

GROUND S FOR QUESTIONING ELECTION S IN NIGERIA: EMERGING JURISPRUDENCE AND LEGAL IMPLICATION S

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ABSTRACT

This study thoroughly examines the legal dimensions surrounding the grounds underpinning election petitions in Nigeria. It elucidates the legal and procedural aspects that shape the landscape of electoral dispute resolution. Elections, a cornerstone of democratic governance, often generate disputes requiring judicial resolution. Nigeria has witnessed a history of contested elections, prompting a critical evaluation of the grounds for election petitions. The study employs descriptive research to comprehensively review relevant legal frameworks, statutes, and case law to identify critical areas where legal ambiguities, loopholes, or violations have given rise to challenges, focusing on the specific grounds that allow for filing election petitions. The analysis encompasses key issues of qualification, allegations of electoral malpractices, voter irregularities, and disputes over the interpretation and application of election laws. By analysing precedents and legal interpretations, the paper clarified the parameters that guide the initiation and adjudication of election petitions. In conclusion, this study offers a valuable analysis of the legal landscape and insights into the grounds for election petitions in Nigeria, providing an understanding of the legal and procedural frameworks underlying electoral dispute resolution. By identifying areas of improvement and potential reforms, the paper contributes to the ongoing discourse on enhancing the integrity and fairness of the electoral adjudicatory process in Nigeria.

Keywords: *Corrupt practices, Disqualification, Election, Election Petition, Ground, Non-Compliance, Qualification.*

INTRODUCTION

Credible elections remain the cornerstone of democratic governance, and in Nigeria, the process and outcome of elections have frequently been subjects of contention. Practically, election disputes have revolved around issues such as over-voting, ballot box stuffing, allocation of votes where election did not take place, deliberate falsification of results, suppression of votes, violence, and other forms of electoral malpractice. The 2002, 2006, 2010 and 2022 Acts made provisions for resolution of election disputes by election petition. The four versions provide that an election could be challenged on grounds of ineligibility, corrupt practices, and non-compliance with the Electoral Act as common grounds. However, the 2002¹ and 2006² versions have unlawful exclusion of a candidate as a fourth ground, while the 2010 version³ has the submission of an affidavit containing false information of a fundamental nature in aid of his qualification for the election as a fifth ground.

Over the years, the judiciary has developed a robust body of jurisprudence addressing these grounds. As the judiciary continues to interpret and apply electoral laws, its decisions shape the conduct of elections, the behaviour of political actors, and the character of election disputes. The evolution and

¹ Electoral Act 2002, 134.

² Electoral Act 2006, 145.

³Electoral Act 2010, 138.

emerging jurisprudence reflect both the increasing sophistication of electoral fraud and the judiciary's efforts to uphold the integrity of the electoral process. The paper will now delve into these grounds, examine the dynamics, and assess how judicial decisions (precedents) impact the credibility and stability of Nigeria's electoral process, influence electoral reforms, and enact new legislation.

Grounds of Election Petition

Activating legal processes in challenging an election primarily revolves around the grounds.³ Ground refers to a fundamental reason, either an error of law or fact, that a petitioner perceives as a flaw in the election's outcome. The petitioner relies on the ground(s) to request the court or tribunal to invalidate the election. The Electoral Act determines the grounds for an election petition, and they are

- (i) the person whose election is questioned was, at the time of the election, not qualified to contest the election;
- (ii) the election was invalid by reason of corrupt practices or non-compliance with the provisions of this Act; and
- (iii) the respondent was not duly elected by a majority of lawful votes cast at the election.⁴

Olatubora argues that the Supreme Court decision in *Obasanjo v Yusuf*⁵ supports the notion that sections 239(1)(a) and 285(1)(a) and (2) of the Constitution introduced additional grounds for challenging an election.⁶ The learned writer's submission focuses on the purpose of petitions, which is to determine the validity of elections for various positions outlined in the Constitution. These positions include members of the National and State Assemblies, Governors of a State, and the President. Hence, a petitioner can build their petition on a single ground or a combination of grounds outlined in the Electoral Act. These grounds align with the overarching or omnibus objectives stated in the Constitution and are used to challenge the election result.⁷

The basis or substratum on which a petition is based is undeniably demonstrated by the grounds of the election petition, which are not merely cosmetic. A party must submit a petition cognisable under the established grounds. The rule governing grounds of petitions further stipulates that each ground is backed by the facts or particulars stated and incorporated after the grounds.⁸ The petition's facts serve as the pleadings, the entirety of the petitioner's arguments. Its purpose is to give adequate notice to the adverse party of the case in dispute and afford him the necessary opportunity to respond to it adequately. Therefore, it aims to bring all essential facts to the knowledge of the opposite side as a safeguard against surprise.¹⁰ It should also be emphasised that the facts or particulars of the petition should be particularly identifiable (precise, clear, unequivocal, and direct facts) and not expressed in an obscure, odd, or ambiguous way, leaving room for conjectures or speculations. This will help the Respondents understand the specifics of the Petitioner's complaint and the particular issues the court will consider.⁹ The Supreme Court has specifically held that where the facts pleaded are imprecise and generic, inadequate, insufficient

³ Every election petition must state the grounds on which the petition is based: *Okechukwu v Obiano* [2008] 8 NWLR (Pt. 1726) 276, 304, 306.

⁴ Electoral Act, s134.

⁵ [2004] 9 NWLR (Pt. 877) 117.

⁶ A Olatubora, *Electoral Law and Practice in Nigeria* (Aderemi Olatubora & Co., Akure, 2006) 84-86.

