

How Courts Undermine Democracy in Nigeria

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ABSTRACT

The courts serve as a societal bulwark in safeguarding democracy by upholding the rule of law, balancing the constitutional powers among the two other branches of government, securing fundamental human rights, and resolving diverse conflicts. The democratic history of Nigeria belies those postulations as the paper argues that contrary to the above, the courts have in many ways acted as active facilitators in undermining democracy. The pathways through which this facilitation has taken place range from the courts enabling executive lawlessness and authoritarianism by giving free passes for the abridgement of civil rights and liberties, aiding and abetting executive disobedience of court orders and issuing of orders overtly influenced by considerations other than legal merit, permitting the judicialisation of electoral process and the commodification of court decisions. The paper suggests a reawakening of the constitutional path that underlines the independence, impartiality and integrity of the courts to make the institution alive to its critical role in upholding the rule of law, protecting constitutional integrity, and safeguarding democratic institutions from overreach as bastion of democracy rather than subverts.

KEYWORDS

Courts, Executive, Democracy, Elections

I. INTRODUCTION

The ideal of democracy rises or falls on the concept of Separation of Powers as it serves to prevent the abuse of power, promote accountability, ensure the rule of law, encourage efficiency and specialisation with no single branch dominating or controlling governance thus reducing the risk of tyranny or authoritarian rule. This concept features the legislative, executive and judicial branches of government with the one making law, the other implementing the laws and last interpreting the laws. Its roots are traced to several 17th and 18th century thinkers including Alexander Hamilton, John Locke and Baron de Montesquieu who argued that in securing and protecting the societal goals, values and ideas of justice, equality, equity, liberty of persons, and sanctity of life and property, governmental powers must be limited and should not reside in one single branch. Sections 4, 5 and 6 of the 1999 Constitution of the Federal Republic of Nigeria (CFRN,1999) recognizes this concept by vesting the legislative powers in the National Assembly, the executive powers in the President and the judicial powers of the Federation are vested in the courts respectively.

Beyond the interpretation of laws and resolution of disputes however, the judicial branch of government also protects the rights and freedoms of individuals by applying the law impartially. This function is a fundamental one, requiring the branch to be an independent

and neutral arbiter, upholding the rule of law, guaranteeing fair treatment, and serving as a bulwark and a check on the powers of the legislative and executive branches thus strengthening and supporting democracy.

A. Statement of the Problem

Notwithstanding the virility of the court system in Nigeria and its constitutionally designed role as a stabilising anchor for democracy, a pattern of democratic backsliding has been emerging in Nigeria, bringing into question whether the courts are being effective in carrying out its roles above. In the past over two decades, the courts, in the discharge of its constitutional functions, have tended to work in concert with the executive and acted as active collaborators in the subversion of democracy, rather than acting as barriers to democratic backsliding by ensuring adherence to the Separation of Powers concept and the Rule of Law. With the acquiescence of the courts, the executive branch continues to incrementally overreach its constitutionally allotted functions and powers thereby jeopardizing inbuilt constitutional mechanisms designed to prevent totalitarianism and tyranny. This pattern presents a puzzling introspection. Are the courts betraying their constitutional mandate? The paper identifies five pathways through which the courts, while appearing to carry out its constitutionally allotted functions, subvert democracy by utilizing the Institutional Theory to explain this behaviour. The pathways include enablement of authoritarianism and democratic backsliding, aiding and abetting executive disobedience of court orders, the judicialisation of the electoral process, corruption and the commodification of court orders into a purchasable commodity.

B. Objectives

Nigeria has experienced three decades of military rule since 1960 that has witnessed the subversion of civil liberties and non-adherence to the Rule of Law. With the advent of democracy and constitutionalism in 1999, there was public expectation that it would usher in an era of respect for the civil liberties of citizens and the enthronement of the Rule of Law over the rule of men that as symptomatic of military dictatorships. The public expectation aligns with a plethora of literature that points to a correlation between adherence to key democratic principles such as the Rule of Law and Separation of Powers and democracy. Even though the reviewed literature examines the centrality of the concept of Separation of Powers in the Nigerian democratic setting, there is a dearth of published works that identify the weak part in the tripod chain. This paper seeks to fill that void by frontally examining the role of one of the branches of government in the democratic journey – the judiciary. It reveals how, in the discharge of its constitutionally allotted powers and functions, the courts have tended to work in concert with and has unwittingly collaborated with the executive branch of government to undermine constitutionalism and democracy.

