journals.unizik.edu.ng/index-php/jcpl
ISSN: 2736-0342
NNAMDI AZIKIWE UNIVERSITY, AWKA
JOURNAL OF COMMERCIAL AND PROPERTY LAW

The Doctrine of Substantial Compliance as Contained in the Electoral Act 2022: A Threat to Nigerian Democracy

Ubanyionwu Chima Josephat*

Abstract

Section 135(1) of the Electoral Act 2022 provides that an election shall not be liable to be invalidated by reason of non – compliance with the provisions of this Act if it appears to the Election Tribunal or Court that the election was conducted substantially in accordance with the principle of this Act and that the non – compliance did not affect substantially the result of the election. This provision forms the statutory basis for the doctrine of substantial compliance in Nigeria. It emphasizes that the courts must look at the overall effect of non-compliance before annulling an election. There is nowhere in the Electoral Act where the doctrine of substantial compliance was defined. The doctrine of substantial compliance in Nigeria's electoral process presents several problems and challenges, particularly in the context of determining what constitutes "substantial" non-compliance. These challenges often involve judicial discretion, inconsistent interpretations, and potential for abuse. By the doctrine of substantial compliance in Nigerian electoral process, one can safely say that in most political cases, what we have is the judicialization of democracy in Nigeria. Section 14(1) Constitution of the Federal Republic of Nigeria 1999 (as amended) provides that the Federal Republic of Nigeria shall be a State based on the principles of democracy and social justice; while subsection 2 (a) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) provides that sovereignty belongs to the people of Nigeria from whom government through this constitution derives all its powers and authority. This doctrine of substantial compliance has eroded the constitutional powers of the citizens of the Federal Republic of Nigeria as it relates to sovereignty belonging to the people of Nigeria. In this article, the writer is making a case for the eradication of this doctrine as it infringes on the right of the people to freely decide on who their leaders should be.

Keywords: Substantial Compliance, Electoral Act, Nigerian Democracy

1. Introduction

There is a big question mark on the integrity of elections in Nigeria. Elections in Nigeria have degenerated from being a means for popular participation and peaceful change of government to an invitation to intense violence and political uncertainty in the country.[1] While it may seem that Nigeria's democracy has steadily progressed on the road from nascent to fledging, there has emerged a disturbing concern over the conduct of elections in the country.[2] The conduct of elections in Nigeria has at various intervals remained an invitation to political uncertainty for the country. This is not unconnected with the recurrent incidences of electoral malpractices especially electoral violence prevalent in the country. Elections in Nigeria have been described as a do-or-die affair even by esteemed official quarters.[3] As a result of this, series of violent clashes occur and sometimes results to loss of lives and properties. As electoral competitions become the preserve of violent individuals, the recurrence of electoral violence scares credible people from exercising their franchise and in engaging in partisan politics. This poses threat to democracy and development of the country.

The judiciary that is saddled with the powers of judicial review is constrained with the doctrine of substantial compliance by usurping the powers of the people as enshrined in the constitution through the doctrine of substantial compliance. In this article, the writer looks at the meaning of substantial compliance in election petition in Nigeria as well as the meaning of democracy, theories behind the doctrine was equally looked at as well as its application in Nigeria. The writer is making a case for the

*__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]<http://www. International peace and conflict.org/profiles/blogs/election….> accessed 18 June 2012.

[2]*Ibid.*

[3]<http://www. International peace and conflict.org/profiles/blogs/election…> accessed 18 June 2012.

abrogation of this doctrine as it infringes on the right of the people to freely decide on who their leaders should be.

1.1 Meaning and Concept of Substantial Compliance in Election Petitions in Nigeria

Substantial compliance in the context of election petitions in Nigeria refers to a situation where, despite minor deviations from the procedural requirements set by law, the essence of the legal requirements is met in a way that does not undermine the integrity of the electoral process. The principle emphasizes that procedural irregularities or minor errors should not invalidate an election result if the essential elements of the process have been substantially followed. The principle of substantial compliance is primarily guided by the Electoral Act, 2022[4] which provides that certain defects should not invalidate election. The concept of substantial compliance in election petitions in Nigeria is shaped by a combination of statutory provisions, judicial precedents, and principles of electoral law. This framework aims to ensure that minor procedural errors do not unduly disrupt the electoral process or invalidate an election result if the core requirements have been substantially met. The focus on substantial compliance emerges from judicial interpretations rather than a direct statutory provision.

