Critique of the Requirement for the Selection of the President in Nigeria: A Case Study of 25% FCT Votes

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Degree

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DECLARATION

I, hereby declare that this long essay titled 'Critique of Section 134 of the Nigerian Constitution 1999 as amended and Electoral Act 2022; A case study of 25 percent FCT votes,' was performed by me in the faculty of Law, Lead City University, Ibadan, under the supervision of Associate Professor Simeon Ola Oni. The information derived from the literature has been fully acknowledged in the text and the lists of references provided. No part of this work has been presented for another degree or diploma at any institution.

AMAO DAUDA KOLAWOLE **DATE**

CERTIFICATION

I certify that this research was carried out by Amao Dauda Kolawole, with matriculation number, 003957 in the Faculty of Law, Lead City University, Ibadan during the 2023/2024 academic session under my supervision.

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EXTERNAL EXAMINER **DATE**

DEDICATION

This long essay is dedicated to almighty God, who sees me throughout the programme despite the teething challenges and associated hiccup that I experience during the course of my study.

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Abstract

The provisions of the Constitution of the Federal Republic of Nigeria are supreme and having binding force over every person within Nigeria. The provisions of the Constitution is read alongside with others enactments made by the National Assembly. One of the enactments in relation to election in Nigeria is the Electoral Act, 2022 and other guidelines and regulations. Before a person can contest for the post of a President of the Federal Republic of Nigeria, as amended, such person must meet the requirements of the laws as laid down by the Constitution and other extant laws. One of those laws is the provision of 25 percent of votes in 24 states and Federal Capital Territory, Abuja. The interpretation as provided by the Court has not even resolved the issue of mathematical calculation of the 25 percent and whether scoring of 25 percent of vote in the Federal Capital Territory, Abuja is a mandatory requirements by law. Thus, this research work considered many interpretations to the provision of section 134 of the 1999 CFRN, as amended.

The researcher explored and adopted legal doctrinal method that is a library - oriented research by search for primary and secondary sources of information which included the Constitution of Federal Republic of Nigeria, 1999 (as amended), Electoral Act, 2020; relevant textbooks, journals and articles.

The study shows that the judicial discord in the interpretation of the constitution in relation to the study will create more problems in the nearest future because the decision of the Supreme Court is not binding on itself and the recent position in relation to the subject matter can be overturned whenever an issue of such nature arises for interpretation before the court.

The study concluded that the pluralistic nature of our legislative body which makes the amendment of the constitution cumbersome is a hindrance to achieving a unified legal system against the interpretation of the 25 percent votes.

Keywords: Election, President, Federal, State and Nigeria

CHAPTER ONE

INTRODUCTION

1.1 Background to the Study

The President as the commander-in-chief of the Armed Forces of the Federal Republic of Nigeria is the number one citizen and before such a person can be voted for into the post, some constitutional requirements must be met. It means that before a person emerges as the President elect in Nigeria, he must have satisfied the requirement of the law by being voted for in 24 states and most especially in the Federal Capital Territory in Abuja.[1] The correctness or otherwise of this position shall be considered in this study.

In democratic systems across the globe, elections present an opportunity for the citizens, the people to decide/choose who is going to pilot their affairs either as the President, or Prime minister depending on whether the system is presidential or parliamentary.[2] By the social contract theory the people, on whom sovereignty resides, would choose to grant the same to one or more of them who would exercise those powers on their behalf.[3] Nigeria practices a federal system of government which mirrors the presidential system of government in the United States.[4] Therefore, like the United States, we have a President as the Head of State and Head of Government.[5] Whereas the United States adopts a system of voting called the Electoral college, we vote directly in Nigeria, each citizen being entitled to one vote which can only be cast if the

[1]O.C. Emeka& C.T. Emejuru, An appraisal of the Jurisprudential role in Nigeria; *Donnish Journal of Law and Conflict Resolution* (2007) 1 (1) available at http://donnishjournal.org.ng accessed 25/11/2023.
[2] K.M. Mowee, *Constitutional Law in Nigeria* (Malthouse, Press Limited 2008) p. 152.
[3] K Usendu 'The Presidential powers under Nigerian Criminal Justice System and the Quasi-Judicial Power of the Executive' [2016]1 (2)<https://www.google.com/amp/s/legalresearchernigerian.wordpress.com> accessed 25/11/2023.
[4] W Humbert, *The Constitutional Powers of the President* (Washington Publisher 1941), 73.
[55] W F Duker, *'The Presidential Power*: A Constitutional History' [1977] 18 Wm. & Mary L. Rev. 475 <https://scholarship.law.wm.edu/wmlr/vol18/iss3/3 l> accessed 25/11/2023.

citizen's name is included in the Independent National Electoral Commission's register of voters and the citizen bears his Permanent Voters Card.[6] To contest for the position of the President of the Federal Republic of Nigeria, the would-be candidate must be a citizen of Nigeria by birth; the person must be at least 40 years old; he or she must have school certificate or its equivalent, the person must also be a member of a political party and be sponsored by that party.[7] These requirements are specified in **Section 131 of the Constitution**[8] and must be met by anyone seeking to run for the office of the President in Nigeria. ***Section 137 of the Constitution of the Federal Republic of Nigeria***[9] made further provisions on the qualification of a person to run for the office of the President of the Federal Republic of Nigeria thus:

> **137.** (1) A person shall not be qualified for election to the office of President if –
>
> (a) subject to the provisions of section 28 of this Constitution, he has voluntarily acquired the citizenship of a country other than Nigeria or, except in such cases as may be prescribed by the National Assembly, he has made a declaration of allegiance to such other country; or
>
> (b) he has been elected to such office at any two previous elections; or
>
> (c) under the law in any part of Nigeria, he is adjudged to be a lunatic or otherwise declared to be of unsound mind;
>
> or
>
> (d) he is under a sentence of death imposed by any competent court of law or tribunal in Nigeria or a sentence of imprisonment or fine for any offence involving dishonesty or fraud (by whatever name called) or for any other offence, imposed on him by any court

[6]E Okebukola and A Kana, 'Constitutional interpretations in Nigeria as Valid Legislative Instruments' [2012] (3) *NnamdiAzikiwe University Journal of International Law and Jurisprudence* 59-68.
[7]Ibid.
[8]Constitution of the Federal Republic of Nigeria, (CFRN) as amended, 1999.
[9]1999 as amended 2011.

or tribunal or substituted by a competent authority for any other sentence imposed on him by such a court or tribunal; or

(e) within a period of less than ten years before the date of the election to the office of President he has been convicted and sentenced for an offence involving dishonesty or he has been found guilty of the contravention of the Code of Conduct; or

(f) he is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law in force in Nigeria or any other country; or

(g) being a person employed in the civil or public service of the Federation or of any State, he has not resigned, withdrawn or retired from the employment at least thirty days before the date of the election; or

(h) he is a member of any secret society; or

(i) he has been indicted for embezzlement or fraud by a Judicial Commission of Inquiry or an Administrative Panel of Inquiry or a Tribunal set up under the Tribunals of Inquiry Act, a Tribunals of Inquiry Law or any other law by the Federal or State Government which indictment has been accepted by the Federal or State Government, respectively; or

(j) he has presented a forged certificate to the Independent National Electoral Commission.

A person who fulfills the conditions and requirements set out above is eligible to run for the office of the President of the Federal Republic of Nigeria. Having considered the Constitutional requirements for a person to contest for the office of the president of the Federal Republic of Nigeria, it remains to consider the constitutional requirements for a person who has participated in an election duly conducted by the Independent National Electoral Commission to be declared the winner of such election.[10]

[10]The Guardian Newspaper, 7th March, 2023, 8.

To be declared winner of a presidential election in Nigeria, the requirements provided in ***sections 134 of the Constitution of the Federal Republic of Nigeria***[11] should be met. ***Sections 134 of the Constitution of the Federal Republic of Nigeria***[12] provides as follows:

> **134.** (1) A candidate for an election to the office of President shall be deemed to have been duly elected, where, there being only two candidates for the election -
>
> (a) he has the majority of votes cast at the election; and
>
> (b) he has not less than one-quarter of the votes cast at the election in each of at least two-thirds of all the States in the Federation and the Federal Capital Territory, Abuja.
>
> (2) A candidate for an election to the office of President shall be deemed to have been duly elected where, there being more than two candidates for the election-
>
> (a) he has the highest number of votes cast at the election;
>
> and
>
> (b) he has not less than one-quarter of the votes cast at the election each of at least two-thirds of all the States in the Federation and the Federal Capital Territory, Abuja.

In a default of a candidate duly elected in accordance with subsection (2) of this section their shall be a second election in accordance with subsection (4) of this section at which the only candidate shall be -

> (a) the candidate who scored the highest number of votes at any election held in accordance with the said subsection (2) of this section; and
>
> (b) one among the remaining candidates who has a majority of votes in the highest number of States, so however that where there are more than one candidate with majority of votes in the highest number of States, the candidate among them with

[11] 1999 as amended 2011
[12] 1999 as amended 2011

the highest total of votes cast at the election shall be the second candidate for the election.

(4) In default of a candidate duly elected under the foregoing subsections, the Independent National Electoral Commission shall within seven days of the result of the election held under the said subsections, arrange for an election between the two candidates and a candidate at such election shall be deemed elected to the office of President if -

(a) he has a majority of votes cast at the election; and

(b) he has not less than one-quarter of the votes cast at the election in each of at least two-thirds of all the States in the Federation and the Federal Capital Territory, Abuja

(5) In default of a candidate duly elected under subsection (4) of this section, the Independent National Electoral Commission shall, within seven days of the result of the election held under the aforesaid subsection (4), arrange for another election between the two candidates to which the subsection relates and a candidate at such election shall be deemed to have been duly elected to the office of President, if he has a majority of the votes cast at the election.

It is crystal clear, from the foregoing, that by virtue of the Constitution of the Federal Republic of Nigeria[13], it is not enough in a Presidential election contested by more than two candidates, to obtain the majority of votes cast, rather a candidate desirous to be declared winner must obtain 25 percent of the votes cast in each of at least two-third of the states in the Federation and the FCT. If this requirement is not met by the candidate that had the majority of votes, a fresh election would be held between the person with the highest number of votes and the person that

[13] 1999 as amended 2011

won the majority of votes in the highest number of states.[14] If there are two candidates with the majority of votes in the highest number of states, then the candidate between them that pulled the majority of votes cast in the election would be the second candidate for the second election. If no winner emerges yet again, another election would be conducted within seven days of the declaration of the result of the previous election and between the two candidates.[15] A candidate would only be deemed to be duly elected if he complies with the requirement of ***subsection (4) of section 134 of the Constitution***. In default of a winner emerging in accordance with that subsection, another election would be conducted within seven days of the declaration of the results of the previous election and the candidate with the majority of votes would be declared winner in that election.

In the case ***of Chief Obafemi Awolowo v Alhaji Shehu Shagari&Ors[16]***, the issue bordered on the correct interpretation to be given to Section 34A(1)(c)(ii) of the Electoral Decree of 1977 as amended. The import of Section 34A (i) (c) (ii) of the Electoral Decree is that a Presidential candidate will be deemed to have been duly elected to such office where he has the highest number of votes cast at the election and one-quarter or 25 percent of the votes cast in each of, at least, two thirds of all the states in the federation.[17] Nigeria had only 19 states at the time, the question was: how to calculate two-third of nineteen, whether the answer is 12 or should be approximated to 13.[18] It was contended for Chief Obafemi Awolowo that even though the Respondent pulled the highest number of votes cast at the election, his election was invalid for

[14]The Guardian Newspaper, 28th February, 2023, 27.
[15] The Tribune Newspaper, 2nd March, 2023
[16] (1979) All N.L.R. 105
[17]The Tribune Newspaper, 4th April, 1979, 7.
[18]The Tribune Newspaper, 28th February, 1979, 12.

reason of non-compliance with the Electoral Decree. The Supreme Court dismissed the appeal and cost was awarded against the Appellant on the ground that Shehu Shagari was rightly declared winner having satisfied the provisions of the Electoral Decree. The court also held that even if he (Shagari) did not meet the requirement, ***Ss. 111 and 110*** of the Decree would come to his aid and judgment would still be given to him.

Amidst the keenly-contested 2023 presidential election, Nigerians have been asking questions following the constitutional requirement for a candidate to have a quota of 25 percent of the total votes cast in Two-thirds of all the States including the Federal Capital Territory, before being declared as president. It is interesting to state that there are two (2) conditions for determining a winner of a presidential election:

1. A presidential candidate must secure the highest number of votes cast at the election

2. He/she must secure not less than 25% of votes cast in at least two-thirds of all the States of the federation and FCT.

The Electoral Act (2022) states that the winner of the presidential election will be subjected to the provisions of section 134 of the Nigerian Constitution.

> "In an election to the office of the President or Governor whether or not contested and in any contested election to any other elective office, the result shall be ascertained by counting the votes cast for each candidate and subjected to the provisions of sections 133, 134 and 179 of the Constitution,"

According to the 1999 Constitution, presidential candidates must not only win a single majority but whoever will be recognised as an elected president must have won a stipulated minimum in

every region of the country.[19] The candidate that receives the highest number of votes shall be declared elected only if they also fulfill a quota of 25 percent of the total votes cast in about 24 states including the Federal Capital Territory[20]. Section 134, subsection 2, of the 199 Constitution states:

> "A candidate for an election to the office of President shall be deemed to have been duly elected where, there being more than two candidates for the election-he has the highest number of votes cast at the election; and he has not less than one-quarter of the votes cast at the election each of at least two-thirds of all the States in the Federation and the Federal Capital Territory, Abuja."

