

# **ELECTION PETITION IN NIGERIA**

*Presented by:*

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**GREENFIELD CHAMBERS IN-HOUSE  
LECTURES**

# ELECTION PETITION IN NIGERIA

## PART 1

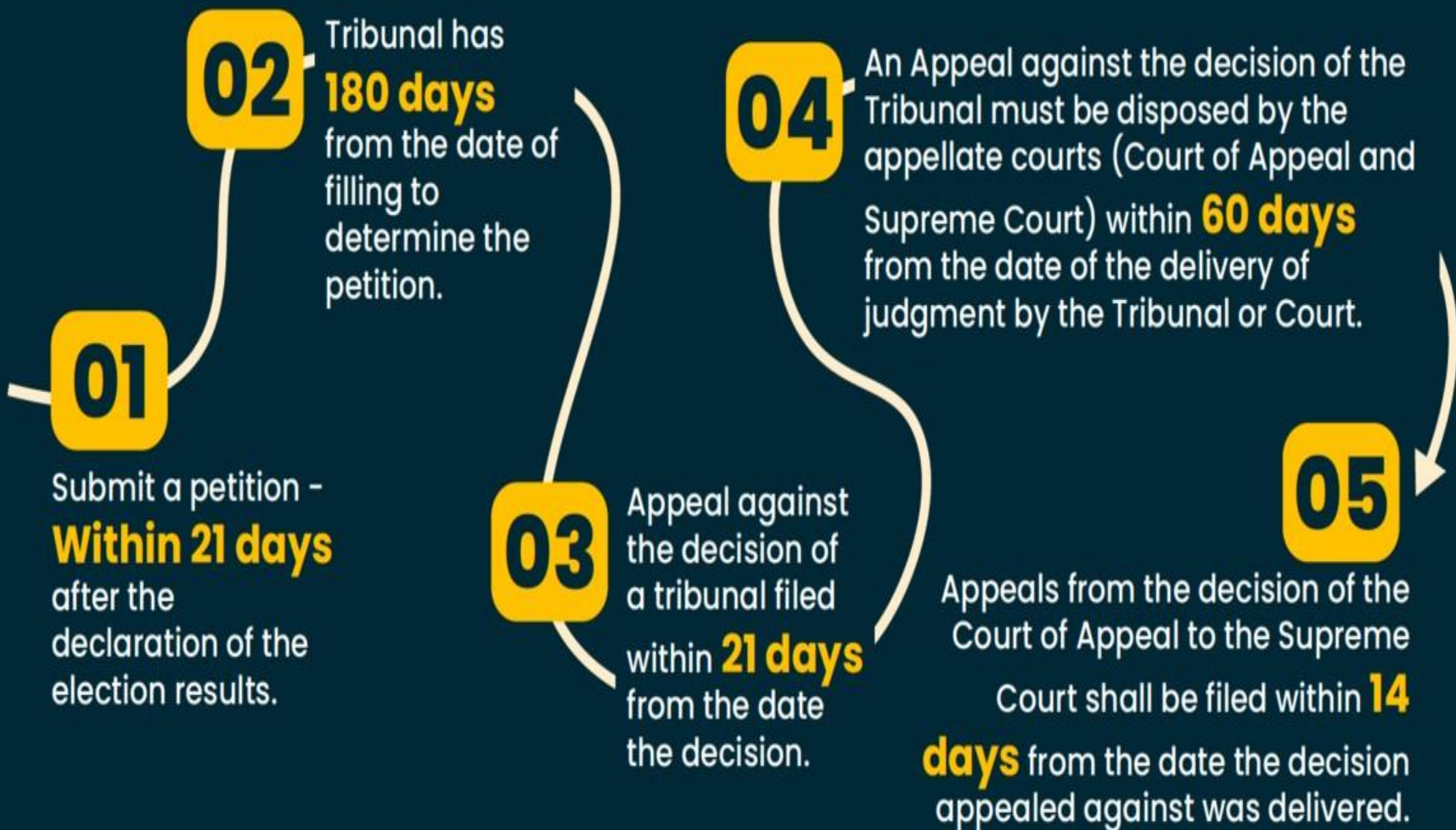
- Election Petition is the process meant to challenge the validity of an election. Election petitions are said to be ‘sui generis’ in nature. This means that they are neither civil proceedings nor criminal proceedings *strictu sensu* but are rather in a class of their own with special regulatory regimes which require strict compliance.
- In *Kalu v. Uzor* (2004) 12 NWLR (Pt. 886) 1 at 20 the Court of Appeal clarified the meaning and implications of this special categorisation when it held that:

*Election petition have certain peculiar features which make them sui generis. They stand on their own and bound by their rules under the law, relevant rules are raised in mandatory forms. Defects or irregularities which in other proceedings are not sufficient to affect the validity of the claim are not so in an election petition.”*

# LAWS THAT REGULATE ELECTION PETITION IN NIGERIA

- ▣ The CFRN, 1999 as amended
- ▣ Electoral Act 2022
- ▣ The Rules of Procedure for Election Petitions ( First Schedule to Electoral Act)(RPEP)
- ▣ The Election Tribunal & Court Practice Directions 2011-made by the President, Court of Appeal
- ▣ Federal High Court (Civil Procedure) Rules 2019 (where electoral act is silent).
- ▣ Election Judicial Proceedings Practice Direction, 2023
- ▣ Supreme Court Pre-Election and Election Appeals Practice Directions 2023.
- ▣ • Evidence Act 2023.

# Key Timelines In Election Petitions



# COURTS WITH JURISDICTION IN ELECTION PETITIONS

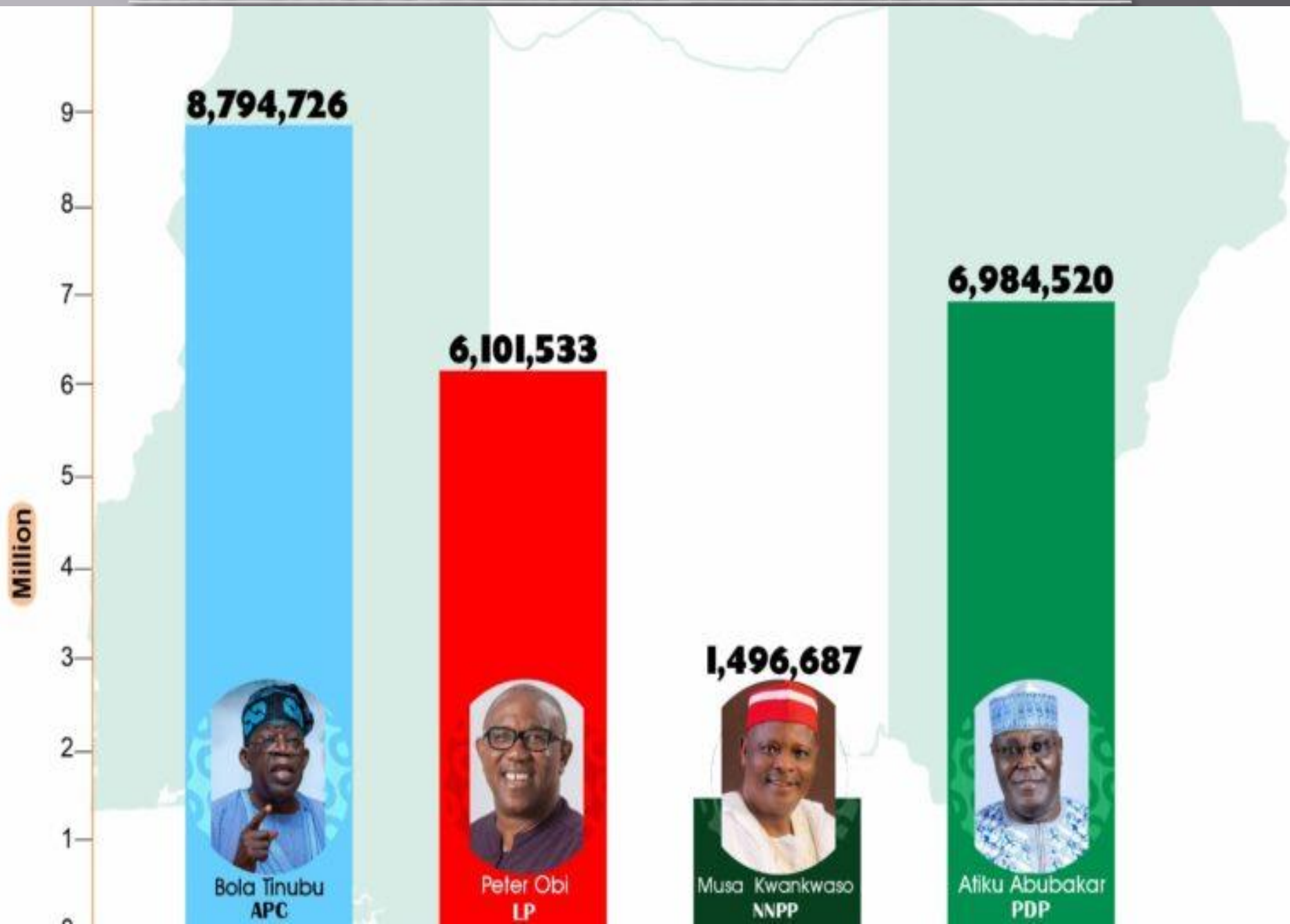
- ▣ **THE SUPREME COURT:** Section: 230 CFRN 1999 (as amended). To the exclusion of Appeals from the National & States Houses of Assembly Election Petition Tribunals. These appeals ends at the Court of Appeal.
- ▣ **THE COURT OF APPEAL** (The Presidential Election Petition Tribunal sits at the Court of Appeal): The jurisdiction of the court of appeal in election petition is over the office of president and vice-president and it is EXCLUSIVE--OBASANJO V. YUSUF (2004) LPELR-2151(SC).
- ▣ The jurisdiction of the court of appeal in this regard is exclusive and the composition of the court is at least three (3) justices of the court of appeal---S. 239(1)(2) CFRN. : The jurisdiction is on any of the following:
  - a. **Whether any person has been validly elected into the offices of the president or vice-president.**
  - b. Whether the term of office of the president or vice-president has ceased; or Whether the office has become vacant.

