TOPIC: SUSTENANCE OF OUR DEMOCRACY THROUGH CREDIBLE ELECTIONS: THE ROLE OF THE BAR

BEING A PAPER PRESENTED BY ***MATTHEW BURKAA,SAN. FCIArb(UK)*** ON THE OCCASION OF THE BAR WEEK OF THE NBA LAFIA BRANCH ON THE 12TH DAY OF DECEMBER 2022 AT THE TA'AL CONFERENCE HOTEL LAFIA, NASARAWA STATE.

1.0. INTRODUCTION

1.1. Countries all over the world have adopted different systems of Government in their quest to have the best form of political leadership. In Nigeria, since Independence in 1960, the country have been governed by both military regimes and civilian administrations. Whereas the military assumed leadership by forceful takeover of the reins of power through coup d'tats, civilian leaders are usually, supposedly, elected by the people through periodic elections.

1.2. Democracy as a form of government is said to have originated from the Greek city states that were known to be the forerunners or pioneers of participatory governance. It is a system which ordinarily allows for popular participation and ultimate decision of the people in the choice of their leaders. Abraham Lincoln saw Democracy as the Government of the people, by the people and for the people. This system of governance thrives on elections as a medium through which the people are afforded the opportunity to choose persons who will govern them or hold public offices in trust for them.

1.3. Election on the other hand, which is the fulcrum of this paper, is a process of selection of persons who ought to hold public offices in trust for the people. Since this form of government is predicated on the electoral system i.e. the will of the people, the rule of law necessarily plays a pivotal role. When elections are conducted especially in

Nigeria there are sometimes legal challenges which necessitates the determination of certain questions or issues by the Tribunal and Courts. The Bar being a body of lawyers who are considered ministers in the temple of justice and as advocates who plead the cause of their clients are naturally obligated to approach the court for the just determination of these issues.

1.4. This presentation will look at the role the court system, through lawyers, have played in sustaining our democratic institutions and influencing the improvement of electoral related legislation. It will also highlight the key innovative provisions of the Electoral Act, 2022.

2.0. THE ROLE OF THE COURTS IN DEMOCRATIC GOVERNANCE IN NIGERIA.

2.1. With Nigeria's return to democratic rule in 1999 after many years of military rule, it became necessary for credible elections to be conducted so as to elect leaders into public offices. The Nigeria Constitution provides for three arms of government, namely, the executive, legislatures and the judiciary. Each of these arms of government is constitutionally assigned powers and roles to play in the governance of the people.

2.2. The judiciary, through the Court system, is an integral part of our democratic system and has helped in no small measure in sustaining and deepening democratic norms Nigeria since the return to democracy in 1999. The role of the courts in interpreting the Constitution, the Electoral Act and other related legislations has greatly helped to shape and enhance our legislations and electoral jurisprudence. We shall consider some notable cases in which judicial pronouncements since our return to democracy have helped in

repositioning our electoral laws and helped strengthen our democratic governance in Nigeria.

2.2.1. **Amaechiv. INEC (2008) 5 NWLR (Pt. 1080) 227**

In this case, the appellant emerged as the candidate of the Peoples Democratic Party (PDP) for Rivers State at the Governorship Primaries conducted by the party as he polled the highest number of votes at the Primary election. The 2nd Respondent Celestine Omehia with whom the party purportedly substituted the appellant did not contest the primary election. Pursuant to the result of the primaries, the PDP forwarded the Appellant's name to the Independent National Electoral Commission as the candidate of the Party for the Governorship election coming up on 14/4/07. Later the appellant heard rumours that his Party was about to substitute him for another person. He went to Court to stop the Party from substituting or disqualifying him except in accordance with the provisions of the Electoral Act, 2006.

The P.D.P went ahead, while the suit was pending to forward the name of the 2nd respondent as a substitute for the Appellant, offering as a reason that the name of the Appellant was submitted in error. INEC accepted the substitution. The Appellant continued his case in court. The trial court set aside the substitution on the ground that though it was made within the time limited for doing so, it was made during the pendency of the suit but came short of affording any meaningful relief to the appellant. The appellant appealed against the decision to the court of Appeal and the respondents Cross Appealed. The court of Appeal adjourned proceedings in the matter to await the outcome of the decision in **Ugwu v Ararume** at the Supreme Court.

