

THE RULE OF LAW – A PILLAR FOR AN ENDURING CONSTITUTIONAL DEMOCRACY: AN APPRAISAL OF THE SUPREME COURT DECISION IN THE CASE OF PETER OBI V. INEC*

Abstract

*The principle of the Rule of Law which has for long become a central feature of the Western Liberal Democratic Government has seriously been undermined by the developing Third World Countries in Africa. In Nigeria the rate of executive lawlessness and abuse of power has been the order of the day. For example, elections have turned out to be a wasteful and unnecessary exercise. Not only that some electorates have been disenfranchised, there has been looting of ballot boxes, wanton rigging and announcing of unelected candidates contrary to the wishes of the people. Actions in court by the popular candidates at times do not make any difference since it takes donkey years to conclude. This work takes a look at the significance of the court's decision in **Peter Obi v. INEC** which placed the law in the right position. The work also calls for the continuous vigilance of all and sundry towards the protection and maintenance of the rule of law since it is the duty not only for the judiciary, but for all citizens.*

Introduction

Briefly put, sanctity of the rule of law in any human society mean that everything must be done according to law. It means all government departments and functionaries must be able to justify their actions according to law. And where such actions are unjustifiable, any affected person may resort to the courts of law for appropriate remedy or remedies.

The concept of the rule of law is founded upon the theories of the early Greek philosophers,²¹ in the third century BC, and was taken up by the Romans and then considerably developed by Christian thinking. The principle of rule of law has since become a central feature of western liberal democratic government.

Aristotle was categorical when he said that a rightly constituted law was the final authority. Aristotle posits,

“That the rule of law is preferable to that of a single citizen even if it be the better course to have individual ruling; they should be made guardians or ministers of the laws.”²

What this mean according to Aristotle is that the law rules and nothing else not even individuals, entrusted with the responsibility of safeguarding the laws.

Interestingly, the rule of law is in every body's lips. However, its exact content, application and indeed desirability remain a subject of intense controversy and debate

The Meaning of Rule of Law

The rule of law implies a notion of equality before the law which means at least that there must be equal access for all to law, vindication of their rights and protection of their interests.

* **A. K. Mgbolu**, LL. B (Hons) LL.M. Lecturer in Law, Ebonyi State University Abakaliki Nigeria.

¹ See the works of Plato, Socrates and Aristotle particularly the teachings, trial and death of Socrates and in those of Aristotle in 3rd Century B.C.

² S. Mukherejee: **A History of Political Thought. Plato to Marx**: Prentice hall of India, New Delhi: 2007. PP:95-97.

However, most commentators like Plato and Socrates agree that under the rule of law that:

1. No person or institution is above the law and the state itself is subject to legal regulation.
2. That rules of law must be clearly defined and precisely stated.
3. Rules of law should be adjudicated upon and applied by independent judges and thus, the rule of law implies the existence of some concept of separation of powers.
4. The rule of law implies a notion of equality before the law, which means at least that there must be equal access for all to law vindication of their rights and protection of their interests.
5. The rule of law guarantees liberty and accepts the notion of natural justice.
6. That law should promote and serve the interest of all those subject to it.

Furthermore, the vast majority of commentators agree that law must possess a degree of stability in order for those subject to it to know in advance the likely consequences of their acts according to law³.

It is also generally agreed that the rule of law requires that the law should not be made retrospective in effect, ie, conduct that was not a crime at a point in time should not be made criminal by a later change in the laws. Similarly, legal rule should be coherent and not contradictory⁴.

According to A. V. Dicey⁵ a renowned cerebral Professor of English law; he says, “We must be ruled by law and law alone”.

He categorized the doctrine of the rule of law into three aspects:

1. The first aspect he says mean:

The absolute supremacy or predominance of regular law as opposed to influence of arbitrariness or prerogative authority on the part of government.

2. The second aspect of Dicey’s theory may be summarized as meaning “Equality before the law and that law is no respecter of persons rank or status.

Equality before the law or the equal subjection of all classes to the ordinary law of the land administered by the ordinary law courts, the rule of law in this sense excludes the idea of any exemption of officials or others from the duty of obedience to the law which govern other citizens or from the jurisdiction of the ordinary tribunals⁶.

3. Finally the third meaning of the rule of law according to Dicey is expressed as follows:

³. D. Pollard, Neil Parpworth and David Hughes, **Constitutional and Administrative Law**. Butherworths London, 2nd Edition. p. 26.

⁴ A.V. Dicey: **Law of the Constitution** (London: Stevens and sons,) 10th edition,1959, P. 147-150,202

⁵ *Ibid* at p. 149

⁶ *Ibid* at P. 146

The rule of law lastly may be used as a formula for expressing the fact that with us the law or the constitution, the rules which in foreign countries naturally form part of a constitutional code are not the source but the consequence of the rights of individuals as defined and enforced by the court⁷.

