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OLAGUNJU-IBRAHIM RIDWAN

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THE 2010 NIGERIAN ELECTORAL ACT AND SOME RULES OF ISLAMIC LAW: IMPERATIVE OF SYNERGY FOR PEACEFUL ELECTIONEERING PROCESS IN NIGERIA.

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ABSTRACT:

It is common, on daily basis, to hear or read muttered words underscoring the essence of peace and conflict resolution, among others. No one challenges the dire need for realizing these beautiful objectives- be it in Nigeria, Africa or the world over. However, an enabling environment has to be created before such laudable height can be attained. For instance, one has to survey the various things that go awry around us, as a people, and for which peace is now becoming an elusive mirage in almost all spheres. In this paper, the writer sojourns into the electioneering process in Nigeria with a view to bringing out some peace inhibiting provisions in the contemporary legal framework for the electioneering exercise. The writer, just like most countrymen, is worried by the spate of dissatisfactions expressed each time election result is released. It is believed that something, among others, is wrong with the operational legal framework for elections in Nigeria. The writer thus aims at fishing out some of those anomalies as well as recommending workable solutions capable of nipping them in the bud. Heeding these recommendations shall, no doubt, calm down the nerves of the perturbed and better the lots of many in our axis. Other African communities with record of similar electoral problems are expected to take cue from the recommendations as they follow later in the full paper. The bulk of the ideas, which the write-up proposes for adoption as a way out from some aspects of the electoral mess, is informed by the writer's reflective understanding of the rules of Islamic law. This way, it is believed that the literary piece in its approach shall appear somewhat different from other similar works in the area.

KEYWORDS: *Election, Problem and Peace*

INTRODUCTION

The ongoing democratic dispensation in Nigeria became fully entrenched close to two decades ago[1]. Since then and up till now, there is hardly an election in the country adjudged completely free from allegations of misconduct and irregularity. This, without mincing word, is bad omen capable of sending wrong signals about us as a nation.

Another ugly situation prevalent in the circumstance and with prospective propensity

1. To be specific, it started on the 29th of May, 1999 with Chief Olusegun Obasanjo as the President.

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to bedevil our country is not far away from finger tips. Those who emerge victorious after elections into various tiers of government rarely enjoy general civil obedience from the citizenry. This is because people see their ascension to elective offices as product of flawed electoral processes. In the entanglement of anomalies of this specie, one is expected to ask few questions such as: can there ever emerge a device to tame the tide of the menace? Can such device, if at all thinkable, be realized ahead of the next general elections scheduled to hold in the year 2019 and beyond?

To these questions, writer's answer is in affirmative. The ugly situation would change for better once efforts are taken to tackle causes of the problem. One of these causes is the defective nature of some provisions in the Electoral Act[2] itself.

Another source of the problem is uncomplimentary performances of some judicial officers in the handling of certain election matters[3]. In this write-up, aim is to remind judicial officers of their onerous task. Reference shall also be made to some anomalous provisions in the Electoral Act. This shall be done with a view to analyzing the anomaly in them and justifying the need for their amendment, borrowing from the basis of Islamic rules[4]. It shall also interest the writer to call for introduction of some other necessary provisions into the Electoral Act. Islamic rules shall equally be shown to be the basis of call for this introduction. This way, the humble work before readers shall appear different, in outlook and fashion, from previous relevant others on the issue.

It is the writer's fervent conviction that upon heeding the recommendations in this paper, the Nigerian general elections to hold in 2019 and beyond shall, to a great extent, stand tall above allegations.

BETWEEN DEMOCRACY AND SHURAH

Western democracy, which is one out of numerous4 political philosophies developed for governance by the ancient Greeks, may mean different things to different people[5]. However, democracy is generally regarded to connote "government of the people by the people for the people"[6].

For Shurah[7], an Arabic term, it denotes "government by mutual consultation or decision making process through consultation"[8]. Going by the way exemplary leadership was demonstrated by Prophet Muhammad (Peace be upon Him) and his succeeding Caliphs (may Allah be pleased with them), one cannot but acknowledge the superiority of Islamic law styled leadership over and above man invented means of social governance including democracy.