Meanwhile, the general election was held and the PDP won the election into the office of Governor of Rivers State and Celestine Omehia was declared as winner of the election. Every effort was made by the respondents to frustrate the continuation of the case on the ground that election have taken place and the suit could no longer be maintained by the appellant who had been sacked by the P.D.P then. The Supreme Court considered Section 34 of the Electoral Act, 2006

among other statutes and in declaring that the appellant was the candidate of the P.D.P duly nominated, campaigned for and voted for at the election, the court made these pronouncements among others:

> ***"Section 221 of the 1999 constitution effectually removes the possibility of independent candidacy in our elections and places emphasis and responsibility in elections on political parties. Without a party, a candidate cannot contest, as provided in Section 221, it is only a party that canvasses for votes, it follows that it is a party that wins an election. A good or bad candidate may enhance or diminish the prospect of his party in winning but at the end of the day, it is the party that wins or losses the election.***

The court stated, Per Oguntade JSC as follows:

> ***"In his argument in the brief filed for P.D.P, J.K. Gadzama SAN, senior counsel argued that Amaechi who had not contested the election could not be declared the winner. He stated that such a declaration would amount to a negation of democratic practice. With respect to counsel, I think he missed the central issue which is that it was infact Amaechi and not Omehia who contested the election. I ought not allow my approach to this to be influenced by a consideration of the fact that PDP eventually won the election. Even if Omehia had lost the election, this court would still be entitled to declare that it was Amaechi and not Omehia who was PDP's candidate for the election. The argument that a new election ought to be ordered overlooks the fact that this was not an election petition appeal before court but rather an appeal on a simple dispute between two members of the same party.***
> ***If this court falls into the trap of ordering a new election, a dangerous precedent would have been created that whenever a candidate is improperly substituted by a political party, the court must order a fresh election even if the candidate put by the party does not win the election .... The candidate that wins the case on the judgment of the court simply steps into the***

> ***shoes of his invalidly nominated opponent whether as loser or winner"***

The case of Amaechi v INEC (Supra) presented a platform upon which several other decisions on invalid substitution of candidates by Political Parties under the Electoral Act, 2006 were decided. In almost all the meritorious cases that came after Amaechi's case, the courts validated the candidacy and ordered that such persons be sworn in immediately where the party in question won the general election even where such a person did not physically participate in the general election. The reasoning of the court was simply that, such a person was deemed to be the candidate in the eyes of the law.

The Electoral Act, 2006 had allowed a political party to substitute its candidate for any election after the candidate's name had been submitted to the Electoral Commission. However, one of the conditions placed upon such substitution was that it must be for a cogent and verifiable reason. What constituted cogent and verifiable reason was however left subject to the interpretation of the courts in line with the circumstances of each case. The courts thereby held the balance between avaricious party leaders and helpless candidates who would have spent fortunes to contest and win Party Primary elections only to be uprooted and thrown out of the general election at times when they could no longer seek nomination in another party. No section of the Electoral Acts, 2002 and 2006 generated as much heat as the sections that allowed for substitution of candidates. It was in consequence of the decision of the Supreme Court in the Ameachi's case that the National Assembly in their quest to correct the supposed anormally of having the Court declare as winner of elections person who did not participate in the general election that the legislatures amended and inserted section **33** and **41** of the **Electoral Act, 2010** which provides thus:

> ***"33. A political party shall not be allowed to change or substitute its candidate whose name has been submitted pursuant to section 31 of this Act, except in the case of death or withdrawal by the candidate"***

> ***"141. An election tribunal or court shall not under any circumstance declare any person a winner at an election in which such a person has not participated in all the stages of the said election"***

The import of the above provisions was to the effect that a person must participate in ALL the stages of an election e.g. primary and general elections before he can be declared the winner of any election. In giving effect to the above provision, the Court held in the following cases as follows;

