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AN EXAMINATION OF THE JURISDICTION OF TRIBUNALS AND COURTS IN ELECTION PETITION LITIGATION



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Abstract

The paper looks at the fundamental nature of jurisdiction and its centrality to the determination or otherwise of Election Petitions at Election Petition Tribunals and Courts. It appraises the jurisdiction of Election Petition Tribunals and Courts against the backdrop of the grounds for challenging General Elections in Nigeria as provided for in the 1999 Constitution and the Electoral Act 2010 (as amended 2015). The study adopts the doctrinal approach to research and focuses on case law as reported in the assorted law reports available in the country. It highlights the issues and controversies that have enveloped, shrouded and delimited the exercise or otherwise of jurisdiction by tribunals and courts and posits the need for lawyers to examine the extant provisions of the statutes and case law so as to make the prosecution of petitions less cumbersome. The paper also addresses the various impediments to the jurisdiction of tribunals and courts. It recommends a careful study of the various grounds for challenging elections and recommends that practitioners should avoid redundant and frivolous objections so as to focus on the substance rather than technicalities due to the sue generis nature of election petitions.

Keywords – Jurisdiction, Election Petition, Grounds for Presentation of Election Petition.

1.0. Introduction

The jurisdiction of court is a creation of statute; it is fixed, inflexible and rigid and cannot be elongated or extended. It is not inherent in a tribunal or an appellate court; neither can it be conferred on a

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court by order of court.¹ It is the authority a court has to decide matters before it and it embraces every kind of judicial action. It is the power of the court to decide a matter in controversy and presupposes the existence of a duly constituted court with control over the subject matter and the parties.² It is a matter of substantial law and litigants cannot confer jurisdiction on a court where the constitution or statute or any provision of the Common Law says that the court does not have jurisdiction. It cannot be assumed in the interest of justice neither can it be conferred by consent. Nothing shall be intended to be outside the jurisdiction of the superior court but that which specifically appears to be so and on the contrary nothing shall be intended to be within the jurisdiction of an inferior court but that which is expressly alleged.

Even though courts have enormous powers, nonetheless these powers are not unlimited as they are confined, limited and circumscribed by the statutes creating them. It has been settled that Judges have the duty to expound the jurisdiction of courts and not expand it as doing so will be usurping the functions of the legislature. A court is also not at liberty to give itself jurisdiction by misconstruing a statute neither can it come under the guise of inherent powers.³

It is against this background that issues of objections and challenge to the jurisdiction of tribunals and courts have become the order of the day and are raised by litigants at the slightest prompting in election petition litigations. An issue of jurisdiction must be taken first being that it is a radical and crucial question of competence. Once there is a defect in competence, it is fatal, grave and terminal; and proceedings, no matter how well conducted, are a nullity.⁴

The fundamental importance of issue of jurisdiction is underscored by the principle of law to the effect that it can be raised for the first time at the Tribunal or the Court of Appeal or even at the Supreme Court. It may be raised by any of the parties or *suo moto* by

¹ ANPP v. Goni (2012) 49 (Pt.1) NSCQR 1 at P. 32.

² Ladoja v. INEC (2007) 12 NWLR (Pt.1047) 119 at Pp. 181, Paras B-D Ratio 1 (SC); AG Anambra State v. A.G Federation (2007) 12 NWLR (Pt.1047) 4 at P.80 paras B-D, (SC); AG Anambra State v. A.G. Federation (1993) 6 NWLR (Pt.302) 692; Shitta – Bey v. A.G Federation (1998) 10 NWLR (Pt.570) 392; Okonkwo v. Ngige (2007) 12 NWLR (Pt. 1047) 191 at Pp. 216-217 paras F-A.

³ Dangana v. Usman (2012) 49 (pt 2) 1064 at pp. 1092-1093, O.O. Adekeye, JSC.; African Newspapers of Nigeria v. Federal Republic of Nigeria (1985)2 NWLR (Pt.6) P.137.

⁴ Abubakar v. INEC (2012) 49 (Pt.2) NSCQR 786 at P.839, O.O. Adekeye, JSC.; Dangana v. Usman (2012) 49 (Pt.2) NSCQR 1064 at P. 1098 B. Rhodes Vivour, JSC; Olowu v. Nigerian Navy (2012) 49 (Pt.2) NSCQR 1157 at P. 1186; PPA V. INEC (2012) 13 NWLR (Pt. 1317) 215 at P. 245 Paras A-B

the court itself. Once it is raised it must be determined first. This is because a challenge on irregularity and competence of a matter or an action ought to be determined first before any further steps are taken.⁵

1.1. Conceptual Clarifications

In this section, the keywords in this paper shall be discussed to give insight into the subject of the research study.

1.2. The concept of Jurisdiction

Jurisdiction is the authority that a court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision. It is the power of the court to decide a matter in controversy and presupposes the existence of a duly constituted court with control over the subject matter and the parties.⁶ It is circumscribed by the constitution or the statute creating the court or by a condition precedent created by a legislation which must be fulfilled before the court can entertain the suit. The constitution or the enabling law vesting jurisdiction in the court is examined in the light of the claims of plaintiff. If the claims fall within the jurisdiction of the court, the court assumes jurisdiction. If it does not, the court declines jurisdiction.

Per Chukwuma-Eneh, JSC, (as he then was) in *Okonkwo v. Ngige*⁷ defined jurisdiction of a court as a very fundamental and priceless "commodity" in the judicial process. It is the fulcrum, centre piece, or the main pillar upon which the validity of any decision of any court stands and around which other issues relate. It cannot be assumed or implied, it cannot also be conferred by consent or acquiescence of parties. Per Onnoghen, JSC, (as he then was, later CJN), in *Dangana v. Usman*⁸ described jurisdiction as the 'life blood of every adjudication' because, according to him, a court or tribunal without jurisdiction is like an animal without blood, which means it is dead. That is why an issue of jurisdiction is crucial and fundamental in adjudication and has to be dealt with first and foremost no matter how brilliant the argument of any of the parties to the contrary. Similarly, per Muhammad, JSC, in the Leading judgment in *Yardua v. Yandoma*⁹ defined jurisdiction as 'the limits imposed on the power

⁵ *Riruwai v. Shekarau* (2008) LPELR-4898(CA) (P. 20, paras. D-G)

⁶ *Ladoja v. INEC* (2007) 12 NWLR (Pt.1047) 119 at Pp. 181, Paras B-D Ratio 1 (SC).