No doubt, it is this entirely pro-people Islamic style of government, adopted in the

2. 2010. (Being the Act currently in force)
3. Whether pre or post
4. Others are; monarchy, aristocracy, oligarchy, tyranny e.t.c.
5. For instance, Schmitter and Karl view modern political democracy as system of governance in which rulers are held accountable for their actions in the public realm by citizens acting indirectly through the competition and cooperation of their elected representatives.
6. Harris P.B., Foundations of Political Science (The Anchor press ltd., Britain, 1979) P. 203
7. Quran,chap. 42, verse 38 and chap. 3, verse 159.
8. Munjid al-Lugah wal-a'lam, (40th ed., Dar el Mashreq Sar Publishers, Beirut-Lebanon, 2003) pp. 407-408

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early classical Islamic period, which must have, among others, inspired Michael H. Hart to rate Prophet Muhammad (PBUH) as "the only man in history who was supremely successful on both the religious and secular levels".[9]

Notwithstanding the above, Islamic law is not yet the prevailing law in Nigeria[10]. In fact, Nigeria has errorneously[11] been given the colouration of a secular state[12]. Though, it should be pointed out that the master minds of the erroneous interpretations of s.[13] of the 1999 Nigerian Constitution, by which the country is presented as a secular state, are doing double standards on the issue. When it comes to Islamic law, their position is that Nigeria must be secular. Whereas they are aware of the Christian origin of the Nigerian legal system. The fact of this origin is not hidden. It had been an open truth since the year 1917 when Lord Summer, in the foreign case of BOWMAN VS SECULAR SOCIETY,[14] stated thus;

Ours is and always has been a Christian state. The English family is built in Christian ideas, and if the national religion is not Christian, there is none. English law may well be called a Christian law, but we apply many of its rules and most of its principles with equal justice and equally good government, in heathen communities and its sections even in courts of conscience....

As such, where expressions in this write up tend to approve of holding elections in Nigeria under the current democratic dispensation, it is the hope of the writer that readers would hinge such a stand on the necessity of discussion within the frame of what is available. Admittedly, the gap between Shurah in Islamic law and Western democracy is more than wide.

This has been attested to by a number of scholars[15]. Nevertheless, democracy, of all the Greek invented political philosophies for governance, appears to be the closest[16] to Islamic governance style.

It is now thought expedient to delve into the major preoccupations of this write-up. As such, certain provisions in the Electoral Act, not thought wise to be retained, would be discussed and recommendations shall follow.

1. S. 91, ELECTORAL ACT, 2010.

The provision of the above section tends to give limitation to expenses allowed for party candidates to incur at elections in a bid to attract electorates and solicit their votes.

9. Hart M. H., The 100: A Ranking of The Most Influential Persons in History (Citadel Press, New Jersey-Secaucus) pp. 13-20
10. At least by virtue of the provision of s.I of the Nigeria 1999 Constitution by which no other law but the Constitution is regarded supreme.
11. It is erroneous because Nigeria has recognition for religion. See ss. 4,6,275 and 277 of the 1999 Constitution, among others, as testimonies to this assertion.
12. It is more apt to refer to Nigeria as a multi religious nation. The reason for this is clear to all. In Nigeria, there are in practice Islam, Christianity and other religions
13. (1917) A.C. 406
14. Which is not completely acceptable to Islam.
15. One of them whose name readily comes to mind now is former Grand Khadi of Shariah Court of Appeal, Kwara State, Hon. Justice Abdul-Mutallib Ambali. He gave the attestation in the conclusion of his book "Democracy on the scale of Islam".
16. Ibid

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Much as we believe in the need for some expenses to be bore in this respect by these candidates[17], the various monetary figures approved in the section as maximum of acceptable expenses by seekers of various elective posts are too much on the high side. Participation as candidates in an election is to render service of governance. Capacity to govern well is not dependent on the whooping amount of money a particular candidate has. Rather, this is determined by the quantum of leadership qualities possessed. For avoidance of doubt, to govern is defined in a Dictionary[18] as follows; (To control and direct the making and administration of policy in (a state, organization, etc)

If the above is the responsibility of a person who is to govern in Nigeria, why should a presidential aspirant and a governorship aspirant be allowed to incur expenses up to One billion Naira (N1,000,000,000)[19] and two hundred million Naira (N200,000,000)[20] respectively. In the same vein, the maximum amounts of money allowed to be expended by candidates seeking membership seats in the Senate,[21] House of Representatives[22] and House of Assembly[23] are also unnecessarily huge. Chairmanship[24] and Councillorship[25] elections are as well not free from this stigma.

