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An Overview of Conflicting Judgments of Appellate Courts in Election Litigation in Nigeria

Ubanyionwu Chima Josephat*

Abstract

If one is not confused by the series of glaringly contradictory judgments coming out of the 2023 general election petition tribunals across the country, even up to the level of the appeal court, then one must be confusion personified. This is glaring in the various governorship election tribunals in almost all the 29 States where elections took place in March, 2023.Forexample, in thecase of the Kano State governorship election petition, the judgment read in the courtroom was different from the one contained in the Certified True Copy obtained from the same court. As a result of this development, one begins to wonder what happens to the concept of "judicial precedents."Doctrinal method of legal research was employed in this work. In this article, attention would be focused on conflicting judgments of the appellate courts in election litigation cases in Nigeria.

Keywords: Overview, conflicting judgments, appellate courts, election litigations

1. Introduction

Quite a number of judgments from the Court of Appeal and a few from the Supreme Court appear to have created some confusion amongst practitioners and the general public. This untenable situation further underscores the importance of this article. We have witnessed a lot of confusion regarding the proper application of the principle of judicial precedent. The creation of several Divisions of the Court of Appeal has also led to the unintended problem of conflicting judgments at the appellate court. Such judicial contradictions have a tendency to lead not only to confusion in judicial precedent but cause untold hardship to litigants in their quest for justice. In this article, we defined the major concepts used in this work, as well as the theories behind conflicting judgments of court in election litigation. We equally looked at some specific cases bordering on the subject. The essence of this work is to provoke more discussions on the topic. This will go a long way in strengthening our democracy.

2. What is Conflicting Judgments?

Conflicting court judgments are final or interim orders or decisions of courts of coordinate jurisdiction, or of different divisions in the same court hierarchy both of which contradict each other in respect of the same subject matter.[1] By virtue of Section 54 of the Evidence Act,[2] every judgment is conclusive proof as against parties and their privies of facts directly in issue in the case, actually decided by the court and appearing from the judgment itself to be the ground on which it was based; unless evidence was admitted in the action in which the judgment was delivered which is excluded in the action in which that judgment is intended to be proved.[3] By the provision of Section 318 (1) of the Constitution,[4] decision means, in relation to a court, any determination of that court and includes judgment, decree, order, conviction, sentence or recommendation.[5]

3. Meaning and Concept of Appellate Courts in Election Litigation in Nigeria

Appellate courts[6] play a crucial role in Nigerian election litigation by reviewing decisions made by lower courts or tribunals on electoral matters. These courts ensure that justice is served in election disputes by examining the legal correctness of decisions made at trial courts or tribunals. Appellate courts do not typically retry cases but focus on whether there were legal errors in the application of the law or in

*Ubanyionwu Chima Josephat, LL.B, LL.M, Ph.D B.L, Professor of Law, Department of International Law & Jurisprudence, Faculty of Law, Chukwuemeka Odumegwu Ojukwu University, Igbariam Campus, Anambra State. Email: barcjuba@yahoo.com. Tel: 08036660646

[1] Definition given by M Ousman, SAN. See< https//www.vanguardngr,com > accessed 30 June 2024.

[2] Evidence Act 2011.

[3] *Balogun v Adejobi* (1955) 2 NWLR (376)131, *Oguleye v Aina* (2011) 3 NWLR (Pt 1235) 479 at p. 580, para. A.

[4] Constitution of the Federal Republic of Nigeria 1999 (as amended).

[5] *Saulawa v Kabir* (2011) 2 NWLR (Pt 1232) 417 at p. 439, paras. G – H.

[6] Appellate Courts in this context are the Court of Appeal and the Supreme Court.

procedural matters. In the context of election litigation, appellate courts review cases brought from the decisions of election petition tribunals, which have original jurisdiction in resolving disputes arising from the conduct of elections. The appellate courts ensure that the provisions of the Electoral Act 2022, the 1999 Constitution (as amended), and other relevant laws are properly applied. In Nigeria, election petitions can be appealed up to the Court of Appeal and, in some instances, the Supreme Court. In *Atiku Abubakar v INEC & Ors*,[7] that has to do with the 2019 presidential election, the candidate of the People's Democratic Party (PDP), Atiku Abubakar, challenged the election of President Muhammadu Buhari. He alleged irregularities in the conduct of the election, including electronic transmission of results, issues with voter accreditation, and over-voting. The Court of Appeal, sitting as the Presidential Election Petition Tribunal, initially dismissed his petition. The matter was then appealed to the Supreme Court, which upheld the decision of the Court of Appeal, affirming Buhari's election. The appellate court affirmed the decision of the lower tribunal, stressing that the petitioner had not provided sufficient evidence to overturn the election results. The Electoral Act 2022 outlines the process for filing an election petition and the appeal procedure. In this case, the appellate courts highlighted the principle that a petitioner must prove his case beyond a reasonable doubt to succeed in election petitions. In *Peter Obi v INEC & Ors*,[8]the appellant,Peter Obi, the gubernatorial candidate of the All Progressives Grand Alliance (APGA), challenged the declaration of Andy Uba as the winner of the 2007 Anambra gubernatorial election. He contended that his tenure had not expired, having taken office after a successful election petition against Chris Ngige. The Court of Appeal ruled in favor of Peter Obi, setting aside the election of Andy Uba. The appellate court upheld Peter Obi's claim, ruling that his tenure had not lapsed at the time of the 2007 election. Section 285 of the 1999 Constitution (as amended) gives the Court of Appeal jurisdiction over appeals arising from election petitions. This case demonstrates the appellate court's role in interpreting the law on electoral matters. Also, in *Oshiomhole v INEC*,[9] which has to do with the 2007 Edo State governorship election, Adams Oshiomhole challenged the election of Oserheimen Osunbor, alleging widespread irregularities. The Election Petition Tribunal declared Oshiomhole the winner, and Osunbor appealed the decision to the Court of Appeal. The Court of Appeal upheld the decision of the tribunal and declared Oshiomhole the validly elected governor. The appellate court affirmed the tribunal's decision, citing sufficient evidence of electoral malpractices. This case exemplifies how appellate courts ensure the proper administration of electoral justice by confirming decisions based on credible evidence of electoral irregularities.