⁷ While the constitutional basis is expressed in broad language, it should not be interpreted as a provision that can address every alleged violation of the electoral process. According to the Supreme Court in *Ojukwu v Yar'adua* [2009] 12 NWLR (Pt. 1154) 50, 121, following the Electoral Act and copying the specific grounds mentioned is recommended to ensure a more secure position..

⁸ *Wada v Bello* (2016) LPELR-41263(CA); *Oyetola v Adeleke* (2019) LPELR-47529(CA). 10
Abba v Abba Aji (2022) LPELR-56592(SC) 54-55.

⁹ *Ikezu v Otti* [2016] 8 NWLR (Pt. 1513) 38, 97.

or devoid of necessary particulars, the petition is incompetent and is liable to be struck out by the Tribunal.¹⁰

The paper will now examine, relying on decisions of the appellate courts, the various grounds supported as contained in an election petition.

A Petition Challenging the Qualification of the Winner of an Election.

The 1999 Constitution outlines the requirements for individuals to be eligible to participate in elections and also specifies the conditions under which they may be disqualified from running for office. A person is considered eligible for an elective office, and their election cannot be challenged based on their qualifications if they meet the relevant requirements outlined in sections 65, 106, 131, or 177 of the Constitution. Additionally, eligibility will be compromised by the violations of sections 66, 107, 137, or 182 of the Constitution,¹¹ as applicable to the specific election in question. Additionally, the Supreme Court has consistently ruled in numerous cases that the requirements outlined in the Constitution are the only ones that must be met, leaving no room for extra conditions. It means that once a person is qualified by fulfilling the requirements stipulated in the Constitution, he cannot be disqualified by the operation of any other law.¹² The Electoral Act explicitly prohibits the imposition of extra qualification or disqualification of candidates, as outlined in its constitution, guidelines, or rules for nomination, unless otherwise stipulated by the Constitution.¹³¹⁴¹⁵ The following are the constitutional qualifications for elective offices:

- a) National Assembly members must be at least 35 (Senate) and 25 (House of Representatives) years old, have a School Certificate or equivalent level of education, and be a member of a political party.¹⁶
- b) House of Assembly members must be Nigerian citizens, at least 25 years old, have a School Certificate or equivalent level of education, and be a member of a political party.¹⁷
- c) President and Vice President¹⁶¹⁷ candidates must be Nigerian citizens, at least 35 years old, members of a political party, and have a School Certificate or equivalent level of education.¹⁹
- d) Governor and Deputy Governor¹⁸¹⁹²⁰ candidates must be Nigerian citizens, at least 35 years old, members of a political party, and have a School Certificate level or equivalent education.²¹

Some persons are ineligible for political positions such as membership of the National or Assembly, President (Vice President), and Governor (Deputy Governor) ²² if they have voluntarily acquired citizenship from another country, are mentally unfit, or have a death sentence. Disqualifications include being convicted for dishonesty if found guilty of violating the Code of Conduct, being undischarged

¹⁰ *Ombugadu v Sule* [2021] 2 NWLR (Pt. 1759) 171, 183.

¹¹ Electoral Act, s134(3).

¹² The legal implication is that where the issue of qualification is raised in an election petition, it should relate to the qualifying or disqualifying factor(s) specifically outlined in the Constitution. *Abubakar v INEC* [2020] 12 NWLR (Pt. 1737) 37, 173-174; *Useni v PDP* [2022] 10 NWLR (Pt. 1839) 401, 413; *Agi v PDP* [2017] 17 NWLR (Pt. 1595) 386, 455; *Shinkafi v Yari* (2016) LPELR-26050 (SC).

¹³ Electoral Act, s84(3).

¹⁴ Constitution s65.

¹⁵ Constitution, s106.

¹⁶ The qualifications and disqualifications for the President also extend to the Vice-President. 1999 Constitution, s142(2).

¹⁷ Constitution, s131.

¹⁸ The qualifications and disqualifications for the Governor also apply to the Deputy Governor. 1999 Constitution, s187(1).

¹⁹ Constitution, s177.

²⁰ Constitution, ss66, 107, 137(1), 182(1).

insolvent, not resigning or retiring 30 days before the election, having secret society membership, and submitting forgery to INEC. Moreover, regarding the offices of President (Vice President) and Governor (Deputy Governor), if he has been elected to these positions in two previous elections.

A petition challenging a person's eligibility is to prove that the person in question was either not qualified because of failure to meet the constitutional requirements or was constitutionally disqualified from participating in the election. According to the Electoral Act, if an election is declared invalid due to the winner's ineligibility to run, the candidate who received the second-highest number of valid ²¹votes will be declared the winner by the election tribunal or court, provided they meet the constitutional requirements.²³

The constitutional requirements for qualification and disqualification are extensive and will be analysed in detail, considering the burden of proof required for each requirement seriatim as follows:

(i) Citizen by birth:

Citizenship is a legally recognised position that grants individuals certain rights, advantages, and obligations within a particular political society.^{22,23} In Nigeria, citizenship acquired through birth is the fundamental prerequisite for eligibility to participate in an election. The Constitution clearly defines Nigerian citizens by birth as individuals born in Nigeria before the country gained independence if either of their parents or any of their grandparents belonged to an indigenous Nigerian community. Similarly, individuals born in Nigeria after independence are citizens if either of their parents or any of their grandparents are Nigerian citizens. Individuals born outside of Nigeria are also considered citizens if their parents are Nigerian citizens.²⁵

