporated that agrees to act together for common lawful purpose, and includes association formed for any ethnic, social, cultural, occupational or religious purposes. While the Constitution allows formation of association and freedom of association, no such association is permitted to function as a political party unless:

- the names and addresses of its national officers are registered with the Commission;
- Its membership is open to every Nigerian without discrimination;
- a copy of its Constitution is registered with the Commission's headquarters;
- any alteration in its registered Constitution is registered with the Commission's headquarters within 30 days of the alteration;
- neither its name nor symbol contains any ethnic or religious connotation or give the impression that its activities are limited to a part only of the geographical area of Nigeria; and
- the headquarters of the association is situated in the Federal Capital Territory, Abuja.

A political association becomes a political party after its registration or deemed registration by the Commission. The Supreme Court stated: "According recognition to a political party is the fact of acceptance of the existence of an association eligible to function as a political party, while registration is the recordings and certifications of that." *(INEC* v. MUSA, 2002). Once a political association meets the conjunctive six criteria for registration under the Constitution in order to function as a political party, and the Commission accepts the existence of such association's eligibility, that amounts to recognition while the recording and certification of that fact is registration. Thus, recognition precedes registration. The refusal of the Commission to recognize and register political associations as political parties came for judicial pronouncement in the case of Independent National Electoral Commission & anr. V. Alhaji Abdulkadir Balarabe Musa &4ors. The Plaintiffs each applied to the first defendant for registration as a political party. On 17$^{th}$ day of May, 2002, the Commission released guidelines for the registration of political parties. The Plaintiffs considered some provisions of the guidelines as being inconsistent with the provisions of the Constitution of the Federal Republic of Nigeria, 1999 relating to registration of political parties, and therefore should not be made to comply with the guidelines. The Plaintiffs took out originating summons to challenge the guidelines and some provisions of the Electoral Act, 2001. The Supreme Court affirmed the constitutional provision which set out thesix criteria that constitute condition precedent for the recognition and registration of political parties, and the power of the Commission to issue guidelines or manuals for the purpose of due administration of the Act. The Supreme Court further affirmed the powers of the National Assembly to confer by way of legislation, power on the Commission to regulate political parties and ensure observance of the Constitution. It was not in doubt that the Commission has the power to register and regulate political parties. The salient point was whether by extension, it has the power to determine the eligibility of an association to function as a political party. On this, the court held that section 222 of the 1999 Constitution has set out the conditions upon which an association

shall function as a political party. Consequently, "the Constitution has impliedly withdrawn such matters from the ambit of any regulatory enactment that the National Assembly may make" (INCE v. MUSA, 2002).

The court further held that for an association to engage in activities which only a political party is permitted to, it must comply with the provisions of section 222 of the 1999 Constitution. The section stipulates six conditions for eligibility of an association to function as a political party. Does it stand to reason that once an association has complied with the six criteria stated in section 222 of the 1999 Constitution, the association becomes a political party even before its registration with the Commission? The court said: "Registration is the process of recording the existence of a political party…." (INEC v. MUSA, 2002) So the Commission merely records the existence of a political party and that provides the evidence and certification of compliance with section 222 of the Constitution. Compliance with section 222 of the 1999 Constitution is a condition precedent for the existence of a political party. The court further held thus: "It is evident that a political party cannot be registered as being in existence unless the association has satisfied the conditions of eligibility in section 222". Once section 222 is complied with, the association becomes a political party while the subsequent registration with the Commission is to provide evidence of compliance with the above section.

The regulatory power of the Commission relates only to registered political parties. Thus, the formation and registration of a political association as political party may take the following stages namely:

- Formation of the association;
- The association's compliance with the six conditions under section 222 of the 1999 Constitution which makes it eligible to function as a political party;
- The acceptance by the Commission of the existence of the association's eligibility to function as a political party-that is recognition by the Commission.
- The recording and certification of "C" above by the Commission. That is registration.