- ▣ **THE GOVERNORSHIP ELECTION PETITION:** There shall be a Governorship Election Tribunal for each state of the federation ---S. 285(2) CFRN. The jurisdiction is to determine whether any person has been validly elected to the office of Governor or Deputy-Governor of a state. Composition and quorum is the same as the National and State House of Assembly Election Tribunal.
- ▣ **NATIONAL AND STATE HOUSE OF ASSEMBLY ELECTION TRIBUNAL:** It is to be established in each state of the federation and the FCT. Their jurisdiction is to determine whether a person has been validly elected as a member of the National Assembly or State House of Assembly---S. 285(1) CFRN. Their jurisdiction is exclusive. The composition as found in the 6th schedule, CFRN is:
  - ▣ **The chairman who shall be a judge of the HC; and**
  - ▣ **Two other members appointed from judges of High Court, Kadis of Sharia Court of Appeal, judges of the Customary Court of Appeal or other members of the judiciary not below the rank of chief magistrate.**



- ▣ They are to be appointed by President of the Court of Appeal (PCA) in consultation with Chief Justice of the State, the Grand kadi of the Sharia Court of Appeal or the President of the Customary Court of Appeal of the state – section 1(1)(3) of sixth schedule. The quorum/composition is the chairman and at least, one member.
- ▣ **AREA COUNCIL ELECTION TRIBUNAL:** In the FCT Abuja, the Electoral Act prescribes the procedure for election into Area Councils in Abuja. It establishes the Area Council Election Tribunal for the FCT and an Area Council Election Appeal Tribunal for the FCT. The decisions of the appeal tribunal on area council elections is final. The Electoral Act does not create election tribunals for local government councils as they are under the exclusive jurisdiction of the states.

# WHO CAN PRESENT AN ELECTION PETITION





## CONTENT OF A VALID ELECTION PETITION

- ❑ **HEADING OF THE APPROPRIATE COURT OR TRIBUNAL: E.g. IN THE NATIONAL ASSEMBLY ELECTION PETITION TRIBUNAL**
- ❑ **PETITION NUMBER: E.g. EPT/IM/GOV/65/2023.**
- ❑ **HEADING: IN THE MATTER OF THE PETITION OF THE GOVERNORSHIP ELECTION OF IMO STATE HELD ON THE 11<sup>TH</sup> DAY OF NOVEMBER, 2023.**
- ❑ **Indicated in Paragraph 4(1)(a-d) of the 1<sup>st</sup> Schedule others include:**
  - ❑ Specify the parties interested in the election petition.
  - ❑ Specify the right of the petitioner to present the election petition.
  - ❑ State the holding of the election, the scores of the candidates and the person returned as the winner of the election; and
  - ❑ State clearly the facts of the election petition and the ground or ground on which the petition is based and the reliefs sought by the petitioner.