Furthermore, the Constitution further states that if a parent or grandparent of an individual would have been a Nigerian citizen by birth at the time of that person's birth, they shall be considered a citizen of Nigeria. This provision assumes that the parent or grandparent would have met the criteria for citizenship if they were alive on the date of Nigeria's independence.²⁶ Having blood ties to the country is necessary to be recognised as a Nigerian citizen by birth.²⁴

The issue of citizenship as a determining factor for eligibility to participate in an election was highlighted in APC's response to Atiku's petition challenging the 2019 presidential election. It contended that Atiku lacked the *locus standi* to file the petition because he is not citizenship by birth, having been born a Cameroonian. Historical background reveals Cameroon was under German colonial rule before 1919 and transitioned to a League of Nations mandate area under French and British Cameroon territories. According to APC, it is claimed that British Cameroon conducted a referendum in 1961 to determine its decision to join Nigeria. At the same time, southern Cameroon decided to maintain ties with their mother country, northern Cameroon, which was aligned with Nigeria. The inclusion of Northern Cameroun, including Adamawa, into Nigeria resulted from the referendum. The argument put forth by the APC is that Atiku, born in 1946 in Jada, Adamawa State, Northern Cameroun, is a Cameroonian citizen rather than a Nigerian citizen by birth.²⁵

²¹ Constitution, s136(2).

²² Citizenship is a legal status that grants individuals full membership in a state and requires them to pledge complete allegiance to it - *Lavoie v Canada*, 1995 CanLII 3593 (FC); EK Iwuagwu, 'The Concept of Citizenship: Its Application and Denial in the Contemporary Nigerian Society.' [2015] 8(1) IJRASS, 165; KC Okoli, 'Nigerian Citizenship Law: A Current Perspective' [1990] 34(1) JAL, 27.

²³ Constitution, s25. 26

1999 Constitution, s31.

²⁴ CB Denton, 'The ways in which Citizenship can be Acquired in Nigeria,' <<https://www.ibanet.org/article/89D400A4-EA2D-41D6-9ACE-E19B4AF99337>> accessed 19 October 2023.

²⁵ <https://guardian.ng/politics/atiku-is-not-a-nigerian-apc-tells-tribunal/>> accessed 26 December 2021.

Regrettably, the Court of Appeal did not resolve the issue concerning citizenship by birth, stating that its jurisdiction did not include determining the qualification of a person who lost an election. The court further noted that the law does not mandate a winner of an election or political party who is being challenged to question the qualifications of their challenger. Instead, they are expected to present opposing evidence that refutes the claims made by the petitioner.²⁶ The matter remains unresolved and would require a clear Supreme Court decision to resolve those in Atiku's class citizenship.

(ii) Educated up to School Certificate level or its equivalent

The 1999 Constitution requires a minimum school certificate or equivalent to run for office.²⁷ Several judicial authorities interpret this rule as a candidate may not necessarily pass or produce the school certificate. The candidate must have completed at least a school certificate level of education.²⁸ Any candidate who fails to meet the minimum educational requirements can be disqualified from contesting, and the academic requirements have been recognised as valid grounds for an election petition.²⁹ The point need not be further stretched.

(iii) Attainment of Mandatory Age:

Another requirement for eligibility to participate in an election and a potential basis for disqualification is meeting the minimum age limit specified in the Constitution. The minimum age requirement for the State Assembly and House of Representatives is 25 years. On the other hand, the minimum age for the Senate, Governor of a State, and Presidential candidate is 35 years. One example of a situation where a candidate's age became a significant concern was Salisu Buhari, elected as the Speaker of the House of Representatives in 1999. Upon further investigation, it was discovered that he forged a certificate from the University of Toronto, and his claim of 1963 as his year of birth was false. Records indicated he was born in 1970.

Consequently, his actual age was 29 years rather than the initially stated 46 years. His age was relevant to his position as a member and later Speaker of the House since the Constitution disqualified anyone below 30³⁰ from contesting for membership of the House of Representatives.³⁰ Though an election tribunal did not determine the matter, he admitted to falsifying his age, which led to his resignation from the House of Representatives and subsequent conviction by a court.³¹

(iv) Membership of and sponsorship by political party

In addition to becoming a member of a political party, an individual needs to get sponsorship from that party to be qualified to run for any electoral office. Consequently, the only way to ascertain an individual's membership of a political party is through sponsorship by the same party.³² When a political party sponsors a candidate, the criteria are sufficiently met. A person who satisfies the conditions can be regarded as a member of a political party, according to the principle in *Tarzoor v Ioraer*.³³ The Supreme

²⁶ Why tribunal declined to rule on Atiku's citizenship. <<https://thenationonline.net/why-tribunal-declined-to-rule-on-atikus-citizenship/>> accessed 26 December 2021.

²⁷ The equivalent of a qualification includes a Grade II Teacher's Certificate, City and Guilds Certificate, Secondary School Certificate, Primary Six School Leaving Certificate, 10 years of service in the Federation's public or private sector, one year of training, and English language proficiency: 1999 Constitution, s318.

²⁸ *Ibrahim v Sheriff* [2004] LPELR-7315(CA), *Kakih v PDP* [2014] 15 NWLR (Pt. 1430) 374, 424-425; *ANPP v Usman* [2008] 12 NWLR (Pt. 1100) 1, 51-52.

²⁹ *Abubakar v INEC* [2020] 12 NWLR (Pt. 1737) 37, 105; *Bayo v Njidda* [2004] 8 NWLR (Pt. 876) 544, 592. 33 Before section 65(1)(b) amendment, the minimum age was 30.

