Law ought to be an instrument of social engineering

By Robert Omote

THE history of political theory is written in the light of the hypothesis that theories of polities are themselves a part of politics. They have no semblance to an external reality but normal part of the social milieu in which politics itself has its being.

Reflection upon the ends of political action, upon the means of achieving them, upon the possibilities and necessities of political situations, and upon the obligations that political purposes impose is an intrinsic clement of the whole political process. Such though evolves along with the institutions, the agencies of government, the moral and physical stresses to which it refers and which one likes at least a believe it in some degree controls. The court as a pivot of government institution not only determines the success of the political process, it also regulates as an 'impartial' umpire other government's agencies whose successes cumulatively accrue to the overall political process.

A court of law is an established institution for the fair and just determination of conflicts from perceived disturbances between various levels of government and private organisations, between citizens in a society, among others. However, litigants in their quest for justice may encounter some impediments that could be human in nature, procedural or mechanical in form. It is in line with these impediments that the frustrations visited on litigants and interest parties by the court system will be examined.

Obviously, that electoral matters arising from the conduct of the flawed election of April 14, 2007, the stalled trial of public office holders, especially most of the former governors who with impudence looted their respective state treasuries with the cloak of constitutional immunity S.308 (1999) FRN, have posed great challenge to the system and the credibility of the government in power to Nigerians and the international community.

S.285 (1) (1999) CFRN established the National Assembly Election Tribunal, which shall to the exclusion of any court or tribunal, have original jurisdiction to hear and determine petitions as to whether (a) any person has been validly elected as a member of the National Assembly. In a related development, S.285(2) of the same constitution established the "Government and Legislative Houses Election Tribunals" which shall, to the exclusion of any court or tribunal, have original jurisdiction to hear and determine petitions as to whether any person has been validly elected to the office of governor or deputy or as a member of any legislative house".

Interestingly, SS140-151 of the Electoral Act (2006) stipulates the determination of election petition arising from elections. S.146 in particular provides "without prejudice to the provisions of S.294(1) (1999) CFRN, an election petition and an appeal arising therefrom under this Act shall be given accelerated hearing and shall have precedence over all other cases or matters before the tribunal or court. S. 145(1) EA (2006) in line with the Supreme Court position in Abubakar & 2 Ors v. Yar'Adua & 89 Ors (2008) 19 NWLR (Pt 1120) SCI, RI succinctly spell out the grounds on which election may be questioned namely:

- That a person whose election is questioned was at the time of the election, not qualified to contest the election;

- That the election was invalid by reason of corrupt practices or non-compliance with the provision of the Act;

- That the respondent was not duly elected by majority of lawful votes cast at the election or

- That the petitioner or its candidate was validly nominated but was unlawfully excluded from the election.

Disappointedly dotting the political landscape of Nigeria are plethora of cases ranging from National Assembly elections to governorship/legislative over elections shamelessly conducted and the Electoral Act did not provide for the timeframe for the quick dispensation of justice as regards electoral matters. The Lacuna has been grievously abused by litigants and their counsel to frustrate petitioners having genuine grounds listed aforesaid with the court or tribunal being swayed by technicalities and granting of frivolous injunctive orders. Imagine beneficiaries of flawed elections priding over their supposedly elective positions on injunctive orders or technicalities, and using their remuneration to fund litigations in electoral matters.

In Odeh v FRN (2008) 13 NWLR 9Pt 1103) 1 R. 16, the apex court declared "dispensation of justice on the pedestal of technicalities is no longer fashionable". In Omoju v FRN (2008) 7 (Pt 1085) SC 38 R.8 Per Tobi JSC at Page 57, paras D-G, his Lordship said "Courts of law have long moved away from the domain or terrain of doing technical justice to doing substantial justice. Technical justice, according to the legal colossus, is not justice but a caricature of it. Caricatures are not the best presentations or representations, substantial justice is justice personified and is secreted in the elbows of cordial and fair jurisprudence with a human face and understanding. It pays to follow it as it brings invaluable dividends in any legal system anchored or predicated on the rule of law, the life-blood of democracy".

On impropriety of using interlocutory applications to delay dispensation of justice, the court in Seriki v Aduralere (2007) 3 NWLR (Pt 1020) 127 CA, R. 7 emphatically said "it is not right to use the instrumentality of interlocutory applications to cause unnecessary delay in dispensation of justice".

Furthermore, in defence of its constitutional functions in unambiguous terms, the court in a robust and ebullient manner in Abana v Obi (2004) IONWLR (pt 881) 319 CA R 14 emphasised that "there must be an end to litigation and particularly when such litigations are based on election petitions of which time is the essence in their consideration by the court".

This welcomed development and approach of the court has been strengthened when it said in Mohammed Hassan Rimi v. INEC & Arch. Umar Jubril (2004) 15 NWLR (Pt 895) CA 121, R. 12 that "as a matter of deliberate policy to enhance urgency, election petitions are expected to be devoid of procedural clogs that cause delay in the disposition of substantive justice".

Auxiliary to pending electoral matters are the operations of the moribund Independent Corrupt Practices Commission (ICPC)) and the 'weeping' Economic and Financial Crimes Commission (EFCC) through series of injunctive orders or technicalities whose goal it is to circumvent the legal process and shield corrupt private and public economic vampires from possible prosecution.

Conclusion

It took the Appeal Court and the Supreme Court almost two years to dispense with the election petition matters in Yar'Adua v Buhari. It is amazing that almost three years on assumption of this administration, some National Assembly, governorship and House of Assembly elections are still pending at various tribunals and Appeal Court just as the public officers in the waiting list of Nuhu Ribadu-controlled Economic and Finance Crimes Commission have suddenly become regular visitors at the Aso Rock Villa and are untouchables.

It is no more arguable that the courts, through some of its landmark judgments, have basically altered the extant constitution. The lacuna in the constitution as regards the time frame in resolving electoral matter ought to have been determined by the order of the court. The Chief Justice of Nigeria and President, Court of Appeal would assuage the anguish of litigants and those calling for the persecution of corrupt public officers for setting the time frame for the resolution of such sensitive matter. In that wise, injunctive orders or technicalities cannot be substituted for substantive justice. It is repugnant to natural law, equity and good conscience giving judgment in favour of a petitioner/legislator a year to the completion of his four-year tenure or sentencing a peasant who stole N5,000 to six months' imprisonment while corrupt public officers who helped to impoverished him are gallivanting and globe-trotting.

In the same vein, both the ICPC and EFCC should be unchanged by the invincible manipulative hands of the government. In that wise, those basking in the euphoria of clandestinely circumventing the law can be brought to book. Scanty lauded judgments of the courts are inadequate to redeem the sinking political boat of Nigeria orchestrated or captained by visionless Executive and Legislature. A Rawlings military option might be too colossal to be contemplated in contemporary global politics. A twin vibrant Bench and Bar void of infractions, intrigues is the needed antidote for the rejuvenation of the Nigerian society. In the face of the daily drift of the Nigerian "Leviathian", the law ought to be a corrective instrument of social change and not a clog.