

The Peter Obi judgment

I hereby in the circumstance order that Andy Uba should vacate the office immediately and the appellant runs his full term which ends on the 17th of March 2010 having taken the oath on the 17 of March, 2006.

JUSTICE KATSINA ALU
SUPREME COURT
OF NIGERIA

The Nigerian Supreme Court on June 14, 2007 handed down a landmark judgment in the case of

Peter Obi V Independent National Electoral Commission & 8 others (Peter Obi's Case). Obi had in April 2003

contested for and lost the governorship seat in Anambra State. He proceeded to the Election Tribunal and was ultimately in 2006 declared the winner of the election on which basis he was sworn in to office on March 17, 2006. In general terms, the 1999 Constitution of the Federal Republic of Nigeria provides for the holding of elections for States and federal positions every four years counting from May 29, 1999.

As the 2007 general elections approached and all the parties were making feverish preparations, Obi sought to stop the holding of governorship elections in Anambra State and therefore approached the Federal High Court for a determination that his four-year term of office commenced on March 17, 2006 when he took his oath of office and will lapse on or about March 17, 2010 in accordance with Section 180(2) of the 1999 Constitution which benchmarks a governor's tenure from the date that "he took the oath of allegiance and oath of office". In the case of Obi, it is

uncontested that he took the oath of office on March 17, 2006 after the conclusion of his election petition.

The Supreme Court in a unanimous judgment ruled in favour of Obi and specifically held "that the office of Governor of Anambra State was not vacant as at 29 May 2007" and therefore "ordered that the 5th Respondent" who was declared the winner of the governorship elections that were held on April 14, 2007 "should vacate the office of the Governor of Anambra State with immediate effect to enable . . . Mr Peter Obi to exhaust his term of office". The Justices on June 14, 2007 only gave an outline of the Court's decision and promised to give the full reasons for Their Lordships' judgment on July 13, 2007. While not pre-empting Their Lordships' full reasons, **PUC Journal** considers it meet to examine in this edition, some of the outstanding imports and ramifications of this judgment and what they portend for the Nigerian polity.

Jurisdiction

The main plank of the respondents' defence was that the Federal High Court lacked jurisdiction to entertain Obi's suit and that the National Assembly Election

Telco acquisition

PUC RECENTLY ASSISTED ITS client, a telecommunications services provider, to acquire another licensed service provider in the primary telephony area. This was a very exciting transaction for PUC which spanned about three months and required PUC, amongst others, to conduct due diligence on the acquired company, advise the client on the deal structure, negotiate and prepare the transaction documents and supervise the completion of the deal. Not less than four of our transactional lawyers were involved in the transaction which was valued at about N3,000,000,000.00. Upon deal completion, PUC continues to serve as legal consultants for the restructuring and repositioning of the acquired company. The principal minds of the acquiring parties have great plans and hopes of repositioning the company which they have shared with us and, given their outstanding track records in other significant sectors of the Nigerian economy, PUC shares their enthusiasm and plans.

Tribunal had exclusive competence therefor pursuant to Section 285(1)(b) of the 1999 Constitution. Both the Federal High Court and the Court of Appeal upheld the respondents' arguments but these decisions were overturned by the Supreme Court which held that Obi had merely "*sought by his claim . . . the true interpretation of Section 180(2)(a) of the 1999 Constitution*" and that the Federal High Court had the competence, amongst others, under Section 251(1)(q) and (r) of the 1999 Constitution "*to interpret any provision of the Constitution or the law*".

A few leading commentaries on the judgment have suggested that the Supreme Court may have erred on the jurisdictional issue. While not preempting Their Lordships' full reasons, **PUC Journal** is of the firm view that Their Lordships pronounced the law aright on this issue. To appreciate the sense in Their Lordships' holding, one must bear in mind two of the most cardinal statutory interpretation principles, one being that the provisions of a statute must be read in a holistic sense (and not in isolation) in order to get the proper intendment of the legislators. The second principle requires a plain and ordinary meaning and interpretation of the words used in a statute except that which leads to absurdity.

