

A CRITICAL ANALYSIS OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA 1999 (FOURTH ALTERATION, NOS 4, 9, AND 16) ACTS, 2017.

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Abstract

The paper examines the 4th Alteration Act Numbers 4, 9 and 16 to the 1999 Nigerian Constitution and found that the alterations serve a useful purpose in fast tracking the electoral process. However, the alterations ought not be part of the Constitution but should be contained in ordinary laws so as to avoid frequent amendments to the Constitution. The paper further identifies the limitation on the powers of the legislature by judicial decisions with respect to legislating on time limitations for the conduct of judicial proceedings and recommends that the legislature can enact provisions in laws as a way of overcoming the limitation imposed on it in this regard by the court.

Key Words: *Constitution, amendment, alteration and legislature.*

Introduction

The Constitution (Fourth Alteration) Act can be described as an omnibus statute as it comprises the following five different Acts.

1. Constitution of the Federal Republic of Nigeria 1999 (Fourth Alteration, No. 4) Act, 2017.¹
2. Constitution of the Federal Republic of Nigeria 1999 (Fourth Alteration, No. 9) Act, 2017.²
3. Constitution of the Federal Republic of Nigeria 1999 (Fourth Alteration, No. 16) Act, 2017.³
4. Constitution of the Federal Republic of Nigeria 1999 (Fourth Alteration, No. 21) Act, 2017.⁴
5. Constitution of the Federal Republic of Nigeria 1999 (Fourth Alteration, No. 27) Act, 2017.⁵

The Constitution (Fourth Alteration, Nos. 4, 9, 16 and 21) Acts have the 7th day of June 2018 as their commencement date while the Constitution (Fourth Alteration, No. 27) Act has the 31st day of May 2018 as its commencement date.

This paper critically examines the amendments made pursuant to Nos. 9 and 16 of the Constitution (Fourth Alteration) Acts.⁶ The paper will examine the purpose of the amendments and consider whether the amendments will meet the purpose for which it was made.

¹ Act No. 7.

² Act No. 9.

³ Act No. 10.

⁴ Act No. 8.

⁵ Act No. 6.

⁶ The Constitution of the Federal Republic of Nigeria 1999 (Fourth Alteration, Nos. 4, 21 and 27) 2017 will be examined in other articles.

Constitution of the Federal Republic of Nigeria 1999 (Fourth Alteration, No. 9) Act, 2017: Alteration of Sections 134, 179 and 225 of the 1999 Constitution

Sections 134 and 179 of the Constitution was altered by Act No. 9 as follows: the expression “seven” days in line 2 of subsections 4 and 5 of Sections 134 and 179 of the principal Act, were substituted with the expression *twenty-one*” days. The purpose of this alteration is to provide INEC with sufficient time to conduct bye-elections where no clear winner emerged in an election.

The Alteration Act No. 9 further provides for deregistration of political parties on certain grounds. The Act altered section 225 of the 1999 constitution by introducing a new section 225A which empowers the INEC to de-register political parties on some grounds including on ground of non-performance. The alteration relating to deregistration of political parties is considered in a different work.

Constitution of the Federal Republic of Nigeria 1999 (Fourth Alteration, No. 16) Act, 2017: Alteration of Section 137 and 182 of the 1999 Constitution.

Section 137 of the 1999 Constitution was altered by inserting after subsection (2) a new subsection (3) which reads as follows:

- (3) A person who was sworn-in as President to complete the term for which another person was elected as President shall not be elected to such office for more than a single term.

As seen above, the Alteration of section 137 of the 1999 Constitution applies to the office of the President. A similar alteration of section 182 of the 1999 Constitution applies to the office of the governor.

This alteration is aimed at ensuring that a governor or president does not spend more than a cumulative period of eight years in office in accordance with the spirit of the constitution by reckoning with the period spent after being sworn in as president or governor to complete the term of an elected president or governor as the case may be. There was unsuccessful effort to achieve this objective in the case of *Njoku v Jonathan*⁷ where the plaintiff sought to stop President Jonathan from running for election after he completed the tenure of late President Yar’Adua and thereafter did a four-year term of office of his own after winning election. The appellant in the *Njoku* case submitted that the 1st respondent and the late President Umaru Yar’Adua had a joint and single ticket in 2007 when they were elected Vice-President and President respectively, under one single ballot. He referred to Section 142(1) of the 1999 Constitution and argued that since the 1st respondent took over and completed the tenure of late President Yar’Adua after taking Oath as President in accordance with Section 146(1) of the 1999 Constitution, by the operation of Section 143 of the 1999 Constitution, he cannot now separate or extricate himself from the presidency of Umaru Yar’Adua. The appellant further contended that the 1st respondent was sworn in a second time as the 6th President of the Federal Republic of Nigeria on the 29th of May, 2011, after he had been declared the winner of the presidential election held on 16th April, 2011. On this premise, he

⁷ LPELR 24496 (CA).

concluded that the 1st respondent had therefore taken the Oath of Allegiance and the Oath of Office contained in the Seventh Schedule to the 1999 Constitution twice, i.e. on the 6th of May, 2010 after the demise of President Umar Yar'Adua and on the 29th of May, 2011 after he won the presidential election. He then sought to invoke the provision of Section 135(1) and (2) of the 1999 Constitution to the effect that no President can take the oath of office more than twice.

He further argued that the interpretation of Section 135(1) of the 1999 Constitution would be the same as the interpretation of Section 180(1) and (2) in *Marwa v Nyako*⁸. The case of *Marwa v Nyako*⁹ was a consolidated case in which the Governors of Adamawa, Bayelsa, Cross River, Kogi and Sokoto States sought for an interpretation of when their tenure would start to run. They were first elected as Governors of their respective States and they subscribed to the Oaths of Allegiance and Office. Their elections were successfully challenged in Court and were consequently annulled. They stood for re-run elections and triumphed in their respective States and they again took the required Oaths. The Supreme Court held that they were certainly governors de facto during the period they operated ostensibly in accordance with the provisions of the Constitution and Electoral Act and as such the period they so operated has to be taken into consideration in determining the terminal date of their tenure as the Constitution unequivocally grants a tenure of four years to a person elected governor of a State calculated from the date he took the Oaths of Allegiance and of Office. Consequently, ignoring the period from 29th May, 2007 when they took the first Oaths is to unconstitutionally extend the four years tenure constitutionally granted the governors to occupy and act in that office. The second Oaths which they took were declared superfluous by the Supreme Court.