The application for registration must be duly submitted to the Commission not later than 6 months before a general election. The Commission may, pursuant to section 153 of the 1999 Constitution, issue guidelines, or manuals for the purpose of giving effect to the provisions of the 1999 Constitution and the Act. When a political association fulfils the conditions stipulated in the Constitution and the Act, the Commission shall register the political association as a political party within 30 days from the date of the receipt of the application. Where the association is not so registered, the Commission shall inform the association accordingly otherwise, the association shall be deemed to have been registered. However, the Act did not contain a provision mandating the Commission to issue Certificate of registration to a deemed registered political party. It is suggested that a provision be made in the Electoral Act to mandate the Commission to issue Certificate of Registration to such political party within 5 working days from the date the political party in deemed registered under the Act. In all cases, an application for registration as a political party shall not be processed unless there is evidence of payment of administrative fee as may be fixed from time to time by the Commission. And an association that procures certificate

of registration through submission of false or misleading information shall have such certificate cancelled. This in law means deregistration of the political party.

Where the Commission declines to register any association as political party, the decision may be challenged in the court of law. The legal action challenging such decision of the Commission shall be commenced within 30 days from the date of receipt of the letter of notification of non registration from the Commission. The cause of action to challenge the Commission's decision not to register a political association as a political party accrues on the association's receipt of the letter of notification of non-registration from the Commission. The right of action becomes statute barred after 30 days from the date of receipt of the letter. The day the letter was received is excluded. Upon actual or deemed registration, the political party becomes a body corporate with perpetual succession and a common seal and may sue or and be sued in its corporate name.

However, the Commission can deregister a political party on grounds of breach of any of the requirements for registration and for the failure to win a seat in the National or State Assembly election. Section 78 (7) of Electoral Act 2010 (as amended) provides as follows:

The Commission shall have power to deregister political parties on the following grounds –

- breach of any of the requirements for registration; and
- for failure to win a seat in the National or State Assembly Election

The above two grounds for deregistration of political parties are disjunctive, the use of the word "and" notwithstanding. Either of the two grounds is sufficient to de-register a political party. It is submitted that the requirement in section 78 (7) (b) – failure to win legislative seat in the National or State Assembly as a ground to de-register a political party is an affront to freedom of association. Political parties should be allowed to exist and remain whether they win elections or not if such political parties can survive without winning election. It is sufficient that governments no longer make financial grants to political parties. That a given political party did not win election within a given period is not conclusive that it cannot win in subsequent elections. Losing in an election should not be a ground for deregistration. Election cannot be won at all cost. It suffices that any breach of any of the requirements for registration is a ground for cancellation of registration.

**Finances of Political Parties**

Unarguably, political parties need funds to survive and sustain the performances of their political activities. The normal channel of fund sourcing – annual dues, sale of memorabilia, investment, surcharge of party office holders combined are probably not enough.

The sources of funds are highly restricted. Political parties are not permitted by law to hold or posses any fund or other assets outside Nigeria, and they shall not retain any fund or asset remitted or sent to them from outside Nigeria. Any fund or asset sent to any political party from outside Nigeria is to be sent or remitted to the Commission within twenty-one days of the receipt

of the fund or asset. Any political party that holds or possesses any fund or other asset outside Nigeria or retains any fund or asset remitted or sent to it from outside Nigeria commits an offence and shall be liable on conviction in each case to a fine not less than fine hundred thousand (N500,000.00) naira only and forfeiture of the fund or asset to the Commission. Again, under the Company and Allied Matters Act, (2010), it is an offence for a company either directly or indirectly to make donation or gift of any of its property or funds to a political party or political association, or for any political purpose. More also, the Act in its section 91 (a) prohibits any individual or other entity from donating more than Nl,000,000.00to any candidate.

The National Assembly is by the Constitution empowered to make law for an annual grant to the Commission for disbursement to political parties on a fair and equitable basis to assist the parties in the discharge of their function. Thus, statutory grants were made for the Commission to disburse to political parties on fair and equitable basis to assist them in the discharge of their functions. The distribution formula of grants to political parties was:

- 10% of the total grant to be shared on equal basis to all registered political parties; and
- 90% of the total grant to be shared to all the registered political parties in proportion to the number of seats won by each political party in the National Assembly.

The more the number of seats secured or won by political parties at the National Assembly, the larger its share of the 90% of the grant. This larger part of the grant was shared without consideration to seats won by political parties at the State Houses of assembly or any other elective office. Although the law upon which grants were made to political parties has been repealed, it is suggested that the Constitutional requirement for law to provide for grant to political parties should be abrogated. Government should not fund political parties at all. Nothing more than financial grant to political parties in Nigeria has led to multiplicity of political parties in the country. This has weakened the opposition and strengthened the political party in power and endangered good governance.