1.2 The Concept of Democracy

Democracy, derived from the Greek words "demos" (people) and "kratos" (power or rule), literally means "rule by the people." It is a form of government that allows for the participation of the citizenry in the political process, either directly or through their elected representatives. Democracy is a system of government in which power is vested in the people, who exercise that power directly or through elected representatives. It is characterized by the principles of political equality, majority rule, the protection of minority rights, and the rule of law. In a democracy, citizens have the right to participate in decision-making processes, typically through free and fair elections, where they elect representatives to govern on their behalf. Representative government is often referred to as democracy where the authority of government is derived solely from the consent of the governed.[5] The principal mechanism for translating that consent into governmental authority is the holding of free and fair elections.[6] A free and fair election gives the assurance that those who emerge as rulers are the elected representatives of the people. Except in case where an aspirant is returned unopposed; there will usually be at least two contestants to elective posts. Rules and regulations are normally put in place for the conduct of free and fair elections.

Democracy is based on the principles of (a) political equality where all citizens have equal rights and opportunities to participate in the political process; (b) majority rule where decisions are made based on the preference of the majority, while respecting the rights of the minority; (c) protection of rights where fundamental human rights, including freedom of speech, assembly, and the press; and (d) rule of law where **t**he law applies equally to all individuals, ensuring fairness and justice in governance. In *A-G Ondo State v A-G Federation,*[7] the Supreme Court of Nigeria emphasized the importance of democracy in ensuring that the will of the people is reflected in government actions. The case involved the constitutionality of certain provisions of the Electoral Act, where the court upheld the principles of democratic governance by ensuring that laws affecting elections must be consistent with democratic ideals.

Democracy is more than just a system of government; it is a way of life that upholds the principles of freedom, equality, and justice. Through free and fair elections, adherence to the rule of law, the separation of powers, and the protection of human rights, democracy ensures that power resides with the people.

[4] See section 135 of the Electoral Act (No. 15 of 2022).
[5] Section 14(2)(a) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) provides that "sovereignty belongs to the people of Nigeria from whom government through this Constitution derives all its powers and authority."
[6] <https://www.Buzzle.com/articles/electoral-reform-in-Nigeria-html-28k >accessed 18 December 2008.
[7] (2002) 9 NWLR (Pt 772) 222.

1.2.1 **Characteristics of Democracy**

The characteristics of democracy are as follows:
a. **Free and Fair Elections**: A hallmark of democracy is the conduct of regular, free, and fair elections. In a democratic society, elections must be transparent, competitive, and inclusive, allowing citizens to choose their leaders and hold them accountable. The integrity of the electoral process is crucial in reflecting the will of the people. In *Buhari v Obasanjo***,**[8]the petitioner challenged the fairness of the 2003 Presidential election, alleging widespread electoral malpractices. Although the Supreme Court upheld the election, the case underscored the importance of free and fair elections as the foundation of democracy.

b. Rule of Law: The rule of law is a fundamental principle of democracy, ensuring that all individuals, institutions, and the government itself are subject to and accountable under the law. It requires that laws are fairly applied and enforced, and that justice is accessible to all citizens. In *A-G Lagos State v A-G Federation*,**[9]** the Supreme Court reaffirmed the principle of the rule of law by holding that both Federal and State governments must operate within the limits of the Constitution, ensuring that no branch of government exceeds its authority. Section 1(1)**[10]**declares the Constitution as the supreme law of the land, binding on all authorities and persons throughout the country.

c. Separation of Powers: Democracy is characterized by the separation of powers among the executive, legislative, and judicial branches of government.[11] This division ensures that no single branch has absolute power, promoting checks and balances that protect individual freedoms and prevent tyranny**.** In *Inakoju v Adeleke***,**[12]the Supreme Court of Nigeria nullified the impeachment of the Oyo State Governor, emphasizing the need for strict adherence to the principle of separation of powers and due process in a democratic system.

d. Protection of Fundamental Human Rights: Democracies are committed to protecting the fundamental human rights of all citizens, including the right to life, liberty, and freedom of speech, assembly, and religion.[13] These rights are enshrined in the Constitution and international human rights instruments. In *Fawehinmi v Abacha,***[14]**the court upheld the fundamental rights of the applicant, who had been unlawfully detained by the military regime. This case highlights the judiciary's role in safeguarding human rights within a democratic framework.

1.2.3 **Importance of Democracy**

The importance of democracy is as follows:
a. Accountability and Transparency: In a democracy, public officials are accountable to the people. Transparency in governance is essential to ensure that officials act in the public interest, and mechanisms such as elections, legislative oversight, and judicial review are in place to hold them accountable.[15] In *Omoworare v Omisore,***[16]**the court emphasized the importance of accountability in elections, where electoral officials were held accountable for the conduct of free and fair elections.

