FROM THE POLLING BOOTHS TO THE COURTROOMS: CHALLENGES OF STRICT APPLICATION OF TIME FRAME IN JUDICIAL CONTESTATION OF ELECTION DISPUTES IN NIGERIA

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After her longest military interregnum spanning almost two decades since 1984, Nigeria returned to a democratic system of government in May 1999. By May 2019, five presidential and other national and sub-national elections were held in the country. Virtually all of these elections were characterized by intense political strives and electoral malpractices of varying degrees, leading to the challenging of elections in the election petition tribunals and other courts, long after the conclusion of the polls. This challenge has heightened the spate of judicialization of politics - the practice of excessive utilization of the courts for adjudication of core political matters in the country. But a significant by-product of judicialization of politics in Nigeria is the apparent relegation of substantial justice and possible miscarriage of justice arising from a resort to a technicality in the strict interpretation and enforcement of time frame for such adjudications. This paper, using a doctrinal research methodology of relying on primary and secondary sources of information, shows that the current strict interpretation of the constitutional provisions on the time limit for adjudication of electoral disputes defeats the essence of substantial justice and impacts negatively on the role of the judiciary in social engineering. For comparative constitutional purposes, the paper also juxtaposes the practice in Kenya, another country in Africa with electoral disputation experiences,

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with the practice in Nigeria. The paper concludes that a review of the law is imperative and then makes some recommendations.

INTRODUCTION

In a democracy, elections and electoral institutions are very crucial components of the democratic process. Thus, a country cannot be said to be truly democratic until it can guarantee credible electoral practices and institutions through which its citizens can exercise the right to choose their representatives in elections that are free and fair. Since her return to democracy in 1999, after a long military interregnum that took off in 1984 following a military coup *d'état*[3], Nigeria has held several national and sub-national elections within its federation. These elections have been largely characterized by intense political strives and electoral malpractices of varying degrees,[4] thereby leading to contestations of their outcomes in the election petition tribunals and other courts, several years after the conclusion of the polls. In other words, instead of concluding the elections and determining winners and losers at the polls as is customary with electoral processes in a democracy, a culture of resorting to the election petition tribunals and other courts for adjudication of electoral disputes is common in Nigeria. This has therefore promoted the use of the judicial process of the courts, instead of the actual electorates at the polls, to determine the winner or loser of an election.[5] Yet, an important

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[3] Starting with the first military coup *d'état* of 15 January 1966 which truncated the first republic, to the last one of 17 November 1993, when General Sani Abacha staged a palace coup to unseat the Interim National Government led by Chief Ernest Shonekan, Nigeria has had a total of nine (9) military coups since her independence on 1 October 1960. *See generally*: MAX SIOLLUN, OIL, POLITICS AND VIOLENCE: NIGERIA'S MILITARY COUP CULTURE 1966-1976 (Algora Publishing 2009); MAX SIOLLUN, SOLDIERS OF FORTUNE: NIGERIAN POLITICS UNDER FROM BUHARI TO BABANGIDA 1983-1993 (Cassava Republic Press 2013); James Francis, *The History of Coup D'état In Nigeria*, INFO-NAIJA (Mar. 29, 2009, 10:12 AM) <http://info-naija.blogspot.com/2009/03/history-of-coup-detat-in-nigeria.html>.

[4] ADENIYI AKINTOLA, REFLECTIONS ON THE NIGERIAN ELECTORAL SYSTEM 67-85 (Abiodun I. Layonu & Akeem A. O. Adekunbi eds., First Law Concept 2012).

[5] The Policy and Legal Advocacy Centre of the Nigeria Civil Society Situation Room, in conjunction with the *Open Society Initiative for West Africa (OSIWA), in a 2017 Report on the 2015 General elections in Nigeria, indicated there were over six hundred (600)* elections petitions

measure of the democratisation process in a polity is the number of post-election contestations that end up in the courts. Thus, the fewer the post-election disputations, the more consolidated a democracy may be regarded.

However, the perennial challenge of electoral disputations in Nigeria has heightened the spate of Judicialization of politics - the practice of excessive utilization of the courts for adjudication of core political matters.[6] But a more significant problem, arising from such Judicialization is an apparent miscarriage of justice[7] and relegation of substantial justice to the whims of technicality in the strict enforcement of time frame for such adjudications. Without a doubt, time is an essential factor in all human endeavours where planning and management are inevitable. Judicial time frame, therefore, means the time limit within which a judicial act is to be done[8]. Legal time frame manifests in various forms — limitation law, estoppel, *res judicata*, laches and acquiescence among others. After all, there must be an end to litigation as the right of action is not eternal. But, should substantial justice be sacrificed at the expense of a time limit? Furthermore, what should be the limit of strict application of time limit to the resolution of electoral disputes submitted to the courts? These are some of the issues that this paper seeks to examine.

An election petition refers to a judicial process by which the outcome of an election is challenged before a court or an election petition tribunal established by law. When a petition is presented against a return made in an election, there are four possible outcomes. Firstly, the election

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filed in courts, post-2015 general elections. *See* Nigeria Civil Society Situation Room, *2015 General Election in Nigeria: Compendium of Petitions*, POLICY AND LEGAL ADVOCAY CENTRE (Oct, 10, 2020, 12:12 AM), http://www.placng.org/situation_room/sr/wp-content/uploads/2017/07/Compendium-of-Election-Cases-inNigeria.pdf; John E. Irem, *An Overview of the 2015 General Elections Report*, INEC NIGERIA (June 17, 2019, 10:45 PM), https://inecnigeria.org/wp-content/uploads/2019/02/AN-OVERVIEW-OF-THE-2015-GENERAL-ELECTIONS-REPORT..pdf.

[6] Ran Hirschl, *The Judicialization of Mega - Politics and the Rise of Political Courts,* 11 ANNUAL REVIEW OF POLITICAL SCIENCE 65, 94. (2008).

[7] The phrase "miscarriage of justice" has been variously defined but its essence is that it is the decision or outcome of legal proceedings that is prejudicial or inconsistent with substantial rights of a party. *See* Ojo v Anibire, (2004) 5 SC (Pt.1) 1 (Nigeria); Larmie v. D.P.M.S. Ltd., (2005) 12 SC (Pt.1) 93 at 107 (Nigeria).

