

THE CIRCUMSCRIPTION OF TIME FOR THE COMMENCEMENT OF ELECTION PETITIONS UNDER THE ELECTORAL ACT 2010 AS AMENDED: AN APPRAISAL

BY

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INTRODUCTION

Undoubtedly, the time for the commencement of election petition is of essence, not only to the competence of the petition itself as a complaint, but also to the competence of the adjudicatory body, the tribunal. Indeed, failure to comply with the requirement as to time for the commencement of election petition renders the petition incurably incompetent, regardless of whether or not the failure is engendered by administrative problems of the tribunal¹. This remarkable emphasis on time of presentation of election petitions further underscores the uniqueness of proceedings relating thereto in relation to ordinary civil proceedings.

It is worthy of note that the provision as to time for commencement of election petition forms one of the most important provisions in all laws dealing with election petitions; and it is provided for in electoral statutes. In view of the centrality of time of commencement of election petition, this paper examines the relevant provisions relating to time for the commencement of election petition in all the Electoral Acts up to Electoral Act, 2010.

The cardinal objective is to ascertain the time within which an election petition may be presented; and when the time begins to count for the purpose of commencement of election petition under the Electoral Act 2010, as amended.

THE MEANING OF ELECTION

It is instructive to note from the beginning that though there exist an avalanche of literature on the provision relating to time for the commencement of election petition under past electoral statutes, the literature on the provisions relating to time for the presentation of election petition under Electoral Act, 2010, as amended, owing to the novelty of its enactment, is exiguous. To better appreciate the thematic thrust of this paper, it is axiomatic to first understand the meaning of election.

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¹ Mallah V.Kachallah (1999) 3 NWLR (Pt.594) 309

² Black, H.C., Black's Law Dictionary (6th Ed.) (St. Paul, Minn.: West Publishing Co., 1990) P. 505

According to the Black's Law Dictionary², a (general) election is an election which is held through out the entire state or territory for the choice of a national, state, judicial, district, municipal, county or township official required by law to fill a vacancy in an office at the expiration of the full terms thereof.

Indeed, good as the above definition might be, it does not clearly mirror the complete meaning of election, as it fails to capture the other components of general elections such as bye-election and re-run elections, whose conduct are not necessary engendered by the effluxion of tenure. Additionally, the recognition of judicial elections in the above definition, as specie of general election, is alien to the Nigerian political system, in strong view of the fact that, in Nigeria, judicial offices are filled by appointment, not by elections.

According to the Electoral Act, 2002 an election is n held in the Federation at large and at all levels, a recurring election to select officers to serve after the expiration of the full terms of their predecessors.³

Undoubtedly, the above definition has enacted a distinction between intra-party elections, known as primary elections, and general elections which hold throughout the country, and between political parties. However, the statute does not appear to have in view other categories of elections which, though general, come before the expiration of the prescribed tenure, such as bye-elections and re-runs.

Equally worthy of note about this statutory meaning of election is the use of the word "predecessor" denoting succession. In fact, this conception of general elections as being held after the expiration of the full term of the candidate's predecessor does not recognise the fact that the incumbents are themselves eligible to seek re-election. Therefore, to define general election without giving regards to the legal right to self-succession in office is defective.

The courts have also contributed their quota to the search for an adequate and comprehensive meaning of election. According to Salami J.C.A, the issue of election goes beyond merely voting, as it is inclusive of delimitation of constituency, nomination, accreditation, voting itself, counting, collation and declaration of result.⁴ His Lordship's view of election is, without doubt, sweeping. It thus comprehends all the activities inherent in the electoral process. But then, it has to be noted that the foregoing represents an imprecise conception of the term election, as it omits to draw a dividing line between pre-election activities and the real election business which forms the subject matter of election petition, and thus the thrust of this paper.

It will be proper to posit for the purpose of this paper, and in

³ S. 151 (1) thereof

⁴ Odumegwu Ojukwu V. Chief Olusegun Obasanjo (2004) I EPR 626 at 653. See also Ogunbiyi, JCA in Independent National Electoral Commission and Others V. Onyimbah E.C. Ray and Others (2004) 14 NWLR (Pt. 892) 92 at 123

⁵ Supra

agreement with the views of Edozie, JSC in **Chief Chukuemeka O. Ojukwu V. Chief Olusegun Obasanjo and Others**,⁵ that the word 'election' in the context in which it is used in Section 137(1) (b) of the Constitution means the process of choosing by popular votes a candidate for a political office in a democratic system of government.