To a reasonable man, the worry will be how to source for these whooping sums of money without involvement in corrupt practices. Even where friends and well-wishers of a presidential candidate rally round and donate voluntary contributions, do the electorates need such huge sum of money to solicit their votes. If the whooping sum of money is needed, then votes are no longer solicited but bought.

The danger in such circumstance which we are already witnessing in the country these days, is the tendency by this set of candidates, upon electoral victory, to govern according to whims and caprices. Their lots are interested in embezzlement and self making. The reason is simple. They have paid heavily to buy votes, and it is their turn to siphon and loot the public treasuries as they wish.

It could be argued against my position here that the acceptable expenses' limitation fixed in S.91 under discussion is the maximum and not minimum and so, a particular candidate may not spend up to the fixed maximum. My reaction to such an argument is in two folds:

First, the fixed maximum in each of the various elective offices is too much on the high side. This has nothing to do with whether it is exhausted or not. The second point is the possibility to even spend more than the fixed maximum. On this point, the example which readily comes to mind is that of a governorship aspirant in Kogi State whose news of readiness to spend N1.4 billion Naira on election was carried in a daily[26] in the year

17. At least, it is certain that candidates seeking elective offices would incur some expenses during their territorial campaign tours around, which are allowed by the Electoral Act.
18. The New Penguin English Dictionary (Penguin group publishers, London-England, 2001) P.604
19. See S. 91 (2), Electoral Act, 2010
20. See S, 91(3), Electoral Act, 2010
21. See S. 91 (4), Electoral Act, 2010
22. Ibid
23. See S. 91 (5), Electoral Act, 2010
24. See S. 91 (6), Electoral Act, 2010
25. See S. 91 (7), Electoral Act, 2010
26. The Nation, (Vol. 6, No.1888, Sept. 19, 2011)p.6

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2011. According to further report in the daily, the aspirant was also prepared to give out one new gulf car to each of the one thousand, four hundred delegates in the state then. To inhibit such recklessness in future elections, I humbly recommend amendment of the particular provision (S.91, Electoral Act, 2010) with effect to drastically cut down the various monetary maximum stipulations therein. Doing it this way would serve us more good in this country than bad, which we now contend with. It may even open the path to emergence of leadership of credibility instead of leadership by might and wealth for which we are currently be deviled as a people in this country.

This writer also recommends adjustment of the prescribed monetary punishments[27] where the maximum figures as they stand, are contravened by overzealous candidates. For instance, what is the reasonable punishment in asking a presidential candidate to pay a fine of one million naira where he is convicted of spending more than one billion naira? Will this punishment device be felt by him? The answer is certainly No! We all know the ratio of one million to one billion (i.e 0.1%), not to talk of over one billion.

To this extent, I recommend disqualification of such a contravening presidential aspirant[28] from eligibility for the office being sought. The basis for this recommendation is the laudable contributions of Muslim scholars in a jurisprudential maxim which says: "He who hastens an immature right shall be punished by denying him of same"[29].

2. RECOMMENDATION NO. 2

Akin to the above point is the recommendation to introduce into the Electoral Act in force, by way of amendment, a provision mandating elective office seekers in Nigeria to honour calls for interview sessions by necessary stakeholders whose votes are needed. These range from students of higher institutions, market men and women to civil servants and faith leaders, etc. This line of thought is influenced by the writer's understanding of the allegorical meaning of a verse[30] in the Holy-Quran where Allah instructed that the Muslim women faithful, who pronounced outward interest to migrate from Mecca to Madinah, should be properly interviewed and examined. The reason behind this divine instruction, which is now the basis for the recommendation at this juncture, was for Prophet (SAW) to ascertain the sincerity of such Muslim women as regards the statements they muttered. If we must shun deception, this requirement is more in need in the Nigerian political affairs these days than ever.

The reason for the above is not farfetched. Majority of election candidates now formulate fake policy statements and manifestoes, more than ever before, and print out same in form of posters, leaflets and handbills. These prints out, more often than not, are replete with sweeping promises of people oriented and development driven programmes such as health care delivery system, education, economy, security and job opportunities to mention a few. Since there are no provisions in the Electoral Act nor in the Constitution allowing institution of court actions when these laudable promises are

27. In s. 91(10) (a-g), Electoral Act, 2010)
28. i.e s. 91(10) (a)
29. Azzam A.M. & Hasary A.M., Al-Qawaid al-Fiqhiyyah: Dirasah 'Ilmiyyah Tahliliyyah Muqaranah (Azhar University Press, Cairo, 2013) p.416
30. Quran, chap. 4, verse 46 and chap. 5, verse 13.