The rule of law thus envisages the existence of the constitution or some sort of law which shall be bestowed with absolute supremacy over all persons, whether governor or governed.

The Supreme Court of Nigeria in simple terms put this across in the case of **Governor of Lagos State V. Ojukwu**⁸ when it held that”

The law is no respecter of persons, principalities government or powers and the courts stand between the citizens and the government to see that the state or government is bound by law and respects the law.

However, in today’s contemporary world, the rule of law denotes the minimum condition of existence in a free, open, humane, civilised and democratic society. It thus implies that democracy without the rule of law is tantamount to wholesale arbitrariness⁹

Nwabueze, while subjecting the concept of constitutional democracy and barbaric rule to *considerable thoughts admirably posit that:*

Constitutional government recognizes the necessity for government but insists upon a limitation being placed in essence therefore. It connotes in essence therefore a limitation on government, it is the antithesis of arbitrary rule, its opposite is despotic government, the government of will instead of law.¹⁰

In Nwabueze’s view, a constitutional, popular government connotes not just a government under Constitution, but rather government under a Constitution which has force of a supreme, overriding law and which imposes limitation upon it. He went further to conclude that in practical terms, constitutionalism, democracy and the rule of law are practiced in a country where the government is genuinely accountable to an entity or organ distinct from itself where elections, are freely held on a wide franchise at frequent intervals; where political groups are free to organize in opposition to the government in office, and where there is an effective legal guarantee of fundamental civil liberty enforced by an independent judiciary.

An Enduring Constitutional Democracy and the Rule of Law

A constitutional and enduring democracy exists where there is a predominance of the rule of law; where there is absolute supremacy of the constitution; where the government has no more powers, than those granted to it either expressly or impliedly, by the Constitution and any exercise by it of power not so granted or which is prohibited is unconstitutional, null and void. The Supreme Court of Nigeria in the aforementioned case of **Governor of Lagos State V.**

⁷ *Ibid* at P. 147

⁸ (1986) 1 NWLR (pt. 19) p. 621 at 647-8

⁹ **M.A.A. Ozekhome: The Role of a Constitution in an Emerging Democracy**, A paper presented at the first LAWSAN Conference in Benin City Nov. 2005 p. 85.

¹⁰ B.O Nwabueze: **Constitutional Democracy in Africa**. Vol. 1 Spectrum Books, Lagos, 2003. p.2.

Ojukwu¹¹ exhibited in glaring colour, the importance and the need for the observance of the rule of law. UWAIS JSC (as he then was) said;

If government treats courts order with levity and contempt, the confidence of the citizen in the courts will be seriously eroded and the effect of that will be the beginning of anarchy in replacement of the rule of law.

On March 13th and 14th 2006 the first ever lawyers boycott paralyzed the courts under the umbrella of Nigerian Bar Association because according to the NBA “the exercise was only one of several measures to draw attention to several disobedience of court orders by the executive at all levels in the country¹².

The decision by the National Executive Council of NBA to boycott the courts is not a punishment of the courts nor the litigants. In actual fact, it is intended to draw attention to the important role the courts play in keeping our society together.

The significance of the boycott is that for two days, Nigeria would experience how it feels and what it takes to live in a society without the courts of justice or the—effect of non-adherence to the rule of law¹³

Obaseki JSC in his own words summed it up as follows:

The Nigerian constitution is founded on the rule of law, and the primary meaning of which is that everything must be done according to the law. It means also, that Government should be conducted within the framework or recognized rules and principles which restrict discretionary power which COKE Colourfully spoke of as “Golden and straight wet wand of law as opposed to the uncertain and crooked cord of discretion.

Again the Supreme Court in the Case of **Governor of Lagos State V. Ojukwu**,¹⁴ Stated that the rule of law presupposes:

1. That the state is subject to law.
2. That the judiciary is a necessary agency of the rule of law.
3. That government should respect the right of individual citizen under the rule of law.
4. That the judiciary is assigned both by the rule of law and by our constitution the role of the determination of all actions and proceedings relating to matters in dispute between persons or between Government or authority and any person in Nigeria.

Also, as early as in 1969, in the case of, **RE-Mohammed Olayori**;¹⁵ a Judge of the Lagos State High Court had occasion to expound the concept of the rule of law in a flowery style.

¹¹ (1986) 1 NWLR (pt 18) 621 at 639.

¹² The Guardian Newspaper Tuesday March 14 2006. p. 1.

¹³ **Governor of Lagos State V. Ojukwu.** (*Supra*).

¹⁴ (1986) 1 NWLR (pt. 18) 621 at 639

¹⁵ Suit N0. M /196/69 Unreported.