MEANING NATURE AND CHARACTER OF ELECTION PETITION

An election petition according to H.C. Black is “a formal written request presented to a court or other political body.”⁶

This definition is, no doubt, deficient, as it is unable to afford us a clue as to the objective of the request so presented. In other words, it does not state the cause of action giving rise to the requests. We may however not be entirely wrong if we suggest that such a petition shall be a complaint about the conduct or outcome of the particular election. Similarly, it does not limit the adjudicatory powers in respect of the request to the court, but extends it to other political bodies; thereby taking the meaning outside the purview of our present concern.

Furthermore, Hon Justice P.A Onamade, views election petition as “an inquiry into the validity of a parliament member's election when the member's return is allegedly invalid for bribery or other reasons.”⁷

This definition, no doubt, is an improvement over the other definitions of election petition as it provides us with the cause of action. This notwithstanding, it is also not free of shortcomings. First, it is deficient in respect of its suitability to the Nigerian political system, where the operative form of government is presidential, not parliamentary. Again, it is instructive to note that the learned author has a narrow view of election petitions, having regards to the fact that election petitions are not meant to question only elections to parliamentary seats, but also to executive positions like the office of the President, Governors, and even Local Government Chairmen.

The 2002 Electoral Act in prescribing the manner of questioning an election by an election petition provides that:

No election and no return at an election under this Act shall be questioned in any manner other than by a petition complaining of an undue return (in this Act referred to as election petition) presented to the competent tribunal or court in accordance with which the person elected or returned is joined as a party.⁸

The description of election petition by the tenor of this Act is no less insightful. It exposes us to both the cause of action, being the ground for the election petition and also the parties thereto, i.e., the party

⁶ Black, Loc. Cit.

⁷ Onamade, P.A., *Advocacy in Election Petitions* (Lagos: Philade Co. Ltd., 2007) P. 2

⁸ S, 131(1) Electoral Act, 2002, Cap E6, Laws of the Federation of Nigeria, 2004

complaining and party whose election or return is being complained against.

Unfortunately, however, the Act has failed to accord recognition to other species of respondents who may be necessary parties, like, Independent National Electoral Commission⁹ and its officers. This observation is reinforced by the provisions of Electoral Act, 2006, which is to the effect that where the petition complains of the conduct of an Electoral Officer, a Presiding Officer, a Returning Officer or any other person who took part in the conduct of an election, then such officer shall be joined as respondent, and as a necessary party.¹⁰ It therefore goes without saying that to view only the candidates at an election as the only parties to an election petition, in an attempt at describing an election petition, is incorrect.

As respect the time for the presentation of election petition, the Local Government Election Decree No. 37 of 1987 provides that election petition should be commenced within one months after the date on which the election was held.¹¹ This section generated serious controversy in view of that fact that petitions were required to be commenced before the accrual of the cause of action. This is because the mere conduct of election did not itself create the factual circumstances capable of being complained against. This problem was encountered in the case of **Ezeobi V. Nzeka**,¹² where the petitioner presented his petition at the Awka High Court on the 4th day of January, 1989 against an election held on the 12th day of December, 1987. Instructively, at the time of the presentation of this petition, the Returning Officer had not declared the result, and the result was not announced until the 20th day of January, 1988. However, against the backdrop of the provisions of S.2, Schedule 3 of that the Decree that the petition be presented within one month after the date on which the election was held, the petition was held to be invalid, as at the time of its presentation, no cause of action had arisen. Further, it was held that at the time the result was eventually declared, that was a month and half after, the time for filing the petition had expired. This obviously was the pitiable condition of petitioners during the regime of those electoral statutes.

Under the 2002 Electoral Act,¹³ an election petition was required to be presented within thirty days from the date the result of the election was declared. The provision of this Act is *impari materia* with Electoral Act 2006, as they all put the time for the commencement of petitions on the day of the declaration of results, which is the day for the accrual of the cause of action.

However, the Act does not expressly indicate the mode of

⁹ INEC, for short.

¹⁰ S.144 (2) Electoral Act, 2006

¹¹ S.2, Schedule 3 thereof

¹² (1989) 1 NWLR (Pt. 98) 479

¹³ S. 132 of the Act, which is *impari materia* with S. 141 Electoral Act, 2006

declaration, that is, whether radio declaration or declaration by posting the results at the appropriate places, was the mode. Finally, the above provision, it must be noted, does not represent the position of the 2010 electoral Act on the time of commencement of election petitions.¹⁴

Under the 2010 Electoral Act, as amended, it provides that:

No election and no return at an election under this Act shall be questioned in any manner other than by a petition complaining of an undue election or undue return (in this Act referred to as “election petition”) presented to the competent tribunal or court in accordance with the provisions of the Constitution or of this Act, and in which the person elected or returned is joined as a party.¹⁵

Further, the Act defines a petition to mean an election petition brought under the Act.¹⁶ It can thus be surmised that an election petition is a judicial proceeding emanating from an election, which proceeding is brought by a person or group of persons, referred to as the petitioners upon specific grounds, wherein they seek to ventilate their grievances before the court or tribunal based upon specific remedies which they claim.

