



E-ISSN: 2789-9500
P-ISSN: 2789-9497
IJCCSL 2022; 2(1): 47-51
© 2022 IJCCSL
www.criminallawjournal.org
Received: 27-10-2021
Accepted: 11-01-2022

Godwin Emeka Ngwu
Lecturer, Department of Private
Law, Faculty of Law, Enugu
State University of Science and
Technology, Agbani, Nigeria

Onyemaechi Titilayo Ogiri
Associate P.KO Practice, Bodija,
Ibadan, Oyo State, Nigeria

The Supreme Court's decision in senator hope Uzodinma & all progressives congress (APC) V. Rt. Hon. Emeka Ihedioha, Peoples Democratic Party (PDP) & independent national electoral commission (INEC): A case of corruption or preponderance of evidence?

Godwin Emeka Ngwu and Onyemaechi Titilayo Ogiri

DOI: <https://doi.org/10.22271/27899497.2022.v2.i1a.24>

Abstract

Election petitions have become the norm after almost every conducted by the Independent National Electoral Commission (INEC) in Nigeria. The 2019 Imo State Governorship election was not an exception. It would have been like the regular election petitions that take place nationwide but this particular one sparked public interest and public outrage. The term 'Supreme Court Governor' was coined and used to describe the appellant in the election petition, who emerged victorious. The opinion of the general public, especially those in Imo State, was that it was impossible for the appellant, who got the fourth highest number of votes, to be declared winner of the election. It was generally assumed that, if at all there was an error in the final results of the elections, the best person to be declared winner of the elections should have been the contestant with the second highest number of votes. This paper reviews the legality of this theory as well as important decisions the Supreme Court held in the case.

Keywords: Election petition, corruption, decadence of the judicial system, electoral act

Introduction

On 8th March 2019, the Independent National Electoral Commission (INEC) conducted the Governorship election of Imo state with 70 candidates contesting for the position ^[1]. The election produced Hon. Emeka Ihedioha, candidate of the Peoples Democratic Party, as the winner declared by INEC after polling 273,404 votes of the total number of 714,355 valid votes in the governorship election ^[2]. Senator Hope Uzodinma, the candidate of the All Progressives Congress, polled 96,458 votes and was declared the third runner-up in the election ^[3]. Uzodinma, the appellant in the case under review, was not satisfied with the results of the election and filed a petition seeking the election tribunal to determine if there had been some form of injustice which prevented him from emerging the winner of the election. Most often, when an election petition of this manner is filed, it is usually by the first runner-up, however, this is probably the first of its kind where the third runner-up filed an election petition. This issue was raised by the respondents at the election petition tribunal and the Court of Appeal, while interpreting section 179 of the Nigerian Constitution, 1999 held that election petitions should rightly be filed by the candidate who came second and that if the appellant's appeal must succeed and be found competent, he should have joined the candidates who came second and third in the petition. However the law ^[4] is not specific on which candidate can file an election petition and as such the appellant was not restricted from filing an election petition if he was aggrieved by the outcome of the election. As the Supreme Court determined, there are no specifications as to who can file a petition provided that the petitioner is either a candidate at the election or a political party that participated at the election ^[5]. The appeal was allowed by the Supreme Court and the appellant emerged as the candidate declared winner of the Imo State governorship election. This sparked outrage all over the country ^[6] as many tagged the appellant 'Supreme Court Governor', which is interpreted to mean a governor brought into office by the Supreme Court and not the votes of the majority. In fact, Hon. Ihedioha, the respondent was reported to have described the Supreme Court's decision as 'unfair, unjust and does not reflect the voting that took place during the elections ^[7].' Many wondered how it was possible for the third runner-up to be declared winner of an election and thought that if for any reason the Certificate of Return of the initial winner, Hon.

Corresponding Author:
Godwin Emeka Ngwu
Lecturer, Department of Private
Law, Faculty of Law, Enugu
State University of Science and
Technology, Agbani, Nigeria

Ihedioha, was nullified, the Supreme Court should have declared either the first or second runners-up as the winner of the election. This, of course is an argument that seems reasonable to a layman but a person who knows the law knows that this argument holds no water.

This case review examines the provisions of the Electoral Act 2010 (as amended) and section 179 of the 1999 Constitution and whether or not the decision of the Supreme Court in declaring the appellant winner of the Imo State governorship election had any form of legality or decadence as the public alleged.

