



**BETWEEN SUBSTANTIAL JUSTICE AND THE RULE IN
DEMONSTRATION OF EVIDENCE BY WITNESSES IN AN ELECTION
PETITION: A CASE STUDY OF *PETER GREGORY OBI V. BOLA AHMED
TINUBU & ORS* PETITION NO: CA/PEPC/03/2023**

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Abstract

Over the years, administration of justice which ought to be the bane of the judiciary has become one of the most challenging tasks facing the Nigerian courts/tribunal, especially in an election petition. Election petition is sui generis and often, there is tendency of the judges to tilt towards procedural technicalities against substantial justice in deciding matters before the election tribunal. Therefore, whenever the court dismisses a case on the ground that a particular party fails to follow a proper step for the judicial enforcement of his right, then it amounts to procedural technicality which often affect the merit and substance of the case. This is exactly what played out in the 2023 Presidential Election Petition Tribunal on so many grounds that led to the striking out of the subpoenaed witness depositions of the Petitioner's witnesses. The main objective of this paper is to examine substantial justice and the rule in demonstration of evidence by witnesses in an election petition: a case study of Peter Gregory Obi v Bola Ahmed Tinubu & Ors¹. The work adopted the doctrinal method of research. It was found that a court does substantial justice when it administered justice fairly regardless of any procedural errors not affecting the litigant's rights, a fair trial on the merits. It is also our finding that the striking out of the subpoenaed witnesses and the relevant documents tendered through them by the Tribunal in the 2023 Presidential Election Petition is a matter of technical justice than substantial justice. The paper recommends that judges should always be concerned with achieving substantial justice than merely placing reliance on technical justice.

Key Words: Human Rights, Gender, Gender Inequality, Discrimination.

1.0 Introduction

The end of every case before the court is to ensure that justice is served on the parties by the judgement of the court. In *Obajimi v Adediji*² the Court of Appeal held that justice means fair treatment and the justice in any case demands that the competing rights of the parties must be taken into consideration and balanced in such a way that justice is not only done but must be seen to be done. It is absolute that court is the last hope of the common man. The implication is that if the court of law fails to administer justice for a man before it, he has no more hope anywhere. The common man can only appeal to God and that in reality is very utopia. The truth of course is that Justice is becoming a wishful thinking and is very hard to obtain in all the Nigerian Courts as well as the Tribunals specially constituted for election petitions.

However, technical justice is gaining more ground than substantial justice in Nigeria, especially in election petition which is *sui-generis*. In most proceedings before the court, there is tendency of justices and judges of various Tribunals to swing the pendulum of justice to technical ground than delivering judgment on the merit. In fact, one of the clearest legal controversies that have gained divergent intellectual argument is the persistent reliance on technical rules over and above the interest of justice.

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¹CA/PEPC/03/2023. Note, The Petition is Peter Gregory Obi while the 1st Respondent is the Independent National Electoral Commission while the 2nd Respondent is Bola Ahmed Tinubu.

²(2008) 3 NWLR (Pt. 1073) 1 CA.



In *Adegbola v Idowu*³ the Supreme Court stated thus:

A technicality arises if a party quickly takes an immediately available opportunity, however infinitesimal it may be, to work against the merits of the opponent's case. A technicality in a matter could arise if a party is relying on abstract or inordinate legalism to becloud or drown the merits of a case. In other words, he holds and relies tenaciously unto the rules of court with little or no regard to justice of the matter. As far as he is concerned, the rules must be followed to the last sentences, the last words and the last letters without much ado and with little or no regard to the injustice that will be caused to the opponent. Once a court is inclined to doing substantial justice by deflecting from the rules, it quickly draws a distinction between justice and technicality so much so that it has become not only a cliché but an enigma in the jurisprudence. When the Courts invoke substantial justice principle, they have at the back of their minds the desire to put to naught technicalities which the adverse party relies upon to drum down an otherwise meritorious case⁴

Relying on issues of procedural non-compliance to give judgement is defeating the merit of the case. This is purely the decision of the Supreme Court in *Akeredolu v Abraham & Ors* where the court held that:

Technicality in the administration of justice shuts out justice. A man denied justice on any ground, grudges the administration of justice, it is therefore better to have a case heard and determined on merit than to leave the Court with a shield of 'victory' obtained on mere technicalities.