⁷(2007) LPELR - 2485(SC) (P. 25, paras. A-C)

⁸ (2012) LPELR-7827(SC) (P 42,Paras D-F)

⁹ (2014) LPELR-24217(SC) (Pp. 48-49, paras. E-B)

of a validly constituted court to hear and determine issues between persons seeking to avail themselves of its process by reference to the subject matter of the issues or to the persons between whom the issues are founded or to the kind of relief sought.'

The issue of jurisdiction subsists throughout the period of the pendency of a matter before a court or tribunal and can be raised at any stage of the proceedings. It can be raised by any of the parties or the court *suo motu* provided that where it is raised *suo motu*, parties are heard before the court will arrive at a decision. An objection to jurisdiction of a court or tribunal can even be raised for the first time on appeal by any of the parties or the court itself. But once raised, the court has the burden to resolve it first.¹⁰ There is jurisdiction as a matter of substantive law and as a matter of procedural law. While procedural jurisdiction can be waived by a litigant, no litigant can waive the issue of jurisdiction as a matter of substantive law.¹¹

Jurisdiction in judicial proceedings is a central and fundamental issue. It is a threshold matter which sits at the brink of legal tussles, which must be determined at the outset of any legal proceedings. If a court has no jurisdiction to hear and determine a case, the proceedings remain a nullity, *ab initio*, no matter how well conducted and decided. A defect in competence of a court is not only inherent, but extrinsic to the whole process of adjudication.¹²

A party's right to raise the issue of jurisdiction is available to him at all times and this gives credence to the immutable principle that the issue of jurisdiction can be raised at any stage of the proceedings at the court of trial or in the appellate courts. The importance of resolving the issue of jurisdiction before dealing with any other matter before a court or tribunal has long been settled by the Supreme Court. There are a plethora of authorities in this regard.¹³ It can be raised at any stage of the proceedings even without leave of the court.¹⁴ It is a radical and critical question of competence because if a court has no jurisdiction to hear and determine a matter, the proceedings are and remain a nullity *ab initio* no matter how well conducted or brilliantly decided they might be. It is the nerve-centre of the process of adjudication.¹⁵ It is determined one way or the other first before any further step is taken in a matter.

¹⁰ Olatunji v. Olakunde (2011) LPELR-4734(CA) (Pp.20-21, Paras.E-C).

¹¹ Etim v Obot (2010) 12 NWLR (Pt. 1207) 108 at 150 and Umaru v Aliyu (No 1)(2010)3NWLR(Pt. 1180)135 at 174

¹² Anyanwu v. Ogunewe (2014) LPELR-22184(SC) (Pp. 55-56, paras. G-B)

¹³ Ibid

¹⁴ Ishaku v. Kantiok (2011) LPELR-8944(CA) (P. 46, para. E)

¹⁵ Dapianlong v. Dariye (2007) 8 NWLR (Pt. 1036) 332 SC.

1.3. The concept of Election Petition

The nature of election petition matters is *sui generis*. It is not the same as everyday civil proceedings. It is neither here nor there. It is none of any of all the other procedures. It is a hybrid¹⁶ *cum* crossbreed proceeding; exceptional and an admixture, blend, fusion and cocktail of distinctive and inimitable laws and rules. It is adorned with odd, eccentric and idiosyncratic qualities and traits. The matters are highly sensitive¹⁷ and can be sensationalized being a derivative of politics. They are a specie of legal action enjoying special status.¹⁸ It is in a class,¹⁹ category and track of its own. It was in this vein that the Court of Appeal in *Sirika v. Bello*²⁰ admonished, *albeit* cautioned, that care must be taken to follow meticulously the conditions set in order to successfully ventilate a party's grievance before an election tribunal.

Section 133 of the Electoral Act 2010 (as amended 2015) establishes the only way an election conducted within the Act may be questioned through an election petition. It stipulates thus:

(1) No election and return at an election under this Act shall be questioned in any manner other than by a petition complaining of an undue election or undue return (in this Act referred to as an "election petition") presented to the competent tribunal or court in accordance with the provisions of the Constitution or of this Act, and in which the person elected or returned is joined as a party.

The jurisdiction of an Election Petition Tribunal is derived from Section 285 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and the Electoral Act, 2010 (as amended 2015).²¹ The procedure in an election petition is largely governed by laws made specially to regulate its proceedings.²² The proceedings have no affinity with any action known to common law.²³ Sometimes, the general statement of the law applicable in ordinary civil litigation may not be justice in election proceedings.²⁴ Its proceedings are unique

¹⁶ *Ikechukwu v. Nwoye* (2015) 3NWLR (Pt.1446) 367 SC, (Pp. 401, paras. G-H 402, paras. B-C); *Orubu v. N.E.C.* (1988) 5 NWLR (Pt.94) 323; *Onitiri v. Benson* (1960) SCNLR 314; *Oyekan v. Akinjide* (1965) NMLR 281

¹⁷ *Dingyadi v. INEC* (2011) 10 NWLR (Pt. 1255) 347 SC (Pp. 403-404, paras. H-B)

¹⁸ *Ajayi v. Nomiyi* (2012) 7 NWLR (Pt.1300) 593 CA (Pp. 615, paras. C-D; 622 para. D)

¹⁹ *Sirika v. Bello* (2011) 2 NWLR (Pt. 1232) 452 CA (P. 468, paras. D-E)

²⁰ (2011) 2 NWLR (Pt. 1232) 452 CA (P. 468, paras. D-E)

²¹ *Gebi v. Dahiru* (2012) 1 NWLR (Pt. 1282) 560 at P.616, para F; *Ugba v. Suswam* (2013) 4 NWLR (Pt. 1345) 427.