Indeed, the revelation from the above definition is that an election petition, being a process which commences the proceeding aimed at redressing grievances resulting from the conduct of an election is not concerned with pre-election matters. Consequently, primary elections of political parties, held for the purpose of nominating their candidates who will contest at the general elections, though very much within the realm of political question, are not subject matters of election petition, being that they are purely pre-election matters.¹⁷

This position was restated by the court in **Ozigbo V. PDP**,¹⁸ where the court stated that Election Tribunals have no jurisdiction to entertain disputes over primary election, as such could not be a ground for an election petition.

In the same vein, in **Dalhatu V. Turaki**,¹⁹ the court maintained the position that an election tribunal being concerned only with disputes arising from the conduct of an election which are the only likely grounds of an election petition, cannot determine disputes arising from the internal affairs of a political party.

It is worthy of note that election petitions are governed by the Electoral Act, the Constitution and other subsidiary legislations.

⁹ INEC, for short.

¹⁰ S. 144 (2) Electoral Act, 2006

¹¹ S.2, Schedule 3 thereof

¹² (1989) 1 NWLR (Pt. 98) 479

¹³ S. 132 of the Act, which is *impari materia* with S. 141 Electoral Act, 2006

¹⁶ Section 156 thereof

¹⁷ Justice Georgewill, B.A., “Conduct of Election Petition: Best Practices”, Being a Seminar Paper Presented at the Conference Hall of the Rivers State Ministry of Justice on the 29th day of March, 2011

¹⁸ (2010) 9 NWLR (Pt.1200) 601 at 652

¹⁹ (2010) 15 NWLR (Pt.843)310 at 347

Moreover, proceedings in respect of election petitions are sui generis, that is, they are unique, peculiar and distinct from ordinary civil proceedings.²⁰ A consequence of the unique character of proceedings relating to election petitions is that the slightest default in complying with a procedural step which could either be cured or waived in purely civil cases may produce ruinous consequences on the petition.

Thus, in the case of **Adighise V. Nwaogwu**,²¹ the court expressed recognition for the uniqueness of proceedings respecting election petition when the court stated that such proceeding are neither civil nor criminal.

Finally, it can be said that election petition being the only means for the commencement of proceedings intended to resolve disputes arising from elections are not always amenable to most principles regulating the general civil proceedings. This undoubtedly underscores their uniqueness, though they are still a specie of civil proceedings.

METHOD OF COMMENCEMENT OF ELECTION PETITION

The questions which the sub-heading seeks to answer are simple: “By what means is a proceeding to challenge the undue election or undue return of candidate at an election commenced?” “Is it by a writ of summons, originating summons or a petition?”

Indeed, proceedings instituted to question the undue election or return of a candidate at an election is commenced by one method; that is a petition. It must be quickly pointed out that the method or methods or mode of commencement of election petition is statutorily prescribed. Therefore, it is not a matter of choice by the aggrieved parties.

According to Electoral Act, 2002, the recognised mode of commencement of proceedings in respect of disputes emanating from the conduct of election is by election petition. Accordingly S. 131 (1) theory provides that:

No election and no return at an election under this Act shall be questioned in any manner other than by a petition complaining of an undue election or undue return (in this Act referred to as “election petition”)....²² A similar provision can be found in Electoral Act, 2010, as amended. The current electoral statute also recognises petition, as the only mode of commencement of such proceedings.²³

²⁰ Georgewill, Loc. Cit.

²¹ (2010) 12 NWLR (Pt.1209) 419 at 461.

²² See S. 131 (1) Electoral Act, 2002

²³ See S. 133(1) Electoral Act, 2010, as amended

The foregoing position regarding the method of commencement of proceedings relating to election disputes was upheld by the court in the case of **ANPP V. PDP**,²⁴ where it reiterated that petitions were the only method that an aggrieved party could use to kick-start proceeding calculated at resolving electoral disputes.

It is thus clear that to ventilate grievances resulting from the declaration of results of a general election, the aggrieved party cannot use the general writ of summons, originating summons or default summons to kick-start the proceedings, as the appropriate method which is statutorily prescribed is a petition known as the “election petition”.

