

CAN SUPREME COURT JUDGEMENTS END ELECTORAL FRAUDS?

By Ahuraka Isah

"....Whatever others may say, this is my personal view. I am not speaking as a judge but as a Nigerian. Here we have one of the first Premiers of the autonomous region standing trial. If you were the only one before me, I would have felt that it was enough for you to have undergone the strain of the trial. I would have asked you to go. But I am sorry; I cannot do so now because my hands are tied. --But this is a political crime. There are things which one may never know. All I know is what is before me and I am bound by the evidence". (Hon. Justice SodeindeSowemimo on 11 September 1963 in State v Awolowo, ors).

An Italian engineer and economist, Vilfredo Pareto (1848–1923) seems to have had the Judiciary in mind when he posited that the optimal efficiency of resource allocation is attained only when a distribution strategy exists where one party's situation cannot be improved without making another party's situation worse. Pareto Optimality or Efficiency as it is known in Economics, though devoid of fairness or equality, but can be likened to justice delivery in the courts; because a law court must always resolve a dispute in favour of a party or parties and not all the parties before it in a particular matter.

It is human for the person(s) favoured by a court's pronouncement to jubilate while those it went against to lament. However, the way and manner one expresses either of the two is significant. There have been divergent views on the propriety or otherwise of the Supreme Court's judgments in the appeals entered in respect of some 2015 gubernatorial elections, especially where the Tribunals and/or the Court of Appeal concurrently or separately resolved to void the elections. The high expectations over whether the Supreme Court would uphold or not the judgments of the lower courts in the Rivers, Akwa-Ibom and Abia states governorship appeals, precipitated high political tension generally.

The 7-man panel upheld the elections, which to some people in the true sense of the words never happened, but rather was allegedly marked by bloodletting, killing and maiming; and at best held amidst all manners of brigandage and fraudulent practices. Those who lost at the apex court cried blue murder, describing the decisions as outrageous and vexatious to good conscience and natural justice; while at the same time insisting that the apex court has endorsed or legalized electoral fraud, malpractices or rigging. "One can now win elections at all cost and approach the court for confirmation", some people argued.

In all honesty, these positions are reflective of our freedoms as citizens in a democracy as well as the lack of understanding of the principles underpinning governance. The principle of separation of power amongst the three arms of government, i.e., Legislature, Judiciary and the Executive, confers specific roles

and functions on each one. These are spelt out in the 1999 Constitution (as amended).

For instance, Section 233 (2) (b) states that an appeal shall lie from decisions of the Court of Appeal to the Supreme Court as of right in the following cases - (b) decisions in any civil or criminal proceedings on questions as to the interpretation or application of this Constitution.

Irrespective of the political winds that are blowing, emotional dispositions on the land or the bounty of evil unleashed on, before or after the day of elections by the politicians, posterity won't spare the Supreme Court if its Panel ventures outside the letters of the Constitution, the Electoral Act and other relevant laws of the land to make pronouncements. If substantial evidence of the brigandage, bloodletting and all forms of electoral malpractices that occurred during the elections were not placed before a judge or proved beyond reasonable doubt; what does one expect the judge to do? Surely he cannot turn into Father Christmas or act outside his statutory mandate.

Supreme Courts all over the world are there to dot ‘i’, cross ‘t’ and thus correct any errors arising from the judgment of the lower courts, so as to avoid a miscarriage of justice or a cannibalization of the Constitution. This was aptly demonstrated in the United States of America in the year 2000. The issue at stake was a controversial recount in the 2000 U.S. presidential election and, ultimately, who between Vice President Al Gore, a Democrat, and Texas Governor George W. Bush, a Republican would become President of the United States.

As the election results were counted, it became clear that the vote would be very close, and that the results of ballots cast in the state of Florida would decide the election. Bush was initially declared the winner by just a few hundred votes—a tiny margin in a state with millions of voters. However, reports of widespread problems with ballots (for instance, conflicting ballots that were designed so that people who thought they were voting for Gore ended up casting votes for another candidate) soon called the results into question. Gore's supporters sued the state of Florida for a recount. Bush's supporters sued to prevent it. To make matters more complicated, Florida's election laws set an unchangeable deadline for announcing the final results, so the recount had to be begun quickly if it was to be done at all. When the Florida Supreme Court decided in favor of Gore, and ordered the recount to be completed, Bush appealed to the U.S. Supreme Court.

The U.S. Supreme Court, in a 5–4 decision, stated that the Supreme Court of Florida had violated the U.S. Constitution when it ordered the recount only in certain districts, and that the recount had already been tainted by shifting methods of vote-counting. Both of these, it said, violated the equal-protection

guarantees of the Fourteenth Amendment. The court then said that there was no way to hold an acceptable recount by the final election deadline. As a result, it ordered the recounts abandoned, effectively naming Bush the winner of the national election.