Facts of the Case

As with all gubernatorial election petitions in Nigeria, the foundation of this appeal was an election conducted by the INEC in Imo State. The 1st appellant and the 1st respondent were two of the seventy candidates at the election which held in March 2019. The 1st respondent was returned as winner of the election after polling 273,404 votes of the total number of 714,355 valid votes. The 1st appellant was declared fourth in the election with 96,458 votes. The 1st appellant contested the result of the election and claimed that votes from some polling units were not counted as part of the total votes collated causing him to lose a substantial number of votes that would have resulted in his being returned as winner of the election. The 1st appellant followed up his contest with a petition at the Governorship Election Tribunal where he contended that the elections held in 3,523 polling units and that the 3rd respondent, INEC, collated results from 2,883 polling units, cancelled the results in 252 polling units and excluded the results from 388 polling units, where he had a substantial number of votes amounting to 213,695 votes^[8]. If the votes for the excluded units were collated, it would mean that he would have a total of 310,153 votes and would have been declared the Governor-elect of Imo State. He requested that the Election Tribunal should declare that:

1. The 1st respondent was not validly elected by majority of lawful votes cast.
2. The declaration and return of the 1st Respondent is invalid by reason of non-compliance with the Electoral Act^[9].

The Tribunal dismissed the petition finding no merit in it and as is common with all petitions, the appellant made an appeal to the Court of Appeal where on 19 November 2019, the appeal was dismissed in a majority decision of 4:1^[10]. Still dissatisfied, the appellant made a final appeal to the Supreme Court^[11] where his appeal was heard and unanimously allowed. At the Supreme Court, the appellant raised 6 issues for determination which are:

1. Considering the facts of this case and the case law on polling unit results given to Police Officers deployed to polling units, whether the Court below was not in grave error when it held that PW54 was not the proper person to tender exhibits PPP1- PPP366?
2. Given the state of pleadings and the evidence before the lower Court, whether the decision of the Court below that the appellants did not prove their allegation that their scores were excluded from collation was not wrong as a result of a misconception of the appellants' case?
3. Was the Court below not in error when it held that appellants' issues 1, 2, 4 and 5 which raised distinctive complaints against the decision of the trial Tribunal "are all indexed in the evaluation of evidence by the trial

Tribunal" thereby failing to consider and resolve each issue distinctly and distinctively?.

4. Whether the Court below was in grave error when it failed to fully resolve the complaint raised in Issue 3 before it and having lumped issues 1, 2, 4 and 5 together without considering the distinct complaint in each issue, it proceeded to resolve them in the respondents' favour?.
5. Having regard to the facts of this case, whether the Court below was not wrong in its construction and interpretation of Section 179 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) to the effect that only a candidate who came second in an election can raise allegation of non-compliance with in Section 179?.
6. Was the Court below not in error when it held that failure to join "2nd and 3rd runners-up?" (Losers) in the election rendered the Petition incompetent and accordingly struck out same?

The issues were addressed by the Supreme Court; however, the very issues that reflect the argument of the public opinion are issues 5 and 6 and they would form the crux of this review.

The appeal was heard and decided by Ibrahim Tanko Muhammad, CJN, Nwali Sylvester Ngwuta, JSC, Olukayode Ariwoola, JSC, Amiru Sanusi, JSC, Amina Adamu Augie, JSC, Uwani Musa Abba Aji, JSC and Kudirat Motonmori Olatokunbo Kekere-Ekun, JSC, who delivered the leading judgement. The appeal was unanimously allowed and appellants' reliefs were granted.

Case Review

The 1st, 2nd and 3rd respondents each raised issues for determination but the Supreme Court adopted the issues raised by the appellant and addressed issues 1 and 2. Issues 1 and 2 were the main issues that could determine whether or not the appeal had merit^[12] raised by the appellant were important to the determination of the appeal and bordered on the admissibility of the evidence showing that votes from 388 polling units were excluded from the total votes collated. Contrary to the decisions of the Election Tribunal and the Court of Appeal, the Supreme Court held that the evidence was admissible and that the appellants had rightly proven that votes from the 388 polling units were excluded. However, the focus of this case review is on the last two issues which formed the basis of the public outrage and days of protest – whether the candidate with the 4th highest number of votes could file an election petition and succeed. Arguments of such would only be valid if there is a foundation in the relevant statutes or earlier judicial decisions. The two relevant statutes in this case are the Electoral Act, 2010 and the 1999 Nigerian Constitution. Section 137(1) of the Electoral Act, 2010 provides thus:

137. (1) An election petition may be presented by one or more of the following persons—

- a) a candidate in an election;
- b) a political party which participated in the election.