[8] PDP v CPC, [2011] 17 NWLR (pt. 1277) 485 [507] (Nigeria).

petitioned against may be declared void or null in which event the result is quashed, and a new election ordered.[9] Secondly, a return may be found to have been unduly made in which case the original return is quashed, and another candidate (the petitioner) is declared to have been elected, usually by a majority of lawful votes.[10] Thirdly, the election may be upheld, the petition dismissed, as the candidate returned is found to have been duly elected.[11] Fourthly, the petition may be struck out. This may occur when the petitioner abandons the petition or fails to prosecute it diligently, or when a preliminary objection is upheld.[12] While only a person duly elected as expressed through the ballots should occupy an elected office, it is also understandable that a person who feels sufficiently aggrieved that an election has not been properly conducted is entitled to resort to judicial adjudication. Sometimes, as experiences in Nigeria have shown, the legal battle to determine who won or lost an election at the polls may drag on till the end of the tenure of the office itself.[13] Where a petitioner succeeds, two possibilities arise: he starts a new tenure as was in the case of governorship election petition of Mr Peter Obi of Anambra State[14] or he merely completes the tenure wrongfully begun by his opponent as in the case of Mr Rotimi Amaechi of Rivers State[15]. Such are

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[9] Electoral Act (2010), § 140 (1) - (2); *See Electoral Act 2010*, POLICY AND LEGAL ADVOCAY CENTRE (Oct. 12, 2020, 12:12 AM), http://placng.org/wp/wp-content/uploads/2016/08/Electoral-Act-2010.pdf ; Daggash v Bulama [2004] 4 NWLR (pt, 892) 144 (CA) (Nigeria).

[10] *Id.* s 140 (3); Ngige v Obi, [2006] 14 NWLR (pt. 999) 1 (Nigeria).

[11] Buhari v Obasanjo, [2005] 2 NWLR (pt. 910) 241 (CA) (Nigeria).

[12] Electoral Act (2010), § 140 (4). In a case, although the trial tribunal voided the election and ordered a bye election after hearing the petition on merits, the Court of Appeal on a preliminary objection set aside the decision and struck out the petition for having been filed out of time. *See* Mala v Kachalla, [1999] 3 NWLR (pt. 594) 309 (Nigeria). *See also* Eseduwo v INEC [1999] 3 NWLR (pt. 594) 215 (CA) (Nigeria).

[13] Ogboru v Uduaghan, [2011] 17 NWLR (pt. 1277) 727 (Nigeria), where an appeal heard by the Supreme Court on 17 November 2011 was in respect of the 2007 election and the tenure of office in dispute had expired on 28 May 2011.

[14] Ngige v Obi, [2006] 14 NWLR (pt 999) 1 (CA) (Nigeria).

[15] Amaechi v INEC, [2008] 5 NWLR (pt 1080) 227 [316] (SC) (Nigeria) where Mr. Amaechi was to continue the tenure begun by Mr. Omehia because they belonged to the same political party which won the election.

the scenarios that have played out in Nigeria's democratic journey thus far.

Using a doctrinal research methodology by relying on primary and secondary sources of information to indulge in case law analysis, this paper discusses the negative implications of a strict interpretation of the provision of Section 285 of the Constitution of Nigeria, 1999 ("**Constitution**")[16] which places limitations on the time within which an adjudicating authority may adjudicate on an election petition either at the trial or the appellate level. The authors of this paper show that in the attempt to strictly adhere to the stipulated time frame for adjudication of election disputes, substantial justice is often sacrificed. To be sure, this paper appreciates the necessity for some time frame for judicial adjudications generally; however, given the peculiarity – *sui generis* – nature of election petitions, the authors of this paper believe that there must be a balance between the need for expediting the adjudication of election petitions and the overriding need for delivery of substantial justice.

This paper is divided into nine parts. Part one provides this background introduction. Part two overviews the historical background of legislative efforts to set a time limit for adjudication of election disputes in Nigeria. Part three examines the interpretative attitudes of the courts in the cases decided on the constitutional provisions providing for such time limits and the divergent views that emerged therefrom. Part four explains the paradox of the allotted time frame to an election petition and the implication of the concept of not pausing the time in interlocutory matters. Parts five, six and seven examine the negative implications of the timeframe concept. For comparative constitutional purposes, Part eight of the paper does a brief overview of the practice in Kenya, another African country with electoral disputation experiences. Part nine discusses the importance of amending the time frame provisions in the Constitution by providing suggestions in that regard.

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[16] 4th Alteration Act No. 21 of 2017. Mohammed A. Oyelade, *Pre-Election Dispute in Nigeria: Appraisal of the Fourth (4th) Alteration No 21 Act, 2017 of the 1999 Constitution of the Federal Republic of Nigeria (Part II),* LAW AXIS 360° (Oct.10, 2020, 12:15 AM), https://lawaxis360degree.com/2019/11/22/pre-election-dispute-in-nigeria-appraisal-of-the-fourth-4th-alteration-no-21-act-2017-of-the-1999-constitution-of-the-federal-republic-of-nigeria-part-ii/.

HISTORICAL BACKGROUND

Protracted litigations on pre and postelection disputes gave rise to the need to introduce a certain time frame for adjudication of election disputes in Nigeria. One of the earliest legislative attempts to resolve the problem of protracted litigation of election petitions was the enactment of the Electoral Act, 1982. Section 129 (3) of the Act provided for a maximum limit of 30 days from the date of the election, for the disposition of election petitions at the High Court. Furthermore, Section 140 (2) provided that any election petition that is not disposed of within the specified time frame, shall be time-barred and thus become null and void. For the hearing of an appeal from the High Court to the Court of Appeal, Section 130(1) also provided that "… *and the decision of the Court of Appeal on the appeal shall be given not later than seven days from the date on which the appeal was filed."*[17] Subsequently, the constitutionality of the aforementioned provisions of the Electoral Act of 1982 was tested in the courts of Nigeria. In *Unongo v. Aku*[18] and *Kadiya v. Lar,*[19] a full panel of the Supreme Court of Nigeria declared each of the above provisions as unconstitutional, for being *ultra vires* the legislature and a contravention of the right of the citizens to a fair hearing.[20] The Supreme Court in the case of *Unongo v. Aku* particularly held that the powers of the National Assembly under Section 73 of the Constitution to legislate in respect of election petitions did not extend to prescribing or limiting the time frame within which the Courts must hear and determine election petitions.[21]

Until the enactment of the First Alteration Act in 2010 which incorporated the judicial time frame, the Supreme Court followed *Unongo's case* without exception once it was established that an Act had so restricted the exercise of the judicial function to a time limit[22]. About nineteen years after *Unongo's case*, the legislature enacted the Electoral Act,2001. Section 25 (10) of the Act of 2001 provided thus:

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[17] ELECTORAL ACT (1982), § 130 (1).
[18] Unongo v. Aku, (1983) JELR 46429 (SC) (Nigeria).
[19] [1983] 14 NSCC 591 (NIGERIA)
[20] Abbott v. Sullivan, 905 F.2d 918 (6th Cir. 1990).
[21] *Ibid.*
[22] Obih v. Mbakwe, [1984] 1 SC 325 (Nigeria).