The Court of Appeal, however, distinguished the facts of *Marwa v Nyako* case from those of the *Njoku* case. According to the Court, the same persons who stood for election as Governors and won and were sworn in, were the same persons who stood for the re-rerun elections and won and were sworn in. The Court of Appeal also reasoned that the succession of a Vice-President to the office of a President who died, in accordance with Section 146(1) of the 1999 Constitution, cannot be deemed an election especially for the purpose of taking away a right that has been vested.

It is submitted, however, that the principle in the *Njoku* and *Marwa* cases are similar having regard to the spirit of the Constitution which is that no single individual should spend more than eight years on the aggregate in office as a president or governor. The amendment to section sections 137 and 182 of the constitution has therefore restored the original spirit of the constitution with regard to the maximum number of years a person can spend in office as either president or governor. It has effectively foreclosed any form of tenure elongation beyond the maximum period stipulated by the constitution for the office of president or governor.

⁸ (2012) 6 NWLR (pt. 1296) 199 at 308.

⁹ (2012) 6 NWLR (pt. 1296) 199. This is a consolidated case involving appeals in respect of the same issue in the following cases: *Marwa & Anor v INEC*, SC 266/2011; *INEC v Imoke*, SC 267/2011; *INEC v Sylva & 4 Ors*, SC/282/2011; *INEC v Wamako & Anor*, SC/356/2011; *INEC v Nyako & Anor*, SC/357/111. For a criticism of the decision in the *Marwa* case, see Akeredolu, A and Umeche, C. "Tenure of Office of Governors: An Appraisal of the Decision of the Supreme Court in *Marwa & Ors v Independent National Electoral Commission*."

Constitution of the Federal Republic of Nigeria 1999 (Fourth Alteration, No. 21) Act, 2017: Further Alteration of Section 285 of the 1999 Constitution

Section 285 of the 1999 Constitution which was altered in the First and Second Constitution Alteration Acts was further altered. The highlights of the alterations to the section include the following: alteration of the marginal note; introduction of time limitation in pre-election suits; provision for ruling on interlocutory objections to be delivered along with final judgment; definition of pre-election matter.¹⁰

Alteration of the Marginal Note

A new marginal note was substituted for the existing marginal note. The new marginal note reads as follows:

Time for determination of pre-election matters, establishment of Election Tribunals and time for determination of election petitions.

The new marginal note became necessary to accommodate the new provisions of section 285 introduced by the Constitution (Fourth Alteration, No. 27) Act.

Ruling on Interlocutory Objections to be delivered along with Final Judgment

Subsection (8) of section 285 was altered by substituting it with a new subsection (8) which reads as follows:

(8) Where a preliminary objection or any other interlocutory issue touching on the jurisdiction of the tribunal or court in any pre-election matter or on the competence of the petition itself is raised by a party, the tribunal or court shall suspend its ruling and deliver it at the stage of final judgment.

The first observation is that the section is inelegantly drafted. A pertinent question is whether the provision applies only to preliminary objections or any other interlocutory application challenging the jurisdiction of the tribunal or court or the competence of the petition itself. Does it mean that any other type of preliminary objection is not covered by the provision? The subsection should have simply provided that all preliminary objections challenging the jurisdiction of the court or the competence of the action should be taken and decided with the substantive suit with a proviso that no matter the ruling on the preliminary, a tribunal or High Court or Court of Appeal should render its decision on the substantive suit. The reason is that in view of the stringent time limitation in such suits, decisions on preliminary objection should be appealable along with the decision on the substantive suit, otherwise, a situation may arise where if a ruling on preliminary objection dismissing a suit is reversed on appeal, the substantive suit may be caught up by time limitation.¹¹

¹⁰The definition of pre-election matter will be considered as a separate topic.

¹¹Order VIII of the Fundamental Rights (Enforcement Procedure) Rules, 2009 contains a similar provision. However, the Fundamental Rights (Enforcement Procedure) Rules in Order VIII Rules 5 and 6 provides to the effect that during the hearing of the application, the court may terminate the suit through a ruling on the preliminary objection without deciding the substantive application; but where the preliminary objection does not hold water, the court ought to dismiss it and give a judgment on the substantive suit. This provision may not be prejudicial because there is no time limitation for the determination of fundamental rights applications or appeals arising therefrom. Yet

It is plausible to argue that the implication of this amendment is that election and pre-election matters must be decided on the merit as it is required that any decision on interlocutory application should be rendered at the stage of the final judgment [on the merit]. In any case, the draftsman of section 285(8) should have made it clear that this does not apply to the Supreme Court. By common sense, if any interlocutory ruling will terminate a petition or pre-election suit, the Supreme Court as the Court of final appeal will not be expected to consider the merit of the matter.

Interlocutory objections have become a clog on speedy administration of justice in Nigeria. The appellate courts have of recent been trying to discourage unnecessary interlocutory objections which delays the trial of the main suit. The position of the Supreme Court has always been that as much as possible interlocutory objections should be taken with the substantive matter to avoid delay. Accordingly, decisions on interlocutory objections should be delivered along with the judgment on merit. This is the objective that this particular alteration seeks to achieve. In *Amadi v. NNPC*¹², Uwais, C.J.N. observed, pertinently, as follows:

The chequered history of this case once more brings to light the dilatory effect of interlocutory appeal on the substantive suit between the parties. With the success of the plaintiff's appeal before us the case is to be sent back to the High Court to be determined, hopefully, on its merits after a delay of 13 years. Surely, this could have been avoided had it been that the point was taken in the course of the proceedings in the substitute claim to enable any aggrieved party to appeal on both the issue of jurisdiction and the judgment on merit in the proceedings as the case might be. I believe that counsel owe it, as a duty, to the court to help reduce the period of delay in determining cases in our courts by avoiding unnecessary preliminary objections as the one here; so that the adage 'justice delayed is justice denied' may cease to apply to the proceedings in our courts.¹³