Thus, this study shall painstakingly examine the extant positions of the law and the judicial attitude in relation to the subject matter.

1.2 Statement of the Problem

The provision of section 134 of the 1999 Constitution has been a subject of debate and this debate became notorious in February, 2023 general elections when the current President, Ahmed Bola Tinubu did not win in Abuja. This debate has created two schools of thought wherein a school of thought provides that 25 percent in Abuja is a mandatory requirement of the law while others seriously contend that it is not a mandatory requirement of the law as FCT shall be treated as a state for the purpose of the election.

In a bid to understand what the law says about section 134 of the Constitution, TRIBUNE ONLINE x-rayed the opinions of two renowned Nigerian lawyers. In his submission, Ridwan

[19]Section 32 of the Constitution of the Federal Republic of Nigeria as amended.
[20] See The Guardian Newspaper, 27th September, 2022, 27.

Oke[21], the legal services director of Connect Hub Nigeria, opined there will be a rerun election if the candidate with the highest number of votes still fails to have the required 25 percent.

> "We have 36 states of the federation and two-thirds of that is about 25. So, if you are a presidential candidate, you must have 25 percent of the total votes cast in at least 25 states of the federation before you are declared [winner]. If nobody has that, if the candidate with the highest number of votes still fails to have the required 25 percent, there will be a rerun election,"

> "When it goes to the rerun, it will only be the majority [votes required]. So, if you are polling 10 million votes, you must have at least 25 percent of the total votes in 25 states in that majority vote. The candidate does not have to win all those 25 states. They only need to meet the minimum 25 percent in the states,"

On the contrary, Femi Falana,[22] a foremost Nigerian legal practitioner said a candidate can be declared winner of a presidential election in Nigeria without necessarily scoring up to 25 percent of votes cast in the Federal Capital Territory.

> "Section 299 of the Constitution said the FCT shall be treated like as a state," Therefore, the constitutional requirements for 25 percent of votes in two-thirds state and the FCT only means that the FCT be added to the 36 states to arrive at 37 states,"

This dichotomy shall be resolved via this study and this study will also appraise and criticize the current position of the Supreme Court of Nigeria in relation to the subject matter.

1.3 Aim and Objectives

[21]Tribune online 28th February, 2023 at pg., 17.

[22] People's Gazette; an interview granted by Femi Falana SAN on people gazette on the 28th February, 2023.

The aim of this research is to critically analyze the constitutional questions about a President scoring 25 percent vote in 24 states& FCT. The specific objectives include:

1. To discuss the legal framework of the calculation of 25 percent in 24 states and Federal Capital territory Abuja
2. Ascertain if the 25 percent votes at the FCT is a mandatory requirement of the law.
3. Analyze the judicial pronouncement of the court in the celebrated case of Peter Obi v. Bola Ahmed Tinubu.
4. Examine and identify the necessary reforms required to strengthen the legal framework to regulate elections in Nigeria.

1.4 Research Questions

1. What is the legal framework of the calculation of 25 percent in 24 states and Federal Capital territory Abuja?
2. Is 25 percent votes at the FCT a mandatory requirement of the law?
3. What has been the judicial attitude to the provisions of Section 134 of the 1999 Constitution as amended?
4. What are the necessary reforms required to strengthen the legal frameworks to regulate elections in Nigeria.

1.5 Methodology

To achieve it aim and objectives, the doctrinal research method would be explored in this study. i.e. library oriented research. Also, both primary and secondary sources of materials would be combined for this study. Relevant statutes and case law would be consulted. The primary authorities include the Constitution of the Federal Republic of Nigeria 1999, the electoral Act, 2022; Interpretation Act, 2020; and case law. The secondary authorities include existing

literature on the subject or related subjects which include textbooks, journal articles, opinion of scholars and jurist.

1.6 Scope of Study

This study focuses on the interpretation of the court in relation to a presidential candidate having 25 percent votes in 24 states and FCT. It also covers the legal calculation of the 25 percent of votes cast.

1.7 Significance of Study

There are many issues associated with the calculation of the 25 percent in the 24 states and FCT. Also, people do not know the mathematical and legal calculation of the 25 percent votes cast and this study will broad the horizon of every Nigerian who is interested in the interpretation and calculation. It will also be on tremendous benefit to the Researchers, Political science students, politicians, lawyers, judges and others who are interested in the subject matter. Also, the literatures available for the purpose of this study are emerging and evolving and as such, it is not out of place to have a comprehensive research on the relevance and importance of the legal calculation of the 25 percent of votes cast in 24 states and FCT in Nigeria.

1.8 Definition of Terms

Constitution: it is the fundamental and organic law of a nation or state that establishes the institution and apparatus of government, defines the scope of government action through legislative ordinary process.

Election: this is the procedure to elect a president in a democratic setting.

President: this is the number one citizen of a country.

Nigeria: this is a sovereign state without any external influence.

INEC: this is the body in charge of conducting elections in Nigeria.

Court: this is the body saddled with the interpretation of the law.

Law: this is the rule that governs human conduct.

F.C.T: Federal Capital Territory

CHAPTER TWO

LITERATURE REVIEW AND CONCEPTUAL FRAMEWORK

2.0 Introduction

A plethora of legal scholars have written on the constitutional question of scoring 25 percent of votes in Abuja before a President emerges in Nigeria. The authors have identified the legality or otherwise of the question in Nigeria, a lot of fundamental questions have been raised on how the provisions of section 134 of the Constitution can be utilized in order to accommodate the duly elected president, vice president, governors and deputy governors at where they belong. . This chapter also covers nature and meaning of different concepts related to the subject matter.

Thus, this chapter examines the contributions of authors and scholars to the contributions of jurisprudence and the interpretation of the provisions of section 134 of the Constitution; and it will also appraise different concepts associated with the discourse.

2.1 Literature Review

Okodolor[23] was of the view that the interpretation of section 134 of the Constitution can only be made by the court. He critized the opinion of the learned silk, Olisah Agbakoba SAN when the latter wrote a letter to the Independent National Electoral Commission (INEC) chairman for the proper interpretation of the section 134 of the constitution. He further submitted that since the Independent National Electoral commission is an agency of government, it can only implement the relevant laws including the constitution and cannot interpret them.

Kayode[24] is also of the view that the interpretation of the Nigerian constitution in relation to section 134 is ambiguous and the ambiguity can only be resolved by the court. He further submitted that the residents of the Federal Capital Territory (FCT) cannot be treated separately as they are part and parcel of the Federal Republic of Nigeria. For the purpose of election, FCT shall be treated as a state.

Akowonjo[25] stated that The Senior Advocate of Nigeria also said Section 134 of the Constitution wasn't explicit enough, as to whether the two-thirds votes a candidate must secure as mentioned in the Constitution would include or exclude the Federal Capital Territory (FCT), Abuja.

[23] C. Okodolor, "Constitutional interpretation: Towards a Review of Section 134 of the Nigerian Constitution;" (2023), 25 (7-8) *Nigerian Forum*, 208.
[24] G. Kayode, Constitutional questions of the interpretation of section 134 of the Nigeria constitution: Nigerian Tribune, Tuesday, April 23, 2023, 15.
[25] D. Akowonjo, The interpretation of the Constitution in relation to section 134 of the Nigerian Constitution., (2023), 78.

He asked if, to be declared winner of the Presidential election, a candidate must win a quarter of votes in 24 States – which makes up the two-thirds – as well as the FCT, or without the FCT.…does this mean that the Federal Capital Territory, Abuja is incorporated in the 24 States? Or…does it mean that the Presidential candidate must also score not less than one-quarter of the votes cast at the election at the Federal Capital Territory, Abuja?"

Etemiku[26] also submitted that Part of the grouses include the interpretation of the 25% requirement which a presidential candidate must meet to be elected as president. Currently, there is a back and forth on the interpretation of that requirement, together with the fact that the conditions seem to indicate that a candidate is required to win 25% of the votes in a bunch of states AND Abuja. The back and forth, in my estimation, is in the definition of the word AND. While those on the one divide say that the word AND includes Abuja, the others insist that it does not.

Part of the dilemma that this scenario has generated and presented to us all is the fact that the persons involved in the back and forth are mostly lawyers. Depending on the aisle they belong, they have very successfully given their various versions of what AND means and how it should apply. Their dictionary, the Black's Law Dictionary does not have an entry for the word AND in contention. When you listen to the lawyers adumbrate and puff and hump, all you mostly hear them say is that the AND is a conjunction, and depending on the side they represent, they go right ahead to tell you why their own definition of AND is the correct and the applicable one.

[26] Bob Majiri Oghene Etemiku; Interpreting Section 134 Of The Nigerian Constitution With Dead English?;Nigerian Punch, Monday, April 21, 2023, 7.

But the question is this: If the Black's Law Dictionary does not have an entry for the word AND, upon what linguistic platform do these lawyers base their definitions? We may hazard a response concerning the erroneous linguistic platform upon which the lawyers on both sides of the aisle base their summations of the use of the word AND. Most of them base their knowledge of the definition of AND on the basis of logic formulated at the peripatetic epochs of Plato and Aristotle known as traditional grammar. If you calculate the epochs of Plato and Aristotle, (384 – 322BC), you will find out that that epoch spans hundreds and hundreds of years. Throughout that time, and up till now English in our statute books is modeled on an already dead language Latin. But today however, most of those nuances related to the Latinate or Aristotelean grammar have all gone under, have been modernized and many have been discarded. For instance, around the 19th century, Michael Halliday, came up with the notion of 'Systemic Functional Grammar' which set the framework for the modernization of linguistic analysis of grammar. Rather than rely on the 'parts of speech' of the old school, this new grammar was built on the Hallidayan tripods of phonology, semantics and lexico-grammar (syntax, morphology and lexis).

Augustine Aigbiniode[27] posited that the constitution adds Abuja to the other 36 States to make it 37 States so to say. That is to say a candidate with the highest number of votes cast in a presidential election, must also get at least 25 per cent of the votes cast in each of at least 2/3 of the States. If the candidate has one-quarter of the votes cast in 25 States, the constitutional requirement would be deemed satisfied irrespective of whether he gets up to 25 per cent votes in Abuja or not. This means that a candidate who gets the highest number of total votes cast and also at least 25 per cent in 25 States of the Federation, does not need to get up to 25 per cent in the FCT Abuja as a condition precedence to be declared the winner of the election. Further

[27] Augustine Aigbiniode; "Some Critical Remarks on the National Security Question", Nigerian Journal of International Affairs.(2024) (12),1-7.

reliance on this view is placed on Section 299 which said that the FCT should be treated as a state.

Idahosa[28] stated that the effect that for a candidate to be declared a winner of a presidential election, he must have 25% per cent of the votes cast in at least 24 States of the Federation, in addition, must have 25% per cent of votes cast in FCT. This opinion appears to be the intendment of the framers of the Constitution because there is no doubt that Section 299 regards FCT as a state only to the extent of making the FCT to have executive powers vested in the president just like the states, where the governors have such powers, vesting Legislative powers in the National Assembly just like states with Houses of Assembly and vesting Judicial Powers in its own Courts with distinct Chief Judge of FCT just like you have CJ of State courts.

Agbakoba[29] submitted that noted that many concerned Nigerians have contacted him in the past days seeking correct interpretation of Section 134 of the constitution said that there is urgent need for the INEC chairman to clarify the correct meaning of the section to the public.

The letter read: "I write to commend INEC on the great job to ensure free, fair, verifiable, credible and transparent elections. However, I am a little worried. Many concerned Nigerians contacted me about the correct interpretation of section 134 of the 1999 Constitution that provides requirements to be met by a Presidential candidate in relation to the office of the President of Nigeria.

[28] Kingsley Idahosa; X-Raying The Provision Of Section 134 Of The 1999 Constitution Of The Federal Republic Of Nigeria (As Amended): Nigerian Tribune, Tuesday, April 23, 2023, 13.

[29] Cited in UniniChioma; Many Voices Of Section 134 Of The Constitution: The Need For Judicial Interpretation: Retrieved September 21, 2021, from https://punchng.com/ebubeagu-Amotekun-and-the-confusion-of-meaning/ retrieved in 15/04/2024.

"I reviewed section 134 carefully, specifically, subsections 134 (1) (b) and (2) (b), and wondered if "two-thirds of all the States in the Federation and the Federal Capital Territory, Abuja" means either of the following: that a presidential candidate must score not less than one-quarter of the votes cast at the election in each of at least two-thirds of all the States in the Federation which means 24 states, the 24 States will include the Federal Capital Territory Abuja as a "State", or (b) that a presidential candidate must score not less than one-quarter of the votes cast at the election in each of at least two-thirds of all the States in the Federation which means 24 states and in addition to meeting the one-quarter requirement in 24 states, a candidate must also win one-quarter of the votes cast in the Federal Capital Territory, Abuja.