MODE OF FILING OF ELECTION PETITION

Indeed, having established that the only statutorily recognised means of setting in motion the machinery for the resolution of differences occasioned by the conduct or outcome of a general election is by election petition, the question that naturally arises is the manner of filing or presenting the petition.

An election petition is filed or presented by leaving the required number of the petition with the Registrar of the Tribunal or the Secretary of the Tribunal as the case might be.²⁵ That is to say, an election petition is said to have been filed when the petitioner either by himself or through his solicitor leaves or delivers as many numbers of the petitions as required to the Secretary of the Tribunal and receives a certificate for receipt issued by the Secretary of the Tribunal to that effect.

To constitute a valid filing of the election petition, the petitioner shall either by himself or through his counsel deliver to the tribunal Secretary the number of petitions as prescribed under the enabling statute, and pay the requisite filing fees within the time limited for the filing of petitions. It is noteworthy that failure to do any of these will render the petition incompetent.²⁶

In fact, the filing of an election petition will not be valid without the payment of the statutory fees. This is because the court's attitude to such petitions unaccompanied by the filing fees is that the petitions are not properly filed or presented. In the case of **Onuorah V. Okeke**,²⁷ the court had this to say on the effect of non-payment of the statutorily required fees:

The issue of payment of fees or security for costs is fundamental to hearing of the petition. They are not mere

²⁴ (2006) 17 NWLR (Pt.1009) 467 at 486

²⁵ Babalola, Op. Cit. P.218

²⁶ See Ngoh V. Nwadike (1960) SCNLR 205

²⁷ (2005) 10 NWLR (Pt. 932) 40

matters of form. Without such payments, the petition has no legs to stand on, and it must necessary collapse.

Similarly:

Even where the petition is filed without the payment of the necessary fees and the making of the deposit such petition cannot be deemed to have been presented. The fees must be paid before the petition is received and wrongful receipt of the petition by the registrar will not validate it.²⁸

It follows from the above that the payment of the filing fees and security for cost is fundamental to the proper filing of the petition. Thus, merely giving the petition to the Secretary or Registrar of the Tribunal for assessment without more will not constitute a valid filing of the petition. This position was firmly enacted in the old case of **Eminue V. Nkereuwensors**,²⁹ where the court held that the Registrar could not even receive the filing fees after the limited period, as the payment itself is supposed to be within the time limited by law. Thus, the action of the Registrar in the instant case was held to be ultra vires.

Also in **Remi V. Sunday**,³⁰ where the petitioner did not pay the necessary fees and the deposit at the time of presenting the petition, the court held that the petition wrongfully received by the Registrar was not properly filed as provided by law.

Instructively, the Electoral Act, 2010, as amended, has laid down the following procedures for valid presentation of an election petition.³¹

a. The presentation of an election petition under this Act shall be made by the petitioner (or petitioners if more than one) in person, or by his solicitor, if any, named at the foot of the election petition to the Secretary and the Secretary shall give receipt.

b. The petitioner delivers to the secretary a copy of the election petition for each respondent and then other copies to be preserved by the Secretary.

c. The Secretary shall compare the copies of the election petition received in accordance with Subparagraph (2) of this Paragraph with the original petition and shall being satisfied by the comparison that they are true copies of the election petition.

d. The petitioner or his solicitor, as the case may be, shall at

²⁸ **Onuorah V. Okeke** (Supra)

²⁹ (1966) 1 ALL NLR 63

³⁰ (1998) 8 NWLR (Pt. 613) 92

³¹ See Paragraphs 3(1)–(4) of the First Schedule to Electoral Act, 2010, as Amended

the time of presenting the election petition, pay the fees for the service and publication of the petition and for certifying the copies, and in default of payment, the election petition shall be deemed not to have been received; unless the tribunal or court otherwise decides.³²

It is obvious that the above also stresses the importance of payment of filing fees to the proper presentation of the petition; that is to say that failure of the petitioner or his solicitor to file the petition upon payment of the requisite fees derogates from the competence of the election petition.

Moreover, all petitions presented before the tribunal or court shall be accompanied by:

- a. List of all the witnesses that the petitioner intends to call in proof of the petition;
- b. Written statement on oath of witnesses; and
- c. Copies or list of every document to be relied upon at the hearing of the petition.³³

In **Dantiye V. Kanya**,³⁴ the court emphatically held that a petition which disobeys the above requirements ought not to be accepted by the secretary of the tribunal.