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broken, it only appeals to reasoning to use the instrumentality of the Electoral Act by way of amendment, to mandate candidates to honour calls for sessions of interview at the instance of the stakeholders earlier mentioned.

The existing practice of question and answer sessions, which feature throughout the country for similar purpose at campaigns and rallies organized by the elective office seekers does not appear to have the propensity to serve the purpose in the best form. This is submitted because the candidates in this case are themselves the organizers, coordinators and anchorers. They therefore reserve the right to pick and choose whom to be given the chance to ask questions, as to them also belongs the choice of which questions to answer. Citing instances where the kind of public interviews, being advocated for, have been staged, Wahab Shittu says:

The three presidential debates between President Obama and his then rival, Senator McCain, during the build up to the historic 2008 US President elections were held in Universities situated in the United States. The first held on September 26, 2008 at the University of Mississipi, Oxford. The second held on October 7, 2008 at Belmont University while the third held on October 15, 2008 at Hofstra University, Hempstead, New York. The Vice Presidential debate between Vice President Joe Biden and his then rival, Sarah Palin was held on October 2, 2008 and the debate equally held within the serenity of an Ivory Tower Washington University in the U.S. Nigeria's young men and women can lead the introduction of such enviable tradition into Nigeria. This will have the enduring benefit of instilling some seriousness and thoroughness into our electoral contests which are (sic) hitherto clouded by such inanities like empty sloganeering, money and illegal weapons distribution and many other rowdy activities we ought to all be ashamed of as a collective[31]

3. S.31 (5), ELECTORAL ACT, 2010

The provision in the above section makes it lawful for any prospective candidate to be challenged where falsity is discovered in the candidate's personal particulars affidavit information submitted by him to the INEC as required in s.31(2),(3) and (4) of the Electoral Act. The particular section under reference here (s.31(5)) empowers the discoverer of such a false information to spearhead the challenge by instituting a suit for the purpose in a State or Federal High Court within the jurisdiction.

It must be said that the wisdom in allowing the challenge of such a falsity is commendable. Nothing below that is expected. Nevertheless, the writer stays far away distant from the particular channel (filing a suit in the court) prescribed for routing the challenge.

With respect to the drafters of the Act, the requirement of suit filing by the discoverer leaves much to be desired. The negative effect inherent therein is the possibility of door shutting against exposure of any untrue affidavit discovered. This occurs spontaneously when the discoverer is not buoyant enough to bear the cost of

31. Wahab Shittu, LL.M, a paper he presented at a seminar organized by the Law Students' Society, Faculty of Law, University of Ilorin, held at the Engineering Lecture Theatre on 24th of November, 2010, on the Topic: "2011 Elections: Challenges for Nigeria Next Generation".

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engaging a lawyer to file the court action. The underlying implication of this is bad, but not incurable. It can be corrected. It is with a view to correcting the anomaly that I thus recommend amendment of the current Electoral Act to the effect of substituting the suit filing prescription therein with the writing of an official letter from the side of falsehood discoverer to the Chief Registrar of the competent court. From that end, the registry can contact the authority of the Legal Aid Council in the state where the case may be assigned to a counsel for handling. With the above, injustice (or Zulm in Arabic language) which Islamic law frowns at, would be said to have been reduced to the barest minimum.

In a number of verses in the glorious Quran, Allah states that "He loves not those who unleash injustice"[32]. It is injustice and hardship on he who observes fabrication in an aspirant's affidavit information to be made to bear the cost of briefing counsel in order to correct the misgiving. In Islamic law, another basis exists on which the hardship analyzed above can be whittled down. It is the fifth of the five great principles of Islamic jurisprudence (Al-Qawaid al-Fiqhiyyah al-Kubrah)[33]. This principle, in particular, underscores the need to always remove harm or hardship. In Arabic language, the principle is known as "Ad-darar yuzal" or "la darar wala dirar"[34]. My submission on the recommendation here is also informed by and predicted upon this jurisprudential principle.