3.1 Hierarchy of Appellate Courts in Election Litigation in Nigeria

A. Court of Appeal

The Court of Appeal is the first appellate court for most election matters in Nigeria. Section 239 (1) of the Constitution[10] grants the Court of Appeal exclusive jurisdiction to hear and determine appeals from the decisions of election tribunals.

B. Supreme Court

The Supreme Court is the final appellate court for presidential election petitions and governorship elections. Section 233(2) (e) (i)[11] grants the Supreme Court exclusive jurisdiction to hear appeals from decisions of the Court of Appeal in election-related matters, particularly in presidential election disputes. In *Wike v Dakuku Peterside*,[12]Nyesom Wike, the candidate of the PDP, was declared the winner of the 2015 Rivers State gubernatorial election. His opponent, Dakuku Peterside, of the All Progressives Congress (APC), challenged the election, citing violence and irregularities. The Election Tribunal nullified Wike's election. Wike appealed to the Court of Appeal, which upheld the tribunal's decision. On

[7](2019) LPELR-46935(SC).
[8](2007) 11 NWLR (Pt 1046) 565.
[9](2008) 15 NWLR (Pt 1109) 131.
[10] Constitution of the Federal Republic of Nigeria 1999 (as amended).
[11]*Ibid.*
[12](2015) 17 NWLR (Pt 1485) 209.

further appeal, the Supreme Court overturned the lower court's decision and reinstated Wike as governor. The Supreme Court held that the tribunal did not have sufficient grounds to annul the election, emphasizing the importance of proving substantial non-compliance with the Electoral Act to nullify an election. Section 134 of the Electoral Act 2022 lists the grounds for invalidating an election. The case underscores the appellate courts' role in ensuring that election annulments are based on substantial non-compliance with the law, rather than procedural errors alone.

Appellate courts in Nigeria serve as a critical mechanism for resolving election disputes, ensuring that errors at lower tribunals are corrected and that electoral justice is upheld. The appellate process involves a meticulous review of facts, evidence, and legal principles, with the goal of affirming or overturning decisions based on the law and the weight of evidence.

3.2 Election and Election Litigation Defined

In its simplest form, 'election' is a means through which people make choice of leadership.[13] It is the process of selecting one person or more for leadership positions in both public and private establishment. Election offers a medium through which citizens in a polity choose their representative and political leadership.[14] It allows a degree of communication between the rulers and the ruled and further provides a means of legitimizing rights of the rulers to govern.

In the contemporary world of today, elections have become the most acceptable means of changing leadership in any given political system. Election, ordinarily, in most democratic States, is usually conducted by an institution set up by law in a given society. Representative government is often referred to as democracy where the authority of government is derived solely from the consent of the governed. The principal mechanism for translating that consent into governmental authority is the holding of free and fair elections.[15]

The Electoral Act[16] is the law which currently regulates elections in Nigeria. Applying a broad interpretation, the Court of Appeal, in *Progressive Peoples' Alliance (PPA) v Sariki,*[17] interpreted the word "election," as used in section 137(1) (b) of the Constitution of the Federal Republic of Nigeria 1999 (as amended), to mean the "process" of choosing, by popular votes, a candidate for a political office in a democratic system of government. It cannot refer exclusively to the polls. The casting of votes by the electorates on the day of the polls is just part of the electoral process.

The procedure for challenging an election under the Electoral Act is by way of an election petition complaining of either an undue election or undue return.[18] That election petition is what is referred to as election litigation. Election litigation presupposes that an election has been held and the result announced.

3.3 Nature of Election Petition

Election petition are neither criminal nor civil cases. On the ground of public policy, they are regarded as unique and therefore, accorded special treatment. In legal parlance, it is common knowledge that election petitions are *suegeneris* which means special, or, put in another expression, proceedings of its own kind or class, unique or peculiar.