TIME FOR THE COMMENCEMENT OF ELECTION PETITION

As have been observed, election petitions because of their unique character make time of filing them a fundamental precondition to the competence or jurisdiction of the tribunal. The time within which to file the petition is normally prescribed by the enabling electoral law. Under 2002 Act an election petition must be presented within thirty days from the date the election results were declared. The Act provides that “an election petition under this Act shall be presented within thirty days from the date the result of the election is declared.”³⁵

From the above provision, certain words are relevant; 'shall', 'within' and 'from'. The word 'shall' connotes a command; 'within' means inside, not beyond; whilst the word “from” means beginning at, starting with.³⁶ Moreover, going by the tenor of the above section, a petition challenging the result of an election must necessarily be presented within the thirty day period limited by the Act.

In interpreting the provisions of the Section, the court in **Ogbebor V. Daisy Danjuma**,³⁷ stated that by the tenor of Section 132 of the 2002

³¹ See Paragraphs 3(1)–(4) of the First Schedule to Electoral Act, 2010, as Amended

³² Paragraphs 3 (1)-(4) of the First Schedule to Electoral Act, 2010, as amended

³³ Paragraph 7 of the First Schedule to Electoral Act, 2010, as amended

³⁴ (2009) 4 NWLR (Pt.1130) 33

³⁵ See S. 132 Electoral Act, 2002

³⁶ Onamade, Op. Cit. P.266

³⁷ (2006) 2 EPR 564

Electoral Act, the time within which the petition must be presented begins to run on the day of declaration of result. In that case, the senatorial election took place on the 12th day of April, 2003. The 1st Respondent's Counsel filed a Notice of Preliminary Objection that the petition was filed out of time, and therefore incompetent. This objection was overruled, but on appeal, the Court of Appeal resolved the matter thus:

If we go by the tenor of Section 132 of the Electoral Act, 2002, then Monday, 12th day of May shall be the last day for the presentation of the petition. The petitioner did not file the petition until on Wednesday 14/5/2003. He was therefore two days out of time.

Furthermore, in **Yusuf V. Obasanjo**,³⁸ the court held that since Section 132 of the Electoral Act, 2002 provides a maximum period of thirty days, which starts running on the date of declaration of results, the filing of the petition together with every such motion for amendment must be within the statutorily limited period of thirty days.

It follows from the above therefore that the thirty day period prescribed by the Electoral Act, 2002 will be reckoned from the day of the declaration of results of the election. Aside that, not only is the petition necessarily required to be presented within the limited period, but also all such motions for the amendment of the petition which will substantially affect the petition must not be made outside the date of expiry.

Indeed, Niki, Tobi, JSC, captures this position in the following words:

It looks clear to me that the legal duty of the petitioner is to make amendments within the thirty day period limited by S. 132 of the Act, and Paragraph 14 (2) (a) of the 1st Schedule to the Act. Both the presentation and amendment of the petition must be carried out within the thirty days beginning on the day of announcement of results of election.³⁹

TIME FOR THE COMMENCEMENT OF ELECTION PETITION UNDER THE ELECTORAL ACT 2006

The position as respects the time for the presentation of election petition under Electoral Act, 2006 is the same with the 2002 Act. The 2006 Act provides that “an election petition under this Act shall be presented within thirty days from the date the result of the election is declared.”⁴⁰

The above section is *impari materia* with Section 132 of the 2002

³⁸ (2004) 1 EPR 467

³⁹ Yusuf V. Obasanjo (Supra). See also Paragraph 14 (2) of the First Schedule to the Electoral Act, 2006

⁴⁰ See S. 141 thereof

Electoral Act, as both make the date of announcement of result the relevant date of commencement of time of filing of petitions, or accrual of the cause of action.⁴¹

On the meaning of 'within' and 'from' in Section 141 of Electoral Act 2006, the court in the case of **Ibrahim V. Fulani**,⁴² adumbrated thus:

It is on this premise that we shall turn to the grammar and syntax of Section 141 of the Act. I note that against the backdrop of the dynamics that dictated the elevation of election petitions to special proceedings, the two prepositions 'within' and 'from' in that section were deliberately employed to indicate the express delimitation of the time frame for the presentation of election petition....

... A reference to their lexical meanings will clarify this point. The preposition 'from' is defined as a function word which is used to indicate a starting point, in reckoning or in statement of limits, Webster's Ninth New collegiate Dictionary Page 494. The second preposition 'within' is also a function word. It is used to indicate the situation or circumstance in the limits or compass of (a thing or the happening of an event) or not....