At times an interlocutory appeal is followed by application for stay of proceedings. Even when there is no stay of proceedings, there is the practice that once an appeal has been entered the case at the lower court should be stayed. Decrying this practice, Belgore, J.S.C. (as he then was) observed as follows in *Oduba v. Houtmangracht*¹⁴:

I agree with my learned brother, Iguh, J.S.C. that the main achievement of this matter travelling up to this court was to frustrate the expeditious trial of the substantive case that has been dormant for almost nine years due to stay of

it will be preferable that both ruling on a preliminary objection and the substantive suit be given at the same time so that the case does not go back and forth whatever is the decision on appeal. For instance, the practice has always been that the Court of Appeal must consider and determine all issues laid before it. That will enable the apex court review the decision fully and finally. The only exception to this rule is when the Court of Appeal orders a retrial and there is the likelihood that consideration and resolution of such other issues may prejudice, or will be prejudicial to the issues ordered to be retried. Please see *Tyonex (Nig.) Ltd. v Pfizer Ltd* (2020) 1 NWLR (pt. 1704) 225 at 166. It is preferable that a High Court hearing a fundamental right case should pronounce the judgment along with the pronouncement on interlocutory objection so that there will be opportunity for wholistic appeal.

¹²(2000) 10 NWLR (pt. 674) 76 at 80.

¹³At page 100.

¹⁴(1997) 6 NWLR (pt. 508) p. 185 at 205-206.

proceedings the appellant procured. It is true that out of respect for hierarchy of courts, once an interlocutory appeal is entered, the lower court stays proceedings in many cases voluntarily. But whether the stay is voluntary by the trial court or on its being moved so to do, regard must be given to the overriding principle of justice of the case. If the stay of proceedings, by the nature of the case, will tend to stifle the case and cause great inconvenience and or great loss to the person who wishes to proceed with the hearing the trial court should not stay the proceedings unless ordered by a superior court.

Akaraiwe opined in this connection that currently there are moves to expressly abolish unnecessary, premature interlocutory appeals which frustrate the trial of the substantive suit.¹⁵ While the constitution amendment requiring that preliminary objections be decided along with the substantive suit in election cases is imperative in view of the provisions for time limitations in election cases, it is respectfully suggested that the constitution should be further amended to require that in all civil and criminal cases, the same principle should apply except in exceptional cases, as interlocutory appeals have generally become a clog in the speedy administration of justice. Let it not be assumed that the members of the National Assembly are amending the constitution only in respect of areas that concern them.

Time Limitations in Pre-election Suits: Introduction of Subsections (9) – (12) of Section 285 of the 1999 Constitution by the Constitution (Fourth Alteration, No. 21) Act 2017

It is a notorious fact that prior to the amendment of the constitution to introduce time limitation in pre-election suits, pre-election suits in Nigeria have always been protracted and in many cases linger till the expiration of the tenure of office which is the subject of litigation. As observed by the Supreme Court in *Eligwe v Okpokiri*¹⁶ the position has been that by virtue of section 87(9) of the Electoral Act, 2010, it is not the law that a pre-election matter must abate once the election is held and the winner sworn in or inaugurated as a member of the legislative house for which the election was conducted. In other words, a pre-election matter or appeal arising from it was never extinguished by the mere fact that the election has taken place and the winner sworn-in as a member of the legislative house or executive office for which the election was held and from which the pre-election matter arose.

Where a pre-election suit continues till the conduct of the election for the office concerned, an aspirant who wins his case and is adjudged as the rightful candidate of his party will not, in view of section 141 of the Electoral Act, 2010, be declared the winner of the election in which he did not actually participate. In such a situation, his remedy will be to have the election declared null and void and a fresh election in which he will contest as his party's candidate ordered. In any case,

¹⁵ Akaraiwe, I. A. "Appeals as of Right and Public Policy Imperatives for the Supreme Court of Nigeria" in Akarawe, I. A. *et. al.* (ed) *Contemporary Legal Essays Vol. 1* (Enugu: Court of Appeal Reports, 2020) p. 92 at 95.

¹⁶ (2015) 2 NWLR (pt. 1443) 348 at 373-374.

the Supreme Court observed in the *Eligwe* case that even if fresh elections could not be held due to time constraint, all is not lost as far as the candidate is concerned. The expiration of the term for which the election was conducted does not affect the jurisdiction of the court to determine the pre-election matter, depending on the claim before the court. An aspirant for elective office who contested and won the primary election but was denied the opportunity to contest in the main election for which the primaries were conducted has a claim in damages against the person or authority that prevented him from contesting the election. To deny a person who contested and won the primary election the right to contest the main election is an infringement of the right he acquired by winning the primary election for which he can sue the person or the authority concerned for damages. Nevertheless, in such circumstances, not many aspirants will be ready to embark on the tortuous and unpredictable journey of litigation for the purpose of securing a remedy in such circumstance.

It is against this background that the Constitution and Electoral Reform Committee (CERC) considered the necessity for time limits for filing, hearing and determination of pre-election matters and made some observations and recommendations in that regard. According to the Committee, while sections 31 and 87 of the Electoral Act 2010 gave aggrieved parties the right to seek redress in courts in pre-election matters there is no provision for timelines for the determination of the cases. Appeals lied all the way to the Supreme Court in pre-election matters. Some cases are normally protracted to the extent that parties remain in court long after the tenure of office in respect of which litigation is in court has expired.¹⁷

Some of the recommendations of the Committee were implemented through the Constitution of the Federal Republic of Nigeria, 1999 (Fourth Alteration, No. 21) Act of 2017 which tried to address some of the concerns and accordingly made special provisions in relation to election matters. It provides for the time frame within which pre-election matters shall be heard and disposed of. It is evident that the intention of the legislature is to bring an end to the state of affairs where pre-election matters linger in the courts' dockets far beyond the conduct of the election to which they relate and in some cases, up to the end, or even until after the expiration, of the tenure of the office in issue.¹⁸

The following amendments were made for purposes of time limitation in pre-election matters. New subsections (9) – (14) were inserted in section 285 after subsection (8). The new subsection (9) reads as follows.