The election expenses a candidate standing for election into a particular office may incur is regulated and limited by the Act. It is as follows:

Office Maximum expenses

1. Presidential Election

N 1,000,000,000.00

2. Governorship Election

N200,000,000.00

3. Senatorial Election

N40,000,000.00

4. House of Representative Election

N20,000,000.00

5. House of Assembly Election

N 10,000,000.00

6. L.G.A Chairman Election

N 10,000,000.00

7. L.G.A Councillorship Election

N 1,000,000.00

**Source: Section 91** (1) (2) (3) (4) (5) **(6) & (7),**

**Electoral Act, 2010** (as **amended).**

The above represents election expenses in respect of various candidates in election. Election expenses for the purpose of an election means expense incurred by a political party within the period from the date notice of the election is issued by the Commission until and including the polling day in respect of the particular election. In determining the total expenditure incurred in relation to the candidature of any election, the Act provides that an account shall not taken of the followings:

a. any deposit made by the candidate on his nomination in compliance with the law;

b. any expenditure incurred before the notification of the date fixed for the election with respect to services rendered or materials supplied before such notification; or

c. political party expenses in respect of the candidate standing for a particular election.

The Act expressly stated the maximum election expenses of a candidate in respect of an election and defined election expenses as expenses incurred by political parties within a given period, yet in determining the election expenses of a candidate, the expenses incurred by a political party in respect of the candidate standing for a particular election shall not be taken into consideration. What is an election expense to which maximum is stipulated and political party expenses to which no account shall be taken in determining the maximum election expenses? Election expenses is limited to expenses incurred by a political party from the date of notification of election till the poll is conducted while the political party expenses to which no account shall be taken includes all expenses prior to the notification of the election date and every other expenses after the poll is concluded provided the expenses is connected with the election of the candidate. Thus, where a return is challenged after a poll in a given election, the said election is still in the process till the authentic return is made. And if "expenses incurred by political parties in respect of the candidate standing for a particular election" is not to be taken into account in determining election expenses, any candidate may spend far above the maximum prescribed by the Act but through the political party that nominated him. Consequently, determining the maximum expenditure of a candidate may become difficult.

It is an offence for a candidate to incur election expenses above the limits stipulated in the Act and on conviction is liable to pay certain maximum fine or imprisonment for term of years or both depending on the office being contested and in respect of which the offence was committed. In a bid to monitor the expenditure of political parties, each political party is required to submit to the Commission a detailed annual statement of assets and liabilities and the analysis of its sources of the funds and other assetsincluding its expenditure in such aform as the Commission may from time to time require. The Commission shall publish the report in 3 National Newspapers. Political parties are also required to file a report of contributions made to them by individuals and other entities to the Commission. It is submitted that the Act has not made adequate provision to guide against reckless spending by candidates before, during and after election till the matter is determined in the Election Tribunal and the appeal thereof. The maximum amount a political party shall spend in respect of her candidate for an election should be stated. It is the political party that contests and wins election not candidates.

**Primary Election of Political Parties**

Primary Election of Political Parties means nomination of candidates by various political parties ahead of general election. The nominated candidates are fielded by the political parties at the general election into various elective offices. Prior to the enactment of the Electoral Act 2010 (as amended), the nomination of candidates by political parties in Nigeria had no uniform standard procedure. This encouraged political manipulation, and jungle justice. The party echelon was the lord of the manor. It was rather unregulated internal affairs of political parties which even the court of law lacked the requisite jurisdiction to adjudicate. In *Onuoha v. Okafor,* the court opined that the issue of nomination is a political question which the court cannot dabble into and answer. The Supreme Court was emphatic thus:

The question of the candidate a political party will sponsor is more in the nature of political question which the Courts are not qualified to deliberate upon and answer. The judiciary has

been relieved of the task of answering the question by the Electoral Act when it gave the power to the Leader of the political party to answer the question. (Onuoha v. Okafor,

1983). The above was the legal position on nomination of candidates. The reason can be gleaned from the past political experience when scheduled elections were disrupted through the machinery of courts by candidates who were dissatisfied with the nomination process of their political parties (Babalola, 2003). The judicial position crystallized into a notorious principle of law that courts lack jurisdiction to entertain matters on internal squabbles of political parties.