---

[8](2005) 2 NWLR (Pt 910) 241**.**
[9](2003) 12 NWLR (Pt 833) 1.
[10]Constitution of the Federal Republic of Nigeria 1999 (as amended).
[11]See Sections 4, 5, and 6 of the Constitution of the Federal Republic of Nigeria 1999 (as amended)outline the powers of the legislative, executive, and judicial branches, respectively, ensuring a clear division of authority.
[12](2007) 4 NWLR (Pt 1025) 423.
[13]Chapter IV of the Constitution of the Federal Republic of Nigeria 1999 (as amended).
[14](2000) 6 NWLR (Pt 660) 228**.**
[15]Section 15(5) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) mandates the state to abolish corrupt practices and abuse of power, reflecting the importance of transparency and accountability in a democratic society.
[16](2010) 3 NWLR (Pt 1180) 58**.**

b. Participation in Governance: Democracy encourages active participation in governance by all citizens. Through voting, civic engagement, and public discourse, citizens influence decision-making processes and contribute to shaping policies that affect their lives. In *Ojukwu v Obasanjo,*[17] the court addressed the right of citizens to participate in the electoral process, emphasizing the importance of inclusive participation in a democratic society. Section 40 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) guarantees every citizen the right to assemble freely and associate with others, particularly for political purposes.

2. Theories of Substantial Compliance

The doctrine of substantial compliance in the Nigerian electoral process refers to the standard that electoral irregularities must be substantial enough to affect the outcome of an election for the courts to nullify it. The doctrine aims to balance between technical breaches of electoral laws and upholding the will of the electorate where the irregularities are insignificant to the overall result.

The doctrine of substantial compliance is rooted in the idea that elections are primarily about the expression of the will of the people. As long as the core objective of an election, that is, the reflection of the voters' will, is met, the courts may overlook minor procedural irregularities. This doctrine promotes electoral stability by ensuring that not every procedural flaw results in the invalidation of the election. In *Buhari v INEC*[18]General Muhammadu Buhari, the presidential candidate, challenged the 2007 election results, alleging massive irregularities. The Supreme Court upheld the election, stating that there was substantial compliance with the Electoral Act 2006 despite some irregularities. The court held that the petitioner must prove not just that irregularities occurred, but that they were substantial enough to have affected the result of the election. The mere existence of irregularities was insufficient to overturn an election. In this case, the doctrine of substantial compliance was affirmed by the court as essential for the stability of elections, ensuring that only significant breaches lead to nullification. The theories of doctrine of substantial compliance in Nigerian electoral process are as follows:

2.1 Theory of Electoral Integrity

This theory posits that substantial compliance is necessary to uphold the integrity of elections. It emphasizes that procedural adherence guarantees fairness but allows flexibility for minor deviations that do not undermine the overall election result. In *Atiku Abubakar v INEC,*[19] the petitioner, Atiku Abubakar, challenged the 2019 presidential election, alleging widespread non-compliance with the Electoral Act, particularly concerning the transmission of results electronically. The court ruled that despite some irregularities, the election was conducted in substantial compliance with the law, and the irregularities did not substantially affect the outcome. The court reaffirmed the need to establish that the non-compliance was of such magnitude that it affected the result. The mere presence of irregularities or procedural flaws was not enough. The judgment in this case demonstrates the importance of balancing electoral integrity with practical flexibility, ensuring that technicalities do not nullify the genuine expression of voters' will.

2.2 Theory of Materiality

This theory emphasizes the materiality of the non-compliance. It asks whether the irregularity materially affected the result of the election. Courts focus on the outcome, and where the irregularities are proven to be minor or immaterial to the result, the election stands. In *Wike v Peterside,*[20]Nyesom Wike, the governor of Rivers State, was challenged by Dakuku Peterside over alleged widespread violence, ballot snatching, and voter intimidation in the 2015 gubernatorial election. The tribunal annulled the election, but the Supreme Court reversed this decision, holding that the petitioner failed to prove that the irregularities affected the result. The Supreme Court held that an election should not be invalidated for every irregularity. The petitioner must show that the irregularities were so widespread that they materially

[17] (2004) 12 NWLR (Pt. 886) 169.
[18](2008) 19 NWLR (Pt 1120) 246.
[19](2019) 5 NWLR (Pt 1670) 1.
[20](2016) 7 NWLR (Pt 1512) 452.

affected the outcome. The decision stresses the materiality of irregularities, reinforcing that only significant breaches impacting the results can justify nullification.