... Taken together, these two prepositions employed in Section 141 come to this; the thirty days period for the presentation of an election petition begins to count from the date of declaration of results. Above all, the presentation can only take place during the continuance of the thirty days starting from that date the election results were declared.

Furthermore, the court in the case of **Kumalia V. Sheriff**,⁴³ which is the locus classicus as far as interpretation of Section 141 Electoral Act 2006, is concerned, stated trenchantly that the thirty days limited by the provisions of Section 141 of the Electoral Act for the filing of election petition, would be computed from the date the result of the election in question was declared. In other words, according to the court, time would start to run for the purpose of computing the period of time limited by the section from the date the election result was officially declared by the electoral body, INEC.

In **Sule V. Kabir**⁴⁴ the court threw its weight behind the foregoing position by affirming that under Section 141 of the Act thereof the cause of

³⁸ (2004) 1 EPR 467

³⁹ Yussuf V. Obasanjo (Supra). See also Paragraph 14 (2) of the First Schedule to the Electoral Act, 2006

⁴⁰ See S. 141 thereof

⁴¹ Babalola, Op. Cit. P. 210

⁴² (2010) 17 NWLR (Pt. 1222) 269

⁴³ (2009) 9 NWLR (Pt. 1146) 420

⁴⁴ (2011) 2 NWLR 9(Pt. 1232) 531

action in respect of which a petition could be presented arises on the day the results of the election are declared. Worthy of note too is the fact that all motions for amendment of the petition are also required to be filed within the same statutorily limited period for the filing of election petitions under the 2006 Electoral Act.⁴⁵

It is thus safe to conclude that like the 2002 Electoral Act, the 2006 Act provides for thirty days within which a complaint against the result of an election may be made. Aside that, it also makes the exact date of declaration of results of the election, the relevant date for the commencement of computation of time for the presentation of election petition. Above all, any petition or substantial amendment thereto can be filed only within the thirty days limited period.

TIME FOR THE COMMENCEMENT OF ELECTION PETITION UNDER ELECTORAL ACT 2010 AS AMENDED

Under the 2010 Act, as amended, the time within which an election petition may be presented has been abridged to twenty one days. The Act provides that “an election petition shall be filed within 21 days after the date of the declaration of results of the election.”⁴⁶

From the tenor of the above section, it is obvious that the twenty one days limited by the Act within which an election petition may be presented will start running day after the date of the official declaration of results by INEC. It follows therefore that the date of declaration of results is certainly not a relevant date for the computation of time within which to present a petition. Thus, it can be said that though on the date of declaration of results of the election, a cause of action accrues, i.e., there comes into existence a person who can sue and that who may be sued, the right of action does not arise until that date after the date of the declaration of result.

Furthermore, all amendments which will substantially affect the petition in its original form can only be made within the 21 days limited for the filling of election petitions under this Act. Consequently, any motion for amendments of the defect described above which is brought outside the twenty- one days limited for the filing of election petitions will be struck out as incompetent.

It therefore goes without saying that the provisions of this Act relating to time within which an election petition may be presented is a remarkable contrast to the 2002 and 2006 Electoral Acts, where the time limit was thirty days which began to run on the day of declaration of result. Under the 2010 Electoral Act, the time frame has been compressed to twenty-one days beginning on the date following the date of declaration of results.

⁴⁵ See *Akume V. Lim* (2009) 16 NWLR (Pt. 1114) 490

⁴⁶ S. 134 Electoral Act 2010, as amended

COMPUTATION OF TIME FOR THE COMMENCEMENT OF PETITION UNDER ELECTORAL ACTION 2010 AS AMENDED

Undoubtedly, the rights, liabilities, duties and privilege of parties in a legal relationship are often expressed in relation to time. Similarly, the most important provision of all laws relating to election petition is the provision relating to the time of presentation of election petition.⁴⁷ The time of filing of election petition is so essential that failure to comply with it renders the petition incurably incompetent. In view of the gravitas attached to time in election petitions, it is important to know when a stated period of time begins to run, and when it expires.

It must be pointed out however, that most of the expressions relating to time have acquired technical meanings different from their grammatical usage. Hence the computation of time is a question of law and not a question of measurement.⁴⁸ For instance, authorities are not in agreement on the technical meaning of “from” in the computation of time. In the English case of **The Goldsmiths' Company V. West Metropolitan Railway Company**,⁴⁹ it was stated that; “the rule is now well established that where a particular time is given, from a certain date, within which an act is to be done, the day of the date is to be excluded.”

From the above authority, the computation of a limited time of thirty days from the date of declaration of results will exclude the day of the date of declaration, and start on the day after the date of declaration of result.