2.2 Theoretical Review

2.2.1 Conflict Theory

Those who follow the teachings of German political philosopher Karl Marx (1818 – 1883: known as Marxists), who was the pioneer of the conflict theory believed that there exists a basic conflict, between those who own and control the means of production and those who do not. Those who control economic relationship constitute a ruling class that control social relationship. The interest of the capitalist determines when and to whom the law is applied. Laws are selectively imposed against those people who threaten the interest of those who own and control

the means of production, when members of ruling class violate laws that are not rigorously enforced.[30]

The Conflict theory opined that: Law is a tool by which the ruling class exercises its control. Law both protects the property of those in power and serves to repress political threats to the position of the elite---- law is the state's coercive weapon, which maintains the social and economic order, and support some interest at the expense of others, even when those interests are that of the majority.[31]

Furthermore, studies attempt to relate the disproportionate involvement of poor people in contributing of the national growth of a society. Many opinions on the interpretation of the section 134 of the Nigerian constitution came from well to do Nigerians before the intervention of the court. The assumption in these studies is that technocrats, politicians, Election officials and lawyers are the major critical shareholders when it comes to election matters in Nigeria. This serves as a tool used by the social group with higher economic status to advance its class interests. These theories assert that the Constitution is fashioned according to the needs of these elite, and to the detriment of classes with lower status.[32]

The assertion of the conflict theory that 'who made the law, who benefit from it and who breaks the law, as well as law is a tool by which the ruling class exercises its control' clearly explained the situation in Nigeria 'where the politicians are looking for the interpretation of the Nigerian constitution to suit their own personal interest and not the interest of the nation.

Similarly, the conflict theory further asserts that those who control economic relationship constituted a ruling class that control social relationship. By means of controlling the economy

[30] A. Onwuka, lawsand the confusion of meaning. *Punch*. Retrieved September 21, 2021, from https://punchng.com/ebubeagu-Amotekun-and-the-confusion-of-meaning/ retrieved in 15/04/2024.
[31] J. Obado-Joel, *The challenge of the Nigerian Consitution:Considerations for Section 134n*. RESOLVE Network & the U.S. Institute of Peace, 2005, https://doi.org/10.37805/pn2020.9.ssa
[32] E.E. Osaghae Ethnic minorities and federalism in Nigeria. *African Affairs*,(1991) *90* (359), 237–258. https://doi.org/10.1093/oxfordjournals.afraf.a098413 retrieved on the 15.04.2024.

and the political super structure, the Nigerian ruling class deliberately neglected other sectors of the economy, thereby creating a mass unemployment. For example, the greater the revenue accrued by the Nigerian ruling class from the oil industry, the less their incentive to pursue the development of agriculture and other branches of the economy. The Nigerian government can spend a lot of money on electioneering than other section of the economy. By means of petrol-dollars, the Nigerian ruling class consolidated its rule.[33]

It was further explained that: globalization, which Marx spoke of long ago, and which bourgeois economics and government seems to have only recently discovered, now expressed itself as a global crises of capitalism. privatization, liberalization, deregulation the mantra of bourgeois economists have resulted in untold misery. These miseries include rising unemployment, poverty, and intense suffering for the mass of Nigerian workers. Mass unemployment, ruthless cuts in wages, increased taxation, the abolition of social reforms, and a general worsening of living standards have become the order of the day.[34] The question of fact is, how can an impoverished man be interested in the interpretation of the constitution when all what he thinks about is how to feed himself and his family?

Considering the above, the occurrences of certain strikes, demonstrations, criminal activities and violence activities of the politicians in Nigeria may be considered as reactions to the unbearable condition of poverty and intense suffering faced by the people in Nigeria, which is the aftermath of the imposed violated and manipulated laws by the ruling class. Furthermore, the conflict perspective stated that laws are selectively imposed against those people who threaten the interest of those who own and control the means of production therefore; extra-

[33] A. Ugwuja, Vigilante outfits and security in Nigeria: The Anambra State situation, 1999-2015. *Journal of Good Governance in Africa*, (2020) *2*(1), 120–136.
[34]G.A. Almond & G.B. Powell .Developing Countries; Politics and Government; Comparative Government. Boston: Little Brown, 1996.

judicial killings, illegal arrest and improper apprehension of offenders of the law are part of the strategies adopted by the ruling class in order to sustain their status during and after the election. There was never a time a major politician would be dragged to court for election violations. Only political thugs and touts are prosecuted for election offences.

2.2.2 Structural-Functionalism Theory

This study is anchored on the analytical framework of structural functionalism, which is an offshoot of the general systems theory of political analysis. The major proponents of the theory are Almond and Coleman[35] and Almond and Powell[36]. As a derivative of the system theory, the analysis of structural functionalism is a means of explaining what political structures perform and their functions in the political system and its tool of analysis.

The basic assumptions and postulations of the structural-functional approach are:

a. It takes the society as a single, inter-connected system, each element of which performs a specific function. The basic feature of such a system is the interaction of its components for the maintenance of its equilibrium.

b. If society is a system as a whole, it has parts that are interrelated with a social system that has a dominant tendency towards stability that is maintained by virtue of built-in mechanism. If there are deviations or tensions, they are resolved. Thus, change in a social system is not sudden or revolutionary, but gradual and adjustive.

[35]G.A. Almond, &J.S.Coleman: *The politics of the developing areas*. (Princeton: Princeton university press, 1960), 14.

[36] L. Malami, Amotekun: the Barking Leopard cited Akinwunmi,K (2020). Operation Amotekun: An End to Security Challenges in Southwest States, 56.

c. Underlying the whole social structure are broad aims and principles that are observed by the members of the society.[37]

The structural-functional analysis revolves around the two concepts of structure and functions. While structure refers to those arrangements within the system which perform the functions and/ or roles; functions denote the consequences involving the objective as well as process of the action and roles. A single function may be fulfilled by a complex combination of structures just as any given structural arrangement may perform functions which might have different kinds of consequences for the structure.[38]

This theory explains how the politicians use election as a tool to serve their personal interest rather than the tool to enhance democracy in Nigeria.

2.2.3 Regionalism Theory

There have been a lot of controversies on what 'Region' actually depicts. Agbola defines region as a flexible concept referring to a continuous and localised area intermediate between national and urban levels.[39] To some, a region is a real entity that can be positively identifies. To others a region is merely a product of imagination and method of classification.

The regionalism concept was introduced into the administrative framework of Nigeria shortly before Independence. It was entrenched through a series of constitutional developments and

[37] J.C. Johari, Comparative Politics (New Delhi: Sterling Publishers Private Limited, 2021), 7.
[38]Ibid.
[39]Agbola and Tunde. *Reading on Humanities and Social Science.*(Macmillan Nigeria limiter Yaba. Lagos, 2004), 1.

Amendments.[40] The Constitutional development and Amendment were included in the 1946 Richard's Constitution, 1952 McPherson constitution and the 1954 Constitution[41]. These laid the seed of ethnicity and tribalism. The beginning of the fragmentation and separatist tendencies and region economic disparities were bunched in Nigeria. The constitutional conference took place in London in 1945 and 1953 and in Nigeria in 1954.[42] The federation of the three region of Nigeria was recognised in these conferences. The Northern region has its headquarters in Kaduna, the Eastern region with headquarters in Enugu and the Western region with headquarters in Ibadan[43]

The origin of the idea that one region was different from the other could be traced implicitly from Lord Lugard's policy of Indirect rule or 'Divide and Rule' of the amalgamated Nigeria.[44] According to Raheem Mayowa[45]Lugard's policy of regionalising his administration under the Lieutenant Governors actually aggravated the increasing differences between the Northern and Southern region.[46] The uneven administration and preparation of budgets for the two 'Nigerias' resulted in social and economic disparities being created between the two regions by the colonial administration, as well as the emergence of confrontational ethnicity.[47]

Thus, the issue of giving a preferential treatment in the view of this theory is to discriminate against every other resident living in other states apart from the Federal Capital Territory. This is

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[40]G.A. Almond & G.B. Powell, Developing Countries; Politics and Government; Comparative Government. Boston: Little Brown, 1996, 56.

[41] L. Malami, Amotekun: the Barking Leopard cited in K. Akinwunmi, Operation Amotekun: An End to Security Challenges in Southwest States, (2020), p. 56.

[42]Ibid.

[43] A. Ugwuja, "Vigilante outfits and security in Nigeria: The Anambra State situation", 1999-2015. *Journal of Good Governance in Africa*, (2020) *2*(1), 120–136.

[44]Ibid.

[45]RaheemMayowa. Regional Imbalances and Inequalities in Nigeria: Causes, consequences and Remedies. *Research on Humanities and Social Sciences*, (2014) 4 (18), 2014 (online).

[46]Ibid.

[47] A. Ugwuja, Vigilante outfits and security in Nigeria: The Anambra State situation, 1999-2015. *Journal of Good Governance in Africa*, (2020) *2*(1), 120–136.

against the tenor of section 42 of the Nigerian Constitution where it is expressly stated that nobody shall be discriminated against and every Nigerian is treated equally.

2.3. Theoretical Review

The link between the Nigerian state and the challenges of interpretation of the Nigerian constitution is better explained in the light of structural-functional theory of the society. This framework unravels the hidden relation that accounts for the structural-functional lacuna found in Nigeria's national policies and its concomitant failures by its constitution architecture and the need to complement the efforts of government that would eventually bring about structural maintenance in the interpretation of Nigerian laws which invariably would metamorphosed into a relatively stable country where insecurity would be minimized. Hence, the importance of this approach in interrogating Nigerian state and the challenges of interpretation of the constitution and the proposed amendment to make the interpretation of the constitution less cumbersome.

This theory has explicitly unraveled that it is the value of input invested in the quality of law as made by the Nigerian legislature that would determine the stability or otherwise of the political system. It is also the argument of the theory that bad input from the structure involve in the maintenance of stability in Nigeria will affect the political system negatively. Conversely, good input from the judiciary will affect the political system positively, leading to a politically stable Nigeria. It is because of the structural lacuna in the maintenance of peace in the Nigeria's state that propelled the divergent views in the interpretation of section 134 of the Nigerian constitution before the intervention of the judiciary.

Finally, why linking conflict theory with section 134 of the Nigeria Constitution it opines that election in Nigeria often trigger significant political conflict partly due to the high stakes involves in winning national office. Dispute over whether a candidate have met the requirement

of section 134 such as securing enough votes in enough state can lead to election violence or legal challenges. Conflict theory helps to explain this electoral tensions as a reflection of deeper power struggles between competing interest. In summary, section 134 of Nigeria 1999 Constitution can be seen through the lens of conflict theories as an attempt to balance competing interest in a highly differs society. However it also reflect ongoing tensions over representation, power distribution and the role of political elite in shaping the countries governance structure.

CHAPTER THREE

LEGAL FRAMEWORK - CONSTITUTIONAL INTERPRETATION OF SECTION 134 OF THE NIGERIAN CONSTITUTION 1999 AS AMENDED.

3.1 Dichotomy in the Interpretation of Section 134 of the Nigerian Constitution

After the announcement of the winner of the 2023 Presidential election, some persons including Legal Practitioners have attempted interpretation of Section 134 (2) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) (the Constitution).[48] The said Section which prescribes two major Constitutional requirements for a Presidential Candidate to be declared a winner in a Presidential election in Nigeria provides:

[48]UniniChioma; Many Voices Of Section 134 of the Constitution: The Need For Judicial Interpretation: Retrieved September 21, 2021, from https://punchng.com/ebubeagu-Amotekun-and-the-confusion-of-meaning/ retrieved in 15/04/2024.

134.(2) A candidate for an election to the office of President shall be deemed to have been duly elected where, there being more than two candidates for the election-

(a) he has the highest number of votes cast at the election;

and

(b) he has not less than one-quarter of the votes cast at the election each of at least two-thirds of all the States in the Federation and the Federal Capital Territory, Abuja.

Given that the Presidential Candidate that was eventually declared winner and President-elect though garnered the highest number of votes cast and more than one-quarter of the votes cast in well more than two-thirds of the 36 States of the Federation did not have up to one-quarter of the votes cast in the Federal Capital Territory the attention of the debaters on this Section[49], expectedly is on whether for a Presidential Candidate to be declared winner he must compulsorily have one-quarter of the votes cast in the Federal Capital Territory[50]. Some have argued that the Constitution intends that having one-quarter of the votes cast in the Federal Capital Territory is a sine qua non for any Presidential Candidate to be declared a winner even if such Candidate has more than one-quarter of the votes cast in more than two-thirds 36 States of the Federation while others are of the view that a Candidate does not need to have had one-quarter of the votes cast in the Federal Capital Territory to be declared a winner if the said Candidate already had one-quarter of the votes cast in more than two-thirds of the 36 States of the Federation.

[49] Augustine Aigbiniode; "Some Critical Remarks on the National Security Question", Nigerian Journal of International Affairs. (2024) (12), 1-7.

[50] Kingsley Idahosa; X-Raying the Provision Of Section 134 Of The 1999 Constitution Of The Federal Republic Of Nigeria (As Amended): Nigerian Tribune, Tuesday, April 23, 2023, 13.