It is correct that Section 285(1)(b) of the 1999 Constitution suggests that the National Assembly Election Tribunals have exclusive jurisdiction to "hear and determine petitions as to whether . . . the term of office of any person under this Constitution has ceased . . ." However a holistic reading of Section 285(1) of the 1999 Constitution shows that the provisions thereat relate, as the

name of the tribunal suggests, to the "National Assembly Election" and offices while Section 285(2) of the 1999 Constitution is the relevant section that establishes "the Governorship and Legislative Houses Election Tribunals" with exclusive jurisdiction "to hear and determine petitions as to whether any person has been validly elected to the office of Governor or Deputy Governor or as a member of any legislative house".

Extending the intendment of Section 285(1) of the 1999 Constitution and the jurisdiction of the National Assembly Election Tribunals to include a determination as to whether Mr Obi's Anambra State Governorship seat would be vacant on May 29, 2007 would, in our view, be as absurd as extending the competence of the Governorship and Legislative Houses Election Tribunals under Section 285(2) of the 1999 Constitution to include the hearing and determination of a dispute as to whether a member of the National Assembly has been validly elected simply because the said Section 285(2) of the 1999 Constitution vests exclusive jurisdiction on the Governorship and Legislative Houses Election Tribunals in regard to the question of "whether any person has been validly elected . . . **as a member of any legislative house**".

Framed differently, we believe that Section 285(1) of the 1999 Constitution relates solely to and should be read in the context only of National Assembly offices in the same manner as Section 285(2) of the same Constitution, notwithstanding the unrestricted expanse of the words used, must be understood to relate only to the Governorship and State Legislative Houses. Such an intendment, comes

out from a reading of the two subsections and also when one particularly notes that subsections 285(1)(a) and (c) respectively expressly mention “National Assembly” and “the seat of a member of the Senate or a member of the House of Representatives”. We also believe firmly that it is only such a holistic reading of the two subsections that can overcome the absurdities which the plain and ordinary reading of each of the Sections produce e.g. the expansion of the jurisdiction of the Governorship and Legislative Houses Election Tribunals to include questions and issues in regard to National Assembly elections and offices simply because of the unqualified and completely expansive use of the words “member of any legislative house” in subsection 285(2) thereof.

We also believe that the entirety of Section 285 of the 1999 Constitution must be read in the context of election petitions. Incidentally the 1999 Constitution does not provide a definition of election petitions but help may be sought from the Electoral Act No. 2 of 2006 which defines “petitions” only in the context of elections to offices pursuant to the Act. It is also instructive that the Electoral Act defines “tribunal or court” in the context of “the Election Tribunal established under the 1999 Constitution or by this Act” except the Presidential Election Tribunal which it expressly specifies to be the Court of Appeal.

The *ad-hoc* nature of the Election Tribunals in Section 285 of the 1999 Constitution is reinforced by their composition pursuant to subsection (3) thereof and the Sixth Schedule to the 1999 Constitution. The two Tribunals are composed of “a Judge of a High Court” who shall be the Chairman “and four other members” who “shall be appointed from among Judges of a High Court, Kadis of a Sharia Court of Appeal, Judges of a Customary Court of Appeal or other members of the judiciary not below the rank of a Chief Magistrate”. The appointing authority in both

cases is “the President of the Court of Appeal in consultation with the Chief Judge of the State, the Grand Kadi of the Sharia Court of Appeal of the State or the President of the Customary Court of Appeal of the State”.


The fact that all members of the Tribunals hold regular judicial offices confirms that the Tribunals are indeed special *ad-hoc* arrangements that are intended for election purposes, as their names expressly suggest. Section 140(3) of the Electoral Act affirms this position when it benchmarks the constitution of the Election Tribunals with the holding of an election by stating that “the Election Tribunals provided for under the Constitution and this Act shall be constituted **not later than 14 days before the election**”. The 1999 Constitution itself has no other provision in regard to when the Election Tribunals may be established and the only guide in that regard therefore remains the Electoral Act.

All of these clearly confirm our view that the Election Tribunals that were established under Section 285 of the 1999 Constitution were intended solely for election petitions and matters directly issuing therefrom. Now was Mr Obi's matter an election petition? No, it was not and nobody has suggested otherwise. Obi's Suit, it must be noted, predated the elections of April 14, 2007 and, as the Supreme Court stated, was merely intended to seek an interpretation of Section 180(2)(a) of the 1999 Constitution, an issue that indisputably falls within the jurisdictional purview of the Federal High Court.