The foregoing having been analyzed, there are two other issues to be addressed. The issues do not concern call for amendment of any provision[35] in the Electoral Act. They also depart from the writer's idea in recommendation No. 2 above in which reason has been advanced for the introduction of an entirely new provision in the Act [36]. Rather, one of these two other issues touches the Uwais Panel Report recommendation on appointment of the Chairman of INEC. The other stresses the need for our judicial officers to be more painstaking, thoughtful and reliable in their conduct of both pre and post election matters, the same way they should be seen in all other cases before them. For precision and convenience, these two additional issues are labeled "recommendations No.4 and 5. The idea is to catch up freely with the adopted numbering arrangement from the scratch.

4. RECOMMENDATION NO.4

S.154 of the 1999 Constitution empowers the Nigerian President at any particular time to appoint Chairman and members of the Independent National Electoral Commission. However, It is observed that due to crucial functions and powers of the holder of the office of INEC Chairman, any sitting President may decide to favour his

32. Quran, chap. 2, verse 140.
33. Salih Ganim S., Al-Qawaid Al-fiqhiyyah Al-kubrah wa Ma Tafarra 'a Anha, (Balansiyyah Printing Press, Riyadh-Saudi Arabia, 1999) pp.493-499.
34. Laldin M.A., A Mini Guide to Sharia'ah & Legal Maxims (2nd. ed., Cert Publications Edu. Bhd., Kuala Lumpur Malaysia, 2009)pp.124-129.
35. This should not be misunderstood as saying that the Electoral Act provisions are free from further critique.
36. i.e. the need to embody a provision in the Electoral Act mandating the election contestants to honour calls for interviews by electorates.

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political party by appointing his confidant for the job and later ask him for election favours. To forestall this, clamours here and there remain overwhelming for a shift of practice with respect to who appoints the INEC Chairman. The Uwais Panel Report on recommendations for electoral reforms succumbs to the yearnings of the majority on this issue as well. The report calls, among others, for removal of this appointing responsibility from the President.

Despite the above, one notices with discomfort the sheer neglect by the National Assembly to accommodate this recommendation when, ahead of the general elections in the year 2011, it dispatched a bill[37] for an act to alter some provisions of the 1999 Constitution and the issue[38] was not listed therein[39]. Instead of the President to solely handle the appointment, the Uwais panel's recommendation is to make the exercise extensive by allowing both the National Judicial Council and the Council of states to have input in it. One therefore wonders why the National Assembly, the top hierarchy of legislators in the country, have avoided this beautiful recommendation which is commendation inspiring. Do we believe the President then whispered to their eardrum and tutored them on what to include and what to ignore? The revered legislators should know that Nigerians are all eyes and ears. They should equally know that Nigerians are not fools. Above this all, history and posterity are there to judge all.

Before moving on to the second issue, dedicated to judges, mention must not be omitted of Mike Ahamba's criticism [40] to this laudable recommendation of the Uwais Panel to involve the NJC and the National Council of states in the responsibility of INEC Chairman's appointment. Although, I do not entirely agree with him, the learned Senior Advocate's point of criticism deserves to be quoted. It goes thus;

The Uwais Panel Report had recommended a process of appointment which would have involved the National Judicial Council of States. This was however rejected by the National Assembly in the Bill sent to the State Assemblies. Although the support for the removal of the responsibility for appointing the Chairman of INEC from the President was, and still is overwhelming, one considers the clamour as much ado about nothing, for one does not appreciate how the extended process would have avoided Presidential influence at any stage of implementation. Under the consideration, the President appoints the Chief Justice of Nigeria. A President with bad intention could start from there to appoint his own man since appointment to that office by seniority is purely conventional... Also, the President is the Chairman of the National Council of states with governors from his party in the majority[41].

With respect to the critic, the present writer only agrees with him half-way. I

37. The Bill was dispatched to various state Assemblies as required by s. 9(2) of the Nigerian 1999 Constitution.
38. i.e. taking away the Presidential power of appointing INEC Chairman as contained in ss. 153 and 154 of the Constitution.
39. Just like a good number of other recommendations of the Uwais Panel were not listed as well.
40. In a paper presented at the first conference of the National Association of Nigeria Law Students held at Afe Babalola University, Ado Ekiti, Ekiti State on 8th July, 2010 on the Topic: The Effect of Justice Uwais Electoral Reform Panel's Report on the Constitution of the Federal Republic of Nigeria.
41. Ibid. pp. 6-7

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associate myself with the critic's thought and fears on that of the office of the Chairman of the National Council of states which is occupied by the President. But with respect to how the CJN (flagship of the NJC) is appointed, I respectfully disagree with the learned Senior Advocate on his insinuations. It is submitted that whether by law or convention, appointment of CJN on the basis of seniority has come to stay.

