President Tinubu Inauguration in Nigeria: To Be or Not to Be?

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Abstract:

No election in the history of Nigeria has thrown up so much negative publicity as the 2023 election that produced Tinubu as the 17th Nigerian President. That he would emerge as the President willy-nilly was presaged by his boastful campaign and the complicity of ex-President Buhari who was installed in 2015 (without a court challenge from ex-President Jonathan) because of the kingmaker role played by Tinubu who had seen the 2023 election as a pay-back deal. Buhari completely abided by the deal he had with Tinubu despite the drug, certificate, nationality scandals and unconstitutional issues surrounding his candidature and that of his running mate: Kashim Shettima. The groundswell objection by Christians to the mandate for being a Muslim-Muslim ticket and the unprecedented support the presumed winner of the election, Peter Obi, received from the youths did not upturn Tinubu’s triumphalism. In view of these deep strictures which the Tinubu presidency encountered, his inauguration was equally greeted with a floodgate of litigations and popular objections. His swearing in before the outcome of the judicial challenge that has been raised by Akitu Abubarkar and Peter Obi gave birth to this paper which is doctrinal in method. It seeks to interrogate the political and legal perspectives that have informed the polarizing views of those who support, and those who oppose the swearing in of the President-elect vis-à-vis judicial decisions and the constitutional provisions of the 1999 Constitution of the Federation and the Electoral Act, 2022. It finds that those who believe that the swearing in should be carried out pending the outcome of the Tribunal’s and the Supreme Court’s decisions are more in tune with the democratic ethos and conventions in the country. Even the major contender, Peter Obi, seems to be in tandem with the pro-inauguration group having benefited from or experienced the same circumstances previously as a two-time Governor of Anambra State. In the light of the serious scrimmages that the issue has engendered throughout the country, it is recommended that an urgent amendment be made to the 1999 Constitution of the Federation and the Electoral Act, 2022 to provide for an early scheduling of all elections such that all issues concerning their legal challenges are timely settled before a winner is sworn into office to avoid the perennial crisis that greets situations where a candidate assumes office only to be booted out by the judiciary.

Keywords: Nigeria, Tinubu, Presidential election, Presidential inauguration, Election Tribunal and Constitutional law.

Introduction

In the last days of the month of May, 2023 a crucial debate had taken the political space and legal fireworks have taken the centre ground as to whether the President-elect Alhaji Bola Ahmed Tinubu should and ought to be inaugurated as the President of the Federal Republic of Nigeria while the mandate which the Independent National Electoral Commission...
has given him is still being hotly contest before the Presidential Electoral Tribunal. This question has confronted the academic, legal and political divides in the Country. While some views are to the effect that the law is clear that he should be inaugurated pending the outcome of the decision of the Tribunal and even a further appeal to the Supreme Court which later court is the final arbiter in such a monumental legal challenge, others believe that to swear in the President-elect in such an atmosphere is a coup especially in the light of the weighty issues that the challengers have demonstrated in the public spaces before the tribunal comes up with its summations.

In as much as there are these two dominant views for and against the inauguration, the history of Nigeria has not exhibited a case in which after a presidential election, the President-elect and who has been sworn in while the election petition continued, was later deposed. Such a scarce history is not about to be made because the Nigerian judiciary has so ironed its path that it is clearly in the final analysis working in cahoots with the government in power. The courage of the Nigerian judiciary against the power-that-be is faint. Because it is a toothless bulldog ‘going cap in hand to the executive’ it has always and has largely lacked the temerity to pull down the ship of state at the pinnacle of power. The view by the cultured and informed Nigerian public that the 2023 election petition shall be a benchmark for the judiciary to test its will against executive power and lawlessness is non sequitur.

Since 1979 the Nigerian apex courts have always propounded prodigious technical reasons to dismiss bids to overturn presidential election outcomes. Abatta (2023) of the Foundation for Investigative Journalism sought the views of three legal pundits and came to the irrefutable conclusion that regardless of the shortcomings of the electoral processes in Nigeria nothing could manifestly change the pro-establishment posture of the Nigerian Courts as they have been set up to guarantee the perpetuation of the status quo of the old brigade and the oppressive system they have created. In such a vein, nothing could stop the swearing in as that will be in keeping with the tenets of democratic conventions and practices. Benard Onigah (as cited in Abatta, 2023) therefore canvasses that the concept of swearing in the President-elect while his mandate is being challenged is to ‘avoid lacuna in the government as it is unconstitutional to have interim government.’ Such school of thought believes that although the INEC and the political parties in power since 1999 have ‘bastardized the electoral process’ and to follow their trail and body language could lead the country astray; even as they have mismanaged the electoral process, ‘better days are ahead’ as the Nigerian democracy is a work in progress.