Even if we were wrong in our lines of reasoning above, we would still argue that the Federal High Court had competence to adjudicate on the Peter Obi Case pursuant to Section 251(1)(q) and (r) of the 1999 Constitution which confers exclusive jurisdiction on the Court “**notwithstanding anything to the contrary contained in this Constitution**” to hear and determine “causes and matters” relating to “the operation and



While not pre-empting Their Lordships' full reasons, PUC Journal is of the firm view that Their Lordships pronounced the law aright on this issue.



Was Mr Obi's matter an election petition? No, it was not and nobody has suggested otherwise. Obi's Suit, it must be noted, predated the elections of April 14, 2007 and, as the Supreme Court, stated, was merely intended to seek an interpretation of Section 180(2)(a) of the 1999 Constitution, an issue that indisputably falls within the jurisdictional purview of the Federal High Court.

interpretation of this Constitution in so far as it affects the Federal Government or any of its agencies” and “any action or proceeding for a declaration or injunction affecting the validity of any executive or administrative action or decision by the Federal Government or any of its agencies”.

In this instance, the relevant agency of the Federal Government is the Independent National Electoral Commission which had programmed elections for the Anambra State Governorship seat for April 14, 2007. It was the INEC's “executive or administrative action or decision” in regard to the Anambra State Governorship elections that was in issue in the Peter Obi case and the Federal High Court expressly had jurisdiction in that regard “notwithstanding anything to the contrary contained in this Constitution” which, by ordinary interpretation, includes but extends beyond the provisions of Section 285 of the same Constitution.

From whichever angle one approaches it, it is our view that the Federal High Court had the jurisdiction to entertain Peter Obi's Case and the Supreme Court was on very firm grounds in so holding.

Constitutional Review

Peter Obi's Case seems to have brought to the fore the need for a review of the 1999 Constitution. Peter Obi's Case has introduced the concept of staggered elections into the Nigerian polity and this is not expressly provided for in the 1999 Constitution. In point of fact, it is most doubtful that the framers of the Constitution intended to introduce the staggered-elections concept through an interpretational reading of Section 180(2) of the Constitution which gives a four-year tenure to the Governors of each State, calculated, “in the case of a person first elected as Governor under this Constitution” from the date when

“he took the Oath of Allegiance and oath of office . . .” To ascribe such an intention to the writers of the Constitution would also mean that they envisaged that election petitions would take three or more years to resolve as in Obi's case.

It is more likely that if they had such prescient of mind, the Constitutional framers, rather than build in a potentially disordered electoral arrangement through a literal interpretation of Section 180(2) of the Constitution, would have taken statutory steps to ensure that Nigeria has a more ordered and orderly arrangement and does not end up with 36 governorship elections held in different months and dates of different years, given the potential scenario of different concluding dates of the different petitions that would issue from the different governorship elections and the consequential differences in the dates for the administration of the oaths of offices on those with successful petition.

The concept of staggered elections has its merits and attractions beyond the governorship elections and we would argue shortly that it should be applied perhaps even more in the elections to legislative offices both at the national and state levels. Yet, the Constitution does not have the equivalent of Section 180(2) for legislative offices, whether national or states.

We must mention that the President of the Federal Republic of Nigeria has its equivalent of Section 180(2) of the Constitution in Section 135(2) which means that if a Presidential Election Petition is concluded three years after an election, the winner of the petition shall hold office for a period of four years from when he takes his oath of office and, the next presidential election can only hold four years thereafter. It is not difficult to see the unintended distortions that this would introduce into the body polity if the 1999 Constitution,

unedited, holds sway through five election years, for example, and if some of the initially declared winners of the various presidential and governorship election lose at the tribunals.

It is very doubtful that the framers of the Constitution in 1998/99 had foreseen and intended these unregulated and unordered consequences. And yet, these are but samples of the unintended consequences which the operation of the Constitution in the last eight years has unearthed. Peter Obi's Judgment may just be the clarion call which Nigerians need to take a hard look at some of the provisions of the 1999 Constitution. In effect, and using staggered elections only as an example, we are saying that the concept may be good and welcome but should not be dependent on or determined by such indeterminate factor as the concluding dates of election petitions. It should also not be limited to presidential and governorship elections but extended to the national and state legislatures and the local government councils.