²² *Amaechi v. INEC* (2007) 18 NWLR (Pt. 1065) 170 CA (Pp. 195-196, paras. H-C)

²³ *Eluemunoh v. Obidigwe* (2012) 13 NWLR (Pt. 1317) 369 CA (Pp. 386-387, paras. G-A); *Abubakar v. Yar'Adua* (2008) 19 NWLR (Pt.1120)1; *Bamigboye v. Saraki* (2009) All FWLR (Pt.484) 1573

for which special provisions are made under the Constitution. Furthermore, the jurisdiction of an election tribunal to deal with election matters is of exceptionally peculiar nature and analogous to ordinary civil cases.²⁵ Any slight error in complying with the provisions of the Electoral Act could be fatal to a petition,²⁶ and it is the duty of courts to hear them without allowing technicalities to unduly fetter their jurisdiction.²⁷

Also an election petition shall not be defeated by an objection as to form if it is possible at the time the objection is raised to remedy the defect either by way of amendment or as may be directed by the Tribunal or Court.²⁸ Congruently, an application to set aside an election petition or a proceeding pertaining thereto shall show clearly the legal grounds on which the application is based,²⁹ and the objection challenging the regularity or competence of an election petition shall be heard and determined after the close of pleadings.³⁰ On the need to ensure that election petitions are not slaughtered on the altar of technicalities, per Sankey, JCA, Leading, in *Muhammed v. Abdullahi*³¹ held that:

It bears emphasis that courts are no longer inclined towards dwelling on technicalities but rather lean towards doing substantial justice in deserving cases. Mere irregularities, (such as in the instant case), would be waived by the Court unless an aggrieved party shows that he would be prejudiced or misled. The attitude of superior courts has consistently been to move away from undue reliance on technicalities to doing substantial justice even-handedly to parties in a case. Thus, the inclination in election petitions is to hear them out without regard to technicalities which may unduly fetter the jurisdiction of this Court and of the Tribunals.

1.4. Grounds for Presentation of Election Petition

Per Owoade, J.C.A., (Leading) in *Kalu v. Chukwumereije*³² defined a ground as 'the fundamental constituent or the essential part of anything.' It is a circumstance on which an opinion, inference, argument statement or claim is founded or which has given rise to

²⁴ *Uduma v. Arunsi* (2012) 7 NWLR (Pt. 1298) 55 CA, (P. 121, paras. D-E)

²⁵ *Amaechi v. INEC* (2007) 18 NWLR (Pt. 1065) 170 CA (Pp. 195-196, paras. H-C)

²⁶ *Kazeem v. Kola* (2011) LPELR-3698(CA) (P. 21, paras. A-B)

²⁷ *Sa'eed v. Yakowa* (2012) 49(Pt.1) NSCQR 453 at P. 492 at p. 492

²⁸ Paragraph 53(4) of the First Schedule of the Electoral Act 2010 (as amended 2015)

²⁹ Paragraph 53(3) of the First Schedule of the Electoral Act 2010 (as amended 2015)

³⁰ Paragraph 53(5) of the First Schedule of the Electoral Act 2010 (as amended 2015)

³¹ (2015) LER - CA OJSB - SN: CA/YL/EPT/TRS/SHA/55/2015

³² (2011) LPELR-9188(CA) (Pp. 38-39, paras. F-B)

an action, procedure or mental feeling. A valid reason justifying motive or what is alleged as such.³³ The Court of Appeal in *Ogboru v. Uduaghan*,³⁴ held that 'the ground of a petition is like a godfather from which the facts draw their strength.'

It is a fundamental requirement that a petitioner must state the ground which is the basis of his petition. A petition without a ground as provided for in the Electoral Act or the Constitution is dead on arrival. One cannot put something on nothing and expect it to stand. Section 138 of the Electoral Act 2010 (as amended 2015) stipulates thus:

138.(1) An election may be questioned on any of the following grounds, this is to say:

- (a) that a person whose election is questioned was, at the time of the election, not qualified to contest the election;
- (b) that the election was invalid by reason of corrupt practices or non-compliance with the provisions of this Act;
- (c) that the respondent was not duly elected by majority of lawful votes cast at the election; or
- (d) that the petitioner or its candidate was validly nominated but was unlawfully excluded from the election.
- (e) that the person whose election is questioned had submitted to the Commission affidavit containing false information of a fundamental nature in aid of his qualification for the election.

(2) An act or omission which may be contrary to an instruction or directive of the Commission or of an officer appointed for the purpose of election but which is not contrary to the provisions of this Act shall not of it be a ground for questioning the election.

A Petition can be presented only on the basis of one or more of the grounds stated in the Electoral Act. The ground for the petition must be stated in terms clear enough as to bring it within one of the grounds listed in Section 138 of the Electoral Act 2010 (as amended 2015). If it is expressed in terms that do not show that it is one of the grounds listed in the petition, then it can be struck out.³⁵ As grounds recognized for presenting an election Petition are acts or omission that were contemporaneous with the conduct of the election, and that an election Tribunal has no power to investigate matters that took place before the conduct of the election.³⁶

³³ Ibid

³⁴ (2012) All FWLR(Pt.651)1475, 1508

³⁵ Ngige v. INEC (2014) LPELR-25413(CA) (Pp. 100-102, paras. F-A)

³⁶ Katsayan v. Fago (2011) LPELR-8818 (CA) (P. 22, paras. C-E); see also ANPP v. Usman (2008) 12 NWLR (Pt. 1100) 1 at 55 and Ibrahim v. INEC (1999) 8 NWLR (Pt. 614) 334.