¹⁷The recommendations of the Constitution and Electoral Reform Committee (CERC) are as follows. (1) There should be a time limit for filing of pre-election matters. The Committee proposes this to be 14 days from the date of declaration of primary results in any case challenging nomination. (2) Where the matter is with reference to the qualification of candidate, it should be filed within 14 days from the publication of the name and particulars of such candidate by INEC. (3) All pre-election matters shall be heard and determined within 60 days of filing at the court of first instance, and appeals therefrom shall be filed within 14 days after judgment and determined within 30 days of filing. (4) All pre-election matters should terminate at the Court of Appeal. See page 60 of the report. Of course, not all the recommendations were implemented.

¹⁸See *Toyin v Musa* (2019) 9 NWLR (part 1676) at 46.

Notwithstanding anything to the contrary in the Constitution, every pre-election matter shall be filed not later than 14 days from the date of the occurrence of the event, decision or action complained of in the suit.¹⁹ A Court in every pre-election matter shall deliver its judgment in writing within 180 days from the date of filing of the suit.²⁰ An appeal from a decision in a pre-election matter shall be filed within 14 days from the date of delivery of the judgment appealed against.²¹ An appeal from a decision of a Court in a pre-election matter shall be heard and disposed of within 60 days from the date of the appeal.²²

The Supreme Court of Nigeria has consistently struck out suits filed after the limitation period stipulated under the Constitution (Fourth Alteration, No. 21) Act. In *Garba v. A.P.C.*²³ it was held that by virtue of section 285(9) of the 1999 Constitution, notwithstanding anything to the contrary in the constitution, every pre-election matter shall be filed not later than fourteen days from the date of the occurrence of the event, decision or action complained of in the suit. In that case, the court found that the cause of action arose on 7th October 2018 while the appellant's action was filed on 29th October 2018. In the circumstance, the action was caught by the limitation provision of the Constitution. The Supreme Court therefore affirmed the decision of the Court of Appeal that the action was statute-barred.

It is pertinent to note, however, that the cause of action may not arise from the date of conduct of the party primary but on the date the wrongful act affecting the right of the candidate occurred. In *Iliyasu v Rijau & 2 Ors*²⁴ the appellant along with other aspirants contested for the office of member representing Magama/Rijau Federal Constituency of Niger State at the House of Representatives on the platform of the 2nd respondent in the primary election conducted on 3rd October, 2018. The appellant claimed he won the election having scored 4,777 votes but that to his surprise, the 2nd respondent, instead of forwarding his name, rather forwarded the name of the 1st respondent who did not participate in the primary, to the 3rd respondent.

The 1st respondent contended that the primary election took place on 4th October, 2018 but that his name was forwarded to the 3rd respondent as the 2nd respondent's candidate on 18th October, 2018. The 1st respondent filed a preliminary objection contending that the action was statute-barred having been commenced outside the time prescribed by section 285(9) of the 1999 Constitution. The trial court overruled the preliminary objection and held that the appellant's cause of action accrued on 18th October 2018 when the 1st respondent's name was submitted to the 3rd respondent. On appeal, the Court of Appeal allowed the appeal and held that the cause of action accrued on 3rd October 2018 when the primary election was conducted and therefore the suit was statute-barred. The Supreme Court held that a cause of action matures or arises on a date or from the time when

¹⁹Section 285(9).

²⁰Section 285(10).

²¹Section 285(11)

²²Section 285(12)

²³(2020) 2 NWLR (pt. 1708) 345.

²⁴(2019) 16 N.W.L.R. (pt. 1697) 1.

a breach of any duty or act occurs which warrants the person thereby injured or the victim who is adversely affected by such breach to take a court action in assertion or protection of his legal right that has been breached. On this premise, it was observed that the cause of action accrued on 18th October 2018, which all the parties agreed was the date on which the 1st respondent's name was submitted to the 3rd respondent. Accordingly, since the originating summons was filed on 26th October 2018 which is within the 14 days prescribed by section 285(9) of the 1999 Constitution, it was not caught by the limitation period. The Supreme Court further observed that there may be more than one good and effective cause of action arising out of the same transaction and that the cause of action accrues on the happening of the latest of such facts. As an *obiter* the Supreme Court held that the *onus* is on a defendant who relies on section 285(9) of the 1999 Constitution to prove the date of the occurrence of the event, decision or action complained of *vis-à-vis* the date of filing of the suit to show that the same was filed outside the 14 days prescribed.

Similarly, in *A.P.C. v. Lere*²⁵, Rhodes-Vivour J.S.C. observed as follows:

The processes reveal that the 1st respondent was declared winner of the 1st appellant's primaries which held on 7 October 2018 and he was issued a certificate of return by the Returning Officer as the 1st appellant's candidate for the Lere Federal Constituency of Kaduna State for the 2019 general election. The processes also reveal that instead of forwarding the name of the 1st respondent to the 2nd respondent, the 1st appellant forwarded the name of the 2nd appellant as its candidate for the 2018 general elections. The wrongful act by the 1st appellant occurred on 18th October 2018. It was on that day that the 1st respondent had a cause of action and the suit filed by the 1st respondent on 30 October 2018, twelve days after his cause of action arose. The suit is not statute-barred since 14 days had not elapsed as at 30 October 2018 when the suit was filed. The suit would have been statute-barred if it was filed after 1 November 2018.²⁶

In *Gbenga v. A.P.C.*²⁷ the Supreme Court similarly rejected the contention that the cause of action arose on the date the name of the nominated candidate was published. The apex Court held that the cause of action arose on the date the name of the nominated candidate was submitted to the INEC.

On the purported ground that election cases are *sui generis* the Supreme Court has refused to apply the doctrine of continuous injury to election suits. In *Nwoko v Waoboshi*²⁸ it was held by the Supreme Court that section 285(9) of the Constitution of the Federal Republic of Nigeria (Fourth Alteration) Act does not permit the doctrine of continuous injury as election and election related

²⁵[2020] 1 NWLR (part 1705) 254.

²⁶At p. 282.