³⁰ <<https://oldnaija.com/2017/06/12/1999-toronto-saga-how-former-speaker-salisu-buhari-declared-false-age-and-forged-university-certificate/>> accessed 26 December 2021.

³¹ *COP v Salisu Buhari* (2000) FWLR (Pt. 1) 164.

³² *PDP v Sylva* [2012] 13 NWLR (Pt. 1316) 85, 145.

³³ [2016] 5 SCM 152, 167.

Court, in *Lado v CPC*, held that the Constitution does not include any provision for independent candidacy, as any individuals who wish to run for elective positions can only do so by affiliating themselves with a political party.³⁴ Accordingly, the Constitution grants political parties the right to sponsor candidates for elective offices. The Electoral Act specifies the process for political parties to nominate candidates by direct, indirect, or consensus primaries for the various elective posts and regulates political party sponsorship.³⁵ Whether direct, indirect, or consensus-based, the provisions for primaries are necessary for political parties to sponsor candidates for elections, making it the only legitimate method. Failure to conduct primary elections by a political party indicates that the party will be ineligible to participate in the general elections.³⁶ The court's strict adherence to the Electoral Act regarding candidate sponsorship was evident in the disqualification of the APC in Zamfara State.³⁷ The Supreme Court's decision on the Zamfara issue suggests that if a political party does not follow the Electoral Act during primary elections, any candidates they present will be disqualified from receiving the benefits associated with participating in the election, even if the election itself was conducted successfully.

Notably, challenging candidature has developed into a pre-election matter. The established legal principle states that candidates are only eligible to make a complaint if they have participated in a primary election that their political party organised.⁴² In *PDP v Sylva*, the Supreme Court established that for a member of a political party to challenge the outcome of party primaries, they must meet the criteria of being an aspirant, or the legal action cannot be pursued due to lack of *locus standi*.⁴³ A petition rooted in the sponsorship of a candidate is a pre-election matter. In *Alhassan v Ishaku*,⁴⁴ the petitioner argued that Ishaku was not qualified to compete for Taraba State governor because the Constitution required him to obtain the sponsorship of a political party. The trial court decided in the petitioner's favour, finding that the PDP had not legally sponsored the Ishaku purported nomination, which did not happen. As a result, his nomination was nullified. The Supreme Court, upon review, held that individuals participating in a primary election are the only ones eligible to raise concerns regarding the results of said primary. In *PDP v INEC*,⁴⁵ the Supreme Court emphatically stated that no political party could challenge the candidate's nomination of another political party.⁴⁶

(v) Voluntary acquisition of citizenship of another country

If a candidate willingly acquires citizenship in a country other than Nigeria, he is ineligible to run for office. A citizen by birth is unaffected by the legal interpretation. As held in *Ogbeide v Osula*,⁴⁷ a person who is a citizen of Nigeria by birth cannot, under any circumstances, have their citizenship revoked or lose their eligibility to run for office. In *LP v Ishola*,⁴⁸ it was the erudite holding that when a Nigerian gets citizenship in another nation by naturalisation or registration, he forfeits his rights as a naturalised Nigerian. A person like that would be ineligible to run for any elective position in Nigeria. A Nigerian citizen by birth, as opposed to one who obtained citizenship later through naturalisation or registration, retains the right to run for any office up for election in Nigeria.⁴⁹

(vi) Adjudged lunatic or otherwise declared to be of unsound mind

By constitutional provision, a person is ineligible to run for any elected position if legally determined to be lunatic or declared to be of unsound mind. Lunacy, also known as unsoundness of mind, is a condition characterised by mental illness or disorder, mental disease, or insanity.⁵⁰ It impairs an individual's capacity for rational reasoning, thinking, or behaviour.⁵¹ The severity of the condition is such that it results in the individual lacking legal capacity and being exempted from criminal or civil liability.⁵² A

³⁴ [2011] 18 NWLR 689, 729; *Alhassan v Ishaku* [2016] 2 SCM 1, 26.

³⁵ Electoral Act, s84 (1) and (2).

³⁶ Electoral Act, s84(13).

³⁷ *APC v Marafa* [2020] 6 NWLR (Pt. 1721) 383, 431.

commentary suggests that the test for determining lunacy or unsoundness of mind is based on a person's ability to comprehend the relevant matters and rationalise how they will impact their interests.⁵³ This further suggests that unless a person is officially declared mentally unstable through a legal process, it is generally assumed that they are mentally stable.⁵⁴ The most reliable method of proving insanity is through medical evidence.⁵⁵

(vii) Conviction by a Court

It is widely accepted in legal doctrine that punishment for criminal offences can only be imposed after a trial and conviction by a court. A conviction refers to the legal determination made by a court of competent jurisdiction, which finds an individual guilty of committing an offence that carries a punishment.⁵⁶ *Igbiginie v State* established that a conviction for any offence could only be obtained if there was enough credible

42 Electoral Act, s84(12); *Odedo v PDP* [2015] 8 SCM 121, 155; *Daniel v INEC* [2015] 4 SCM 148, 176-177; *Emenike v PDP* [2012] 12 NWLR (Pt. 1315) 556, 591.

43 [2012] 13 NWLR (Pt. 1316) 85, 148.

44 [2016] 2 SCM 1, 27-28, 29; *Jegede v INEC* [2021] 14 NWLR (Pt. 1797) 409, 548-550.