Statement of the Problem

Two Legal pundits, Edogiawere Omoruyi and Jide Ologu (Calls for Stay…, 2023), believe that declining to swear in Tinubu is an unnecessary politicization of a ‘purely legal matter and Judges should be allowed to do their job of determining the legality or otherwise of the declaration of the President-elect.’ If this is not done, a constitutional crisis may erupt when none ought to as the function of such a determination would be ‘to affirm the election or annul it or call for another ballot or declare the petitioner the winner.’ Even as such scenarios are unpalatable, Jide Ologu believes that sufficient constitutional provision have been made for the identified mischief in this study as the Constitution has provided that an Election Petition Tribunal must render its decision within 180 days while an appeal to the Supreme Court from the decision of the Election Petition Tribunal shall be 90 days within which a final decision shall be rendered. Yet Jide Ologu submits cogently in the direction of this study that Nigeria needs to develop ‘an efficient system that will not create room for election petition after the event of a swearing in of a President-elect.’

The concept and convention of swearing in a President-elect whose mandate is subject matter of litigation before an Election Petition Tribunal has given rise to so much divisive tendencies and opinions in Nigeria. When a subject matter has been donated to a court of competent jurisdiction for trial and determination, the
parties are usually and universally enjoined and admonished to keep the matter in status quo ante bellum in order not to dissipate the res and in order to give the trial court the ambience of control over the res and in order not to face the trial court and even the court of appeal, in this case, the Supreme Court, with a fait accompli, or render the trial court’s decision or the decision of the appellate Supreme Court nugatory. The Nigerian democracy has come of age since 1999 when it has had an unbroken period of civilian rule even though ex-military officers have continued to dictate the tune to the referee of the match. This study is thus actuated towards the campaign for a legislative environment and electoral process in which the outcomes of presidential election are clearly determined by the judiciary before the President-elect or any mandate holder is sworn into office. The era of uncertainty should be put behind. The international and national embarrassment of swearing in a President-elect who is eventually sacked from court should be a mischief which the Nigerian legislature should be able to address before it is too late or before the country is faced with such political crisis.

Festus Ogun (Adeola, 2023) brought the nature of the political crisis to the fore when he propounded that Tinubu can be sworn in and later sacked by the Election Petition Tribunal if the petitioners are able to prove their case before the Tribunal and whoever the Tribunal declares as the President-elect is bound to be sworn in. Wars can ensue in situations of the nature that Festus Ogun has painted if the deposed President refuses to vacate the office and if the President pronounced by the Tribunal insists on claiming the mandate as pronounced by the Tribunal. Benard Onigah, legal pundit (as cited in Abatta, 2023), was thus close to the problem when he stated that ‘it is only that legislators (in Nigeria) are lazy otherwise by now we would have reached a stage in the law where all disputes would have been laid to rest before inauguration.’

Theoretical Framework and Conceptual Clarification

Several theories and conceptual issues can be identified as applicable to the subject matter of whether the President-elect and his Vice should be inaugurated into office before the outcome of the legal challenges that have been instituted by Atiku and Obi before the Presidential Election Petition Tribunal and some of these conceptual and theoretical frameworks shall be considered hereunder.

Constitutional Interpretation Theories

The interpretation of law, particularly the constitution which is the highest norm of modern democracies, has acquired a certain degree of certainty and approach. The rules of interpretation are not exhaustive and they are applied with regard to the circumstances of an individual or a particular case. By the literal rule of interpretation, the plain meaning of the words used by the legislature is focused upon by the judiciary. The courts are enjoined to give statutes their ordinary meaning as the simple words used in the statutes connote. The plain meaning rule is acclaimed as the safest guide to legislative intention as the legislature is not expected to use words in a statute in vain. The court simply looks at the words of the statute and applies them as they are written giving them their ordinary and natural meaning. In Ugwu v. Ararume (2008) 155 LRCN/EPJ p. 198 words in a statute are primarily used in their ordinary grammatical meaning or common or popular sense and generally as used as they would have been ordinarily understood (Garba v. FCSC (1988) 1 NWLR (Pt.71) 449). The Judge must pay attention to the grammar or syntax underlying the construction.

The second rule attempts to determine legislative intention. Its main aim is to determine the ‘mischief and defect’ of the statute. It was established in 1584 in Heydon’s case. It tells an interpreter-Judge to read a statute in the light of the mischief or evil (that is, the problem that prompted the statute). It is used when there is ambiguity in the statute. The court’s role is to suppress the mischief the statute is aimed at and advance the remedy. The court is enjoined to
determine the mischief which the legislature intended to correct in the legislation by going into a voyage of discovery to determine the history of the legislation. In Ugwu v. Ararume (supra) Niki Tobi JSC had held that to ascertain the mischief aimed at by a statute, it is helpful to look into the history of the statute to ensure that the meaning given to it does not lead to public mischief (Ifezue v. Mbadugha (1984) 1 SCNLR 427). By so doing, the Judge considers the state of the law before the enactment, the defect which the statute sets out to remedy or prevent, the remedy adopted by the legislature to cure the mischief and the true reason behind the remedy.

The third method of interpretation of statutes is the golden rule. It modifies the language or the words in a statute to successfully interpret the actual meaning of the legislation. It takes into consideration the context in which the words are used so that justice can be done to the intention of the legislature. The purposive rule in another breath highlights the need for a shift from literal construction if it may lead to absurdity or give a different meaning to defeat the object of the statute.