With respect to several eminent commentators[51], the interpretation that a Presidential Candidate must have one-quarter of the votes cast in the Federal Capital Territory in addition to other requirements for such Candidate to be declared a winner is grossly absurd and in fact against other provisions of the Constitution itself. If Section 134 (2) of the Constitution is interpreted to mean that a Presidential Candidate must have at least one-quarter of the votes cast in the Federal Capital Territory then this will surely be violating the express provision of Section 42 (1) of the same Constitution as this would subject citizens of Nigeria in the 36 States of the Federation to disabilities or restrictions based on the communities they live in and their political opinions. Likewise, such absurd interpretation would also accord citizens of Nigeria in the Federal Capital Territory privileges or advantages over citizens of Nigeria in the 36 States of the Federation based on the communities they live in and their political opinion. Section 42 (1) of the Constitution provides for instance that:

> *(1) A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person:–*
>
> *(a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions are not made subject; or*
>
> *(b) be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or*

[51] D. Akowonjo, The interpretation of the Constitution in relation to section 134 of the Nigerian Constitution., (2023), 78; Augustine Aigbiniode; "Some Critical Remarks on the National Security Question", Nigerian Journal of International Affairs.(2024) (12),1-7; Kingsley Idahosa; X-Raying The Provision Of Section 134 Of The 1999 Constitution Of The Federal Republic Of Nigeria (As Amended): Nigerian Tribune, Tuesday, April 23, 2023, 13.

advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions.

Interpreting the provision of Section 42 (1) of the Constitution, the Supreme Court noted in *LAFIA LOCAL GOVT v. EXECUTIVE GOVT NASARAWA STATE & ORS* (2012) LPELR-20602(SC):

> *"By the provisions of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) a citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religion or political opinions are not made subject; or be accorded either expressly by or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religion or political opinions. And no citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth. See; Section 42 of the Constitution." Per OLUKAYODE ARIWOOLA, JSC (Pp 55 – 56 Paras F – D)*

The Respondents in this case were civil servants in Nasarawa State but were redeployed based on a government policy from Lafia Local Government Area to Nasarawa Edgon Local Government Area on the ground that after screening they were found not to be from Lafia Local

Government Area. The Supreme Court found that they were discriminated against based on their ethnicity or their place of origin. The Supreme Court further held in the case thus:

> *"There is no doubt about it that in due interpretation of the provisions of the Constitution which is the ground norm, the Court should embark upon broad interpretation more especially when same relates to the fundamental rights of the citizen. The Court should employ a liberal approach or take what is often called a global view. This is so as the rights of the citizen must not be toyed with under any guise. See: Rabiu v. The State (1980) 8-11 130 at 151, 195.Further more, related sections of the Constitution ought to be interpreted together so as to produce a harmonious result. See: Senator Abraham Adesanya v. President of the Federal Republic &Anr (1981) 5 S.C. 112 at 134, 321; Akaighe v. Idama (1964) 1 All NLR, 322."*

The Apex Court further noted:

> Courts should assume an activist role on issues that touch or concern the rights of the individual and rise as the occasion demands to review with dispatch acts of Government or its agencies and ensure that the rights of the individual guaranteed by the fundamental rights provisions in the Constitution are never trampled on.

One thing that is obvious from the decision of the Supreme Court is the high pedestal in which the Courts are to hold Fundamental Rights of persons Nigeria.[52] It would therefore be absurd for the provision of Section 134 (2) of the Constitution to be interpreted to defeat or violate the

[52] G. Kayode, Constitutional questions of the interpretation of section 134 of the Nigeria constitution: Nigerian Tribune, Tuesday, April 23, 2023, 15.

provision of Section 42 (1) of the same Constitution especially when the provision of Section 42 (1) relates to fundamental right of citizens which is held in higher pedestal.

It is important to further note that there are other provisions of the same Constitution that point to the fact that all voters in Nigeria are intended by the drafters to be equal and not for some to be more equal than others. Section 132 (4) and (5) of the Constitution provides:

> *(4) For the purpose of an election to the office of President, the whole of the Federation shall be regarded as one constituency.*
>
> *(5) Every person who is registered to vote at an election of a member of a legislative house shall be entitled to vote at an election to the office of President.*

Similar provisions relating to Governorship election are contained in Section 178 (4) and (5) of the Constitution. Sections 77 (2) and 117 (2) of the Constitution prescribe who can vote at election of members of legislative houses as Nigerian citizens that are 18 years of age and above. If Section 134 (2) is intended to be interpreted to mean that for a Presidential Candidate to be declared winner in an election he must have one-quarter of the votes cast in the Federal Capita Territory then similar provision would have been made in respect of State Capitals[53]. However, no such provision is contained in Section 179 (2) which prescribes similarly that for a Governorship Candidate in a State to be declared a winner in an election he must inter alia have one-quarter of votes cast in at least two-thirds of the Local Government Areas of the State. Since Local Government Area(s) always form the State Capitals there is no need to separate State Capitals or specifically mention such in the Constitution as done in respect of the Federal Capital Territory which is not a State and needs to be mentioned separately.

Furthermore, Section 299 of the Constitution provides:

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[53] C. Okodolor, Constitutional interpretation: Towards a Review of Section 134 of the Nigerian Constitution; (2023), 25 (7-8) *Nigerian Forum*, 208.

The provisions of this Constitution shall apply to the Federal Capital Territory, Abuja as if it were one of the States of the Federation; and accordingly –

(a) all the legislative powers, the executive powers and the judicial powers vested in the House of Assembly, the Governor of a State and in the courts of a State shall, respectively, vest in the National Assembly, the President of the Federation and in the courts which by virtue of the foregoing provisions are courts established for the Federal Capital Territory, Abuja;

(b) all the powers referred to in paragraph (a) of this section shall be exercised in accordance with the provisions of this Constitution; and

(c) the provisions of this Constitution pertaining to the matters aforesaid shall be read with such modifications and adaptations as may be reasonably necessary to bring them into conformity with the provisions of this section.

From this provision it is clear that for the purpose of Presidential election, the Independent Electoral Commission would only regard and treat the Federal Capital Territory as the "37th State" of the Federation[54].

It is our view that Section 134 (2) of the Constitution does not intend to create out of the Federal Capital Territory super voters whose votes would worth more than that of voters in the 36 States of the Federation and interpreting the Section this way would discriminate against voters in the 36 States of the Federation.

Furthermore, Section 134 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) provides thus:

[54]Oluwakale Atolagbe cited in Kingsley Idahosa; X-Raying The Provision Of Section 134 Of The 1999 Constitution Of The Federal Republic Of Nigeria (As Amended): Nigerian Tribune, Tuesday, April 23, 2023, 13.

(1) A candidate for an election to the office of President shall be deemed to have been duly elected, where, there being only two candidates for the election –

(a) he has the majority of votes cast at the election; and

(b) he has not less than one-quarter of the votes cast at the election in each of at least two-thirds of all the States in the Federation and the Federal Capital Territory, Abuja.

(2) A candidate for an election to the office of President shall be deemed to have been duly elected where, there being more than two candidates for the election-

(a) he has the highest number of votes cast at the election;

And

(b) he has not less than one-quarter of the votes cast at the election each of at least two-thirds of all the States in the Federation and the Federal Capital Territory, Abuja.

(3) In a default of a candidate duly elected in accordance with subsection (2) of this section their shall be a second election in accordance with subsection (4) of this section at which the only candidate shall be –

(a) the candidate who scored the highest number of votes at any election held in accordance with the said subsection (2) of this section; and

(b) one among the remaining candidates who has a majority of votes in the highest number of States, so however that where there are more than one candidate with majority of votes in the highest number of States, the candidate among them with the highest total of votes cast at the election shall be the second candidate for the election.

(4) In default of a candidate duly elected under the foregoing subsections, the Independent National Electoral Commission shall within seven days of the result of the election held under

the said subsections, arrange for an election between the two candidates and a candidate at such election shall be deemed elected to the office of President if –

(a) he has a majority of votes cast at the election; and

(b) he has not less than one-quarter of the votes cast at the election in each of at least two-thirds of all the States in the Federation and the Federal Capital Territory, Abuja

(5) In default of a candidate duly elected under subsection (4) of this section, the Independent National Electoral Commission shall, within seven days of the result of the election held under the aforesaid subsection (4), arrange for another election between the two candidates to which the subsection relates and a candidate at such election shall be deemed to have been duly elected to the office of President if he has a majority of the votes cast at the election.

The provision of Section 134 of the Constitution of the Federal Republic of Nigeria (As amended) is unambiguous, in other words very clear.

It is settled law that where a provision of a Statute is clear or unambiguous, it must be given its natural, ordinary everyday meaning.

The provision of Section 134 is express. It mentioned "…the votes cast at the election in each of at least ⅔ (two-thirds of all the States in the Federation "and the Federal Capital Territory, Abuja" meaning "plus" or "including" the Federal Capital Territory, Abuja.

The Latin term that easily calls to hand in aid is the Expressiouniusestexclusioalterius principle or rule. It means "the expression of one thing is the exclusion of the other not mentioned". The section in question specifically and deliberately used the word "and the FCT, Abuja" to remove the imputation of these unwarranted arguments designed to erode the Federal Capital Territory of its special status and that is certainly not the intendment of the draftsmen.

Furthermore, on the meaning and the use of the word "and" the Supreme Court in the case of *Ogunyade v. Oshunkeye&Anor*[55] held thus:

> "In grammar or syntax, a sentence does not end with the word "and". It is conjunction playing the role in the grammatical construction of connecting words or phrases expressing the idea that the latter is to be added to or taken along with the first. In its conjunctive sense, the word is used to conjoin words, clauses or sentences expressing the relation of addition or connection and signifying that something is to follow in addition to that which proceeds and its use implies that the connected elements must be grammatically co-ordinated as where the elements proceeding and succeeding the use of the words refer to the same subject mailer.

While the coordinating conjunction can begin a sentence in certain instances, its function or role in the grammar of the amended statement of claim is to add more thing or things to the reliefs sought" Per Niki Tobi, J.S.C. (Pp.20-21. Paras. G-D)

More so, another Latin term worthy of mention here is the "Generaliaspecialibus non derogant" which literally means "things generally do not derogate from things special".

This common law principle is used for construing legislation which holds that a syntactical presumption may be made that where there is a conflict between a general and a specific provision, the specific provision will prevail over the general provision and in the instance case Section 299 has been the general provision to give way to the provision of Section 134.

The point driving at here is that Section 299 (a general provision) of the Constitution goes to no issue in the face of the specific provision of Section 134 of the same Constitution under the Generaliaspecialibus non derogant principle or rule.

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[55] *(2007) 15 NWLR (PT. 1057) page 218; (2007) LPELR-2355 (SC)*

Finally, the last Latin term that is of note also is the "Ejusdem Generis rule". In simple terms, it says "if the legislature intended general words to be used in an unrestricted sense, it would not have bothered to use particular words at all". Put differently, if the Constitution intended to elevate the provision of Section 299 to the status being arrogated to it over Section 134, it won't have bothered about Section 134.

In summary, in order to be successfully elected the president of the Federal Republic of Nigeria the candidate must of necessity SCORE 25% of the votes cast in the FCT and without which he/she cannot be declared the winner.

Also, section 134 of the 1999 Constitution provides requirements to be met by a Presidential candidate in relation to the office of the President of Nigeria.

In a letter dated January 17, 2022 and addressed to the INEC chairman, Agbakoba stated that his request for clarification on the provision of section was premised on the seemingly ambiguous nature of the section.

Agbakoba[56], who noted that many concerned Nigerians have contacted him in the past days seeking correct interpretation of Section 134 of the constitution said that there is urgent need for the INEC chairman to clarify the correct meaning of the section to the public.

The letter read:

> I write to commend INEC on the great job to ensure free, fair, verifiable, credible and transparent elections. However, I am a little worried. Many concerned Nigerians contacted me about the correct interpretation of section 134 of the 1999 Constitution that provides requirements to be met by a Presidential candidate in relation to the office of the President of Nigeria.

[56] Bob MajiriOgheneEtemiku; Interpreting Section 134 Of The Nigerian Constitution With Dead English?;Nigerian Punch, Monday, April 21, 2023, 7.

> I reviewed section 134 carefully, specifically, subsections 134 (1) (b) and (2) (b), and wondered if "two-thirds of all the States in the Federation and the Federal Capital Territory, Abuja" means either of the following: that a presidential candidate must score not less than one-quarter of the votes cast at the election in each of at least two-thirds of all the States in the Federation which means 24 states, the 24 States will include the Federal Capital Territory Abuja as a "State", or (b) that a presidential candidate must score not less than one-quarter of the votes cast at the election in each of at least two-thirds of all the States in the Federation which means 24 states and in addition to meeting the one-quarter requirement in 24 states, a candidate must also win one-quarter of the votes cast in the Federal Capital Territory, Abuja.

Meanwhile, "In this sense, a Presidential candidate must have one-quarter of the votes cast in the Federal Capital Territory, Abuja, in addition to scoring not less than one-quarter of the votes cast at the election in 24 States of the Federation, to be duly elected.[57]

Raising vital questions that the INEC chairman must address, Agbakoba said: "is the requirement that a presidential candidate must score not less than one-quarter of the votes cast at the election in each of at least two-thirds of the 36 States of the Federation; does this mean that the Federal Capital Territory, Abuja is incorporated in the 24 States?

"is the requirement that a presidential candidate must score not less than one-quarter of the votes cast at the election in each of at least two-thirds of the 36 States of the Federation; does it mean that the presidential candidate must also score not less than one-quarter of the votes cast at the election at the Federal Capital Territory, Abuja?

[57] Augustine Aigbiniode; "Some Critical Remarks on the National Security Question", Nigerian Journal of International Affairs. (2024) (12), 1-7.