An election petition which strays outside the circumscribed precinct will be justifiably struck out as being incompetent. A petition containing grounds which are not recognized by law is incompetent. In the case of *Nwabochi v. Gift*,³⁷ the petitioner, a candidate of the Democratic Party of Nigeria was recorded to have scored a majority of votes as against the first respondent. The first respondent was, however, declared elected instead of the petitioner on the ground that the petitioner had been disqualified by the second respondent, the electoral body, two days before the election. The petitioner filed a petition contending that he had no notice of his disqualification or the reason for it and therefore the disqualification was invalid. In striking out the petition, the Court of Appeal construing Section 89(1) of the Local Government (Basic Constitutional and Transitional Provisions) Decree No. 7 of 1997 held that none of the grounds apply to the case since the petitioner actually took part in the election but lost to the first respondent even though the latter was said to have scored lesser votes. The Court of Appeal, per Nsofor, JCA (as he then was) held thus:³⁸

As the law stands, it does not appear the present petitioner may present an election petition under any of the grounds stated in section 89 (1) of decree no. 7 of 1997. His remedy may lie elsewhere. What has happened may have been beyond the contemplation of the legislation in question.

A petitioner cannot make contraventions with the instructions of the Commission, (such as those contained in the Approved Guidelines and Regulations for the conduct of the 2015 General Elections), a ground for questioning an election. In this wise, per Sankey, J.C.A., Leading, in *Muhammed v. Abdullahi*³⁹ held that:

.....Consequently, I find that an Election Petition which is presented outside the ambit of the grounds specified in Section 138(1) of the Electoral Act 2010 (as amended), is void.

A valid ground of a Petition is a sine qua non for the right to be heard in a Petition. Where there is no competent ground, the Tribunal lacks jurisdiction to hear the Petition.

A Petitioner cannot, in law, on his own volition go outside the grounds as prescribed by Section 138(1)(a) - (e) of the Election Act 2010 as amended.⁴⁰ In addition to the grounds for petition listed in

³⁷ (1998) 12 NWLR (pt 579) 522

³⁸ Ibid, at page 526, Paras. G-H

³⁹ (2015) LER - CA OJSB - SN: CA/YL/EPT/TRS/SHA/55/2015

⁴⁰ *Abubakar v. Ali* (2015) LER - CA 5864 - SN: CA/YL/EPT/TRS/SEN/96/2015

the Act, the Supreme Court in *Obasanjo v. Yusuf*,⁴¹ stated that the provisions of Sections 239 (1) (a) and 285(1)(a) and (2) of the 1999 Constitution created additional respective ground for questioning the election of the President or Vice-President, members of National Assembly, or Governor or Deputy Governor or members of any State House of Assembly. One of the reliefs claimed by the petitioner read: IT MAY BE DETERMINED that 1st Respondent was not duly or validly elected and or returned as the President of the Federal Republic of Nigeria pursuant to the election held on 19th April, 2003.

The Supreme Court held that the ground fell within the scope of Section 239(1) (a) of the Constitution and was completely outside the four grounds stipulated under the Electoral Act (now five grounds). In *Ogboru v. Ibori*,⁴² it was held that Section 134 of the Electoral Act 2002 which is in *pari materia* with Section 138 of the Electoral Act 2010 (as amended 2015), did not make "irregularities" one of the grounds of challenging an election. The word "irregularities" was stated not to be in any sense synonymous with corrupt practices or non-compliance which was one of the specific grounds set out in the section. Thus, paragraph 4 of the petition in that case questioned the election on the ground of "irregularities" was held to be unknown to the Electoral Act, 2002 and consequently struck out.

Similarly, a single ground in an Election Petition if within the ambit of Section 138(1)(a) - (e) of the Electoral Act 2010 (as amended 2015) can sustain an Election Petition since it has the requisite legal capacity to render it competent in law.⁴³

1.5. Source of Jurisdiction in Election Petitions

The jurisdiction of the Election Petition Tribunal is derived from Section 285 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and the Electoral Act, 2010 (as amended 2015).⁴⁴ Jurisdiction of all superior courts of record is constitutional, same having been donated by the Constitution and cannot be circumscribed or limited by any other statute, or Practice Directions. The issue of jurisdiction cannot be subjected to the dictates of any statute, including rules of court.⁴⁵ It has been decided in a plethora of cases by the Supreme Court that the jurisdiction of courts is granted by

⁴¹ (2004)9 NWLR (pt.877) 144

⁴² (2004) 7 NWLR (pt. 871)192

⁴³ *Anderifun v. Adaki* (2015) LER- CA XBPP - SN: CA/YL/EPT/TRS/SHA/48/2015

⁴⁴ *Gebi v. Dahiru* (2012) 1 NWLR (Pt. 1282) 560 at P.616, para F.

⁴⁵ *Okereke v. Yar'adua* (2008) LPELR-2446(SC) (P. 47, Paras. A-D)

statute or constitution but not by courts. Per Ariwoola, JSC (Leading) in *Ugba v. Suswan*⁴⁶ held that no court shall have jurisdiction to go beyond the provisions of the enabling law, otherwise, it will be *ultra vires*. It is a fundamental issue, the absence of which would rob a court, or any court for that matter, the power to determine a suit.⁴⁷ It cannot be acquired or conferred on the court by the consent of the parties, or because the court was oblivious or mistaken as to the defect in its jurisdiction.⁴⁸

Section 285 (1) of the Constitution established the National and State Houses of Assembly Election Tribunals for each state of the Federation and the Federal Capital Territory to hear and determine Petitions. The Tribunal so created must be with respect to:

- a) an election;
- b) against a person who was deemed elected;
- c) whether that person was duly elected a member of the National Assembly/House of Assembly for the State; and
- d) the right created is exclusive to the Tribunal and cannot be exercised by any authority.

Similarly, Section 285 (2) of the Constitution established in each State of the Federation election tribunal to be known as the Governorship Election Tribunal which shall exclusively determine whether a person has been duly elected a Governor or Deputy Governor of a State. By Section 239 (1) of the Constitution, the Court of Appeal was vested with jurisdiction to adjudicate on challenges to a presidential election thus:

- 1) Subject to the provisions of this Constitution, the Court of Appeal shall, to the exclusion of any other court of law in Nigeria, have original jurisdiction to hear and determine any question as to whether:
 - (a) any person has been validly elected to the office of President or Vice-president under this Constitution; or
 - (b) the term of office of the President or Vice-President has ceased; or
 - (c) the office of President or Vice-President has become vacant.
- 2) In the hearing and determination of an election petition under paragraph (a) of subsection (1) of this section, the Court of Appeal shall be duly constituted if it consists of at least three justices of the Court of Appeal.