The Court has the burden to do justice at every point in time. The Court has a duty to do justice over technicality. This was affirmed in *Ajewole v Adetimo*⁵ where it was held that a court of law should not allow a mere technicality to hinder it in doing substantial justice.

It is crucial to point out that in May 2019, the Supreme Court ruled that non-compliance with Independence National Electoral Commission (INEC) guidelines and directives on the date for submission of candidates disabled the All-Progressive Candidate (APC) from legally participating in the elections in Zamfara State. Also, in Imo State, the reign of Honourable Emeka Ihedioha was cut short when the Supreme Court awarded a whopping number of rejected votes to the opposition party. The rationale behind the decision was purely on technicalities, which many Nigerians have termed as a wrong application of judicial activism. Election matters are considered delicate as issues of such affect the entire populace, it became a worrisome thing for issues of technicalities to grace the field on such important issues.

Be that as it may, since the decision of the Presidential Election Petition Tribunal (PEPT) and the Supreme Court in *Peter Gregory Obi v Bola Ahmed Tinubu & Ors*⁶, many Nigerians in home and diaspora have expressed extreme opinions on the Judgment of the court. It has been called blue murder which is a reference for murdering justice at the altar of technicalities. Among lawyers, there have been divided opinions. On one part, it has been argued that the Supreme Court complied with the law and that election petition is different from all other aspect of litigation and as such, it has strict application of the relevant sections of the Electoral Act which was applied. On the other hand, it has been adjudged judgement based on technicalities and issues of corruption in quest to make Tinubu, the President of Nigeria at all cost. The Tribunal threw out the subpoenaed witness deposition. The Court ruled that the People's Democratic Party (PDP) candidate, Atiku Abubakar and his Labour Party (LP) counterpart Peter Obi failed to prove the allegations of fraud, Tinubu's ineligibility and others in their petition challenging the outcome of the tightly contested election.

³(2020) 7 NWLR (Pt. 1722) 94 SC

⁴*Adegbola v Idowu* (2020) 7 NWLR (Pt. 1722) 94 SC

⁵(1994) 3 NWLR (Pt. 335) P 739 at 577

⁶CA/PEPC/03/2023



The spirit of substantial justice is rooted in the Latin maxim *fiat justitia ruat caelum*, which means “let justice be done though the heaven falls.” In fact, an English poet and philosopher Walter Savage Landor wrote many years ago, “when law becomes a science and system, it ceases to be justice.”⁷ This form of ideology has offended the law enthusiasts, who are of the opinion that the rules are integral parts of the law and any attempt to downplay the rules will make the law lifeless and susceptible to the whims and caprices of any judge. It follows that litigants should accept judgment willy-nilly without undue grievances. It is against this background that this paper seeks to examine between substantial justice and the rule in demonstration of evidence by witnesses in an election petition using the 2023 Presidential Election Petition between *Peter Gregory Obi v Bola Ahmed Tinubu*⁸ as a case study.

1.2 Conceptual Clarifications

1.2.1 The Meaning of Technicality

Technicality means the quality of something to be technical. In law it is taking advantage of an error in law to give judgement against the other party. In *Andre v INEC*⁹, technicality means a harmless error. The concept was given lengthy judicial interpretation by Niki Tobi JSC, in *Adeniji v The State*¹⁰ when he stated that:

Courts of law seem to be using the word technicality out of tune or out of turn, vis-à-vis the larger concept of justice. In most cases, it has become a vogue that once a court is inclined to doing substantial justice by deflecting from the rules, it quickly draws a distinction between justice and technicality so much so that it has become not only a cliché but an enigma in our jurisprudence. In most cases when the courts invoke the substantial justice principle, they have at the back of their minds the desire to put to naught technicalities which the adverse party relies upon to drum down an otherwise meritorious case. We seem to be overstretching the technicality concept. We should try to narrow down the already onerous and amorphous concept in our judicial process. A technicality in a matter could arise if a party is relying on abstract or inordinate legalism to becloud or drown the merits of a case. A technicality arises if a party quickly takes an immediately available opportunity, however infinitesimal it may be to work against the other party.