- The Election Petition shall be divided into paragraphs each of which shall be confined to a distinct issue or major facts of the election petition, and every paragraph shall be numbered consecutively: Sub(2)
- The Election petition shall conclude with a prayer or prayers, as for instance, that the petitioner or one of the petitioners be declared validly elected or returned, having polled the highest number of lawful votes cast in the election or that the election may be declared nullified, as the case may be; and.
- Shall be signed by the petitioner or all the petitioners or by the Solicitor, any, named at the foot of the election petition. See: Para 3 (a-b).
- At the foot of the election petition there shall also be stated and address of the petitioner for service at which address documents intended for the petitioner may be left and its occupier. See: Para 4.
- The election petition shall be accompanied by:
  - a. a list of the witnesses that the petitioner intends to call in proof of the petition;
  - b. Written statements on oath of the witnesses; and
  - c. Copies or list of every document to be relied on at the hearing of the petition. See: Para 5(a-c).

- ▣ A petition which fails to comply with subparagraph (5) shall not be accepted for filing by the secretary. See: para 6
- ▣ An election petition, which does not comply with subparagraph (1) or any provision of that subparagraph is defective and may be struck out by the tribunal or court.

The image shows a hand dropping a ballot into a white ballot box. The box has the text 'GROUNDS FOR ELECTION PETITION AND TIME BOUND NATURE' printed on it. In the background, there is a large clock face and a person writing on a board. The overall theme is related to elections and legal grounds for challenging them.

## GROUNDS FOR ELECTION PETITION AND TIME BOUND NATURE

- ❑ The grounds of an election petition is recognised in Section 134 (a-c) of the Electoral Act, 2022. They are:
- ❑ Disqualification: That a person whose election is questioned (respondent) was, at the time of the election, not qualified to contest the election. Section 65 & 66 CFRN 1999 (as amended).
- ❑ Invalid by reason of corruption/non-compliance: That the election was invalid by reason of corrupt practices or non-compliance with the provisions of Electoral Act.
- ❑ Not duly elected: That the respondent was not duly elected by majority of lawful votes cast at the election.

# PROCEDURE AND SEQUENCE OF EVENTS INVOLVED IN ELECTION PETITIONS UP TO THE CONCLUSION OF TRIAL

- ▣ **ELECTION STAGE:** Accreditation of voters, Voting, Transmission of Result through IREV, Collation of Results, INEC Declaration of results. INEC certified form used at Elections are EC8A, EC8B, EC8C, EC8D and EC8E.
- ▣ **PRESENTATION OF ELECTION PETITION:** The originating process is an election petition. By Paragraph 3(1) of the First schedule to the Electoral Act as amended, the election petition shall be presented to the SECRETARY OR REGISTRAR OF THE ELECTION TRIBUNAL/COURT either by the petitioner or his solicitor. Thus, a petition is presented when it is actually brought by the petitioner or his solicitor, if any, named at the foot of the petition before the Secretary or Registrar of the Tribunal for filing, coupled with the payment of filing fees/obtaining a receipt (Form TF002) for same; and the payment of security for costs---OZOBIA v. ANAH (1999) LPELR-6502(CA).

## STEPS TO BE TAKEN BY THE SECRETARY (PARA 7 (A-C) OF THE 1<sup>ST</sup> SCHEDULE OF THE ELECTORAL ACT, 2022.

- ▣ He posts a Certified copy for onward transmission to the person required by law to adjudicate and determine the petition.
- ▣ Notifies the respondent.
- ▣ Notifies the tribunal members who will sit over the matter.

The electoral act does not provide for the transfer of a petition from one tribunal to the other. Thus, a petition filed at a wrong tribunal shall be struck out---OLANIYONU v. EME AWA (1989) 5 NWLR (Pt.122) 493 at 501 and 502. Where it is not subsequently re-filed before the appropriate tribunal within the 21 days period, it becomes statute barred and the cause of action is barred---MOGHALU V NGIGE (2005) 4 NWLR (Pt. 914) 1.