A. MODIBBO V. USMAN (2020) 3 NWLR (Pt. 1712) at 470 Page 516-517, Paras G – B, The Court held **Per Eko, JSC** thus:

> ***"There is no doubt that the 1st Respondent did not, at the time of the trial court order on 3rd May, 2019, participate in all the stages leading to the subject election and indeed the election itself in Yola North/Yola South/Gerei Federal Constituency on 23rd February, 2019.***
>
> ***Section 285 (13) of the Constitution is in parimateria with section 141 of the Electoral Act, 2010 (as amended). This Court in CPC V. Ombugadu (2013) All FWLR (Pt. 706) 406 at 444 – 445 had emphatically declared that the decision in Amaechi V. INEC (2008) All FWLR (Pt. 407) 1, (2008) 5 NWLR (Pt. 1080) 227, is no longer good law, the provision of section 141 of the Electoral Act, 2010, having effectively set-aside and overridden the decision, and that a person to be declared and returned as a winner of an election by an election tribunal or court must have been a person who had fully participated; as a candidate to the actual voting. That is the position of the court. It has not changed, so it is stare decisis"***

B. In **RABO V. ANANI (Unreported) Appeal No. CA/J/63/2019** the Appellate Court held **Per TANI YUSUF HASSAN, JCA** at Page 21 of the Judgment that:

> ***"Accordingly, where a political party fails to comply with the mandatory provisions of the Electoral Act on nomination of its candidate(s) for a general election, the Court will intervene and declare such election invalid; and the affected party would be taken or deemed to have fielded no candidate for the general election"***

2.2.2. **<u>James Faleke v. INEC (Yahaya Bello) (2015)</u>**

Faleke had contested on a joint APC ticket with late Prince Abubakar Audu who died in the course of collation of the gubernatorial election results was later declared inconclusive by INEC. His political party subsequently substituted Faleke with Bello, an action which necessitated the Suit. The Supreme Court held that Faleke as running mate could not claim victory in the election or inherit the votes of his principal because he did not participate in all processes leading to the election. The apex Court upheld the substitution of Audu with Bello because he (Bello) participated in the party primary and came second. The court stated that by Section 221 of the 1999 Constitution (as amended), it is a political parties that contest elections. Bello having become the candidate of the APC, and legally sponsored by the party, could lay claim to the votes scored by the party.

This case led to the amendment of the Electoral Act by the legislature who have now introduced section 34(3) of the Electoral Act, 2022 which provides that:

> ***"34(3) If after the commencement of poll and before the announcement of the final result and declaration of a winner, a candidate dies.***
> ***(a) The Commission shall, being satisfied of the fact of the death, suspend the election for a period not more than 21 days; and***
> ***(b) In the case of election into a Legislative House, the election shall start afresh and the political party whose candidate died may, if it intends to continue to participate in the election, conduct a fresh primary within 14 days of the***

> ***death of its candidate and submit the name of a new candidate to the commission to replace the dead candidate:***
>
> ***Provided that in the case of presidential or gubernatorial or Federal Capital Territory Area Council Election, the running mate shall continue with the election and nominate a new running mate"***

The effect of the above provision is that the Electoral Act, 2022 has adopted a twin approach in dealing with the issue of the demise of a candidate during election, particularly the period between commencement of poll and the declaration of final result in the following manner:

1. Where it relate to Legislative House election,
   a. The election shall be suspended for a period not more 21 days.
   b. The election shall be re-conducted afresh, and
   c. The political party whose candidate died may, if it desire to continue to participate in the election conduct a fresh primary within 14 days of death, and submit the name of the new candidates to INEC.
2. Where it relate to presidential, gubernatorial or Federal Capital Territory Area Council election,
   a. The election shall be suspended for a period not more 21 days and
   b. The running mate shall continue with the election and nominate a new running mate.

2.2.3. **Maku v. Sule (2022) 3 NWLR (Pt.1817) 231**

In this case the Court held that in computing the time within which an election petition is to be filed by virtue of Section 285(5) of the 1999 Constitution, the date the result was declared ought to **be excluded** while in pre-election cases, the date of the event, action or decision complained about should **be included** according to section 285(9) of the 1999 Constitution.

It is imperative to note that section 285(5) of the 1999 Constitution was replicated in section 134(1) of the repealed Electoral Act, 2010 (as amended) and has also been retained in section **132(7)** of the **Electoral Act, 2022**. So, this case of Maku v. Sule (Supra) is much relevant and applicable for all purposes in the computation of time under the Electoral Act, 2022

The Supreme Court further upheld the argument that where a party issues pre-hearing application before the expiration of time any of the Respondent to file their Replies, the application will be treated as incompetent for being premature and the Petition deemed abandoned.

