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### Judicialization Of Electoral Outcomes In Nigeria: Case Of 2019 Presidential Election.

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#### Abstract

Courts intervention in Nigeria political corridor is a topical issue that is gaining attention of scholars of psephology and democratization. There is large volume of literature that has dealt with the pre- election and post -election issues at the state and national parliamentary elections in the country, but much study is yet to be done to capture the intricacies of presidential election petitions. May 29, 1999 marked a watershed in the history of the country, as Nigeria experienced a restoration of democratic governance, signposting the fourth republic. Since then, most of the presidential elections conducted has ended up in the court room. The study interrogated participant's views who are purposively selected of the performance of the judiciary in settling electoral disputes, and the capacity of the judiciary to offer remedies when election falls below the expectation of freeness and fairness, with reference to the 2019 presidential election. Using the interpretative phenomenological analysis (IPA), we gained access into how participants' make sense of the courts activities within the country's political space. Result revealed that the super presidentialism system which the country practices, allowed the constitution to give enormous power to the executive arm of government making the other arm especially the judiciary to be sub-servient to the former. The study also found that lack of strong will on the part of the judicial official has as compared to other climes, especially Kenya and Malawi could be responsible for inability of the courts to be objective in determining election outcomes. We equally found that the palpable institutional weakness could serve a tool for the elite class to clinch unto power and make their selves unnoticeably formidable. We discovered that most judges have a strong ethnic, party and religious affiliation which often time influences their decision. The implications of the findings were examined within the context of the separation of power.

**Key Words:** Judicialization, Election, Presidential, Outcomes, Nigeria.

#### Introduction

As Nigeria have engaged in the rough and uncertainty of consolidating electoral democracy since the commencement of fourth republic, controversial election disputes have increasingly been transferred into the legal arena (Gathii & Akinkugbe, 2022; Omotola, 2021; Kerr & Wahman, 2019). It means that post-election sentiments have established themselves as a research topic in the fields of political science, where courts have played an important, yet contentious role in Nigeria electoral politics since 1999.

Judicialization of politics according to Enabulele (2008) involves the settlement of electoral controversies regarding issues such as the conduct of campaigns, voters' registration, delimitations of constituencies, campaign financing among others. Courts also rule on cases in relation to executive elections. Court rulings on election petitions could send an important signal about the judiciary conduct of professionalism and independence, and possible political biases

(Karr, 2019). Rulings could also send signals about the quality of elections organized and conducted within a political system.

Judicialization of politics has gained a steady and continuous trend, and has become a defining factor in both national and international arena (Omotola, 2021). The reason being that judicial resolution of political conflicts against other means or medium of resolving disagreement emanating from political contest, has taken a pivotal place in most democratic milieu. In its own encapsulation of the concept, Hirschl (2008) corroborated the substantial influence of courts and judiciary across nations from a similar perspective of capacity to address issues that are premised on moral, cultural, social, and more so political. The import of this assertion is that judiciary, is instrumental to the stability and survival of any society, either developed or underdeveloped to avoid the 'Hobbesian' nature.

Going forward, judicialization of politics according to Hirschl (2008) has enlarged beyond the above categorization to issues such as "electoral process and outcome". Such that, the courts today are increasingly in the business of administration of electoral justice, even when the electorate must have decided their preferred candidates through the ballot. In another instance, scholars such as Omoregie (2019) highlighted the level of inroad the courts have gained into the 'democratic' domain of states in respect to election matters, be it consolidated or not.

Historically, the dependence on the courts and judicial procedures for resolving key moral difficulties, political disagreements, and public policy questions is perhaps one of the most significant trends of the late nineteenth and early twentieth centuries. National high courts around the world are called on to settle a variety of issues, ranging from the rights of expression and religious liberties, reproductive and privacy freedoms, equality rights, to criminal justice, education, labor, and environmental protection regulations. The growing political prominence of courts has expanded its reach to become a multidimensional phenomenon that extends far beyond the already "standard" concept of judge-made policymaking. The judiciary interventionist stands in the electoral process and outcome as rightly observed has turned out to be a global issue. In his influential study on the roles of institutions, specifically the judiciary in electoral disputes in Kenya Ongoya (2013) aptly highlighted the need for the existence of and conflicts resolution drive as an integral part of a free and fair electoral contest. It means the courts are instituted in this regard for pre- and post-elections disputes and administer justices accordingly. In a similar vein Phirinyane (2013) chronicled issues surrounding 'conflicts and contestations' in the electoral politics of Botswana, in spite of the enduring and maturing nature of the country's democracy achieved through a transparent and fair electoral system, there are cases where losers in electoral contest approached the courts to seek redress and contested electoral outcomes, at the peril of democratic sustainability.