However, in another case of **English V. Giff**⁵⁰ the court was of the position that the computation of time where “from” is used will include the day of the event. It is worthy of note that this problem of computation is not limited to such words as the one above; the problem is visible also in computation of calendar months, days, working days, weeks and even years.⁵¹

In a bid to proffer solution to the challenge of time computation, Chief F.R.A. Williams, SAN formulated three propositions which should guide the court in the computation of time; and these propositions have been approved by the Supreme Court in **Akeredolu V. Akinremi**⁵² as follows:

a. Where the period of time is prescribed by statute and that period is to be computed with reference to that event, which had happened, then the question whether the computation must include or exclude the date on which the event happened would depend on the true intention of the legislature.

⁴⁷ See Babalola, Loc. Cit.

⁴⁸ Imhanobe, S.O., Legal Drafting and Conveyancing (Abuja: Sylvester Imhanobe Legal Research Ltd., 2003) P. 59

⁴⁹ (1904) 1 K.B 1 at 5 per Mathew, L.J.

⁵⁰ (1914) 2 ch. 376 per Warrington, J.

⁵¹ Imhanobe, Op. Cit. P. 62

⁵² (1985) 2 N.S.C.C. 1283

- b. Where the time prescribed is for the benefit of the persons affected by the computation, then as much time should be given as the language of the statute allows; accordingly, the computation must always exclude the date on which the event happened.
- c. Where time prescribed is to the detriment of the person (say imprisonment or bankruptcy) then a construction, which would avoid such detriment, or penalty ought to be preferred.

We are in doubt whether these formulations were used or applied by the courts or tribunals, which have churned out disparate decisions relating to the computation of time for the accrual of cause of actions in election petitions.

EXCLUSIVE THEORY METHOD OF TIME COMPUTATION

This is obviously the general principle governing the reckoning of time for the doing of an act or certain acts. In the computation of a calendar month, this principle or method is referred to as the corresponding day principle. By this method of time computation, where the period of time is reckoned from a particular event, it will be calculated as excluding the day of the said event. The exclusive method of time computation is preserved under Section 15 (2) (a) of the Interpretation Act⁵³ which provides that a reference in an enactment to a period of days shall be construed, where the period is reckoned from a particular event, as excluding the day on which the said event occurred.⁵⁴

Thus, going by this exclusive theory as enunciated above, a month from 8th July will exclude that day and expire on the corresponding day in the next month which is 8th August. But where there is no corresponding day in the month, for instance, where it is a shorter month, a month from 30th or 31st January will expire on the 28th (or 29th) February being the last day(s) in that month.⁵⁵

Applying this principle in the case of **Dodds V. Walker**,⁵⁶ where the question was in respect of when a landlord's notice to determine a tenancy under the Act, served on September 30 began to run for the purpose of computing four months within which the tenant could apply for a new tenancy, the landlord contended, and the court agreed that four months from 30 September expired on January, 30. On his part, the

⁵³ Cap. 123, Laws of the Federation of Nigeria, 2004

⁵⁴ Shaakaa, A.S. "Legal Drafting and Conveyancing" (Unpublished Manuscripts)P. 75

⁵⁵ Ibid.

⁵⁶ (1980) 1 WLR 106

tenant argued that the four month expired on 31 January, the day he made the application. The English Court, per Templeman L.J, held thus; “the landlord served his notice on September, 30 and therefore the last available date for application by the tenant was the corresponding January 30....”

Furthermore, in the Nigerian case of **Akeredolu V. Akinremi**,⁵⁷ the issue was the interpretation of Section 31 (2) (a) of the Supreme Court Act 1960 dealing with the computation of three months within which appeal may be filed at the Supreme Court. The Court of Appeal delivered its judgment on Wednesday 10 April, 1985. The appeal was filed on July 10 1985 and the Court held that the appeal was within time. Expatriating on this principle, Aniagolu J.S.C (as he then was) after considering the provision of Section 31(2) (a) of the Supreme Court Act, and Section 18 of the Interpretation Act said:

It would follow that in computing the period for filing of the appeal in this matter, the date 10th April 1985, on which the Court of Appeal delivered its judgment must be excluded. The calculation thus begins on 11 April, 1985, and three months hence must end at mid night of 10th July, 1985.