It was also decided that where the issue is whether or not a petition has been abandoned by virtue of paragraph 18(1)-(4) of the First Schedule to the Electoral Act, 2010 (as amended), the Tribunal will not be bound by the provision of 285(8) of the 1999 Constitution which mandate the Tribunal to reserve ruling to Judgment. In other words, such application can be taken by the Court and a Ruling delivered on same immediately.

2.2.4. **Goni Vs. Shetima (2012)7NWLR(Pt.1298)147**

Some cases like that of **Ngige V. Obi, Ogboru v. Uduaghan and others** where petitions that were filed immediately after the 2003 and 2007 gubernatorial Elections almost outlived the tenure of the Respondents and proceedings were even still on-going as the nation approached the next electoral cycle became a huge embarrassment to the country. In a bid to cure this defect, the limitation period for the determination of election cases was introduced through Section 285(6-7) of the 1999 Constitution (as amended) and section 134 of the Electoral Act, 2010 (as amended), limiting the period within which to present election petition to 180 days after filing a Petition at the Tribunal and 60 days at the appellate court, after filing Notice of Appeal.

The import of **section 285(6)** of the 1999 Constitution as amended was first espoused by the Supreme Court in ANPP v. Goni and the court Supreme Court held:

> ***"by virtue of section 285(6) of the 1999 Constitution (as amended) and section 134 (2) of the Electoral Act, 2010 (as amended) an election tribunal shall deliver its judgment in writing within one***

> ***hundred and eighty days from the date of filing of the petition. Thus, an election tribunal in an election petition matter must deliver its decision or judgment or ruling or order in writing within one hundred and eighty days from the date the petition was filed. The judgment cannot be given a day or more or even an hour after the one hundred and eighty day...the time fixed by the constitution is like the rock of Gibraltar or Mount Zion which cannot be moved..."***

This development indeed helped in curbing the ugly situation where a Respondent finished his four years term and left office while the petition was still pending.

2.3. SOME INNOVATIONS IN THE ELECTORAL ACT, 2022

This segment shall highlight some of the novel provisions of the Electoral Act, 2022 which has affected our electoral jurisprudence.

2.3.1. Jurisdiction in pre-election matters is now vested exclusively in the Federal High Court by virtue of Sections 29(5) and 84(14) of the Electoral Act, 2022

Under the Electoral Act, 2010 (as amended) the jurisdiction to entertain pre-election dispute was shared concurrently by the Federal High Court, State High Courts and the High Court of the Federal Capital Territory. However, under the current regime of the Electoral Act, 2022 the jurisdiction to entertain pre-election disputes have now been placed solely on the Federal High Court. The instructive provision in this regard is **Section 84(14)** of the Electoral Act, 2022 which is hereunder reproduced:

> ***"Notwithstanding the provisions of this Act or rules of a political party, an aspirant who complains that any of the provisions of this Act and the guidelines of a political party have not been complied with in the selection or nomination of a candidate of a political party for election, may apply to the Federal High Court for redress" (underlined for emphasis).***

Section 29(5) of the Electoral Act, 2022 also provides:

> ***"an aspirant who participated in the primaries of his political party who has reasonable grounds to belief that any information given by his political party's candidate in the affidavit or any document submitted by that candidate in relation to his constitutional requirement to contest the election is false, may file a suit at the Federal High Court, against the candidate seeking a declaration that the information contained in the affidavit is false"***

These two sections are the only sections in the Electoral Act, 2022 that expressly mentioned the Court that is empowered to determine electoral matters and it mentions only the Federal high Court and excludes other Courts.

2.3.2. **Unlawful exclusion in the general election by a candidate validly nominated by his political party is no longer a ground to question an election before an Election Petition Tribunal**

A look at section 138(1) (a-d) of the Electoral Act 2010 (as amended) will show that there were four grounds upon which an election could be questioned before the Tribunal. The fourth ground is provided under **section 138(1) (d)** which provides;

> ***"138(1) An election may be questioned on any of the following grounds, that is to say:...***
>
> ***(d) that the petitioner or its candidate was validly nominated but was unlawfully excluded from the election."***

The above provision came up for interpretation in **Okocha v. INEC (2009) 7 NWLR (PT.1140) P. 295** and the apex court held that it allows a candidate though validly nominated by his political party as a candidate for an election but unlawfully excluded from the election by the INEC to file or present a Petition. The successes of these kinds of Petitions were fatal as they lead to the total nullification of the said election.

