



March 2023

by **Cornelius Gabriel** – Associate II

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The Independent National Electoral Commission (INEC) conducted the Presidential and National Assembly Elections and has declared Bola Ahmed Tinubu the President-Elect. The declaration has since been rejected by his opponents Atiku Abubakar and Peter Obi who have vowed to challenge the outcome of the election in court. As a result, the need to consider the grounds for challenging an election arises.

Section 134 of the Electoral Act, 2022 provides that a party who intends to challenge the process and or outcome of an election can do so on the following grounds:

- (a) A person whose election is questioned was, at the time of the election, not qualified to contest the election;
- (b) The election was invalid by reason of corrupt practices and non-compliance with the provisions of this Act; or
- (c) The respondent was not duly elected by the majority of the lawful votes cast at the election.

The Ground On Non-Qualification

To contest an election in this context the candidate must be qualified to do so. It is a constitutional requirement that must be met otherwise the candidate will be deemed not qualified to contest. According to Section 134(3) of the Electoral Act, 2022, a person is deemed to be qualified for an elective office and his election shall not be questioned on the grounds of qualification if, with respect to the particular election in question, he meets the applicable requirements of Sections 65, 106, 131 or 177 of the Constitution and he is not, as may be applicable, in breach of Section 66, 107, 137 or 182 of the Constitution.

The implication of the above is that where it is satisfactorily proven by the petitioner before the tribunal that the winner of an election is not qualified to contest the election therefore the candidate who came second will have to be declared the winner of the election.

Ground Of Corrupt Practices And Non-Compliance With The Provisions Of Electoral Act

An election can be questioned on the grounds that it was invalid by reason of corrupt practices or non-compliance with the provisions of the Act. The Electoral Act, the Regulations and Guidelines for the conduct of Elections regulate the conduct of elections. This places a compulsory duty on INEC to adhere to the provisions of the above laws in order to have free, fair and credible elections and a breach of the Act and Guidelines has far-reaching consequences.

For instance, the failure of INEC to upload election results to the INEC Result Viewing Portal (IREV) in real-time using the BVAS, electoral violence, disenfranchisement of voters, intimidation, manipulation of election results, mutilation of result sheets etc are all incidents of corrupt practices and non-compliance, which the Electoral Act frowns at and are grounded upon which an election can be challenged.

The court in *Iniyama v Akpabio* (2008) 17NWLR(pt.1116) 225; *OKE V MIMIKO* (2014) 12 NWLR (PT. 1388) 322 etc held that a petitioner who pleads corrupt practices and non-compliance with the Electoral Act must establish by evidence their effects on the outcome of the election. That is, for a petition to succeed under these grounds, it must be proven that there was non-compliance and that the non-compliance substantially affected the result of the election.

It is worthy of note that Section 137 of the Electoral Act, 2022 provides that it shall not be necessary for a party who alleges non-compliance with the provision of this Act for the conduct of elections to call oral evidence if the originals or certified true copies manifestly disclose the non-compliance alleged.

The Ground Of Not Having Majority Of The Lawful Votes Cast At The Election

For a Petitioner to succeed on this ground the evidence adduced in support of the allegation should come directly from the officers who were on the field where the votes were counted and or collated. This requires party agents from each polling unit where corrupt practices are alleged must be called to testify in court as evidence of a person who merely received the figures without being present is hearsay which is not admissible.

The court is therefore not going to rely on the testimony of agents from other polling units or other wards. The attitude of our courts has been to treat the testimony of agents from other polling units as hearsay evidence which is not admissible. See: *BUHARI V OBASANJO* (2005) 13 NWLR (P. 941)

Time To File

The election petition must be filed within 21 days after the date of the declaration of

results of the elections. The Tribunal shall deliver a judgment in writing within 180 days from the date of the filing of the petition. This is as stipulated in Section 132(7 & 8) of the Electoral Act, 2022. Failure to comply with this time frame will be fatal to the petition of the petitioner.

Conclusion

The electoral process in Nigeria has not been anything close to having a world-class standard of a free, fair and credible election. However, the Electoral Act 2022 made some innovations that will not only help in conducting free and fair elections but also help in having a good election petition. The introduction of the BVAS and IREV promises to create a new dimension in proving election petitions.

Key Contact



Collins Okeke
Associate Partner/Head,
Public Sector Practice Group
e: collins@oal.law



Cornelius Okey Gabriel
Associate II, OAL
e: cornelius@oal.law

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Contact Us:

Corporate Office: 10A Ilabere Street, Ikoyi, Lagos. | **Apapa Office:** Maritime Complex 34, Creek Road, Apapa Lagos. | **Abuja Office:** Purplestone Mall, Plot 1265, Zone E27, Apo Resettlement, Apo, FCT, Abuja. | **Postal Address:** P.O.Box 3169, Apapa Lagos, Nigeria

Website: www.oal.law

Email: clientsupport@oal.law

Phone: +234-9121397097, +234-8167306347