Relatedly, in **Yasaba V. Donkin & Ors**,⁵⁸ the issue was the interpretation of Paragraph 2 (2) of Schedule 5 of the Local Government (Basic Constitutional and Transitional Provisions) Decree No. 7 1999, which states that “an appeal arising from the decision of the Election Tribunal on an election petition shall be heard and determined one month from the date of filing. In resolving the vexed question as to when time began to run in that case, the Court of Appeal held thus:

By S.18 of the Interpretation Act Cap.192 Law of the Federation of Nigeria 1990 “one month” means calendar month reckoned according to the Gregorian calendar. In the instant case as the appeal in question was filed on the 8th of July, 1997, the limitation period will start to run from 9th July, 1997 and will expire on the 8th of August, 1997.

The court went further to adumbrate on the rationale behind its decision that:

Where a statutory period runs “from” a named date “to” another or the statute prescribes some period of days or weeks or months or years within which some acts has to be done, although the computation of time must in every case depend on the interpretation of the parliament as gathered from the statute, generally the 1st day of the period will be excluded from the reckoning and consequently the last day would be included.

It is obvious from the foregoing that by the theory of exclusion, which is a general principle, where the limited period within which a thing

⁵⁷ (Supra)

⁵⁸ (1998) 7 NWLR (Pt. 556) at 162

is to be done is to be computed 'from' a named date, for instance, "from the date of declaration of results" the period will start running a day after the date on which the results were declared. But, it must be pointed out again that this is a general principle subject to exception.

INCLUSIVE THEORY METHOD OF TIME COMPUTATION

This is an exception to the general principle of time computation; the exclusive theory discussed above. By this theory of time computation, the reckoning of time is inclusive of the named date. In other words, by this method of time reckoning, where an act is expressed to be done within a particular time starting on a named day or date, then, it is a clear intention that the named date be included in the computation, thus the time limited for the doing of that act will start running on the named date.⁵⁹

It must be noted where this principle is to be applied in time computation, the parties must manifest their intention from the couching of the provisions relating to time. This is because where the intention is not made manifest, the general principle shall apply. Normally, the use of expressions like "commencing on" and "inclusive of" evinces the intention to exclude the principle of exclusive theory, and include the principle of exclusive theory, and include the specified date in the computation of time.⁶⁰

CONCLUSION

Before the enactment of the 2010 Electoral Act, and its consequential amendments, the computation of time for the commencement of election petitions posed a no mean difficulty to the litigants, lawyers, and need we say, the tribunals, as computing thirty days from the date of declaration of results by the Independent National Electoral Commission became an interpretative quagmire. While some tribunals held that the thirty days period should be reckoned inclusive of the named date, that is, the day of declaration of results; others expressed different sentiments thus the avalanche of disparate decisions on the matter.

The resolution by the Court of Appeal in **Kumaila V. Sheriff**, and such other cases, was neither equitable nor salutary because, legally speaking, both the proponents of the inclusive and exclusive theories were no less correct. The 2010 Act, it would appear, has obliterated any iota of doubt regarding the relevant time of accrual of cause actions in

⁵⁹ See Blackett V. Gutter Buck Bros (1923) ASR 301

⁶⁰ Imhanobe, Op. Cit 67

election petitions by the elegant use of the word **after** in Section 134, which provides that ***an election petition shall be filed within twenty-one days after the date of the declaration of results of the election.*** By this provision, no one is left in doubt as to the relevant time the twenty-one days statutorily limited for the commencement of election petition begins to run.

Finally, in as much as time is essential to proceedings relating to election petition, it is still germane to note that the essence of establishing tribunals to adjudicate on disputes resulting from the conduct of elections is to enable parties ventilate their grievances in the tribunals or courts established in that behalf, and consequently discourage resort to self-help. On the basis of the above, therefore, it is suggested that the time for the commencement of election petition under the current Electoral Act be enlarged to enable aggrieved parties more properly ventilate their grievances.

The foregoing suggestion is predicated upon the fact that the 21 days prescribed by the Act within which to commence an election petition, though calculated at obliterating tardiness and expediting the dispensation of electoral justice, it must be noted, is frustrating, as it shuts the doors of justice against aggrieved litigants. In the alternative, the time for the commencement of election petition be made to reflect the nature of the particular election in terms of space covered by that election, so that the wider the constituency covered by a particular election, the longer the time frame within which to present a petition in respect thereof. This is because the prescription of a uniform time frame within which to commence an election petition without taking into view the peculiarities of each election occasions injustice to a petitioner. For instance a petitioner challenging the results of a presidential election which covers the thirty-six states and the Federal Capital Territory can not be said to be placed on the same pedestal with a petitioner challenging the result of a House of Assembly election which covers just a few electoral wards, in terms of the requirement of commencement of the petition within 21 days.