However, by virtue of **Section 134 of the Electoral Act, 2022** that ground has been expunged as a ground to question the outcome of a general election. The devastating legal effect of this state of affair is that political parties are

at the mercy of the INEC and can only hope that INEC will be diligent in conducting it's affairs and ensure that political parties who have validly nominated candidates will not be unlawfully excluded by INEC in the general election. It would appear that the only remedy opened to a political party to challenge the exclusion of its candidate is to make recourse to the provision of **285(14)(c)** of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and seek for redress before the general election by filing a pre-election matter before the Federal High Court. The relevant section **285(14)(c)** of the Constitution of the Federal Republic of Nigeria 1999 (as amended) provides thus:

> ***"a political party challenging the actions, decisions or activities of the Independent National Electoral Commission disqualifying its candidates from participating in an election or a complaint that the provisions of the Electoral Act or any other applicable law has not been complied with by the Independent National Electoral Commission in respect of the nomination of candidates of political parties for an election, timetable for an election, registration of voters and other activities of the Commission in respect of preparation for an election"***

Further to the above, section 32(2) and (3) of the Electoral Act, 2022 mandate political parties to notify the Commission in writing of such omission after publication of the full names and address of all candidates standing nominated on the commissions offices and website. The relevant provision of **section 32(2) and (3) of the Electoral Act, 2022** is reproduced hereunder:

> ***"(2) Any registered political party that observe that the name of its candidate is missing on the list published in accordance with subsection (1) shall notify the commission in writing, signed by its National Chairman and Secretary, supported with an affidavit not later than 90 days to the election***
>
> ***(3) Failure of the Political party to notify the commission in accordance with subsection (2) shall not be a ground to invalidate the election"***

It would appear from the above, that the law makers have intentionally **EXCLUDED** the question of **UNLAWFUL EXCLUSION** in the general

election of a **VALIDLY** nominated candidate from judicial determination, thereby leaving the only grounds of questioning the outcome of an election to **three grounds** namely:

a. That a person whose election is questioned was at the time of the election, not qualified to contest the election;
b. That the election was invalid by reason of corrupt practices or non-compliance with the provisions of the Electoral Act, 2022.
c. That the respondent was not duly elected by majority of lawful votes cast at the election.

It seems to me that despite the express removal of the above ground from section 134 of the Electoral Act, 2022, the universal principle of law that provides that there cannot be a wrong without a remedy will come in aid for any political party that had complied with section 32(2) of the Electoral Act, 2022 by notifying INEC of the exclusion of its candidate before the election, and yet is excluded in the general election. In that instance, such an election cannot be said to have been conducted in compliance with the provisions of the Electoral Act, 2022. That being the case, I will submit that the concerned political party can question the outcome of such a general election by invoking **section 134(b)** of the Electoral Act, 2022 on the ground of "*…non-compliance with the provisions of this Electoral Act, 2022*".

2.3.3. **<u>Election Result cannot be cancelled or nullified due to mistake or inconsistency in date.</u>**

Section 135(3) of the Electoral Act, 2022 have made attempt to validate a result wrongly dated or which date contained therein is inconsistent provided it was made by an authorizing officer. **Section 135(3) of the Electoral Act, 2022** is reproduced hereunder:

> ***"No election shall be questioned or cancelled by reason that there is a mistake, conflict or inconsistency in the date contained in the result of such election signed by a returning officer or any other officer of the Commission"***

What this mean is that error or mistake in the dating of an election result cannot be basis to render it invalid.

2.3.4. **<u>Non compliance in an election can now be proved by documentary evidence *simpliciter* without resort to oral evidence.</u>**
Section 137 of the Electoral Act, 2022 provides:

> ***"it shall not be necessary for a party who alleges non-compliance with the provisions of this Act for the conduct of elections to call oral evidence, if originals or Certified True Copies manifestly disclose the non compliance alleged"***

What this means without saying much is that a Petitioner or Respondent (who is objecting to votes) in an election petition who has original copies or certified true copies of documents which shows non-compliance in the conduct of election can dispense with the calling of oral evidence to proof such non-compliance.