**Status Quo Ante Bellum Theory**

What was the factual circumstance and position of the parties before the disagreement or dispute arose? Status quo ante is the situation that existed before something else (being discussed or interrogated) occurred (Garner, p. 1542). That is, that state of affairs before the parties or one of the parties approached or invited the court. It is a cardinal principle of law that when parties have submitted a dispute before a court of law, in this case, an Election Petition Tribunal, they are not expected to alter the circumstances of the facts of the case so that the court is not misled to act in vain or in error. To submit oneself for inauguration or swearing-in presages self-help and overreaching the other party to the dispute.

To concede to swear in a candidate whose mandate is being challenged at the Election Petition Tribunal whose decision shall or may be appealed to the Supreme Court which is presided over by the same Chief Justice of Nigeria who swears the candidate into the presidential office smacks of approbating and reprobating! The Chief Justice of Nigeria would be caught in the web of having to swear in the President-elect and turn around to depose him if a proper case for the deposition is made out against the Commander-in-Chief he had already sworn in. It sounds clumsy. However, strong arguments can be raised if parties desirous of truncating the country’s nascent democracy choose to embark on interminable disputes. Therefore a thin layer has to created, as courts continue to evolve judicial principles to define and confine the question of locus standi in election petition litigation.

**Literature Review**

**Against Inauguration**

A prominent elder statesman and the Chairman of Anya Ndi Igbo (the Eye of the Igbo) Dr. Eleazu (2023), is trenchant in his views against the inauguration of Alhaji Bola Ahmed Tinubu before the conclusion of the election petition. He believes that the President-elect should not be inaugurated until the petitions are fully dispensed with because if the process is carried out, it would compromise democracy and the judiciary would be deemed to have been overreached. He states, ‘Democracy would be compromised if the judiciary allows the All Progressive Congress’ President-elect to assume governance of the country while challenges to his victory are still being litigated, then democracy is dead.’ In other words, the President-elect should await the decision of the Tribunal as the democratic process of selecting a leader has not been fully explored as opposition parties are still in the trenches of contesting the results of the polls.

Dr. Eleazu has the backing of Maxi Okwu (as cited in Okafor, 2023) who, in 2003, was the Presidential Candidate of Citizen Popular Party (CPP) citing the ‘doctrine of necessity’ which was once used by the Nigerian judiciary to hold that even though late President Musa Yar’Adua did not officially transmit power to Vice President Jonathan before he became ill, went into coma and died in Saudi Arabia, Vice President Jonathan was perforce entitled to
mount the office of the President of the Federation. Okwu argues that Buhari should remain in office after May 29, 2023 to allow the Tribunal to deliver judgment before a new President is sworn in. Delving into the petition before the Tribunal, Okwu believes that with the state of pleadings, issues have been joined and as such, it would not take much longer time before the matter would be resolved. Delving further into the petition which was subjudice, he argued that the three main planks of the petition can be easily resolved as they were based on recondite documentary evidence and not much oral evidence would be required. He argues that the three legal questions donated by the pleadings did not require oral evidence. The parties would therefore be given ample opportunity to address the Tribunal on them and thereafter judgment would be reserved and delivered within 48 hours and the reasons for the judgment would be given at a future date stating further that the procedure was used in 1983 elections.

Maxi Okwu thinks that there is nothing sacrosanct about 29th May, 2023. It is a mere date which can be compromised by the doctrine of necessity and under the 1999 Constitution of the Federation, President Buhari can be allowed to remain in office until the Tribunal decides. Such a procedure, Okwu believes, would give the country international credence and credibility, national stability for a short period of time to enable the Tribunal to sum up. But a direct beneficiary of the campaign for the non-inauguration of the President-elect until the verdict of the apex court is known, Peter Obi, has distanced himself from the call and campaign for the postponement of the swearing in of the President-elect until the outcome of the election petition. As Okeh (2023) puts it, this is because it may not impact much on the legal proceedings before the court and the Electoral Act and the Constitution have not yielded room for it. Okeh states, ‘Even Peter once benefited from the system of being sworn into office despite pending petitions filed against him before the Tribunal by Andy Uba … and until the law is changed by a proper amendment of the Constitution the swearing must go on.’ He continues in the course which may guide the findings in this study, ‘Obi believes in the judiciary as the last arbiter in the affairs of the country and had neither made any such statement in public or private’ for the postponement of the inauguration of the President-elect pending the outcome of his petition against the President-elect. ‘Whether Tinubu is sworn in or not, there is right to remove him if it is found out that he was not duly elected.’