I am as I know is every member of the bench and every right thinking and honest member of our society, against prevailing conditions of corruption and embezzlement of public funds existing in the country (Nigeria) today, if we are to have our actions guided and restrained in certain ways for the benefit of the society in general, individual member in particular, then whatever status, whatever post we hold, we must succumb to the rule of law. The alternative is anarchy and chaos.

In the African Conference on the Rule of Law held in Lagos¹⁶. The delegates and participants unanimously resolved that:

The rule of law is of universal validity and application as it embraces those institutions and principles of justice which are considered minimal to the assurance of human rights and the dignity of man.

The concept of the rule of law has changed over the years¹⁷ and today it is synonymous with rights of man in a free, open, humane, civilized and democratic society. This encompasses supremacy of the law over all person and authorities in a state, supremacy of the constitution in theory and in fact independence of the judiciary and the right of man as Human Right.

According to Jean Flariam Lalive¹⁸ of the International Commission of Jurists, the Rule of Law is based upon one permanent and fundamental factor as well as others, which may be considered more flexible and relative. This permanent factor “is the belief that every individual has the right to enjoy the dignity of man”. For the effective operation of the rule of law, the international Commission of Jurists has set out the following guiding principles:¹⁹

1. The state is subject to the law.
2. Government should respect the right of the individuals under the rule of law and provide means for their enforcement.
3. Judges should be guided by the rule of law, protect and enforces it without fear or favour and resist any encroachment by government or political parties on their independence as judges.
4. Lawyers all over the world should preserve the independence of their profession, assert the rights of the individual under the rule of law with fair trial.

It can therefore be submitted here that the structure and foundation of the rule of law is founded on democratic structures. And human rights are necessary desideratum for democracy. If human rights are undermined, democracy itself is undermined. As such democracy cannot thrive with the suspension or subjugation of human–right²⁰. The modern concept of human rights functions only in a familiar and enabling territory often described as “**Rule of Law**”, and, “**Constitutionalism**” Democracy insists that the law be equally, fairly and consistently enforced and this is referred to as “**Due Process of Law**” or the “**Rule of Law**”. The period

¹⁶ Held Eko Le Mexiden Lagos 1993 under the instance of the ICJ, the Urban Morgan Insatiate of Human Rights, and the Centre for Human Rights, Faculty of Law, Michigan University. USA

¹⁷ See, P.A.O. Oluyede **Constitutional Law in Nigeria**. 1st Edition Evans Bros. (Nigeria Publishers) limited. 1992, p. 90-92

¹⁸ N. March editorial: The Rule of Law: Form and Substance”, **ICJ Journal** 1957-8. P.153-4 Secretary of the International Commission of Jurists, 1961

¹⁹ **People Union for Democratic Rights v. Union of India** (1992) ALSC. 1473-1478

²⁰ N. Marsh Editorial “The Rule of Law: Form and substance”, **ICJ Journal**. 1957-8. P.153-4.

between April 2003 and March 2006, was indeed another volatile period in the chequered history of Nigeria, as the political gladiators and second term seeker unleashed terror on the polity, of course and as usual INEC was vacillating and oscillating, registering qualified and unqualified candidates at the electoral process. This led to the challenge of Olusegun Obasanjo's victory at the Presidential polls by three prominent aspirants to wit; **Ojukwu Vs. Obasanjo**²¹, and **Obasanjo Vs. Yusuf**²². Muhammadu Buhari's action was the third because of its comprehensive nature. In the case reported as **Muhammadu Buhari and 2 Ors. Vs. Chief Olusegun Aremu Obasanjo and 266 Ors;**²³ the Supreme Court dismissed the appeal. However, the observation of Uwais CJN (as he then was) is instructive.

He observed at page 182 paragraphs (D-E) that:

The evidence adduced at the trial in the Court of Appeal by the 1st and 2nd appellants respondents was not sufficient to enable the Court of Appeal hold substantially in accordance with the principles of the Electoral Act. This was so despite the Court of Appeal nullifying the election in Ogun State.

In as much as we accept this judgement as that of the final court, one is not oblivious of the very powerful, forceful and indeed prophetic dissenting judgement of the sagacious and courageous NSOFOR JCA at the lower Court. For the purpose of this work, I concur with his lamentations in the closing lines of his judgment to the effect that:

May the Almighty God never let Nigerians witness another black Saturday like that of Saturday 19th April 2003 when Governorship and presidential elections were held in Nigeria God forbid.

Nsofor's judgment even though dissenting is true and axiomatic and in tandem with the case under appraisal.