The interpretation of this is that any candidate of an election can contest the results of the election if he suspects an irregularity in the result. Section 179 of the 1999 Constitution, which the appellants alleged to have been wrongly interpreted by the Court of Appeal, provides thus:

179. (1) A candidate for an election to the office of Governor

of a State shall be deemed to have been duly elected to such office where, being the only candidate nominated for the election-

- a) he has a majority of YES votes over NO votes cast at the election; and
- b) he has not less than one-quarter of the votes cast at the election in each of at least two-thirds of all the local government areas in the State, but where the only candidate fails to be elected in accordance with this subsection, then there shall be fresh nominations.

2. A candidate for an election to the office of Governor of a State shall be deemed to have been duly elected where, there being two or more candidates -

- a) he has the highest number of votes cast at the election; and
- b) he has not less than one-quarter of all the votes cast in each of at least two-thirds of all the local government areas in the State.

3. In default of a candidate duly elected in accordance with subsection (2) of this section there shall be a second election in accordance with subsection (4) of this section at which the only candidates shall be -

- a) the candidate who secured the highest number of votes cast at the election; and
- b) one among the remaining candidates who secured a majority of votes in the highest number of local government areas in the State, so however that where there are more than one candidate with a majority of votes in the highest number of local government areas, the candidate among them with the next highest total of votes cast at the election shall be the second candidate.

4. In default of a candidate duly elected under subsection (2) of this section, the Independent National Electoral Commission shall within seven days of the result of the election held under that subsection, arrange for an election between the two candidates and a candidate at such election shall be deemed to have been duly elected to the office of Governor of a State if -

- a) he has a majority of the votes cast at the election; and
- b) he has not less than one-quarter of the votes cast at the election in each of at least two-thirds of all the local government areas in the State.

5. In default of a candidate duly elected under subsection (4) of this section, the Independent National Electoral Commission shall within seven days of the result of the election held under that subsection, arrange for another election between the two candidates to which that subparagraph relates and a candidate at such election shall be deemed to have been duly elected to the office of governor of a State if he has a majority of the votes cast at the election ^[13].

There is absolutely no part of section 179 that specified that only the candidate with the second highest number of votes can file a petition against the outcome election. Perhaps the Court of Appeal saw something that is not visible to the authors that made the learned justices interpret it to mean that only the candidate with the second highest votes (the 1st runner-up) could file an election petition. Otherwise, there is no law restricting the 1st appellant from filing an election petition and succeeding in it. There is also no law restricting

an election tribunal or Court from allowing a petition or appeal filed by any candidate other than the 1st runner-up. Fortunately, the Supreme Court found no restriction and allowed the appeal in favour of the appellants making the following orders:

1. It is hereby declared that votes due to the appellants (i.e. Sen. Hope Uzodinma & All Progressives Congress) from 388 polling units were wrongly excluded from the score ascribed to them.
2. It is hereby ordered that the appellants' votes from the 388 polling units unlawfully excluded from the appellants' score shall be added to the results declared by the 3rd respondent.
3. It is hereby declared that the 1st respondent, Rt. Hon. Emeka Ihedioha was not duly elected by a majority of lawful votes cast at the said election. His return as the
4. Elected Governor of Imo State is hereby declared null and void and accordingly set aside.
5. It is hereby declared that the 1st appellant, Sen. Hope Uzodinma polled a majority of lawful votes cast at the Governorship Election held in Imo State on 9th March, 2019 and satisfied the mandatory constitutional threshold and spread across the state.
6. It is hereby declared that the 1st appellant, Sen. Hope Uzodinma is the winner of the Governorship Election of Imo State held on 9th March, 2019.
7. The certificate of return issued to the 1st respondent Rt. Hon. Emeka Ihedioha is hereby withdrawn.
8. It is hereby ordered that a certificate of return shall be issued to the 1st appellant, Sen. Hope Uzodinma forthwith and he should be sworn in as the Governor of Imo State immediately ^[14].

A Case of Corruption or Preponderance of Evidence?