In order to conform and act within the praxis of non-violent agitation for the validation of his mandate having duly submitted his petition before the Election Petition Tribunal and having been assured by his legal team of light at the end of the tunnel, Peter Obi proceeded at the Twitter Spaces Session on 29th May, 2023 which was the inauguration date of President Bola Ahmed Tinubu to state resolutely that he was unyielding about his ‘stolen mandate,’ aware that he was out for a long battle and a long walk with entrenched forces. He states, ‘I didn’t start this journey in a single day, I knew it’s not going to be easy. The inauguration will strengthen me.’ To his heady supporters and their organization called in the Nigerian political space as the ‘obidients’ and the ‘obidient movement’ he states, ‘I know how dampened you are that your effort did not come the way you wished. We are in a battle with an entrenched establishment. We are in a long battle. Even me, I know that the journey ahead is tough, they will make allegations, blackmail, and all sorts of things, but I am ready…. I plead that you stay focused. This is about transformation which takes time’ (What Tinubu’s swearing in will do…, 2023).

In a more ideological framing of the perspective of his non-violent determination to take back his mandate, the Presidential Candidate of Labour Party had a night before the inauguration of President Tinubu at Eagle-square, Abuja charged the members of the ‘obidient movement’ at Kaduna to remain calm and law abiding as ‘only the court of law will decide the actual winner’ of the poll in due course bearing in mind that the ‘unity, peace and security of the country’ was paramount to any other consideration and interest in the development and advancement of the country. The themes
addressed in the two outings before the inauguration where adherence to rule of law, respect for democratic institutions and trust in the judiciary.

But the ranks of those determined to stop the inauguration particularly from eastern Nigeria where Obi comes from and which believes that the 2023 election ought to have been the turn of the Igbo to produce a President, continues to swell. Igbo Patriotic Forum (IPF) had called on the Presidency to ‘allow the court to complete its work on the presidential election petitions before anyone is sworn in as the next President of Nigeria.’ The Forum believes that since the 1999 Constitution provides that any candidate who participated in the election and feels that he is dissatisfied with the outcome of the process should proceed to court then the processes of the court ought to be concluded before a winner can be sworn in as the President of the country. 

Likening the development to a football match, the Forum believes that in ‘a football match the true winner is not determined until the referee blows the final whistle.’ ‘We should allow the court to finish its business before we swear in any one that finally wins in the court’ (Jannanike, 2023).

As a consequence of popular opposition, several cases were instituted by a cross section of the public against the inauguration of President Bola Ahmed Tinubu; and a critical letter outlining eight issues why he ought not to have been sworn in as the next President of Nigeria. It further alleged that Tinubu lied on oath about his possession of Guinean passport. The suit had Praise Ilemona Isaiah; Pastor Paul Isaac and Dr. Amonga Moses as plaintiffs. It sought a declaration that Tinubu deliberately deposed that he is not a citizen of another country on Form EC9 and thus sought an order barring him from contesting any election in another ten years because evidence exists that he has a Guinean passport (Abo and Penaranda Law, 2023). Another suit by Govindex Leadership, Empowerment and Development Foundation & 6 Ors brought their action for failure of INEC to comply with section 160(1) of the 1999 Constitution and sections 60(5) and 148 of the Electoral Act, 2022 which required INEC to electronically transmit or transfer and upload the scanned copy of Form EC8A result of the polling units directly to the collation system (that is the usage of the Bimodal Voters Accreditation System BIVAS) to upload the result to INEC Result Viewing Portal (iRev) immediately and in real time after completion of voting at the polling units.

A floodgate of suits became opened in the Nigerian litigation space that the Chief Judge of the Federal High Court of the Federal Capital Territory, Abuja, John Terhemba Tsoho, had to issue a circular barring all the Judges of the Federal High Court, Abuja from entertaining any action related to the swearing in of the President-elect. One such suit caught by the barring order was marked as FHC/EN/CS/77 Abudu Yusuf Rufai v. AG of the Federation filed on 27th May, 2023 against the inauguration that held on 29th May, 2023. It sought a declaration that section 134 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) provides for a mandatory win of at least 25 percent of the FCT Abuja votes before a candidate of any of the political parties can be declared the winner and duly elected in a presidential election in Nigeria (Abujareporters, 2023). This was also one of the eight critical issues captured in Ogebe’s letter to President Joe Biden to shun the inauguration.

Unfavourable Judgments

It did not take long however before a battery of unfavourable judgments began to issue from the bench. On the issue that the President-elect had
a Guinean passport and made false declarations under oath, James Omotosho J. held that the suit was ‘unconstitutional, frivolous and vexatious’ and that the plaintiffs lacked locus standi to bring the action thus stripping the court of the requisite jurisdiction to entertain the suit; and thus, the suit was an abuse of court process and a waste of judicial time and brought to expose the judiciary to ridicule as only the Presidential Election Petition had the power to look into the claims. The Court threatened to commit the Counsel to the plaintiffs before the Legal Practitioners’ Disciplinary Committee for engaging in frivolity and dragging the court to the mud. A fine of N15 million was imposed on the plaintiffs for filing such a frivolous action (Politics Nigeria, 2023).