Peter Obi VS. INEC.²⁴ A perfect example of the display of Rule of Law was revealed in the Anambra State scenario, wherein Dr. Chris Nwabueze Ngige, the unduly elected Governor had spent about three solid years as a Governor before the duly elected Mr. Peter Obi was sworn in as the winner. Yes, an election result was upheld by the verdict on INEC of 19th April 2003 in accordance with section 178(2) of the Constitution²⁵. Three years after, precisely on the 15th of March 2006, the Court of Appeal sitting at Enugu affirmed the judgment delivered by the Anambra State Election Petitions Tribunal on 12/8/2005 and nullified the election of the erstwhile state Governor, Dr. Chris Ngige.

The Tribunal having examined myriad of witnesses numbering over 450, came to the conclusion that the incumbent Governor of Anambra State, Chief Chris. Ngige only had a total of one quarter votes in nine Local Government Areas of its 21 Local Governments, thus failing to meet the constitutional provisions of section 179 (2) of the 1999 Constitution²⁶. That section provides that:

²¹. (2004) 12 NWLR (pt886) 169

²² (2004) 9 NWLR (pt. 877) 144

²³ (2005) 13 NWLR (pt.941 at -318)

²⁴ (2007) 11, NWLR (1046) PP.565-695

²⁵ Constitution of the Federal Republic of Nigeria, 1999.

²⁶ The News Magazine, 27th August 2005. p. 27

A candidate for an election to the office of governor of a state shall be deemed to have been duly elected where, there being two or more candidates.

- a. he has the highest number of votes cast at the election and,
- b. He has not less than one-quarter of all the votes cast in each of at least two-thirds of all the local government areas in the state.

Mr. Peter Obi's Overtures

As a successful businessman, Mr. Obi's venture into politics was not by accident. He sees the political terrain as a virgin land which he can conquer if he could face it with the same resilience, hard work that hinged on truth and sincerity with which he has confronted the business world²⁷.

Mr. Obi stood for the Governorship election as candidate for the All Progressives Grand Alliance (APGA) Party in 2003, his rival Dr. Chris Ngige was declared winner by the Independent National Electoral Commission. (INEC)

After nearly three years of dogged litigation the nullification of Ngige's victory was upheld by the Court of Appeal on 15 March 2006. That is to say the Court of Appeal sitting in Enugu endorsed the verdict of the Anambra State Elections Petitions Tribunal which in 2005 declared Mr. Peter Obi of the (APGA) winner of the April 2003 gubernatorial election in Anambra State, thereby ending the almost three years judicial battle. In a lead judgement the court dismissed all the forty grounds of Appeal and held that Mr. Peter Obi had the majority votes in the election. The Court also condemned the Independent National Electoral commission (INEC) for what it called its hide and seek game with justice. It was further held that INEC's call for a fresh election was not justifiable as the tribunal had adjudged the 2003 elections to be free and fair. The Court ordered that Mr. Peter Obi be sworn in as Governor in accordance with the judgement of the lower tribunal, because he polled a total of one quarter votes cast in fifteen local government areas in compliance with section 179 (2) of the Constitution²⁸. This was after Mr. Obi presented 47 witnesses to prove his case and Ngige paraded 425 witnesses in his own defence. In his 15- paragraph affidavit in support of the originating summons, the plaintiff/appellant had deposed that sequel to the election for the Governorship of Anambra State on the 19th April, 2003, Dr, Chris Ngige was wrongfully declared the winner by the 1st respondent (INEC). Dissatisfied with the said declaration of results, the appellant lodged a petition at the Election Petition Tribunal. The declaration was set aside by the Tribunal and it was held that the appellant, who secured the majority of the lawful votes cast at the Election was the candidate duly elected.

Governor Ngige's Appeal

However, as encapsulated on the Electoral Act 2002, the incumbent governor shall remain in office until his appeal is determined if he appeals within 21 days as Dr. Chris Ngige did. That section provides, that.

If the election Tribunal or the court, as the case may be determines that a candidate returned as elected was not validly elected, and if notice of appeal against that decision is given within 21 days from the date of the decision, the

²⁷ Saturday Sun, Newspaper February 2, 2008, p. 4.

²⁸ Constitution of the FRN. 1999

candidate returned as elected shall notwithstanding the contrary decision of the election Tribunal or the court remain in office pending the determination of the appeal.