"The decision of the commission as to the qualification or disqualification of a candidate for an election may be challenged by a candidate. Any legal action challenging decision of the commission shall commence within five working days and be disposed of not later than one week before the election."

On 28 March 2002, a full panel of the Supreme Court in *A-G., Abia State v A-G., Fed.,*[23] declared no fewer than nineteen sections of the Electoral Act, 2001 *ultra vires* the National Assembly and struck them out for being an unconstitutional attempt to amend the Constitution.[24]

FROM A SPECIFIC TIME FRAME TO ACCELERATED HEARING

By the time the above decision of the Supreme Court was made, it was already apparent to the legislature that no Act could dictate a time frame to the judiciary. Therefore, neither the Electoral Act, 2002 which succeeded the judicially dismembered Electoral Act, 2001, nor any subsequent Electoral Act had any provision that dictated a time frame to the judiciary.[25] Instead, these acts saw the incorporation of new provisions that called for an *accelerated hearing* of election petitions. Accelerated hearing is a hearing that is accorded priority and timely disposition in the court's dockets through avoidance of undue adjournment, delay, or resorts to technicalities. Section 148 of the Electoral Act 2006 provided that:

"… An election petition and an appeal arising therefrom under this Act shall be given accelerated hearing and shall have precedence over all other cases or matters before the Tribunal or Court."[26]

As time passed by, the judiciary began to receive criticism for prolonged litigation on election matters as the citizens waited for too long to know what would become of their ballot expression.[27] For example, in Edo, Ekiti,[28] Osun and Anambra[29] States it took up to three years and in some

[23] [2002] 6 NWLR (pt 763) 264 (Nigeria).
[24] *Ibid* at 370.
[25] *See*, for example, Electoral Acts 2006. National Legislative Bodies, *Electoral Act 2006*, REFWORLD (Oct. 9, 2020, 10:10 PM), https://www.refworld.org/docid/4c3dcbb82.html.
[26] Electoral Act (2010), § 142.
[27] Aregbesola v Oyinlola, [2009] 14 NWLR (pt. 1162) 429 (Nigeria).
[28] Fayemi v Oni [2009] 7 NWLR 223 (Nigeria) (the Court of Appeal on 17 February 2009 set aside the return of Oni on the basis of unconcluded election of 14 April 2007

cases from half to three-quarters of the four-year tenures before the election petitions were finally disposed of. In Ekiti and Osun States, two years after the election, the Court of Appeal ordered a trial *de novo* and supplementary elections respectively.[30]

FROM ACCELERATED HEARING TO SPECIFIC TIME FRAME

The discussions surrounding the need to enforce a judicial time-frame resurfaced again. The arguments in favour of re-enactment of judicial time frame border on wastage of public funds; justice delay; poor time management; poor case management; frequency of unnecessary and long adjournments[31]; frequency of unnecessary interlocutory applications; useless petitions or arguments[32]; unnecessary preliminary and trial objections[33]; laziness on the part of the adjudicators; corruption; and frustration of the litigants.[34]

Following the infamous 2007 general elections in Nigeria, the Electoral Reform Committee (Uwais Panel) was set up to look into the issues plaguing elections in the country.[35] This committee recommended the

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and ordered INEC to conduct supplementary elections. The supplementary elections were conducted and on 15 October 2010 in Fayemi v Oni [2010] NWLR (pt 1222) the Court of Appeal set aside the majority decision of the Tribunal and nullified the return of Oni and declared Fayemi as the duly elected Governor of Ekiti State. It took three and half years to finally dispose of the petition).

[29] Ngige v Obi [2006] 14 NWLR 1 (CA) (the petition against the Governorship election of Anambra State held on 19 April 2003 was disposed of on 15 March 2006).

[30] Aregbesola, *supra* note 25.

[31] Ngige v Obi [2006] 14 NWLR (pt. 999) 1 (Nigeria).

[32] Ogboru v Uduaghan [2011] 17 NWLR (pt. 1277) 727 [752] - [3] (Nigeria) (the appeal was heard by the Supreme Court on 17-11-2011 over the election of 2007. The Supreme Court eventually dismissed it on 16-12-2011 on the ground that at the time the cause of action arose the Court of Appeal was the final court on governorship elections).

[33] SPDCN Ltd v Amadi, [2011] 14 NWLR (pt1266) 157 [187] (the Supreme Court described a Notice of Preliminary Objection as an abuse of judicial process).

[34] *Ibid.*

[35] At the onset of his administration in August 2007, late President Umar Musa Yar'adua took the widely applauded bold decision to set up what later became known as Justice 'Uwais Report'. The President had during his inauguration in May that year acknowledged that the 2007 elections that produced his presidency was flawed and characterized by electoral malpractices that require reforms. See MOJEED A. OLUJIMI

limitation of time for the hearing and determination of election petitions, which was later incorporated into the constitution via Section 29 of the First Alteration Act, 2010. Section 286 (6) of the Constitution provides that an election petition tribunal shall deliver its judgment in writing within 180 days of the filing of a petition. Section 285 (7) of the Constitution prescribes a maximum of 60 days for hearing and disposition of appeals by the Court of Appeal and the Supreme Court from the date of the delivery of the judgment appealed against.

Section 285 (6) and Section 285 (7) of the Constitution has been interpreted literally by the Courts without discussing earlier decisions like *Unongo's case*, *Kadiya's case,* and *A-G., Abia State's case.* The aforementioned constitutional provisions have therefore been applied in the following cases: *Shettima v. Goni,*[36] *PDP v. CPC,*[37] *Abubakar v. Nasamu,*[38] *Amadi v. INEC,*[39] *PDP v Okorocha*,[40] *Ugba v Suswan,*[41] *Udenwa v Uzodinma,*[42] *ANPP v Goni*,[43] *ACN v INEC.*[44]

EMERGENCE OF DIVERGENT VIEWS

The stance of the Supreme Court in its interpretation of Section 285 of the Constitution can be viewed through two major perspectives. First is the *ultra vires* perspective which posits that the legislature lacks the vires to enact a time limit for a judicial function. This perspective finds support in the *Unongo*'s case[45] and the cases that followed it (hereinafter referred to as the *earlier cases*). Second is the perspective which postulates that the court only must interpret the constitution. Thus, since Section 285 is a constitutional provision, the court can do nothing but to apply

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ALABI & OMOLOLU TOLUWANIMI OMOLOLU, UWAIS REPORT, ELECTORAL ACT 2010, AND THE FUTURE OF DEMOCRATIC ELECTIONS IN NIGERIA 54 (Abiodun I. Layonu & Akeem A. O. Adekunbi eds., First Law Concept 2012).