In *Olley v Tunji*¹¹ the word “technicality” has been elevated to the status of a mantra. It has become the scapegoat on which to blame any defect in procedural or substantive law in a process filed in court. Phrases such as technical defect, technical error or simply the word ‘technical’ from which it is derived will provide insight into the import of the word ‘technicality’. A technical defect is one which may come within the four corners of it but in fact, it does not affect the merit of the case. It is a mistake which does not go to the bone of the matter. Technical error means merely abstract and practically harmless error. The word “technical” from which “technicality” is derived means immaterial, not affecting substantial right, without substance.

In *Ogbonnaya v Mbalewe*¹². A decision arrived at by the court which is based on technicality is no decision as technicality in the administration of justice shuts out justice, it is therefore, better to have a case heard and determined on the merits than to leave the court with a shield of victory on mere technicality. The court in *Dalko v U.B.N Plc*¹³ distinguished between substantial technicality and non-substantial technicality. According to the court, a distinction must be drawn between a mere non-substantial technicality in proceedings that are competent and within the jurisdiction of a court

⁷ <https://internetpoem.com/walter-savage-landor/comments/> (accessed 20/10/2024)

⁸ CA/PEPC/03/2023

⁹ (2018) 9 NWLR (Pt. 1625) 507 SC

¹⁰ (1992) 4 NWLR (Pt. 234) 248

¹¹ (2013) 10 NWLR (Pt. 1362) 275

¹² (2005) 1 NWLR (Pt. 907) 252

¹³ (2004) 4 NWLR (Pt. 862) 123



and a substantial technicality which amounts to a condition for the commencement of an action and which renders a proceeding manifestly incompetent thereby affecting the jurisdiction of the court and renders the same incurably defective. Whereas the former may be waived, the latter as a general rule may not be waived. In the instant case, what occurred in the court is a substantial technicality which rendered the proceedings incompetent.

1.2.2 Substantial Justice

The term "Substantial" has acquired a legal meaning over the years. In *Incorp Trustees LSMN v Ekhatior*¹⁴, the meaning of "substantial" includes tangible, real, of solid character or quality, firm, strong, fundamental. In *Uwazurike v A.G. Federation*¹⁵, it was stated that courts are set up for the sole purpose of doing substantial justice between the parties. Substantial justice entails justice to the court, the accused person and the public. In *Jibrin v The State*¹⁶, the court is not one of technicalities but a court of substantial justice which is three-way traffic, that is to say, justice for the accused, justice for the victim and justice to the State.

In *Okpala v Okpu*¹⁷, the consideration of substantial justice in a case is from the viewpoint of the court and not necessarily from the viewpoint of the parties. The expression in the above case is to the effect that parties have interest in the subject matter of the suit and are likely to becloud on issues of justice. The court however is an independent umpire in adjudication of cases. The implication is that court is always minded to do justice at all times.

In *Ogunyade v Oshundaye*¹⁸, the role of the court is to do substantial justice and not technical justice. It is justice in its reality or personification and not a caricature of it. It is the primary function of the court to do substantial justice to the parties before it and not to insist on technicalities which is termed technical justice.

According to the 9th edition of the Black's Law Dictionary¹⁹, substantial justice is defined as "Justice fairly administered according to the rules of substantive law, regardless of any procedural errors not affecting the litigant's substantive rights, a fair trial on the merits."

1.2.3 The Rule on Demonstration of Evidence by Witnesses

Documentary evidence is one of the vital methods by which a petitioner is required to substantiate his allegation in his election petition. The general rule that governs the admissibility of documentary evidence is applicable to documents to be tendered in election petitions. The rule on the demonstration of evidence holds that documents cannot be dumped in the court. It is therefore, not the duty of the court to proceed through documents tendered by parties which were not demonstrated in open court²⁰.

The rule further states that when a party decides to rely on documents to prove his case, he must not "dump" the documents on the court by simply tendering and having the documents admitted from the bar. Rather, he must demonstrate the documents by linking them, through oral evidence of their makers or witnesses through whom the documents are tendered, to specific aspects of his case. In the instant case, all the documents the appellants relied upon in proving their petition were rightly adjudged inadmissible and/or discountenanced by the election petition Tribunal and the Court of Appeal, as same were tendered from the bar and not through witnesses.²¹

¹⁴ (2022) 15 NWLR (Pt. 1852) 35

¹⁵ (2013) 10 NWLR (Pt. 1361) 105 SC

¹⁶ (2022) 4 NWLR (Pt. 1820) 269

¹⁷ (2003) 5 NWLR (Pt. 812) 183 (P.216, para. D).

