

THE JURISPRUDENCE OF ELECTION PETITIONS IN NIGERIA



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CHAPTER FIFTEEN

THE CLOCK IN JUDICIAL CAPACITY, TIME CONSTRAINTS, AND THE QUALITY OF ELECTORAL ADJUDICATION IN NIGERIA (1999–2023)

John Afolabi Ogedengbe* & Ruth N. Fadipe**

15.1 INTRODUCTION

On 25 October 2023, the Supreme Court of Nigeria dismissed the appeal of the main opposition presidential candidates, Atiku Abubakar and Peter Obi against the declaration of Bola Ahmed Tinubu as winner of the February 2023 presidential election.¹ The dismissal came after months of proceedings before the Presidential Election Petition Court (PEPC), during which petitioners' alleged widespread irregularities, manipulation of electronic result transmission, and questions bordering on the constitutional qualification of the president-elect.² Yet what was equally remarkable was not merely the outcome, but the conditions under which it was produced. Judges were required to receive voluminous documentary evidence, evaluate complex technological questions around the Bimodal Voter Accreditation System (BVAS) and the INEC Result Viewing Portal (IREV),³ hear multiple petitions simultaneously, and deliver a reasoned judgment all within a constitutionally mandated window that brooked no

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¹ *Atiku Abubakar v INEC* (2023) LPELR-61534(SC); *Peter Obi v INEC* (2023) LPELR-61535(SC).

² *Atiku Abubakar v INEC* (2023) LPELR-61534(SC).

³ Independent National Electoral Commission, *Regulations and Guidelines for the Conduct of Elections 2022* (INEC 2022).

extension.⁴ The 2023 presidential petition was not an aberration. It was the fullest expression of a tension that has defined Nigeria's electoral system since the return to democratic governance in 1999, the collision between the constitutional imperative of speed and the judicial imperative of thoroughness.

Nigeria operates one of the most time-compressed electoral adjudication systems in Africa. The Constitution of the Federal Republic of Nigeria, 1999 (as amended), and successive Electoral Acts prescribe strict timelines within which election petitions must be filed, heard, and determined, culminating in the now-familiar 180-day rule for tribunal proceedings.⁵ These provisions were designed with legitimate purposes in mind: to prevent governance paralysis, to foreclose endless litigation, and to instill certainty in electoral outcomes.⁶ Yet across twenty-four years and seven election cycles, a troubling pattern has emerged. Courts are routinely overwhelmed by the volume of petitions generated by Nigeria's general elections.⁷ Judges operate under resource constraints that would challenge any legal system.⁸ And the rigid ticking of constitutional clocks has, in numerous instances, forced tribunals to prioritise procedural closure over substantive inquiry producing what scholars and practitioners have increasingly called "technical".⁹

This pattern carries consequences well beyond individual cases. Africa's democratic trajectory over the past two decades has been shaped, in no small part, by the credibility of electoral dispute resolution. From Kenya's post-election violence of 2007, which catalysed sweeping judicial reforms culminating in the landmark *Raila Odinga v. IEBC* decision of 2017,¹⁰ to Ghana's consistent record of peaceful judicial resolution of electoral

⁴ Constitution of the Federal Republic of Nigeria 1999 (as amended), s 285(5)-(7)

⁵ Constitution of the Federal Republic of Nigeria 1999 (as amended), s 285; Electoral Act 2022, ss 132-137

⁶ *ANPP v Goni* (2012) 7 NWLR (Pt 1298) 147

⁷ Independent National Electoral Commission, *Report on the 2023 General Election* (INEC 2023)

⁸ VO Key Jr, *Southern Politics in State and Nation* (Vintage Books 1949)

⁹ JAA Adetiba, 'Substantial versus Technical in Nigerian Election Petitions' (2015) 6 *Nigerian Bar Journal* 45

¹⁰ *Raila Amolo Odinga & Another v Independent Electoral and Boundaries Commission & 2 Others* [2017] eKLR (Supreme Court of Kenya)

disputes,¹¹ the continent has demonstrated both the risks and the possibilities embedded in electoral adjudication. Nigeria, as Africa's most populous democracy and largest economy, occupies a central position in this landscape.¹² The quality of its electoral is not just a domestic matter but a barometer of democratic health with regional implications. The jurisprudence on Nigerian electoral system has grown substantially since 1999 with scholars such as Omotola, Nwosu, and Jolade who have examined judicial independence, electoral integrity, and the institutional design of election tribunals with rigour and insight.¹³ International organisations have also documented electoral irregularities and judicial shortcomings with commendable detail.¹⁴ Yet a critical analytical gap persists. Most existing studies treat judicial independence, institutional capacity, and constitutional time limits as separate variables, examining each in relative isolation. Very few have considered how these factors interact, how the judicial workload amplifies the distortive effects of time constraints, and how that interaction shapes the quality of that litigants, and by extension the electorate, ultimately receive. This article addresses that gap directly.