3.4 The Role of the Judiciary in Election Litigation in Nigeria

The Judiciary is construed as the hallmark and pantheon, of constitutional democracy and the bulwark of the people against repressive governments and infractions or deprivations of their rights and privileges. It is clear

[13] T Osipitan, *Problems of Proof under the Electoral Act 2002* in Judicial Excellence, Essay in Honour of Hon. Justice Anthony Iguh, JSC, CON, Snaap Press Ltd, Enugu, 2004, pages 289 – 304.
[14] *Ibid*.
[15] Article 13(4) African Charter on Human and Peoples' Rights (Ratification and Enforcement Act Cap. A9 Laws of the Federation of Nigeria 2004, which is part of our law as was held in *Abacha v Fawehinmi* (2006) 6 NWLR (Pt 660) 228.
[16] Electoral Act 2022.
[17] (2007) 17 NWLR (Pt 1064) 456.
[18] ANPP v. PDP (2006) 17 NWLR (Pt 1009) 467.

that when matters become knotty and inexplicable in society, it is the judiciary that is resorted to for the interpretation of laws and for resolution of conflicts. It follows that to be able to interpret the law and resolve conflicts, the Courts must be very clear, consistent and certain in its judgments or decisions. The Court must refrain from giving conflicting decisions or rulings on cases brought before it by parties which make interpretation of the law a nightmare or bring about confusion in the state of the law at any given time.

4 The Concept of Judicial Precedent

According to the Black's Law Dictionary,[19] judicial precedent otherwise known as *staredecisis* means to stand by things decided. The rule of adherence to judicial precedents finds its expression in the doctrine of *stare decisis.* This doctrine is simply that, when a point or principle of law has been once officially decided or settled by the ruling of a competent court in a case in which it is directly and necessarily involved, it will no longer be considered as open to examination or to a new ruling by the same tribunal, unless it be for urgent reasons and in exceptional cases.[20]

In recent times consistency and certainty which are the cornerstones of the legal system hinged on judicial precedent appears to have been fast eroded especially in election litigations in the country, so much so that it appears that the judiciary rather than playing its time long traditional constitutional role of being an interpreter of the law and an instrument of conflict resolution is rather seen as the harbinger of anarchy and confusion. Put another way, the Courts rather than providing solutions to conflicts are now embroiled and enmeshed in confusion and conflict emanating from contradictory and conflicting decisions of the appellate Court especially in the Court of Appeal where it is now a notorious fact that there has been an avalanche of conflicting judgments by the different Divisions or Panels on election matters.

5 Theories of Conflicting Judgments of Court in Electoral Matters

Conflicting judgments of courts in electoral matters occur when different courts of equal jurisdiction[21] or even courts at different levels[22] deliver contradictory decisions on the same or related issues in an electoral case. This phenomenon has implications for the integrity of elections, legal certainty, and judicial authority. Theories addressing conflicting judgments in electoral matters can be classified into the following:

5.1 Judicial Hierarchy Theory

This theory emphasizes the importance of adhering to the judicial hierarchy. In the Nigerian legal system, lower courts are bound by the decisions of higher courts. Conflicting judgments of courts of equal jurisdiction must be resolved by a court of superior jurisdiction, such as the Court of Appeal or the Supreme Court. This ensures that the principle of *stare decisis*[23] is upheld and legal certainty is maintained. See *Oguebego v INEC*[24] which has to do with conflicting judgments regarding the legitimacy of the candidates of the People's Democratic Party (PDP) for the 2015 general elections in Anambra State. There were two factions within the PDP, each conducting its own primary elections and producing separate lists of candidates. The dispute was taken to the courts, leading to conflicting judgments from different courts regarding which list of candidates was valid. The High Court of the Federal Capital Territory (FCT) ruled in favor of one faction, while another court supported the list produced by the other faction. This conflict led to confusion about which candidates INEC should recognize for the election. Ultimately, the Supreme Court stepped in to resolve the conflict, holding that only the list produced by the PDP's National Working Committee (NWC), and recognized by the party's national leadership, should be deemed legitimate. The Supreme Court emphasized that INEC could only recognize candidates submitted by the party's national leadership, as the internal workings of the party fall within the exclusive

[19] BA Garner, *Black's Law Dictionary*, (8th edition, Thomson West, USA, 1999) p.1443.
[20] Ibid.
[21] Courts of coordinate jurisdiction.
[22] Example, High Court, Court of Appeal, or Supreme Court.
[23] The doctrine of precedent.
[24] *Supra.*