The Supreme Court bench also came down heavily on the Peoples Democratic Party’s case that the Vice President to Tinubu, Alhaji Kashim Shettima, entered two nominations contrary to sections 29(1), 33, 35 and 84(1) & (2) of the Electoral Act, 2022. The highest court held that the Peoples Democratic Party also lacked the locus standi to bring the action and that the party was thus a meddlesome interloper as it was not a member of the All Progressive Congress because the issue concerning double entering of a candidate in one election cycle was internal to the members of the political party and they only had the standing to raise it (Naija News, 2023).

**Pro-Inauguration**

A Solicitor to the Presidential aspirant of the Peoples Democratic Party in the 2023 election and the prosecuting Counsel before the Tribunal sees the issue of inauguration and swearing-in from the perspective of oath taking and the covenant of only the President-elect and that it does not preclude the Tribunal from going into the merits of the petition before it. Uche (2023) therefore believes that the swearing in of the President-elect does not affect the Tribunal or tie its hands as it has given timelines for the parties to present their cases expeditiously.

Uche finds support in the opinion of Ubani (2023) that it would be irregular to canvass that a President-elect should not be sworn in and take over the reins of power. An ex-Vice President of the Nigerian Bar Association whose opinion is strong on legal matters believes that the 1999 Constitution of the Federal Republic of Nigeria does not make any provisions to prevent a President-elect from being sworn into office simply because his mandate is being disputed by any of his adversaries in the polls. Locating the issue within the constitutional framework of the country, Ubani submits that in so far as the timeline provided by the ground-norm to the effect that all disputes concerning the poll must be determined within the constitutional framework of 180 days before the Election Tribunal and 90 days before the Supreme Court in the event of an appeal against the decision of the Election Tribunal in accordance with section 285 of the 1999 Constitution (as amended), the legal processes have been met and inauguration can proceed on 29th May, 2023.

In the consideration of the inauguration issue, reference has been made and authority has been sought in what happened previously as judicial precedence. Ebiomoh (2019) has drawn critical attention to the previous Presidential Election Petition Tribunal where an interim injunction sought to stop President Buhari from being sworn into office in 2019 was refused by the Acting Chief Justice of the Federation, Justice Tanko Mohammed. The application in 2019 was brought before the Election Petition Tribunal by Hope Democratic Party (HDP). The interim application was made ex-parte pending the hearing of the main petition in order to preserve the res (the subject matter) in dispute. It was an order determined to restrain the then President-elect, Mohammadu Buhari from presenting himself for the purpose of being sworn into office pending the determination of the petition. The Presidential aspirant of Hope Democratic Party (HDP), Chief Ambrose Owuru who polled 1,663 in the election hitched his application under sections 1(2), 6(6), 139, and 239 of the 1999 Constitution in addition to sections 26(4)(5) and 138(1)(b) of the Electoral Act, 2010.

**What Characterized 2023 Election?**

It would be necessary to highlight some of the basic features that characterized the 2023 presidential election that Alhaji Bola Ahmed
Tinubu won in order to be in a better position to address the subject matter of this study being the inauguration of the President-elect while his mandate is being vigorously challenged before the law courts. It was one election in which the Nigerian youths became keenly interested in seeing that the old brigade was rooted out of power and in order to do so, they routed their support for the youngest of all the presidential aspirants particularly within the bracket of the four front liners in the race: Tinubu, Atiku, Kwakwanso, and Obi. They routed for Obi through the instrumentality of the social media which was initially shunned or snubbed but later became the chief corner stone and the determinant of the trajectory of the campaigns and the main election. The youths routed for Obi because he spoke to their understanding and in philosophical frameworks that was almost a new language in the political history of the country. Obi campaigned to shift the country from consumption to production, from fulltime legislature to part time engagement, from monthly emolument to hourly pay, from national cake sharing to baking. As such, the youths and the Labour Party that Obi deployed to emerge as a presidential candidate was almost sure of victory that the old grade had sleepless nights to work out a programme of rigging the election.

The election was rigged in such a shoddy manner that even the un-initiated and gullible could not be convinced. Therefore, for the cultured south which believed in the mandate it seemed to have donated to Obi, it was inconceivable for Tinubu to be sworn in when the mandate is under challenge. It was in this respect that Nwuke and Ordu (2023) sought to locate the groundswell against the mandate and resistance to the inauguration in so much fake news that characterized the election and the methodology employed by the Independent National Electoral Commission in declaring the result of the election. It was argued that while the Presidential and National Assembly elections took place simultaneously, the results of the National Assembly elections were uploaded while the Presidential election was not uploaded in real-time with BIVAS to the iRev, with INEC claiming that there were glitches in the processes of doing so. It was thus believed that the election was terribly marred by irregularities and corrupt practices that there was flagrant non-compliance with the provisions of the Electoral Act and other relevant regulations made hitherto the election. The scale of voters’ molestation and intimidation in the west and large scale buying of votes despite the cashless and naira re-designing policy the Buhari's administration introduced months to the election did not help the acceptance of the election as a free and fair exercise.