On the law aspect, it can be impliedly construed that the provision of the Constitution of the Federal Republic of Nigeria, which recommends appointment of the most senior judicial officer in the apex court as the Acting CJN, whenever the position is vacant, is a legal requirement with emphasis of some sort on seniority. On the other hand, if the appointment to the office of the CJN is assumed, as Ahamba maintains, to be purely conventional, solace is taken at least, in the certainty of the position of convention as a known source of law.

However, one is, although, not unaware of the appointment in the past, of Hon. Justice (Dr.) Teslim Olawale Elia[42] and Hon. Justice Sir Darnley Arthur Alexander[43], as Chief Justices of Nigeria[44] at times they weren't yet the most senior judicial officers in the country, the appointments then were in a special and exceptional class of their own. Their cases are therefore least expected as reference points on the precedent of appointing of a less senior member of the Supreme Court as Chief Justice of Nigeria.

First and foremost, each of the two judicial officers mentioned above was appointed as CJN during the military era[45] when aberration was the order of the day. That era is clearly distinguishable from the aura of democratic dispensation which now fills everywhere to the brim. Further, none of the two Jurists was at the Supreme Court before the appointment. For the former, though a serving Attorney-General of the Federation at the time, he was never on bench before his appointment as CJN. In the latter's case, he was a Chief Judge in a state when he was appointed as CJN [46].

However, it is not expected that the office of the CJN would be occupied again by any less senior judicial officer. Thus, it reasons well for now to recommend restriction of the power to appoint INEC Chairman to any sitting Chief Justice of Nigeria. He is the head of judiciary who, to a fair extent, can be said to be patiently free from involvement in partisan politics. The executives and legislatures are not free from this label. As a result, allowing either of them to have a say on the issue is to put them in a position of advantage to influence the said INEC Chairman towards favouring a particular political party in elections.

This recommendation above is inspired by a rule of Islamic law of Evidence which disallows testimony to be given in favour of a party to a case where the witness and such a party happen to enjoy one form of cordiality or the other.[47] It is on the strength of

42. CFR; GCON; (CJN 1972-1975)
43. CBE; KCMG; CFR; GCON; (CJN 1975-1979)
44. In succession
45. Hon Justices Elias and Alexander were CJNs during the military rulership of Gowon and Muritala respectively.
46. Oral interview conducted on 10/10/2012 with his Lordship, Hon. Justice Ahmad Olarewaju Belgore, Justice of Court of Appeal, then of Kaduna division , but now of Sokoto division.
47. Abu Aziz S.Y., Al-Fiqh al-Muyassar Wa Adillatihi Min al-Quran wa as-Sunnah (Dar atTawfiqiyyah Li at-Turath, Cairo, 2009)p.454

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this rule, which goes under the term "Man'u Shahadah al-Muntafi'i" in Islamic law of Evidence i.e prohibition of testimony by interested person[48], that a child and his parent[49] are disallowed to give evidence in favour[50] of each other in Islamic law. For the same reason, husband and wife[51], employer and employee[52] etc are equally so disallowed. The rationale behind this noble rule of Islam is to guide against false testimony (Shahadah Az-Zur)[53] and fabrication (Iftirau) which is likely to emanate from attestations by close relatives and associates whose only goal may be to save the head of their kins and allies at all cost.

To do anything short of disallowing testimonies in the above circumstance is to pave way for inequity and oppression (Zulm). Consequently, the writer compares this scenario to the Nigerian political situation, where the President appoints INEC Chairman, and submits that same (the latter) is also an unfair and wrongful arrangement. In other words, such arrangement equally constitutes despotism and injustice (Zulm) in our political scheme of things. To curb the menace therefore is to opt for a change in the identity of who appoints the INEC Chairman. This is a sure and realistic attempt at stopping the perceived injustice in this respect. This idea above is derived from the allegorical meaning which the writer ascribes to a prophetic saying which goes thus:

> *"Help your Muslim brother when he has the tendency to oppress or when he is oppressed. The Prophet companions reacted: it is the oppressed that deserves our assistance. How can we assist an oppressor! The prophet then replied: by holding his hands"*[54].