purview of the party's leadership. See also Shinkafi *v Yari*[25] that involved conflicting judgments over the validity of the primary election that produced Abdulaziz Yari as the APC candidate for the 2015 gubernatorial election in Zamfara State. Different factions within the party held parallel primary elections, resulting in conflicting judgments from lower courts. The Supreme Court resolved the conflict by affirming the validity of the primary conducted under the auspices of the party's recognized leadership. Like *Oguebego v INEC*,[26] this case dealt with conflicting judgments concerning intra-party disputes over primary elections and the importance of party leadership in determining legitimate candidates. In *PDP v Sylva*,[27]there were conflicting judgments regarding the validity of the PDP primaries for the Bayelsa State gubernatorial election in 2012. Sylva challenged his exclusion from the primaries, and conflicting judgments arose from different courts regarding the process. The Supreme Court eventually resolved the issue, ruling that the party's decision to exclude Sylva was within its rights, as long as due process was followed within the party's framework. Similar to *Oguebego v INEC*,[28] this case involved conflicting judgments over party primaries, with the Supreme Court affirming the role of party leadership in resolving disputes over candidate selection. In the landmark case of *Amaechi v INEC*,[29]Rotimi Amaechi was excluded from contesting the 2007 Rivers State gubernatorial election, despite winning his party's primary election. Conflicting judgments arose regarding his candidacy, with some court's ruling in favor of Amaechi, while others ruled against him. The Supreme Court eventually ruled that since Amaechi was the rightful candidate from the primary election, he should have been on the ballot, even though another candidate had already been declared the winner. The case highlights the resolution of conflicting judgments over party primaries and the Supreme Court's role in ensuring justice in electoral matters.

5.2 Judicial Comity Theory

Judicial comity refers to the respect and cooperation that courts of coordinate jurisdiction are expected to exhibit towards each other. This theory posits that courts should avoid issuing conflicting judgments by acknowledging and respecting the rulings of other courts, even those at the same level. Judicial comity seeks to prevent contradictory rulings that could undermine the legal system and cause confusion. In *Eze v PDP*,[30]the case revolved around internal party disputes within the People's Democratic Party (PDP) during the primary elections for the 2015 general elections. Eze, a member of the PDP, sought to challenge the conduct and outcome of the primaries on the grounds that due process was not followed, and his candidacy was wrongfully excluded. The case led to conflicting judgments from different courts regarding the legitimacy of the primaries and the list of candidates submitted to the Independent National Electoral Commission (INEC). Some courts ruled in favor of Eze, stating that the PDP had violated its own guidelines and the Electoral Act, thus affecting the validity of the primaries. Other courts, however, ruled that the primaries were conducted in substantial compliance with the law, thereby upholding the list of candidates produced by the PDP. The Supreme Court eventually resolved the conflicting judgments, emphasizing the principle of party supremacy and internal party democracy. It ruled that the courts should refrain from interfering in internal party matters, particularly when it concerns the selection of candidates, as long as the party follows its constitutional procedures. The judgment reaffirmed the idea that courts should not micromanage political party affairs unless there is a clear breach of the law. Also in *PDP v Sylva*,[31]Sylva, the then-governor of Bayelsa State, was excluded from participating in the PDP primaries for the 2012 gubernatorial election. He challenged his exclusion, and conflicting judgments arose from different courts regarding whether his exclusion was lawful. The Supreme Court ruled that the party had the discretion to decide on its candidates, and as long as the process adhered to internal rules,

[25](2016) 7 NWLR (Pt 1511) 340.
[26] *Supra.*
[27](2012) 13 NWLR (Pt 1316) 85.
[28] *Supra.*
[29](2008) 5 NWLR (Pt 1080) 227.
[30](2015) 9 NWLR (Pt 1463) 123.
[31](2012) 13 NWLR (Pt 1316) 85.

the courts should not interfere. Like *Eze v PDP*,[32] this case dealt with internal party disputes and the conflicting judgments arising from the courts. The Supreme Court emphasized party autonomy in deciding its candidates.

In *Oguebego v INEC,*[33] which involved conflicting judgments over which faction of the PDP had the authority to submit a list of candidates for the 2015 general elections in Anambra State. The Supreme Court ruled that INEC could only recognize the candidates submitted by the party's National Working Committee (NWC), resolving the conflict between lower courts. Similar to *Eze v PDP*,[34] this case highlighted conflicting judgments relating to internal party disputes and the submission of candidates, with the Supreme Court playing a role in resolving the issues. Also in *Shinkafi v Yari,*[35] conflicting judgments arose from different courts over the validity of the All Progressives Congress (APC) primary elections that produced Abdulaziz Yari as the gubernatorial candidate for the 2015 Zamfara State election. The courts issued contradictory rulings on the faction of the APC that conducted the legitimate primary. The Supreme Court resolved the conflict by affirming the authority of the APC's recognized leadership to organize the primaries. Like *Eze v PDP*,[36] this case dealt with conflicting judgments related to internal party disputes, with the Supreme Court emphasizing the importance of party leadership in determining candidates.