▣ **SERVICE OF THE PROCESSES ON THE RESPONDENT:**

Generally, service of the petition and frontloaded documents is to be by personal service. However, if the respondents cannot be found at the places listed by petitioners for service, then, upon application by the petitioner, supported by affidavit showing that reasonable efforts have been made to effect personal service, the tribunal may order substituted service. Substituted service shall be effected in the same manner as it is done in other civil cases.

▣ **ENTRY OF APPEARANCE AND REPLY BY THE RESPONDENT:**

The respondent, upon being served with the petition and frontloaded documents, is to enter an appearance by filing a memorandum of appearance.



- Thereafter the Respondent files his reply to the election petition in the registry within 14 days from receipt of election petition (Para 12 of the 1<sup>st</sup> Schedule). However, it must be noted that a respondent can file a reply without filing a memorandum of appearance. The respondent is to provide/deliver 10 copies of his reply to the court and a copy each for all the parties to the petition. The effect of failure to file memo of appearance is that the respondent will be deemed to have waived personal service and all subsequent processes will be deemed duly served on him by pasting it on the Notice board at the Tribunal Registry. See: Para 10 of the 1<sup>st</sup> Schedule.
- The Respondent's reply is to be filed within fourteen (14) days of the service of the petition--- Paragraph 12(1) of the First schedule to the Electoral Act. The petitioner's reply to the respondent's reply shall be filed within five (5) days from the day he received the respondent's reply. A petitioner's reply is in answer to the new issues raised in respondent's reply. This reply is limited to new issues and the time given is not to be extended--Paragraph 16 of the First schedule to the Electoral Act.
- Where the Respondent has a preliminary objection, he should file a conditional appearance. If the respondent fails to file his memorandum of appearance, he can still file his reply to the petition.

- NB: In election petition you cannot counter claim. You only defend or keep quiet.
- **PRE-HEARING NOTICE:** Within 7 days after the filing and service of the Petitioner's Reply on the Respondent or 7 days after the filing and service of the Respondent's Reply, as the case may be, the petitioner shall apply for the issuance of Pre-hearing Notice as in form TF007. Upon application as above stated, the parties or their legal representative, shall be issued with pre-hearing conference notice as in form TFD007 accompanied by a Pre-hearing information sheet as in TF008. See para 18 of the 1<sup>st</sup> Schedule.
- **PRE-HEARING SESSION:** This is to tackle matters and issues and documents so that when hearing commences, there will be expeditiousness in the proceedings unhindered by the usual, never ending interlocutory applications; objection to documents etc all of which contribute to undue delays in the hearing of causes or matters. The basic focus of Pre-hearing session is stated in para. 18(2) of the 1<sup>st</sup> Schedule, thus:
- The disposal of all matters which can be dealt with on interlocutory application.

- ▣ Giving such directions as to the future course of the petition as appear best adapted to secure its just, expeditious and economical disposal in view of the urgency of elections, and
- ▣ Giving directions or order of witness to be called and such documents to be tendered by each party to prove their cases having in view the need for the expeditious disposal of the petition and;
- ▣ Fixing clear dates for the hearing of the petition.

## ELECTION PETITION PART 2

### SITTINGS OF THE TRIBUNAL

- ▣ Adopting of processes at pre-hearing session/ Effect of failure to attend the pre-hearing session.
- ▣ Hearing of the petition (Trial) .
- ▣ Final Written Address
- ▣ Judgment

P:S: All motions must be heard during pre-hearing session. The Tribunal ALWAYS reserve ruling for final judgment.

### APPEAL

- ▣ Appeal to the Court of Appeal
- ▣ Brief of Argument
- ▣ Judgment
- ▣ Appeal to Supreme Court

- ▣ The pre-hearing session has a lifespan of 14 days from commencement to termination. Hearing at these sessions is from day to day, as much as practicable. At the conclusion of the session, a report is published to guide the Court or Tribunal on the subsequent course of the proceedings.
- ▣ The consequences of non-compliance or failure to fully participate in the pre-hearing session are significant. **For the Petitioner, if they or their counsel fail to attend or participate fully, the Tribunal is empowered to dismiss the petition (Paragraph 11(a)). In the case of the Respondent, the tribunal can enter judgment against them for failing to attend or participate fully.**
- ▣ We shall now proceed to the Hearing of the Petition.