45 (2023) 12 NWLR (Pt. 1900) 31, 131.

46 *PDP v INEC* [2023] 12 NWLR (Pt. 1900) 89, 127-128.

47 [2004] 12 NWLR (Pt. 886) 86, 127.

48 (2014) LPELR-24386(CA) 18-23.

49 *Ogbeide v Osula* 12 NWLR (Pt. 886) 86.

50 National Mental Health Act, 2021.

51 *Hunponu-Wusu v Hunponu-Wusu* (1969) LPELR-25569(SC) 17.

52 *Oladele v State* [1993] 1 NWLR (Pt. 269) 294, 307; *R v Kemp* [1957] 1 QB 399.

53 A Padmanabhan, 'Unsoundness of Mind in Contract'

<[http://www.manupatra.com/roundup/325/Articles/](http://www.manupatra.com/roundup/325/Articles/Unsoundness%20of%20Mind%20in%20Contract.pdf)

[Unsoundness%20of%20Mind%20in%20Contract.pdf](http://www.manupatra.com/roundup/325/Articles/Unsoundness%20of%20Mind%20in%20Contract.pdf)> accessed 26 December 2021. 54 Ibid

55 *Ejinima v State* (1991) LPELR-

1067(SC) 19. 56 *Ushie v State* (2012) LPELR-

9705(CA) 21.

and compelling evidence and all the necessary elements of the offence(s) were satisfied.³⁸ Therefore, if a candidate is serving a sentence of death, jail, or fine for crimes including dishonesty or fraud, or if they were found guilty and punished for violating the Code of Conduct as a public official within ten years of the election, they are ineligible to run for office.³⁹

(viii) Failure to resign, withdraw, or retire from the public service of the Federation or of any State thirty days before the date of the election.

The determinant of this ground is to address whether the persons whose election is being challenged fall under the category of public officers whom the constitution mandates to resign, withdraw or retire before seeking political office.⁴⁰ The Constitution clearly defines who falls under the category of public service, either of the federation or a state.⁶⁰ In *Dada v Adeyeye*,⁴¹ the Court held that though political office holders

³⁸ (2021) LPELR-55750(CA) 32-33; *Igbikis v State* (2017) LPELR-41667(SC) 25-26; *The People of Lagos State v Umaru* [2014] 7 NWLR (Pt. 1407) 584, 606.

³⁹ *Sanyaolu v INEC* [1999] 7 NWLR (Pt. 612) 600, 608; *FRN v Saraki* (2017) LPELR-43392(CA) 59-60.

⁴⁰ The three methods of leaving employment in the public service of a state/federation thirty days before the date of election are resignation, retirement and withdrawal. Leaving by any of the three methods thirty days before the date of election qualifies a person to contest an election. *Ogwuche v Agbo* [2023] 17 NWLR (Pt. 1913) 339, 358-359. 60 1999 Constitution, s318.

⁴¹ [2005] 6 NWLR (Pt. 920) 1.

are public officers, they are not in public service. Similarly, in *Orji v PDP*,⁴² the offices of Chief of Staff to Governor of a State and Commissioner were declared political offices against public service. Therefore, the requirement for resignation does not apply to them. This underscores the reason for the decision in *Oni v Fayemi*.⁴³

(ix) Undischarged bankrupt

In Nigeria, those who have been declared bankrupt are legally disqualified from participating in elections. Eghobamien asserts that bankruptcy commonly leads to a social stigma that limits the bankrupt individual's ability to obtain credit, disqualifies them from certain public positions, and prohibits them from engaging in regulated professions.⁴⁴ By the Bankruptcy Act, those declared bankrupt are disqualified from holding offices such as President, Vice-President, Governor, or Deputy Governor. They are also forbidden from being elected to, participating in, or voting in the National Assembly or State Assembly.^{45,46} Consequently, individuals who have been declared bankrupt and have not yet been released from bankruptcy are ineligible to participate in an election.

(x) Membership of Secret Society

A constitutional provision prohibits individuals from running for office if they are members of secret societies. Any organisation of persons who use secret signs, vows, ceremonies, or symbols, whether legally registered, is defined under the Constitution as a secret society.⁶⁶ It further provides that the purpose of such a society is to promote a cause and to support its members in any situation without considering merit, fair play, or justice. This can be at the expense of those who are not members and their legitimate interests. Oaths of secrecy bind members, and the society's activities are not publicly known. Meetings and other activities are held behind closed doors, and the identities of its members are kept secret.

In *Orji v Ugochukwu*,⁶⁷ the petitioners alleged that the respondent was a member of the Okija Shrine, a secret society, and thus ineligible to run for governor of Abia State in 2007. The court determined that the Okija shrine is a popularly recognised arbitration shrine in the south-eastern zone of Nigeria and is, therefore, not a secret society within the contemplation of section 318(1) of the Constitution. Thus, an associate can be classified as a secret society if it satisfies the constitutional definition.

(xi) Presentation of a Forged Certificate to the INEC.

Submitting a fake certificate to INEC is a severe matter that affects a candidate's eligibility to participate in an election. The objective of the 1999 Constitution, according to the Supreme Court's decision in *Maiha v Gaidam*,⁴⁷ is to disqualify anyone who presents a false certificate to INEC. The purpose of this constitutional provision is to deter persons from using fraudulent certificates to secure public office. Furthermore, the position of the law as espoused by the Supreme Court in *Abdulazeez v Shittu*⁴⁸ is that proof of forgery is beyond reasonable doubt. In *APC v Obaseki*,⁴⁹ the evidential burden to establish that a candidate in an election has been involved in the falsification of documents or forgery of certificates, it has to be established that the document in question is alleged to be forged, forged by the respondent, knowing it was forged, and intended to be acted upon as genuine.