II. METHODOLOGY

The methodology employed for this study is based on secondary research, utilizing existing literature and published writings relevant to examine the manner the courts have gone about discharging their functions and exercising powers allotted to it by the Constitution.

This approach involves a comprehensive review and analysis of scholarly articles, books, reports, and other credible sources to gather insights, identify trends, and synthesize findings from previous research. By drawing upon established knowledge and documented evidence, this method will provide a robust foundation for identifying the pathways through which the courts unwittingly undermine democracy by aiding and strengthening the executive branch of government in doing harm to constitutionalism.

A. *Theoretical Underpinning*

Scholarly perspectives on the multi-dimensional role of courts in a democracy dimension them into four broad themes: upholding the Rule of Law, balancing institutional powers, protecting fundamental rights, and resolving societal conflicts. Dicey (1889) wrote that the functions of the court rests on three main pillars: the total supremacy of law over arbitrary power, equality before the law for all classes of citizens and the ensuring the constitutional rights in judicial decisions.

The American Bar Association (American Bar Association, 2017) identify the role of the courts in securing the Rule of Law as the most essential one in ensuring that democracy is effective and sustainable. It sees that responsibility as one in which not only is order maintained, but that all tensions and disagreements citizens of any democracy engage in with each other would be resolved peacefully, sensibly, and fairly. Piersol (2007) posits that the role of the courts in modern societies is one that ensures that justice is delivered to one and all and that no one is above the law and everyone is equal before the law. He reasons that this role makes it incumbent upon the courts to apply the law to factual situations and provide fair and equitable avenue for a just resolution of disputes of all parties as well as for society.

On equality before the law, Anuye (2017) argues that the courts are required to treat and apply the concept of equality before the law literally - that is, no one is above the ordinary law of the land and that no matter rich, powerful, connected, high or low one is in the society, the courts must blindly treat all equally. Equally, Adetomiwa (2022) maintains that equality before the law is central to and at the heart of the court adjudication of disputes and its enduring pedigree underscores its relevance and centrality to democratic survival and vitality. Adetunji (2022) notes that the court, in the democratic triangle of the legislative and executive branches occupies a very unique position and performs near omnipotent functions that are essential to the well-being and sustainability of the governance model.

Underscoring the centrality of courts to democracy, political scientist Robert Dahl (1957) argues that beyond considering courts as legal institutions, they are also political institutions given the long history of their rendering controversial questions of matters of national policy, even when there are no legal elements. The sum total of the above is that where the courts fail to fulfil its functions, they inadvertently undermine rather than reinforcing democracy.

The foregoing literature underscores the fact that courts in a democracy do far more than settle legal disputes. They act as systemic anchors that preserve democratic order, insulate and protect human rights from political actors, and hold power accountable. There is therefore a scholarly consensus that a robust, independent court is indispensable to the survival of democracy.

B. Theoretical Framing

The paper situates its theoretical foundations on the Institutional Theory developed by political scientists including Andrew O'Donohue (2023; 2026) who argue that even by their institutional design, courts are positioned to act as defenders and sustainers of democracy, often, and they do the reverse by subverting democracy. This occurs when the control of process and procedures for the selection and appointment of judges are concentrated in a single actor or group, facilitating court capture. This leads to antidemocratic judgements and orders notwithstanding that the judges are de jure independent of the executive. This theory counters the conventional wisdom of counter-majoritarian courts inherently act as "bulwarks" or defenders of democratic norms.

The theory maintains that courts can undermine democracy even where there are considered independent of the elected government not just when they are captured by an autocratic executive. These democracy-undermining actions include subversion of free and fair elections and abridging citizens' civil liberties, enabling executive power grabs and legitimizing military incursions into the democratic space. The theory traces the root cause of these behaviours of the courts to lie in the manner judges are selected as it leads judges undertake to illiberal judicial behaviour that facilitates fuel democratic backsliding.

C. How Courts Undermine Democracy in Nigeria

Contrary to the colourful eulogies attributed to the courts as purifying agents in the streams of democracy above, they have, and continue, contrary to scholarly expectation, to subversively betray tenets of constitutionalism thereby undermining democracy in Nigeria in a number of ways.