“can a candidate that scored not less than one-quarter of the votes cast at the election in 36 States of the Federation but fails to score one-quarter of the votes cast at the election at the Federal Capital Territory, be duly elected as President of Nigeria?

“Finally, section 134(1)(a) provides that a candidate for an election to the office of President shall be deemed to have been duly elected, where, there being only two candidates for the election, the candidate has the majority of votes cast at the election, but section 134(2) provides that a candidate for an election to the office of President shall be deemed to have been duly elected where, there being more than two candidates for the election, the candidate has the highest number of votes cast at the election.

The Constitution describes the winner in two languages. One, the winner must score the majority of votes and the other, the winner must score the highest number of votes.

“This is confusing. To be honest, I am not quite sure of the right answers to my questions. I just thought to bring this to your attention as something you might wish to clarify to the public.”

The possible outcome of the presidential election and the possibility of any candidate being declared the winner in consideration of Section 134(2) of the Constitution has sparked a lot of legal debates amongst lawyers and political actors as to what really is the intendment of the framers of Section 134. It may be recalled that the legal giant Olisa Agbakoba SAN former President of the Nigeria Bar Association had written to INEC to give interpretation to Section 134 but INEC failed to give heed to the somewhat prophetic request.

Section 134 (2) of the CFRN 1999 provides that *"A candidate for an election to the office of President shall be deemed to have been duly elected where, there being more than two candidates for the election: (a) he has the highest number of votes cast at the election; and (b) he*

has not less than one-quarter of the votes cast at the election in each of at least two-thirds of all the States in the Federation and the Federal Capital Territory, Abuja"

Trending

The above provision has been given a different interpretation[58]. Some are of the view that so far a candidate has not less than one–quarter of the votes cast at the election in each of at least two-thirds of all the states, he does not necessarily need to get one-quarter of the votes cast FCT while the others are of the view that getting one-quarter ie 25% of the votes cast in Abuja is mandatory in addition to getting 25% in two-third of the state of the Federation.

The first opinion is that the constitution adds Abuja to the other 36 States to make it 37 States so to say. That is to say a candidate with the highest number of votes cast in a presidential election, must also get at least 25 per cent of the votes cast in each of at least 2/3 of the States. If the candidate has one-quarter of the votes cast in 25 States, the constitutional requirement would be deemed satisfied irrespective of whether he gets up to 25 per cent votes in Abuja or not. This means that a candidate who gets the highest number of total votes cast and also at least 25 per cent in 25 States of the Federation, does not need to get up to 25 per cent in the FCT Abuja as a condition precedence to be declared the winner of the election. Further reliance on this view is placed on Section 299 which said that the FCT should be treated as a state.

The second opinion is to the effect that for a candidate to be declared a winner of a presidential election, he must have 25% per cent of the votes cast in at least 24 States of the Federation, in addition, must have 25% per cent of votes cast in FCT. This opinion appears to be the intendment of the framers of the Constitution because there is no doubt that Section 299 regards FCT as a state only to the extent of making the FCT to have executive powers vested in the

[58] Bob MajiriOgheneEtemiku; Interpreting Section 134 Of The Nigerian Constitution With Dead English?;Nigerian Punch, Monday, April 21, 2023, 7.

president just like the states, where the governors have such powers, vesting Legislative powers in the National Assembly just like states with Houses of Assembly and vesting Judicial Powers in its own Courts with distinct Chief Judge of FCT just like you have CJ of State courts.

Judicial interpretation has been given to Section 299 in *BABA-PANYA V. PRESIDENT, F. R. N*[59]*,**BAKARI V. OGUNDIPE*[60] **etc. However, it is worthy of note that the above cases** determined questions as to whether agencies of the FCT are agencies of the Federal Government of Nigeria. The above cases never determined the electoral status of the FCT with respect to a candidate being qualified to be declared as the winner of a presidential election also it did not in any way give interpretation to Section 134 (2) of the Constitution as it clearly does not apply in this context.

It is therefore conclusive, to state the need for a judicial interpretation of Section 134(2) in other to lay to rest the debates as to whether the constitution intends that winning 25 per cent of the votes cast in FCT is compulsory in addition to 25 per cent in 24 States.

According to Etemiku[61], Part of the grouses include the interpretation of the 25% requirement which a presidential candidate must meet to be elected as president. Currently, there is a back and forth on the interpretation of that requirement, together with the fact that the conditions seem to indicate that a candidate is required to win 25% of the votes in a bunch of states AND Abuja. The back and forth, in my estimation, is in the definition of the word AND. While those on the one divide say that the word AND includes Abuja, the others insist that it does not.

[59] .(2018) 15 NWLR (PT. 1643) 395.

[60] (2020) LPELR-4957 (SC).

[61]Ibid.

Part of the dilemma that this scenario has generated and presented to us all is the fact that the persons involved in the back and forth are mostly lawyers. Depending on the aisle they belong, they have very successfully given their various versions of what AND means and how it should apply. Their dictionary, the Black's Law Dictionary does not have an entry for the word AND in contention. When you listen to the lawyers adumbrate and puff and hump, all you mostly hear them say is that the AND is a conjunction, and depending on the side they represent, they go right ahead to tell you why their own definition of AND is the correct and the applicable one.

But the question is this: If the Black's Law Dictionary does not have an entry for the word AND, upon what linguistic platform do these lawyers base their definitions? We may hazard a response concerning the erroneous linguistic platform upon which the lawyers on both sides of the aisle base their summations of the use of the word AND. Most of them base their knowledge of the definition of AND on the basis of logic formulated at the peripatetic epochs of Plato and Aristotle known as traditional grammar. If you calculate the epochs of Plato and Aristotle, (384 – 322BC), you will find out that that epoch spans hundreds and hundreds of years. Throughout that time, and up till now English in our statute books is modeled on an already dead language Latin. But today however, most of those nuances related to the Latinate or Aristotelean grammar have all gone under, have been modernized and many have been discarded. For instance, around the 19th century, Michael Halliday, came up with the notion of 'Systemic Functional Grammar' which set the framework for the modernization of linguistic analysis of grammar. Rather than rely on the 'parts of speech' of the old school, this new grammar was built on the Hallidayan tripods of phonology, semantics and lexico-grammar (syntax, morphology and lexis).

Then in 1957, Noam Chomsky, a statistician and linguist published Syntactic structures. With this treatise, two things happened: English shifted from value judgement to science; and

Chomsky's model – Transformational Generative Grammar, TGG, had a Surface and Deep Structure. It overhauled most of the English that our laws are written. While the other paradigm – traditional grammar – appeared prescriptive, TGG had a descriptive outlook. With TGG, the 'parts of speech', – nouns, pronouns, verbs, adverbs, adjectives, prepositions, interjections, conjunctions, determiners and articles together with some of their definitions became somewhat irrelevant. They were eventually sort of replaced with such items as word order, punctuation, tense and aspect, determiners and connectors.

Chomsky's TGG, therefore, is the most up-to-date template. This template consisting of phrase structure, transformational structure and morphophonemics has very strict rules. What is however very disturbing is that 99% of all the laws in Nigeria, including the Constitution, are written on the Aristotelian template. Nearly all lawyers, Economists, journalists in Nigeria still apply the old templates. Most of the interpretations of the law in Nigeria have no deep structure and are based on antediluvian models of the English language. For instance, the Transformational Structure rule puts forward the following rules T-and (to take care of how to use AND), T-q (to take care of how to use interrogative statements, T-af (to take care of how to use the verbs), T-p (to take care of active to passive sentences), and T-neg (to know how to apply negation). Are most judgements and interpretations often made with a recourse to this 'new' model?

Therefore, if anyone were to apply the T-and TGG rule to Section 134 of the Nigerian Constitution (as amended) the interpretation of that section would be radically different from the conjunctive definition that most lawyers ascribe to that word. Apart from the more than eight literal meanings which the Oxford Advanced Learner's English dictionary confers on AND, that word has a deep structure that seems to suggest that we are getting our bearings all wrong,

especially with the interpretation of Section 134 of the Nigerian Constitution. I would recommend to the people going to make decisions on what Section 134 of the Nigerian Constitution infers, to apply the new TGG Rules. In the new system AND is not 'just' a conjunction. It is supposed to produce a 'third sentence'. It is a device with which to juxtapose data, information, etcetera. A meticulous rendition of the T-and rule of Transformational Generative Grammar, TGG, will be found in Tomori (1977), with reasonable background in L.A. Boadi, D.W. Grieve, B. Nwankwo (1968).

3.2 Interpretation of Section 134 of the 1999 Constitution

In case of an election with only two candidates, Section 134(1) of the 1999 Constitution states that a Presidential candidate shall be deemed to have been duly elected where he has "the majority" of votes cast at the election, and has not less than one-quarter of the votes cast at the election in each of at least two-thirds of all the States and the Federal Capital Territory, Abuja.

But, in a case where there are more than two Presidential candidates, Section 134(2) provides that a candidate shall be deemed to have been duly elected where he has the "highest number" of votes cast at the election, and has not less than one-quarter of the votes cast at the election in each of at least two-thirds of all the States in the Federation and the Federal Capital Territory, Abuja. In my opinion, there is absolutely nothing ambiguous about this particular aspect of Section 134 of the Constitution in the slightest. In parliamentary and constitutional procedure, the term "majority" simply means "more than half". In this sense, as it relates to a vote, a majority vote is more than half of the votes cast. In short, where there are two candidates the

winner is expected to have more than 50% of the votes cast between them; but, when there is more than two candidates, he who secures the highest number of votes amongst the candidates is the winner.

The Senior Advocate of Nigeria also said Section 134 of the Constitution wasn't explicit enough, as to whether the two-thirds votes a candidate must secure as mentioned in the Constitution would include or exclude the Federal Capital Territory (FCT), Abuja.

He asked if, to be declared winner of the Presidential election, a candidate must win a quarter of votes in 24 States – which makes up the two-thirds – as well as the FCT, or without the FCT.…does this mean that the Federal Capital Territory, Abuja is incorporated in the 24 States? Or…does it mean that the Presidential candidate must also score not less than one-quarter of the votes cast at the election at the Federal Capital Territory, Abuja?"

Once again this part of Section 134 of the Constitution is not ambiguous in my view. Section 134 (2)(b) of the Constitution specifically provides: "…….. and the Federal Capital Territory, Abuja". It does not use the words inclusive. That implies that a candidate that scores not less than one-quarter of the votes cast at the election in 24 States of the Federation, but fails to score one-quarter of the votes cast at the election at the Federal Capital Territory cannot be duly elected as President of Nigeria. There isn't much to debate here in terms of meaning, but can this be just? The subsection does seem rather absurd, in the sense that it implies that if a candidate manages to secure a majority of votes cast in an election and satisfies the requirement of securing one- quarter of the votes cast in two-thirds of the 36 States of the Federation, he or she might still not be eligible to become President, if he/she fails to secure one-quarter of the votes cast in the FCT. This seems to suggest that the FCT is of special status, and even more significant than a

State. It would have been more appropriate to use the word "inclusive" of the Federal Capital Territory, Abuja instead of "…….. and the Federal Capital Territory, Abuja". This subsection should therefore, accordingly be made subject to a constitutional amendment. Unfortunately, it is too late

for this to be done before next month's Presidential elections. This is rather unfortunate, considering we have been operating the 1999 Constitution for about 24 years now, and a fundamental flaw of such magnitude is just being noticed.

Section 134 (3)

> In default of a candidate duly elected in accordance with subsection (2) of this section there shall be a second election in accordance with subsection (4) of this section at which the only candidate shall be –
>
> (a) the candidate who scored the highest number of votes at any election held in accordance with the said subsection (2) of this section; and
>
> (b) one among the remaining candidates who has a majority of votes in the highest number of States, so however that, where there are more than one candidate with a majority of votes in the highest number of States, the candidate among them with the highest total of votes cast at the election shall be the second candidate for the election.

As earlier mentioned, the word majority is used and relevant where there are two candidates. Section 134(3) (b) itself seems to erroneously suggest that there could be more than one candidate with a majority of votes in the highest number of States. This can't be correct. There can't be two candidates with a majority of votes. As mentioned earlier, there can only be two

candidates to be able to use the word majority, since you must exceed 50% for a simple majority. Section 134 (3) (b) therefore, is grammatically incorrect in constitutional and parliamentary terms and the draftsman ought to have used the word highest instead of majority, since there could be more than two candidates who qualify under Section 134 (3) (b) of the 1999 Constitution (as amended) The draftsman probably didn't want to use the words …..has the highest votes in the highest number of States. He was probably avoiding using the word highest in the same sentence in two different contexts; but in trying to avoid this, he has left the section open to wrong interpretation.