¹⁸ (2007) 15 NWLR (Pt. 1057) 218.

¹⁹ Garner B A 'Black's Law Dictionary' (9th Edition, London)

²⁰ (2022) 3 NWLR (Pt. 1818) 577 SC

²¹ (2022) 11 NWLR (Pt. 1841) 339 SC



2.0 The Facts Distilled from the Petition

On the 25th day of February, 2023, the Independent National Electoral Commission (INEC), the 1st Respondent in the Petition conducted the Presidential and National Assembly Elections in Nigeria. The 1st Petitioner is Mr. Peter Gregory Obi while the 2nd Petitioner is the Labour Party who sponsored the candidate. At the end of the election, the 1st Respondent (INEC) returned the 2nd Respondent (Bola Ahmed Tinubu) as the duly elected President of the Federal Republic of Nigeria with 8,794,726 votes. The 1st Petitioner came third with 6,101,533 votes behind Abubakar Atiku of the People's Democratic Party (PDP) who came second with 6,984,520 votes.

Dissatisfied with the result of the election, the Petitioners filed this petition on the 20th of March, 2023 challenging the outcome of the election on the following three grounds which are stated in paragraph 20 of the Petition:

- (1) the 2nd Respondent was, at the time of the election not qualified to contest the election,
- (2) the election of the 2nd Respondent was invalid by reason of corrupt practices or non-compliance with the provisions of Electoral Act, 2022
- (3) the 2nd Respondent was not duly elected by majority of the lawful votes cast at the election.

Based on the above ground, the petitioners then sought for the reliefs stated in paragraphs 103 of the Petition, thus:

- i. that it be determined that at the time of the Presidential election held on 25th February 2023, the 2nd and 3rd Respondent's were not qualified to contest the election,
- ii. that it be determined that all the votes recorded for the 2nd Respondent in the election are wasted votes, owing to the non-qualification/disqualification of the 2nd and 3rd Respondents,
- iii. that it determined that on the basis of the remaining votes (after discountenancing the votes credited to the 2nd Respondent) The 1st Petitioner scored a majority of the lawful votes cast at the election and had not less than 25% of the votes cast in each at least 2/3 of the States of the Federation and the Federal Capital Territory, Abuja and satisfied the constitutional requirements to be declared the winner of the 25th February, 2023 Presidential election.

2. That it be determined that the 2nd Respondent having failed to score one-quarter of the votes cast at the Presidential election in the Federal Capital Territory, Abuja was not entitled to be declared and returned as the winner of the Presidential election held on 25th February 2023.

In the alternative to the 2 above:

3. An order cancelling the election and compelling the 1st Respondent to conduct a fresh election at which the 2nd, 3rd and 4th Respondents shall not participate.

4. (i). that it may be determined that the 2nd Respondent was not duly elected by a majority of the lawful votes cast in the election for the office of the President of the Federal Republic of Nigeria held on the 25th day of February, 2023, therefore, the declaration and return of the 2nd Respondent as the winner of the Presidential election are unlawful, unconstitutional and of no effect whatsoever.

(ii) that it be determined that based on the valid votes cast at the Presidential election of 25th day of February 2023, the 1st Petitioner scored the highest number of votes cast at the election in each of at least two-thirds of all the States of the Federation and the Federal Capital Territory, Abuja and ought to be declared and returned as the winner of the Presidential election.

(iii) an order directing the 1st Respondent to issue Certificate of Return to the 1st Petitioner as the duly elected President of the Federal Republic of Nigeria.

(iv) that it be determined that the Certificate of Return wrongly issued to the 2nd Respondent by the 1st Respondent is null and void and be set aside.

In the further alternative to 1, 2, 3 and 4 above:

5(i) that the Presidential election conducted on the 25th day of February, 2023, is void on the ground that the election was not conducted substantially in accordance with the provisions of Electoral Act, 2022 and Constitution of the Federal Republic of Nigeria, 1999 (as amended).



(ii) an Order cancelling the Presidential election conducted on 25th day of February 2023 and mandating the 1st Respondent to conduct a fresh election for the office of the President of the Federal Republic of Nigeria.