D. Enabling Authoritarianism

Authoritarianism is a method of governance that suppresses political freedoms and civil rights, using various levers of control to shift power from the people to the hands of one ruler or set of rulers. It occurs when elected officials and political actors use legal and constitutional mechanisms to illegally and unconstitutionally accumulate and consolidate power, undermine institutional checks and balances which ends up eroding civil liberties and good governance. Nigerian courts over the years have enabled authoritarianism and aided democratic backsliding by serially giving legality and legitimacy to actions of the executive that seek to harvest and accumulate power thereby straining the Separation of Powers concept. This has unwittingly allowed the executive to encroach into and extend its jurisdictional sphere of influence beyond constitutionally permitted areas.

A few examples highlight this tendency. Under the Nigerian criminal procedure a person arrested on suspicion of the commission of a crime is mandatorily required to be brought before a court of competent jurisdiction within a "reasonable time" with the law defining reasonable time as 24 hours if there is a court within a 40-kilometer radius, and a maximum of two days in any other cases. In practice however, security agencies under the executive branch, as a matter of routine, harass and detain persons accused of crimes for periods longer than allowed by law with the active silence and acquiescence of the courts. This has been a reliable weapon of choice to silence dissenting voices in the body polity, thereby

infringing their human rights (Campbell, 2020). The regularity of this occurrences has not attracted the attention of the courts whenever they are eventually brought to court, notwithstanding the iron-clad constitutional provisions guaranteeing the innocence of an accused person until proven guilty.

In addition to the unlawful arrests and detentions aforesaid, there has been a ballooning of broad security restrictions that have abridged the civil liberties of citizens with acquiescence of the courts. A Civil Rights Group, the Action Group on Free Civic Space in a 2026 report (2026) and Ibezim-Ohaeri (2017) tabulated two emerging tendencies. One is forced disappearances, unlawful killings, physical attacks, torture, degrading treatment; anti-civil society restrictive laws; proscription and the designation of constitutionally-permitted protesters as terrorists. The other tendency manifests where security operatives under the guise of protecting national security, utilise overbroad application of existing laws, non-legal restrictions and other extra-judicial means to infringe on the rights of citizens in a variety of ways.

The use of excessive and deadly force during the EndSARS protests against protesters and self-determination agitators, which is a weapon of choice by autocrats and wannabe autocrats, have reached an all-time high in the last 13 years as security agencies continue to demonstrate zero tolerance for all kinds dissent, public assemblies, whether peaceful or not. The pattern these infringements have taken include indiscriminate arrests, detentions, travel bans, freezing of bank accounts, proscription, fines and sanctions on broadcast media stations and harassment of civil society organizations. Even though most of these authoritarian tendencies have been serially challenged in the courts by the victims, civil society organizations, pro-democracy activists, attempts to get relief and intervention from courts have been unsuccessful with the courts hiding under the guise of national security.

The vexed question of balancing national security with civil rights and liberties is a deeply debated question in law, political science, and ethics with no straight forward answers. Most democracies and international law frameworks seek a carefully calibrated balance. While national security is considered foundational to any society as without safety and stability, society cannot exist and function, civil rights and liberties, on the other hand, are inalienable. Thus, the two are interdependent concepts in a democratic society. National security exists to protect the populace and the freedoms they enjoy, while civil liberties are the fundamental rights that define a free society. Sacrificing either completely undermines the very system governance is supposed to protect.

Since none that survive without the other, rights may be limited for genuine security needs, but such limitations must be lawful, necessary, and proportionate and there must be mechanisms for oversight, redress, and restoration of rights once the emergency passes. Use of sunset clauses, enhanced parliamentary and judicial oversight,

- Transparency requirement
- The article closes with recommendations regarding, inter alia, clarity in precision
- Drafting, use of sunset clauses, enhanced parliamentary and judicial oversight,
- Transparency requirements, and technology-specific safeguards that balance security
- With due-process and proportionality concerns

What most democracies practice, which our courts do not, notwithstanding that they are a part of the international legal eco-system, is that where a defence of national security is raised by the state, the courts inquire into its merits to ensure that it is lawful, necessary, and proportionate. In addition, courts tend to subject such a defence to strict mechanisms for oversight, redress, with requirement for the restoration of the rights once the national security/emergency passes. For the Nigerian courts however, for the most part, once the flag of national security is waved, they submissively leave the victims of gross civil rights and liberties to the mercy of the executive.