Perhaps one of the reasons why the members of the public ^[15] had a strong belief that the appellant should not have emerged victorious at the court and was only a 'Supreme Court Governor' is not unconnected to the fact that all arms and organs of government, including the Courts in Nigeria are now ridden with corruption. The incorruptible are few and difficult to find. Little wonder why it is quite difficult to convince the average Nigerian that there was no exchange of 'brown envelopes' ^[16] under the tables to ensure that the appeal succeeded. Many Nigerians were convinced that corruption and decadence of the judicial system was at play in the Supreme Court's verdict. This was evident not only in the public protests by the men and women of Imo State but by the reactions of Nigerians on Twitter ^[17], one of the social media platforms where Nigerians air their views and complaints against bad governance. One of the tweets by popular activist and journalist, Deji Adeyanju, reads thus: 'Hope Uzodinma of APC who came 4th with minimal votes declared winner of Supreme Court. What a regime!' ^[18]. Another tweet stated thus: '...Supreme Court just declared Hope Uzodinma as Governor Elect of Imo State...this reminds me of a popular Yoruba proverb that says "instead of a child to beat me at checkers, I would outwit him by cheating"...' ^[19]. These two tweets are just a little of the many things Nigerians had to say about their opinion on the verdict. It is clear that the general public was convinced that corruption or at least a decadence of the justice system was at play. Whether or not that is true, it is not visible to the human eye. What is quite visible and can be determined is the interpretation and application of the law. If it was correctly interpreted, then justice was served; if

it was not, then there is no way to convince even the learned man that justice had to bow to the pressure of corruption and/or decadence of the judicial system.

As has already been addressed, the concern of many was whether the 1st appellant, having been declared the 3rd runner-up (4th in the election), could file a petition that had merit. The electoral act did not place restrictions on who can file an election petition. The only requirement is that the petitioner must be either a candidate at the election or a political party that presented a candidate at the election ^[20]. Moreover, as long as the petitioner was a candidate at the election and files the petition based on one of the grounds provided by the Electoral Act, the petition is valid. The grounds of petition could be any of the following:

- 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
- 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 ^[21].

It is the authors' view that the issues raised by the appellant were carefully considered by the court. The Election Tribunal and the Court of Appeal dismissed the appellants' case because they considered inadmissible the documents tendered as proof of wrongful exclusion of votes. This documentary evidence and the witness through whom the appellants sought to tender the evidence were vital in the determination of the appellants' case. The respondents argued that the documents were forged and fake and that they, the respondents, would tender the original before the court. At the end of it all, the respondents failed to tender the 'original' documents. In light of this, Uwani Musa Abba Aji, JSC cited an earlier decision held by Oru, JSC - 'What is fictitious cannot be proved and what is suborned must be tested. Every fact pleaded must be proved, otherwise, it amounts to nothing ^[22].' The Supreme Court determined that the respondents had failed to prove the allegation that the documents tendered by the appellants were forged; and if it could not be proved that the documents were forged, then the Supreme Court was not wrong to treat it as the original.

Where then is the case of corruption? If there had been glaring evidence that forged documents were tendered in court, corruption of the judicial system could be argued but in the absence of 'original' documents, it is safe to say that justice was served based on the preponderance of evidence.

Conclusion and Recommendation

It is commonly said that the Court is the last hope of the common man ^[23]. If a man believes that injustice has been meted out to him, he can approach the court with the confidence that he will be granted justice. The court is symbolised worldwide with the image of Lady Justitia, a representation of an arbiter or judge that is blindfolded and orders justice based on evidence presented in court ^[24]. Following the Supreme Court's decision, the idea that the appellant was only a Governor brought in by the Supreme

Court, which was and still is the thought of many Nigerians, is false and has no legal foundation. The Supreme Court is not bound to make its decisions based on the opinions of the public majority but rather on the value attached to every piece of evidence and argument presented in court. The term 'Supreme Court' Governor is a term the layman would believe but one learned in the principles of the law and the system of the Court would know otherwise.

One thing that is very clear from the decision of the Supreme Court is that if the respondents had been able to provide evidence to show that the documents tendered by the appellants were forged, the appeal would have lacked merit. The question of whether or not the Supreme Court's decision was affected by corruption or was decided based on the preponderance of evidence has a clear answer. If it was a result of corruption, the respondents have themselves to blame for not been able to disprove the validity of the appellant's evidence. On the other hand, if it was a decision arrived at after weighing the evidence of both sides, the respondent still have themselves to blame ^[25] for not tendering sufficient evidence to convince the court to dismiss the appeal.

After reviewing the Supreme Court's decision, we can arrive at the conclusion that a case of corruption and decadence of justice would have been glaring if the respondents had proven that the appellants' evidence was forged and so all of the public protests would have been justified. The 1st respondent may have been the choice of the people in a lot of areas in Imo State but unless he was able to prove same with the records of the election results, the 1st appellant remains the people's choice on paper. It is thus recommended that candidates that are respondents in election petition matters, already privileged to be co-respondents with INEC, should endeavour to provide the court every piece of evidence necessary to retain their certificates of return. If respondents are convinced that they earned the majority votes, they should strive to prove same in cooperation with INEC that has access to every form of document they would need to do so.