2.3.5. **<u>Power of INEC to mandatorily monitor primary elections</u>**
Section 84(1) of the Electoral Act, 2022 provides that a political party seeking to nominate candidates for elections under the Act shall hold primary election for aspirants to all elective positions which **SHALL BE monitored by the INEC**. This provision is in consonance with the constitutional powers of INEC to monitor the organization of political parties' primaries under item 15 (A and F), Part 1 of the third Schedule to the 1999 Constitution (as amended) and keep records. Infact **section 82(1) and (5) of the Electoral Act, 2022** had earlier provides:

> ***"(1) Every registered political party shall give the Commission at least 21 days notice of any convention, congress, conference or meeting convened for the purpose of 'merger' and electing members of its executive committees, other governing bodies or nominating candidates for any of the elective offices specified under this Act"***
>
> ***"(5) failure of a political party to notify the Commission as stated in subsection (1) shall render the convention, congress, conference or meeting invalid"***

The above provisions are couched in absolute terms and re-echoes the pronouncements of the Apex court in **AMEACHI V. INEC & ORS (2008) LPELR-446 (SC)** where the court Oguntade, JSC (P. 40, paras. A-D) stated thus:

> ***"...it is mandatory that political parties inform INEC of the date and time of holding a convention or congress summoned for the purpose of nominating candidates for any of the elective offices under the Electoral Act. If parties were not to be bound by the results of their party primaries in the nomination of candidates at any level, why would it be necessary for Independent National Electoral Commission's (INEC) representatives to be present at and monitor the proceedings of such congress? It seems that the obligation on the parties to inform INEC of such congress was to ensure that INEC would know and keep a record of candidates who won at the primaries"***

It is imperative to note that the proviso mandating INEC to monitor political parties primary elections was not in the repealed Electoral Act, 2010. In addition, section 85 of the repealed Electoral Act, 2010 which mandates political parties to give INEC 21 days notice prior to the conduct of its primary election does not provide for a sanction in the case of a breach but the new provision under **section 82(5) of the Electoral Act, 2022** provides a devastating sanction that the said primary election will be invalid for lack of proper notice by the political party. The provision provides:

> ***"failure of a political party to notify the commission as stated in subsection (1) shall render the convention, congress, conference or meeting invalid"***

2.3.6. **<u>Offence in relation to unlawful possession, sell or attempt to sell, or buy or offer to buy Voter's Card.</u>**

Section 22 of the Electoral Act, 2022 criminalized the act of being in unlawful possession of voter's card, selling or buying of Voters' card

and any attempt to buy or sell voter's card. And made same punishable upon conviction with fine of not more than N500,000 or imprisonment not more than two years or both.

2.3.7. **Power of INEC and the Court to review declaration and return**
Section 65(1) of the Electoral Act, 2022 provides as a general rule that the decision of Returning officers shall be final on any issue touching on unmarked ballot papers, rejected ballot papers and declaration of scores and return of candidate. However a proviso and subsection 2 of the same section stated exceptions and provides that the Commission/INEC shall have the power within seven days to review a declaration where such is not made voluntarily or made contrary to law. The Tribunal or Court is also granted the power to review the decision of the Returning Officer. This novel provision was not in the repealed Electoral Act, 2010 (As amended).

2.3.8. **Creation of the National Electronic Register of Election Results.**
Section 62(2) of the Electoral Act, 2022 provides for a distinct data based to be known as National Electronic Register of Election Results where register of election results shall be compiled, maintained and updated by INEC on continuous basis. Adding that the electronic format by the Commission shall be kept in electronic form by the INEC at its national headquarters. The relevant section provides thus:

> ***"The Commission shall compile, maintain and update, on a continuous basis, a register of election results to be known as the National Electronic Register of Election Results which shall be a distinct database or repository of polling unit by polling unit results, including collated election results, of each election conducted by the Commission in the Federation, and the Register of Election Results shall be kept in electronic format by the commission at its national headquarters"***