²⁷[2020] 14 NWLR (pt. 1744) 248 at

²⁸[2020] 13 NWLR (pt. 1742) 395

matters are *sui generis*. Consequently, the contention of counsel for the appellant that the injury was continuous until the general election was discountenanced by the Supreme Court.

It has been held that time begins to run against a plaintiff, for the purpose of limitation, from the date the cause of action accrues, which, generally, is the date on which the incident or event giving rise to the cause of action occurs. Accordingly, in the computation of time in an electoral action, including pre-election matters, in the light of the constitutional alteration referred to as the 4th Alteration, and as also highlighted under section 141 of the Electoral Act 2010, computation of time commences from the very date on which the results were declared or the date the cause of action arose.²⁹ The implication of this decision is that the provisions of the Interpretation Act will not apply to the interpretation of the time limitation provisions in section 285 of the 1999 constitution. Ordinarily by section 318(4) of the 1999 constitution, the Interpretation Act³⁰ applies to the interpretation of the constitution.³¹ In the earlier case of *P.D.P. v INEC*³², Okoro, J.S.C. who delivered the leading judgment said:

The Practice Directions (Election Appeals to the Supreme Court) No. 33 of 2011 contains only mandatory provisions, and so the Supreme Court must interpret the provisions therein without having recourse to any other document to aid interpretation, e.g. Interpretation Act. The Provisions of the Practice Directions must be interpreted free from any embellishment. The words used must be given their ordinary meanings.³³

Distinguishing the principle for computation of time in election petitions from ordinary civil proceedings in *Okechukwu v I.N.E.C.*³⁴ Ariwoola, J.S.C., speaking for the Supreme Court, said:

Ordinarily, but for the *sui generis* nature of election matters, according to the common construction of the English language, “within any number of days after an act” is to be understood exclusive of the day of the act. The modern rule in relation to a period of time fixed by statute within which an act is to be done after a specified event is that the day of the event is to be excluded, the next day is that first day of the stipulated period and the time expires on the last day of the period, counting from and of course including the first day. However, because of the *sui generis* nature of election and election related matters in which time is of essence, and the stand of the Supreme Court on the interpretation of the Practice Directions *vis-à-vis* the Interpretation Act, the provisions of the

²⁹(2019) 15 N.W.L.R. (pt. 1695) 250.n

³⁰Cap. 118, Laws of the Federation of Nigeria, 2004.

³¹In computing time in election matters, the Courts include Saturdays, Sundays and Public Holidays as well as court vacations. See *PDP v CPC* (2011) 17 NWLR (pt. 1277) 485 at 506 per Onnoghen JSC. In *Okechukwu v INEC* (2014) 17 NWLR (pt. 1436) 255 and *PDP v INEC* (2014) 17 NWLR (pt. 1437) 525 the Supreme Court included Saturdays and Sundays in computing the five days within which to file the Respondent’s Brief as envisaged by the Election Tribunal and Court Practice Directions 2011. In *Ngige v INEC* (2015) 1 NWLR (pt. 1440) 281 the apex Court affirmed that the time for filing of briefs as provided for in the Practice Directions cannot be extended.

³²(2014) 17 N.W.L.R. (pt. 1437) 525.

³³At p. 571.

³⁴(2014) 17 N.W.L.R. (pt. 1436) 255.

Interpretation Act on computation of time shall not apply to the requirement of time by the Practice Directions. Time shall run in the peculiarity of the Electoral Act, Practice Directions and the 1999 Constitution of the Federal Republic of Nigeria (as amended), from the day of the act and the day shall not be excluded.³⁵

It is unfortunate that the Supreme Court failed to overrule its earlier decision where it applied section 15(2) of the Interpretation Act³⁶ to a pre-election suit. In *Ezeigwe v Nwawulu*³⁷ Onnoghen, J.S.C. (as he then was) held as follows:

By virtue of section 15(2) of the Interpretation Act, in calculating or computing time stipulated by a statute, generally the first day of the period will be excluded from the reckoning while the last day will be included, except where the last day is a public holiday in which case the end of the following day which is not a public holiday will be included.³⁸

In *Bello v Yusuf & 2 Ors*³⁹ it was contended that the limitation period should begin to run from the date of knowledge of the accrual of the cause of action. In rejecting the contention, Peter-Odili, J.S.C. speaking for the Supreme Court, said:

The reason is simple and logical as it is to render uncertain and tied to people's *convenience* whenever a party decides to activate a court process depending on his subjective whim. The implication being that the statute of limitation would start to run at the point when the plaintiff/appellant in this instance puts across as time of becoming aware of the happening of the event that he is aggrieved over. That position of uncertainty will aid indolence and give a one sided subjective advantage to a party to the detriment of the other side.⁴⁰

The facts of *Toyin v Musa & 3 Ors*⁴¹ are as follows. The appellant was an aspirant for election into the Ado-Ekiti Constituency 1 in the House of Assembly of Ekiti State. The primaries were conducted on 29th November 2014. The appellant participated in the primaries along with the 3rd respondent. The 3rd respondent won the primaries. However, before the 2015 general election into the House of Assembly, the name of the 3rd respondent was substituted for the name of the 1st respondent. The appellant was aggrieved with the substitution and complained that, instead of submitting the name of the 1st respondent to the 2nd respondent by the 4th respondent, his name should have been submitted.

Consequently, the appellant filed an originating summons at the Federal High Court, Ado-Ekiti seeking, among other reliefs, an order that he is the candidate of the 4th respondent and that the certificate of return issued to the 1st respondent be withdrawn and issued to him and an order setting aside the decision of the Federal High Court, Abuja, in suit No. FHC/ABJ/125/2015 given

³⁵ At pp. 284 – 285.

³⁶ Laws of the Federation of Nigeria, 2004.

³⁷ (2010) 4 N.W.L.R. (pt. 1183) 159

³⁸ At p. 197.

³⁹ See section

⁴⁰ At p. 279.

⁴¹ (2019)9 NWLR (pt. 1676) 22.

in favour of the 1st respondent. At the end of trial, the trial court in its judgment delivered on 4th July 2016 granted all reliefs claimed by the appellant.

