



MANY VOICES OF SECTION 134 OF THE CONSTITUTION:

The Need for Judicial Interpretation

March 2023

by **Cornelius Gabriel** – Associate

www.oal.law

The possible outcome of the presidential election and the possibility of any candidate being declared the winner in consideration of Section 134(2) of the Constitution has sparked a lot of legal debates amongst lawyers and political actors as to what really is the intendment of the framers of Section 134.

It may be recalled that the legal giant Olisa Agbakoba SAN former President of Nigeria Bar Association had written to INEC to give interpretation to Section 134 but INEC failed to give heed to the somewhat prophetic request.

Section 134 (2) of the CFRN 1999 provides that *“A candidate for an election to the office of President shall be deemed to have been duly elected where, there being more than two candidates for the election: (a) he has the highest number of votes cast at the election; and (b) he has not less than one-quarter of the votes cast at the election in each of at least two-thirds of all the States in the Federation and the Federal Capital Territory, Abuja”*

The above provision have been given different interpretation. Some are of the view that so far a candidate has not less than one –quarter of the votes cast at the election in each of at least two-thirds of all the states, he does not necessarily need to get one-quarter of the votes cast FCT while the others are of the view that getting one-quarter ie 25% of the votes cast in Abuja is mandatory in addition to getting 25% in two-third of the state of the Federation.

The first opinion is that the constitution adds Abuja to the other 36 States to make it 37 States so to say. That is to say a candidate with the highest number of votes cast in a presidential election, must also get at least 25 percent of the votes cast in each of at least 2/3 of the State. If the candidate has one-quarter of votes cast in 25 States, the constitutional requirement would be deemed satisfied irrespective of whether he gets up to 25 percent votes in Abuja or not. This means that a candidate who gets the highest number of total votes cast and also at least 25 percent in 25 States of the Federation, does not need to get up to 25 percent in the FCT Abuja as a condition precedence to be declared the winner of the election. Further reliance on this view is placed on Section 299 which said that the FCT should be treated as a state.

The second opinion is to the effect that for a candidate to be declared a winner of a presidential election, he must have 25% percent of the votes cast in at least 24 States of the Federation in addition must have 25% percent of votes cast in FCT.

This opinion, appears to be the intendment of the framers of the Constitution because there is no doubt that Section 299 regards FCT as a state only to the extent of making the FCT to have executive powers vested in the president just like the states, where the governors have such powers, vesting Legislative powers in the National Assembly just like states with Houses of Assembly and vesting Judicial Powers in its own Courts with distinct Chief Judge of FCT just like you have CJ of State courts.

Judicial interpretation has been given to Section 299 in BABA-PANYA V. PRESIDENT, F. R. N.(2018) 15 NWLR (PT. 1643) 395,BAKARI V. OGUNDIPE (2020) LPELR-4957 (SC) etc. However it is worthy of note that the above cases determined questions as to whether agencies of the FCT are agencies of the Federal Government of Nigeria.

The above cases never determined the electoral status of the FCT with respect to a candidate being qualified to be declared as winner of a presidential election also it did not in any way give interpretation to Section 134 (2) of the Constitution as it clearly does not apply in this context.

It is therefore conclusive, to state the need for a judicial interpretation of Section 134(2) in order to lay to rest the debates as to whether the constitution intends that winning 25percent of the votes cast in FCT is compulsory in addition to 25percent in 24 States.

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

This Publication is published for the general information of our clients, contacts and interested persons and does not constitute legal advice. Whilst reasonable steps were taken to ensure the accuracy of the information contained in this publication, Olisa Agbakoba Legal (OAL) accepts no responsibility for any loss or damage that may arise from reliance on its content.

OAL
OLISA AGBAKOBA LEGAL

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