Consequently, nomination of candidates for elective political offices became a slot for the highest bidder even in the 11th hour. The case which involved Hon. C.N. Ukachukwu v. Senator Ugochukwu Uba illustrates the political aberration of our time. The duo contested the PDP nomination for Anambra South Senatorial District Seat. The PDP forwarded the name of Senator Uba to INEC as its candidate for the election. Subsequently, Senator Uba's was substituted with Hon. C.N. Ukachukwu. On the same day, 6th March, 2003, PDP sent another list titled, "Revalidation List" and Senator Uba's name was restored as the party's candidate for the election. On 12lh April, 2003 the election was conducted and Hon. C.N. Ukachukwu was declared the winner and issued with Certificate of Return (form EC8E) by the Commission. Later the Commission cancelled Hon. Ukachukwu's victory and returned Senator Uba.

In the tribunal, it was held that the Commission lacked the legal capacity to cancel an already declared election. On appeal, the Court of Appeal held that a returning officer can withdraw, cancel or invalidate a return of a candidate after election. While the judgment of the Election Tribunal represents the law, the decision of the Court of Appeal thereof is an affront to judicial function. In fact, two justices of the Court of Appeal that delivered the majority judgment were subsequently dismissed from judicial service unceremoniously upon proven allegation of receiving bribe amounting to N27,000,000.00 and other unascertained sums of money in three "Ghana-Must-Go" bags in relation to the appeal before them.

A similar case is Senator Julius Ucha v. Dr. Emmanuel Onwe. Both were members of the same political party – PDP at the material time. Dr. Onwe contested PDP primaries for EbonyiCentral Senatorial district election and won while Senator Ucha vied for PDP nomination in respect of office of the Governor of Ebonyi state but lost. Notwithstanding the fact that Dr. Onwe's name had been properly submitted to INEC as the validly nominated candidate of the party for Ebonyi Central Senatorial district election, he was subsequently substituted with Senator Ucha who did not indicate interest in the senatorial district nomination exercise. The substitution was contrary to every known principle of justice and fair play and against the guideline for the nomination issued by the political party. The trial tribunal dismissed the petition for lack of jurisdiction but the Court of Appeal declared Dr. Onwe as the winner of the election. However, on appeal to the Supreme Court, the apex court noted the dichotomy between pre and post election matters and opined that the factas pleaded by Dr. Onwe was a pre election matter which only the regular court not election tribunal has exclusive original jurisdiction to determine. It is the view of this writer that the Supreme Court decision enabled Senator Ucha to benefit from his own wrong doing with his collaborators in the party. It was also a supreme judicial attack on the Constitutional finality of the decision of the Court of Appeal over National Assembly election

petition matters. Section 246 (3) of 1999 Constitution provides: "The decision of the Court of Appeal in respect of appeals arising from election petitions shall be final". It is irrelevant that the decision of the Court of Appeal was wrong.

In view of political disorder and electoral uncertainty generated by the abracadabra nomination process, the *dictum* of Nnamani JSC (as he then was) in *Onuoha v. Okafor* becomes apt. He enthused: "In my view, in the interest of the healthy growth of our democratic process… political parties must… be dissuaded from swapping one sponsored candidate for another without due regard to their constitution and/Dime rules of natural justice". The above judicial opinion was later entrenched into the Electoral Act 2006 now repealed. A political party cannot swap its nominated candidate for another without due regard to its constitution, the rules of natural justice and in particular, the Electoral Act.

The Supreme Court stated the Law in the following words: "….If the political parties, in their wisdom had written it into their constitutions that their candidates for election would emerge from their party primaries, it becomes unacceptable that the court should run away from the duty to enforce compliance with the provisions of the parties constitution", (Ameachi v. INEC, 2008).

In Electoral Act, 2006, the conditions and procedure for change of nominated candidates by political parties were expressly stated. Thus, the conditions were that the change must be effected:

- Not later than 60 days to the date of the election with cogent and verifiable reasons; or
- In case of death of a candidate already nominated, at any time before the election.