Furthermore, substantial judicial intervention in Nigeria politics began in the country's first attempt with presidentialism in 1979 (Omotola, 2021). Since then, it has become a trend in the country's political space right from the second republic all through to the current fourth republic, which started on May 29, 1999. The development of courts serving as a determining factor in elections does not really mix well with the spirit of consolidated democracy as contended by (Sihanya, 2013). Consolidated democracy is characterized in the ability and maturity of all contending parties in electoral contest to accept the outcome of elections hook line and sinker. A cursory assessment of Nigeria democracy that was 23 years old on May 29, 2022, is indicative of the fact that the journey to a consolidated democracy seems to be a far cry for the country, if to be measured by incidences of rejection of electoral process and outcomes by contestants. In all, Nigeria under the fourth republic which is the longest democratic experience in her history, as conducted six general elections. These include 1999, 2003, 2007, 2011, 2015, and 2019 for the offices of the president, governors, national assembly (Senate and House of Representatives), and state houses of assembly respectively with huge attendant post-election litigations. Cases in point according to Human Rights Watch (2008) revealed that most of the presidential elections conducted in Nigeria since fourth republic ended up in the court, up until the last one held in 2019, where the main opposition party PDP challenged the purported irregularities of the election up to the Supreme Court.

The stability and survival of democracy is a function of the fairness and transparency in the process and actual outcome of election, conducted and managed by unbiased, objective institutions of government, such as judiciary.

Election has been a strong indicator in democratic governance all over the World. Given this, Alabi (2007), argues that regular free and fair election are central to democratic sustainability in Nigeria as in other parts of the world. In this case, the success or failure of any democracy is a function of the quality of elections conducted in such a political system at various time. In that, it would provide electorates the opportunity to express their will freely by voting for their preferred candidate and party as outlined in the constitution. Taking a similar position (Omotola, 2017), concludes that election constitutes the most crucial ingredient of democracy, because it serves as a strong and veritable global approved criterion to measure the quality of democracy. Inferring from the above assertions, it implies that the scope of democratic progress in the world is partly deceptive and imaginary without a credible platform for political leadership recruitment that is representative of the will and wish of the electorates (Diamond, 1997). This shows that a credible elections acceptable by all contending parties are the lifeblood of democracy. A closer look at some African countries such as Senegal, Cape Verde, Ghana, Sao Tome and Principe, Togo, and Benin Republic according to (Reynolds, 2014) shows that they had transited from outright dictatorship to a multi-party democracy and had all in one time or the other held multi-party elections, with subsequent alternation of power. Most of these elections extended to courts room instead of terminating at the polling units are the reason of litigations and counter litigations advanced by 'dissatisfied players'. Looking at the above indisputable relevance of election to democracy, it therefore means that all stages that would lead to its success should be with probity and integrity, otherwise, democracy would be a mere caricature.

Yes, among democratic institutions, the courts occupy a unique position. They are, in a way, one of last institutions of participatory democracy, in which disputants appear before a judge or jury to resolve a disagreement. An individual could take a concern to a decision maker who represents the complete force and power of that arm of government in no other governmental connection. The democratic process revolves around this direct interaction between the individual and the state (Izzi, 2019). It is vital to submit that election disputes open the functionality of judiciary as indispensable partner in the democratic system into sharp focus. The judiciary's equality, ingenuity and independence nature generally seen as a basic conditionality for the survival of democracy, are germane, but judicial decision after people's decision through the ballot box could have a telling impact on legitimacy. The democratization process could be derailed, in that people's confidence in the political institutions could be dampened, which may impact negatively on the political system. In the context of this study therefore, the ascendancy of the judiciary in addressing and resolving issues bothering on public policy questions, and the settlement of political controversies seems to have affected the performances of the courts. The central argument of this study is to interrogate the way in which court rulings in relation to executive i.e, (presidential election petitions, especially that of 2019 which is the most recently conducted as shaped the performance of the judiciary in Nigeria. Furthermore, to know if the judiciary have the capacity to render solution if election falls below the standard of freeness and fairness, regarding the 2019 presidential election petition.