The only way to effect this is through a constitutional review process which would address these and other "inadequacies" of the 1999 Constitution. In doing that, it is critical that Nigerians and more importantly, the political class, learn from past experiences and not attempt to take the country through a manipulative constitutional review process. All shades of opinion should be well and properly accommodated and entertained in a democratic setting even as the majority would transparently and ultimately have its say. It is also important to note and acknowledge that there are some very good, functioning and functional provisions in the 1999 Constitution that should be retained.

Staggered Elections

As earlier acknowledged, staggered elections, in an ordered and orderly setting, has its merits, in our view, even more so for the national and states legislatures and local government elections. The sustenance and orderly transfers of legislative and governance skills and experience in the national and states legislatures and local governments will definitely be enhanced by two-yearly staggered but orderly and ordered elections. This scenario envisages, for example, that 50% of the current National Assembly seats will, in an alternating manner, be declared vacant and contested every two years thus making for the deepening and transfers of skills and experience between and amongst all the members. Framed differently, such a scenario would eliminate the preponderance of freshmen legislators in any new legislative year as we have experienced in some State Houses of Assembly and the National Legislatures both in 2003 and 2007 and the consequential dearth of adequate legislative skills transfer.

The electoral process would also be the richer by and with staggered elections. Practice indeed makes perfect and the expectations should be that INEC that holds major elections every two years would soon enough develop the institutional capacity, depth and experience to conduct reasonably hitch-free elections which, over time, would hopefully bring out transparent, dedicated and honest political leaders. Such staggered elections would also require constant updating of the electoral register by INEC and the glitches that reportedly characterise current exercises hopefully would be identified and weeded out through such constant refinements. Overall, Nigeria would benefit immensely from this.

The concept of staggered elections has its merits and attractions beyond the governorship elections and we would argue shortly that it should be applied perhaps even more in the elections to legislative offices both at the national and state levels.... Framed differently, such a scenario would eliminate the preponderance of freshmen legislators in any new legislative year as we have experienced.



It is not reasonable, in the first place, to expect the election petitions to be concluded within the rather short time lag after the elections and before the winner is sworn in.

Staggered two-yearly elections would also reduce the elections to manageable bites for INEC and even the States Electoral Commissions in respect of local government elections. The total number of National and State legislative seats that were up for contest on in April 2007, for example, was about 1,538. Surely the logistical nightmares that were experienced by all the stakeholders in the elections of April 2007 and even the preceding one in 2003 would expectedly reduce if the contested offices were or are correspondingly halved. And over time and with gained experience and insights, INEC's elections-related logistics would become routine and the recurring logistical problems and issues would be reduced to manageable proportions.

All of these factors recommend staggered elections as a conscious constitutional requirement and beyond the governorship seats. It should be constitutionally provided for both for the governorship and national and states legislative seats and the local government offices and the trigger therefor, we emphasise, must be more definitive than the completion date of the various election petitions.

Election Timetables and Petitions

It is, perhaps, rather ironic that the Supreme Court or rather, the 1999 Constitution should, in the Peter Obi's Case, use a judicial failing as a peg for introducing staggered elections. Obi would perhaps not have had the motivation to seek judicial interpretation of his tenure if, for example, his election petition was determined within one month of the elections. A combination of two principal factors set the stage for Peter Obi's scenario. First, Nigeria's general elections are usually held in April of the election year and the

winners are sworn in about a month thereafter, leaving no sensible time whatsoever for the conduct of election petitions.

Nothing can really be done within one month of an election, at least in a Nigerian setting. Almost two months after the April 2007 general elections, newspapers are still awash with reports of efforts by petitioners and the tribunals to serve the successful candidates with election petitions. Some of the petitioners are also still working on discoveries and investigations, using the instruments of the Tribunals' orders. Given our pervasive manual processes, all of these take time and it is not reasonable, in the first place, to expect the election petitions to be concluded within the rather short time lag after the elections and before the winner is sworn in. In that circumstance and given the best judicial and advocacy will and effort, scenarios such as Peter Obi's are inevitable. Perhaps we need to mention that the Peter Obi scenario would still occur even if the ultimate winner (and the initially declared loser) of the elections was sworn in within a month or only some months after the initially-considered sacrosanct date of May 29 of any election year.