⁴² [2009] 14 NWLR (Pt. 1161) 310, 396; *Asogwa v Chukwu* (2003) 4 NWLR (Pt. 811) 540, 546.

⁴³ (2019) LPELR-46622(CA) 39-40.

⁴⁴ O Eghobamien, 'Bankruptcy Law: A Need for Urgent Reform.' <<https://www.mondaq.com/nigeria/insolvencybankruptcy/535948/bankruptcy-law-a-need-for-urgent-reform>> accessed 26 December 2021.

⁴⁵ Bankruptcy Act, s126.

⁴⁶ Constitution, s318(1); *INEC v Orji* (2009) LPELR-4320(CA) 24-25. 67 [2009] 14 NWLR (Pt. 1161) 207, 299.

⁴⁷ (2017) LPELR-42474(SC) 30-33.

⁴⁸ [2023] 14 NWLR (Pt. 1904) 293, 315.

⁴⁹ (2021) LPELR-53538(CA) 67-80.

Furthermore, the petition must explicitly plead the act of forgery⁵⁰ or an amendment to address the fact of forgery within the specified timeframe, accompanied by submitting relevant evidence. The Supreme Court rejected the filing of new evidence accusing Bola Tinubu of forging his certificate in the *Atiku v INEC* because the application was filed beyond the legally mandated deadline. The court found that it lacked vires to hear the application and make a ruling. Justice Okoro (JSC)⁵¹ held that the Constitution stipulates that a petitioner is required to submit their case within 21 days, and the tribunal must then conduct a hearing and make a decision within 180 days. The position maintained that the duration of 180 days is fixed and cannot be extended. Surprisingly, the petitioners did not plead forgery in their case or request an amendment to include forging before attempting to provide fresh evidence of forgery against Tinubu.⁷³

A Petition Alleging Corrupt Practices or Non-Compliance with the Electoral Act.

The second basis for challenging an election is that it was affected by incidents of corruption or the failure to adhere to the provisions of the Electoral Act in conducting the election. The objective of this provision is for a petitioner to demonstrate either of the requirements. Including the word ‘or’ suggests that corrupt practices and non-compliance are presented as options. Therefore, it is not appropriate to combine them into a single category.⁵² The petitioner can base their case on corrupt practices or non-compliance with the Election Act’s requirements. In addition, the burden of proof for non-compliance differs from that for corrupt practices. While non-compliance is on the balance of probability, evidence of corrupt conduct is proven beyond a reasonable doubt.⁵³ Nevertheless, if a petitioner incorporates allegations of noncompliance with corrupt practices, it assumes an inseverable toga of criminality such that the burden of proof must be beyond reasonable doubt.⁵⁴

The Electoral Act did not define corrupt practices. However, it encompasses specific activities that can negatively affect elections by undermining the integrity of the electoral process. Acholonu (JSC), in *Yusuf v Obasanjo*, described corrupt practices as immoral and illegal behaviours characterised by their wickedness and lack of ethical standards.⁵⁵ These practices include over-voting, multiple voting, underage voting, falsifying results, bribery or inducement of electoral officers, vote buying, and violence (thuggery).⁵⁶ In petitions contending criminal conduct against a respondent, the petitioners are required to establish, beyond a reasonable doubt, that the respondent either committed the crime(s) or explicitly sanctioned it through their agents. This standard has been consistently upheld in a series of longstanding decisions.⁵⁷

Non-compliance refers to not fulfilling or rejecting to execute an official or statutory obligation expressly mandated by the Electoral Act. When filing an election petition based on non-compliance, it is essential to present compelling evidence demonstrating the failure to adhere to the requirements of the Electoral Act that are being contested. Additionally, it is necessary to provide proof that this non-compliance had a significant impact on the outcome of the election.⁵⁸ The petitioner is required to provide evidence of

⁵⁰ *Atiku v INEC* (2023) LPELR-61556(SC).

⁵¹ The application for additional evidence was brought on October 6, 2023, after the case lapsed on September 17, 2023. ⁷³ *Atiku v INEC* (2023) LPELR-61556(SC) 24-30.

⁵² *Oji v Ndukwe* (2019) LPELR-48955(CA) 35-40.

⁵³ *Mohammed v Wammako* (2017) LPELR-42667(SC) 10.

⁵⁴ *In Re: Onwubuariri* (2019) LPELR-49121(CA) 11-13.

⁵⁵ [2003] 16 NWLR (Pt. 847) 544, 641.

⁵⁶ A Jega, *Towards Elections with Integrity in 2019: Challenges and Prospects* (Nigerian Institute of Advanced Legal Studies, Lagos) 8-14.

⁵⁷ Evidence Act, s135(1). *Nyesom v Peterside* (2016) LPELR-40036(SC) 77-78; *Waziri v Geidam* (2016) LPELR-40660(SC) 73; *Emmanuel v Umana* (2016) LPELR-40037(SC) 17-18; *Buhari v INEC* [2008] 19 NWLR (Pt. 1120) 246, 435 are directly on point here.