It must be noted however that the above provision is just a first step as it is not an end in itself. Once the appeal is dismissed as in this case, the Governor will be asked to vacate office finally. But if his appeal is allowed, he continues as if nothing ever happened. If a governor is removed physically from office by the decision of the Tribunal but later wins his appeal, it will be inconvenient, inexpedient and highly untidy to again remove the winner at the Tribunal and reinstate the previously ousted Governor

Constitutional scholars, lawyers and keen political analysts were not surprised when on 15/3/2006, the Court of Appeal dismissed Ngige's appeal whilst affirming the findings of the Election Petition Tribunal as set out in the preceding paragraphs hereof. In his illuminating leading judgement, the presiding judge, Justice Rabiun Danladi Muhammed declared with judicial finality thus:

The judgement of the Tribunal as delivered on 12th August 2005 is hereby upheld and the court declared that Dr. Chris Nwabueze Ngige should not have been declared as duly returned or duly elected by the 2nd to 4th Respondents (INEC), Mr. Peter Obi is declared as validly and duly elected and returned as governor of Anambra state having polled the highest majority of lawful votes cast at the April 19th gubernatorial elections.²⁹

Sanctity of the Rule of Law

The remaining judges concurred with this judgement, thus legally truncating a political jamboree and macabre era in Anambra state and Nigerian politics. Perhaps, most welcome and interesting however was the condemnation of the role of the supposed neutral arbiter, the Independent National Electoral Commission (INEC) by the court. This body which argued extensively at the Election Tribunal that the elections were free and fair, suddenly on appeal without shame turned around to declare that the election that brought Ngige into office were fraudulent and irregular. What a shame, and a devastating blow to the rule of law.

In response to this macabre dance by (INEC), the sagacious Justice Muhammedu, JCA Rabiun further stated that:

It is manifested that INEC is deviating from what it canvassed at the Tribunal, that cannot be allowed because justice is not a hide and seek game. INEC's position makes mockery of the judicial process and the rule of law and should be condemned. I hereby strike out the preliminary objection filed by INEC.³⁰

On his part the proficient Omokri JCA pondered aloud that:

²⁹ This Judgement of the Court of Appeal sitting at Enugu was delivered amidst a tumultuous reception on the 15th of March 2006.

³⁰ See, Akpo Mudiaga Odje: On Challenges of political Transition 2007. (*Supra*) p.54.

It was embarrassing, mischievous and scandalous for INEC to have filed the appeal. INEC is not supposed to appeal. It should leave candidates to fight their own battles³¹

It should be noted, albeit being axiomatic, that by virtue of section 246 (3) of the 1999 constitution, the Court of Appeal is the final court on such matters. *A fortiori* Ngige's case was then finally laid to rest.

Governor Obi remained as dogged and determined as ever. He took office on 17th March 2006, only to be impeached by the state House of Assembly after seven months in office and was replaced the next day by Dame Virginia Etiaba, his deputy making her the first ever, female Governor in Nigeria's political terrain and history.

Obi who with his counterpart Rotimi Chibuike Amaechi-Governor of Rivers state won the Sun Newspaper 2008, Man of the Year award³² successfully challenged his impeachment and was reinstated as the governor on 9th February 2007 by the Court of Appeal sitting in Enugu. Dame Virgy Etiaba handed over power back to him after the Court ruling. He once again left office on May 29 2007 following general elections, in which he did not contest.

Obi's 3rd Onslaught to find Justice and Rule of Law

Reminiscent of a good lawyer, Obi, though not a lawyer, knows where to find the law. He returned to the courts once more, determined and this time contending that the four-year tenure he had won in the 2005 elections only started to run when he took office in March 2006. His contention was that the later in 2006, the 1st respondent commenced preparations to conduct another round of elections to the office of Governors of the states of the Federation of Nigeria including Anambra State, and it announced in 2007 that the election would be conducted on 14th April 2007.

The Appellant was aggrieved with the actions of the 1st respondent and he commended a suit against the 1st respondent at the Federal High Court by an originating summons in which he sought the determination of the following question:

1. Whether having regard to section 180 (2) (a) of the 1999 constitution the tenure of office of a Governor first elected as Governor begins to run when he took the oath of allegiance and oath of office.
2. Whether the Federal Government of Nigeria through the defendant being its agent will conduct any Governorship Election in Anambra State in 2007 when the incumbent Governor took oath of allegiance and oath office on 17th March 2006 and has not served his four-year tenure as provided under S. 180 (2) (a) of the 1999 constitution.

He therefore sought for the following reliefs:

1. A declaration that the four-year tenure of office of the plaintiff as the Governor of Anambra State began to run from the date he took the oath of allegiance and oath of office, being the 17th day of March 2006.

³¹ See, Daily Independent Newspaper, 16/3/2006. p.1-2

³² See: Sun Newspaper February 2. 2008 page 4.

2. A declaration that the Federal Government through the dependant being its agent cannot lawfully conduct any Governorship Election in Anambra State in 2007 in so far as the plaintiff as the incumbent Governor has not served his four year tenure of office commencing from when he took oath of allegiance and oath of office on 17th March, 2006.
3. Injunction restraining the defendants by themselves, their agents, servant, assigns and privies or however from in any way conduction, any regular election for the Governorship of Anambra State until the expiration of a period of 4 (four) years from the 17th day of March 2006 when the plaintiff 's tenure of office will expire."