[36] [2011] 10 MJSC 53 (Nigeria).

[37] PDP, *supra* note 6.

[38] [No.1] [2013] 17 NWLR (pt 1330) 407 (SC) (Nigeria).

[39] [2013] 4 NWLR (pt 1345) 595 (SC) (Nigeria).

[40] [2012] 15 NWLR (pt 1323) 205 (SC) (Nigeria).

[41] [2013] 4 NWLR (pt 1345) 427 (SC) (Nigeria).

[42] [2013] 5 NWLR (pt 1346) 94 (SC) (Nigeria).

[43] 2012] 7 NWLR (pt 1298) 147 (SC) (Nigeria).

[44] [2013] 13 NWLR (pt 1370) 161 (SC) (Nigeria).

[45] Unongo, *supra* note 15.

it strictly. This perspective also finds support solace in the *Shettima*'s case[46] and other cases decided along that line (hereinafter referred to as the *later cases*).

The two perspectives are on common ground that election petitions should be timely disposed of. However, they both conflict on whether or not the legislature is entitled to decide a time limit for the judiciary. Despite the criticisms that followed the case of *Awolowo v. Shagari,*[47] it demonstrated the possibility of concluding an election petition within a short time frame before the swearing-in of the President. In that case, the election to the office of the President was conducted on 11 August 1979 and the final judgment of the Supreme Court in the election petition that followed was delivered on 26 September 1979.

In *Abubakar's* case[48]*,* the Kebbi State Governorship Election Tribunal on 13 November 2011 nullified the result of the election and ordered a fresh election. The Court of Appeal delivered its decision on 29 December 2011 but gave its reasons on 23 January 2012, amounting to a period of 71 days from the date of nullification of the election. The Supreme Court considered Section 285 (6) and Section 285 (7) of the Constitution and held *inter alia* that, failure of the Court of Appeal to give reasons for its earlier decision in the case within the specified time limit amounted to no decision at all, in the case. It, therefore, concluded that there was no need for the Supreme Court to go into the merit of a judgment that was already in nullity.[49]

In *Shettima's* case involving three consolidated interlocutory appeals before the Supreme Court,[50] one of the issues was whether the appellate courts still had jurisdiction to hear the appeals given section 285 (7) of the Constitution. The Supreme Court held that neither it nor the Court of Appeal had jurisdiction to continue to hear the appeal again. The Supreme Court reached this conclusion after accepting the fact that the

[46] Shettima, *supra* note 33.
[47] [1979] 12 NSCC 87 (Nigeria).
[48] Abubakar, *supra* note 36.
[49] [No.1] [2013] 17 NWLR (pt 1330) 407 (SC) (Nigeria).
[50] SC.332/2011, SC.333/2011 and SC.352/2011.

time spent by the litigants in pursuing interlocutory appeals at the appellate courts had already exhausted the maximum time limit to prosecute the substantive petition from the election petition tribunal up to the appellate courts.

In *PDP v CPC*[51] the Court of Appeal sitting as the Presidential Election Tribunal refused to grant a preliminary objection that the petition was incompetent because it was filed on a Sunday. At the Supreme Court, the issue turned on whether the appeals were still valid having regard to when the decision appealed against was delivered. The facts and circumstances of the case introduced another episode to the debate in that the period of 60 days within which the Supreme Court was to hear and determine the case fell within the court vacation. In construing Section 285 (5), (6) & (7) of the Constitution the Supreme Court held *inter alia* that, it is not the function of the court to pander to sentiment or sympathy in constitutional interpretation;[52]and that computation of the 60 days allotted to the Court for disposition of election petition appeals includes Saturdays, Sundays, public holidays, and the periods of court vacation, except where the last day of the specified time fell on a Sunday or Saturday or a publication holiday whereupon the next following working day may be accepted.[53]

In our considered view, with due respect, the reasoning of the court concerning the last day of the time frame being a Sunday or public holiday is unimpressive. If Sundays, public holidays and court vacations are not reckoned with in the computation of the time limit under Section 285 of the Constitution, the fact that the last day of the time limit happens to be a Sunday or public holiday would not matter. This is because Section 285 makes no distinction among the beginning, middle and last days of the time limit. That view can only find support in Section 15 (2) (b) and (3) of the Interpretation Act and the authorities that interpreted it.

In *Amadi's* case,[54] the decision of the tribunal was delivered on 7 October 2011. The appeal against it was struck out on 7 December 2011

[51] [2011] 17 NWLR (pt 1277) 485 (SC) (Nigeria).
[52] *Ibid*, at 520.
[53] *Idbi*. at 506-7.
[54] Amadi, *supra* note 37.

for having lapsed. The court held *inter alia* thus:

> *"… the appeal in question had lapsed by one day as of 7th December 2011 when same was listed for hearing … it was dead in the eyes of the law and constitution"*[55] *(emphasis supplied)*

In *ACN v INEC*[56] an appeal against the judgment of the election petition tribunal was filed at a time that the Court of Appeal was on annual vacation and no panel was constituted to hear it. The 2nd appellant subsequently filed an application seeking accelerated hearing of the appeal. The Respondents filed a counter-affidavit and a motion seeking the dismissal of the appeal because 60 days within which to hear it had lapsed. Both the Court of Appeal and the Supreme Court held that the appeal had lapsed.

JUDICIAL TIME THAT NEVER STOPS

In any judicial process, justice is the end and fair hearing is the highest norm and most valuable means to it. In *Newswatch Comm. Ltd v Attah*,[57] the Court closed the case of the Defendant because of its dilatory antics and it lost the case without adducing evidence. His appeal to the Supreme Court was also dismissed. If this case had been an election matter, the Plaintiff would have lost the case to the frightful time limit manipulated by the contrivance of the defence.

The implication of the strict interpretation that time never stops to run was put to test in *ANPP v Goni*[58] where at the time the Court of Appeal ordered a retrial of the petition, 180 days from the date of filing the petition had lapsed. The Supreme Court held that the retrial order was wrong and reversed it on the ground that the time within which the petition is to be heard and determined had lapsed. That is, the interlocutory appeal was filed and prosecuted while the 180-day period was running. The Supreme Court has followed that decision in

[55] [2013] 4 NWLR (pt 1345) 595 (SC) (Nigeria).
[56] [2013] 13 NWLR (pt 1370) 161 (Nigeria).
[57] [2006] 12 NWLR (pt 993) 144(Nigeria).
[58] [2011] 10 MJSC 53 (Nigeria).

subsequent cases such as *Akpanudoedehe v Akpabio*[59] and *Ugba v Suswam* [60] to the effect that time within which to hear and determine a petition continues to run while an interlocutory appeal is being prosecuted, whether or not the appeal is on a decision which struck out the petition and the trial tribunal no longer hears it and whether or not the appeal succeeds.