As said earlier, if a sitting President in Nigeria is to continue exercising the constitutional power[55] to appoint INEC Chairman, there is propensity that he may utilize his vintage position as the appointor to influence such a Chairman to his party's side in whatever form. To forestall this possibility, it is better, in line with the saying of the Prophet above, that somebody else,[56] apart from the President,[57] be empowered[58] to appoint INEC Chairman. That is one of the possible ways of holding the President's

48. Ismail M.B., Al-fiqh al-Wadih Min al-kitab wa-as-Sunnah 'ala al-madhahib al-Arba'ah (Vol. 2, 2nd ed., Daral- Mannar li an-Nashr wa at-Tawzi', Cairo, 1997)p. 338
49. Ibid
50. Where the evidence given by a person about his close relation is against the interest of the latter, the evidence is acceptable in this circumstance for likelihood of being a true testimony and one devoid of suspicion (Tuhmah). This suspicion will be there if the evidence is given in favour of a close relation to the witness. See:Ibid.
51. Ismail M.B., Ibid.,
52. Ibid
53. Abu Aziz S.Y., p.45
54. Al-ahadith an-Nabawiyyah Al Mukhtarah Min Sahihai Al-Bukhari Wa-Muslim, (Al-Mannar printing Press Tunis)p.9
55. S.154, 1999 Constitution.
56. Such as the Chief Justice of Nigeria who is not expected, in the least, to be a partisan politician.
57. Who would always be a partisan politician.
58. Through Constitution amendment to change the state affairs on the issue.

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hands[59] from falling into the pit of being an oppressor. At this juncture, one can quote, with interest, the statement credited[60] to Governor Abiola Ajimobi of Oyo State, who pinches tent with our recommendation above, in a lecture[61]. The statement goes thus:

> *The Chief Justice of Nigeria (CJN) should be given the power to appoint the Chairman of Independent National Electoral Commission (INEC).... Extant constitutional provisions allow the President to appoint members of the INEC board, which will superintend the election in which he is likely to be a candidate. INEC reports to the Report. Its funding relies on the disposition of the President as well. All these have serious implications on INEC's independence and the possibility of having free and fair elections in the country.*

5. RECOMMENDATION NO. 5

The thrust of the message here centres on the writer's admonition to the judicial officers sitting at the temple of justice. With due respect, some of them are due for further tutoring on the need to be more painstaking and careful in the conduct of cases before them. They are expected to exhibit some good and assuring traits whenever they sit on any matter-be it the day to day ordinary cases or election related matters. But due to the "sui generic"[62] nature of the latter, judges are expected to employ upper most care and diligence when handling election related cases. Though they are not super men, judges should endeavour to always conduct themselves above board in their handling of cases.

On this note, one does not pray for a reoccurrence of the judicial rascality and show of might exhibited by the Court of Appeal ahead of the year 2007 general elections in Nigeria. The victim of the rascality then was an erstwhile Vice-President, Atiku Abubakar. He was the candidate sponsored by his party[63] for the Presidential election. But the INEC, possibly carrying out orders of the powers that be, from the side of the ruling party[64], directed Abubakar's party, as well as other political parties, to present their candidates for physical verification and screening. The Vice-President was eventually disqualified in the process and many were left with the sole conclusion that he was even the target behind the whole exercise.

Consequently, both the Action Congress and Atiku Abubakar caused an originating summon to be issued in their names as plaintiffs at the Federal High Court, Abuja[65]. The Defendant was INEC. The plaintiffs' prayer, in the main, was that the court should determine whether the defendant had any basis to disqualify or screen out the second plaintiff.