Aggrieved, the respondents appealed to the Court of Appeal. In its judgment delivered on 29th December 2017, the Court of Appeal allowed the appeal and set aside the judgment of the trial court. Dissatisfied with the decision of the Court of Appeal, the appellant appealed to the Supreme Court. The appellant's notice of appeal was filed on 23rd March 2018.

At the Supreme Court, the 1st respondent filed a notice of preliminary objection challenging the jurisdiction of the Supreme Court to entertain the appeal on the ground that the time for hearing and determination of the appeal had lapsed. The 1st respondent contented that since the appeal was filed on 23rd March 2018, as at 7th November 2018 when the appeal was to be heard, it had lapsed. The Supreme Court held that by virtue of section 285(12) of the 1999 Constitution an appeal from a decision of a court in a pre-election matter shall be heard and disposed of within sixty days from the date of filing of the appeal. The provision has limited the time for entertaining and determining pre-election a matter to sixty days after filing of the notice of appeal. In the circumstance since the appellant's notice of appeal against the decision of the Court of Appeal was filed on 23rd March, 2018, the time allowed by law to hear and determine the appeal had already lapsed. Consequently, the Supreme Court was divested of jurisdiction to hear and determine the appeal.

In *A.P.C. v Umar*⁴² it was held that by the provision of section 285(12) of the Constitution of the Federal Republic of Nigeria 1999, pre-election appeals from the High Court to the Court of Appeal must be heard and determined within sixty days from the date of filing such appeal. By virtue of section 285(12) of the Constitution of Federal Republic of Nigeria 1999 as amended by the Constitution of the Federal Republic of Nigeria, 1999 (Fourth Alteration No. 21) Act, 2017, an appeal from a decision of a court in a pre-election matter shall be heard and disposed of within sixty days from the date of filing the appeal. In the instant case, since the appellant's appeal was filed at the Court of Appeal on 23rd October 2018, it ought to have been determined latest by 22nd December, 2018. Therefore, the appeal which culminated into the appeal at the Supreme Court was statute-barred and the Court of Appeal became bereft of jurisdiction to entertain same due to effluxion of time. The relief sought by the appellant for the remittance of the appeal to the Court of Appeal for determination was considered a futile exercise since the court no longer had the jurisdiction to adjudicate on the matter. In the words of Sanusi, J.S.C.,⁴³

The provision of section 285(11) and (12) of the 1999 Constitution as amended, provides time frame within which to hear or determine a suit or an appeal. In this instant case, this court cannot accede to the appellant's relief to remit the case to the lower court, since it will amount to sheer academic exercise and will be a waste of the precious time of that court.

It was emphasized in the case that no court has jurisdiction to extend the time stipulated in section 285(12) of the Constitution. If the court extends time, that will amount to judicial legislation which

⁴²(2019) 8 N.W.L.R. (part 1675) 564.

⁴³At p. 575.

will be wrong. According to the Supreme Court, the legislature is to make laws while the judiciary is to apply the law, and in the process explain it.

One of the issues that arose in *Gusau v APC*⁴⁴ was whether the amendment introducing time limitation in pre-election matter has effect on suits pending before the alteration. It was held that though a statute operates prospectively and cannot apply retrospectively, unless it is made to do so by clear and express words, the amendments introducing time limitations affect only purely procedural matters and does not affect the rights of the parties. In that case, the decision of the Court of Appeal was made on the day the 4th Alteration Act bringing into being section 285(11) of the constitution was signed into law. Consequently, the matter was ongoing. However, based on the premise that the alteration is procedural, the suit was held to be caught up retrospectively and it was no defence that the action was already pending before the change was made to the constitutional provision in section 285.⁴⁵ Citing and relying on *Ojokolobo v Alamu*⁴⁶ the Supreme Court was emphatic that a statute making provision for time within which judicial proceedings can be taken or prescribing the time within which a court should dispose of proceedings is retrospective. So also statutes which make alterations in procedure or shortening time within which proceedings can be taken. In the *Ojokolobo* case, the Supreme Court held that it is settled law that the presumption against retrospective construction has no application to enactments which only affect procedure and practice of a court. In the words of Bello, C.J.N.,

It is a cardinal principle of our law that a statute operates prospectively and cannot apply retrospectively unless it is made to do so by clear and express terms or it only affects purely procedural matters and does not affect the rights of the parties.⁴⁷

Similarly, in *Toyin v. PDP*⁴⁸ the Supreme Court emphasized that Section 4 of the 1999 Constitution empowers the National Assembly to make laws with retrospective effects and such laws are, generally, not unconstitutional. The Supreme Court, however, observed that courts have the *vires* to question such legislations on the presumption that courts lean against construing statutes with retrospective effects if the statute purports to affect existing or accrued rights. However, according to the Supreme Court, when the legislature enacts a statute with retrospective effect and states so in clear terms, the courts will give effects to such legislative intent.

However, the plain words of the Constitution (Fourth Alteration No. 21) Act does not suggest that the provisions were intended to have retrospective operation. Secondly, it is obvious that the Supreme Court interpretation affected existing rights when it extinguished the right of action of some litigants out of no fault of theirs like happened in the *Gusau* case. It is unfortunate that the Supreme Court in *Toyin v. PDP*⁴⁹ paid lip service to the principle of interpretation that a statute

⁴⁴(2019) 7 NWLR (pt. 1670) 183

⁴⁵At pp. 194, 197-198.

⁴⁶(1987) 3 NWLR (pt. 61) 377.

⁴⁷At p. 396.

⁴⁸(2019) 9 NWLR (pt 1676) 50.

⁴⁹(2019) 9 NWLR (pt 1676) 50.

should not be construed to have retrospective effect. The Supreme Court stated the principle lucidly in the following words:

No statute shall be construed to have retrospective operation unless such construction appears very clearly in the provisions of the statute, arising therefrom by necessary and distinct implication. Generally, retrospective laws are *prima facie* of questionable policy and contrary to the general principle that the legislation shall not have retrospective effect and that courts lean against interpreting a statute to deprive a party of an accrued right. That is, the fundamental canon of interpretation is against a construction that gives a statute retrospective operation so as to impair existing right or obligation.⁵⁰

Strict fidelity to the theory espoused above should have yielded a different interpretation regarding whether the alteration for time limitation should have retrospective effect.