**The procedure requires a written application to the commission.**

Presently, Electoral Act 2010 (as amended) regulates party primaries. Political parties must conduct primary elections for aspirants to all elective political offices. It may be direct or indirect primary election. Direct primary election requires participation of all members of the political party in the nomination. Indirect primary election on the other hand, is election by delegates. The Act has skewed discretion on the part of any political party in the nomination exercise and outlawed automatic or consensus candidates. This is a healthy legislative step in our fledging nascent democratic process. And no substitution after nomination except upon the death of the nominated candidate before the general election or voluntary withdrawal by the candidate under his own writing.

**Change of Political Party Membership by Elected Political Office Holders**

Freedom to form and/or belong to any political party is constitutionally guaranteed to every person though not absolute. Sponsorship of a candidate by a political party into elective office is a cardinal requirement for election into various political offices.

The issue of defection from one political party to another is a no new phenomenon in the political landscape of Nigeria. The first premier of the Western Region, Ladoke Akintola decamped from Action Group and formed alliance with the NCNC. Again, when NNDP was formed, some members of the House of Representatives on the platform of the AG cross carpeted to the NNDP.

In the second Republic, the then Kano State Governor, Abubakar Rimi cross-carpeted from Peoples Redemption Party (PRP) to Nigeria Peoples Party (NPP) over disagreement with the PRP leadership. Mr. Abubakar Barde of the old Gongola state did same. Governor Mohammade Goni of the old Bornu State defected from Great Nigeria Peoples Party (GNPP) upon which he was elected to the Unity Party of Nigeria (UPN). The third Republic did not witness any civilian government at the centre before the political structure was disbanded. However, the fourth Republic which began in 1999 has witness massive cross-carpeting by both elected executive and legislative office holders in Nigeria.

In Attorney General of the Federation v Alhaji Atiku Abubakar& 3 ors, the Vice President of Nigeria, Alhaji Atiku Abubakar who was elected with the President, Chief Olusegun Obasanjo on the platform of People's Democratic Party (PDP) decamped to the Action Congress. Consequently, the President declared the Vice President's office vacant. The Supreme Court held that a President or Vice President of Nigeria under the 1999 Constitution that defects from the political party on whose platform he was elected to the office to another political party does not automatically forfeit his office by reason of the defection. He only forfeits his office if removed through any of the following ways:

1. impeachment on ground of misconduct;
2. two-third majority resolution of the member of the Federal Executive Council on reasons of incapacity of the holder of such office to discharge the functions of that office;
3. reason of death; or
4. resignation.

The same conclusion may not be reached in respect of the seats of legislators under the 1999 Constitution. Although, the issue as it relates to legislators was not directly called for determination in the above cases, the *dictum* of the Supreme Court on it may not be glossed over. The Court cited section 68 (1) (g) of the 1999 Constitution which deals with the defection of legislator and reasoned thus:

*I have no doubt in my mind that the legislators have made it manifest thatif any of these elective members after winning an election on the platform of a political party, later on being a member of the Senate or the House of Representatives, defects to another political party, he is deemed, in law, to have automatically vacated his seat in the House of which he is a member.*

A similar provision was not made in respect of the offices of the President, Vice President, Governor and Deputy Governor. Section 68 (1) (g) 1999 Constitution provides:

A member of the Senate or the House of Representatives shall vacate his seat in the House of which he is a member if…

being a person whose election to the House was sponsored by a political party, he becomes a member of another political party before the expiration of the period for which that House was elected: Provided that his membership of the latter political party is not as a result of a division in the political party of which he was previously a member or of a merger of two or more political parties or faction by one of which he was previously sponsored.

Except for merger or division in a political party that sponsored a member of Legislative House, such member is deemed in law to have vacated his seat in the House of which he is a member, if he becomes a member of another political party before the expiration of the period for which that House was elected. In the interpretation of the provisions of the Constitution, the court adopts broad and liberal approach. Where the words used are clear and unambiguous, they will be given their ordinary meaning. Notwithstanding the above position of law, Senators Tokumbo Afikuyomi, Olorunnimibe Mamora along with other House of Representatives members and Lagos State House of Assembly members elected under the platform of Alliance for Democracy declared for the then Action Congress, yet retained their legislative seats. The provision of the Constitution in that regard requires judicial pronouncement, as same is not self executory.