The stance in above cases just gave victory to the Respondent right from home because he was at the liberty to prolong the proceedings beyond the time frame by filing interlocutory appeals and employing various tactics to delay the hearing. Ironically, an average tribunal is usually saddled with several election petitions at a time than a 180 days' time frame may be sufficient to accommodate all at once. Where ten aggrieved candidates file ten petitions in respect of the same election, the time available to a petition is 180 days divided by ten petitions. Therefore, in reality, each of the petitions has 18 days to be heard and disposed of. By procedure, documents tendered from the bar lack probative value unless witnesses are called to tender them.[61] In February 2013, the Election Petition Tribunal in Ondo State had the following frontloaded witnesses in just two petitions: 1,700 witnesses for Action Congress of Nigeria; 4523 witnesses for Labour Party; 2,224 witnesses for Mr Mimiko.[62]

RIGID TIME FRAME VERSUS FLEXIBLE TIME FRAME: JUDICIAL TIME FRAME IS NOT *MALUM IN SE*

As we have earlier noted, there is nothing fundamentally wrong with having a time frame for adjudication of electoral disputes. However, everything is wrong wherein the application of such a judicial time frame technicality is allowed to trump substantial justice. This exactly, in our view, is what the *later cases* have done. These cases as we have demonstrated by references to some of the above have all exhibited the pattern to sacrifice substantial justice for speed and technicality. For clarity, these *later cases* can be divided into two categories viz:

[59] [2013] 7 NWLR (pt 1354) 485 (Nigeria).
[60] [2013] 4 NWLR (pt 1345) 427(Nigeria).
[61] Kubor v Dickson [2013] 4 NWLR (pt 1345) 534 SC (Nigeria).
[62] Akeredolu v Mimiko (2013) LPELR-20889(CA).

a) Petitions in which the parties did not conclude their respective cases within the time frame as in the *Shettima's* case, supra.[63]

b) Petitions in which the time expired owing to no fault of the parties, such as where parties concluded their respective cases within time but the tribunal or court or the appellate court did not give its decision within the time limit as in the *CPC's* case, supra,[64] or the court did not sit because it is on vacation as in the *ACN's* case, supra.[65]

What should the tribunal do if parties conclude their cases on the last day or a day after the time limit? Should the tribunal pronounce that its time is up and cannot review the evidence and deliver its judgment? What should the tribunal do if the petitioner closes its case on the last day of the time limit so that neither the Respondent has time to present its defence nor does the tribunal have time to give its decision? In an attempt to address these challenges, the tribunals now divide the time so that each party is allotted several days to present its case. But what happens if the allotted days to a party are not sufficient for that party? It should be noted that in presenting its case a party is not totally in control of its time as the opposing party has a right to a part of that time via cross-examinations[66] and reasonable trial objections.[67]

In *Falae v Obasanjo*[68], the relevant law provided that an election petition must be determined within 21 days from its filing. The Court of Appeal which was the trial tribunal noted that the court had had to sit long hours up to 9:00 PM on some occasions and that longer days up to 42 days instead of the prescribed 21 days, would have been more appropriate to allow a thorough hearing and attainment of justice required of each case.

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[63] Shettima, *supra* note 33.
[64] CPC, *supra* note 34.
[65] ACN, *supra* note 41.
[66] Counsels under the garb of testing the witnesses' credibility do tend to ask unnecessary, extraneous questions.
[67] Nwobodo v Onoh [1984] 15 NSCC 1 (Nigeria); Omoboriowo v Ajasin [1984] 15 NSCC 81 (Nigeria); Torti v Ukpabi [1984] 15 NSCC 141 (Nigeria).
[68] Per Oguntade, JCA, [1999] 6 NWLR (pt 606) 283 [290] (Nigeria).

A common thread observed from the *later cases* is the lack of sufficient time for petitioners as well as adjudicating authorities, to present their cases and to deliver judgments respectively. What is required, therefore, is sufficient time or flexibility of time and a tribunal that is in control of the proceedings with a view to the quick dispensation of cases.

BEATING THE TIME FRAME

To beat the time frame, many a party has adopted a method of tendering several documents at once and from the bar, but the court has always refused to act on such documents on the ground that they were not tested by cross-examination. In *Sa'eed v Yakowa,* the learned counsel for the petitioner tendered 1,376 documents from the bar without objection. In holding that the method adopted by the learned counsel for the petitioner squeezed probative value out of the documents, the Supreme Court concluded that such apparent labour and desperation of the counsels should not coerce the court into sacrificing the constitutional need to attain substantial justice for speed.[69]

It is submitted that wherein a proceeding which has a time frame such as an election petition, documents tendered from the bar without objection or documents tendered by a party which are corroborated by other undisputed documents or documents tendered by an uninterested party such as copies tendered by the police, should be accorded probative value.

UBI JUS IBI REMEDIUM

The age-long Latin maxim *Ubi jus, ibi remedium* – meaning 'where there is a right, there is a remedy', postulates that where the law has established a right there should be a corresponding remedy for its breach. This is no doubt an age-long principle that is well respected in all legal systems.[70] Applying this age-long principle of law to litigation of disputes arising from electoral processes, it must be acknowledged that factors responsible for delay or waste of time in the prosecution of electoral disputes in court are not always voluntary or that of the litigants. Some

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[69] [2013] 7 NWLR (pt 1352) 124 [151] Per Oguntade, JCA.

[70] Donald H. Zeigler, *Rights, Rights of Action, and Remedies: An Integrated Approach,* 76 WASHINGTON LAW REVIEW 67 (2001).

of the voluntary and involuntary factors responsible for delay or waste of time in the prosecution of electoral cases can be put in three categories under the abbreviation L.C.M., namely:

a) **Logistics factors**: power outage; social unrest; strike such as the Fuel Subsidy Removal Protest of January 2012; security challenges such as what forced the Tribunal in *Shettima's case* to relocate from Maiduguri to Abuja;
b) **Case related factors**: the complexity of the case, for example, the nature of the allegations; the number of witness and documents; workload and caseload such as in *Falae v Obasanjo*[71] which made the tribunal to sit till 9:00 P.M.
c) **Man (human) factors***:* unnecessary interlocutory applications, objections, long cross-examination and a large number of witnesses as in *Ngige's case* where 486 witnesses were called, and thousands of exhibits tendered.