5.3 Finality of Judgment Theory

This theory holds that once a higher court has ruled on an issue, all other courts must abide by that decision. The finality of a higher court's judgment particularly that of the Supreme Court, is crucial in resolving conflicting judgments in electoral matters. Courts of coordinate jurisdiction must not revisit issues already decided by a superior court. In *Amaechi v INEC,*[37] Rotimi Amaechi was initially nominated by the People's Democratic Party (PDP) as its gubernatorial candidate for the Rivers State 2007 election. However, the party substituted his name with that of Celestine Omehia without valid justification. Amaechi challenged the substitution, arguing that he had won the party primaries and was the rightful candidate. The case resulted in conflicting judgments from different courts. Some courts upheld the substitution of Omehia, while others ruled that Amaechi was the rightful candidate. The Federal High Court dismissed Amaechi's case on technical grounds, and the Court of Appeal initially ruled in favor of Omehia. Eventually, the Supreme Court resolved the conflicting judgments. In a landmark decision, the Supreme Court held that since Amaechi was the winner of the party primary, he was the lawful candidate and should have been on the ballot. Even though Omehia had already been sworn in as governor, the Supreme Court declared Amaechi the rightful winner of the election, effectively removing Omehia from office. The judgment emphasized the supremacy of party primaries and the importance of adherence to the internal processes of political parties. It also set a precedent that a person can win an election through party primaries without actually being on the ballot if the substitution was unlawful. In *PDP v Sylva,*[38] Timipre Sylva, the incumbent governor of Bayelsa State, was excluded from the PDP primaries for the 2012 gubernatorial election. Sylva challenged his exclusion, and conflicting judgments arose from different courts regarding whether the PDP acted within its rights to exclude him. The Supreme Court ruled that the party had the discretion to choose its candidates, provided it adhered to its internal guidelines. Like *Amaechi v INEC*,[39] this case involved conflicting judgments over party primaries and candidate selection, with the Supreme Court affirming the principle of party autonomy. Also in *Oguebego v INEC,*[40] this involved conflicting judgments over the submission of PDP candidates for the 2015

[32] *Supra.*
[33] *Supra.*
[34] *Supra.*
[35] (2016) 7 NWLR (Pt 1511) 340.
[36] *Supra.*
[37] (2008) 5 NWLR (Pt 1080) 227.
[38] (2012) 13 NWLR (Pt 1316) 85.
[39] *Supra.*
[40] (2015) 18 NWLR (Pt 1491) 1.

general elections in Anambra State. There were two factions of the party, each submitting its own list of candidates. Conflicting judgments arose regarding which faction's list INEC should recognize. The Supreme Court ultimately ruled that only the candidates submitted by the party's National Working Committee (NWC) were legitimate. Like *Amaechi v INEC,*[41] this case dealt with conflicting judgments over the legitimacy of party candidates and emphasized the role of party leadership in determining its candidates. In *Ladoja v INEC,*[42]Rasheed Ladoja, the former governor of Oyo State, was impeached under questionable circumstances. Conflicting judgments arose from the courts regarding the legality of his impeachment, with some courts upholding it and others invalidating it. The Supreme Court eventually ruled in favor of Ladoja, holding that his impeachment was unlawful and ordering his reinstatement as governor. Like *Amaechi v INEC,*[43] this case involved conflicting judgments from different courts over political and constitutional matters, with the Supreme Court ultimately resolving the conflict and restoring the rightful officeholder.

5.4 Substantial Compliance Theory

In cases involving conflicting judgments in electoral matters, courts often consider whether the conflicting rulings substantially affected the conduct of the election or its result. This theory argues that unless the conflicting judgments have a direct and substantial impact on the electoral outcome, the election should not be invalidated. The courts look at the overall fairness of the process. In *Ibrahim v INEC,*[44] conflicting judgments arose regarding the candidacy of Ibrahim Idris in the 2007 Kogi State gubernatorial election. The court ruled that despite the conflicting judgments, the election was conducted in substantial compliance with the law and was therefore valid. This case illustrates the substantial compliance theory, where the conflicting judgments did not substantially affect the electoral process or outcome.

6 Doctrine of Precedent (*Stare Decisis*)

This theory emphasizes the role of the doctrine of precedent in preventing and resolving conflicting judgments. According to this theory, courts are bound to follow established legal principles laid down by higher courts in previous decisions. When conflicting judgments arise, courts must rely on the doctrine of precedent to determine which decision should be followed based on hierarchy and earlier established rulings. In *Shinkafi v Yari,*[45]the case arose from the All Progressives Congress (APC) gubernatorial primary elections for the 2015 general elections in Zamfara State. Abdul'Aziz Yari emerged as the party's gubernatorial candidate, but Sani Abdullahi Shinkafi, another aspirant, challenged the outcome of the primaries, alleging irregularities and non-compliance with the party's constitution and the Electoral Act. Shinkafi contended that the primaries were marred by procedural irregularities and that the APC had not followed its internal guidelines. He sought the court's intervention to nullify the primary and remove Yari as the APC's candidate. Conflicting judgments were issued by the courts. The trial court ruled in favor of Yari, upholding the validity of the primary election. However, Shinkafi appealed, and the Court of Appeal issued a conflicting judgment, suggesting that the primary was flawed. Eventually, the Supreme Court resolved the conflicting judgments, ruling in favor of Yari. The Court held that the party had substantial compliance with its rules and guidelines during the conduct of the primaries, emphasizing that courts should only intervene in party primaries where there is a clear breach of the law or fundamental irregularities. The decision reaffirmed the principle that courts should generally refrain from interfering in internal party disputes, provided the process is conducted in substantial compliance with the law. In *PDP v Sylva,*[46]Sylva, the incumbent governor of Bayelsa State, was excluded from the PDP primaries for the 2012 gubernatorial election. He challenged his exclusion, and conflicting judgments