### **Statement of the Problem**

The performance and objectivity of the judiciary in election matters according to Thiankolu (2013) is utterly diminishing because of seemingly cases of miscarriage of justice. Empirical evidence reveals that since the commencement of Nigerian fourth republic in 1999, courts have been inundated by lots of pre- and post-election petitions submitted by aggrieved contestants (Enabulele, 2008) who often took their grievances to court rooms for legal remedy.

The resolution of electoral disputes has often been marked with controversies. Literatures abound on different roles played by courts in public policy decision making and electoral politics. Omotola (2021) highlighted such roles as entrenchment of rule of law in all its ramifications, clarification and settlement of disputes emanating from electoral controversies. Better still, scientific evidence has shown that voters in the current dispensation in Nigeria seems to be using court judgement to form opinion on the quality of election and judicial legitimacy in the country (Kerr, 2013).

Perceived election integrity and acceptance of judicial authority in the words of Munso (2013) is important for the attainment of democratic consolidation. Previous literature on comparative politics such as Kwarteng (2014) has claimed that citizens who perceived the judiciary operates and performs independently of other arms of government and sees election as credible are more likely to vote and participate in democracy.

The decreasing level of institutional trust common among unconsolidated democracies such as Nigeria, offers political players the opportunities to manipulate and negotiate the narrative surrounding elections (Moeher, 2009). A fundamental problem confronting Nigeria democracy according to Kerr & Wahman (2019) is that democracy in this part of the world is characterized by a form of 'super presidentialism'. This implies that the constitution gave enormous power to the executive arm of government, thereby placing the other arms especially the judiciary on a subservient status. Courts in Nigeria have largely lacked the power of jurisprudence and independence. The powers of appointing, promoting, and removing judges constitutionally resides with the president at the federal level and governors at the state level in Nigeria (Odugbemi, 2019). A point in case was the unbelievable and sudden removal from office a former chief justice of the country, Justice Walter Onnoghen on the eve of the 2019 presidential election by the incumbent president. It was argued among various political gladiators, Human rights groups, and civil society organizations that the removal of a judicial officer of such caliber in an embarrassing and controversial circumstance in an election period was an indication of judicialization of Nigeria politics, and readiness to manipulate the process. The president according to (Odugbemi (2019; Kerr & Wahmann, 2019) was accused of packing courts with loyalists, as we saw in the appointment of Justice Tanko Muhammad who came as replacement for Justice Walter Onnoghen.. It was argued that his appointment was to create a safe landing for the incumbent and give credibility to his election, in the case of litigation. True to it, the 2019 presidential election was conducted, and the main opposition contestant in person of Alh. Atiku Abubakar of the People's democratic party (PDP) went to court, harmed with proofs to challenge the outcome of the election, it was decided in favour of the ruling party.

The executives believe that controls over judiciary is of critical importance for their political survival. The perceived overbearing influence of executive over the judiciary is not only at the federal level, but there are also cases of such at the state level in the country. This narrative has severely led to voter's lack of trust in the electoral process and outcome, and the performance of the judiciary. Monso (2013) pointed out a wide lacuna in the level of trust that supporters of the opposition and government has in courts. The study went on to assert that, opposition parties have less trust in courts performance than in government party and supporters. Indeed, the burgeoning study on democratic backsliding in African politics is illustrative of the politicization of the judiciary as one of the main encouragers of current wave of de-democratization (Barnhizer, 2001). In a situation where courts regularly rule in favour of the incumbent, except on some cases at the state level. This will most likely be regarded as proof that judges are not separate from the executive. But if they, despite pressure from executive political actors to tow the government line, act in an autonomous manner, this could improve the trusts in judicial performance among opposition parties as we have in some few cases in Nigeria. Above all, the major problem that this research is grappling with is to examine the role and performance of the judiciary in 2019 presidential election in the country (Omotola, 2021). In spite of evidence of widespread election irregularities that characterized the country's presidential elections. Studies such as (Gathii & Akinkugbe, 2022; Kerr & Wahman, 2019) have shown some African countries where the election of incumbent presidents was nullified by courts. According to Gathii & Akinkugbe (2022) the Kenyan 2017 and Malawi's 2020 presidential election petitions were ruled against the incumbent presidents based on the evidence of irregularities presented before the national courts of the countries.