E. Abridgement of Civil Rights and Liberties Rights

By design, democracy positions courts as the last line of defence. They are therefore expected to uphold the rule of law (World Justice Project, 2024) by safeguarding fundamental human rights and freedoms, ensuring due process, equal protection, acting as a check and balance against the overreach of other branches of government and reinforcing the foundational values of justice, equality, and fairness that underpin a democratic society (Tiware, 2024). In addition, in the resolution of disputes of whatever nature, the courts are expected to act in a fair and transparent manner, relying solely on established law rather than political interests in order to keep authoritarianism or tyranny at bay. In Nigeria, however, there is a widespread perception among legal scholars, media commentators, and civil society organizations that most court decisions particularly where they involve civil liberties and electoral disputes are influenced by political and financial considerations rather than merit.

One of the most fundamental ways the courts have unwittingly emboldened the executive branch of government and contributed to the erosion of democracy has been its failure to hold the executive arm to account for the disobedience of lawful orders of court. In legal jurisprudence and principles of law, valid and subsisting orders of court must be specifically, completely, and wholly obeyed and acted upon by the duty bearer or party responsible to do so and where this is lacking, the courts have an inherent common law remedy to hold the person to account. Courts do this by requiring obedience with fear of punishment or refusal to hear the contemnor's case until the contemnor purges itself of the contempt with further option of punishment by way of fine, imprisonment or both. The primary rationale for this position of the law is to protect the integrity of the judicial system, preserve the authority of the law, and ensure the due administration of justice.

Nigerian courts have over the years however, maintained a record of failing or neglecting to preserve its authority and integrity by exercising its powers to mandatorily require the executive branch to obey its orders that would preserve rule of law and the rights and liberties of citizens. The Open Society Foundations (OSF) / Open Society-Africa through the Citizens' Gavel (2014) has documented detailed report of over 100 incidents of disobedience of clear orders of court without the courts utilizing its powers of sanction to ensure obedience between 2015 and 2024. The aggregate effect of this is that the courts have continually given the government a pass to continue to infringe upon the basic rights and liberties of citizens thus subverting the rule of law which is the bastion of democracy. According to a frontline civil rights advocate, Femi Falana, underscores the unprecedented refusal of the government to obey court orders since the return of civilian rule in 1999, a situation that was not so even under the three decades of military rule in Nigeria. Further explains that

what has made the government altitude more worrisome is the impunity with which it cherry-picks which orders to obey and which to ignore. The courts have thereby unwittingly, if not intentionally, made themselves facilitators for the erosion of democratic norms.

F. Courts Supplanting Electorate

The hallmark of democracy rests on the foundation that it is the people who get to decide who will be their representatives and leaders. In a representative democracy therefore, the ultimate authority to choose leaders and representatives lies directly with the people through the ballot. While the judiciary plays an important role in interpreting the constitution and safeguarding electoral laws, democratic legitimacy stems from the electorate, not the courts (Ace -Project). When courts frequently overrule election results or dictate candidates, it raises legitimate concerns about whether the core principle of popular sovereignty is being compromised by the courts who are statutorily expected to sustain and uphold the citizen's popular sovereignty that has been freely expressed in the ballot.

The over two decades of democratic governance in Nigeria has witnessed a strange development: the courts have increasingly become the institution that determines who is the ultimate winner of elections instead of the electorate. This puts democracy on its head. The heightened activism of the courts in electoral matters has seen them elevating their decisions over and above the will of the electorate expressed through the ballot box, thereby torpedoing the sovereignty of the people in favour of the courts. Where the ultimate outcome of electoral contests is decided by the courts, it naturally leads to elevated apathy on the part of electorate, who think and conclude, and rightly so, that their votes do not count or matter given that the final outcome would be decided in a courtroom and not at the ballot box.

Some instances stand out: The courts awarded victory to state governorship candidate who had been emerged in the fourth position in the election under a head-turning reasoning. Secondly, a duly elected candidate for the position of state governor in a state in North-West Nigeria in 2019 was replaced with a candidate who was well beaten into a distant second position. This has been likened to a strange jurisprudential acrobatic which amount to a crass subversion of the will of the people in a manner not dissimilar to the effect of a military coup. The pattern peaked with the derogatory reference to a particular Governor as the "Supreme Court Governor" elevating a new phenomenon in Nigeria's polity, where people assume office based on judicial verdicts rather than the mandate of the people.