⁵⁸ *Maku v Al-makura* [2016] 7 SCM 124, 142; *CPC v INEC* [2011] 18 NWLR (Pt. 1279) 493, 546-547 81

Buhari v Obasanjo [2005] 2 NWLR (Pt. 910) 241.

non-compliance with the legislation, such as an improper accrediting procedure and or non-transmission of results. This is insufficient in law. The petitioners still need to prove that non-compliance substantially affected the election outcome.⁸¹

According to the decision in *Viwanu-Ojo v Towakennu*,⁵⁹ not every incidence of non-compliance will invalidate an election. The only cases of significant non-compliance that substantially vitiate an election will be regarded as substantial enough to ground a nullification. This problem is addressed by the Electoral Act,⁶⁰ which states that non-compliance cannot render an election invalid as long as the tribunal or court finds that the election was conducted in compliance with the Act and that the non-compliance had no appreciable impact on the outcome of the election.

In *CPC v INEC*,⁶¹ Justice Adekeye argued that violations of electoral laws or regulations are not uncommon in election petitions. According to the Supreme Court, it is the petitioner's burden to demonstrate that failure to comply with electoral law significantly impacted the election outcome. In *Ucha v Elechi*,⁶² the Supreme Court clarified that when a petitioner complains about a failure to follow the rules outlined in the Electoral Act, they must present evidence polling unit by polling unit and ward.

The required standard of proof is based on the balance of probabilities. In addition, he must demonstrate that the failure to comply was substantial and impacted the outcome of the election. The immediate electronic transmission of polling unit results to the INEC Results Viewing Portal (IREV) was a primary reason for noncompliance in the 2023 presidential petitions. In the opinion of the Supreme Court, the petitioners failed to fulfil their legal duty to demonstrate how the failure to comply substantially marred the election.⁶³

It is important to note that an election will be cancelled, and INEC will have to hold a fresh election within 90 days if an election tribunal or court finds that a candidate declared the winner by INEC was elected in violation of electoral law or through corrupt means.⁶⁴

A Petition Alleging the Winner was not Elected by a Majority of Lawful Votes Cast at the Election.

The final ground for challenging an election is to raise questions about the legality of votes cast and the resulting outcome to ascertain whether the winner was legitimately elected through a majority of valid votes. It is generally presumed that INEC's declared result is correct, and it is up to the party disputing the result to present evidence to rebut this presumption.⁶⁵ The evidential burden for a petitioner challenging the legality of votes cast in an election has been consistently established in numerous authoritative cases, stating that the only way to contest the legality of votes cast in an election is to present all relevant forms as evidence and call witnesses to testify regarding any potential miscalculation of votes tallied by the candidates.⁶⁶

It is necessary to clarify that if it is determined that a candidate who was declared elected failed to receive a majority of valid votes, the election tribunal or court will acclaim as the winner the candidate who accumulated the greatest number of valid votes and satisfies the constitutional and electoral requirements.⁹⁰ In 2020, the Supreme Court delivered a verdict that nullified Emeka Ihedioha's election and declared Hope Uzodinma the legitimate winner in the governorship election of Imo State. The Supreme Court's judgement determined that excluding results from 388 polling units, in which the APC

⁵⁹ (2015) LPELR-41989(CA); *DPP v INEC* [2009] 4 NWLR (Pt. 1130) 92, 114; *Audu v INEC* (No. 2) (2010) 13 NWLR (Pt. 1212) 456, 519.

⁶⁰ Electoral Act, s135(1).

⁶¹ (2011) LPELR - 8257 (SC).

⁶² [2012] 13 NWLR (Pt. 1317) 330 at 359.

⁶³ *Atiku v INEC* (2023) LPELR-61556(SC).

⁶⁴ Electoral Act, s136(1).

⁶⁵ *Buhari v Obasanjo* [2005] 13 NWLR (Pt. 941) 1, 255; *Chime v Onyia* [2009] 2 NWLR (Pt. 1124) 1, 70.

⁶⁶ *Adedayo v Christine* [2021] 9 NWLR (Pt. 1780) 148, 183-184; *Faleke v INEC* [2016] 18 NWLR (Pt. 1543) 61, 151. 90
Electoral Act, s136(3).

obtained a majority vote, from the final election result collation process violated the law. By integrating outcomes from 388 polling units, Uzodinma emerged as the candidate who obtained the highest number of valid ballots; as a result, he was declared the winner.⁶⁷⁶⁸⁶⁹

Another legal obstacle that must be surmounted relates to the territorial distribution for presidential and governorship elections. To be deemed validly elected, a presidential candidate must secure a quarter of the total votes cast in the FCT, Abuja and two-thirds of the states comprising the Federation.⁹² Alternatively, a governor may be declared elected with a minimum of two-thirds of the votes cast in the state's local government areas.⁹³ Osadolor posits that failure to meet this constitutional requirement could result in a complaint that the returned winners were not legitimately elected.⁷⁰ A significant issue in the 2023 presidential elections was the constitutional requirement that a candidate receive at least 25% of the total ballots cast in at least two-thirds of all states and the FCT before being considered duly elected. The Petitioners contend that Tinubu's failure to secure a minimum of 25% in the FCT barred him from satisfying the constitutional requirements for election victory.