2.3 Theory of Non-Punitive Approach

This theory suggests that the substantial compliance doctrine prevents the court from adopting a punitive approach to election petitions. Rather than focusing on penalizing every breach of procedure, the court should focus on whether justice is done, that is, whether the election outcome truly reflects the will of the electorates.In *Oshiomhole v INEC,*[21] Adams Oshiomhole challenged the result of the 2007 Edo State gubernatorial election, citing widespread rigging and irregularities. The tribunal found in his favor, and the Court of Appeal affirmed this, holding that the non-compliance with the electoral law was substantial enough to have affected the outcome. The Court held that the purpose of electoral law is not punitive but corrective. Thus, only when non-compliance substantially affects the result should it lead to the annulment of the election. This judgment illustrates the non-punitive perspective, affirming that courts should not annul elections based on procedural irregularities unless the breach distorts the electoral outcome.

2.4 Theory of Voter Representation

This theory is based on the understanding that elections are a means to represent the will of the people, and the substantial compliance doctrine ensures that minor irregularities do not obstruct this representation. It focuses on the fairness and transparency of the overall process. In *INEC v Oguebego,*[22]there was a dispute regarding the authenticity of the list of candidates submitted by political parties. The Supreme Court held that where the process allowed the electorates to express their will, even if there were disputes over party nominations, the election result should stand unless there was proof of significant non-compliance that affected the outcome. The Supreme Court reinforced that the primary concern of electoral laws is to reflect the will of the electorate and that minor irregularities in the process of candidate nomination did not affect the expression of voters' will. This case highlights the significance of voter representation, underscoring that procedural flaws that do not distort the electorate's intent should not invalidate elections.

3 History of Substantial Compliance in Electoral Process in Nigeria

The historical development of the doctrine of substantial compliance in Nigeria's electoral process is a response to the complexities of electoral disputes, evolving through judicial interpretations and legislative reforms. The doctrine seeks to balance the need for fairness and integrity in elections with the stability and continuity of governance. Below is an outline of its historical evolution.

3.1 Early Development and the Pre-Independence Era

Before Nigeria gained independence in 1960, the country operated under a colonial system, with elections largely conducted under British electoral laws. The idea of strict compliance with electoral procedures was predominant during this time. However, there was no formal doctrine of substantial compliance, and any significant breach of procedure could lead to the annulment of elections. In *Adegbenro v Akintola*,[23]though not primarily an election matter arose during the political crisis in the Western Region and highlighted the tension between legal technicalities and political realities. The Privy Council ruled that the Governor of the Western Region acted within his powers in dismissing the Premier, based on technical compliance with the Constitution. The case exemplified the strict adherence to legal formalities, which was later modified with the introduction of substantial compliance in electoral law. Before independence, Nigeria followed strict legal formalism, with little room for flexible interpretations such as substantial compliance in electoral disputes.

[21](2009) 4 NWLR (Pt 1132) 607.
[22](2015) 18 NWLR (Pt 1491) 273.
[23](1963) AC 614.

3.2 Post-Independence Era and the Emergence of Substantial Compliance

After independence, Nigeria adopted its own Constitution and electoral laws, which gradually moved away from rigid adherence to technical compliance. The focus shifted towards ensuring that elections reflected the will of the people, even if minor irregularities occurred. This era saw the first signs of the substantial compliance doctrine taking shape. In *Awolowo v Shagari,*[24] Chief Obafemi Awolowo challenged the election of Shehu Shagari as President of Nigeria in 1979, arguing that Shagari did not meet the constitutional requirement of securing one-quarter of the votes in two-thirds of Nigeria's then 19 States. The Supreme Court ruled that while there were irregularities, they did not substantially affect the outcome of the election, thus affirming Shagari's victory. This landmark case marked the beginning of the substantial compliance doctrine, as the court moved away from strict legal formalism and began emphasizing the overall integrity of the electoral process over technical breaches.

3.3 The Doctrine of Substantial Compliance Gains Prominence

In the 1999 democratic transition, following years of military rule, Nigeria's electoral system underwent significant reforms. The 1999 Constitution[25] and the Electoral Act 2002 were introduced to guide elections. The doctrine of substantial compliance began to feature more prominently in judicial decisions as courts were tasked with interpreting these new laws in the context of electoral disputes. In *Buhari v Obasanjo,*[26]Muhammadu Buhari, the presidential candidate of the All Nigeria Peoples Party (ANPP), challenged the election of President Olusegun Obasanjo in the 2003 election, alleging widespread irregularities. The Supreme Court upheld Obasanjo's election, holding that while there were irregularities, they did not substantially affect the overall outcome. This case solidified the substantial compliance doctrine, as the court held that only irregularities that significantly impacted the election results could warrant nullification, emphasizing the will of the electorate over procedural defects.