3.3 Conclusion

Although inadvertent, Dr. Agbakoba, SAN has perhaps, drawn our attention to what could turn out to be a highly significant issue in any Presidential runoff race. In strict legal parlance, a majority means at least 50% of the votes cast, and if this interpretation is strictly applied to Section 134 (3) (b) instead of the meaning attached to highest, then we could easily find ourselves in yet another constitutional stalemate, in the sense that there may be no outright winner under Section 134 of the Constitution; and neither might there be a runoff challenger to whoever emerges with the highest number of votes under Section 134(3)(a) of the Constitution if the strict interpretation of majority which ordinarily should mean at least half of the votes cast is adhered to. Since as we have already noted, this is the meaning given to majority and highest under 134(1) and 134(2) of the 1999 Constitution, why or how can we interpret Section 134(3)(b) any differently? In any case some Lawyers would argue and insist on this strict interpretation, and this could lead to yet another constitutional stalemate similar to the 1st Republic case

of *Akintola v Adegbenro&Anor*[62] on the removal of a sitting Premier and the 2nd Republic 12 2/3 case of *Awolowo v Shagari*[63]**.** Since there is every possibility that this situation could actually play itself out, INEC would be well advised to seek legal interpretation in a court of law before the elections begin in just under a month's time.

CHAPTER FOUR

The Electoral Act 2022 and Democratic Stability in Nigeria With Reference To The 25 Percent Of 36 States And Federal Capital Territory In Nigerian Constitution Devolves To Simple Math

4.1 Introduction

Electoral democracies the world over, thrive on credible, free, fair, and periodic elections. This is to the extent that, while elections alone do not make democracies, there however cannot be democracy in the real sense of the word without clean elections. Thus, it is safe to infer that democracy will survive well into the future when there are credible elections. Given the fact that elections are imperfect the world over democratic states make efforts from time to time to improve the electoral process by way of tinkering with the electoral laws and guidelines.

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[62]1963] 3 All ER.
[63]SC 62/ 1979.

This singular act is what is meant by electoral reforms. It, therefore suffices that electoral reforms not only improve the electoral process but also serve as instruments for attaining democratic stability – an assurance of democratic practice well into the future. All too often in Africa, Nigeria, inclusive elections are marred by serious irregularities which threaten the continued existence of democracy in such a manner that democratic stability is not assured.

Since the democratisation of the continent in the 1990s, several changes have been made on issues relating to gender voting, voter registration, participation of people living with disability, and the participation and inclusion of marginalised groups, etc[64]. In Nigeria, since its return to democratic rule in 1999, elections have been synonymous with rigging, and antithetical to democratic stability, with 1999, 2003, and 2007 elections standing out in terms of poorly conducted elections. In 2015, with some measures of electoral reforms (Electoral Act 2010, as amended in 2015), and the deployment of technologies for the conduct of the election, it resulted in one of the best elections in the electoral history of the country. Since 1999, the country has made efforts to improve its electoral process by way of electoral reforms, including the Justice Uwais Commission of 2007/2008, and the Electoral Act 2006, 2010, and 2015. After a few controversies and going back and forth on the Electoral Act 2022, it was eventually assented to by the president on 25th day of February, 2022[65]. Pertinent to add that these reforms were designed to address such electoral malfeasance like ballot snatching/stuffing, over-voting,

[64]Abubakar, U. I. & Yahaya, A. M. (2017), Public relations perspectives on electoral reforms as a panacea for consolidating Nigeria's democracy. Journal of Social and Administrative Sciences, 4(4), 370-381.

[65]H. Amersfoort, and Wusten, H. (Democratic Stability and Ethnic Parties. Ethnic and Racial Studies, 4(4): 476-485.

multiple registration/voting, and lack of confidence in the election management body, among others, which frequently beset the electoral and democratic process in Nigeria.[66]

The impression that has been created in previous studies is the fact that electoral reforms play a critical role in stabilising democratic practice. Nevertheless, electoral reforms do not always guarantee democratic stability, as some are mere façade by the political class to suit their political interests, and do not necessarily with a sincere motive to improve the electoral process and may yield mixed results. It is however yet to be demonstrated, how the electoral reforms have helped or are helping to stabilise democracy in Nigeria, or otherwise. The critical question thus, is: what are the prospects of attaining democratic stability in Nigeria through the instrumentality of electoral reforms?

4.2 Historical Trajectory of Electoral Reforms in Nigeria

The Electoral Act 2022 in Nigeria brought several reforms to the electoral process, including provisions concerning the requirements for a candidate to be declared the winner of a presidential election. One of the significant aspects of this act is the stipulation regarding the Federal Capital Territory (FCT), Abuja.

According to the Electoral Act 2022, for a candidate to be declared the winner of a presidential election, they must secure at least 25% of the votes in at least two-thirds of the states and the Federal Capital Territory (FCT). This provision has sparked discussions and debates regarding the status of the FCT, given that it is not a state in the traditional sense but serves as the capital of

[66] R. Abati, 2023 Elections and Electoral Bill 2022, by Reuben Abati: Mr President, Sign the Bill. History should not repeat itself. Premium Times, February 22, 2023. Available at https://www.premiumtimesng.com/opinion/512852-2023-elections-and-electoral-bill-2022-by-reuben-abati.html.Last accessed on 24th day of September, 2024.

Nigeria.The case study of the 25% requirement for the FCT votes highlights the constitutional and legal implications surrounding the electoral process. Critics argue that excluding the FCT from the requirement undermines its status as the capital, while supporters assert that the FCT should not be treated as a full state in this context.

This provision continues to be a focal point of legal interpretations and discussions, especially during elections, as it has implications for the legitimacy and acceptance of the electoral outcomes. The interpretation of this law has the potential to affect the political landscape in Nigeria significantly. Overall, the Electoral Act 2022, with its emphasis on the FCT's vote requirements, reflects ongoing efforts to enhance the democratic process in Nigeria, albeit with complex challenges related to its implementation and interpretation.[67]

Electoral reforms in Nigeria date back to the period of colonial rule. Following independence in 1960, Nigeria had its first elections as a Republic in 1964. Since then, several other elections have been held amidst intermittent disruptions by military interventions. [68]Many if not all of these elections have been alleged to be marred with different kinds of irregularities and malpractices. Apart from serving as incentives for the military to interrupt the process, these electoral malfeasances have provided justifications for many of the electoral reforms before the return to democracy in 1999. For example, Nigeria practised the proportional representation electoral system under a parliamentary system of government from 1959-January 15th 1966 when the military struck and usurped political powers in a bloody coup d'état. Within this period,

[67]Bowler, S., Donovan, T. & Karp, J. (2006). Why Politicians like Electoral Institutions: Self-interest, Values or Ideology? Journal of Politics, 68(2): 434- 446.

[68] H.A Idowu, and N.O. Mimiko, "Enabling Factors for Peaceful Political Power Alternation and Democratic Consolidation in Ghana and Nigeria". *Taiwan Journal of Democracy*, (2022), 16(1): 161-195.

parliamentary seats were allocated to political parties based on the number of votes pulled in a poll. However, in 1979, Nigeria not only instituted a presidential system of government but also adopted the first-past-the-post electoral system modelled after the United States.

To address electoral fraud and irregularities identified in previous elections in Nigeria, the National Electoral Commission (NEC) during the military administration of General Ibrahim Babangida innovated the Option A-4 system to conduct the 1992/93 General elections. Option A-4 is an electoral system which requires voters to queue behind the campaign poster of their preferred candidates until after counting and proper recording. It was Option A 4 that produced the outcome of the 1993 presidential elections allegedly won by the late Chief M. K. O. Abiola. The election was widely acclaimed by both international and domestic the most credible election ever conducted in Nigeria. Sadly, the election was annulled by the Gen. Babangida-led military government.[69] The crisis and controversies generated by the annulment of the June 12 elections are well-known with far-reaching implications for Nigeria's corporate existence. The annulment of the June 12, 1993, elections ushered in yet another military-civilian rule transition programme midwife by the late Gen. Sani Abacha's military regime. During the Abacha regime's military-civil rule transition programme (1993-1998), the Option A-4 system was replaced with the Open-Secret Ballot system. However, the transition from the military-civil rule programme ended abruptly following the death of Gen. Sani Abacha on June 8 1998..[70]

In 1999, Nigeria returned to democratic rule after a successful 9-month military-civil rule transition programme administered by Gen Abdulsalami Abubakar. During the military-

[69] O.S. Balogun, & S. Ikheloa, Vote Buying and Election Administration in Kogi State: A Review of the 2019 General Election in Lokoja Metropolis. *Zamfara Journal of Politics and Development*, (2024), 3(2), 102-111.

[70]J.S Omotola, Electoral Reforms and the Prospects of Democratic Consolidation in Nigeria. *Journal of African Elections*, (2021), 10(1), 187-207.

supervised general election in 1999, the Open- Secret Ballot system innovated by Gen. Sani Abacha's regime was sustained. It must be noted that the 1999 and successive elections in Nigeria have been characterized by varying degrees of malpractice. Asnoted that there is a widely accepted notion supported by undeniable evidence that the quality of elections in Nigeria is progressively compromised at each circle of elections just the same way it happened in the 1999, 2003 and 2007 general elections[71]. He further argued that the major challenge bedevilling Nigeria's democracy is that of "election administration." Indeed, all the stages of the electoral process from voter registration, party primaries, and election campaigns to the conduct of elections and management of post-election issues have remained sources of worry to observers and the international community.

These concerns have often inspired the calls for reforms and accounted for the electoral reforms initiated by the Federal Government since 2003. By the provisions of the 1999 Constitution (as Altered), general Elections have been held every four years since 1999. These elections were held in 2003, 2007, 2011, 2015, and 2019. Before each of these elections, electoral reforms of varying degrees were introduced. Before the 2003 general elections, the Electoral Act 2002 was passed. The Electoral Act covered voter registration, political party operations, area and local government council elections, electoral offences, and election petition tribunals. However, these provisions did not constitute any significant reform to the electoral process, as the inadequacies of the Electoral Act 2002 resulted in the 2003 elections falling below the minimum standard due to widespread violence.[72]

[71]Ibid at 10(1), 187-207.

[72]https://www.thisdaylive.com/index.php/2023/03/07/is-25-of-fct-votes-required-to-win-a-presidential-election/ last accessed on 11th day of October, 2024.

The deficiencies in the Electoral Act 2002 created the impetus for further reform and culminated in the Electoral Act 2006. The 2006 Act expanded the functions of INEC to include conducting voter and civic education; promoting knowledge of sound democratic electoral processes; and conducting any referendum required by law. In addition, the Electoral Act 2006 closed gaps in the Electoral Act 2002 that makes it possible for political parties to change or replace candidates even during polling; gave supremacy to election tribunal judgments over INEC's certification where election results are contested; introduced campaign funding ceilings; as well as INEC power to appoint its own Secretary (Electoral Reform Committee, 2008). Despite these among other reforms, the 2006 Act had its failings such as ambiguous provisions, poor drafting, and denial of rights of the petition to some stakeholders which adversely impacted the 2007 General Elections. The 2007 General elections were described by observers including President Umaru Musa Yar'adua, who came into office during the same election as one of the worst elections ever held in Nigeria due to widespread irregularities and malpractices that characterized it (Human Rights Watch, 2007). Despite these, the 2007 General Elections gave Nigeria a huge quantum leap in democracy development and tested the resolve of Nigerians to embrace democracy with all its flaws as the preferred system of government.

Having publicly acknowledge the elections that brought him in were fraught with irregularities, President Umaru Musa Yar'adua upon assumption of office on August 28 2007, inaugurated a 23-man Electoral Reform Committee (ERC), led by Justice Muhammed Uwais and drew membership from the CSOs and other critical stakeholders. The ERC was mandated to suggest ways to comprehensively reform and overhaul the country's electoral process.

4.3 Federal Capital Territory And 25% Electoral Vote Threshold

On Saturday, February 25, 2023, Nigeria conducted an election for the position of President, which was widely regarded as the most fiercely contested in the country since 1999. On March 01, 2023, the Independent National Electoral Commission (INEC) declared Bola Ahmed Tinubu, candidate of the ruling All Progressives Congress (APC), as the winner and President-elect. On May 29, the Chief Justice of Nigeria swore him in as the Commander-In-Chief of the Armed Forces and 16th president of the Federal Republic of Nigeria.

While the reaction of the international community was mixed, the two major opposition parties, the People's Democratic Party (PDP) and the Labour Party (LP), took their dissatisfaction to the Presidential Election Petitions Tribunal in Abuja in petitions challenging the announced outcome of the presidential election.

Their core argument revolves around the President's alleged failure to secure "not less than 25 per cent of the votes cast in each of at least two-thirds of the States of the Federation, AND the Federal Capital Territory (FCT), Abuja," as mandated by the constitution (capitals added). They contend that this constitutional requirement was not met in the elections.

The challenge to the February 25, 2023 presidential election results has revived a well-known constitutional dilemma around the intended meaning of the phrase "and FCT" in the aforementioned constitutional clause as distinct from "including FCT" or "plus FCT." While there may be disagreement on the precise interpretation, it seems generally agreed that the intention was not to exclude the FCT from the constitutional requirement.[73]

[73] Ibid

If indeed the framers of the constitution intended "and FCT" to mean "plus FCT" or "FCT specifically," the opposition would be justified in challenging INEC's declaration of an APC victory. If the interpretation leans towards "including FCT," then INEC's result would fulfill the specific constitutional requirement, especially considering that the 1999 Constitution also acknowledges that the FCT can be treated as a state.

If the former, then this raises the fundamental question of why the framers of the 1999 Constitution would grant such a special right or privileged status to citizens of Abuja and the FCT that voters in other administrative units in the country do not enjoy.