The Supreme Court in the case of *Nnajiofor v Ukonu*[72] had long recognized and explained some of the foregoing factors when it noted that different cases are by their nature short or lengthy, thereby requiring or yielding to such considerations as different time frame, the volume of documents, number of witnesses, all of which may reasonably cause a delay or prolonged proceedings.[73]

Arising from the above reality and given the challenges that the judicial time frame in the adjudication of electoral disputes are now known to pose, *Twelve Possibilities* or scenarios in the time frame regime can be observed as follows:

i. Commencement of hearing within or on the last day of the time limit.[74]
ii. Commencement of hearing after the time limit.

[71] [1999] 6 NWLR (pt 606) 283 (Nigeria).
[72] [1985] 2 NWLR (pt 9) 686 [694]-[5] (Nigeria).
[73] *Ibid.*
[74] Unongo, *supra* note 15 (See the exposition of Uwais JSC)

iii. Closure of hearing or both parties closing their cases within or on the last day of the time limit.
iv. Closure of hearing or both parties closing their cases after the time limit.
v. The petitioner concludes within the time limit, but the respondent does not.
vi. The petitioner concludes shortly before or on the last day of the time limit so that only a few days or one day is left for defence and judgment.
vii. The tribunal delivers its judgment (including reasons) within the time limit.
viii. The tribunal hears the petition within the time limit but delivers its judgment (including reasons) after the time limit.
ix. The appellate tribunal or court delivers its judgment (including reasons) within the time limit.
x. The appellate tribunal or court hears the appeal within the time limit but delivers its judgment after the time limit
xi. The appellate tribunal or court hears the appeal and delivers its decision within the time limit but gives its reasons after the time limit[75]
xii. The appellate tribunal or court hears the appeal after the time limit[76]

In all of the foregoing possibilities or scenarios, the need for a fair hearing and substantial justice become an inevitable issue. And once a right has been established, the need to provide a requisite remedy must not be sacrificed for speed.[77]

A fair hearing is the bulwark of justice before the law. It is best appreciated in the phrase *Ubi Jus Ibi Remedium.*[78] The *later cases* contradict and violate this time-honoured foundation of justice which enjoins the courts to provide a remedy whenever the litigant has established a right.[79] According to Oputa, JSC, law and all its technicality should only serve as

[75] PDP, *supra* note 6.
[76] Ogboru, *supra* note 11 (This may occur—during the tenure of the office in dispute or after the tenure of the office in dispute).
[77] [2008] 3 NWLR (pt 1073) 156 [177] (Nigeria).
[78] Saleh v Monguno, [2006] 15 NWLR (pt 1001) 26 (SC) (Nigeria).
[79] Bello v A.G (Oyo), [1986] 5 NWLR (pt 45) 828 [871] (SC) (Nigeria).

a handmaid of justice but not to the extent that the court will be slavishly constrained by it in such a way as to sacrifice the justice of a case because of the error or ignorance of the counsel.[80]

What is to be said where a judgment is held to be a nullity by the failure of the court to deliver its judgment within time and the case is lost forever? It should be noted that, as in the limitation law, it does not require good faith to avail a Respondent in an election petition to blow the whistle of time up nor does it require malice to deprive the Respondent of such a refuge or sword.[81] In *LPDC v Fawehinmi*,[82] Karibi-Whyte, JSC held thus: *"fair hearing is an entrenched provision of the Constitution which cannot be displaced by legislation however unambiguously worded."*

In our view, the Supreme Court should consider the Constitutionality of Section 29 of the First Alteration Act No. 1 (2010). Since the First Alteration Act is not a constitutional provision but an Act of the Legislature, it is subject to the judicial test.[83]

By the doctrine of constitutional supremacy any law or Act which is inconsistent with the constitution is null and void to the extent of its inconsistency.[84] A legislative Act may be *substantial ultra vires* or *procedural ultra vires*. This is the limit on the legislative power to enact a law or amend the constitution.[85] It follows that the Supreme Court has the power to consider whether an amendment to the constitution is itself constitutional. The Supreme Court can declare the process of amendment wrongful and unconstitutional (that is, *procedural ultra vires*) or declare the Act itself unconstitutional (*that is, substantial ultra vires*).[86]

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[80] *Ibid* at 870 – 1.
[81] Fajimolu v. Unilorin, [2007] 2 NWLR (pt. 1017) 74(Nigeria).
[82] [1985] 2 NWLR (pt 7) 300 (Nigeria).
[83] A.G. Abia *supra* note 21.
[84] CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA (1999) § 1.
[85] Att Gen [Bendel] v Att Gen [Fed], [1981] All NLR 85 SC (Nigeria); Att Gen [Ondo] v Att Gen [Fed], [2002] 9 NWLR (pt.772) 222 (Nigeria); Imonikhe v Att Gen (Bendel), [1992] 6 NWLR (pt. 248) 130 (Nigeria).
[86] [2002] 6 NWLR (pt. 763) 264 [370] (Nigeria).

Indeed, the Supreme Court in *Amadi's case*[87] alluded to the possibility of considering the constitutionality of the controversial provisions by suggesting that the Appellants had not invited the Court to examine the constitutionality or otherwise of Section 285 (7) of the 1999 Constitution.[88]

It is trite that in any matter where fair hearing is involved, the Court being the last hope of the common man must feel concerned.[89] The provisions under consideration were indeed enacted to avoid delays in election petitions, but they were not enacted to shut out the litigant or punish him for the sin of the court. An issue of fair hearing occurs in different forms including the following:

a) When a court raises an issue *suo moto* and decides the same without hearing parties.
b) Where the Court decides the issue(s) before it without hearing one of the two parties to the case.
c) Where the judge descends into the arena by showing undue support, sympathy or leaning towards one of the parties.
d) Where the time limit within which the Court is to hear and determine the case of the litigant is not sufficient for it.

The common line amongst those instances is the lack of opportunity to be heard. And in this case, there is no '*half-hearing'*. The right to a fair hearing must be available in full. Rejecting the argument that the strict application of Section 285 of the Constitution amounts to the denial of fair hearing, the Supreme Court equated it to the limitation law by holding thus:

> *"The provisions of Section 285 (7) are in the mould of a statute of limitation but with a constitutional flavour … If for whatever reason the appeal is not heard within the allotted time frame it cannot be said that an appellant affected thereby has been denied his right to fair hearing."*[90]

[87] [2013] 4 NWLR (pt. 1345) 595 [626] - [627] (Nigeria).
[88] *Ibid.*
[89] [2008] 6 NWLR (pt. 1082) 1 (Nigeria).
[90] Amadi, supra note 3, at [626]-[627].