3.4 Refinement of the Doctrine in the Electoral Act 2010

With the introduction of the Electoral Act 2010, the substantial compliance doctrine was given a clearer statutory basis. The Act specified that an election would only be invalidated if non-compliance with the law substantially affected the result. This marked a significant turning point in the legal treatment of electoral disputes. Section 139(1)[27] provides that no election shall be invalidated by reason of non-compliance with the Electoral Act unless it is proven that such non-compliance substantially affected the result of the election. The inclusion of this provision codified the substantial compliance doctrine, shifting the burden of proof to the petitioner to demonstrate that irregularities materially impacted the election.

3.5 Post-2010 Period: Greater Reliance on Substantial Compliance

Following the 2010 Electoral Act amendment, courts increasingly relied on the substantial compliance doctrine to adjudicate electoral disputes. The doctrine became a safeguard against annulling elections over minor procedural errors, ensuring the stability of the political process. In *Oshiomhole v INEC,*[28]Adams Oshiomhole challenged the 2007 Edo State gubernatorial election, alleging widespread rigging. The Court of Appeal annulled the election, finding that the irregularities were substantial enough to affect the outcome. Oshiomhole was declared the winner after a re-run election. This case exemplifies the application of substantial compliance, as the court acknowledged that not all irregularities warrant annulment but determined that the irregularities in this case were substantial.

3.6 Modern Application: Substantial Compliance and the 2019 General Elections

The 2019 general elections saw further reliance on the doctrine of substantial compliance, particularly in the presidential election petitions. Courts used the doctrine to uphold the results of elections despite allegations of procedural breaches, focusing on whether such breaches affected the outcome. In *Atiku*

[24](1979) 6-9 SC 51.
[25]Constitution of the Federal Republic of Nigeria 1999 (as amended).
[26](2005) 2 NWLR (Pt 910) 241.
[27]Electoral Act 2010 (as amended).
[28](2009) 4 NWLR (Pt 1132) 607.

Abubakar v INEC,[29]Atiku Abubakar challenged the victory of President Muhammadu Buhari in the 2019 election, alleging irregularities such as failure to electronically transmit results and voter suppression. The court held that while there were irregularities, they did not substantially affect the overall result. This case reaffirms the court's reliance on substantial compliance, as it dismissed the petition on the grounds that the irregularities cited were not significant enough to alter the election outcome.

4 Recent Legislative Reforms: Electoral Act 2022

The enactment of the Electoral Act 2022 introduced several reforms aimed at addressing issues in the electoral process, including electronic transmission of results and improved safeguards against irregularities. The doctrine of substantial compliance continues to be a key aspect of resolving electoral disputes, though recent legal reforms aim to reduce the occurrence of irregularities in the first place. Section 134[30]emphasizes that an election will only be invalidated if the petitioner proves non-compliance with the law and demonstrates that such non-compliance substantially affected the result of the election. It also introduces new guidelines for the conduct of elections and transmission of results, aiming to minimize the likelihood of procedural errors. The 2022 Electoral Act continues to uphold the doctrine of substantial compliance, but with a stronger emphasis on technological transparency and procedural integrity, reflecting the evolving nature of electoral processes in Nigeria.

The substantial compliance doctrine continues to be a crucial tool in preserving the integrity of elections while maintaining stability in governance, with courts applying it to ensure that electoral outcomes reflect the will of the electorate despite minor irregularities.

5. Problems associated with Substantial Compliance in Electoral Process in Nigeria

The doctrine of substantial compliance in Nigeria's electoral process presents several problems and challenges, particularly in the context of determining what constitutes "substantial" non-compliance. These challenges often involve judicial discretion, inconsistent interpretations, and potential for abuse. Below are the main problems:

A. Problem of Judicial Discretion

One major issue with substantial compliance is the wide judicial discretion involved in determining whether non-compliance is substantial enough to affect the result of an election. Different judges may apply the doctrine differently, leading to inconsistent rulings on similar electoral disputes. In *Atiku Abubakar v INEC,*[31]Atiku Abubakar challenged the 2019 presidential election, alleging non-compliance with the Electoral Act, particularly in the use of electronic transmission of results. The court held that there was substantial compliance, even though there were irregularities in some polling units. The wide discretion given to judges created a situation where the same irregularities could lead to different judgments in other courts. This discretionary power may erode confidence in the objectivity of judicial decisions on election matters. The outcome of this case shows that judges may interpret the concept of substantial compliance differently, potentially leading to unpredictable rulings.