Consequently, the 2023 presidential election was the most vilified by the international community and international election observers. The condemnation was so wide spread that attack against the swearing in of the holder of the mandate was easy battle because the election had been deemed to be so marred by irregularities that even the residents of the Abuja Federal Capital Territory moved the court to claim that they did not give Tinubu 25 percent of the votes cast in the FCT, Abuja. In the suit, five residents of Abuja made the application to the Federal High Court claiming that the President-elect was illegally and unconstitutionally declared the winner of the election without securing 25 percent in Abuja. They claimed that for a President of the country to emerge as the winner of a presidential election, the candidate shall score not less than one quarter of the votes in each of at least two thirds of the 36 states and the Federal Capital Territory, Abuja.

Believing therefore that Tinubu did not meet the required constitutional bench mark, Barrister Chuku Nwachukwu, learned Counsel to the claimants (who are Jeffery Uche, Osang Paul Ayaegbunam Okey, Chibuike Nwachukwu and David Adzer) urged the Federal High Court to restrain the President-elect from being inaugurated while urging the court to hold that the incumbent President Mohammadu Buhari should be allowed to remain in office until the issue is resolved as an interim government (Asadu, 2023). They requested that the Chief Justice of Nigeria should be restrained from swearing in the President-elect while pushing the strong point that the Federal High Court should
declare that no candidate can be sworn in as a Nigerian President unless the candidate has scored 25 percent of the votes cast at the FCT, Abuja (Abe, 2023).

Though Idayat Hassan (as cited in Asadu, 2023) believes that the development was novel and was an extreme position capable of pushing the country beyond the precipice of political safety, Blankson (2023) while reporting the views of a Senior Advocate of Nigeria on the issue, canvasses that the concept of stopping the inauguration of a President-elect is a coup and can equally amount to an interim government which is unconstitutional because in so far as the Tinubu has been declared the President-elect, he must be sworn into office and to fly the kite of interim government is most obnoxious. Citing the position of the country at the beginning of the current 4th Republic when Chief Olusegun Obasanjo won and was declared the winner of the 1999 presidential election, Blankson drew attention to several court actions that took place in 2003, 2007 and 2011. It was only in 2015 when the incumbent ex-President Goodluck Jonathan refused to challenge the then President-elect, Mhammadu Buhari, that there were no judicial skirmishes. In 2019, Atiku Abubarkar challenged the victory of Buhari and in all these incidences, the processes of inauguration continued and were concluded. Blankson therefore submits on the basis of the views canvassed by the learned Senior Advocate of Nigeria, that if Tinubu loses at the Tribunal and the Tribunal judgment is subsequently upheld by the Supreme Court, then Tinubu would have no choice then to dismount the horse; and while all these processes of litigation pans out, the President-elect must remain in office.

The Presidency was also trenchant in clearing its position as to the swearing in of the President-elect. Apart from the processes of setting up handover committees and engaging the President-elect and the First Lady to do elaborate tours of the Aso Rock Villa to get them familiarized with the administrative set up of the complex and seat of government, Boss Mustapha (as cited in Ajimotokan, 2023) has stated it widely that out-going President Buhari would not spend a day extra beyond the May 29, 2023 exit date submitting that a spate of litigations over the outcome of the election would not even yield a second longer for the presidential exit from the Villa and transfer of power. He states, ‘This is not the first time we have had an election and is not the first time people have assumed offices and litigations continue. So, the matters before the election tribunal will continue unabated till the final determination and the matters could get to the Supreme Court if the parties involved are dissatisfied with every level of the litigation.’

The election was not only characterized by deep intra-generational divide in which the youths cleaved to Obi and the old brigade manipulated the poll for Tinubu, it was also characterized ethnic bigotry, hate speech and deep religious divide. A position taken by Bayo Onanuga (as cited in Olokede, 2023) for instance portrayed the electoral outcome as a ‘shame for those in cassocks who were predicting victory for Obi claiming that it was ordain by God almighty particularly cardinal John Onaiyekan of the Catholic Church who claims that the election was rigged.’ But in a Saharareporters’ publication (2023), Cardinal Onaiyekan continues to hold the tenacious view that it does not make sense to swear in Tinubu and others whose victories are being challenged in court yet. The Cardinal went personal as follows, ‘I am entitled to take the position that I am still waiting for the court to determine who won the election. I am one of those who have been saying that it does not make much sense to swear in people when they are still in court. We have to review the election process to ensure that we have a winner who will be sworn in and everybody would rally around. There are countries which do not want to hear the name of God yet they are organizing their things well but Nigeria which calls the name of God often is not ready to follow the precept of God in managing its affairs.’

Canvassing that the winner should be sworn in while the Tribunal continues with the hearing of the petition before it, Onanuga cited the convention as it happened in 2011 when Obi was the Vice Presidential candidate and his Presidential candidate, Atiku Abubarkar approached the Tribunal to challenge the
outcome of the election between him and the out-going President Mohammedu Buhari. It was further demonstrated that the Labour Party Vice Presidential candidate to Peter Obi in the 2023 election, Datti Ahmed, in 2011 became a Senator representing Kaduna north under the Congress for Progressive Change (CPC) until his victory was upturned after he had been sworn in as a Senator of the Federal Republic of Nigeria. In other words, those who are campaigning against the swearing in of the President-elect (according to Agboke, a Residential Electoral Commissioner with the Independent National Electoral Commission, as cited in Gbadamosi, 2023) are displaying ignorance of the law of the country. The Constitution and the Electoral Act have made it abundantly clear that the Court of Appeal seats as the Tribunal in the case of presidential election and appeals goes to the Supreme Court from its decision. The Constitution and the Electoral Act do not provide that the winner of an election who has been proclaimed the President-elect should not be sworn in.