⁴⁶ (2012) LPELR-9726(SC)

⁴⁷ *Ugwa v. Lekwauwa* (2010) LPELR-3326(SC) (P.22, Paras. B-C)

⁴⁸ *Adams v. Umar* [2009] 5NWLR (PT. 1133) P. 41 at page 116 para. D

Thus original jurisdiction is vested in the Court of Appeal to adjudicate, outside its appellate jurisdiction,⁴⁹ with respect to matters arising from the National Assembly, State House of Assembly and Governorship Election Tribunals.

1.6. Conditions for Exercise of Jurisdiction

The jurisdiction of all superior courts of record is constitutional, same having been granted by the constitution and cannot be restricted or manacled by any statute. It cannot be subjugated to the shackles or fetters of any statute, not even the rules of court. A party's right to hoist the issue of jurisdiction as a bar to the hearing of a matter is available to him at large and at all times.⁵⁰ This gives credence to the unassailable rule that the issue of jurisdiction can be raised at any stage of the proceedings, at the court of trial or in the appellate courts. The exercise of jurisdiction of a court does not exist in *vacuo*. There are condition precedents to the exercise of jurisdiction in any matter. Where a party's case was not initiated with due process of the law and upon fulfillment of condition precedent to the exercise of jurisdiction by the trial court, the court would be deprived of jurisdiction to entertain the action.⁵¹ For a court of law or tribunal to have jurisdiction to hear and determine any matter before it, it must satisfy the settled conditions or features as captured by per Onnoghen, JSC (as he then was, later CJN) in the Leading judgment in *Ohakim v. Agbaso*⁵² that:

- a) it must be properly constituted as to the number or qualification of its membership;
- b) any condition precedent to its exercise of jurisdiction must have been fulfilled;
- c) the subject matter of the case must be within its jurisdiction; and,
- d) the case or matter must have been brought to the court by the due process of the law.

There are a number of processes that a court considers in determining whether it has jurisdiction to entertain a cause or matter or not.⁵³ The court considers whether:⁵⁴

⁴⁹ Section 247 of the 1999 Constitution

⁵⁰ *Okereke v. Yar'adua* (2008) LPELR-2446(SC) (P. 47, Paras. A-D)

⁵¹ *PDP v. Sylva* (2012)13NWLR Pp. 142, paras A-B; 151, Paras. D-E); *Madukolu v. Nkemdilim* (1962) 2 SCNLR 341

⁵² (2010) LPELR-2359(SC) (Pp. 25-26, paras. F-A)

⁵³ *Anyanwu v. Ogunewe* (2014) LPELR-22184(SC) (Pp. 44-46, paras. G-D)

⁵⁴ *Ibid*

- a) It is properly constituted as regards numbers and qualification of the members of the bench such that no member is for any reason disqualified;
- b) the subject matter of the case is within its jurisdiction and there is no feature of the case which prevents the court from exercise of its jurisdiction; and
- c) the case comes before the court initiated by due process of law and upon fulfillment of any condition precedent to the exercise of jurisdiction.

Per Agube, JCA, (Leading) in *Ogara v. Asadu*⁵⁵ held that all these requirements must co-exist conjunctively in order for the jurisdiction of the court to be invoked and exercised by a claimant or plaintiff. Thus, where any or all of these basic elements or requirements are lacking and a court, be it trial or appellate, goes ahead to hear and determine a case, the proceeding shall be a nullity no matter how brilliantly and well conducted as well as sound the judgment may be.⁵⁶

There is a plethora of cases that provide the procedure to guide the courts in the determination of the issue of their competence where same is raised. The court looks at the claim of a plaintiff as evidenced in the writ of summons and statement of claim which determines the jurisdiction of the court. However, from the totality of the pleadings of parties and the evidence adduced to establish same, it becomes obvious that a court has no jurisdiction with regards to the subject matter of a dispute or that the claim, in reality, cannot come within the statutory jurisdiction of a court, the court will take into account the totality of the facts pleaded by the parties and the evidence adduced to establish same in determining whether it has jurisdiction or not.⁵⁷

As firmly settled, where the issue of a court's jurisdiction is raised in any proceedings and at any stage, it must be taken first, immediately, promptly or expeditiously.⁵⁸ It follows also that where a court lacks jurisdiction to hear a matter, for reasons of the processes being fundamentally defective, the implication is that the matter shall be struck out for being incompetent. Such processes are incapable of initiating the proceedings as the courts are robbed of the jurisdiction to hear and determine the action as initiated.⁵⁹ Issues of preliminary

⁵⁵ (2014) LPELR-22862(CA) (Pp. 39-41, paras. G-A)

⁵⁶ *Umanah v. Attah* (2006) 17 NWLR (Pt.1009) 503 (S.C.)

⁵⁷ *Yar'Adua v. Yandoma* (2014) LPELR-24217(SC) (P. 49, paras. B-G)

⁵⁸ *Nwankwo v. Yar'adua* (2010) LPELR-2109(SC) (P. 36, paras. D-E)

⁵⁹ *Ibid*

objections raised on substantive law, at whatever stage in a proceeding, are resolved by the court and no argument that the other party shall suffer a miscarriage of justice will suffice. Such objections take primacy over the subsistence of a hearing and proceeding. It puts the proceedings on hold, to say the least, as no matter how well conducted, amounts to a nullity. Besides, where the court lacks jurisdiction, in such instances, parties cannot, no matter how well intentioned, confer or bestow jurisdiction on the court by consent or acquiescence. Per Fabiyi, JSC, (as he then was) in *Anyanwu v. Ogunewe*⁶⁰ held that:

This court will continue to stress the point when same is required, as herein, that jurisdiction is a very fundamental issue. As a threshold issue, it should be determined at the earliest stage of the proceedings. This is because if a court has no jurisdiction to hear and determine a case, the proceedings remain a nullity ab initio no matter how well conducted and decided. A defect in competence is not only intrinsic, but extrinsic to the entire process of adjudication.