The central argument advanced here is that the quality of electoral in Nigeria between 1999 and 2023 has been systematically undermined not by any single institutional failure, but by the compounding interaction of three variables: an unsustainable volume of electoral litigation, a constitutional timeline framework that prioritises finality over deliberation, and a judicial infrastructure that remains underprepared for the demands placed upon it. These three forces do not operate independently, but they form a system that tilts electoral adjudication away from substantive justice and toward procedural resolution. Therefore, the chapter draws on a combination of primary and secondary sources: constitutional provisions

¹¹ *Nana Addo Dankwa Akufo-Addo & Others v John Dramani Mahama & Others* (2013) Writ No J1/6/2013 (Supreme Court of Ghana)

¹² World Bank, *World Development Indicators: Nigeria* (World Bank 2023)

¹³ JS Omotola, 'Electoral Governance and the Democratization Process in Nigeria' (2010) 8(1) *African Journal of Elections* 45; P Nwosu, *Election Petition Litigation in Nigeria* (Sibon Books 2012); A Jolade, 'Judicial Independence and Electoral in Nigeria' (2018) 12 *University of Lagos Law Review* 89

¹⁴ European Union Election Observation Mission, *Nigeria General Elections 2023: Final Report* (EU EOM 2023)

and electoral statutes, reported and unreported judgments of election tribunals and appellate courts, quantitative data on petition volumes compiled from INEC reports and court records, and the scholarly literature on electoral law, judicial politics, and African democratization.

15.2 CONCEPTUAL FRAMEWORK AND LITERATURE REVIEW

The International Institute for Democracy and Electoral Assistance defines electoral as comprising all the mechanisms by which electoral disputes are prevented, identified, and resolved, and through which electoral rights are enforced and protected.¹⁵ This definition, while useful, must be disaggregated into its constituent dimensions if it is to serve as an analytical tool. Three dimensions are particularly relevant to this article. The first is procedural fairness, the guarantee that disputants have meaningful access to an impartial forum, adequate time and resources to present their case, and the benefit of a reasoned decision.¹⁶ The second is substantive accuracy, the extent to which adjudicative outcomes reflect the actual facts of electoral conduct rather than the limitations of the process through which those facts were examined.¹⁷ The third is remedial effectiveness, whether the relief available and granted is proportionate to the wrong established, capable of restoring the integrity of the electoral process, and enforceable in practice.¹⁸ These three dimensions are analytically distinct but practically interdependent. A system that is procedurally fair but substantively inaccurate because time constraints precluded adequate fact-finding fails the test of electoral even if it satisfies the formal requirements of due process.¹⁹

The ECOWAS Protocol on Democracy and Good Governance obliges member states to establish independent and impartial bodies for the resolution of electoral disputes and to ensure that such bodies operate

¹⁵ International Institute for Democracy and Electoral Assistance (International IDEA), *Electoral: An Overview of the International IDEA Handbook* (International IDEA 2010)

¹⁶ Tom R Tyler, *Why People Obey the Law* (Princeton University Press 2006)

¹⁷ Mirjan R Damaška, *Evidence Law Adrift* (Yale University Press 1997)

¹⁸ Mauro Cappelletti and Bryant Garth, *Access to* (Sijthoff and Noordhoff 1978)

¹⁹ Lon L Fuller, *The Morality of Law* (Yale University Press 1964).

transparently and within reasonable timeframes.²⁰ The African Charter on Democracy, Elections and Governance (2007) goes further, requiring state parties to guarantee that electoral dispute resolution mechanisms are accessible, efficient, and capable of delivering binding decisions that reflect the will of the people.²¹ Both instruments implicitly reject a purely proceduralist conception of electoral justice, they demand systems oriented toward substantive democratic outcomes, not merely formal compliance with adjudicative timelines.²² The speed-deliberation trade-off is particularly acute in high-stakes adjudication such as election petitions, where the volume of evidence, the complexity of legal questions, and the political salience of outcomes demand more judicial time and attention precisely when institutional pressures demand less.²³ Petitions frequently involve large quantities of documentary evidence such as polling unit result sheets, voter registers, and accreditation records, alongside technical evidence relating to electronic systems, witness testimony from multiple constituencies, and novel legal questions that may lack clear precedent.²⁴ The expectation that such cases can be fully and fairly determined within rigid constitutional timelines, regardless of their complexity, reflects a legislative optimism that the empirical record has repeatedly confounded.²⁵

The jurisprudence on Nigeria's electoral law has matured considerably since 1999. Omotola's work on electoral governance and democratic consolidation has been foundational in linking institutional design to democratic outcomes.²⁶ Nwosu and Nwankwo have contributed important

²⁰ ECOWAS Protocol on Democracy and Good Governance (Supplementary to the Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security) 2001

²¹ African Charter on Democracy, Elections and Governance 2007

²² International Institute for Democracy and Electoral Assistance (International IDEA), *Electoral: The International IDEA Handbook* (International IDEA 2010)

²³ Richard A Posner, *How Judges Think* (Harvard University Press 2008)

²⁴ *Atiku Abubakar v INEC* (2023) LPELR-61534(SC); *Peter Obi v INEC* (2023) LPELR-61535(SC)

²⁵ Constitution of the Federal Republic of Nigeria 1999 (as amended), s 285(5)-(7); *ANPP v Goni* (2012) 7 NWLR (Pt 1298) 147

²⁶ J Shola Omotola, 'Electoral Governance and the Democratization Process in Nigeria' (2010) 8(1) *African Journal of Elections* 45

analyses of the legal framework governing electoral disputes,²⁷ while Jolade and others have examined judicial independence as a variable in electoral integrity.²⁸ Yet a recurrent limitation of this literature is its tendency to treat the relevant variables in isolation. Studies of judicial independence rarely interrogate how workload shapes the conditions under which independence is exercised. Analyses of constitutional time limits tend to evaluate them as legislative policy choices without examining their interaction with the structural capacity of the courts.²⁹ This chapter departs from that pattern by treating workload, time limits, and adjudicative quality as elements of a single integrated problem. This work argues that the volume of petitions being considered by the election petition tribunals is massive creating an inordinate workload on the judges who were appointed to work at these tribunals. It is the further belief that the fact that these judges are not ordinarily experts in electoral dispute adjudication but merely assigned routinely each election cycle does not allow the tribunals, particularly, the judges to acquire specialised knowledge in this area of law. In essence, we have a situation where judges without any background or expert capacity in electoral law are constituted to rapidly decide on electoral issues within a compressed time frame. It is the belief of the author that this situation unavoidably leads to failed or negligible considerations of key issues affecting the quality of electoral being delivered.