3.0: The Place of Substantial Justice versus Technicality in resolving each and every grounds of the Petition before the Tribunal

Preliminary Objections: When the Petitioners filed their petition alleging irregularities in the conduct of the election concerning “many polling units”, the 2nd Respondents challenged the Petition by first filing their preliminary objections challenging the expression “many polling units”. The Tribunal and the Supreme Court found that those paragraphs are too generic and are liable to be struck out for being too nebulous and imprecise, thereby agreeing with the submission to the counsel to the All Progressive Congress (APC) candidate.

However, in order to resolve the issues of substantial justice and technicality in the above, one need to consider the provision of paragraph 4(1) (d) of the Act²² which provides for pleadings in election petition cases. So, where the provisions of the statutes are clear, words should be given their ordinary meaning and literal meaning. It is substantial justice to accord the wording of the statutes their ordinary meaning. The requirements of pleading in election petitions are primarily provided in Paragraph 4 of the 1st Schedule to the Act²³. Paragraph 4(1) (d) mandates that an election petition shall state clearly the facts of the election petition and the ground or grounds on which the petition is based and the reliefs sought by the Petitioner. In *Belgore v Ahmed*²⁴ the rule is that material facts pleaded must be sufficiently specific and comprehensive to elicit the necessary answer from the opponent. Averments that are unspecific, generic, speculative, vague, omnibus and general in terms are grossly imprecise and liable to be struck out²⁵.

Based on the above, the Court did substantial justice by giving paragraph 4(1)(d) of the Act²⁶ its ordinary and literal meaning by holding that:

In this case where the disputes links the election in as many as 895 polling units, the pleading in the Petitions, the Pleading in the Petition which alleged electoral malpractices, non-compliance, and/or offences in “some polling units” “many polling unit” “Most Polling Units” or “Several Polling Units” cannot be said to have met the requirements of pleadings as stipulates in paragraph 4 (1) (d) of the 1st Schedule to the Electoral Act and or/Order 13 Rules 4(1) 5 & 6 (1) of the Federal High Court (Civil & Procedure) Rules, 2009.

The Court rightly held in resolving the Preliminary Objections, that paragraph 9, 60, 61, 66, 67, 68, 69, 70, 71, 72, 73, 76, 78, 83 and 99 of the Petition failed to state the specific polling units. It is therefore vague, imprecise, nebulous and bereft of material particulars.

On the other hand, the Petitioners argued on mere technicality that the Respondents having joined issues in the general allegations contained in the petition, they are deemed to have understood same. This is pure technicality because merely responding to a pleaded facts cannot turn blind eye on the words of statutes concerning pleadings. Substantial justice is when every document and pleaded facts are considered based on their content rather than by technicality. Substantial justice played well in *Udeagha & Anor v Omegara & Ors*²⁷ when the Court held that the argument of Appellant’s counsel that the Respondents did not adequately traverse the Petition is unfounded. The Petition itself contained general complaints.

²² Electoral Act 2022 (as amended)

²³ (n.21)

²⁴ (2013) ALL FWLR (Pt. 705) 250

²⁵ (2023) LPELR-59444(CA)

²⁶ Electoral Act 2022 (as amended)

²⁷ (2010) 11 NWLR (Pt. 1204) 199



On the Challenge to the Competence of the Petition or Some of its Grounds: The court was on the side of substantial justice by treating the membership of a political party as domestic affairs of a political party. The Court ruled in favour of the Petitioners that the petitioner has the locus to institute the Petition even though he was a member of People's Democratic Party and was screened as one of its aspirants before joining the Labour Party. In *Enang v Asuquo & Ors*²⁸ the law is that membership of a political party is a domestic affair of the political party concerned and the court lacks the jurisdiction to entertain same.

On the Issues of Subpoenaed Witness: the major contention is the objection of the Respondents based on the witnesses before the Court presented by the Petitioners. All the respondents challenged the competence of Pw 3, Pw 4, Pw 5, Pw 6, Pw 7, Pw 8, Pw 9, Pw 10, Pw 11 and Pw 13. It is the contention of the respondent that the witness statement on oaths of those witnesses of the Petitioners were not frontloaded along with the Petition but were only filed during trial, contrary to Paragraph 4(5) (b) of the 1st Schedule to the Act²⁹. The question on technicality and substantial justice is whether a subpoenaed witness who is a witness of the court is limited by the same 21 days provided in the Electoral Act for frontloading document together with filing the petition as well as the 1999 Constitution etc? The argument of the petitioners is that subpoenaed witnesses whose witness statements on oath were filed outside the time limited for presentation of the Petition are competent to testify because they are witnesses of the court citing *Omidiran v Etteh*³⁰ and *Lasun v Awoyemi*³¹