Upon these prayers the defendants contended inter alia that the trial court lacked jurisdiction to determine question as to whether the tenure of office of a Governor or a deputy Governor had ceased or when it will cease. This is because when a court gives decision amounts to nothing³³. The appellant subsequently in turn filed an application pursuant to section 295 (2) of the constitution³⁴ of the Federal Republic of Nigeria, 1999 by which he prayed the trial court to refer certain questions raised in the suit to the court of Appeal. The trail court heard the preliminary objections and the application for reference of questions to the court of Appeal together and in a reserved ruling, held that the appellants suit related to electoral matters, which it lacked jurisdiction to adjudicate on. Consequently, it dismissed the appellant's application for reference of questions to the court of Appeal and struck out his suit. The Appellant became dissatisfied with the ruling of the trial court and proceeded to the Court of Appeal.

The basis of the appellant's case before the trial court as can be gathered from the questions posed by him for determination by the trial court was that by the provisions of section 180(2) (a) of the Constitution³⁵ his four year tenure of office commenced from the date he was sworn in as the Governor of Anambra State: that is 17th March 2006 and that election into that office ought not be proposed for 14th April 2007 as the INEC planned to do: for by necessary inference that office would not be vacant on 14th April 2007.

By a motion on notice dated and filed on 28th February 2007 the appellant prayed the trial court for accelerated hearing of the proceedings pending applications including the accelerated reference of the questions formulated by him to the Court of Appeal for adjudication. The questions formulated for reference to the Court of Appeal as set out in the body of the motion were:-

1. Whether having regard to section 251 (1) of the Constitution,³⁶ the federal High Court has jurisdiction to entertain the case which in the main calls for the correct interpretation of section 180 (2) (a) of the constitution of the Federal Republic of Nigeria, 1999.
2. Whether the plaintiff is a person first elected as Governor within the meaning section 180 (2) (a) of the Constitution³⁷
3. In view of section 180 (2) (a) of the Constitution³⁸ when did the tenure of office of the plaintiff begin to run having regard to the fact as admitted by both parties, that the

³³ **Mac Foy V. UAC** (1961) 3, ALL ER 116, at 375

³⁴ Constitution of the Federal Republic of Nigeria, 1999.

³⁵ Constitution of the Federal Republic of Nigeria, 1999.

³⁶ Constitution of the Federal Republic of Nigeria, 1999.

³⁷ Constitution of the Federal Republic of Nigeria, 1999

³⁸ *Ibid.*

- plaintiff took the oath of allegiance and oath of office as Governor of Anambra state on 17th March 2006?
4. Having regard to the fact that the plaintiff took oath of allegiance and oath of office on 17th March 2006, is the plaintiff not entitled to enjoy the full tenure of 4 years for the office of Governor as prescribed by section 180 (2) (a) of the Constitution³⁹?
 5. Can the defendant lawfully abridge the tenure of 4 years prescribed by the constitution for a person such as the plaintiff elected as Governor of a State by holding election for the office of Governor for a state in the middle of the plaintiff's tenure, in other words, can the dependant lawfully conduct a Governorship election in Anambra State in April 2007 notwithstanding the fact the plaintiff took oath of allegiance and oath of office only on 17th March 2006.?
 6. On a proper interpretation of section 180 of the Constitution⁴⁰ particularly section 180 (2) (a),⁴⁰ must election be held in all the states of Nigeria on same date or at the same period irrespective of the date the Governor of a state was sworn and regarded of the provision of section 180 (2) (a) of the constitution⁴¹?
 7. Has the plaintiff waived his rights to continue to remain in office as the Governor of Anambra State for the full tenure of 4 years when the plaintiff is not a candidate recognized by the defendant in the 2007 general elections into the gubernatorial election in Anambra

Consideration of the above issued by the court

After taking arguments of all counsel on the motions and the preliminary objections as to jurisdiction, in a considered ruling on the 30th March 2007, the trial court held that questions 2-7 did not constitute materials for reference to the court of Appeal and it dismissed the motion for reference. On the issue relating to matter of jurisdiction, the trial court held that it had no jurisdiction to entertain the summons and decision, lodged an appeal to the court of Appeal.

That court in a reserved judgement delivered on the 22nd of May 2007, dismissed the appeal in its entirety. In so doing, it held inter alia that the reliefs sought by the appellant were mainly election matters which according to it were within the exclusive jurisdiction of the Election Tribunal and therefore the Federal High Court lacked the jurisdiction to entertain same and that by extension, following its holding that it was the Election Tribunal that was vested with jurisdiction power in the matter, the court of Appeal could not invoke the provision of section 16 of the court of Appeal Act and adjudicate in the substantive matter. The court also upheld the preliminary objection raised by INEC against ground 4 of the grounds of appeal and issue NO.4 in the appellants bring to the effect that the trial court having refused to make a reference should have proceeded to pronounce on the merits of the case for reason that it was not raised before the trial court.