15.3 THE CONSTITUTIONAL AND STATUTORY FRAMEWORK FOR ELECTORAL ADJUDICATION

The legal framework governing electoral dispute resolution in Nigeria is the product of more than two decades of incremental constitutional amendment and statutory refinement. Its centre piece is Section 285 of the Constitution of the Federal Republic of Nigeria, 1999, which establishes the jurisdiction of election petition tribunals and prescribes the timelines within

²⁷ P Nwosu, *Election Petition Litigation in Nigeria* (Sibon Books 2012); C Nwankwo, 'Electoral Dispute Resolution and Democratic Consolidation in Nigeria' (2015) 9 *Nigerian Journal of Public Law* 67

²⁸ A Jolade, 'Judicial Independence and Electoral in Nigeria' (2018) 12 *University of Lagos Law Review* 89

²⁹ Richard A Posner, 'The Role of the Judge in the Twenty-First Century' (2006) 86 *Boston University Law Review* 1049.

which electoral disputes must be resolved.³⁰ In its original form, Section 285 was relatively spare, it created the tribunal structure and assigned jurisdiction without imposing the kind of rigid temporal constraints that would come to define the system in later years.³¹ It is through successive amendments, driven by the practical experience of prolonged litigation across multiple election cycles, that the provision acquired its current character as both the foundation and the principal constraint of Nigeria's electoral system.³²

The first significant constitutional intervention came with the Third Alteration Act of 2010, which introduced explicit time limits for the determination of election petitions.³³ The amendment required that petitions be heard and determined within 180 days of their filing, with appeals to the Court of Appeal concluded within 60 days and further appeals to the Supreme Court within another 60 days.³⁴ The Fourth Alteration Acts of 2017 made additional modifications, most notably extending the scope of provisions governing pre-election matters and clarifying jurisdictional boundaries that had generated considerable litigation.³⁵ The Electoral Act of 2022 further reinforced these timelines while introducing provisions relevant to electronic evidence and result transmission, innovations that, as the 2023 election cycle would demonstrate, the existing framework was ill-equipped to accommodate.³⁶ Taken together, these successive amendments reflect a project of progressive tightening: each reform responded to perceived abuses of the prior framework while adding new layers of procedural constraint.

The court hierarchy established for electoral adjudication follows a structured system. At the base are the Election Petition Tribunals, constituted for each election cycle and staffed by judges drawn from the state and federal high courts.³⁷ These tribunals have original jurisdiction

³⁰ Constitution of the Federal Republic of Nigeria 1999 (as amended), s 285

³¹ Constitution of the Federal Republic of Nigeria 1999 (original text), s 285

³² *ANPP v Goni* (2012) 7 NWLR (Pt 1298) 147

³³ Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010

³⁴ Constitution of the Federal Republic of Nigeria 1999 (as amended), s 285(5)–(7)

³⁵ Constitution of the Federal Republic of Nigeria (Fourth Alteration) Act 2017

³⁶ Electoral Act 2022, ss 47, 60, 132–137

³⁷ Constitution of the Federal Republic of Nigeria 1999 (as amended), s 285(1)–(4)

over petitions arising from House of Assembly, governorship and National Assembly elections.³⁸ The Court of Appeal exercises both original jurisdiction over presidential election petitions, a function it discharges through the specially constituted Presidential Election Petition Court³⁹ and appellate jurisdiction over tribunal decisions.⁴⁰ The Supreme Court sits at the apex, hearing further appeals from the Court of Appeal in election matters, though its jurisdiction has been progressively circumscribed by constitutional amendments designed to prevent the elongation of proceedings.⁴¹ This hierarchy creates a system in which multiple tiers must complete their work within an aggregated constitutional timeline, generating a cascading pressure that intensifies at each level of appeal.

The evolution of statutory timelines mirrors and reinforces these constitutional developments. The Electoral Act of 2002 imposed relatively modest procedural requirements,⁴² and the absence of strict determination deadlines contributed to the notorious delays that characterised the resolution of disputes arising from the 2003 elections, disputes whose resolution in some cases outlasted the tenure of the officials whose elections were contested.⁴³ The Electoral Act of 2006 introduced more structured timelines in response to these delays.⁴⁴ The 2010 Act, enacted in tandem with the constitutional amendments of that year, gave statutory force to the 180-day rule and imposed tighter pre-election matter deadlines.⁴⁵ The 2022 Act retained these core timelines while attempting to modernise the evidentiary framework.⁴⁶ The legislative logic underpinning this trajectory of tightening is not difficult to reconstruct. Prolonged electoral litigation creates governance uncertainty, disrupts the functioning of elected institutions, and provides opportunities for legal

³⁸ *ibid* s 285(2)

³⁹ *ibid* s 239(1)(a)

⁴⁰ *ibid* s 246(1)