To unravel the "and FCT" conundrum, it is important to examine what the founding fathers of the 1999 Constitution, all military personnel, had in mind when they decided earlier, in 1976, to build a new capital city on virgin land and set it up as a special federal capital territory. This article analyzes the historical context and the public policy considerations that drove the establishment of Abuja as a FCT, in order to inform the ongoing national debate and decision-making concerning the 2023 presidential election petition process.

4.3.1 The Founding Fathers of the FCT/Abuja

Among the various reasons identified for the decision to construct Abuja, two factors stand out prominently. Firstly, there was the notion of "national pride." As Africa's most populous country and one of the wealthiest due to its abundant natural resources (further bolstered by the oil boom and petrodollars of the 1970s), Nigeria was seen by both its citizens and the international community as the "black giant" of Africa and potentially a global leader.

The military, as the founding fathers of Abuja in the mid-1970s, believed that Nigeria was destined for greatness. They aspired to build an ultramodern city that would rival Western

capitals and serve as a source of national pride and symbol of modernity for black people worldwide. A new capital city in Abuja deliberately located inland and distinct from the congested and traffic-heavy urban landscape of Lagos, the military believed, would establish a modern and prestigious metropolis, simultaneously banishing the conspicuous remnants of British colonial influence in Nigeria. This reinforced the notion of a new, independent Nigeria that had firmly arrived as a legitimate member of the "Newer World."

The second significant motivation behind the military's choice of Abuja was the concept of an administrative framework known as the FCT. Beyond the evident fact that the FCT does not possess the typical characteristics of a Nigerian state, lacking an elected Governor but instead having an appointed Minister of the FCT, there is a less known yet crucial aspect of "national unity and ethnic neutrality".

As I wrote years ago, "It is common knowledge that Nigeria is a multi-ethnic country …and that the country has been riffed by ethnic rivalry from its inception. Lagos, obviously, is a Yoruba land and with such a lop-sided ethnic mix (Yoruba, 72.2% Igbo,15.4% Edo, 3.17% and Hausa, 2.05% in 1963), it was felt that the city, as capital, is inimical to the spirit of national unity, as it could never be a place where all Nigerians could lay claim to every available right, privilege and resource on an equal footing. This could only be achieved in a sort of no-man's land where no one ethnic group predominated."

The just concluded May 2023 gubernatorial elections in Lagos confirmed this fundamental truth about the Nigerian polity. In the weeks and months leading up to that election, the prevailing discourse revolved around the question of who are the "real owners" or "indigenes" of Lagos and

which individuals or groups possessed a more legitimate right to influence and shape the city-state's future political trajectory.

4.3.2 The strategic location of Abuja—an attempt to make it equi-polity-distant for all

Thus, the founding fathers of Abuja in the 1970s and 1980s embarked on a social re-engineering endeavour with the goal of achieving three objectives related to national unity and cohesion. Firstly, they aimed to strategically locate Abuja at the geographical heartland of the country. By doing so, they hoped that both government and development would be brought closer to the governed., . This approach aimed to ensure that citizens from all parts of the country had relatively equal access to the capital city in terms of physical distance.

Additionally, it is worth noting that one of the underlying motivations for the establishment of Abuja was a desire to address the concerns of the northern elite for conducting the nation's affairs from a capital that was not located so far away in the perceived hostile southern region.

4.3.2.1 The question of who owns Abuja and making it a place for all, on equal footing?

Secondly, another key objective pursued by the military proponents of Abuja was to establish a territory that would provide equal rights and opportunities to all Nigerians, devoid of any specific regional or ethnic affiliations. To achieve this strategic objective, the military regime made a series of 'deliberate and courageous decisions' regarding the FCT.

They carefully selected a central area in Nigeria that had relatively low population density and limited development. This selection was crucial in creating a neutral ground where every Nigerian would be treated equally and have the same rights. In response to this, the military government claimed full ownership of the entire FCT area, granting the federal government

complete control over the land. Unlike in any of the other 36 states of Nigeria, the federal government possesses 100 per cent monopoly control over the land in the FCT.

Thirdly, and significantly, the military decided to compensate and physically relocate all indigenous populations from within the FCT. Approximately 600 villages predominantly inhabited by farmers and potters belonging to the Gbagyi or Gwari ethnic groups, had to be swiftly resettled between 1976 and 1991. Where relocation of the indigenes proved costly, the military government simply decided to excise those parts from the FCT, as can be observed by examining the map of the FCT (Figure 2), where one can notice a distinct "V" shape at the top. This cutout represents the removal of the present-day Suleja town and its sizable indigenous population from the FCT.

4.3.2.2 Is 25% of FCT Votes Required to Win a Presidential Election?

Section 299(1) of the Constitution provides that the provisions of the Constitution shall apply to the Federal Capital Territory (FCT), as if it were one of the States of the Federation. It means that, the FCT is the 37th State. So, Section 134 of the Constitution which provides that "not less than one-quarter of the votes cast at the election in Each of at least two-thirds of All The States Andthe FCT" means 25 States or 24 States plus the FCT. Winning the FCT by a candidate, is not compulsory.

In Baba-Panya v President, F. R. N.the Court of Appeal held inter alia:[74]

"It is therefore, doubtlessly clear that by virtue of Section 299 of the Constitution of the Federation, the Federal Capital Territory is in law a State. In others words, the Federal Capital Territory should be treated as one of the States in the Federal Republic of Nigeria. It follows

[74](2018) 15 NWLR (Pt. 1643) 395

therefore, that bodies like the Federal Capital Development Authority are to be regarded as an agency of "a State", independent of the Federal Government. It would appear that the only relationship existing between the Federal Government and the Federal Capital Territory, is that its executive and legislative powers and duties are exercised for it by the President through the Minister of the Federal Capital Territory and the National Assembly respectively. From the provision of Section 299(a), where the President through the Minister of the Federal Capital Territory Acts, he does so as a Governor of a State, so also where the National Assembly legislates for Abuja, it does so as a State House of Assembly".

Thus, by the combined effect of Sections 134 and 299 of the Constitution, a candidate shall be deemed to have won the Presidential election if he scores the highest number of lawful votes cast at the election, and 25% of lawful votes in 37 States or 36 States plus the FCT. It is not compulsory, for a Presidential candidate to win the FCT. The FCT, is not the Electoral College of the Federal Republic of Nigeria.

Section 134 of the 1999 Constitution has suddenly occupied the centre stage, in the decision on who should be declared as the winner of the Presidential election. The pith of the controversy, is whether in determining the required spread of two-thirds of the States of the Federation, the FCT is to be included or excluded. It is being contended that a candidate who, for example, scores at least 25% of votes cast in 25 or more States of the Federation and has the highest number of votes, must still score not less than 25% of the votes cast in the Federal Capital Territory.

I am of the opinion that FCT is part of the two-third spread, contemplated in Section 134 of the Constitution. The word 'and' which appears immediately after the word Federation and before Federal Capital Territory conjoins FCT with the States, as to make FCT part of the two-third

spread. Had the word 'in' featured immediately after the word 'and' in the section, the argument of proponents of separate treatment of FCT may have been stronger.

It seems to me that proponents of separate treatment of FCT, are interpreting Section 134 of the Constitution in isolation of other relevant provisions of the same Constitution. FCT is like a State, but definitely not a State. FCT is the Federal Capital. It is not the capital of any State, the way Ikeja served as capital of Lagos State when Lagos was the Nation's capital. FCT has no State or Deputy State Governor. The executive powers of FCT vests in Mr President. FCT also has no separate legislative body. National Assembly legislates for FCT.FCT is also not one of the 36 States of the Federation listed in Section 3(1) of the 1999 Constitution. Unlike States that have Local Governments, FCT has six Area Councils. Finally, while each State has three Senatorial seats, FCT has only one. FCT is not superior to the States, as to justify being accorded separate status. Section 299 of the Constitution, is designed to bring FCT to the same level with the States. The section certainly does not confer on FCT a separate and superior status, as being argued by protagonists of separate treatment of FCT.

It is gratifying, that the non-separate and non-superior status of FCT was confirmed in the case of Ibori v Ogboru, where it was held that[75] "..the Federal Capital Territory is to be treated like a State, it is not superior or inferior to any State of the Federation".

Lately, there has been a spate of opinions on the correct interpretation of the provisions of Section 134(2) of the 1999 Constitution, which encapsulates the legal requirements or conditions precedent that a candidate must satisfy before he can be declared by the Independent National

[75](2005) 6 NWLR part 920 page 102

Electoral Commission [INEC] and returned as the winner of the election to the office of President in Nigeria.

I will, at the expense of verbosity, but borne out of necessity, reproduce the ipsissima verba of Section 134(2) (a) & (b) thus:

"A candidate for an election to the office of President shall be deemed to have been duly elected, where, there being more than two candidates for the election-

(a) He has the highest number of votes cast at the election; and

(b) He has not less than one-quarter of the votes cast at the election in each of at least two-thirds of all the States in the Federation and the Federal Capital Territory, Abuja."

The foregoing constitutional provisions, represent the epicentre of varying interpretations and seeming unending arguments to which I have, in accord with the tenets and spirit of the law, accorded a merciless scrutiny.

However, it is prudent to preface this intervention by stating that, the approach of the courts to the construction of the provisions of the Constitution has always been one of liberalism. Thus, the courts usually avoid a construction which will defeat the obvious ends that the Constitution itself was designed to serve. More often than not, the courts embrace the construction which accords and is consistent with words and sense. In United Agro Ventures Ltd. v FCMB Ltd.[76] and Fawehinmi v IGP[77] where the Supreme Court stated that: "In its construction, the Constitution which is a living organism must be given its natural ordinary meaning and the words must be given purposive construction".

[76](1998) 4 NWLR (Pt. 547) 542 at 559
[77](2000) 8 NWLR (Pt. 665) 481 at 528

Also in Buhari v Obasanjo[78], Belgore, JSC [as he then was] posited as follows:

"The Constitution should never be read to say what it has not provided, even though it should be liberally construed to giving meaning and effectiveness, so as not to have embarrassing anomaly that can result in vacuum of any office or cause serious crisis in the polity. The Constitution, I must point out, is a general statement of how Nigerians wish to be governed, and the real way of governing will be found in all the laws, body of laws, that comply with the Constitution".

No Ambiguity in the Provisions of Section 134(2) of the Constitution

It is submitted that there is no ambiguity in the provisions of Section 134(2) of the 1999 Constitution. Accordingly, the furore that have been generated regarding the proper or correct interpretation thereof, are completely misplaced. The words used in the section are clear, lucid, unambiguous, and they clearly evince the intention of the draftsmen. The reference to the FCT in the provision, is clearly indicative of the unimpeachable fact that the territory is treated as part of the constituent units from where a candidate who is desirous of being declared the winner of the presidential election in Nigeria can amass, at the very least, one-quarter, that is, 25%, of the total valid votes cast at the election.

It, therefore, imports a serious remiss, for anyone to contend that the mention of FCT in the section implies the erection of an additional constitutional hurdle that must be dismantled by a candidate. I do not see any court of law that will be persuaded by such argument.

In point of fact, the provisions of Section 134(2) of the Constitution fell for consideration and determination by a full panel of the Apex Court in Buhari v Obasanjo[79], In a unanimous

[78](2003) LPELR – 813 (SC),
[79](2005) All FWLR (Pt. 273) 1

judgement of the court, it was held that the purport of the provisions is simply to ensure that a winning candidate should have the required majority. The court stated further that once a candidate attains such majority, the requirement of the section is/are fulfilled.

Those who have suggested the strained interpretation of Section 134(2) to the effect that a successful Presidential candidate must secure 25% of the votes in at least two-third of the 36 States and, as well, secure an additional 25% of the votes cast in the FCT, seem to overlook the essence or significance of the conjunctive word 'and' employed therein. In law, whenever the word is employed, it denotes a conjunctive, and never a disjunctive meaning[80].

4.4 The 25% Constitutional Requirement and Governance Issues Arising Therefrom

The gravamen of this discourse, is the mathematical exactitude of the requirement of 25%. The wordings of the Constitution, are quite clear and unambiguous. They demand for not less than one-quarter of the votes cast at the elections in each of at least 2/3 of all the States; And the Federal Capital Territory. By a judicial mathematical analysis, 2/3 of 36 States is equal to 24 States, and in addition, the FCT, Abuja. As an example, if I request to see 24 Corpers in my law firm And Okon, it means I want to see 25 persons in all; but Okon must be one of the 25 persons. So, if 25 persons in my law firm show up, without Okon, have I had all the persons I want to see? The answer is No. To satisfy my request, Okon must show up in addition to the 24, thus, making the 25 persons I desire to see.

What the law states is that, the candidate must have 25% of votes in those States, and the FCT, Abuja. The law does not contemplate that, the candidate must win those States. The

[80]Yusuf v Obasanjo (2006) All FWLR (Pt. 294) 387 at 453.

jurisprudence behind this provision, is to ensure that the President as the Numero Uno citizen of the Nation, enjoys a reasonable range of widespread acceptance by majority of the people he seeks to govern, including those inhabiting the seat of power where he would govern from.

To know whether a candidate must win 25% of 24 States aside the FCT, Abuja, to be declared as winner, we must consider the provisions of Section 134 against the background of a community reading of Sections 2(2), 3(1) & (4), 48, 297, 298, 299, 301, and 302 of the 1999 Constitution. The said provisions were pronounced upon and upheld in Bakari v Ogundipe[81] per Bode Rhodes-Vivour, JSC.