In line with the above assertion, the study attempt to unravel the reasons for the continuous rulings of presidential election petitions in favour of the incumbent in Nigeria, were there no merits in the petitions? If yes, how has it shaped courts performance and objectivity in the country?

### **Research Objectives;**

Broadly, the study aimed at interrogating the performance of court in determining the 2019 presidential election petition. Specifically, the study aimed to achieve the following;

1. Determine if the Nigeria judiciary has the capacity to offer remedy, if presidential election fails to meet the expectation of freeness and fairness.
2. Ascertain the independency of the Nigerian courts.

### **Assessing the 2019 presidential election in Nigeria**

Presidential elections in Nigeria is often characterized with contradictions, dynamisms and at times sentiments. Since the return of the country back to democracy in 1999, six presidential elections has held. Available evidences reveals that most of the election within the period as resulted in serious and stiff litigations (Omotola, 2021). The problematic nature of the 1999 constitution has made the context for the highest office in the land to be highly enticing, competitive and complex. The constitution in the words of Alabi (2007) gave enormous power/functions to the office of the president that has made some contestants to believe that any route taken in getting there is irrelevant, but the available perks in that office is of great importance. It means that majority of them have submitted themselves to the 'Machiavellian' maxim "the ends justifies the means".

The 2019 presidential election in Nigeria was conducted on Saturday, 23 February 2019 in 1558 constituencies and 774 local government areas, across the 36 states of the federation. Okeke (2020) aptly captures the post- election, actual election issues of 2019 presidential election, when he submitted that a total of 91 approved political parties partook of the election that was conducted across 119973 polling units. The election was contested by 73 candidates, with a total of 84,004,084 as registered voters. Two notable candidates and political parties stood out in the election in terms of representativeness and number of votes gotten. They are; All Progressive Congress (APC) which is the ruling party, and the main opposition party Peoples Democratic Party (PDP).

According to local and foreign election observers such as the Centre for Democracy and Development (CDD) and, Policy and Legal Advocacy Centre (PLAC) the election was characterized with obvious anomalies that ranges from ward cancellation of votes occasioned by violence, logistical challenges, and misconduct. Riding on the strength of the irregularities in the conduct of the presidential election, the People's Democratic Party flag bearer, Atiku Abubakar submitted his petition challenging the declaration of President Muhammadu Buhari as winner of the 2019 presidential election (Premium Times, p 23, march, 2019). The party and its presidential candidate, Atiku Abubakar, brought together a team of seasoned lawyers to challenge the outcome at the Court of Appeal. The Court approved the PDP application to be allowed access to materials used for the election. The Court however, blocked the party's move to have the presidential election materials forensically examined. It was on this premise that the Supreme Court finally uphold the election result in favour of the sitting president, judicial decision that was greeted with serious dissatisfaction and suspicion especially among the opposition elements based on the evidences presented in court.

### **Theoretical Framework**

#### ***Separation of Power Theory***

The theory was propounded by French Philosopher Baron Montesquieu in 1748. Fairlie (1923) observed that, Montesquieu categorized the powers of government into three different units i.e, executive, judiciary and legislative. The separation of the various powers of government was highly essential to civil liberty because there can be no liberty if executive power is not separate from the legislative and judiciary (Fairlie, 1923). If the powers are not well separated, the life and liberty of the subjects would be exposed to arbitrary control, manipulations. The constitution of the United States of America for example, recognizes the importance of it. Where it was stated that, the executive power is vested in a President, legislative power vested in a congress, and judicial power in one supreme court. Oni (2020) noted that there is a total or resemblance of separation of power in every human society, such as the pre-colonial and colonial era of Nigeria. Importantly, separation of power is central to every country practicing democracy in the world, I order to prevent all forms of tyranny and overstepping of political authority within the political



system. proffering clarification on this Bradley and Ewing (2011) avers that executive i.e, ministers must not perform the functions of the legislature, while executive should not interfere in judicial decision, and the judicial powers and functions should be separated from the executive, to avoid abuse of power. It is argued that uniting power and functions of government in one man or one body could trigger corruption, manipulation, and high handedness in the state.