⁴¹ *ibid* s 233; *Atiku Abubakar v INEC* (2023) LPELR-61534(SC)

⁴² Electoral Act 2002

⁴³ J Shola Omotola, 'Electoral Governance and the Democratization Process in Nigeria' (2010) 8(1) *African Journal of Elections* 45

⁴⁴ Electoral Act 2006

⁴⁵ Electoral Act 2010, s 134; Constitution of the Federal Republic of Nigeria 1999 (as amended), s 285(6)

⁴⁶ Electoral Act 2022

attrition that disadvantage parties with fewer resources.⁴⁷ Strict timelines, on this view, serve democratic stability by ensuring that electoral outcomes are confirmed or overturned within a period short enough to preserve the practical meaning of the mandate at stake.⁴⁸ There is also a deterrence rationale: if petitioners know that proceedings will be swift and demanding, frivolous or dilatory litigation becomes less attractive.⁴⁹

Yet this logic, however coherent in the abstract, rests on assumptions about institutional capacity that is not obtainable in Nigeria. A comparative glance is instructive. Ghana resolves presidential election petitions through its Supreme Court sitting as a constitutional court, with no rigid statutory deadline but with strong institutional norms of expedition the *Mahama v. Electoral Commission* petition of 2013 was determined within eight months through sustained daily hearings.⁵⁰ Kenya's post-2017 reforms introduced a 42-day window for presidential petition determination,⁵¹ but coupled this with substantial investments in Supreme Court capacity and pre-trial case management.⁵² South Africa handles electoral disputes primarily through the Electoral Court, a specialist body with dedicated resources and expertise.⁵³ Nigeria's approach of imposing tight timelines on a generalist tribunal system without commensurate investment in capacity represents a deliberate but deeply contested policy choice, one that prioritises the appearance of efficiency over the conditions necessary for its achievement.

15.4 JUDICIAL WORKLOAD AND STRUCTURAL PRESSURES IN ELECTORAL LITIGATION (1999–2023)

The scale of electoral litigation in Nigeria since 1999 is, by any comparative measure, extraordinary. Across the seven general election cycles conducted under the Fourth Republic 1999, 2003, 2007, 2011, 2015, 2019 and 2023

⁴⁷ P Nwosu, *Election Petition Litigation in Nigeria* (Sibon Books 2012)

⁴⁸ ECOWAS Protocol on Democracy and Good Governance 2001

⁴⁹ Richard A Posner, *How Judges Think* (Harvard University Press 2008)

⁵⁰ *Nana Addo Dankwa Akufo-Addo & Others v John Dramani Mahama & Others* (2013)

Writ No J1/6/2013 (Supreme Court of Ghana)

⁵¹ Constitution of Kenya 2010, art 140

⁵² *Raila Amolo Odinga & Another v Independent Electoral and Boundaries Commission & 2 Others* [2017] eKLR (Supreme Court of Kenya)

⁵³ Electoral Commission Act 51 of 1996 (South Africa)

general elections, the number of petitions filed has consistently placed Nigeria among the most litigation-intensive electoral systems in the world.⁵⁴ INEC records and judicial reports indicate that approximately 574 petitions were filed after the 1999 elections.⁵⁵ That number rose dramatically to well over 1,100 following the 2003 cycle.⁵⁶ The 2007 elections produced approximately 1,250 petitions nationwide, an unprecedented surge that overwhelmed the tribunal structure and resulted in multiple gubernatorial elections being nullified by appellate courts.⁵⁷ Although the 2011 elections, conducted under the Attahiru Jega-led INEC, recorded a relative decline to roughly 731 petitions, the volume remained substantial.⁵⁸ The 2015 elections generated approximately 663 petitions, reflecting improved electoral administration but still demonstrating systemic litigiousness.⁵⁹ The 2019 general elections produced about 807 petitions, reversing the downward trend.⁶⁰ The 2023 elections marked the highest volume in the history of the Fourth Republic, with over 1,200 petitions reportedly filed across all tiers, presidential, governorship, National Assembly and state assembly elections.⁶¹

These figures are more than statistical data, they reveal structural patterns. They demonstrate that electoral adjudication in Nigeria is systemic, as every general election generates extensive litigation across different constitutional levels.⁶² No other major African democracy combines this scale of multiparty competition, simultaneous multi-tier elections, and

⁵⁴ J Shola Omotola, 'Electoral Governance and the Democratization Process in Nigeria' (2010) 8(1) *African Journal of Elections* 45

⁵⁵ Independent National Electoral Commission, *Report on the 1999 General Elections* (INEC 2000)

⁵⁶ Independent National Electoral Commission, *Report on the 2003 General Elections* (INEC 2004)

⁵⁷ Independent National Electoral Commission, *Report on the 2007 General Elections* (INEC 2008)

⁵⁸ Independent National Electoral Commission, *Report on the 2011 General Elections* (INEC 2012)

⁵⁹ Independent National Electoral Commission, *Report on the 2015 General Elections* (INEC 2016)

⁶⁰ Independent National Electoral Commission, *Report on the 2019 General Elections* (INEC 2020)

⁶¹ Independent National Electoral Commission, *Report on the 2023 General Elections* (INEC 2023)

⁶² Constitution of the Federal Republic of Nigeria 1999 (as amended), s 285

constitutionally compressed adjudication windows in quite the same way.⁶³ The 2003 elections widely criticised for extensive irregularities, generated petitions that exposed the fragility of the tribunal system.⁶⁴ But it was the 2007 cycle, often described judicially as deeply flawed, that truly tested the judiciary's limits.⁶⁵ Several landmark appellate decisions nullified gubernatorial elections,⁶⁶ and in some instances proceedings extended dangerously close to, or beyond, the tenure of contested office holders.⁶⁷ The response was the Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010, which imposed the now-familiar 180days deadline for determination of petitions and 60days limits for appeals.⁶⁸ The reform sought to eliminate protracted litigation. It succeeded but it did so by constitutionalising speed in a manner that transformed time from a managerial consideration into a jurisdictional guillotine which led to the sacrifice of thorough judicial analysis.