# HEARING OF ELECTION PETITION IN NIGERIA





- ▣ As seen in part 1, once the pre-hearing session has been concluded, the parties are then free to prove their respective cases within the respective timeline allowed. The conduct through which this is achieved is the hearing session in the election petition. Due to the greater percentage of meticulously settled matters at the pre-hearing stage, hearing is often seamless with tendering of documents.
- ▣ By virtue of Paragraph 19 of the 1st Schedule to the Electoral Act, every election petition shall be heard and determined in an open Tribunal or Court. Paragraph 20 (1) demands that at least 5 (five) days before the hearing commences, the notice of the time, date and place of the hearing is sent to the parties.

- ▣ An Open Court is a public place. See: Section 36(3) of the 1999 Constitution of the Federal Republic. Also see: **Oviasu v. Oviasu (1973) 11 SC 315.**
- ▣ Members of the Public may have access to where the trial is holding but the actual presence of the public is however not necessary. See: **Mcpherson v. Mcpherson (1939) AC 177.**
- ▣ The time and place for hearing of an election is fixed by the Election Tribunal and Notice of time and place of hearing is given in the appropriate for by the Secretary to the Tribunal.
- ▣ Due to the need for expeditious hearing of elections, the hearing is to continue from day to day except as otherwise directed by the Election Tribunal. The hearing may even continue on a Saturday or on a public holiday if the circumstances dictate. See: **Anazodo v. Audu (1994) 4 NWLR (Pt. 600) at P.536.**

# TRIAL

- ▣ The trial of election petition is trial by pleadings. The pleadings consist of Petitioner's Petition, the Respondent's Answer and the Petitioner's Reply (if any). With respect to pleadings, the settled law is that parties are bound by their pleadings and the court is not permitted to make a case for the parties except on pleadings. Therefore, at the trial stage of the action both parties are bound by their pleading and it is elementary that admissions in pleadings do not have to be proved. In so far as pleadings do not contain admission, then the matter alleged must be proved in evidence, but the evidence cannot derogate from the pleadings.
- ▣ A Petitioner in an election petition must call evidence in support of his pleadings and any evidence which is adduced contrary to the pleadings should never be admitted. It makes no difference that the other side did not object to the evidence or that the judge did not reject it.

- ▣ It is of course the duty of counsel to object to inadmissible evidence and the duty of the trial court to refuse to admit inadmissible evidence, but if notwithstanding this, evidence is still through oversight or otherwise admitted then it is the duty of the court when it comes to give judgment to treat the inadmissible evidence as if it was never admitted. See: **Abdullahi v. Elayo (1993) 1 NWLR (Pt.268) at 141.**
- ▣ EXAMINATION IN CHIEF – The Petitioner Leads their witnesses in Chief starting from PW1.
- ▣ CROSS EXAMINATION – The Respondents Cross Examine Petitioner's Witnesses to discredit the testimony of each witness particularly star witnesses.
- ▣ RE-EXAMINATION – At the discretion of the Petitioner.

**P:S: Trial is in accordance with the Pre-Hearing Report.**

## FINAL WRITTEN ADDRESS

- Where the party beginning has concluded his evidence, if the other party does not intend to call evidence, the party beginning shall within 10 days after close of evidence file a written address. Upon being served with the written address, the other party shall within seven days file his own written address. **Order 46 (10) of the Rules of Procedure for Elections Petition 2022.**
- Where the other party calls evidence, he shall within 10 days after the close of its evidence file a written address. **Order 46 (11) of the Rules of Procedure for Elections Petition 2022.**
- Upon being served with other party's written address the party beginning shall within seven days file his written address. **Order 46 (12) of the Rules of Procedure for Elections Petition 2022.**
- The party who files the first address shall have a right of reply on points of law only and the reply shall be filed within five days after service of the other party's address. **Order 46 (13) of the Rules of Procedure for Elections Petition 2022.**

# APPEAL

- ▣ Order 6 Rule 2 of the Election Judicial Proceedings Practice Direction, 2023 states that the Appellant shall file in the Registry of the Tribunal or Court his Notice of Appeal with 14 days and 21 days where the Appeal is a final decision.
- ▣ Order 9 - The Secretary of the Tribunal or Registrar of the lower Court shall, within a period of not more than ten (10) days of the receipt of the Notice of Appeal, cause to be compiled and served on all the parties, the Record of Appeal.
- ▣ Order 10 - Within a period of seven (7) days after the service of the Record of Appeal, the Appellant shall file in the Court, his Brief of Argument in the Appeal for service on the Respondent(s).
- ▣ Order 11 .—(a) The Brief of Argument, which may be settled by Counsel, shall contain what are, in the Appellant's view, the issues arising in the Appeal. (b) The Brief of Argument shall be concluded with a numbered summary of the reasons upon which the argument is founded.