References

1. Mojeed Alabi, 'PDP's Ihedioha Wins Imo Governorship Election' (12 March 2019) Premium Times <www.premiumtimesng.com/news/headlines/319665-breaking-pdps-ihedioha-wins-imo-governorship-election.html> accessed 13 February 2022
2. Ibid.
3. Ibid.
4. Which includes the 1999 Constitution and the Electoral Act, 2010.
5. Section 137 (1) Electoral Act 2010.
6. For days, residents of Imo State staged a public protest against the Supreme Court's verdict. See Dennis Ezezi, 'Pro-Ihedioha Protest in Imo over Supreme Court Verdict' (19 January 2020) The Guardian <<https://guardian.ng/news/pro-ihedioha-protest-imo-over-supreme-court-verdict/>> accessed 14 February 2022.
7. Samson Adenekan, 'Ihedioha Reacts to Supreme Court Judgement Removing Him as Imo Governor' (15 January 2020) Premium Times, <www.premiumtimesng.com/regional/ssouth-east/372836-ihedioha-reacts-to-supreme-court-judgement-removing-him-as-imo-governor.html> accessed 14 February 2022.
8. Senator Hope Uzodinma & Anor v Rt. Hon. Emeka

- Ihedioha & 2 ors (2020) LPELR-50260(SC) 1.
9. Ibid.
 10. It has been assumed that the singular dissenting judgment at the Court of Appeal by Frederick Oho, JCA, gave the appellant the needed courage to file an appeal to the Supreme Court. See The Cable, 'Full Text: The Dissenting Judgement that Gave Hope to Uzodinma' 18 January 2020 <www.thecable.ng/full-text-the-dissenting-judgement-that-gave-hope-to-uzodinma/amp> accessed 15 February 2022
 11. In suit no. SC.1462/2019.
 12. If the Supreme Court had held that the documentary evidence was not admissible and that the witness through whom the evidence was tendered had no authorisation to tender the evidence, the appeal would have been dismissed in its entirety. The evidence in question contained proof that votes from 388 polling units had been excluded. The entire appeal was based on this contention and the other issues would have been of no importance if the first two issues were not resolved in favour of the appellants.
 13. Constitution of the Federal Republic of Nigeria.
 14. Senator Hope Uzodinma & Anor v Rt. Hon. Emeka Ihedioha & 2 Ors (2020) LPELR-50260(SC) 42
 15. Majority of whom are laymen
 16. Brown envelope is a term used to signify bribes or kickback among many in Nigeria
 17. The reaction of Nigerians on Twitter is a mirror into the thoughts of many Nigerians outside of Twitter. Twitter is quite notorious amongst all age groups of Nigerians. It has transcended being a mere social media platform and has become a tool of protest for many Nigerians in demanding good governance. It is not surprising that the Nigerian Federal Government placed a ban on the use of Twitter in the country for over 6 months.
 18. Comrade Deji Adeyanju (@adeyanjudeji) Twitter Post, 14 January, 2020, 6:47pm <https://twitter.com/adeyanju/status/1217133643396796417?t=EZHRYJJQu8T_0ZS-6swhVg&s=19> accessed 15 February 2022
 19. The Revolutionary Seeker (WAEC) (@The_Seeker76) Twitter Post, 14 January 2020, 6:33pm <<https://guardian.ng/news/twitter-reacts-as-supreme-court-sacks-ihedioha-declares-uzodinma-imo-governor/>> accessed 15 February 2022
 20. Section 137 (1) Electoral Act 2010.
 21. Section 138(1) Electoral Act 2010.
 22. Ngilari v. Mothercat Limited (1999) LPELR-1988(SC).
 23. Chiedozie Okechuwku Okafor and others, 'Democracy and Perceived Public Confidence in the Judiciary: Roles of Socio-Economy and Gender' (2020) 14(1) African Research Review 155.
 24. The scale held by Lady Justitia is a representation of the weight the court attaches to the evidence presented by both parties. In a criminal case, justice is determined if a case has been proven beyond reasonable doubt against the defendant while in a civil case, justice is determined by the preponderance of evidence, that is, which evidence is more convincing.
 25. It is especially so, as the 3rd respondent had access to every document and record of results that arose from the election. INEC was in the best position to tender an 'original' if there was an allegation that the documents tendered by the appellants were forged. The failure of the

3rd respondent to disprove the validity of the appellants' evidence means either of two things: 1) there was no original different from the documents tendered by the appellant or 2) the 3rd respondent had lost the originals, if they existed.