

ISSUES THAT MAY EMANATE FROM THE ELECTION PETITIONS PROCESS In Nigeria



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The 2023 Presidential and National Assembly elections have just been concluded. The Independent National Electoral Commission (INEC) has declared the winner of the Presidential Election. Results from the National Assembly elections are gradually trickling in.

What is becoming clear, is that a lot of the elections will be challenged at the election petitions tribunal.

These petitions will throw up new compliance issues that are a substantial departure from the decision in the case of *Atiku Abubakar & Anor v INEC & Anor LER [2019] CA/PEPC/002/2019*. The compliance issues will be around the use of technology. Of note is the use of card readers, BVAS, and IREV. The Osun case of *Oyetola and Anor v Adeleke & Anor* is in this sense a prelude to this new era.

Any petitioner approaching the election petitions tribunal on grounds of non-compliance must not only ensure he puts together a formidable legal team that comprises experts in the use of technologies provided under the Electoral Act 2022, but must also be abreast with innovations introduced by some relevant sections of the 2022 Act.

These innovations in the Electoral Act will be the game changers at the election petition tribunals. For instance, although the Court was reluctant to grant an order of inspection of card readers in the case of *Atiku Abubakar & Anor v INEC & Anor supra*, with Section 47(2) of the new Act providing for mandatory use of BVAS, an all together different approach is anticipated from the court.

Furthermore, the Supreme Court in the extant case refused an order for inspection of INEC server on the basis that the Act did not make provision for a server. But a community reading of Section 60(5) of the 2022 Act and Article 38 of the Regulations and Guidelines for the conduct of Elections 2022 is expected to bring in a new dimension to the issue.

Section 60 (5) provides: “The presiding officer shall transfer the results including total number of accredited voters and the results of the ballot in a manner as prescribed by the Commission.” It is in line with the power donated to INEC in the above section, that the commission released the Regulations and Guidelines for the conduct of Elections 2022. Clause 38 of the regulation provides: “the presiding officer shall electronically transmit or transfer the result of the polling unit, direct to the collation system as prescribed by the Commission; use the BVAS to upload a scanned copy of the EC8A to the IReV as prescribed by the Commission.”

This Regulation as a subsidiary law is binding on INEC and all players in the election. Hence, substantial compliance with some of these innovations are expected to dominate proceedings at the election petition tribunals.

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