In Nigeria, studies such as (Zuckert, 2004; Kalu, 2018; Oni, 2020) concluded that partisanship have taken over Nigerian electoral politics at all levels. In that, judiciary has become extension of and tool for manipulation in the hand of the executive. The incumbent or ruling parties have succeeded to maneuver government institutions to serve partisan interests at election period. Nevertheless, since separation of power and rule of law are the oxygen of democracy, if there is no clear demarcation of powers and functions among the three arms of government, then democracy would be in danger.

According to studies, the structure of the judiciary in terms of its composition, appointment of judges, and finance can inadvertently affect the independence of that important branch of government (Adegbite *et al*, 2019; Diamond, 1987). Political partisanship and ideology of the executive, which has the authority to appoint judges, undermine judicial independence in this situation. The practice typically renders the judiciary highly susceptible to partisan manipulation. Diamond (1987) asserted in his study of the issues in the constitutional design of Nigeria's Third Republic that Nigeria's judiciary is weak and lacks independence, and thus frequently succumbs to political pressures. Comparatively, Supreme Court Justice was sacked in Kenya because of his ruling on presidential election petition of 2017 that saw to the removal of an incumbent president, a similar scenario played out in 2020 in Malawi (Gathii & Akinkugbe, 2022).

The deterioration of judicial independence exposes judges to undue pressure and manipulation; suffice it to say that a judge whose decisions are influenced by politics jeopardizes judicial independence (Nwabueze, 1987). The true perpetrators of the attempt to weaken judicial independence are the elites, who may never willingly work for its restoration, as evidenced by the weakening effects of their activities on the democratization process (Yagboyaju, 2008). In a similar vein, in his assessment of politicians' attitudes toward the judiciary, Nwabueze (1985) stated that "politicians in this country are strongly inclined and prepared to use pressure of various kinds to try to influence in their favor the judges' decision-from lobbying to intimidation to outright bribery". The separation of power theory is suitable to this study, because apart from contributing to knowledge on electoral and judicial politics, it has the prospects of explicating the susceptibility of judiciary to manipulations especially during election petitions and rulings.

## Methods

We used a qualitative descriptive design and a semi-structured In-depth Interview Guide (IDI) as the instrument for data collection. By means of a qualitative method, we utilized an interpretative phenomenological analysis (IPA). The aim of this tool according to Smith and Osborne (2007: 53) is to "explore in detail how participants are making sense of their personal and social world". This design was employed due to its capacity of eliciting in-depth understanding of the research topic. In order to identify themes from the data that were collected, key words and phrases; repetition of concepts and ideas (recurring ideas); indigenous categories; and metaphors and analogies (Ryan and Bernard, 2003) were employed.

The study population was made up of politicians, opinion molders, civil society, judges and academia who were purposively selected based on rich knowledge of the phenomenon. In getting the sample size, we selected 12 in all through a purposive sampling procedure. Because the study population are such categories as listed above, who are believed to possess adequate understanding of the political class and the happenings surrounding them, the purposive sampling procedure was adopted. The sampling procedure affords a researcher the opportunity to identify and draw sample from a population of interest.

Selection was based on participants' willingness to participate in the study. Prior to eventual participation, participants' consent was sought, after the objectives of the study were clearly explained. Respondents' rights were duly observed and respected. For example, we ensured

anonymity by identifying participants using an alphabet and a number: from PN1 to PN12 (i.e., participant number 1 to 12). For a participant to be included in the study, they had to be: (1) fall within the categories highlighted (2) demonstrated willingness to participate in the study. The sample size of the study consisted of eight males and four females who were between ages 18-70 years.

A semi-structured in-depth interview guide containing questions that bordered on the research objectives was employed. We also used open-ended questions to elicit information concerning the objectives of the study. We asked them to discuss issues on judicialization of politics in Nigeria, since 1999 and the performance of the courts in 2019 presidential election in Nigeria, "What are the factors responsible for unwarranted involvement of executive on issues that has to do with the courts in Nigeria?" and does the judiciary has the capacity to offer solution in cases of presidential election petitions?" Interview sessions were conducted with the help of an assistant who we had previously trained on qualitative data collection process. Interview sessions were conducted in neutral, quiet locations, at each participant's convenient time. Each interview session lasted between 45 and 1 hr. Interviews followed institutional review board (IRB) guidelines and was recorded for accuracy.