[41] *Supra.*
[42](2007) 12 NWLR (Pt 1047) 119.
[43] *Supra.*
[44](2007) 3 EPR 50.
[45](2016) 7 NWLR (Pt 1511) 340.
[46](2012) 13 NWLR (Pt 1316) 85.

arose regarding the legitimacy of the exclusion. The Supreme Court eventually ruled that political parties have the discretion to select their candidates, provided the process adheres to the party's internal rules. Like *Shinkafi v Yari*,[47] this case dealt with conflicting judgments arising from disputes over party primaries and emphasized the principle of party autonomy in determining candidates. In *Amaechi v INEC*,[48]Amaechi won the PDP primaries for the Rivers State gubernatorial election, but his name was replaced by Omehia's without any lawful reason. Conflicting judgments arose from different courts regarding the validity of this substitution. The Supreme Court resolved the conflict, declaring Amaechi the rightful governor, as he was the legitimate candidate. Like *Shinkafi v Yari*,[49] this case involved conflicting judgments related to party primaries, with the Supreme Court emphasizing adherence to party processes and the law. Also in *Eze v PDP*,[50]Eze, a PDP member, challenged the conduct of the party primaries in which he was excluded as a candidate. The case led to conflicting judgments from different courts regarding whether the primaries were conducted in compliance with the law. The Supreme Court ultimately ruled that courts should not interfere in internal party matters unless there was a clear violation of the law. This case is similar to *Shinkafi v Yari*[51] in that it involved conflicting judgments on party primaries, with the Supreme Court affirming party autonomy.

7. Conflicting Judgments of Appellate Courts in Election Litigations in Nigeria

It is settled that Appellate Courts in Nigeria in election litigations are: the Supreme Court of Nigeria; and the Court of Appeal. The jurisdiction of the Supreme Court of Nigeria concerning election cases is restricted to appeals from the Presidential Election Tribunal.[52]The Jurisdiction of the Supreme Court of Nigeria in this regard is conferred by Section 233 (2) (e) (i).[53]The Supreme Court of Nigeria is also vested with jurisdiction on appeals from Governorship Petitions from the Court of Appeal. An appellate Court is a Court having the power or jurisdiction to review the decisions at trial level or lower Court in the judicial hierarchy.

On the other hand, the Court of Appeal is the last or final Court to hear appeals from the National/State Assemblies Election Petition Tribunals. This jurisdiction is conferred by Section 246 (1) (b).[54]The Court of Appeal, which has several Divisions, has handed down conflicting judgments and decisions in its interpretation of the Electoral Act and other enactments on election litigations. A glaring example is the conflicting interpretation of Paragraph 18 (1) of the First Schedule to the Electoral Act in respect of the procedure for initiating Pre-hearing Session. Panels or Divisions of the Court of Appeal in Port Harcourt, Calabar, Kaduna, Makurdi and Ibadan have all given contradictory and conflicting judgments/decisions which have occasioned so much uncertainty and confusion until the Supreme Court clarified the position in the cases of the Governorships Petitions in Akwa Ibom and Benue States.

We have seen conflicting decisions of same Judges of the Court of Appeal in Lagos, Osun, Ogun and Ekiti States in election litigations on matters that the facts and circumstances are similar arriving at different decisions to the embarrassment of the Bench and the Bar. There are numerous conflicting decisions on election matters of the Court of Appeal. However, we shall use some cases as illustrations to drive home the point:

The case of *Agbaje v Fashola*[55] comes to mind and it centered on the gubernatorial election conducted in Lagos State, Nigeria, in 2007. The appellant, Jimi Agbaje, contested the election as a candidate of the Democratic People's Alliance (DPA) but lost to Babatunde Raji Fashola, who was the candidate of the Action Congress (AC). Agbaje, dissatisfied with the result, filed a petition at the Lagos State

[47] *Supra.*
[48](2008) 5 NWLR (Pt 1080) 227.
[49] *Supra.*
[50](2015) 9 NWLR (Pt 1463) 123.
[51] *Supra.*
[52] Which in real fact is the Court of Appeal sitting as the Presidential Election Petition Tribunal.
[53] Constitution of the Federal Republic of Nigeria, 1999 (as amended).
[54]*Ibid*.
[55] (2008) 6 NWLR (Pt. 1082) 95 at 133 – 134; (2008) LPELR 3648 CA.