Usually where a court's jurisdiction is challenged by the defence, per Kekere-Ekun, JSC, in the Leading judgment in *APGA v. Anyanwu*,⁶¹ admonished that it is better to settle the issue one way or the other before proceeding to hear a case on the merits. Any failure by the court to determine any preliminary objection or any form of challenge to its jurisdiction 'is a fundamental breach which renders further steps taken in the proceedings a nullity.'⁶² It is trite, therefore, that where a court finds that it lacks jurisdiction to adjudicate on any matter, the proper order to make is an order of striking out.⁶³ Such order is the only thing left of the proceeding regardless, even at the stage of about delivering judgment.

1.7. Scope of Jurisdiction of Election Petition Tribunals and Courts

An election matter is *sui generis*, that is, of its own kind or class. In other words, an election matter is unique and peculiar, different from other civil matters. Thus election petitions and laws, being *sui generis* are regarded, construed and applied with the requisite circumspection and non-conformity to ordinary civil or criminal proceedings especially in matters which will facilitate or give effect to the objective of the constitution in ensuring that the organs created

⁶⁰ (2014) LPELR-22184(SC) Pp. 55-56, paras. G-B.

⁶¹ (2014) LPELR-22182(SC) Pp. 25-26, paras. E-G.

⁶² *Ibid*

⁶³ *Dangana v. Usman* (2012) LPELR-7827(SC) (Pp 35 36, Paras G-A)

by it are functional. Consequently, it is handled specially.⁶⁴

Election matters are in a class of their own and are entirely statutory. The writs of *certiorari* and *mandamus* being common law remedies, as well as others, cannot be invoked in a purely election matter. Where they are invoked, they can change the character of the matter, as an election matter belongs to the election tribunal and is outside the jurisdiction of the High Courts. A decision of an election tribunal cannot be interfered with by an order of *certiorari*. Although the orders of *certiorari* and prohibition will issue against inferior courts, *certiorari* does not lie to an election court consisting of a High Court Judge trying an election petition. In *Abubakar v. Yar'adua*,⁶⁵ Per Katsina-Alu, J.S.C. (as he then was, later CJN, of blessed memory) held that an election petition is *sui generis*. It is in a class by itself. It is different from a common law civil action.

An Election Petition Tribunal is not an all-purpose court that can entertain all sorts of claims or reliefs. It is created for election matters alone.⁶⁶ As such, an election tribunal is not endowed in law with the power to adjudicate on other matters that are not election matters nor can it sit on appeal in a cause or matter pertaining to an interim order issued by the Federal High Court and so cannot vary or review the interim order in any manner whatsoever.⁶⁷ It is also not vested with the power to embark on any collateral proceedings of enquiry into whether a candidate was in breach of the Code of Conduct by failure to declare his assets to the Code of Conduct Bureau.⁶⁸

It is settled beyond peradventure that once the issue of jurisdiction is raised, the only jurisdiction possessed by the Court or Tribunal at that stage is to consider whether it has jurisdiction and once it establishes that it has no jurisdiction, the consequential order the Tribunal will make is an order striking out the matter.⁶⁹ Any other thing done apart from an order striking out the petition is a nullity. Per Bada, JCA, (as he then was) in *Ibaku v. Ebini*,⁷⁰ held that:

Even if it were the last of the issues raised by the parties, it would have been considered first because the issue of Jurisdiction is so fundamental and important. It is a *sine qua non* to an action, and it must be decided as soon as it is raised. It is due to its importance that

⁶⁴ *Ugba v. Suswam* (2013) 4 NWLR (pt.1345) 427 (SC), (Pp. 457-458, paras. H-A); see also *Egharevba v. Eribo* (2010)9 NWLR (Pt. 1199) 411

⁶⁵ (2008) 19 NWLR (PT 1120) 1 AT 82

⁶⁶ *Obi v. INEC* (2007)11NWLR(Pt 1046)565 at 635

⁶⁷ *Kubor v. Dickson* (2013) 4 NWLR (pt. 1345) 534, P. 582, Paras. G-II (SC)

⁶⁸ *Sanyaolu v. INEC*(1999)7NWLR(Pt.612)600

⁶⁹ *Goli V Belief* (2008) LPELR-8644(CA) (P. 23, paras. D-F)

it can be raised by parties at any stage of the case and even for the first time before an Appellate Court of any status. It is like what blood is in human body because without blood the organs of the body cannot function at all.

Additionally, there is a difference between what constitutes an irregularity and a nullity.⁷¹ In *Madukolu v. Nkemdilim*,⁷² Bairamian F.J., (as he then was, now of blessed memory) held that:

Any defect in competence is fatal, for the proceedings are a nullity however well conducted and decided, the defect is extrinsic to the adjudication. If the Court is competent, the proceedings are not a nullity; but they may be attacked on the ground of irregularity in the conduct of the trial; the argument will be that the irregularity was so grave as to affect the fairness of the trial and the soundness of the adjudication. It may turn out that the party complaining was to blame, or had acquiesced in the irregularity or that it was trivial; in which case the appeal court may not think fit to set aside the judgment. A defect in procedure is not always fatal.

In *Adeigbe v. Kusimo*,⁷³ Ademola C.J.N. (as he then was, now of blessed memory) held that:

...There seems to be a confusion of thought between jurisdiction and regularity: between the competence of the court to hear the case and the propriety of a bench who had not heard all the evidence adjudicating on the case.