The court towed the part of technical justice to hold that the case of *Omidiran* was decided in 2006 in accordance with the Electoral Act of 2006. It was decided before the introduction of Section 285(8) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) which mandates that an election petition shall be decided within 180 days from the date of filing of the Petition. The Court held that:

The Application of the issuance of the subpoenas were duly filed at the Registry of this Court by the Petitioner's Counsel and the requisite fees, including filing fees and service fees as assessed were duly paid by them, before this court approved and issued the subpoenas. Therefore, those witnesses are the Petitioners witnesses and not witnesses of the Court.

It is a matter of mere procedure to file for issuance of subpoena in the Court Registry, if not, nothing is holding the Petitioners from calling anyone as a witness even without going to the Registry. Hence, it is a person summoned to Court *suo moto* in exercise of its powers under paragraph 42(1)³² that is a witness of the court and not a person subpoenaed at the request of a party to the case. Court further holds that those witnesses are available to the petitioners at the time of filing the petition and they have no vires to testify in this petition because their statement on oath were not frontloaded at the time of filing of the petition. The above judgment failed to acknowledge the rule that relevancy is admissibility. In *Nwabuoku v Onwordi*³³, the Supreme Court held that admissibility of evidence is based generally on relevancy, as a fact in issue is admissible if it is relevant to the matter before the court. The Court used non-compliance with the provisions of the statute to even strike out documents and exhibits tendered which are very relevant in determination of the petition. To the Court, since the exhibits were tendered through incompetent witnesses, the documents admitted through them which form part of their evidence are inadmissible and liable to be expunged from the record.

It is total neglect of substantial justice because what governs admissibility of evidence is relevancy. Once a document is relevant to the determination of a case, then, it is admissible. Striking

²⁸ (2023) LPELR-60042 (SC)

²⁹ Electoral Act, 2022

³⁰ (2011) 2 NWLR (Pt. 1232) 471

³¹ (2009) 16 NWLR (Pt. 1168)

³² Electoral Act 2022 (as amended)

³³ (2006) All FWLR (Pt. 331) 1236 at 1251



out subpoenaed witnesses and the relevant evidence together is very technical which can be likened to the case of *Okafor v Nweke*³⁴. The quagmire surrounding the issue heightened wherein the applicant filed a motion in court and signed the processes in the name of a law firm, “J.H.C. Okolo SAN and Co.”, as opposed to the name of a legal practitioner. The respondents quickly cashed in on the supposed lacuna and filed a counter motion on the basis that a conjoined interpretation of section 2 and section 24 of the Act³⁵ makes it mandatory for a legal practitioner to sign the processes, thus rendering the processes null and void for failure to comply. The Supreme Court accepted the position of the respondents, holding that the signature was invalid, and expressed the need to uphold the sanctity of the high standards of the noble profession and save it from unusual irregularities. The pain of many who have criticized this judgment is the fact that the Supreme Court in the case had given credence to the document emanating from the hallowed chambers of a legal practitioner. Would it not have been reasonable to examine the merits of the case rather than dwell on a mistake that could be rectified. The furore of the Supreme Court’s decision heightened further when litigants who took noticeable defects in the signature of their opponents’ documents bombarded the court with preliminary objections, thereby defeating the essence of substantial justice, as the merits of the cases were sacrificed on such basis.

On the Issues of Respondents Evidence and offence of Dishonesty: It is very clear that the court chose technical justice over substantial justice by not following the literal rule in interpreting the Constitution. The ruling of the Court exonerating the 2nd Respondent with regard to \$ 460,000 (Four Hundred and Sixty Thousand Dollars) which was fined the 2nd Respondent for an offence involving dishonesty, narcotics, trafficking imposed by the United States District Court, North District of Illinois Eastern Division is very unfair to the entire Nigerians. The Letter written to the National Bureau of Investigation’s National Crime Investigation Centre (NCIC) by the Inspector General of Police confirming that he has no record of any form of criminal arrests, wants and warrants against the Respondents. The Petitioners allegation of fine imposed on the 2nd Respondent by the U.S District Court in Case No. 93 C 4483, hence by Section 137 of the Constitution fine on offence of dishonesty is a disqualifying factor. The 2nd Respondent Counsel argued that civil forfeiture of an asset cannot be a ground for disqualification from contesting an election under the Nigerian Constitution. Relying on *Action Congress v INEC*³⁶, 2nd respondent’s counsel submitted that trial and sentence must take place for a person to be disqualified under Section 137(1)(d) & (e) of the Constitution. The Court found in their favour which is mere technicality by neglecting the wording of the Constitution thus:

A Person shall not be qualified for election to the office of President if (d) he is under a sentence of death imposed by any competent court of law or tribunal in Nigeria or a sentence of imprisonment or fine for any offence involving dishonesty or fraud (by whatever name called) or for any other offence, imposed on him by any court or tribunal or substituted by a competent authority for any other sentence imposed on him by such a court or tribunal³⁷.

Thus, if a substantive law spells out due process to be followed, the litigants should not be so negligent as to neglect the rules and argue technicalities with innocent faces in court. This was the position of the Supreme Court in *FBN v Maiwada*³⁸, where Fabiyi J.S.C., in reaffirming the decision in *Okafor v Nweke*, stated that no one should talk of technicality when a substantial provision of the law has been rightly invoked. This position of the learned justice reflects due process. In the instant case, the trial judges neglected the provisions of the substantive law and turned blind eyes to issues of offence involving dishonesty in the Nigerian Constitution and find for the 2nd Respondent.

³⁴ (2007) 10 NWLR (Pt. 1043) 521

³⁵ Legal Practitioners Act (LPA) Cap L11 LFN 2004

³⁶ (2015) 8 NWLR (Pt. 1462) 531

³⁷ The Constitution of the Federal Republic of Nigeria, Section 137(1)(d) & (e)

³⁸ (2013) 5 NWLR (Pt. 1348) 443



On the Issue of 25% in Abuja: The Constitution is clear in Section 134 (2) (b) (2), that a candidate for an election to the office of President shall be deemed to have been duly elected where there being more than two candidates for the election:

- (a) he has the highest number of votes cast at the election; and
- (b) he has not less than one-quarter of the votes cast at the election each of at least two-thirds of all the States in the Federation and the Federal Capital Territory, Abuja.

Substantial justice is interpreting the statutes as they are provided the words are clear and unambiguous. In our opinion, according to the statute, the literal meaning would have meant that a candidate for the election must acquire 25% of the votes in Abuja, not minding any imputation or reference to other sections of the Constitution. The reference to Section 299 of the Constitution that the provisions of this Constitution shall apply to the Federal Capital Territory, Abuja as if it were one of the States of the Federation' are only with respect to the executive, legislative and judicial powers and not in relation to the election of the President of Nigeria which was specifically stated under Section 299 (a) (b) (c). It is a mere technicality to avoid the specific provision of 25% votes for the Federal Capital Territory by treating it as one of the States for the purpose of the Presidential election.

Conclusion

The striking out of the subpoenaed witnesses and the relevant documents tendered by through them by the Tribunal in the 2023 Presidential Election Petition is a matter of technical justice than substantial justice. There have been various arguments and academic dissertations rendering some Supreme Court decisions on the matter as imponderable and a far departure from their stance on the interest of justice. This is notwithstanding that achieving a balance between substantial justice and technicalities is the ultimate safeguard for upholding the sanctity of the profession. If justice is to be invoked rightly, then the law should be its solid backbone. Law and justice are inseparable and none can exist without the other. The system of dispensing justice is in two phases³⁹. Firstly, an examination of the law, and then the application of the law to facts. The judges depend on law to dispense justice and justice needs good laws to prevail. The judges cannot derive evidence and law from the overt market or public opinion. For effective balance to be achieved in the system of justice there should be constant legislative reviews and the judges should give thorough examinations to the laws to ascertain the minds of the legislature on any matter. The mind of the judges should always be concerned with achieving substantial justice than merely placing reliance on technical justice.

³⁹ JO Ogwu, An Inspection of the Legal Tussle between Technicalities and Substantial Justice: A Need for Balance, available at <https://unilaglawreview.org/2020/05/15/an-inspection-of-the-legal-tussle-between-technicalities-and-substantial-justice-a-need-for-balance> (accessed 20/10/2024)