It has been established that over 80% of the contested offices in elections in any cycle since Nigeria's return to democratic rule are usually decided by the courts rather than the electorate (Vanguard, 2025) giving rise to a scenario that the Economist Newspaper has described as a "democracy by court order." (Economist, 2008) Political actors have perfected the act of "forum shopping," an unethical practice where litigants file identical or substantially similar cases in different judicial divisions or courts of coordinate jurisdiction where they perceive they have strengths or are likely to have sympathetic judges that would give them the kind of justice they desire. This practice, clearly inimical to democracy has been condoned by courts who not only sit over these cases, but also render verdicts, notwithstanding the illegal pathways they came about. Apart from these actions amounting

to abuse of court process, courts issue conflicting ex-parte orders that inject confusion into the body polity.

G. *Election-Subverting Behaviour by Courts*

Professor Hasen (2022) describes election subversion as a form of “sabotage of the electoral process, leading to an election loser being declared the election winner” while Professor Manheim defines it as “the exploitation of a breakdown in the rule of law to install a candidate into elected office.” It encompasses any and all actions that would impact negatively on the due election of leaders and representatives of people through a popular exercise of one man, one vote. Subversive internal threats to democracy have been on the rise in Nigeria as democracy gathers momentum leading to constitutional regression in many ways. Even though the electoral regulatory body in Nigeria, Independent National Electoral Commission (INEC) in listing electoral offences have tended to rely almost exclusively on the activities of politicians and political operatives immediately before, during and after election alone, it is the thesis of this paper that the conduct of certain participants in governance that relate to and connect with elections can, in actual fact, be more fundamentally corrosive of the electoral process than what happen during the elections. This includes the orders of courts in matters relating to elections that usually have a substantially negative impact in the electoral process.

The Nigerian Bar Association in a recent statement titled “Our Laws and Democracy Must Be Protected at All Times” (2026) underlined the emerging danger, stating that both the courts and bar must stay vigilant and resist being drawn into political theatrics that have the real potential of subverting democracy and constitutional ethos. The NBA statement in particular, took issue with the court’s intentional involvement in electoral matters that the law expressly bars it from doing, an action that is clearly subversive of democracy. The statement cited Section 83 of the Electoral Act, 2026 which ambiguously states that “No court in Nigeria shall entertain jurisdiction over any suit or matter pertaining to the internal affairs of a political party.” Based on the above, the NBA maintained that “not only are courts denied jurisdiction to entertain any matter pertaining to the internal affairs of a political party, but they are also precluded from granting any interim or interlocutory injunction even where any action has been brought in violation of the Act.” Notwithstanding the above clear provisions of the basic law regulating elections in Nigeria, numerous courts have entertained hundreds of election-related cases that are within the four corners of that “internal affairs of political parties” in clear violation that the enabling law. Powerful political actors have also used the courts to bypass internal party mechanisms, allowing non-elected politicians to hijack party structures and takeover candidate nominations. The NBA statement, correctly, in our view stated that courts that go ahead to grant orders in clear contempt of statutory provisions of the law are abusing their powers and those actions have clear election subversion elements.

Another variant of election subversive behaviours which the courts have condoned and allowed to fester that has the real potential of undermining public confidence in the judiciary and ultimately dampening and discouraging public participation in elections is the issue of state capture. The National Judicial Council (NJC) is a body established under section 153(1) of the CFRN, 1999 with powers relating to appointments and exercise of disciplinary control over Judicial Officers specified in paragraph 21 of Part I of the Third Schedule of the

Constitution. By the same paragraph it also has power to collect, control and disburse all monies, capital and recurrent, for the judiciary and to deal with all matters relating to policy and administration. The NJC collects, controls, and disburses all capital and recurrent monies for the judiciary, and handles welfare matters like salaries, pensions, gratuities and benefits of the judicial officers such as housing, vehicles, security, among others. These provisions are intentionally made to guarantee the institutional independence of the judiciary by insulating it from the political control of the Executive and Legislative arms of government. Before the NJC was created, the judiciary relied heavily on the executive branch for its funding, salaries, and infrastructure. This dependence historically led to delayed payments, political manipulation, and compromised neutrality.