2.3.9. ***Locus standi* of Aspirants to question affidavit or document of candidates submitted to INEC where the information contained therein relating to the candidate's constitutional qualification is believed to be false.**

The Electoral Act, 2022 donated a special *locus standi* to aspirants who participated in the primary election of their political parties to challenge the candidates of his political party where he belief that any information in the affidavit or any document submitted by that candidate in aid of his constitutional requirement to contest the election is not correct or false. For avoidance of doubt, the provision of **section 29(5) of the Electoral Act, 2022** provides:

> ***"an aspirant who participated in the primaries of his political party who has reasonable grounds to belief that any information given by his political party's candidate in the affidavit or any document submitted by that candidate in relation to his constitutional requirement to contest the election is false, may file a suit at the Federal High Court, against the candidate seeking a declaration that the information contained in the affidavit is false"***

To establish locus and succeed under this provision, the following facts must be shown:

a. That the Plaintiff is an aspirant of a particular political party.
b. That as an aspirant, he further participated in the questioned primary election.
c. That the candidate/Respondent's information (by affidavit or documents) was forwarded to INEC in aid of his constitutional qualification.
d. That the Plaintiff belief that the information or document to forward to INEC are false.
e. That the false information must relate to the constitutional requirement to contest an election.

This section is also novel especially as it relates to the *locus standi* of the person who can file such an action in the Federal High court. In the repealed Electoral Act, 2010 (as amended), any person in the constituency could question such deposition by an action either in the High Court of the State, Federal High Court or High Court of the FCT. But in the

Electoral Act, 2022 only aspirants who participated in the primary election has the *locus standi*.

2.3.10. **Requirement of written consent of cleared aspirants in situation of consensus candidacy**

The provision of **Section 84(9) of the Electoral Act, 2022** provides that a political party that adopts a consensus candidate shall secure the written consent of all cleared aspirants for the position, indicating their;

a. voluntary withdrawal from the race, and
b. endorsement of the consensus candidate.

Subsection 10 of the said section 84 went further to provide that where a political party failed to secure the written consent of all cleared aspirants for the purpose of the consensus candidate, the political party shall revert to the choice of direct or indirect primaries for the nomination of candidates for the aforesaid elective position.

2.3.11. **Political appointee's lost of eligibility right to vote as delegate or aspirants.**

The provision of **section 84(12)** of the Electoral Act, 2022 prohibits political appointees of all level from being a voting delegate or be voted for at political party's convention or congresses for the purpose of nomination of candidates for any election.

The above novel provision was not well received by the political gladiators and was instantly challenged in Court. The Federal High Court sitting in Umahia in **Suit N0. FHC/UM/CS/26/2022** Per Anyadike J. in the case of Chief Nduka Edede & Anor. v. PDP on the 18th day of March, 2022 declared the above section unconstitutional and set same aside. Dissatisfied, the PDP appealed to the Court of Appeal sitting in Owerri and their lordships coram: *Barka, Ekanem and Mustapha JJCA* in **Appeal N0. CA/OW/87/2022** rendered its decision on the 11th day of may, 2022, by striking out suit FHC/UM/CS/26/2022 on the grounds that the Plaintiff lacks the *locus standi* to have maintain the suit. But the Court, being an immediate court proceeded to determine the substantive suit and came to the conclusion that the provision is unconstitutional. There has been a final appeal to the Supreme Court which is yet to make a decision on the issue.

Interestingly, not yet done, the Hon. Attorney General of Federation also filed a suit at the Supreme Court of Nigeria reported as **PRESIDENT FRN & ANOR. V. NATIONAL ASSEMBLY & ORS (2022) LPELR-58516 (SC)**. However, the Supreme Court dismissed the said suit on the ground that the question of section 84(12) of the Electoral Act, 2022 does not involve any question on which the existence or extent of any legal right depends and cannot therefore be entertained by the Court in the exercise of its **original jurisdiction**.

2.3.12. **Circumstance where a political party's candidate shall not be included in a general election**

The provision of **section 84(13)** of the Electoral Act, 2022 provides that where a political party fails to comply with the provisions of the Act in the conduct of its primaries, its candidates for election shall not be included in the election for the particular position. This provision was not in the Electoral Act, 2010 and demonstrates the desire of the legislature to ensure that political parties conduct credible primary elections by adhering to extant laws, their constitutions and guidelines.