In *Ojokolobo v Alamu*⁵¹ case, Aniagolu, J.S.C. pertinently observed:

One principle basic in our legal system and this distinguishes it from the dictatorial system is that the law presumes that the legislature does not intend what is unjust and leans against giving retrospective operation to statutes unless a retrospective effect is clearly intended.⁵²

Nnamani, J.S.C. in the same case made the following observation:

As was said in the 6th edition of Craies on Statute Law at page 386 a statute is retrospective which takes away or impairs any vested right acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect of transactions or considerations already past.⁵³

Based on the foregoing pronouncements, it is submitted that section 285(9) – (12) of the 1999 Constitution ought to have been interpreted to have prospective and not retrospective effect since the retrospective effect of the provisions impairs the exercise of existing right of action before the amendment.

It must be noted that the time limitation will still apply even when there is an order for *de novo* trial.

In *Anyanwu v Eze & 3 Ors*⁵⁴, the Supreme Court held that by section 285(10) of the 1999 Constitution (as amended by the 4th Alteration) Act 2017, a court in every pre-election matter should deliver its judgment within 180 days of the filing of the suit. Since the appellant filed the suit at the trial court on 24th October, 2018 when the judgment of the Court of Appeal ordering trial *de novo* was delivered on 4th May 2019, by which time the 180 days prescribed in Section 285(10) had lapsed, the order of retrial made by the Court of Appeal was erroneous because as at the time the judgment was delivered, the trial court no longer had jurisdiction to hear and determine the suit *de novo*, the constitutional period available for it to hear and determine the pre-election matters having lapsed. The court reasoned that to continue with the hearing *de novo* will be an

⁵⁰ At pp, 64-65.

⁵¹ (1987) 3 NWLR (pt 61) 377

⁵² At p. 404.

⁵³ At p. 394.

⁵⁴ Supreme Court Suit No. SC.626/2019 reported in *Thisday* 14 January 2020 p. 4/Law Report

exercise in futility, and therefore, academic as the order for trial *de novo* by the court of first instance could not be implemented in the face of the expiration of the time allowed for the trial from filing to judgment.

In any case, time will not run during the period allowed by the constitution or guidelines of a political party for seeking internal remedy. In *Ibrahim v Abdallah*⁵⁵, it was held that although the primary election took place on 3rd October, 2018, by which date the cause of action to sue began to accrue to the cross respondent, on 15th October, 2018, the cross respondent made a written complaint to the effect that it was not his name that was submitted to INEC but that of the cross appellant as APC candidate for Dala Federal Constituency of Kano State. Thus, by the complaint of the cross respondent as deposed to by him, failure to replace the name of the cross appellant with the name of the 1st respondent by the 2nd respondent as at the last day for effecting such change which was 17th November, 2018 despite written assurances contained in its letter, was what gave the cross appellant cause of action to sue. Therefore, his suit filed on 30th November, 2018, was within the statutory time frame from the date the cause of action arose. Accordingly, the suit was filed by the cross respondent 13 days after the facts and events giving rise to the cause of action were completed and the cause of action to sue accrued to the cross respondent.⁵⁶

A similar issue arose in *Saki v A.P.C.*⁵⁷ The Supreme Court held that accrual of cause of action is the event whereby a cause of action ripens or matures and becomes complete so that the aggrieved party can begin to maintain his action thereon. Cause of action is an embodiment of the factual situation that gives the plaintiff the right to complain in the court and maintain an action on it. A cause of action is the factual situation on which the plaintiff relies to found his suit and sue against the defendant. A cause of action comprises any facts relied upon by the plaintiff.

In the instant case, the appellant's complaint was not about the primary election and its result declared on 4th October, 2018. His case was that notwithstanding that he allegedly won the primary election, and the fact was allegedly affirmed by the 1st respondent's Appeals Committee, the 1st respondent unlawfully, on 18th October 2018, submitted the name of the 2nd respondent to the 3rd respondent. The proof of the assertion is entirely a different matter. For purposes of the preliminary objection the governing or material fact was his assertion and complaint that the 1st respondent unlawfully submitted, on 18th October 2018, the name of the 2nd respondent to INEC as the candidate of the 1st respondent. On that note, the Court of Appeal was wrong when it held that the appellant's cause of action arose on 3rd October 2018 and not on 18th October, 2018.

Put in different words, a cause of action arises on a date or from the time when the breach of any duty or act occurs that precipitated the person thereby injured or the victim who is adversely affected by such an infraction to commence the action to assert his right or have his legal right protected from the breach. In other words, a cause of action arises on the date of the occurrence, neglect or default of the occurrence of the infraction. Where a plaintiff contends that he won a primary election and that another person's name was later submitted instead of his own, his cause

⁵⁵ (2019) 17 N.W.L.R. (part 1701) 293 at 311-312.

⁵⁶ Per Abba Aji, J.S.C. at pages 314-315. His Lordship delivered the leading judgment in the case.

⁵⁷ (2020) 1 N.W.L.R. (pt. 1706) 515.

of action crystallizes on the date the name of the other party is submitted to INEC. The rationale for this position is that the plaintiff, who was satisfied with the conduct of the primary and who claims that he won has no complaint against anyone and therefore no reason to seek redress until he discovers that someone else's name had been submitted.

In his concurring judgment in *Abubakar v I.N.E.C.*⁵⁸ Ekoh, J.S.C. applied the time limitation under section 285(9) to a situation where a person complained under section 31(1), (2), (3), (4), (5) and (6) of the Electoral Act 2010 that a candidate at an election had made false declarations on oath in his Form CF001 published by the Independent National Electoral Commission. In the words of His Lordship,

By the combined reading of section 285(9) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and section 31(1), (2), (3), (4), (5) and (6) of the Electoral Act 2010 (as amended), whoever complains, that a candidate at an election had made false declarations on oath in his Form CF001 published by the Independent National Electoral Commission pursuant to section 31(1) of the Electoral Act, shall timeously, before the general election and within 14 days from the date of the publication by the Independent National Electoral Commission of the alleged false declarations in Form CF 001 submitted by the candidate, file a suit at the High Court against such candidate seeking a declaration that the information contained in the said Form CF 001 is false...