B. Ambiguity in Defining 'Substantial'

There is no clear statutory definition of what constitutes "substantial" non-compliance, leaving it to the court to decide on a case-by-case basis. This ambiguity can result in conflicting judgments and legal uncertainty. In *Wike v Peterside,*[32]Dakuku Peterside challenged the election of Nyesom Wike in Rivers State, citing widespread violence and voter intimidation. While the election tribunal initially annulled the election, the Supreme Court later reversed the decision, holding that the irregularities were not substantial enough to affect the election outcome. The ambiguous definition of "substantial" led to differing judgments at different levels of the judiciary. This lack of clarity raises the issue of predictability in

[29](2019) 5 NWLR (Pt. 1670) 1.
[30]Electoral Act 2022.
[31](2019) 5 NWLR (Pt 1670) 1.
[32](2016) 7 NWLR (Pt 1512) 452.

electoral disputes. This case exemplifies the ambiguity in determining what level of non-compliance justifies nullifying an election.

C. Undermining Electoral Integrity

The substantial compliance doctrine can be perceived as undermining the integrity of the electoral process by allowing elections to stand despite irregularities. This could give room for electoral malpractice if parties know that only significant irregularities will lead to the annulment of elections. In *Oshiomhole v INEC*,[33]Adams Oshiomhole challenged the 2007 Edo State gubernatorial election, citing rigging and other irregularities. The court annulled the election because the non-compliance was deemed substantial enough to affect the outcome. While the doctrine protects against annulments for minor irregularities, it could allow elections marred by significant yet not "substantial" issues to stand. This undermines electoral integrity, as technical compliance with the law may be sacrificed for perceived stability. This case demonstrates the potential for the doctrine to tolerate irregularities, which may embolden parties to engage in minor malpractices with the hope that they will be overlooked.

D. Erosion of Public Trust

The public's confidence in the electoral process may be eroded if courts repeatedly uphold elections despite irregularities, even if they are deemed "non-substantial." This could lead to a situation where the electorate feels disenfranchised or that their votes do not matter. In*Buhari v INEC*[34]Muhammadu Buhari challenged the 2007 presidential election, alleging widespread rigging and irregularities. The Supreme Court upheld the election, stating that there was substantial compliance, even though irregularities were acknowledged. The court's decision to uphold elections despite proven irregularities led to criticism and accusations of judicial bias, eroding public trust in both the judiciary and the electoral system. This case highlights how the doctrine of substantial compliance, if applied too liberally, may undermine the public's confidence in the electoral system, as it can appear that legal technicalities are prioritized over fairness.

E. Difficulty in Proving Non-Compliance

For an election to be annulled based on non-compliance, the petitioner must prove that the irregularities were substantial enough to affect the outcome. This burden of proof is often challenging to meet, especially in the absence of clear evidence, making it difficult for petitioners to succeed in their claims. In *INEC v Oguebego*,[35] a dispute arose concerning the authenticity of a list of candidates submitted by a political party. The Supreme Court held that, despite issues with candidate nomination, the overall election process substantially complied with the law. The petitioner's burden of proving that irregularities affected the outcome is extremely high, making it difficult to challenge elections even where there are clear violations of the Electoral Act. This case illustrates the difficulty for petitioners in proving substantial non-compliance, as they must not only demonstrate the occurrence of irregularities but also show that those irregularities directly impacted the election result.

F. Encouragement of Election Malpractices

The doctrine can unintentionally encourage minimal levels of election malpractice. Political actors may engage in minor irregularities, knowing that courts may overlook them as long as they are not "substantial." In *Agagu v Mimiko*,[36]Olusegun Agagu's election as Governor of Ondo State was challenged by Olusegun Mimiko, who alleged massive rigging. The Court of Appeal annulled the election, stating that the irregularities were substantial enough to affect the result. In cases where irregularities do not meet the threshold of substantial non-compliance, parties may be incentivized to commit smaller, less detectable infractions, confident that they will not lead to annulment. This case highlights the potential danger of fostering a culture of minimal but widespread electoral malpractice that falls below the "substantial" threshold, weakening the overall integrity of the process.

[33](2009) 4 NWLR (Pt. 1132) 607.
[34](2008) 19 NWLR (Pt 1120) 246.
[35](2015) 18 NWLR (Pt 1491) 273.
[36](2009) 7 NWLR (Pt. 1140) 342.