2.3.13. **Inability of chairman of Tribunal to conclude hearing and deliver Judgment.**

There are two provisions that address the issue of inability of the Chairman of the tribunal to conclude hearing and deliver Judgment. Paragraph **25(2) and 27(2)** of the First Schedule to the Electoral Act, 2022, which are quoted below:

> ***"25(2) if the chairman of the tribunal or presiding Justice of the Court who begins the hearing of an election petition is disabled by illness or otherwise, the hearing may be recommenced and concluded by another Chairman of the Tribunal or Presiding Justice of the Court appointed by the appropriate authority"***
>
> ***… …***
>
> ***"27(2) After the hearing of the election petition is concluded, if the tribunal or court before which it was heard has prepared its judgment but the Chairman or the presiding Justice is unable to deliver it due to illness or any other cause,***

the Judgment may be delivered by one of the members, and the Judgment as delivered shall be the judgment of the Tribunal or Court and the member shall certify the decision of the Tribunal or Court to the Resident Electoral Commissioner, or to the Commission"

2.3.14. **<u>Modification of days within which a Petitioner will proof his Petition</u>**

By the provisions of paragraph 41(10) of the First Schedule to the repealed Electoral Act, 2010 (as amended), the Petitioner in proving his case shall have not more than 14 day to do so and each of the Respondents shall have not more than 10 days to present its defence.
The number of days for the Petitioner to prove his case has now been splinted into five periods of two, three, five, six and seven weeks, depending on the election being questions pursuant to the provision of **Paragraph 41(10)** of the **First Schedule** to the **Electoral Act, 2022** which provides thus;

"(10) The Petitioner, in proving his case shall have, in the case of-
(a) Councillor, Chairman and State House of Assembly, two weeks of;
(b) House of Representative, three weeks;
(c) Senate, five weeks;
(d) Governor, six weeks; and
(e) ***President, seven weeks, to do so and each respondent shall have not more than 10 days to present his defence"***

2.3.15. **<u>Payment of professional fee and reimbursement by the Commission/INEC</u>**

The provision of section 144(3) of the repealed Electoral Act, 2010 is modified in the Electoral Act, 2022 by the removing the word *"private"* when describing legal practitioners. The new provision which is **section 139(2)** of the **Electoral Act, 2022** provides;

"A legal practitioner or legal officer engaged by the Commission under subsection (1) shall be entitled to be paid

such professional fees or honorarium, as the case may be, to be determined by the Commission."

ROLE OF THE BAR

As earlier stated, lawyers are ministers in the temple of justice. A lawyer owes a duty both to his client and the court. He must handle the cases of his clients with all dexterity, diligence and professionalism required by law and professional ethics. It is the duty of lawyers in the course of pursing the interest of their clients to help the Court to do justice. When this duty is diligently carried out, the lawyer helps to shape judicial legislation towards sustaining our democracy and a better society.

In all the remarkable cases cited above, one will note the changes in *status quo*. It is this kind of innovation that the bar is expected to carry out, because all of these activities and changes are as a result of the activities of a vibrant bar.

CONCLUSION

This paper has been able to explain the role of the bar in sustaining our democracy through credible elections. The landmark cases were examined to demonstrate this point. The bar is in the center of the legal development in the country and when their task is diligently carried out, it helps to shape judicial legislation towards sustaining our democracy and a better society.

Your Excellencies, My Lords, Learned Colleagues, Ladies and Gentlemen, I must thank the Nigerian Bar association Lafia Branch for putting together this round table discussion which is coming at a time when the letters and the spirit of our constitution and the Electoral Act is being tested and applied in various courts, preparatory to the 2023 general election. Our courts are already over stretched by pre-election matters and epochal pronouncements have resonated from our court rooms in different jurisdictions applying the law mercilessly in a bid to direct the course of our democracy, our courts have been firm and brutal in the application of law not minding whose 'ox is gored'.

As we all know, the existence of the bar aids the institution of the rule of law in every democratic government. The Bar in Nigeria had over the years ensured that it plays it roles in protecting the interest of the people, advocating for the independency of the judiciary and entrenching the tenet of democracy.

I thank you for listening.