In the recent past, notwithstanding the statutory role of the NJC, the Executive branch of government made a policy decision to build luxury homes and allocate cars to judges in the Federal Capital Territory. These policy initiatives, notwithstanding their laudable nature, have the real likelihood, subconsciously or deliberately, to influence judicial outcomes. The NBA strongly argued that these interventions should be spurned citing the iconic words of Lord Denning that "Justice must be rooted in confidence; and confidence is destroyed when right-minded people go away thinking that the Judge is biased." (Metropolitan v. Lennon, 1960). Apart from the policy initiatives been perceived as state capture, it is submitted that they undermine the Separation of Powers concept.

III. CORRUPTION

Corruption in the Nigerian judiciary is widespread, with surveys indicating that 20% to 50% of citizens interacting with the courts are confronted with bribe requests, and around 65% of the public perceives judicial corruption to be extremely high and with nearly half (49%) of surveyed court users admitted to paying or "sorting" court officials (UNODC). An assessment by Nigeria's anti-corruption watchdog, the Independent Corrupt Practices Commission (ICPC) records that between 2018 and 2020, N9.4 billion was offered or paid in bribes within the justice sector (Anti-Corruption Academy of Nigeria, 2020). The United Nations Office on Drugs and Crimes (UNODC) documents that a total of N721 billion was disbursed as cash bribes to Nigerian public officials in 2023, with judges being the recipients of the highest average bribe amount (UNODC). Courts are a part of the Nigerian eco-system and have been unable to rise above the fray.

Courts themselves have allowed themselves to be used to undermine democracy by making court orders and judgments to become a "purchasable commodity in a rigged judicial market" thus validating the widely held perception of the "commodification of court orders" to fester. The Commodification of Justice occurs when court verdicts and ex-parte orders are treated as transactional goods and the legal system shifts to favour wealthy elites, well connected and powerful politicians over ordinary citizens. The perception that is widespread is that justice in the Nigerian courts has become a commodity for sale, with courts turned into marketplaces where technicalities are exploited, and truth is a casualty. The scales of justice are tipped, and the law, instead of protecting the weak, has become a weapon for the powerful. In a 2018 paper, the frontline journalist, Segun Adeniyi (2018) lamented that "corruption has eaten so deep into our judiciary, such that some of our politicians are no

longer content with hiring Senior Advocates of Nigeria (SANs), they also have their own judges.”

One sure way to undermine democracy is for judges to become bribe takers. This fundamentally destabilises and undermines democracy by subverting the rule of law, crushing public trust in the state, subverting the Separation of Powers concept thereby castrating the judiciary’s capacity to serve as an independent check on executive and legislative power (Joseph, 1991). When courts become commercialised, and court judgements and orders a commodity to be bought and sold, fair justice is transmuted to an exclusive privilege reserved for the wealthy and politically connected alone. As the President of the NBA rightly noted, a corrupt bribe-taking court system weakens the social contract between citizens and the state, depresses investment, drives insecurity, and exacerbates social and economic inequalities thus threatening democracy like no other. Corruption represents a major threat to democracy, human rights and the rule of law and it endangers the stability of democratic institutions and the courts must look at the mirror for self-introspection.

A. *Judicialisation of the Electoral Process*

Judicialisation of the electoral process refers to undue reliance on courts, tribunals and judges in resolving electoral related disputes as against the electorates. It witnesses the expansion of the role of the courts at the expense of the electorate and essentially transfers of the decision-making rights from the electorate to the courts, or tribunals rendering the electoral process more of a judicial rather than electoral one. Conceptually, going by global trends, three main factors have been identified as been responsible for the judicialisation of politics generally, and electoral process in particular. Hirschl (2011) lists these factors to include institutional features, judicial behaviours and political determinants. In the Nigerian context, the third factor which is judicial behaviours, explains the path the judicialisation of the electoral process in Nigeria has taken to date.

The judicial behaviours as a factor for the judicialisation of elections in Nigeria relies on the willingness and pliability of the courts to embrace and give hearing and determination on electoral matters, particularly, pre-election matters brought before it. This is notwithstanding the clear provisions of Section 83 of the Electoral Act, 2026 that bars courts from entertaining any suit or matter pertaining to the internal affairs of a political party. The growth of judicial powers and judicialisation of the electoral process in Nigeria can be seen as integral part of and vital manifestations of the political class struggles seeking to secure the interests of power blocks.