6. Challenges and Criticisms of the Doctrine in Recent Elections

In recent years, the doctrine has been criticized for creating inconsistencies in judicial decisions. The lack of a clear definition of what constitutes "substantial" has led to varying interpretations, which sometimes result in conflicting judgments at different levels of the judiciary. In *Wike v Peterside*,[37]Nyesom Wike's election as Governor of Rivers State was challenged by Dakuku Peterside, who alleged widespread violence and voter intimidation. While the election tribunal annulled the election, the Supreme Court reversed the decision, ruling that the irregularities were not substantial enough to affect the outcome. This case demonstrates the ongoing challenges in applying the substantial compliance doctrine, particularly when the judiciary is faced with significant but arguably not "substantial" irregularities.

7. Relationship between Electoral Violence, Intimidation and the Doctrine of Substantial Compliance in Nigerian Elections

Election-related violence and intimidation are significant issues in Nigeria, often aimed at influencing voter behavior, suppressing opposition, or securing victory through fear and coercion. All these misdemeanors have their primary cause due the doctrine of substantial compliance. Politicians know very well that the standard of proof required in establishing that substantial non - compliance affected the result of the election is very high. As a result, stakeholders[38] do everything humanly possible to ensure that they are declared the winners of the elections. As a result, they employ all sorts of malpractices to win the election. Below are some instances of violence and intimidation in Nigerian elections. In *Wabara v INEC*,[39]Adolphus Wabara, a former Senate President of Nigeria, contested the 2007 senatorial election in Abia State. During the election, there were widespread reports of violence and intimidation, including the deployment of armed thugs to polling stations, physical assaults on voters, and the destruction of ballot boxes. These actions were allegedly carried out to suppress votes for opposition candidates and ensure Wabara's victory. The Court of Appeal nullified Wabara's election, citing extensive evidence of violence and intimidation that compromised the integrity of the electoral process. The court emphasized that elections must be free, fair, and devoid of coercion, and any election marred by violence cannot stand. This case underscores the judiciary's role in safeguarding electoral integrity by nullifying elections tainted by violence and intimidation. It highlights the importance of free and fair elections as a cornerstone of democracy. In *Oshiomhole v INEC*,[40]Adams Oshiomhole, the candidate for the Action Congress of Nigeria (ACN) in the 2007 Edo State gubernatorial election, alleged that the election was marred by widespread violence and intimidation orchestrated by the ruling party. Reports indicated that armed groups attacked polling stations, assaulted voters, and intimidated opposition supporters, leading to a climate of fear and voter apathy. The Election Petition Tribunal annulled the election, citing overwhelming evidence of violence and intimidation. The tribunal ordered a rerun of the election, which Oshiomhole eventually won. This case demonstrates the judiciary's willingness to annul elections compromised by violence and intimidation, reinforcing the principle that elections must reflect the genuine will of the people, free from coercion. In this regard *Ugwu v Ararume*,[41] comes to mind. The facts of this case are that in 2007 Imo North Senatorial election, Ifeanyi Ararume, a candidate for the Peoples Democratic Party (PDP), was involved in a legal battle over the conduct of the primaries. The primaries were marked by violent clashes between rival factions within the party, resulting in several injuries and intimidation of delegates. Ararume's opponents allegedly used thugs to intimidate delegates into voting against him, leading to his exclusion from the ballot. The Supreme Court held that the primary election was conducted in a manner that violated the party's guidelines and the principle of fairness. The court nullified the primaries and reinstated Ararume as the party's candidate, condemning the use of violence and intimidation to manipulate the electoral process. This case highlights the judiciary's role in addressing intra-party violence and intimidation, ensuring that candidates are selected through a transparent and fair

[37](2016) 7 NWLR (Pt. 1512) 452.
[38] Including the petitioners and the respondents.
[39](2010) 11 NWLR (Pt 1206) 606.
[40](2008) 3 NWLR (Pt 1076) 77.
[41](2007) 12 NWLR (Pt 1048) 367.

process. In *Nwosu v INEC,*[42] the 2013 Anambra State gubernatorial election saw significant instances of violence and intimidation. In the build-up to the election, there were reports of political thugs attacking opposition rallies, intimidating voters, and even kidnapping key opposition figures. The violence was allegedly orchestrated to suppress opposition and create an atmosphere of fear among voters. The Election Petition Tribunal found that although there were instances of violence and intimidation, they were not widespread enough to affect the overall outcome of the election. However, the tribunal emphasized the need for strict measures to prevent such occurrences in future elections. This case illustrates the challenge of determining the extent to which violence and intimidation impact electoral outcomes. It also underscores the importance of preventive measures to ensure peaceful elections. Also, in *Buhari v Obasanjo,*[43] the 2003 presidential election in Nigeria, contested by Muhammadu Buhari and the then incumbent President Olusegun Obasanjo, was marred by widespread allegations of violence and intimidation. Buhari alleged that security forces and political thugs were used to intimidate voters, particularly in the northern and southwestern regions, where he had strong support. Reports included incidents of voters being physically assaulted, polling stations being attacked, and ballot boxes being stolen or destroyed. The Supreme Court, while acknowledging the evidence of violence and intimidation, ultimately upheld Obasanjo's victory, stating that the irregularities were not sufficient to invalidate the entire election. However, the court condemned the use of violence and called for reforms to prevent such occurrences in future elections. This case highlights the difficulty in addressing large-scale electoral violence within the existing legal framework. It also emphasizes the need for electoral reforms to ensure that violence and intimidation do not undermine the democratic process.