Over the years, these timelines have been shown to be absolute. In *ANPP v Goni*, the Supreme Court held that once the 180-day period expires, a tribunal is divested of jurisdiction, regardless of the stage of proceedings.⁶⁹ Similarly, in *PDP v INEC*, the Court reaffirmed that no court possesses authority to extend constitutionally prescribed timelines, even where delay is attributable to no fault of the petitioner.⁷⁰ Numerous petitions in the 2011, 2015 and 2019 cycles were dismissed solely because they were filed outside statutory windows or because trial proceedings exceeded the 180-day limit.⁷¹ Substantive grievances were rendered legally irrelevant by the ticking constitutional clock. The 2019 and 2023 cycles revealed the

⁶³ ECOWAS Protocol on Democracy and Good Governance 2001

⁶⁴ European Union Election Observation Mission, *Nigeria General Elections 2003: Final Report* (EU EOM 2003)

⁶⁵ European Union Election Observation Mission, *Nigeria General Elections 2007: Final Report* (EU EOM 2007)

⁶⁶ *Peter Obi v INEC* (2007) 11 NWLR (Pt 1046) 565; *Rotimi Amaechi v INEC* (2008) 5 NWLR (Pt 1080) 227

⁶⁷ *Ladoja v INEC* (2007) 12 NWLR (Pt 1047) 119

⁶⁸ Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010

⁶⁹ *ANPP v Goni* (2012) 7 NWLR (Pt 1298) 147

⁷⁰ *PDP v INEC* (2014) 17 NWLR (Pt 1437) 525

⁷¹ *CPC v. INEC* (2011) 18 NWLR (Pt 1279) 493; *ACN v. Nyako* (2013) 12 NWLR (pt 1368) 585; *Shehu v. Bello* (2014) 5 NWLR (pt 1401) 336, *APC v. Umana* (2019) 14 NWLR (Pt 1691) 1

compounded effect of these reforms under conditions of heightened political contestation and technological innovation. The 2023 general elections alone generated over 1,200 petitions nationwide.⁷² At the presidential level, the Court of Appeal sitting as the Presidential Election Petition Court (PEPC) confronted a petition of unprecedented documentary and technical complexity. Allegations centred on the electronic transmission of results through the Bimodal Voter Accreditation System (BVAS) and the INEC Result Viewing Portal (IREV).⁷³ Yet the court was bound to conclude proceedings within the constitutionally fixed timeframe.⁷⁴ Thus, capacity constraints exacerbate these pressures. Election tribunals are ad hoc bodies constituted from the general judiciary.⁷⁵ The critical analytical point is interaction. Workload and time constraints do not merely accumulate; they compound. A tribunal facing a heavy docket under an inflexible 180-day deadline experiences a qualitatively different kind of pressure from one facing either condition alone. The rational response to compounded pressure is abbreviation which displays as tighter evidentiary rulings, stricter procedural compliance, and increased dismissals on threshold grounds.⁷⁶

15.5 TIME LIMITS AS A PROBLEM: DOCTRINE, PRACTICE, AND CONSEQUENCES

Any serious engagement with constitutional time limits in election petitions must begin by taking their rationale seriously. The case for imposing strict timelines on the resolution of electoral disputes is grounded in values that are not merely procedural but fundamentally democratic.⁷⁷ Electoral outcomes are the mechanism through which political authority is conferred and governance mandates are established.⁷⁸ Prolonged uncertainty about the validity of those outcomes is not a neutral condition; it disrupts the

⁷² INEC, *Report on the 2023 General Elections*

⁷³ Electoral Act 2022, ss 47, 60

⁷⁴ Constitution of the Federal Republic of Nigeria 1999 (as amended), s 285(6)–(7)

⁷⁵ Constitution of the Federal Republic of Nigeria 1999 (as amended), s 285(1)–(4)

⁷⁶ *ANPP v Goni* (2012) 7 NWLR (Pt 1298) 147, *CPC v. INEC* (2011) 18 NWLR (Pt 1279) 493; *ACN v. Nyako* (2013) 12 NWLR (pt 1368) 585; *Shehu v. Bello* (2014) 5 NWLR (pt 1401) 336, *APC v. Umana* (2019) 14 NWLR (Pt 1691) 1

⁷⁷ Constitution of the Federal Republic of Nigeria 1999 (as amended) s 285(6)–(7); Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010

⁷⁸ ECOWAS Protocol on Democracy and Good Governance 2001 art 2(1)

functioning of elected institutions.⁷⁹ A governorship whose tenure is consumed by litigation over its own validity cannot effectively govern, while a legislature whose composition is unsettled by pending petitions cannot legislate with full authority.⁸⁰ Time limits exist, in part, to prevent this institutional paralysis. These are legitimate constitutional values. The question this article poses is not whether they are valid, but whether the specific framework Nigeria has constructed in their service achieves them without sacrificing substantive justice.