Mr. Peter obi once again was dissatisfied with the position of the Court of Appeal, appealed to the Supreme Court. The Supreme Court did not waste time in determining the case. It went straight to construe the meaning of sections, 178 (1) and (2) 180 (1) (2) (3) 184(a), 189(1) 251(q) (r) and 285(1) and (2) of the Constitution⁴². It also considered the following issues before it as follows;

³⁹ *Ibid*

⁴⁰ *Ibid*.

⁴¹ *Ibid*.

⁴² Constitution of the Federal Republic of Nigeria, 1999.

1. Whether the Court of Appeal was right when it upheld the decision of the Federal High Court declining jurisdiction and held that the prayers in the appellant originating summons were election matters within exclusive jurisdiction of the Election Tribunal.
2. Whether the Court of Appeal was right in striking out ground IV of the appellants grounds of appeal and issue IV distilled there from.
3. Whether having regard to the proper appreciations of the appellants prayers in the originating summons, the Court of Appeal was right in not invoking its powers under section 16 of the Court of Appeal Act⁴³

After considering the issues above as well as the issue in the originating summons of 12th February 2007, the Supreme Court also considered the reliefs sought for by appellant and ruled on its merit. Per Aderemi J.S.C who gave the lead judgement as follows:

I only need to add that as at 14th April 2007, when the 1st respondent (INEC) was conducting gubernatorial election in Anambra State the seat of the Governor of that State was not vacant. That election was a wasteful and unnecessary exercise. The 1st respondent was aware at that time that the appellant was in court pursuing his legal rights. A body that has respect for the rule of law which INEC ought to be would have waited for the outcome of the court proceedings particularly when it was aware of it.

In the final analysis, he summed up by saying that the appeal is meritorious and must be allowed. The two judgements of the lower courts in this respect were set aside and in their place the learned judge gave these declaration and orders as justice of the case demands;

1. That the office of Governor of Anambra State was not Vacant as at 29th May, 2007.
2. That the tenure of the appellant (Peter Obi) as Governor of Anambra State which is four years certain will not expire until 17th March 2010 for the reason of the fact that he being a person first elected as Governor under the 1999 constitutional took oath of allegiance and oath of office on the 17th March, 2006.
3. It is hereby ordered that the 5th respondent Dr. Andy Uba should vacate office of the Governor of Anambra State with immediate effect to enable the plaintiff/appellant (Mr. Peter Obi) to exhaust his term of office.
4. By this ruling Dr. Andy Uba vacated the office for Peter Obi as Governor of Anambra State in respect to justice and the rule of law.

Conclusion

Today, everybody is familiar with this canker worm that has determined to undermine the Rule of Law in Nigeria. Indeed, everybody is now familiar with the time long *cliché* that justice delayed is justice denied. It happened in the case of Governor Amaechi of Rivers state. It happened in the case of Dr. Peter Obi of Anambra state. It is therefore disheartening and very grievous indeed that judgements come almost after three years of elections in Nigeria. It is shameful and completely laughable. A reasonable man may be prompted to ask whether this is justice, either for Nigeria or Obi or indeed for the society in the case of Anambra scenario.

⁴³ Appeal Court Act .2002

The Rule of Law frowns at this. What it means by implication is that Dr. Chris Ngige vacated office on 15th March 2006 after two years and eleven months in office as an unduly elected Governor, whereas the duly elected Governor Dr. Peter Obi will serve for the remainder of the term of one year and two months, which will be shorter than that of the unduly elected.

Thank God, the Supreme Court was at hand to correct what would have been a mischief in law. This is because section 19(2) of the Constitution⁴⁴. provided that “A new governor of the state shall hold office for the unexpired term of office of the last holder of the office”.

Consequently, the delay exhibited by these Tribunals with respect, is clearly a travesty of justice and an unprovoked onslaught against the Rule of law. These severe delays breed lack of confidence in the judicial process by the entire citizenry. Thus, a comprehensive reform of the electoral process as being proposed by the head of state, Dr. Goodluck Jonathan must be embarked upon with utmost dispatch to save us from this legal logjam and incubus called delay.