The FCT, Abuja, like any State in the Federation, has its own courts, distinct Chief Judge, a Senator; executive powers exercised by the President for it, similar to Governors of states, legislative powers vested on the NASS, instead of states with Houses of Assembly; with a Minister as its administrative Head rather than a Governor. It is distinct from the States.

In Awolowo v Shagari & 2 ORS[82], the Apex Court considered Section 34A(1)(c)(ii) of the Electoral Decree which is impari material, except that it did not add "And the FCT, Abuja." It held:

"A candidate for an election to the office of President shall be deemed to have been duly elected to such office where-

(c) There being more than two candidates

i.He has the highest number of votes cast at the election; and

[81](2020) LPELR – 4957 (SC)
[82](1979) FNLR Vol. 2

ii.He has not less than one-quarter of the votes cast at the election in each of at least two-thirds of all the States in the Federation."

The difference between this Decree and Section 134 of the Constitution being considered is the addition of "and the Federal Capital Territory, Abuja'' under our extant 1999 Constitution.

In Awolowo's case (Supra), Fatayi-Williams JSC (later CJN), held that Section 34(1)(c)(ii) of the Decree was a clumsily worded section which was nevertheless, devoid of any semantic ambiguity. In that same case, Obaseki JSC, construed the meanings of the word "each" and the words "States in the Federation". He held that the word "each" in subsection (1)(C)(ii) of section 34A qualified "a whole State"; and that the words "States in the Federation" referred to the land area and not votes. For the avoidance of doubt, we shall reproduce the exact words of the learned Justice; thus:

"The word 'each' in the subsection (1) (c)(ii) of Section 34A qualifies a whole State and not a fraction of a State, and to interpret otherwise is to overlook the disharmony between the word 'each' and the fraction 'two-thirds'. …Looking at the subsection still further, the words 'States in the Federation' can only refer to the land area and not the votes. Arising from the interpretation that 2/3 of all the States in the Federation refers to the land area and not the votes, the result of the voting in Kano State can only mean what is stated in Exhibit 'T' and 'T2' and nothing else. …"

By way of extrapolation, the "land area" of the FCT must be distinguished from the land area of each of the 24 States of the Federation. In Bakari v Ogundipe (Supra), the Apex Court of the land held:

"By virtue of section 299(a), (b), of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the provisions of the Constitution shall apply to the Federal Capital Territory, Abuja, as if it were one of the States of the Federation; and accordingly all the Legislative powers, the executive powers and the judicial powers vested in the House of Assembly, the Governor of a State and in the courts of a State shall respectively, vest in the National Assembly, the President of the Federation and in the courts which by virtue of the provisions are courts established for the Federal Capital Territory, Abuja; all the powers referred to in paragraph of the section shall be exercised in accordance with the provisions of the Constitution; and the provisions of the Constitution pertaining to the matters aforesaid shall be read with such modifications and adaptations as may be reasonably necessary to bring them into conformity with the provisions of the section. By virtue of the provisions of section 299 of the Constitution, it is so clear that Abuja, the Federal Capital of Nigeria, has the status of a State. It is as if it is one of the States of the Federation." (Pp. 36-37, paras. E-A).[83]

There is no ruckus or brouhaha with the clear position of the courts, as stated above. This is because the Constitution is clear, on the separate and distinct status of the FCT. It is treated as any other State in Nigeria.

4.5 Conclusion

It is hoped that this chapter has provided some insight into history on the FCT/Abuja that many Nigerians may not know, along with how this relates to the constitutional issue about the 25% threshold of voters in the FCT/Abuja. To understand this debate, one must decode the reasons

[83]NEPA v Endegero (2002) LPELR-1957(SC); Baba-Panya v President, FRN (2018) 15 NWLR (Pt.1643) 395; (2018) LPELR-44573(CA); Ibori v Ogboru (2005) 6 NWLR (Pt. 920) 102.

behind its establishment and the great lengths to which successive Nigerian military rulers (1975-2007) went to create a special identity for the territory and enshrine it in the 1999 Constitution.

It is this thesis that the outcome of the February 2023 presidential election in FCT/Abuja validates the foresight of the Generals who envisioned and implemented the FCT project as a deliberately designed "neutral microcosm" of Nigeria, where ethnicity did not trump all else—a kind of legitimising "litmus test" of the ability of an aspiring candidate for the highest office in the land to appeal to and garner threshold support from diverse segments of the population.

Until such a time that Nigerian political leaders can harness our rich multi-ethnic and cultural heritage into the positive force for change that it is, an emphasis on obtaining at least 25% of the votes in FCT/Abuja as a constitutional requirement may serve as a necessary barometer for both measuring and safeguarding the nation's true political pulse in ideals of national unity and democracy.

As the only "ethnically neutral zone" of the country, with above average income, voter education and awareness, and security atmosphere relatively free from voter intimidation and vote suppression, it logically follows that the legitimacy of any individual aspiring to lead a diverse and significant country like Nigeria should be questioned, if they fail to garner at least 25% of the electoral votes from this special territory. The voice of people in the FCT must not be taken lightly (i.e., not among the 24 'states' mandated by the constitution), or without factoring in its historical context and raison d'etre. For both the generals and civilians alike, FCT symbolizes true unity, representing a shared national identity about the progressive Nigeria everyone wants.

CHAPTER FIVE

SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

5.1 Summary

The provisions of the Constitution of the Federal Republic of Nigeria are supreme and having binding force over every person within Nigeria. The provisions of the Constitution is read alongside with others enactments made by the National Assembly. One of the enactments in relation to election in Nigeria is the Election Act, 2020 and other guidelines and regulations. Before a person can contest for the post of a President of the Federal Republic of Nigeria, as amended, such person must meet the requirements of the laws as laid down by the Constitution and other extant laws. One of those laws is the provision of 25 percent of votes in 24 states and Federal Capital Territory, Abuja. The interpretation as provided by the Court has not even

resolved the issue of mathematical calculation of the 25 percent and whether scoring of 25 percent of vote in the Federal Capital Territory, Abuja is a mandatory requirements of the law. Thus, this study considered many interpretations to the provision of section 234 of the 1999 CFRN, as amended.

It is crystal clear, from the foregoing, that by virtue of the Constitution of the Federal Republic of Nigeria[84], it is not enough in a Presidential election contested by more than two candidates, to obtain the majority of votes cast, rather a candidate desirous to be declared winner must obtain 25 percent of the votes cast in each of at least two-third of the states in the Federation and the FCT. If this requirement is not met by the candidate that had the majority of votes, a fresh election would be held between the person with the highest number of votes and the person that won the majority of votes in the highest number of states.[85] If there are two candidates with the majority of votes in the highest number of states, then the candidate between them that pulled the majority of votes cast in the election would be the second candidate for the second election. If no winner emerges yet again, another election would be conducted within seven days of the declaration of the result of the previous election and between the two candidates.[86] A candidate would only be deemed to be duly elected if he complies with the requirement of ***subsection (4) of section 134 of the Constitution***. In default of a winner emerging in accordance with that subsection, another election would be conducted within seven days of the declaration of the results of the previous election and the candidate with the majority of votes would be declared winner in that election.

[84] 1999 as amended 2011

[85]The Guardian Newspaper, 28th February, 2023, 27.

[86] The Tribune Newspaper, 2nd March, 2023

In the case ***of Chief Obafemi Awolowo v Alhaji Shehu Shagari&Ors***[87], the issue bordered on the correct interpretation to be given to Section 34A(1)(c)(ii) of the Electoral Decree of 1977 as amended. The import of Section 34A(i)(c)(ii) of the Electoral Decree is that a Presidential candidate will be deemed to have been duly elected to such office where he has the highest number of votes cast at the election and one-quarter or 25 percent of the votes cast in each of, at least, two thirds of all the states in the federation.[88] Nigeria had only 19 states at the time, the question was: how to calculate two-third of nineteen, whether the answer is 12 or should be approximated to 13.[89] It was contended for Chief Obafemi Awolowo that even though the Respondent pulled the highest number of votes cast at the election, his election was invalid for reason of non-compliance with the Electoral Decree. The Supreme Court dismissed the appeal and cost was awarded against the Appellant on the ground that Shehu Shagari was rightly declared winner having satisfied the provisions of the Electoral Decree. The court also held that even if he (Shagari) did not meet the requirement, ***Ss. 111 and 110*** of the Decree would come to his aid and judgment would still be given to him.

Amidst the keenly-contested 2023 presidential election, Nigerians have been asking questions following the constitutional requirement for a candidate to have a quota of 25 percent of the total votes cast in Two-thirds of all the States including the Federal Capital Territory, before being declared as president. It is interesting to state that there are two (2) conditions for determining a winner of a presidential election:

1. A presidential candidate must secure the highest number of votes cast at the election

[87] (1979) All N.L.R. 105
[88]The Tribune Newspaper, 4th April, 1979, 7.
[89]The Tribune Newspaper, 28th February, 1979, 12.

2. He/she must secure not less than 25% of votes cast in at least two-thirds of all the States of the federation and FCT.

The Electoral Act (2022) states that the winner of the presidential election will be subjected to the provisions of section 134 of the Nigerian Constitution.

> "In an election to the office of the President or Governor whether or not contested and in any contested election to any other elective office, the result shall be ascertained by counting the votes cast for each candidate and subjected to the provisions of sections 133, 134 and 179 of the Constitution,"

According to the 1999 Constitution, presidential candidates must not only win a single majority but whoever will be recognized as an elected president must have won a stipulated minimum in every region of the country.[90]The candidate that receives the highest number of votes shall be declared elected only if they also fulfill a quota of 25 percent of the total votes cast in about 24 states including the Federal Capital Territory[91]. Section 134, subsection 2, of the 199 Constitution states:

> "A candidate for an election to the office of President shall be deemed to have been duly elected where, there being more than two candidates for the election-he has the highest number of votes cast at the election; and he has not less than one-quarter of the votes cast at the election each of at least two-thirds of all the States in the Federation and the Federal Capital Territory, Abuja."

[90]Section 32 of the Constitution of the Federal Republic of Nigeria as amended.
[91] See The Guardian Newspaper, 27th September, 2022, 27.

However, the incumbent president of the Federal Republic of Nigeria, President Bola Tinubu was declared winner by the Supreme Court as Federal Capital Territory was interpreted to mean a state which is not higher than any other state in Nigeria.

5.2 Conclusions

The provision of section 134 of the 1999 Constitution has been a subject of debate and this debate became notorious in February, 2023 general elections when the current President, Ahmed Bola Tinubu did not win in Abuja. This debate has created two schools of thought wherein a school of thought provides that 25 percent in Abuja is a mandatory requirement of the law while others seriously contend that it is not a mandatory requirement of the law as FCT shall be treated as a state for the purpose of the election.

In a bid to understand what the law says about section 134 of the Constitution, TRIBUNE ONLINE x-rayed the opinions of two renowned Nigerian lawyers. In his submission, Ridwan Oke[92], the legal services director of Connect Hub Nigeria, opined there will be a rerun election if the candidate with the highest number of votes still fails to have the required 25 percent.

> "We have 36 states of the federation and two-thirds of that is about 25. So, if you are a presidential candidate, you must have 25 percent of the total votes cast in at least 25 states of the federation before you are declared [winner]. If nobody has that, if the candidate with the highest number of votes still fails to have the required 25 percent, there will be a rerun election,"
>
> "When it goes to the rerun, it will only be the majority [votes required]. So, if you are polling 10 million votes, you must have at least 25 percent of the total votes in 25

[92]Tribune online 28th February, 2023 at pg., 17.

states in that majority vote. The candidate does not have to win all those 25 states. They only need to meet the minimum 25 percent in the states,"

On the contrary, Femi Falana[93], a foremost Nigerian legal practitioner said a candidate can be declared winner of a presidential election in Nigeria without necessarily scoring up to 25 percent of votes cast in the Federal Capital Territory.

"Section 299 of the Constitution said the FCT shall be treated like a state," Therefore, the constitutional requirements for 25 percent of votes in two-thirds state and the FCT only means that the FCT be added to the 36 states to arrive at 37 states,"

Thus, the current position of the law in Nigeria today is that Federal Capital territory is treated as a state for the purpose of election[94].

5.3 Recommendations

It is a notorious fact that election dispute is gaining ground in the Nigerian jurisprudence. However, it is bedeviled with a lot of problems and in order to solve those problems, it is recommended as follows:

i. There should be an awareness among to people in order to know that election dispute is a sui generis. That is a class on its own which needs thorough interpretation from the judiciary without any form of bias and unfairness.

[93] People's Gazette; an interview granted by Femi Falana SAN on people gazette on the 28th February, 2023.

[94]Peter Obi &Ors. v. Bola Ahmed Tinubu&Ors. Supra; AlhajiAtikuAbubakar&Ors. v. Bola Ahmed Tinubu&Ors. (Supra).

ii. Also, the umpire who constitute election panel should be trained especially so that they can be able to give sound and reliable judgment in deciding election cases.

iii. Furthermore, the Constitution of the Federal Republic of Nigeria should be amended so that its provisions in relation to election can be in clear terms without any form of ambiguity.

iv. Also, lawyers who are supposed to be a minister in the administration of justice are expected to interpret the relevant laws in relation to election without turning the law upside down. The interest of justice and the sanctity of the legal profession should take precedence above the interest of the client that the legal practitioner represents in election cases.

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