The judicialisation of the electoral process in Nigeria is underscored by the large electoral petition profile and atlas of elections litigations in Nigerian electoral landscape since 1999. For example, between 2003 and 2019, there were 3, 979 election petitions and average of 663.16 election petitions at the end of the conduct of every general election in Nigeria since 1999 (Nigerian Civil Society Situation Room (2017). In the 2023 polls, INEC’s records show that a total 1,196 petitions were filed (Daily Trust, 2023). The sheer number of litigations arising from the elections shows the extent to which the courts have assumed judicial management and control of the electoral process and removed the power of determining who gets elected into office from the people – the electorate to the courts, an unelected

branch of government. This pattern of judicialisation of the electoral process has in no small way undermined the core foundation upon which democracy rests – a government of the people, by the people and for the people (Lincoln, 1863) and has instead, elevated it to be government of the courts.

Another variant of the judicialisation of the electoral process by the courts that has a major undermining effect on democracy relates to what is referred to as “judicial duplicity” or “indecipherable court order (s). Even though words are the tool box of the legal profession, quite often, court judgements, rulings and orders in Nigeria are rendered in “mangled syntax or Latin” that make it intelligible and amendable to different and varying interpretations by both for lawyers and laymen. The most recent example of the judicialisation of the electoral process occurred in the decision of the Court of Appeal involving a leadership crisis within factions of the one of the registered political parties vying for the 2027 elections. The order of the Court of Appeal appeared to have been made in an intentionally ambiguous manner to inject confusion into the body polity. This particular order caused the NBA to decry the growing ambiguity in judicial pronouncements, particularly in politically sensitive cases and urged judges to avoid the use of complex phrases in their rulings, calling instead for clear and unambiguous orders to prevent confusion and misinterpretation. The rendering of ambiguous orders that are subject to multiple interpretations has served an unintended purpose: injected confusion, uncertainty and uneasy in the body polity, thus undermining the political process at a critical intersection of the democratic path – build-up to elections. In place of court orders bring finality and clarity to lingering electoral disputes, they instead throw up fresh controversies with the different contending parties interpreting the same order in a manner to suit their political interests thus undermining the fabric of democracy.

IV. CONCLUSION

As outlined above, Nigeria’s democracy ailing with symptoms of authoritarianism. Instead of acting as a bulwark against democratic recession, courts have for the most part aided the drift ad decline. The spectre of courts destroying, rather than protecting, constitutional democracy poses a daunting challenge. Where courts stand by as civil rights and liberties are subverted and eroded becomes worrisome. The paper also established that the judicialisation of elections has led to two unintended outcomes that unless they are expeditiously mitigated, irreparable harm will be visited on the constitutional landscape of Nigeria. First, it has eroded the majesty of democracy in Nigeria as the one man, one vote ideal has been subverted as courts’ rulings have gradually taken away the sovereignty of the electorates. Two, the deep insertion of the courts in the electoral process, otherwise known as judicialisation has heightened voter apathy and wholesome loss of faith in the entire democratic ideal. The courts must awaken itself to its critical role in upholding the rule of law, protecting constitutional integrity, and safeguarding democratic institutions from overreach as bastion of democracy rather than subverters.

RECOMMENDATIONS

- Considering the importance of the popular vote and the intrinsic value of one man, one vote in situating democracy as a people-centric governance model, it is imperative to strip the power to change the popular will of the electorate at the ballot

box from the courts. Apart from preserving the electorates will, it reduces corruption within the court system and insulate judges from external pressures and inducements. Where major breaches occur in the electoral process warranting the nullification of an election, the remedies available should be limited to ordering a fresh ballot with consequential orders to protect the process from a repeat breach.

- A radical reformation of the manner how judges are selected and appointed moving away from loyalty to ruling parties and political actors as a criterion to a merit-based selection process devoid of external interference. A well horned criteria should be instituted that requires judicial appointees to be persons of integrity instead of the present requirement of merely attaining a minimum number of years as lawyers with no personal, professional or civic integrity standards. The process should insulated from external pressures.
- The provisions of the Electoral Act should be amended to expressly oust the jurisdiction of courts in purely political party affairs and the insertion of courts too deeply into the fray in electoral disputes especially at the point of nomination. In addition, a consequential amendment that limits parties from challenging the nomination of the candidate for an election as a ground in an election petition after the election.
- To forestall the serial disobedience of court orders in fundamental human rights matters by the executive branch of government, constitutional reforms should be strengthened to guarantee absolute judicial and financial autonomy.

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