The effect of such person, complaining that the information contained in the candidate's Form CF001 is false, not filing the suit within 14 days from the date of the publication by the Independent National Electoral Commission of the said Form CF 001 pursuant to section 285(9) of the constitution, is that the right to the cause of action arising or accruing to such person, on the grounds of any false information contained in Form CF001, is extinguished, the cause of action having become statute barred.

In relation to section 285(14) of the 1999 Constitution, the Supreme Court held in *Akinlade v I.N.E.C.*⁵⁹ that the words 'aspirant' and 'candidate' mean the same thing and are synonymous. In that case, the appellants contended that the 2nd respondent gave false information of himself in form CF001 submitted to INEC, and that INEC (1st respondent) wrongly placed on the ballot paper the name of the 2nd respondent who should have been disqualified because of the false information. It was held that these events or actions were no doubt events or actions that preceded the election. Accordingly, the right of a petitioner to enforce his right to the cause of action will be extinguished by the operation of section 285(9) of the Constitution unless the action is filed not later than 14 days from the date of the occurrence of the event, decision or action complained of in the action. It was also held that a cause of action extinguished and statute barred by operation of section 285(9) of the 1999 Constitution remains extinguished and cannot be revived subsequently in an election petition as a ground for questioning an election.

⁵⁸[2020] 12 NWLR (pt. 1737) 37 at p. 163.

⁵⁹(2020) 17 NWLR (pt. 1754) 439.

It is obvious that the intention of the law-maker is that all complaints under section 31 of the Electoral Act 2010 will qualify as pre-election matter within the meaning of section 285(14) of the 1999 Constitution as to attract the time limitation under section 285(9) of the 1999 Constitution, notwithstanding that under section 31 of the Electoral Act 2010 the complaint can be brought by any person including a person who is not a candidate at an election. The definition of pre-election suit under section 285(14) of the 1999 Constitution which is limited to a suit instituted by a candidate or the Independent National Electoral Commission is very restrictive.

In *Nwosu v A.P.C. & 3 Ors*⁶⁰ the Supreme Court sensing that the strict application of section 285(9) will lead to injustice and absurd result and also in a person taking advantage of his wrongful and void act resorted to judicial activism in the interpretation of the section. The facts of the case are as follows. The appellant contested and won the primaries conducted by All Progressives Congress (APC) on 6th October 2018 and his name was forwarded to the Independent National Electoral Commission (INEC) as the gubernatorial candidate of the party for the general elections slated for 9th March, 2019. The appellant also contested and won the primaries conducted by another political party, Action Alliance (AA), and was on 2nd November, 2018 issued with a “certificate of return and confirmation as the duly elected Governorship candidate” of the said party. By an originating summons filed on 27th February, 2019, and amended on 18th April, 2019, the 1st – 3rd respondents challenged the nomination of the appellant by the two political parties at the Federal High Court, Abuja on the ground that it violates section 37 of the Electoral Act 2010 which provides that where a candidate allows himself to be concurrently nominated by two political parties, the nominations will be void.

The appellant sought to take refuge under section 285(9) of the 1999 Constitution which provides for time limitation of 14 days for instituting pre-election suit. In his leading judgment to which other Justices unanimously concurred, Augie, J.S.C. observed as follows:

The compelling part of the story is that since “nomination” is complete when INEC receives the necessary documents from a political party, its receipt of two forms CF001, which were both sworn to by the appellant himself, leads to an irresistible conclusion that he knowingly allowed himself to be nominated as the gubernatorial candidate of the two political parties; and by section 37 of the Electoral Act 2010, his nomination is void.⁶¹

On the contention of the appellant that the suit was caught by section 285(9) of the 1999 Constitution having been filed after 14 days from the date of submission of his name to INEC his Lordship held as follows:

The term “void” simply means of no legal effect, null. A void act is an act which has no legal effect or consequence. It does not confer any legal right or title whatsoever, and it does not also impose any legal obligation or liability on anyone or make any party liable to suffer any penalty or disadvantage. In other words, a party may not derive an advantage from its own unlawful acts, and this

⁶⁰(2020) 16 NWLR (pt. 1749) p. 28.

⁶¹At p. 56.

is captured in the Latin expression *nullus commodum capere potest ex sua injuria*, which means – no man can take advantage of his own wrong. This was very much applicable in the facts and circumstances of the instant case. It was the contention of the appellant that section 285(9) of the 1999 Constitution covers all issues arising from any pre-election matter and obligatory in nature, whether void or not. That was not right. Section 285(9) cannot cover all issues arising from any pre-election matter – whether void or not, because where an act is void, it is void and a party will not be allowed to use the said section 285(9) as a shield to cover an illegality or sustain an act that is void.⁶²

Conclusion

The Constitution of the Federal Republic of Nigeria 1999 (Fourth Alteration Nos. 9 and 16) Acts 2017 were enacted to address some challenges in the Nigerian electoral processes. The alteration of sections 137 and 182 of the 1999 Constitution to ensure that no person stays in any executive office beyond the cumulative period of eight years ordained by the constitution serves a very useful purpose. The alteration which stipulates that preliminary objections challenging the jurisdiction of an election court or tribunal or the competence of an action in electoral matter should be determined along with the substantive matter is intended to prevent delay in election matters. It serves a useful purpose that preliminary objections are determined with the substantive matters.

The alteration which introduced time limitation for the determination of pre-election suits in section 285(9) of the 1999 Constitution first and foremost ought not be part of the Constitution. The Constitution should contain only the fundamental laws of the country. For the Constitution to contain such matters will lead to frequent amendment of the Constitution. The issue of time limitation for the determination of suits should be contained in ordinary laws and not the Constitution. However, one is not oblivious of the Supreme Court ruling in *Unongo v Aku*⁶³ that the legislature cannot determine for the court the length of time within which the court will perform its function. The legislature should have overcome the decision by merely providing expressly that the legislature can make laws stipulating the length of time it will take the court to determine particular cases.

⁶²At p. 60.

⁶³(1983)2 SCNLR 332)