International Collaboration

The inauguration of President Tinubu as the democratically elected President of Nigeria has also thrown up certain international conspiracy against the people of Nigeria. The desire for democratic change in Nigeria in the eyes of the US and even the UK is only to the extent that the present strangle-hold of the masses of the Nigerian people is maintained. The desire of the Nigerian people to transform into an industrial nation in Africa is a pipe dream. The support which the international community has given to the electoral process and the non-committal posture to the outcome of the election signifies to a large extent that the flag independence of Nigeria has not shifted. The clamour for democratic change for the west is merely to the extent that Nigeria shifted from one strongman rule to another strongman rule within the compass of the ballot. The desire of the people to transform their conditions from multi-dimensional poverty is at the back seat only lip service is paid to it. In so far as the trade partnership in oil and gas is maintained and the east and China is warded off while the Nigerian economy remains within the compass of the American-UK orbit, any tyrant ready to stay for the constitutionally guaranteed period of four years and another second term of four years is welcome for the west. Whether the citizens and the masses are living below poverty line or the corruption indexes are poor are no longer issues.

Throughout the clamour that the Tinubu presidency was a Muslim-Muslim ticket, that the running mate was a Boko Haram king pin, that Tinubu is a world-wide drug baron with certificate of conviction in US, that Tinubu’s educational backgrounds from the US are cloudy and his bloodlines are clumsy, the United States of America did not blink. It did not as much as call any shots. To the best of all intentions, Nigerians were free to determine who rules them and if the person inaugurated is an Atiku, an Obi or a Tinubu did not matter again in so far as Buhari was ready to vacate Aso Rock Villa, Abuja. In fact, the atrocities associated with a Buhari Presidency in insecurity was so engaging that the west prayed fervently that another bogey of a Nigerian ruler was needed to rid the political space of such a lackluster personality. Therefore, that the election was rigged or not was a non-issue as the US was ready to openly embrace the rigger. That a Tinubu presidency was a ‘rapist’ was also a mere academic issue, the US was ready to watch the premier video the rapist had shot (Ogebe, 2023). In fact, the political language of Obi was sounding like a broken record that the west was not familiar with. To move from consumption to production, from monthly pay to hourly pay, from full time government to part time legislative engagement are ideological constructions that could be difficult to place within the template of what Nigerians and the west are used to. They could be socialist sloganeering in disguise.

It was too difficult to understand whether Obi was ready to need the west and its mafia oil business in Nigeria. It was difficult to say whether it could continue to be business as usual when they could clearly hear from the horses’ mouth that there was nothing more in the national cake to share. The esteem which the US is held in the West African sub-region in term of global peace and oil stability has been so high
that as soon as the US did not kick over the coming to the Aso Rock by Tinubu, and was ready to send a delegation to the inauguration of the President-elect, it became clear that the US had been in the know about the pact that the Buhari administration had established with Tinubu and his colony since the pre-2015 days.

Although the Labour Party and the Peoples Democratic Party had criticized the USA's posture in the electoral impasse in the country by siding more with the ‘entrenched establishment’ and aiding and abetting candidates with flawed, violent personalities and drug related crimes, the Tinubu inauguration was the seventh transition of power in Nigerian democracy and efforts were being made on all fronts to ensure that it was not truncated and or sabotaged by undemocratic forces in the fringes and being an internal affair of Nigeria as an independent democratic nation, the United States appeared to be playing safe not to openly predetermine who rules the country. And Nigeria being one of utmost strategic importance to the US in West Africa, it has carefully avoided being dragged into the murky waters of the internal politics of Nigeria. It then chose to give a blind eye to the entrenched establishment than become the battle axe of internal opposition represented by Labour Party and sent the following delegation led by Secretary Marcia L. Fudge and seven others to the inauguration.

The seven others were: Mr. David Greene (Charge’d’ Affairs US Embassy, Abuja); the Honourable Sydney Kamlager-Dove (US Representative California); the Honourable Marisa Lago (Under Secretary of Commerce for Internal Trade, US Department of Commerce); General Michael E. Langley, Commander US Africa Command; the Honourable Enoh T. Ebong, Director US Trade and Development Agency; the Honourable Mary Catherine Phee, Assistant Secretary of State for the Bureau of African Affairs, US Department of State; the Honourable Judd Devermont, Special Assistant to the President and Senior Director for African Affairs, National Security Council; and the Honourable Monde Muyangwa, Assistant Administrator for Bureau of Africa, US Agency for International Development. The delegation was as powerful as the need to continue to keep the Nigerian nation under the sphere of western influence and murderous capitalism can be.