Governorship Election Tribunal, challenging the election on the grounds of substantial non-compliance with the Electoral Act 2006 and other irregularities. One key issue in the case was the existence of conflicting decisions from different courts regarding pre-election matters. These judgments created confusion and contributed to the petition's complexity. Agbaje argued that these conflicting judgments affected the legitimacy of Fashola's candidacy, thereby invalidating the election. However, the Tribunal dismissed Agbaje's petition, ruling that the conflicts in the judgments did not substantially affect the election process. The appeal to the Court of Appeal also upheld the Tribunal's decision, affirming Fashola's election as Governor of Lagos State. The court reasoned that while there were discrepancies in pre-election judgments, they did not render the entire election process invalid.

In *Adeleke v Oyetola,*[56] the case involved the 2018 Osun State gubernatorial election, where Ademola Adeleke of the Peoples Democratic Party (PDP) lost to Gboyega Oyetola of the All Progressives Congress (APC). Adeleke filed a petition alleging over-voting, non-compliance with the Electoral Act, and conflicting court decisions regarding the eligibility of Oyetola to contest the election. The Election Petition Tribunal initially declared Adeleke the winner. However, the Court of Appeal overturned the Tribunal's decision, and the Supreme Court eventually upheld Oyetola's election, dismissing Adeleke's appeal. The case similarly highlighted the impact of conflicting court judgments on election disputes but affirmed the principle that such conflicts must affect the election's outcome for the petition to succeed.

In *Omoworare v Aregbesola,*[57] this case has to do with the 2007 Osun State gubernatorial election. The petitioner, Omoworare, challenged the election of Rauf Aregbesola on the grounds of electoral irregularities and conflicting judgments regarding the candidacy of certain candidates. Despite the conflicting rulings, the courts held that these issues did not materially affect the election process, and Aregbesola's election was upheld. The case illustrated the judiciary's consistent stance that conflicting court decisions alone do not invalidate an election unless they affect the overall result.

Section 134(1) (b) of the Electoral Act 2022 provides that an election may be challenged on the ground that the election was invalid due to non-compliance with the provisions of the Act. However, Section 135(1) of the Electoral Act 2022 also provides that the petitioner must demonstrate that the non-compliance substantially affected the election result.

In *Obumneke v Sylvester*,[58] the dispute arose from the 2007 election for the Ebonyi State House of Assembly, where the appellant, Obumneke, contested against Sylvester, the respondent. Obumneke filed a petition challenging the election of Sylvester on several grounds, including allegations of electoral malpractices and irregularities. One of the critical issues in the case was the existence of conflicting judgments from different courts on the eligibility of the respondent, Sylvester, to contest the election. The conflicting judgments related to pre-election matters concerning Sylvester's qualifications. Different courts had ruled inconsistently on the validity of Sylvester's nomination, creating confusion regarding whether he was eligible to contest the election. The petitioner, Obumneke, argued that these conflicting decisions compromised the integrity of the election process and should invalidate Sylvester's election.

However, the tribunal and the Court of Appeal ruled that the conflicting judgments did not render the election *null* and *void*. The courts held that, while the judgments created confusion, they did not substantially affect the conduct of the election or its outcome. As such, Sylvester's election was upheld, and Obumneke's petition was dismissed. In *Inakoju v Adeleke,*[59] which has to do with the dispute over the impeachment of Ladoja, the Governor of Oyo State, where conflicting court judgments were issued on the proper procedure for impeachment. The courts were divided on the jurisdiction and authority of the State House of Assembly to remove the governor. Ultimately, the Supreme Court held that the

[56](2019) 5 NWLR (Pt 1659) 31.
[57](2010) 12 NWLR (Pt 1209) 518.
[58](2010) All FWLR (Pt 506) 1945.
[59](2007) 4 NWLR (Pt 1025) 423.

impeachment process was flawed due to non-compliance with constitutional provisions, even though conflicting judgments had initially complicated the matter. Like *Obumneke v Sylvester*,[60] this case dealt with conflicting court decisions, emphasizing that such conflicts must be resolved in a way that upholds the rule of law, but only if they substantially affect the legal outcome. In *PDP v INEC,*[61] that involved conflicting judgments on the validity of candidates submitted by the People's Democratic Party (PDP) for the 2015 general elections. Different courts gave contradictory rulings on the authenticity of primary election results, leading to uncertainty over who the legitimate candidates were. The courts eventually resolved the conflict by determining which faction of the party had the legitimate authority to nominate candidates. This case reflects the issue of conflicting court judgments, particularly in pre-election disputes. The courts upheld the principle that conflicts should not invalidate the election unless they directly impact its outcome.

Ibrahim v INEC[62] that arose out of the 2007 governorship election in Kogi State. Ibrahim, the candidate of the All Nigeria Peoples Party (ANPP), challenged the Independent National Electoral Commission (INEC) and the People's Democratic Party (PDP) candidate, Ibrahim Idris, who was declared the winner of the election. The petitioner contended that the election was marred by irregularities and non-compliance with the Electoral Act 2006.