At the conclusion of each day of data collection, we transcribed and translated field notes and audio recordings of all IDI sessions, wherein appropriate measures were made to preserve the original meaning of what was said. The qualitative analysis software QSR NVivo Version 12 was used to assist with documentation and organization of themes and subthemes. In order to ensure validity, the researcher revisited the participants so that they could check correctness and accuracy of what had been interpreted. As Brink (1993: 37) has justified the use of this technique (also known as member checking) thus, "This ensures that the researcher and the informant are viewing the data consistently". Our subjective analysis brought forth themes and sub-themes that are presented in the result section.

## Results

### **What is your Opinion on judicialization of politics in Nigeria?**

#### ***"A Mixed feelings of Reaction"***

Many participants noted that the activities of the judiciary in Nigeria political space is such that is complex to explicate, some scored the judiciary low, while some graded the judiciary above average. Participants opined on the imperativeness of courts in any ideal society which should be seen as sacrosanct, they went on to say that the needless involvement of courts on issues that is political in nature, or requires political solution such as election could erode electorate/people's confidence in the judiciary. In addition, participants spoke about political selfishness in terms of "remaining politically relevant", through the control and manipulation of courts by political elites. As one participant remarked; "Politicians are the problems of the judiciary, and judiciary is not the problem as it were" (PN5, Male, 32 years). Other participants equally decried the rate of courts intervention in political process, citing examples of election petition cases, especially since the commencement of the fourth republic where courts ruled in a brazen manner in favour of the ruling political parties.

#### ***Success Recorded at the State level, but not yet at the National level***

Majority of the participants expressed optimism on the performance of the judiciary at the state governorship election petition tribunals. In this circumstance, lots of participants scored the judiciary high. They gave instances, where judges summoned courage to dispensed justice by awarding victory to deserving candidates based on available evidences. A high percentage of the participants recalled the tribunal judgements /rulings in the following cases; Olusegun Mimiko v. Segun Agagu of Ondo state on April 14 2007. Celestine Omehia of (PDP) v. Rotimi Amaechi of Rivers state also of (PDP), the former according to a participant "did not actually participated in the party primary, yet was made to fly the party ticket at the governorship election because of his closeness to the seat of power, but the tribunal on October, 25 2007 ruled in favour of the later'. The case between Adams Oshiomhole v. Osunbor of Edo state, the judgment came up for mentioning in 2008, and court ruled against the incumbent ruling party.

A participant clearly remarked that "yes, Nigeria courts have lived above board in the performance of their constitutional prescribed responsibility in the area of election petitions at the state level, but nothing significance has been done at the presidential election petitions tribunal since the commencement of the fourth republic and more importantly 2019 presidential election petition".

**Do you think Nigeria judiciary have the capacity to offer remedies when elections fail to live up to standard of fairness and freeness?**

***Lack of respect for the principle of separation of power is the problem.***

Participants quickly talked about utter disregard to the doctrine of separation of power. They went on to say that, politicians especially those in the executive arm of government are culpable in this regard. They pointed out the issue surrounding the appointment and dismissal of judicial official, which falls within the constitutional prerogative of the presidents. A participant had this to say "He who pays the piper dictates the tone". The meaning of this is that, the judicial official is helplessly helpless in the face of, super presidentialism nature of the Nigerian presidential system of government. Participants recalled the way and manner in which a onetime Chief Justice of the Federation in person of Walter Onnoghne was removed from office against the wish of the judiciary and even civil society organization on the eve of the 2019 presidential election. A participant, for instance attributed the removal to the "judicialization of politics and election in Nigeria" she went on to opined that "even if, such a high profiled Judicial officer had erred in the performance of his duties, the executive should have tarred a while perhaps after the election, to avoid public misinterpretation and misrepresentation of the whole idea, which later happened". Participants further commented about the poor funding of the judiciary, a situation where judges are financially induced to look the other way round, even in case of clear evidences is disturbing and worrisome because of poor welfare package for Nigeria judges.

***Ethnic, party and Religious Sentiments a Strong Factor.***

Participants spoke about appeal to ethnic and religious sentiments on the part of judicial officials when dispensing justice. A male participant of about 50 years old submitted thus; "Don't forget that Judges are also human beings that did not fall from above, they have their own culture, language and religion, and more often than not, that could take hold of them when faced with election petition matter. He said that, some would want to compromise to avoid being witch hunt by their kinsmen after retirement". Majority of the participants recalled the "Walter Onnoghne" saga, they argued that, he was removed from office to pave way for a northern candidate that seems to have a soft spot and preference for the ruling party (APC).