In our view, the above position cannot be right. Limitation of action is not only tied to time as prescribed by Statute of Limitation but must of necessity relate to acts of the party.[91] In other words, the litigant must be at fault before a limitation law operates against him. Regrettably, in the *later cases*, the litigant is not at fault but the court itself! In letter and spirit, there is no significant difference between Section 29 of the First Alteration Act, 2010 and the provisions considered in the *earlier cases* such as Sections 129 (3) and 140 (2) of the Electoral Act, 1982 and Section 25 (10) of the Electoral Act,2001. The only difference is that Section 29 of the First Alteration Act, 2010 is a constitutional amendment.

Right to Court is generally a constitutional right which should not necessarily be curtailed by time limit within which to prove one's case. If there is one thing more than another that is an antithesis to equity, fair play, public policy, fair hearing and substantial justice, it is that a Court or tribunal should close its doors to litigants while they are still presenting their cases or dismiss their cases because the lower court or tribunal failed to give its decision and reason within a time frame. The end of public policy is never served when a judgment delivered on its merits after hearing the parties is nullified by the appellate Court on grounds that the trial Court or tribunal delivered its judgment out of time. Substantial justice is public policy. It is the judicial policy, and it is not achieved when technicality reigns. This point agitated the minds of the legislature over the issue of whether a judgment delivered outside of the 90 days provided by Section 294 (5) of the Constitution should be nullified and the legislature amended it by a proviso that unless *"the party complaining has suffered a miscarriage of justice by reason thereof*".

In *Ariori v Elemo*,[92] Obaseki JSC succinctly put the point thus: "*fair hearing means a trial conducted according to all the legal rules formulated to ensure that justice*

[91] AMADI J., LIMITATION OF ACTION: STATUTORY & EQUITABLE PRINCIPLES 3 (1s ed. 2011); Horsfall v. Rivers State Polytechnic, Bori & Anor, (2018) LPELR-45954(CA) (Nigeria).

[92] [1983] 1 SC 23 at 24 (Nigeria); Atano v A.G (Bendel) [1988] 2 NWLR (pt. 75) 201 [227] (SC) (Nigeria).

is done to the parties".[93] Perhaps the *locus classicus* on fair hearing is *Mohammed v. Kano Native Authority*[94] where Ademola, CJN held thus: *"The true test of fair hearing … is the impression of a reasonable person who was present at the trial, whether from his observation, justice has been done in the case."*[95]

What can be said to be the impression of a reasonable man in the *later cases*? As long as substantial justice remains the public policy of the judiciary, any enactment that prevents it from doing substantial justice is null and void. A situation where party A gets a judgment in his favour against party B, but party B's appeal against that judgment is struck out or dismissed on grounds of time limit to dispose of the appeal is serious indeed. Meanwhile, in *Amaechi v INEC*[96] the Supreme Court restated the duty of all courts in Nigeria to ensure that citizens, high and low, get the justice which their case deserves.[97]

Can it be said that the litigants in the *later cases* got the justice which their cases deserved? In *Abubakar's* case, the Supreme Court recommended an amendment of Section 285 of the constitution in the following words

> *"The National Assembly may however in the circumstances of this case and those of similar nature consider amending the constitution by providing a similar provision to Section 294 (5) of the 1999 constitution (as amended) in Section 285 of the said constitution"* [98]

EXPERIENCES FROM OTHER JURISDICTIONS IN AFRICA

In the preceding paragraphs, we have, in line with the primary focus of this paper, critically analysed the legal contestation of electoral disputes in Nigeria. However, for comparative constitutional purposes, we now intend to briefly overview the practice in another African country, particularly Kenya. But before we proceed, it must be pointed out that there seems not to be another country in Africa with the unique Nigerian experience we have discussed thus far. That said, there are peculiar issues

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93 *Ibid.*
94 [1968] 1 All NLR 424 [428]; [1968] 5 NSCC 325 (Nigeria).
95 *Ibid.*
96 [2008] 5 NWLR (pt 1080) 227 [324] (Nigeria).
97 *Ibid.*
98 [No.1] [2013] 17 NWLR (pt 1330) 407 (SC) (Nigeria).

of stipulations of the time frame for judicial disposition of electoral disputes in different countries of Africa.

In Kenya[99], the period for filing of election petitions before the court will depend on the nature of the elections being disputed. That is counties and national elections. However, Section 87 (1) of the Constitution of Kenya, 2010 provides generally that the Parliament shall enact legislation to establish mechanisms for the timely settling of electoral disputes.[100] Subsection 2 of the same provision further provides that, petitions concerning an election, other than a presidential election, shall be filed within twenty-eight days after the declaration of the election results by the Independent Electoral and Boundaries Commission. To determine the validity of the election of a county governor, Section 75 of the Electoral Act No 24 of 2011[101] provides generally that such an election shall be decided by a High Court within a maximum of six months of the presentation of the petition. Thereafter, an appeal from the High Court in an election petition concerning membership of the National Assembly, Senate or the office of county governor shall lie finally to the Court of Appeal on matters of law only, and shall be determined within a maximum of six months.[102] This is in sharp contrast with the case in Nigeria, where further appeals from the election tribunal or the Court of Appeal shall lie to the Supreme Court and must be decided by the Supreme Court within 60 days from the date of delivery of the judgment of the tribunal or the Court of Appeal.[103]

For presidential elections in Kenya, there is a sharp contrast with the practice in Nigeria, where such a petition will proceed from the Court of

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[99] KENYA: THE CONSTITUTION OF KENYA 27 Aug. 2010, § 87, 140 (In the Republic of Kenya, a federal and multi-party democratic state like Nigeria, the relevant laws concerning resolution of electoral disputes are the Constitution of Kenya 2010 (sections 87, 140) and the Electoral Act No 24 of 2011 (section 75). In Kenya, unlike in Nigeria where there are election petition tribunals, election disputes pertaining to the election of County Governor, National Assembly and Senate are heard by the High Courts.)

[100] *Ibid.*

[101] *Ibid.*

[102] *Supra* note 100.

[103] CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA (1999) Section 285 (7).