The existence or absence of jurisdiction goes to the very root of the matter so as to sustain or nullify a court's decision or order in respect of the relevant subject matter.⁷⁴ In effect, a court only assumes jurisdiction when a suit is properly initiated before it.⁷⁵

1.8. Impediments to Jurisdiction in Election Petitions

A tribunal or court may lack the jurisdiction to entertain a petition where the constitution or statutes oust such or there are fundamental defects as to the form and content of the petition. A petition can only be valid or competent if it complies strictly with the statute conferring jurisdiction on the tribunal empowered to entertain or hear the matter.⁷⁶ Any slight error in complying with the provisions of the Electoral Act could be fatal to a petition.⁷⁷

⁷⁰ (2009) LPELR-19779(CA) (P.38, Paras. C-E)

⁷¹ *Etene v. Nyong* (2011) LPELR-9261(CA) (P. 15, paras. B-G)

⁷² (1962) NSCC 374 at p.380

⁷³ (1965) NSCC 188 at page 191

⁷⁴ *Abdulsalam v. Abdulraheem Salam* (2002) 6 SCNJ Page 388

⁷⁵ *Frank v. Abdu* (2003) FWLR Part 158 Page 1330 at 1346.

⁷⁶ *Ohakim v. Agbaso* (2010) LPELR-2359(SC) (P. 68, paras. C-D)

⁷⁷ *Kazeem v. Kola* (2011) LPELR-3698(CA) P. 21, paras. A-B.

The formal contents of a competent election petition are statutorily set out in paragraph 4 (1) of the 1st Schedule to the Electoral Act 2010 (as amended 2015). It provides as follows:

An election petition under this Act shall-

- (a) Specify the parties interested in the election petition;
- (b) Specify the right of the petitioner to present the election petition;
- (c) State the holding of the election, the scores of the candidates and the person returned as the winner of the election; and
- (d) State clearly the facts of the election petition and the ground or grounds on which the petition is based and the relief sought by the petitioners.

In an election petition, the rights and duties of either petitioner or respondents are conferred by statute and either side has *locus* to take objection in law to any failure by either party to comply with the provisions of the law.⁷⁸ Similarly, an election tribunal secretary has a duty not to accept a defective petition,⁷⁹ and certain defects do not invalidate an election petition.⁸⁰

A respondent who has an objection to the hearing of the petition shall file his reply and state the objection therein, and objection shall be heard along with the substantive petition.⁸¹ Congruently, an application to set aside an election petition or a proceeding pertaining thereto shall show clearly the legal grounds on which the application is based,⁸² and the objection challenging the regularity or competence of an election petition shall be heard and determined after the close of pleadings.⁸³

There are a plethora of situations and conditions that oust, impede or encumber the jurisdiction of election petition tribunals which sit as trial courts to hear and determine Governorship, National and State Houses of Assembly petitions as well as the Court of Appeal which sits as the trial tribunal to determine Presidential election petitions.⁸⁴ A court or tribunal will lack jurisdiction to entertain a petition where it is non justiciable,⁸⁵ statute barred,⁸⁶ or the petition

⁷⁸ *Uzodinma v. Udenwa* (2004) 1NWLR (Pt 854) 303 at 345 paras H

⁷⁹ *Nkeiruka v. Joseph* (2009) 5 NWLR (Pt 1135) 505 at 527

⁸⁰ S. 139 (1)(2) of the Electoral Act 2010 (as amended 2015)

⁸¹ Para 12 (5) of the First Schedule of the Electoral Act 2010 (as amended 2015)

⁸² Paragraph 53(3) of the First Schedule of the Electoral Act 2010 (as amended 2015)

⁸³ Paragraph 53(5) of the First Schedule of the Electoral Act 2010 (as amended 2015)

⁸⁴ *Datau Polycarp Dama, Objections and Arguments in Election Petition Litigation* (Jos, Manifold Strategy Centre Ltd, 2020) ar pp 1-25

⁸⁵ *Ozigbo v. PDP* (2010) 9 NWLR (Pt. 1200) 601 at P. 647 paras D-E; *Madukolu v. Nkemdilim* (1962) 2 SCNLR 341.

⁸⁶ *Sylva v. INEC* (2015) LPELR-24447(SC) (P.40,paras.A-C)

On whether an appellate court has the jurisdiction to extend the time frame for an election petition as provided under section 285 (6) of the constitution, per Ariwoola, J.S.C. (Leading) in *Ugba v. Suswam* (2012) LPELR-9726(SC) held that:

Therefore, in compliance with the provisions of section 285 (6) of the constitution (supra), once an election tribunal gives an appealable decision or makes an order within 180 days and an aggrieved party appeals, it is my firm view that time continues to run until the 180 days shall be exhausted. An appellate court does not have the jurisdiction to extend or enlarge the 180 days once it expires. However, one thing is certain and not disputable, an appellate court, when an appeal succeeds within the time prescribed is competent to order retrial or hearing *denovo*. But certainly not after the time prescribed has lapsed or expired. Any such order or directive when the main substratum, such as, petition before the tribunal has ceased to exist having been either struck out or dismissed by the trial court becomes a nullity and will have no effect whatsoever. raises 'domestic issues of political parties',⁸⁷ and/or issues raised border on pre-election matters.⁸⁸ A tribunal will lack jurisdiction where there are no proper parties before it,⁸⁹ or the petitioner lacks the *locus standi*;⁹⁰ or the petition raises academic,⁹¹ hypothetical,⁹² speculative⁹³ and/or moot matters.⁹⁴

Others include where there is a successful plea of *res judicata* or *estoppel*,⁹⁵ wherein the court or tribunal has become *functus officio*,⁹⁶ or where the petition itself constitutes an Abuse of the Court Process; where there is the improper and tortuous use of a legitimately issued

⁸⁷ King v. INEC (2008) LPELR-4403(CA) (P.34, paras. C-D)

⁸⁸ Ibid

⁸⁹ Bagwai v. Goda (2010) LPELR-3842(CA) (Pp.13-14, paras. F-A)

⁹⁰ PPA v. Saraki (2007) LPELR-8072(CA) (P. 31, para. C)

⁹¹ Okotie-Eboh v. Manager (2004) LPELR-2502(SC) (P. 35, paras. E-G); In AG of Plateau State v. AG of the Federation, (2006) 3 NWLR (Pt 967) 346 at 419 per Tobi, JSC (as he then was, now of blessed memory) stated the law as follows: A suit is academic where it is merely theoretical, makes empty sound, and of no practical utilitarian value to the plaintiff even if Judgment is given in his favour. A suit is academic if it is not related to practical situation of human nature and humanity. A suit is speculative if it is based on speculation. A suit is speculative if it is not supported by facts or very low on facts but very high on guesses. As courts of law are not established to adjudicate on guesses but on facts such actions are struck out. A suit is hypothetical if it is imaginary and not based on real facts. A suit is hypothetical if it looks like a "Mirage" to deceive the defendant and the court as to the reality of the course of action. A suit is hypothetical if it is a semblance of the actuality of the cause of action or relief sought.

