

Fawehinmi's stance on Supreme Court judgment and tenure elongation

With the greatest respect to the most eminent jurists of the Supreme Court, I unreservedly disagree with the Supreme Court because by the provisions of the Constitution of the Federal Republic of Nigeria 1999, I believe that the highest court of the land has no jurisdiction on the matter.

Background facts

Dr. Nwabueze Ngige took the oath of office and oath of allegiance contained in the Seventh Schedule to the Constitution on May 29, 2003.

Mr. Peter Obi of the All Progressive Grand Alliance (APGA) challenged Ngige's election in the election tribunal sitting at Awka, Anambra State capital.

However, Dr. Ngige went on appeal to the Court of Appeal. There again, Mr. Peter Obi won on Wednesday, March 15, 2006. And because the Court of Appeal is a final court in such matters as provided for in Section 246(3) of the Constitution of the Federal Republic of Nigeria 1999, that was the end of the matter. No further appeal could go to the Supreme Court of Nigeria.

Mr. Peter Obi took the oath of office and oath of allegiance on Friday, March 17, 2006.

On Saturday, April 14, 2007, Anambra State governorship election was conducted by INEC. Dr. Andy Uba was declared the winner and on May 29, 2007, he took the oath of office and oath of allegiance under the constitution.

There were several petitions against the election of Dr. Andy Uba pending before the 2007 election tribunal in Awka.

Has the Supreme Court the constitutional jurisdiction to determine the tenure of Governor Peter Obi?

The judicial institutions empowered by the Constitution of the Federal Republic of Nigeria, 1999, to determine whether the tenure of office of any person under the constitution has expired or ceased are:

- Election tribunals; and
- The Court of Appeal, if there is an appeal to that Court of Appeal, from the election tribunals.

Under the 1999 Constitution, the decision of the Court of Appeal in that respect is final. The relevant constitutional provisions are sections 285(1) and 246(3).

section 285(1) provides: "285. (1) There shall be established for the federation one or more election tribunals to be known as the National

Assembly 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 as a member of the National Assembly;
- the term of office of any person under this constitution has ceased;
- the seat of a member of the Senate or a member of the House of Representatives has become vacant; and
- a question or petition brought before the election tribunal has been properly or improperly brought."

Section 246(3) provides thus:-

"246(3) The decisions of the Court of Appeal in respect of appeals arising from election petitions shall be final."

I will start with Section 285. For emphasis, the pertinent subsection above is 285(1)(b), which provides as follows: "285(1). There shall be established for the federation one or more election tribunals to be known as the National Assembly election tribunals which shall, to the exclusion of any court or tribunal, have original jurisdiction to hear and determine petitions as to whether -

- the term of office of any person under this Constitution has ceased;"

Arising from Section 285(1)(b), the Constitution of Nigeria has vested the authority to determine the extent or otherwise of the tenure of any office holder and in this case, the governor of Anambra State in an election petition tribunal and not any other judicial body. Not even the Supreme Court.

The finality of governorship election is in the Court of Appeal and not the Supreme Court. The constitution makes the Court of Appeal the final court in appeals from election tribunal created by Section 285 in all election matters (except presidential election) including whether the tenure of any person and in this case, a state governor has ceased. I refer again to Section 246(3), which provides as follows: "246(3) The decisions of the Court of Appeal in respect of appeals arising from election petitions shall be final."

There is nowhere in the Constitution of the Federal Republic of Nigeria, 1999, that the Supreme Court of Nigeria is vested with the jurisdiction to take an appeal from the Court of Appeal on an election matter determined by the election tribunal and appealed against the Court of Appeal.

What Peter Obi should have done

Since Mr. Peter Obi was in office as governor of Anambra State at the time the governorship election in Anambra State was conducted on Saturday, April 14, 2007, by the Independent National Electoral Commission (INEC), he

should have filed a petition, having been disqualified, to the election petition tribunal at Awka, praying the tribunal among other reliefs for tenure elongation since the constitution in Section 285 has vested in that tribunal the power to determine the tenure of the holder of the office which was subject of that election.

Precedent

There appears a precedent for the argument proffered above. In 2003, in the Anambra-South Senatorial Election between Nicholas Ukachukwu and Dr. Ugochukwu Uba, Dr. Ugochukwu Uba was declared the winner by INEC. Prince Nicholas Ukachukwu went to the election petition tribunal and he won. Dr. Ugochukwu Uba appealed to the Court of Appeal. He was said to have won the appeal but it turned out that the judgment of the Court of Appeal in Appeal No: CA/E/EPT/19/2003 in that matter was bought with more than N27,000,000.00 (Twenty-seven million naira) by two of the three justices of the Court of Appeal. N15,000,000.00 (fifteen million Naira) was given to Honourable Justice Okwuchukwu Opene and N12,000,000.00 (twelve million naira), as well as unascertained sums of money in three Ghana-must-go bags were given to Honourable Justice David Adedoyin Adeniji. The two justices gave judgment to Dr. Uba while the third Justice, Honourable Justice Kumai Bayang Akaahs who had very clean hands dissented.

The National Judicial Council (NJC) on petitions from different persons investigated the allegation. After the investigation, the National Judicial Council (NJC) found that it was true that the two justices (Opene and Adeniji) received N27,000,000.00 (twenty-seven million naira) as bribe. National Judicial Council recommended the dismissal of the two justices to the President of Nigeria who dismissed them from Judiciary on May 3, 2005.