Appeal and up to the Supreme Court. In Kenya, petitions concerning the election of the President commence and end at the Supreme Court alone under Section 140 of the Constitution of Kenya, 2010. For clarity, the provisions are hereby reproduced below:

> *"140. (1) A person may file a petition in the Supreme Court to challenge the election of the President-elect within seven days after the date of the declaration of the results of the presidential election.*
>
> *(2) Within fourteen days after the filing of a petition under clause (1), the Supreme Court shall hear and determine the petition and its decision shall be final.*
>
> *(3) If the Supreme Court determines the election of the President-elect to be invalid, a fresh election shall be held within sixty days after the determination."*

Now, not only are there timelines under the above provisions of the Constitution and Electoral Act in Kenya, but they also appear shorter than what is applicable in Nigeria. However, it is also glaring from the letters of the Constitutions, the Electoral Act, and judicial dispositions of cases, that their emphasis is more on the justice of the cases rather than the mechanical application of time frame that has characterised judicial adjudications in Nigeria. Perhaps it was this sense of justice and urgency that was demonstrated by the Chief Justice of Kenya and the other Justices of the Kenyan Supreme Court in the determination of the recent presidential election dispute between Uhuru Kenyata and Raila Odinga in Kenya.[104] In an unprecedented exercise of judicial courage and independence, their Lordships wasted no time in nullifying the re-election of an incumbent president whereupon they ordered the conduct a new election within 60 days in "strict conformity with the constitution and applicable election laws."[105] It is hoped that in future, other judicial arms in Africa would emulate the Kenyan Justices in this regard.

The position in the Republic of Ghana is somewhat similar to that of Kenya noted above. In Ghana, it is the judiciary that is constitutionally

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[104] Raila Amolo Odinga v Independent Electoral and Boundaries Commission, [2017] eKLR (Kenya).
[105] *Ibid.*

mandated to adjudicate all electoral disputes about presidential and parliamentary elections. Thus, the High Court and the Supreme Court of Ghana are empowered by law to determine election disputes.[106] In Ghana and Kenya, both countries have provisions in their respective Constitutions for presidential election petitions to be filed in the Supreme Court to challenge the election of the President.[107] It is observed that the prevalent practices in both Kenya and Ghana are the timeous determination of disputes without undue consideration for mechanical computation of times for adjudication. For us, this, in addition to a focus on the justice of the cases, should be the approach of every court and tribunal saddled with the responsibility to adjudicate on disputations arising from the conduct of elections.

CONCLUSION

Winners and losers of elections in a democracy are supposed to be determined at the polls by the electorates and not at the courts by the judiciary. Resorting to the courts for adjudication of electoral disputes is, therefore, an exception that should never become the norm in a democracy. Where resorts are made to the courts to determine political matters or any dispute at all, there is also no doubt that there must be some time frame within which parties may approach the court and when the court may determine and resolve such disputes. However, application and interpretation of the law on time frame should never subjugate or relegate the ultimate need to deliver substantial justice required of each case at the altar of technicality. In this paper, we have demonstrated how judicial strict interpretation of the requirement of a time frame in the adjudication of electoral disputes in Nigeria led to consequences that are usually at variance with what the electorates actually or supposedly determined at the polls. We have shown that continuing the trend of strict application of the time frame provisions is capable of undermining the need to deepen democratisation processes in Nigeria.

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[106] CONSTITUTION OF THE REPUBLIC OF GHANA 7 Jan.1993, art. 64(1)

[107] *Ibid* (Note that the Constitution of Ghana was further amended in 2019 with elaborate constitutional reforms).

Also, we have demonstrated that while the *earlier cases* supported the postulation that enacting a time limit for a judicial function is *ultra vires* the legislature and hinders the right of citizens (litigants) to a fair hearing, the *later cases* that departed from them were decided on a tripod philosophy namely: that a time limit is a constitutional provision which is binding on *'all and sundary';*[108] that the words of Section 285 of the Constitution are in *'clear and unambiguous terms';*[109] and that the lawmakers intend to stop the inordinate delay in hearing and determining election petitions and that goal must be achieved howsoever difficult it may be.[110] Sadly, however, rather than curing the intended mischief, the *later cases* would seem to be compounding it as an unintended perpetuation of injustice, at the altar of technicality, now reigns supreme. However, it is trite that where a rule perpetuates injustice, it is time to amend or replace it. For this reason, even the Supreme Court, which is bound by its previous decisions, will overrule any previous decision that perpetuates injustice.[111]

We are of the view that nullifying the decision of a court by an appellate court merely because reasons for such a decision were not given within a time limit is tantamount to saying that failure to comply strictly with Section 285 of the Constitution without more has occasioned a miscarriage of justice – which, as we have observed, is not true.

Having regard to the foregoing, some suggestions for reforms are imperative. We are of the view that the Supreme Court should consider the constitutionality of Section 29 of the First Alteration Act No. 1 (2010). As done to Section 294 (5) of the Constitution, we recommend that the legislature may amend the said Section 29 to now read thus:

> *"The decision of a court or tribunal shall not be set aside or treated as a nullity solely on the ground of non-compliance with the provisions of subsections (6) and (7) of this section, unless the court or tribunal exercising*

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[108] Per Onnoghen, JSC in Amadi*, supra* note 36, at 595.
[109] PDP, *supra* note 6.
[110] Per Onnoghen, JSC in PDP*, supra* note 6, at 507.
[111] Etti M.A., *The Rule in OKAFOR vs. NWEKE: Court Process Is Incompetent If Signed in a Firm's Name*, AYINDE SANNI & CO (Aug. 20, 2020, 11:33 PM), http://www.ayindesanni.com/r.php.

> *jurisdiction by way of appeal or review of that decision is satisfied that the party complaining has suffered a miscarriage of justice by reason thereof."*[112]

In other words, non-strict adherence to the time frame in the doing or undoing of something in the adjudication of electoral disputes should be treated generally as mere irregularity unless doing so will occasion a miscarriage of justice to the petitioner or respondent. This way, the focus of the tribunal or court will be on the substance of each case (substantial justice) and not its form (technicality). In all, a decision affirming or setting aside the outcome of any election should never be set aside or declared a nullity solely because of strict application of the time frame stipulation without more.

Furthermore, necessary reforms should be undertaken to address the following: unreasonable preliminary and trial objections should be adequately penalized with costs to be paid on or before the next adjourned date; undisputed documents should be admitted *en bloc* without cross-examination; interlocutory rulings should be short and given instantly except where impracticable; workload should be reduced by reducing the number of members of the Tribunal to three and appointing of more panels; time frame must be realistic, flexible, measurable and enforceable; provision of means to promptly diagnose delays and mitigate their consequences; monitoring and dissemination of data regarding the course of proceedings; regular supply of power and use of Information and Communication Technology (ICT); use of procedural and case management policies and practices; involvement of different actors and stakeholders in the system; provision of competent staff with appropriate and sufficient tools; definition of goals and standards (to identify best practices and to share ideas of the tribunals with one another); and constant review of Practice Directions and continuous education and training on their use. Once these or some of these are achieved, the wheel of justice will not only speed up but also safeguard the cause of attaining the substantial justice deserving of each case.

[112] These are our own suggested words for necessary legislative drafting for amendment.