A significant issue in the case was the existence of conflicting judgments from different courts regarding pre-election matters. Prior to the election, there were conflicting judgments on the eligibility and candidacy of Ibrahim Idris. Various courts gave contradictory rulings concerning whether Idris was validly nominated by his party to contest the election. Ibrahim argued that these conflicting court judgments created confusion, thereby affecting the credibility and validity of the election. The petitioner claimed that the contradictions undermined the electoral process and should invalidate the results. However, both the Election Tribunal and the Court of Appeal ruled that the conflicting judgments on pre-election matters did not sufficiently affect the election outcome to warrant nullification. They held that the disputes over the candidacy were resolved before the election and that the election itself was conducted in substantial compliance with the law.

The case of *Ugwu v Ararume*[63]involved the nomination of Ararume as the gubernatorial candidate of the PDP for the 2007 Imo State election. PDP had initially substituted Ararume's name with another candidate after his nomination. Conflicting court rulings emerged as to whether the substitution was lawful. The Supreme Court ultimately held that Ararume was the valid candidate of the PDP, stressing that parties must adhere to the rules governing nominations. This case is similar to *Ibrahim v INEC*,[64] but it dealt with conflicting judgments on candidacy, but the courts emphasized that such conflicts should not affect the election unless they materially influenced the result.

In *Amaechi v INEC*[65] which has to do with the 2007 Rivers State gubernatorial election. Amaechi, who initially won the PDP primaries, was substituted by the party with another candidate, Omehia, after the primaries. Conflicting court rulings arose over the legality of this substitution. Eventually, the Supreme Court ruled that Amaechi was the validly nominated candidate and that he should be declared the winner of the election, despite not being listed on the ballot. Like *Ibrahim v. INEC*, this case dealt with conflicting judgments on candidacy. However, in contrast to *Ibrahim v INEC*,[66] the courts in *Amaechi v*

[60] *Supra.*
[61](2014) 17 NWLR (Pt 1437) 525.
[62](2007) 3 EPR 50.
[63](2007) 12 NWLR (Pt 1048) 367.
[64]*Supra*.
[65](2008) 5 NWLR (Pt 1080) 227.
[66]*Supra*.

INEC[67] held that the conflicting judgments substantially affected the outcome of the election, resulting in Amaechi being declared the rightful winner.

In *Shinkafi v Yari*[68] that has to do with the 2015 Zamfara State gubernatorial election, Shinkafi challenged the election of Abdulaziz Yari, alleging that his nomination by the All Progressives Congress (APC) was invalid due to conflicting judgments over the conduct of the party's primaries. Shinkafi argued that the conflicting rulings on Yari's eligibility affected the integrity of the election. However, the court ruled that while there were conflicting judgments, they did not sufficiently impact the election outcome to nullify it. This case highlights the principle established in *Ibrahim v INEC*[69] to the effect thatconflicting court judgments do not invalidate an election unless they have a material effect on the outcome.

In *Oguebego v INEC,*[70] this concerned conflicting judgments over who were the legitimate candidates of the People's Democratic Party (PDP) for the 2015 general elections in Anambra State. Two different factions of the party conducted parallel primary elections, and conflicting court rulings arose as to which faction's candidates were the valid ones. The Supreme Court eventually held that the court of higher jurisdiction's decision should prevail.

In *Eze v PDP,*[71] this involved conflicting rulings over the internal party dispute regarding the legitimacy of PDP officials. Various courts delivered judgments supporting different factions. The courts ruled that conflicting judgments from courts of coordinate jurisdiction should not undermine the party's internal processes. In *Adeleke v Oyetola,*[72] the 2018 Osun State gubernatorial election witnessed conflicting judgments over the validity of the supplementary election conducted by INEC. Different courts gave varying rulings on whether the election was valid. Eventually, the Supreme Court resolved the issue by ruling that the supplementary election was lawful, thus settling the conflicting decisions.

It should be noted that section 287(3) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) stipulates that the decisions of the Court of Appeal and the Supreme Court are binding on all courts and authorities in Nigeria. It ensures that conflicting judgments from lower courts can be overridden by decisions from superior courts, thereby maintaining judicial hierarchy and consistency. This section underlines the importance of recognizing decisions from courts of superior jurisdiction to resolve conflicting judgments.

In *Amosun v Daniel,*[73] the Court of Appeal presided over by Honourable Justice Mohammed Lawal Garba held that one Tunde Yadeke was not an expert in the examination and analysis of electoral materials. However, in the *Aregbesola v Oyinlola*[74] it was ruled that Tunde Yadeke was an expert. These are two cases with similar facts but on which different judgments were delivered within a period of not less than two months.

8. Conclusion

The spate of conflicting judgments which we have seen in election litigations in the Court of Appeal is quite worrisome and a sore point in the administration of justice in the country and this has invariably made a drastic and comprehensive reform of the justice sector imperative. The reform is particularly needed in the mode of appointment of Judges to the appellate courts in the country which presently leaves a lot of room for appointments based on patronage and other inferior methods.

[67] *Supra.*
[68](2016) 7 NWLR (Pt 1511) 340.
[69] *Supra.*
[70](2015) 18 NWLR (Pt 1491) 1.
[71](2015) 9 NWLR (Pt 1463) 123.
[72](2019) 4 NWLR (Pt 1653) 185.
[73]*Supra.*
[74]*Supra.*