59. As the Prophet directed in the concluding part of his saying referred to above note No. 54 above.
60. The Nation, (Vol. 7, No. 2272, Monday, October 8, 2012)p.8
61. The Governor delivered the lecture at the Chatham House in London on the topic "Review and Reform: Key elements and implications of Nigeria's Constitution Review Process".
62. In legal jurisprudence, both within and outside Nigeria, the term means: special, unique or peculiar. See: UZODINMA VS UDENWA (2004)I, NW.LR (pt.854) 303 at 342
63. Action Congress
64. PDP. The Vice-President was initially a PDP member. He later defected to AC due to certair wrangling between him and the then President Olusegun Obasanjo.
65. This was on the 10th of January, 2007

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B.O. Kuewumi J., who decided the matter at the court of first instance, answered the main issue for determination in negative. His lordship was of course, right and commendable. This is so because neither the provisions of ss. 182 and 137 (I)(i) of the 1999 Constitution nor that of item 15, paragraph (a) to (i), relied upon by INEC in the attempted disqualification, lends support for such a reprehensible act by the INEC. S.32(5) of the Electoral Act[66] empowers only the court to deal with matters of disqualification of candidates in the 2007 elections. That remains the position up till now. But alas! With all the very clear position of law on this issue, as can be seen from what the relevant provisions of law above cited connote, the Court of Appeal, on April 3rd, 2007, allowed INEC's appeal to the first instant court's decision. The Appeal Court also dismissed the plaintiff's cross-appeal.

The necessary question that should agitate reader's mind is: Why did the Appeal Court add more to the grounds listed in s. 137 of the Constitution, and thereby went ahead disqualifying Alh. Atiku Abubakar? The section under reference merely gives list of those grounds which can disqualify an aspirant from vying for the position of a President. The section does not empower INEC to disqualify any candidate for running afoul of any of the listed grounds therein. Instead, s. 32 (5) of the Electoral Act treats this. It recognizes only the Court of law as having the power to so disqualify in deserving circumstance(s).

Again, a necessary question is: What was the source of INEC'S power to disqualify Atiku in 2007? Do we refer to the Court of Appeal's reprehensible action as a show of might, entanglement in the abyss of confusion or exhibition of judicial rascality? Readers are free to pick and chose answers.

But thanks to the Apex Court which set aside the Appeal Court's decision and affirmed Kuewumi's earlier judgment. The Supreme Court's stand on the issue represents the whole truth and normalcy. In fact, nothing can be more truthful and equitable than that. Between now and the time for holding the next general elections in the country, and even beyond, judges are advised to stay clear of the Court of Appeal's path in ATIKU VS INEC. It is against the principles of Islamic law for judges to add powers to themselves or fabricate falsehood so as to act in a particular chosen way. Allah says in the Holy Quran:

Among those who are jews, there are some who displace words from (their) right places.... but Allah has cursed them for their disbelief, so they believe not except few[67]

Generally, judicial officers are admonished to uphold the pillar of justice while carrying out their day to day official assignment as officers at the temple of justice. To this extent, reference shall be made to the Chambers Dictionary[68] definition of the word 'Justice' which is given as:

The quality of being just; integrity; impartiality; rightness; the awarding of what is due; the administration of law;

In the same vein, Augie J.C.A. had this to say in OBAJIMU VS ADEDIJI[69] Justice

66. 2006 (This position is maintained in the current 2010 Act)
67. Quran, chap. 4, verse 46
68. (Harrap Publishers Ltd. 1998)P.873
69. (2008), 3 NWLR (Pt. 1073)

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means fair treatment and the justice in any case demands that the compelling rights of the parties must be taken into consideration and balanced in such a way that justice is not only done but must be seen to be done[70].

CONCLUSION

So far, the facts of this study have spoken for themselves. Some of the problems associated with the conduct of elections in Nigeria have been unveiled. Certain unhealthy provisions in the current Electoral Act have been pointed out as a source of election related problems in Nigeria. Another major cause in this respect is the unavailability of some necessary provisions in the said Act. On the two aspects, amendment of the Electoral Act is called for to accommodate the main message of this article so that all and sundry shall be the best for it.

In almost each of the suggestions in the body of the paper, relevant Islamic rule has been shown as the driving basis. In the end, essence of justice upholding by judges is re echoed. The aim is to discourage reoccurrence of the like of the avoidable mistake which the Abuja division of the Court of Appeal fell into in the case of ATIKU VS INEC (2007).

In the end, it is the conviction of the writer that election related problems, which have bedeviled us for a long time as a people in Nigeria, shall soon depart us the moment the recommendations in this paper are implemented. The recommendations, if actualized, have a lot of benefit for the country and the citizenry.

Let's make hay while the sun shines

70. p.1 at 19-20

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