

Election disputes: Go to Court, Which Court?

BY TONNIE IREDIA

There is nothing new about elections in Nigeria. Except for the annulled June 12 election, we have never had a free, fair and credible process because our politicians know that voters don't believe in them. It is worse that it is the ruling party which uses all organs of government to ensure the right candidate does not win. The new system in which voting is open but collation is manipulated dates back to 1999 when former American President Jimmy Carter led the international election monitoring group. Carter told reporters that the number of voters on the voting queue was different from the results that were announced. In other words, the mischief that needs to be cured in Nigerian elections is the collation process. Everything is usually changed during the process to overturn the correct results with the strong telling the weak to go to court. Our courts are not allowed to interfere in the election process hence the law that courts should never stop an electoral commission from doing its work. Many young people were probably too young to be aware of this while those who are old enough to know about the law think that the law can be experimented upon. All that one needs to do is to have enough funds to hire big lawyers that can intimidate a judge. But whether we hire a long list of lawyers or not, the basic truth is that no court is allowed to stop an electoral body from doing its work. Although one legislator said the other day that it was for this reason that they put in the law to make it impossible for courts to stop electoral commission, it is good for Nigerians to know that even the military had the same law.



In 1993, Senator Athur Nzeribe's Association for Better Nigeria ABN attempted to stop the June 12 presidential election, but the electoral body ignored the court and went ahead with the election. The decision of the then electoral body was informed by Section 19 (1) of the Presidential Election Decree No. 13 of 1993 which barred any court from interfering in its work. So, there is nothing new with what the courts are doing today; they are following the old order whereby Judges are materially influenced to give wrong judgments. How can a court bar police and other security agencies from securing an electoral process and argue that it didn't bar the electoral commission from doing its work? If courts are to positively contribute to national development, they must tackle the unending failed elections in the country. Our judges are very different these days; gone were the days of Justice George Oguntade, then a judge of the Court of Appeal who dealt with the subject substantively. According to Oguntade, "where a court makes an order in contravention of a statutory provision which forbids it from making such orders, the order so made is null and void and no appeal need be filed against the order." What this confirms is that we have always had stomach infrastructure judges and lawyers including senior advocates who are always pretending that there is nothing a court cannot do. We say here today that a judge who attempts to stop an election is an unpatriotic citizen who is not bothered about our toga of a country whose elections always fail integrity tests. Oguntade's ruling remains the latest and only law on the subject.

Of course, we are not saying that courts are irrelevant in our electoral process. There is time for courts to work, so they need not work before their time. For example, all the wrongs which the Federal High Court found with the Rivers State Electoral Commission could be used to nullify the election; they cannot be used to stop the election from holding because that would be against the law. If courts start to break the law, then we are heading towards destruction. Even if the military keeps to its promise of allowing democracy to grow, we should not tempt them to change their mind. Besides, let us not remind politicians that they can revert to the old order where strong candidates were murdered just before voting day because people have lost faith in the

judicial process. Our nation needs to listen now. As far as 'go to court' is concerned, it is getting obvious that those who mouth it know the exact courts where the case would eventually be heard. To start with, it is usually the Federal High Court which on its own has a limited jurisdiction. The court has become so popular that it can alter State matters into federal matters. In Kano for example, although chieftaincy matters are purely state matters, the Federal High Court in the city successfully created another emir. Could this idea of further compounding every controversy be the nation's expectation of the judiciary? Chief Justice Kekere-Ekun must in her moments of deep thoughts begin to see how some judges can be stopped from getting involved in ousted matters. She also needs to take a closer look at the way unlimited State High Courts are made to lose their jurisdiction to the Federal High Court which ordinarily only has limited jurisdiction. We are not unaware that despite several warnings, courts are still intransigent on those rules which were made to keep them in line. Perhaps it is time to resurrect the old law which stopped the judiciary from determining winners of elections. Instead, they should examine an election and see whether the process was followed or not. If it was followed, no problem but, if it was not followed, the court should nullify the election and give room for a repeat election. That may help to retrieve the integrity of the judiciary which is right now spoiling her image through the determination of elections in which there are more votes than voters.

Another thing that the heads of court can do is to stop forum shopping. Whereas it is true that all Federal High Courts have the same jurisdiction, it is suspicious that people leave the Federal High Court in the state where they live and where the case arose to the Federal High Court in Abuja to file their cases. What is special about the Federal High Court in Abuja that it is so well patronized? Could it be that judges of the Federal High Court in that city are secret members of a political party? If the situation is not reversed, the judiciary would someday be like police that always cancels check points only for another Inspector General to assume office only to cancel it again because it was never obeyed. What this means is that whatever takes away food from the corrupt hands of officials will really never stop. Instead, they will design new strategies for continuing with the mischief. Except we take such stringent action, we might soon get to a situation in which a common thief can be freed if in his defence, he cites the police. It would then be argued that since the case has police involvement, it has to be moved to the Federal High Court because states cannot deal with the police. In other words, we have successfully turned the object of a case to its subject. In Kano, it was only a chieftaincy case but as soon as police and other security agencies were added to it for implementation of judgment it became a Federal High Court case. Obviously, those who are benefiting from the roles the Federal High Courts are being made to play now are enjoying it but it is only fair that we are all reminded that someday those in government now may not be there again. When the APC was the opposition party, it went to court, to stop the involvement of the Army in Nigeria's election. The party won the case and it was decided that the Army should be far away from election centres. Today, the APC is in government and probably now sees the "usefulness" of the army in elections. If it saw this earlier, it may not have gone to court to secure a victory against what it's now doing. Nigeria's elections would be better handled if every organ is allowed to play its assigned role. There is no need to display voting and declaration of result segments while collation of votes is done in secret. Our Federal High Court should please give us some breathing space.