Efforts through various applications to set aside the judgment of the Court of Appeal obtained by corruption and fraud failed. A further appeal went to the Supreme Court of Nigeria by Hon. Nicholas Ukachukwu. On May 7, 2007, the Supreme Court on a preliminary objection struck out the appeal on the ground that the Supreme Court had no jurisdiction in view of the fact that the matter arose from election, which the constitution had provided should end in the Court of Appeal.

Only in presidential election can the Supreme Court entertain an appeal from the Court of Appeal in all matters relating to elections including tenure of office of any person. Certainly, in governorship election, an issue of tenure arising therefrom has no constitutional competence in the Supreme Court.

In the same vein, it is my view that the Supreme Court has no jurisdiction to have entertained Mr. Peter Obi's case since the issue of tenure is specifically reserved by the constitution for adjudication by the election tribunal and the final court in all election petition cases except presidential election is the Court of Appeal by virtue of Section 246(3) of the Constitution of the Federal Republic of Nigeria, 1999.

In *Awuse v. Odili* (2003) 18 NWLR (Pt. 851) 116 at page 174, paras. C-F, Tobi, JSC while quoting *Uwaifo, JSC in Onuaguluchi v. Ndu* (2001) 7 NWLR

(Pt.712) 309 said as follows: "I have gone into some of the above matters not in the capacity of hearing the appeal brought by the appellant but in the consideration of the preliminary objection to show that the Court of Appeal throughout acted within its mandate of deciding an appeal arising from an election petition under Decree 5 of 1999. Whether it did so perfectly, rightly or was wrong in the decision it arrived at cannot be taken on appeal to this court for consideration ... This court will not permit or encourage any subterfuge under which it may assume jurisdiction to hear an appeal in respect of which the constitution has in clear and unambiguous language made the Court of Appeal the final court.

It follows that an appeal in respect of a decision of the tribunal in an election petition when decided by the Court of Appeal cannot be taken on appeal to the Supreme Court but is final for all purposes."

Finality of Supreme Court judgment

There is no doubt that the Supreme Court's judgment is final whether right or wrong. It must be obeyed and enforced by all authorities and persons in Nigeria in consonance with Section 287(1) of the Constitution of the Federal Republic of Nigeria, 1999, which provides as follows: "287(1) The decisions of the Supreme Court shall be enforced in any part of the federation by all authorities and persons, and by courts with subordinate jurisdiction to that of the Supreme Court."

The implication of the finality of the Supreme Court judgment has been spelt out in the case of *Adigun v. A.-G., Oyo State (No.2)* (1987) 2 NWLR (Pt.56) 197 at 214-215, paras. H-B, Eso, JSC said as follows: "The decision of the Supreme Court is final. Final in the sense of real finality in so far as the particular case before that court is concerned. It is final forever, except there is legislation to the contrary, and it has to be a legislation ad hominem. ... Such is the constitutional power of the Supreme Court that learned counsel, probably rightly, wondered if the Justices of the Supreme Court were supermen. Let me answer the question. The Supreme Court is, under the Constitution, a super court, deliberately meant and made to be so, by the organic law, and the justices of that court, now only to that extent of their decision are supermen, meant to be so and so made by the constitution."

Solution

Undoubtedly, the judgment of the Supreme Court is bound to affect the tenure of any winner in the on-going election tribunals. The solution to the problem created by the Anambra crises is for the Constitution of Nigeria to be amended as follows:

- that all elections to elective offices are conducted not later than three months before the hand-over date; and
- that all election petitions are concluded within two months before the hand-over date, that is, before any one takes oath of office and oath of allegiance.

This amendment will obviate this type of situation, which has now arisen in Anambra State.

It was unfortunate that for eight years, the National Assembly and the state Houses of Assembly did not address this issue. But the military did before them.

Before the Second Republic came into being on October 1, 1979, the military promulgated Electoral Decree No. 73 of 1977, which prescribed that all election petitions must be concluded before hand-over date of October 1, 1979. Hence the case of Awolowo v. Shagari (1979) 6-9 SC 51 was concluded in the Supreme Court on Wednesday, September 26, 1979, before Alhaji Shehu Shagari was sworn in as President of the Federal Republic of Nigeria on October 1, 1979.

In 1999, by Presidential Election (Basic Constitutional and Transitional Provisions) Decree No. 6 of 1999 and State Governments (Basic Constitutional and Transitional Provisions) Decree No. 3 of 1999, it was prescribed that all election petitions must be concluded before the hand-over date of May 29, 1999. Hence, the case of Falae v. Obasanjo (1999) 4 NWLR (Pt.599) 476 was concluded in the Court of Appeal on April 5, 1999. Chief Olu Falae chose not to take the matter to the Supreme Court. General Olusegun Obasanjo took oath of office and oath of allegiance as President on May 29, 1999.

It is tragic that the National Assembly for eight years slept on its duties in this respect.

Conclusion

Can the Supreme Court secure Mr. Peter Obi in office as governor of Anambra State till 2010 in the face of the powers of other institutions established by various sections of the Constitution of the Federal Republic of Nigeria, 1999? This is a constitutional food for reality thought. Need I say more?