The Presidential Election Tribunal determined, based on precedents established in *Ibori v Ogboru*⁷¹ and *Bakari v Ogundipe*,⁷² that the FCT has the precise status of a state under section 299 of the Constitution and has to be treated. Additionally, the court determined that receiving a quarter of the votes cast in the FCT did not constitute an independent constitutional prerequisite or precondition for a legitimate election as president.⁷³ The tribunal's verdict that Abuja does not possess a preferential standing in comparison to the remaining 36 states of the federation in terms of the 25% minimum vote threshold for the presidential election was upheld by the Supreme Court. Additionally, it established that for a candidate to satisfy the constitutional requirements, they must receive 25% of the votes cast in two-thirds (24) of the states of the federation.⁷⁴

This was an issue in *Awolowo v Shagari* as well.⁷⁵ The proclamation that Alhaji Shagari (NPN) had won the 1979 presidential election was contested by Chief Awolowo (UPN). Chief Awolowo contended that Shagari had not met the bare minimum electoral threshold of securing a quarter of the vote in a minimum of two-thirds of the states comprising the Federation. The Presidential Election Tribunal dismissed the petition, and the Supreme Court ruled in a 6-1 decision that the petitioner's argument was unworkable and unconstitutional in light of what comprises two-thirds of the nineteen states.⁷⁶

Legal Effect of Petition Instituted Outside the Grounds

Election petitions are not determined on the grounds of the petition alone but on the facts or particulars pleaded from the grounds. Once the particulars pleaded in the petition are outside the contemplation of the ground(s) of the petition, there are no more particulars of the respective ground(s). The consequence of particulars that are at variance with the grounds of a petition espoused by the appellate courts is that they go to no issue. Thus, any pleading that does not fall within the petition's ground(s) is incompetent

⁶⁷ *Uzodinma v Ihedioha* (2020) LPELR-50260(SC) 31-40.

⁶⁸ Constitution, ss133 & 134.

⁶⁹ Constitution, s139.

⁷⁰ FO Osadolor, 'Constitutional Grounds for Questioning Elections in Nigeria: An Overview' [2019] JPL, 12(3) 173.

⁷¹ [2005] 6 NWLR (Pt. 920) 102, 138.

⁷² [2021] 15 NWLR (Pt. 1768) 1, 38.

⁷³ *Obi v INEC* (2023) 38 WRN 1; *APM v INEC* (2023) 38 WRN 28; *Atiku v INEC* (2023) 38 WRN 35.

⁷⁴ *Atiku v INEC* (2023) LPELR-61556(SC) 60-63.

⁷⁵ (1979) 6-9 SC 51; (1979) All NLR 105; [1979] NGSC 49.

⁷⁶ *Ibid.*

and may be struck out.⁷⁷ Similarly, even if a ground is valid, it will be considered abandoned and liable to be struck out if no facts are led, no particulars are offered, and no evidence is presented.⁷⁸

Relief is also significant in election matters. If no relief is sought, there will be nothing the tribunal or court can grant.¹⁰³ An electoral matter cannot be litigated outside the reliefs sought. Furthermore, the reliefs must have their origin and distil from the pleadings, which should, in turn, arise from the grounds of the petition. Accordingly, a relief should flow or radiate from the pleadings, which must be linked to the main complaint on the grounds of the petition and not be regarded as an independent complaint for determination.⁷⁹

Furthermore, a tribunal cannot grant any relief or remedy not expressly requested or sought in a petition.⁸⁰ It ensures fairness and due process in legal proceedings by preventing courts from adjudicating matters not adequately raised by the parties or addressed in the pleadings. This, without prejudice, does not preclude the tribunal from awarding consequential remedies if necessary.⁸¹

Conclusions and Recommendations

The legal challenge of any election in Nigeria is predicated on grounds. In principle, not all violations of electoral law are legally accepted as grounds for complaint. The grounds are statutory and set out and form the basis for instituting an election petition. Therefore, a complaint or challenge to an election must be cognisable within the statutory grounds provided. Also, the particulars or facts that constitute the pleadings in any election petition are not formulated in the abstract. For particulars or facts (the totality of material facts necessary to establish a legal right in a particular case) pleaded in an election petition to be competent, they must relate to the grounds of the petition. Where particulars or facts pleaded in an election petition fail to find roots in any grounds, such pleadings are certainly crafted in abstract and, therefore, incompetent.

This paper has examined the objectives and juridical basis of the grounds as well as the attitude of the court towards them. Firstly, the courts have not adopted a liberal or nontechnical approach to applying the grounds. The Supreme Court has stated that failure to comply with the provisions of the law in formulating the grounds of a petition is fatal. This is so because the grounds for the initiating process must be solid, valid, and competent. The position of the law stems from the fact that in electoral adjudication, strict compliance with the law, rules, practice and procedure relating to it is required to the extent that any slight default results in disastrous or catastrophic consequences. Accordingly, grounds outside the scope of the legally recognised grounds for challenging an election petition are unknown to law and liable to be struck out. It is therefore recommended that petitioners should take to the advice of Niki Tobi, JSC, in *Ojukwu v INEC*, to copy the appropriate ground or grounds for the petition to satisfactory answer to the requirements of the provisions set out in section 138(1) of the Electoral Act.

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⁷⁷ *INEC v Adeleke* (2019) LPELR-47545(CA).

⁷⁸ *Ezenwo v Festus* (No. 2) [2020] 16 NWLR (Pt. 1750) 353, 375. 103
Owolabi v Seun [2023] 11 NWLR (Pt. 1896) 539, 551.

⁷⁹ The Court of Appeal determined that parties and Tribunals are bound by the specific grounds and reliefs upon which a petition is based. *APC v Adeleke* (2019) LPELR-47736(CA)50-58.

⁸⁰ *Benson v Benson* [2023] 15 NWLR (Pt. 1908) 491, 505-506.

⁸¹ A consequential relief that the party in question did not claim. Its purpose is to empower the Court to administer justice to the parties: *Titus v Bado* (2018) LPELR-44002(CA) 17.

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