Although defection by a holder of an executive elective seat may be condemnable, painful, and unconscionable, it is not illegal provided that the later political party to which the candidate joins is known to law. However, it is trite that one of the conditions for eligibility for election into any elective office is that the person is a member of a political party and is sponsored by that party. This covers both executive and legislative seats. While it is conceded that the Constitution is not specific on the defection from one political party to another by the occupiers of the elective executive offices, it is contended that votes are cast for political parties and not for the individual contestants. The Supreme Court has interpreted section 221 of the 1999 (as amended) and opined thus:

*…Without a political party, a candidate cannot contest. The primary method of contest for elective offices is therefore between parties… it follows that it is a party that wins an election …in mundane or colloquial terms we say that a candidate has won an election in a particular constituency but in reality and inconsonance with section 221 of the Constitution, it is his party that has won the election.*

In view of the above, save in the case of division in a political party or merger, no candidate or person sponsored by a political party ought to decamp to another political party without losing his seat for the office concerned. It is suggested that where an elected office holder leaves the political party that sponsored his election into a particular office, he should automatically lose the office to which even in the first place belonged not to him as an individual but to the political party that canvassed for votes and won the election. However, the political party that sponsored such candidate to office should not be allowed to produce replacement even democratically for the unexpired period of the last holder of the office. The people should elect their leaders through bye-election to fill the vacancy created by the defection of the last holder of the office.

## Conclusion

This paper has appraised the activities of political parties in Nigeria in the current fourth Republic. It is certain that though the laws on the political parties' activities are not flawless, the deliberate abuse and weak institutions of government to enforce the laws thereof is more responsible for the massive non-compliance with the rules of the game by the politicians. Unlawful substitution of nominated candidates is unabated, unconscious change of political party platform during the tenure of the elected legislative and executive political office holders without vacation of office is a daily occurrence, while money politics remains the route to political power acquisition. Internal democracy in political parties is a charade as imposition of candidates is still extant. Beside the suggestions advanced in this work, which if implemented would exterminate the menace, collective effort is a necessity to advance national interest in Nigeria and guarantee the security of the governors and the governed. Specifically, it is recommended that political office holders should muster sufficient political courage to implement the law on electoral process in Nigeria.

## References

Abubakar, S.M. (2008). "Self Succession in Nigeria: A Comparison of IBB and OBJ" in Sam Oyovbaire (ed.), *Governance and Politics in Nigeria The IBB and OBJ Years.* Ibadan: Spectrum Books Limited.

Amucheazi, E. (2008). "Party System and Party Politics" in Sam Oyovbaire (ed.), *Governance and Politics in Nigeria The IBB and OBJ Years.* Ibadan: Spectrum Books Limited.

*Attorney General of the Federation v. AlhajiAtikuAbubakar& 3 ors*(2007) 10 Nigerian Weekly Law Report (pt 1041) 1.

Company and Allied Matters Act, Cap. C 20 Laws of the Federation of Nigeria, 2010.

Constitution of the Federal Republic of Nigeria, 1999, Cap. C 23 Laws of the Federation of Nigeria, 2010 (as amended).

Electoral Act 2006 (now repealed). Electoral Act, 2010 (as amended).

*Hon. C.N. Ukachukwu v. Senator (Dr.) UgochukwnUba*(2004) 10 Nigerian Weekly Law Report (Pt. 881)294.

*INEC v. Balarabe Musa &ors*13 Nigerian Supreme Court Quarterly Report 39

INEC, Election and Party Monitoring Department (2013). List of Registered Political Parties & Their Logos as at August 2013.

Nweke, E.N. (2006). "Political Conflicts in Nigeria" in S.I. Odoh and J. Onuoha, (eds.), *Peace and Conflict Studies in Africa.* Enugu: Jones Communications Publishers.

*Rt. Hon. RotimiChibuikeAmeachi v. INEC* (2008) 33 Nigerian Supreme Court Quarterly Report 332; (2008) 5 Nigerian Weekly Law Report (2004) (pt.1080) 227.

*Senator (Dr) UgochukwuUba v. Hon. Ukachukwu & 4 ors* (2004) 10 Nigerian Weekly Law Report (2004) (pt.881)224.

*Senator Julius Ali Ucha v. Dr. Emmanuel Onwe& 4 ors*(2011) 45 Nigerian Supreme Court Quarterly Report 741.