**For instance, courts in countries such as Kenya and Malawi had over time upturned incumbent elections, and ruled in favour of the opposition political parties, what do you think is the case with Nigeria in 2019?**

Participants in response to this question, asserted that judicial system in those countries mentioned is different from the ones in Nigeria. They remarked that separate courts different from regular/common courts are established specifically for election petition matters. A participant spoke about the way the Supreme Court of Nigeria threw a way with a wave of hand, the petitions submitted by the opposition party (PDP) in the 2019 Nigerian presidential election. He said that how would the highest court in the land established to be the last hope of the people blocked opposition access to have the election materials forensically examined". Participants went on to spoke about the evidences on INEC portal which suggested victory for the opposition party (PDP) which the Supreme Court also dispelled.

Finally, there was consensus among participants that, Judges/Lawyers in those countries are not actually given to materialism/wealth accumulation, but of paramount to them is name and professional recognition. They opined that the audacious nature of the judiciary in the face of utter intimidation, harassment and threat in those countries has enriched democracy, and triggered electorate confidence in the election process and the judiciary.

**Discussion**

The study examined participants' views of the performance of the Nigeria judiciary in the 2019 presidential election, and the capacity of courts to offer remedies when election fail to meet



standard of freeness and fairness. First, in consonance with findings from other studies (e.g., Odugbemi, 2019; Kerr & Wahman, 2019), the study found that one of the factor responsible for low performance of the judiciary in national executive election petition, especially 2019 presidential election is lack of strict submission to the doctrine of separation of power. The nature and operationalization of American style of presidentialism adopted by Nigeria since second republic in 1979 has made the president to be unarguably strong and powerful, making the removal of the occupant of the office difficult either through the courts in the case of election petition, or through legislative proceeding.

Furthermore, consistent with findings elsewhere (e.g., Gathii & Akinkugbe, 2022; Oni, 2020; Odugbemi, 2019), this study found that most of the judicial official in the country are yet to overcome material and monetary temptation. Participants submitted that poor funding and lack of financial independence of the courts could be responsible for this. Participants argued that, this phenomenon could lead to a serious miscarriage of justice, when judges are financial induced before presiding over election petition cases.

It is also discovered that most of the Judges in Nigeria especially at the apex Court do have ethnic, party and religious affiliation which have limited the capacity of courts to offer remedies when election fail to live up to standard of freeness and fairness, this discovery is consistent with the findings of scholars such (Kwarteng, 2014; Enabulele, 2008; Omotola, 2007). Findings shown that ethnic, party and religious consideration do come to play when some judges are considering election petitions in the country especially at the presidential level.

Nonetheless, it is important to add that findings above provide good examples to revalidate some of the key assumptions of separation of power doctrine. For example, the notion that the political elites purposely weakened the judiciary and may not willingly work for its restoration confirm the principles of individualism, self-regarding interests, in the theory. Also, political partisanship and ideology of the executive, which has the authority to appoint judges, undermines judicial independence. The instance that has made the judiciary to become the extension and tool for manipulation in the hand of the executive are indication that political elites in this part of the World failed to uphold the tenets of the theory, and has explored the loophole in it to advance their individual interest. These findings therefore underscore the critical role of separation of power theory in explaining the performance of the judiciary in 2019 presidential election in Nigeria.

## Conclusion

The study examined participants' views of the performance of the judiciary in 2019 presidential election petition in Nigeria, and the capability of the judiciary to offer remedies when election fail to meet standard of freeness and fairness. The result revealed that lack of total respect for the doctrine of separation of power, deliberate action of the political elites to manipulate and subjugate the judiciary, and ethnic, party and religious affiliation of judges when it comes to taken decision on election petition matters are responsible for judicialization of politics in the country in general and 2019 presidential election in particular. Our results have confirmed the basic tenets of the theory of separation of power. The study also found that democratic consolidation and sustainability could suffer as a result of unchecked phenomenon within the country political space. We equally found that this development can serve a tool for the elite class to clinch unto power and make their selves unnoticeably formidable. Our result also underscores the importance of the separation of power theory in our understanding of judicialization of politics in Nigeria.

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