- ▣ (c) Wherever possible, or necessary, the reasons should also be supported by particulars of the titles, dates and pages of cases reported in the Law Reports or elsewhere including the summary of the decision in such case which the parties propose to rely upon. If necessary, reference should also be made to relevant Statutory Instruments, Law books and other legal journals. (d) The parties shall assume that Briefs of Argument would be read and considered in conjunction with the documents admitted in evidence as exhibits during the proceedings in the Tribunal or lower Court and wherever necessary, reference should also be made to all relevant documents or exhibits on which they propose to rely in their argument.
- ▣ Order 12 - The Respondent shall file in the Court his own Brief of Argument within five (5) days of service of the Appellant's Brief of Argument. Paragraphs 11(a) to (d) above shall apply, mutatis mutandis, to the Respondent's Brief of Argument. An Appellant may file his Reply Brief within two (2) days of the service of the Respondent's Brief of Argument.

- Order 14.—(a) Every Brief of Argument, whether of the Appellant or of the Respondent to be filed in the Court, shall not exceed Twenty Five (25) pages ; and a Reply Brief shall not exceed five (5) pages.(b) Every Brief must be prepared in 210mm by 297mm paper size (A4) and typed in clear typographic character. The font type shall be in Arial, Times New Roman or Tahoma of 14 font size with at least 1.5 line spacing between. (c) Any Brief of Argument which does not comply with these provisions shall be invalid.
- Order 16 – The tribunal or Court shall regulate the number of Learned Counsel who may appear before it provided that:
  - A. A Senior Advocate of Nigeria shall not appear with more than (7) Learned Counsel;
  - B. Where more than one Senior Advocate of Nigeria appears for the same party in a matter, the number of learned counsel appearing with them shall not be more than (5);
  - Other Learned Counsel shall not appear with more than (2) Juniors.

- ▣ Order 17 - Unless otherwise directed, fifteen (10) minutes on each side will be allowed for oral argument. Where there is a Cross-Appeal or Respondent's Notice, it shall be argued together with the Appeal as one case within the time allotted for the case, and the Court may, having regard to the nature of the Appeal, inform the parties which one to open and close the argument.
- ▣ Order 18 - When an appeal is called and the parties have been duly served with the notice of hearing, but a party, or any Legal Practitioner appearing for him does not appear to present oral argument even though briefs have been filed, the appeal shall be treated as having been duly argued.
- ▣ Order 20 - An interlocutory Appeal shall not operate as a stay of proceedings, nor form a ground for a stay of proceedings before a Tribunal or lower Court.

- ▣ **60 DAYS CONCLUDING APPEAL:** An appeal from a decision of an election tribunal or court shall be heard and disposed of within sixty (60) days from the date of the delivery of judgment of the tribunal or court---S. 285(7) CFRN. Section 132(9) Electoral Act, 2022.
- ▣ **14 DAYS TO APPEAL TO THE SUPREME COURT:** An appellant shall file in the Registry of the Court of Appeal, notice and grounds of appeal within 14 days from the date of the delivery of the ruling, or judgment appealed against. See: Order 2 Rule 1 of the **Supreme Court Pre-Election and Election Appeals Practice Directions 2023.**

**P:S:** Subject to the provisions of this Act, an appeal to the Court of Appeal or to the Supreme Court shall be determined in accordance with the practice and procedure relating to civil appeals in the Court of Appeal or of the Supreme Court, as the case may be, regard being had to the need for urgency on electoral matters: See: **Paragraph 55 of the First Schedule to the Electoral Act, 2022.**

- ▣ **Supreme Court**

- ▣ Notice of Appeal: 14 Days - Order 2.

- ▣ Appellant Brief of Argument must be filed 10 days upon receipt of the Record of Appeal – Order 5.

- ▣ Respondent Brief of Argument must be filed 5 days upon receipt of the Appellant Brief of Argument – Order 6.

- ▣ Appellant Reply Brief – 3 Days.

- ▣ The Rules, Practice, Practice Direction that governs the activities of Election Petition at the Court of Appeal is applicable to the Supreme Court.

- ▣ **Thank you.**