**Real Power of Incumbency**

Strong views have been expressed about the potentials of the real power of incumbency and its misuse after the swearing in of President Tinubu and before the Tribunal decides. History is replete with situations in which governments in such circumstances may decide to compromise the rule of law. For instance, Nmodu (2023) had argued that the Buhari administration had set up a Swearing-in Committee and the President-elect had equally inaugurated a Transition Committee. By installing Tinubu in power before the final decision over Obi’s and Atiku’s petitions, Tinubu would have had authority and undue advantage over those who are challenging his mandate and the Tribunal would also become aware that it has come under a new dispensation that it is being called upon to annul. ‘While the lawyers shuffle papers in court for their pay, the real power will be handed over to Tinubu who knows the sweet and bitter of power as a kingmaker, two-time Governor, Senator, and now a sworn in President: a sitting President. Nigerians have been presented with a fait accompli.’

The fears expressed by Nmodu did not take long before the President-elect let the cat out of the bag shortly after being sworn in. On 12th June, 2023 which had been declared Democracy day and a public holiday by the Buhari administration in honour of Chief M.K.O. Abiola who won the annulled 12th June, 1993 election by President Ibrahim Babangida, President Tinubu stated in what has been interpreted as an indication that he would be unwilling to concede defeat if the Tribunal rules against him, that ‘court orders have been used by politicians to revoke their rival’s electoral victories and take over elected positions…The public has occasionally been perplexed by conflicting court rulings regarding elections. But illegal orders would not be tolerated.’ ‘Unnecessary illegal orders issued to truncate or
abridge democracy will no longer be tolerated’ (BigMoses, 2023 and Calethewriter, 2023). It is thus prefigured that more in this dimension of the use of the power of incumbency to cow the judiciary may be in the offing in the days ahead.

Drawing critical attention to the problem that this study has set to confront, Nmodu states that ‘the constitution need be reviewed so that all quarrels about election, pre-election and post-election end before swearing in as in Kenya.’ Raising further misgivings, Nmodu believes that in fact Tinubu has already moved into the Defence House in Aso Roak Villa and his spouse has already toured the facilities in Aso Rock. He had already gone to Rivers State to commission projects as the President or the President-elect of the Federal Republic of Nigeria while the Tribunal was yet sitting. In a recriminating atmosphere of this nature, legal pundits have not had uniformity of opinion. Human rights lawyer and Senior Advocate of Nigeria, Olisa Agbakoba, had stated before the inauguration event of 29th May, 2023 that ‘Tinubu will undoubtedly be sworn in whether it is legal or (not) constitutional and despite petitions challenging his victory.’ The learned Silk argues that with 8,794,726 votes Tinubu was proclaimed the winner of the election and the law should be upheld as the Constitution contains no clauses that might prevent his swearing in. He canvasses, ‘It is important to state that the constitutional process should be followed while the Tribunal deals with the petitions as there is no provision to postpone or delay the inauguration. We need to obey constitutional rules.’ Another Legal Pundit, Bashir Ahmad (as cited in Ngdailynews, 2023) has even pushed Agbakoba’s view to the brink arguing that the sitting President should not be distracted but should rather hit the ground running as ‘no Tribunal anywhere in the world has been able to sack a sitting President.’

Yet, the Vice Presidential running mate to Peter Obi, Senator Datti Ahmed, confutes Agbakoba suggesting that since Tinubu did not meet the requirement set down under the same 1999 Constitution, he fell short of the conditions set forth therein citing section 135(1) of the Constitution. Speaking to his obidients supporters after the Tribunal proceedings and hearings went underway with optimism he declared, ‘we are now challenging a sitting President. The battle for a legitimate outcome in the elections will serve as a strong message for Nigerians, highlighting the need for transparency during the electoral process and that no candidate who does not possess the required criteria should take up the mantle of leadership’ (Ngdailynews, 2023).

Conclusion

The Constitution of the Federation seems not to have made adequate provision as to what happens when election results and returns are challenged. Swearing in a President-elect while petitions are flying left, right and center is unhealthy. The view of antagonists that Tinubu ought not to have been sworn in while there are critical litigations against his mandate is healthy even though there are no legislative backing against it in the Constitution and the Electoral Act. The argument that the President-elect is sworn in to avoid a vacuum is lackluster and depicts a legislature that is not proactive and responsible. It has been noted that the legislature is far more interested in what adds value to their deep pockets than legislating for the common good.

Recommendation

The 10th national Assembly should bring an amendment to the 1999 Constitution and or the Electoral Act 2022 to schedule all elections in such a manner that disputes over them are concluded before inauguration or swearing in and assumption of political offices.

Election petitions should be made restricted disputes for political parties and candidates in elections; and court rooms should be closed from all manners of interest groups which are masquerading in the courts as interested and concerned groups raising critical issues which cannot be resolved in their favour because the Nigerian court is not a Father-Charismas giving
a claim beneficial to a party who is not before it to a stranger to a dispute appearing before it.

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