8. Some notable decided Cases based on the Doctrine of Substantial Compliance in Nigerian Elections

1. *Ogbuabor v Ogbu.*[44] In this case the appellant challenged the election results based on irregularities in the conduct of the election. The tribunal dismissed the petition, arguing that the irregularities were minor and did not affect the overall outcome of the election. On appeal to the Supreme Court, the Supreme Court held that for an election to be invalidated on the grounds of non-compliance with the Electoral Act, the non-compliance must be substantial and not merely procedural. The court emphasized that substantial compliance is sufficient to uphold the election result if the core requirements were met.

2. *Dare v Afolabi.*[45] The petitioner in this case alleged that the election process was marred by procedural flaws. The tribunal found some procedural errors but ruled that these did not substantially affect the outcome of the election. On appeal to the Supreme Court, the Supreme Court affirmed the tribunal's decision, reinforcing that minor procedural errors do not automatically invalidate an election. The court emphasized that substantial compliance with the electoral laws is enough to sustain an election result unless the errors are grave enough to impact the integrity of the election.

3. *Ikpeazu v Otti*.[46] The petitioner contested the election on the grounds of numerous procedural lapses, including issues with the conduct of the election and documentation. The tribunal reviewed whether these lapses were substantial enough to affect the result of the election. The Supreme Court held that while procedural errors were present, they did not constitute a substantial breach affecting the election's outcome. The court applied the principle of substantial compliance, affirming that the election result was valid because the core electoral requirements were observed.

4. *Makarfi v Sheriff.*[47] This case dealt with internal party elections where allegations of procedural deviations were made. The petitioner claimed that these deviations significantly affected the election's legitimacy. The Court of Appeal examined whether the deviations were substantial or merely procedural.

[42](2014) 11 NWLR (Pt. 1417) 344.
[43](2005) 13 NWLR (Pt. 941) 1.
[44](2015) LPELR-25868(SC).
[45] (2018) LPELR-44359(SC).
[46] (2016) LPELR-40484(SC).
[47] (2017) LPELR-41922(CA).

The Court of Appeal upheld the election results, applying the principle of substantial compliance. The court determined that the deviations were procedural and did not impact the overall integrity of the election. The judgment reinforced that substantial compliance with procedural requirements is sufficient to validate the election.

5. *Bola Tinubu v Olusola Oke*.[48] The petitioner challenged the election results on grounds of procedural flaws, including issues with the recording and declaration of results. The Supreme Court reviewed whether these flaws were significant enough to affect the election's outcome. The Supreme Court upheld the election results, emphasizing that the procedural flaws were minor and did not affect the election outcome. The court applied the principle of substantial compliance, reinforcing that the election process was valid despite minor errors.

The principle of substantial compliance ensures that elections are not invalidated by minor errors or procedural lapses, thus upholding the democratic process while ensuring that the core requirements are met.

9. Conclusion

The doctrine of substantial compliance is deemed essential in Nigerian electoral jurisprudence as it upholds electoral stability while ensuring that the will of the people is respected. It reflects a balanced approach where minor irregularities do not automatically lead to the nullification of election results unless they substantially affect the outcome. This doctrine is supported by numerous case laws and statutory provisions that guide Nigerian courts in election dispute resolution. The problem with this doctrine is that there is no yardstick to measure this doctrine and the politicians have utilized this loophole to perpetuate all forms of electoral malpractices including violence during elections. The doctrine unintentionally encourages electoral malpractices, undermining the overall integrity of elections and democracy in general. This doctrine is seriously undermining the tenets of democracy where every vote must count. The writer is making a case for the abrogation of the doctrine of substantial justice in Nigeria's electoral process. Any election that is tainted with any form of irregularity should not stand. This will definitely pave way for free and fair elections in Nigeria devoid of malpractices, including electoral violence.

[48] (2022) LPELR-59470(SC).