It is therefore pertinent that since I have pointed out the judicial position on time limitation and its attendant unconstitutionality, to also suggest the following reforms to reduce inordinate, exasperating and frustrating delays in hearing election petitions. They are as follows:

1. The executive should prior to the elections provide through the National Judicial Council (NJC) as directed by section 21 (e) of item 1 in the 1999 Constitution, funds for all logistics such as, venues, cars, residences, registry and allied matters for the sitting of the election tribunals
2. The judiciary should set up the Election Tribunals within 7 days after the date the elections were last held.
3. The election Tribunals should be manned by very competent honest, hardworking and diligent judges and members.
4. Attractive welfare packages, accommodation and allowances should be provided for both the judicial and staff members of the election Tribunals.
5. If need be, election Tribunals may even sit on Saturdays and Sundays to beat time, unlike section 25 of the electoral Act⁴⁵, which forbids sitting on Sundays or a public holiday. After all, the highly learned justice Onu (JSC) has declared in the case of **Anie Vs. Uzorka**⁴⁶, that:
Any judge has the jurisdiction....to sit on Saturdays or even Sundays provided he did not compel the litigants who are members of the public and their counsels to attend....

Consequently, as held in same case above with the consent of the parties, the court can sit on public holiday and work free days, Saturday or Sunday. From the lessons obtained from this treatise, it should be clearly understood by all and sundry that like Mr. Peter Obi, Chibuike Amaechi and Adams Oshiomole we should learn to sacrifice, our time and money in pursuit of justice, democracy and the Rule of Law. It may if need be on the other hand result in death like was recorded in Edo State in jubilation over Oshiomole’s victory.

⁴⁴. CFN 199

⁴⁵. See, Electoral Act of Nigeria 2002.

⁴⁶ (1993) 8 NWLR (pt. 309) 1 at p. 20, pars (F-9).

People rose in thousands in frenzy, happy mood jubilating and chanting songs in recognition and respect for the rule of law. Residents defied the restriction order imposed by the police and poured into the streets. In the result five persons were feared dead. Two-died on the Sapele Road after a car hit them, while two other men who were celebrating atop a moving trailer on Ikpoba Hill lost their lives as they fell off the trailer. Vanguard⁴⁷ told us that a third victim, a commercial motorcyclist lost his life at upper sakpoba road when he ran into a ditch while celebrating.

That is the price and sacrifice for justice, democracy and the rule of law and it may not matter how much and how far it has taken or may take in the process. The foundation of every modern democratic society is premised on the Rule of Law which accentuates constitutional order and legal certainty. In such a society, the activities of Government and its agencies are duly regulated by the laws of the land principally referred to, in Federal system as the “Constitution”.

Regrettably, the executive arm, and the political class seem not to be in a hurry to comply with the dictates of our constitution, as was seriously exemplified in some of our election results in Nigeria. The case of Governors Chibuike Amaechi of Rivers State, Adams Oshiomole of Edo State and the incumbent Peter Obi of Anambra State are examples.

The Supremacy of the constitution has made it abundantly clear and in no uncertain terms that the provisions of the constitution are superior and are binding and must be observed and respected by all persons and authorities in Nigeria⁴⁸. It is therefore regrettable that for more than ten years now, the National Assembly are unable to enact a new electoral law for Nigeria. It is a shame and a monumental tragedy in the history of this political dispensation and our constitutional law. On the contrary, and quite strangely, the country is still relying on the 1999 constitution which though outdated was foisted on the country by the military and was severely distorted to suit the military *cum* civilian former Heads of state. The judiciary which stood the test of the time should be encouraged and equally goaded to continue to stand by the rule of law as was noticed in the Peter Obi case and others too numerous to mention. It was as a result of this act of constitutional tyranny that the Delta State legal team at a time counter-claimed against the President of the Federal Republic of Nigeria in the erroneously called, resource control case of, **Attorney General of the Federation v. Attorney General of Abia State and 35 Ors**⁴⁹ (No.2)

The erudite Ogundare, JSC of Blessed memory, expectedly upheld the counter-claim and declared the act of Mr. President on his first line charges as brazenly unconstitutional. The eminent Jurist held at pages 689-670 of the judgement in favour of Delta State, the tenth defendant, that;

Consequent upon all I have said, I grant claim (f) and hereby declare that the policies and or practices of the plaintiff are unconstitutional being in conflict with the 1999 constitution of Nigeria. I also grant injunction as claimed in claim (h) restraining the Federal Government from further violating the constitution in the manner declared in claim (f) above.

⁴⁷ See; Vanguard Newspaper Nov. 12 2004 P. 5.

⁴⁸ This is encapsulated in the preamble to the constitution of the Federal Republic of Nigeria 1999.

⁴⁹ (2002) 6 NWLR (pt764) 542.

The battle being fought and waged by the judiciary is not for the judiciary alone but for all and sundry and as such, all hands must be on deck to save the face of our country from electioneering malaise.

It is in that same spirit and upon the above authorities that I contend with all due respect that rigging of elections, annulment of election results years after an unelected candidate has been in office illegally, is an act of constitutional tyranny and an unprovoked onslaught on the Rule of law and constitutional order.