The 180-day rule breaks down in practice at precisely the points where electoral is most needed, in complex, high-stakes disputes where the truth of what happened during an election is genuinely difficult to establish.⁸¹ The gathering of evidence in electoral petitions is inherently time-consuming. Result sheets must be obtained from hundreds or thousands of polling units, often through processes requiring judicial orders compelling reluctant respondents to produce documents in their possession.⁸² Forensic analysis of electoral materials, where required, demands expert engagement that cannot be compressed without sacrificing reliability.⁸³ Witness preparation, particularly for witnesses drawn from geographically dispersed constituencies, requires logistical coordination that the tight pre-hearing period does not comfortably accommodate.⁸⁴ The cross-examination, principal mechanism through which adversarial systems test the reliability of evidence, is particularly vulnerable to timeline pressure. In complex electoral petitions, meaningful cross-examination of key witnesses may require days of sustained inquiry.⁸⁵ Under the 180-day framework, tribunals have routinely been compelled to truncate cross-examination, impose limits on the number of witnesses each party may call, and compress documentary review processes.⁸⁶ The

⁷⁹ J Shola Omotola, 'Electoral Governance and the Democratization Process in Nigeria' (2010) 8(1) *African Journal of Elections* 45

⁸⁰ J Shola Omotola, 'Electoral Governance and the Democratization Process in Nigeria' (2010) 8(1) *African Journal of Elections* 45

⁸¹ *Buhari v Obasanjo* (2005) 13 NWLR (Pt 941) 1 (SC)

⁸² Electoral Act 2022 ss 134–137

⁸³ *Atiku Abubakar v INEC* (2023) LPELR-61534(SC)

⁸⁴ Independent National Electoral Commission, *Report on the 2023 General Elections* (INEC 2023)

⁸⁵ *Peter Obi v INEC* (2023) LPELR-61535(SC)

⁸⁶ *Action Congress of Nigeria v Nyako* (2013) 12 NWLR (Pt 1368) 585 (SC)

practical consequence is that petitioners who may have genuine grievances find themselves unable fully to ventilate them within the available time, not because their case lacks merit but because the system lacks institutional capacity.

Most damaging of all is the pattern of dismissals on procedural rather than substantive grounds. Across several election cycles, tribunals have struck out petitions for failures to comply with pre-filing requirements, defects in service of process, or technical non-compliance with procedural rules, thereby foreclosing substantive inquiry without determining whether the underlying electoral conduct was lawful.⁸⁷ While procedural regularity is a legitimate judicial concern, its elevation above substantive inquiry in the context of electoral justice reflects a systemic prioritisation of administrative tidiness over democratic justice.⁸⁸ Nigerian courts have not been passive in the face of these tensions. The jurisprudence on constitutional time limits reveals a sustained, if at times inconsistent, judicial effort to navigate the conflict between the letter of the constitutional framework and the demands of substantive justice.⁸⁹ The resulting body of case law is characterised by oscillation between strict and purposive approaches, with significant implications for the predictability and coherence of electoral adjudication.⁹⁰

The Supreme Court's decision in *Rotimi Amaechi v INEC* remains one of the most consequential interventions in this jurisprudence.⁹¹ In resolving the dispute over the Rivers State governorship, the Court demonstrated a willingness to look beyond procedural formalism and engage with the substantive constitutional question of who was validly nominated by the political party. The decision established important doctrinal markers concerning the Court's interpretive approach to electoral provisions, signalling that technical objections would not invariably triumph over

⁸⁷ *Madumere v Okafor* (2016) 14 NWLR (Pt 1533) 1 (SC); *Ucha v Elechi* (2012) 13 NWLR (Pt 1317) 330 (SC)

⁸⁸ Pius Nwosu, *Election Petition Litigation in Nigeria* (Sibon Books 2012)

⁸⁹ Constitution of the Federal Republic of Nigeria 1999 (as amended) s 285(6)–(7); Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010

⁹⁰ *ANPP v Goni* (2012) 7 NWLR (Pt 1298) 147 (SC); *PDP v INEC* (2014) 17 NWLR (Pt 1437) 525 (SC)

⁹¹ *Rotimi Amaechi v INEC* (2008) 5 NWLR (Pt 1080) 227 (SC)

substantive inquiry where constitutional rights were implicated.⁹² Similarly, the case of *Nyesom Wike v Dakuku Peterside*, arising from the same Rivers State political environment, offered a contrasting lesson.⁹³ The Supreme Court overturned the decision of the Court of Appeal and restored the election of the appellant, a judgment that generated substantial scholarly and civil society commentary.⁹⁴ Critics argued that the Court's treatment of the evidentiary record reflected the pressures inherent in expedited adjudication under section 285 of the Constitution. The case illustrated how even a court committed in principle to substantive operates within structural conditions, most notably the non-extendable 180-day rule that shapes deliberative depth and procedural management.⁹⁵

The 2023 presidential petitions brought these tensions to their sharpest expression. The Presidential Election Petition Court (PEPC), and subsequently the Supreme Court, were required to address novel questions concerning the legal status of electronic transmission of results, the evidentiary weight of BVAS records, and constitutional requirements relating to candidate qualification.⁹⁶ These issues arose under the framework of the Electoral Act 2022 and section 285 of the Constitution, which permits no flexibility in adjudicatory timelines. In *Atiku Abubakar v INEC* and *Peter Obi v INEC*, the Supreme Court affirmed the decisions of the PEPC, bringing the litigation to a constitutionally mandated close.⁹⁷ Although legally final, the judgments generated considerable academic and professional debate regarding the interaction between speed and deliberative quality in electoral adjudication.⁹⁸ The divergence between majority and concurring opinions on certain evidentiary and interpretive issues underscored the complexity of the questions presented and