The **second** trigger for the Peter Obi scenario is of course the in-built delays in judicial processes which, in some instances, counsel take full advantage of. Counsel sometimes consider dragged-out processes as acceptable legal strategy for managing their cases. Judges and the other parties to the litigation, in some instances, appear helpless and may actually be helpless, particularly where the conniving counsel happens to be an experienced and resourceful advocate of many years standing and notable rank. In such cases, election petitions take months and - as in the Peter Obi's Case - years to conclude. Perhaps the positive side of the




Supreme Court judgment is to alert all counsel to the fact that such delay tactics, while it may gain their clients some unmerited executive time in office, does not necessarily work to the detriment of the other party when and if he is ultimately declared the winner of the election.

In some other climes, the electoral laws and the rules of the election tribunals are fortified with sufficient provisions to check and prevent the abuses of counsel and litigants who may wish to prolong the hearing of election petitions. Happily we seem to have started the journey in that direction by introducing the frontloading system into the 2007 election petition procedures. This process makes it mandatory for the petitioners to file their petitions together with the list of witnesses, their witnesses' statements and the exhibits and supporting documents that the petitioners intend to rely upon. The difficulty though is that the one-month period between the elections and the swearing-in date of the office holders may be rather short - and the 2007 election petitions has indeed confirmed this - for all the front-loading processes to be concluded by even the most serious and conscientious litigants. Suitable balance is also required in order not to sacrifice justice on the altar of speed and expediency.


Conclusion

Peter Obi's Case serves as a good resource and research material, not only for academics but for all who invest in and are interested as stakeholders in the continuing development of the Nigerian political standards and nation. It is to the credit of the Nigerian judiciary, so ably led by the Supreme Court, that it serves as the precursor of a number of the positive political changes that are taking place and are envisaged in the country, the Peter Obi Case serving as but one of such critical and significant interventions. For the PUC

business audience, we can only restate the obvious: a well ordered, stable and predictable political climate enhances business investments generally. And so, for that matter, does an upright judiciary.



Perhaps the positive side of the Supreme Court judgment is to alert all counsel to the fact that such delay tactics, while it may gain their clients some unmerited executive time in office, does not necessarily work to the detriment of the other party when and if he is ultimately declared the winner of the election.



THE FIRM

Supporting business

Paul Usoro & Co, PUC, is a full-service firm, providing comprehensive legal services to leading companies, financial institutions, public agencies and governments nationally and internationally. Our clients include leading organisations in the telecommunications, maritime, oil and gas and power sectors, national and multinational companies, financial institutions, public agencies and governments at state and federal levels. Our people have been recognised amongst Nigeria's pre-eminent lawyers, widely respected for their deep insights, professionalism, responsiveness and focus. Our passion for excellence drives us to deliver the best in all that we do. We have invested in cutting edge technology and a robust reference library so we can serve our clients better.

Headquartered in Lagos, Nigeria, our global outlook enables us to offer best-in-class professional services that meet the needs of the international business community. We offer our clients rewarding legal partnership which they require to become and remain industry leaders. We earn their trust by consistently delivering timely, personalised services that keep them ahead.

What We Do

PUC is a one-stop shop for corporate legal services; but we are more active in four practice areas, namely:

- *General Commercial and Transactional Practice*
- *Advocacy and Dispute Resolution Practice*
- *Communications Law Practice*
- *Maritime and Environmental Law Practice.*

Contact Details

For enquiries or further information about us, please contact

The Managing Partner

Paul Usoro & Co

Legal Practitioners, Notaries, Arbitrators

Plot 1668B Oyin Jolayemi Street

P O Box 71605

Victoria Island

Lagos, Nigeria

Tel: 234 (01) 2714842-5

Fax: 234 (01) 2714846

E-mail: info@paulusoro.com

Website: www.paulusoro.com

Feedback

PUC Journal is a noble effort says NDIC

We have gone through the maiden edition of PUC Journal and wish to state that the quality and indeed the content are impressive. The noble objective for which this publication is being put in place is commendable and the topics treated in the said edition are incisive.

We would also appreciate the NDIC judgment report in the PUC News. That report would go a long way in enlightening readers of your publication on when the Corporation could be appointed as bank liquidator.

From your Firm's profile and clientele it is obvious that your Organization is indeed one of the leading Law Firms in the Country. We assure you that we would read all the editions of the PUC Journal that would be sent to us and give you feedback on the content where necessary.

Once more we commend you for contributing to the development of the legal profession in Nigeria.

K. F. Markus

For: Board Secretary/Director,

Legal Department