Back home, we have plethora of the Supreme Court of Nigeria judgments overturning concurrent decisions of the lower courts at least to protect and preserve the sanctity of the Constitution.

Against the backdrop of the 2011 gubernatorial election in Delta state, the Supreme Court on 02 March 2012 in the SC 18/2012 and SC18 A/2012 between CHIEF GREAT OVEDJE OGBORU & DPP (APPELLANTS) AND DR. EMMANUEL UDUAGHAN, PDP & INEC (RESPONDENTS), dismissed the appeal by the appellants and declared the judgment of the Court of Appeal, delivered on 06 January 2012, including its reasoning delivered on 27 January 2012, as null and void. The apex court held that it amounts to nullity in view of section 285 (7) of the constitution that makes it mandatory for the appeal court to deliver its judgment within 60 days after the tribunal have delivered its judgment in the governorship election petition. The appeal court gave its judgment and delivered its reason for judgment after the 60 days.

Hon. Justice Bode Rhodes-Vivour, JSC, had in the Ebonyi governorship matter with the appeal number SC 30/2012, between SENATOR JULIUS ALIUCHA & ANPP (APPELLANTS) AND CHIEF MARTINS NWANACHO ELECHI, PDP & INEC (RESPONDENTS) delivered on 06 March 2012 held that “in the instant case there are 1785 polling units and elections were conducted in all of them .The appellants alleged non-compliance in about 531 polling units. The fact that election were not found wanting in 1254 polling units prima facie shows there was substantial compliance. The burden was on the appellant to show that the non-compliance which he alleged occurred in 531 polling units was substantial to affect the conduct of the election. That burden was not discharged by the petitioners/appellants. There is no merit in this appeal. It is hereby dismissed”.

The Electronic Card Reader Machine for accreditation of voters was provided for in the Approved Guidelines and Regulations for the conduct of the 2015 General Elections. Prior to the authorization of its use by the Guidelines, Sections 49 (1) and (2) of the Electoral Act 2010 (as amended) had adopted analogue procedure for the accreditation process. The National Assembly perhaps went to sleep by not amending the Electoral Act in order to replace the Voters' Register (analogue procedure) with the Card Reader Machine, in order to serve as the sole determinant of valid accreditation process.

The 7-man panel of the Supreme Court led by the Chief Justice of Nigeria, Justice Mahmud Mohammed in the appeal number SC.1004/2015 in the matter

between EDWARD NKWEGU OKEREKE (APPELLANT) AND NWEZE DAVIDUMAHI AND OTHERS (RESPONDENTS), held that; "...since the Guidelines and Manual which authorized the use and deployment of the electronic card Reader Machine were made in exercise of the powers conferred by the Electoral Act, the said Card Reader cannot, logically, depose or dethrone the voters' Register whose judicial roots are firmly embedded in the selfsame Electoral Act from which it (the Voters' Register), directly, derives its sustenance and currency".

Hon. Justice Chima Centus Nweze, who delivered the lead judgment said "the lower court was right in holding that the Card Reader Report was incomplete, unreliable and incapable of proving the appellant's allegation of improper accreditation/over-voting". Should Voters' Register or Card Reader Machine Report be the determinant of valid accreditation? This had been the basis of conflicting judgment amongst the Court of Appeal Divisions recently.

While the Lagos division of the Court of Appeal in the *AGBAJE V AMBODE* appeal declared against the use of the Card Reader, the Port Harcourt division's Court of Appeal held otherwise. The certainty of law is what the Supreme Court had decided to guarantee in the country with its pronouncements in the gubernatorial appeal judgments; even if the heavens are to fall or hell let loose. As expected, there were accusations from some quarters that some apex court justices were compromised, notwithstanding that the judgments which were unanimously delivered by 7 Justices, whose identities were earlier not made known to parties prior to sitting and concomitantly delivering judgement same day..

Speaking at the valedictory court session held in honour of a retiring Justice of the Supreme Court, Justice Muhammad Muntaka-Coomassie, at the Supreme Court complex on 10 February 2016, the CJN, Justice Mohammed stated that; "The Nigerian Judiciary, though constantly striving to redress wrongs and tilt the balance of that which is right, has recently had to face the backlash of misguided opinions fashioned without due consideration of the law and rationale for the system of government that we operate. The Judiciary is duty bound to act in accordance with the dictates of the law as it stands and not as critics would like it to be. In this sense, naïve idealism is but a pale imitation of legal certainty..."

As I had stated above, the Judiciary or the Supreme Court can only decide any matter based on the facts and the laws of the country; even if they are defective. The legislature must enact laws in the interest of the nation to curb electoral malpractices and prescribe appropriate sanctions for perpetrators of electoral crimes. The executive must similarly accept responsibility for the fallout of bad conduct of elections in the country. No amount of pronouncements by the Supreme Court can end electoral fraud as long as members of the other two

Arms of Government by omission or commission breach the laid down Rules of the Electoral Processes.

Ahuraka is the Media Aide to the CJN