⁹² *ibid*; see also Constitution of the Federal Republic of Nigeria 1999 (as amended) s 221

⁹³ *Nyesom Wike v Dakuku Peterside* (2016) 7 NWLR (Pt 1512) 452 (SC)

⁹⁴ Yemi Akinseye-George, 'Electoral Jurisprudence and Democratic Stability in Nigeria' (2017) *Nigerian Bar Journal*

⁹⁵ Constitution of the Federal Republic of Nigeria 1999 (as amended) s 285(6)

⁹⁶ Electoral Act 2022 ss 47, 60; Constitution of the Federal Republic of Nigeria 1999 (as amended) s 134

⁹⁷ *Atiku Abubakar v INEC* (2023) LPELR-61534(SC); *Peter Obi v INEC* (2023) LPELR-61535(SC)

⁹⁸ Independent National Electoral Commission, *Report on the 2023 General Elections* (INEC 2023); J Shola Omotola, 'Electoral Governance and Democratic Consolidation in Nigeria' (2024) *African Journal of Elections*

highlighted the tension between constitutional finality and exhaustive judicial reasoning. This case further reaffirmed the position that many cases are decided not on the merit or due to extensive cerebral analysis but on - the simple fact that time is out.

15.6 THE QUALITY OF ELECTORAL JUSTICE: OUTCOMES ACROSS SIX ELECTION CYCLES

The success rate of election petitions in Nigeria across the several election cycles has been, by any measure, remarkably low.⁹⁹ Available data from tribunal records, reports of the Independent National Electoral Commission (INEC), and civil society monitoring organisations consistently indicate that fewer than ten per cent of filed petitions result in the nullification of an election or a substantive order of relief in favour of the petitioner.¹⁰⁰ The overwhelming majority are either dismissed on procedural grounds, withdrawn, or determined against the petitioner on the merits.¹⁰¹ While a low success rate is not, in itself, evidence of systemic failure as it is entirely possible that many petitions lack merit, the pattern of dismissals is revealing.¹⁰² A disproportionate share of unsuccessful petitions across election cycles have been terminated on procedural rather than substantive grounds, including failures of service, non-compliance with statutory pre-filing requirements, and defects in the formulation of grounds.¹⁰³ This pattern suggests that the system prioritises procedural compliance over examining the substance of complaints, creating barriers so high that many petitioners with potentially valid claims never have their evidence fully considered.¹⁰⁴

⁹⁹ Independent National Electoral Commission, *Report on the 2011 General Elections* (INEC 2012); Independent National Electoral Commission, *Report on the 2015 General Elections* (INEC 2016); Independent National Electoral Commission, *Report on the 2019 General Elections* (INEC 2020)

¹⁰⁰ Ibid., European Union Election Observation Mission, *Nigeria General Elections Final Reports* (2007, 2011, 2019)

¹⁰¹ Pius Nwosu, *Election Petition Litigation in Nigeria* (Sibon Books 2012)

¹⁰² J Shola Omotola, 'Electoral Governance and Democratic Consolidation in Nigeria' (2010) 8(1) *African Journal of Elections* 45

¹⁰³ See *Ucha v Elechi* (2012) 13 NWLR (Pt 1317) 330 (SC); *Madumere v Okafor* (2016) 14 NWLR (Pt 1533) 1 (SC)

¹⁰⁴ Pius Nwosu, *Election Petition Litigation in Nigeria* (Sibon Books 2012)

15.7 DOCTRINAL EVOLUTION THROUGH LANDMARK CASES

The qualitative dimension of the system's performance is best illuminated through its landmark decisions, which trace a jurisprudential arc marked by both innovation and restraint. In *Muhammadu Buhari v Olusegun Obasanjo*, the Supreme Court articulated demanding standards for proof of electoral malpractice, holding that a petitioner must not only establish that irregularities occurred but also demonstrate that they substantially affected the result of the election.¹⁰⁵ This "substantial effect" doctrine, while doctrinally coherent and anchored in statutory interpretation,¹⁰⁶ has in practice operated as a formidable evidentiary hurdle. Proving both that irregularities occurred and that they changed the election result requires thorough and detailed evidence, the very kind of careful inquiry that strict constitutional timelines make difficult.¹⁰⁷ In *Ngige v Obi*, the courts demonstrated their capacity, where evidence was clear and compelling, to nullify a gubernatorial election and restore a mandate.¹⁰⁸ The decision revived confidence in the judiciary's willingness to engage substantively with electoral disputes. By contrast, *Abubakar v Yar'Adua* presented the Supreme Court with its most politically consequential dispute of the Fourth Republic to that date.¹⁰⁹ The Court ultimately upheld the 2007 presidential result despite widespread domestic and international criticism of the election's administration.¹¹⁰ The case illustrated the tension between institutional caution and the demands of substantive electoral accountability. In *Marwa v Nyako*, the Supreme Court clarified jurisdictional boundaries in pre-election matters, narrowing the categories of disputes that could be entertained outside the strict framework of section 285 of the Constitution.¹¹¹ This doctrinal refinement further concentrated the already limited adjudicative space available to petitioners.¹¹²

¹⁰⁵ *Muhammadu Buhari v Olusegun Obasanjo* (2005) 13 NWLR (Pt 941) 1 (SC)

¹⁰⁶ Electoral Act 2002 (repealed) s 135(1); Electoral Act 2022 s 134(1)

¹⁰⁷ Constitution of the Federal Republic of Nigeria 1999 (as amended) s 285(6)

¹⁰⁸ *Ngige v Obi* (2006) 14 NWLR (Pt 999) 1 (CA), affirmed on appeal.