⁹² Salik v. Idris (2014) LPELR-22909(SC) (P. 30, paras. A-F)

⁹³ PPA v. INEC (2011)11-12SC (Pt II) 40

⁹⁴ Trade Bank v. Benillux (2003)7SCM

⁹⁵ APC v. PDP (2015) LPELR-24587(SC) (P. 116, paras. B-D)

⁹⁶ Dingyadi v. INEC (2011) LPELR-950(SC) (P. 44, Paras. C-D)

court process to obtain a result that is either unlawful or beyond the process's scope.⁹⁷ The abuse lies in the multiplicity and manner of the right rather than the exercise of the right *per se*.⁹⁸ An abuse of process always involves some bias, malice, deliberateness or some desire to misuse or pervert the system.⁹⁹ To sustain a charge of abuse of process of court, as a basis for objection, there must co-exist *inter alia*:¹⁰⁰

- a) A multiplicity of suits;
- b) The suit is between the same opponents;
- c) The suit is on the same subject matter;
- d) The suit is on the same issue.

Additionally, a court's defective composition, improper quorum and disqualification of members could oust its jurisdiction to entertain a petition. A court has jurisdiction when it is, *inter alia*, properly constituted as regards members and qualification of members of the bench and no member is disqualified for one reason or the other.¹⁰¹ Furthermore, a petition is incompetent and a tribunal without jurisdiction, where it is filed before a declaration of a winner by the electoral body. There must be a return made before a *res* will exist upon which a petition can be filed by a candidate in a general election.¹⁰² A cause of action must exist and it only accrues on the date on which the event happened.¹⁰³ The election tribunal has no jurisdiction over inconclusive election in respect of which there has not been a return of a declared winner. In *APGA v. Ohakim*,¹⁰⁴ a petition which challenged an inconclusive election was held to be incompetent and that the tribunal was bereft of the jurisdiction to adjudicate on the petition. Jurisdiction is not inferred or imagined but statutory.¹⁰⁵ Where a Statement of Claim discloses no reasonable cause of action, the proper order to make is to strike out the Statement of Claim and dismiss the action.¹⁰⁶ There must be a cause of action before an intending litigant can initiate any legitimate proceedings.¹⁰⁷

⁹⁷ The Black's Law Dictionary, 2009, ninth edition, page 11

⁹⁸ *Dingyadi v. INEC* (2010) 4-7 SC (Pt 1) 76

⁹⁹ *African Reinsurance Corp v. JDP Construction Nig Ltd* (2003) 4 SCM 1

¹⁰⁰ *Umeh v. Maurice Iwu* (2008) 2 SCNJ 272

¹⁰¹ *Apapa v. INEC* (2011) LPELR-3607(CA) (P. 27, paras. C-D)

¹⁰² *Ohakim v. Agbaso* (2010) LPELR-2359(SC) (P. 68, paras. C-D)

¹⁰³ *Umaru v. Aliyu* (2009) LPELR-5052(CA) (Pp.44-45, paras.G-A)

¹⁰⁴ (2009)4NWLR(Pt.1130)116

¹⁰⁵ *Ezeobi v. Nzeka*(1989)INWLR(Pt.98)478, 487 & 489

¹⁰⁶ *Oloride v. Oyebi* (1984) 5 SC 1

¹⁰⁷ *Osigwe v. PMCL* (2009) 1-2 SC (Pt 1)80

In addition, an election tribunal has no jurisdiction to try criminal offences. While an election can be questioned on the ground of offences against the relevant provisions of the Electoral Act and an election tribunal will be acting within the ambit of the law in entertaining such complaint, a tribunal's verdict on its finding on criminal allegations must be confined to how proven criminal allegations affect the conduct of an election.¹⁰⁸ Election tribunals lack jurisdiction to try criminal offences. In *Doukpolagha v. George*,¹⁰⁹ the Court of Appeal held that the law does not empower an election tribunal to conduct "all trials" in respect of elections. However, the Independent National Electoral Commission is empowered by the Electoral Act to consider any recommendation to it by a tribunal with respect to the prosecution by it of any person from an offence disclosed in any election petition.¹¹⁰

2.0. Conclusion and Recommendations

It is trite that if a suit is incompetent, the court's jurisdiction is affected thereby. Where a suit is not competent, the court lacks competence to entertain it. The incompetence of a suit affects the competence of a court to try it, and lack of competence in a court affects the jurisdiction of the court. A court only has jurisdiction to try a matter when the subject matter is within its jurisdiction, or when the suit is initiated by due process and there is no feature therein which robs the court of its jurisdiction; and all the conditions precedent to the exercise of jurisdiction have been fulfilled.

It is therefore pertinent that legal practitioners focus more on a careful and continuous study of the various grounds provided by the 1999 Constitution and the Electoral Act 2010 (as amended 2015) so as to avoid situations where otherwise convincing petitions are thrown out for want of jurisdiction or for not complying with the form and content of petitions which are *sue generis*.

There is also the need to avoid frivolous objections by parties so as to focus on substantive justice rather than morbid adherence to technicalities. The essence of any petition is to ensure that only those who have the mandate of the people are allowed to govern and it therefore behooves on legal practitioners to be more meticulous and diligent so as to appreciate the *sue generis* nature of election petitions litigation in the country.

¹⁰⁸ *Agomo v. Ogwuegbu* (1999) 4 NWLR (Pt 599) 405

¹⁰⁹ (1992) 4 NWLR (Pt. 236) 444, 458

¹¹⁰ Section 149 of the Electoral Act 2010 (as amended 2015)