¹⁰⁹ *Abubakar v Yar'Adua* (2009) 19 NWLR (Pt 1120) 1 (SC)

¹¹⁰ European Union Election Observation Mission, *Nigeria General Elections 2007 Final Report* (EU EOM 2007)

¹¹¹ *Marwa v Nyako* (2012) 6 NWLR (Pt 1296) 199 (SC)

¹¹² Constitution of the Federal Republic of Nigeria 1999 (as amended) s 285(9)

15.8 TOWARD REFORMS: RECONCILING FINALITY WITH JUSTICE

One of the most important reforms Nigeria's electoral system needs is the creation of a permanent and specialised Electoral Disputes Court.¹¹³ The current system relies on ad hoc tribunals set up for each election cycle, staffed by judges temporarily drawn from the regular judiciary and dissolved once petitions are concluded.¹¹⁴ While this approach ensures disputes are heard, it prevents the development of lasting expertise and institutional consistency in electoral adjudication.¹¹⁵ Because tribunals are reconstituted every cycle, the system repeatedly starts from scratch. Judges must quickly adapt to complex electoral rules under strict constitutional timelines, and any experience gained disappears once the tribunal is dissolved.¹¹⁶ A permanent court, by contrast, would allow for the development of a specialised bench with sustained expertise in electoral law, evidentiary standards, and technology-related disputes.¹¹⁷ It would also promote procedural consistency, reducing time lost to technical objections and procedural uncertainty that frequently consume tribunal proceedings.¹¹⁸ Over time, such a court would build institutional credibility that carries across election cycles rather than being rebuilt each time.¹¹⁹ In fact, Kenya provides a useful comparative example. In *Raila Amolo Odinga v Independent Electoral and Boundaries Commission*, the Supreme Court of Kenya nullified a presidential election, the first time an African apex court had done so.¹²⁰ That decision was made possible not only by judicial independence but also by an institutional structure that allowed the Court to develop expertise in electoral adjudication.¹²¹ Although Nigeria need not

¹¹³ Constitution of the Federal Republic of Nigeria 1999 (as amended) s 285

¹¹⁴ *ibid* s 285(1)–(4)

¹¹⁵ Pius Nwosu, *Election Petition Litigation in Nigeria* (Sibon Books 2012)

¹¹⁶ *ANPP v Goni* (2012) 7 NWLR (Pt 1298) 147 (SC)

¹¹⁷ J Shola Omotola, 'Electoral Governance and Democratic Consolidation in Nigeria' (2010) 8(1) *African Journal of Elections* 45

¹¹⁸ *Ucha v Elechi* (2012) 13 NWLR (Pt 1317) 330 (SC)

¹¹⁹ Yemi Akinseye-George, 'Electoral Jurisprudence and Democratic Stability in Nigeria' (2017) *Nigerian Bar Journal*

¹²⁰ *Raila Amolo Odinga v Independent Electoral and Boundaries Commission* [2017] eKLR (Supreme Court of Kenya)

¹²¹ International Commission of Jurists, *The 2017 Kenyan Presidential Election Decision: A Landmark for Electoral in Africa* (ICJ 2018)

replicate Kenya's exact model, the broader lesson is clear: high-quality electoral justice requires deliberate institutional design and sustained investment in specialised judicial capacity.¹²²

15.9 CONCLUSION

Looking at the coloured history of election petitions in Nigeria and the possibility of an annulment of elections, the need for a quick dispensation of electoral disputes cannot be minimized. However, this article argues that although strict constitutional timelines for election petitions were introduced to promote stability and ensure that disputes are resolved before elected officials take office, they have also produced unintended consequences for substantive electoral justice. The 180-day rule and other related deadlines were meant to prevent prolonged uncertainty and safeguard democratic continuity. In many ways, they have achieved that goal — election cases are now concluded more quickly and rarely drag into an official's tenure. However, when these tight timelines are combined with heavy caseloads and limited judicial capacity, the system shifts focus. Instead of concentrating primarily on carefully examining the facts and merits of each dispute, courts often operate under pressure to meet procedural deadlines.

Across successive election cycles, courts have consistently delivered final judgments. Yet many petitions appear to be dismissed on procedural grounds or resolved under significant time constraints. This raises concerns about whether complex electoral disputes always receive the depth of scrutiny they deserve. The system is efficient, but not always fully convincing in terms of substantive justice. The broader concern is that speed alone cannot sustain public confidence. Democratic stability depends not just on timely decisions, but on decisions that are seen as fair and thorough. When disputes are closed without fully addressing underlying questions about electoral integrity, doubt is not eliminated, it is merely deferred. As Nigeria moves into future election cycles under even tighter deadlines, the key challenge remains clear: preserving the benefits of swift resolution while ensuring that efficiency does not undermine substantive electoral justice.

¹²² ECOWAS Protocol on Democracy and Good Governance 2001 art 2(1)