

***GUARDIAN (Nigeria)***

May 2, 2007

The role of the election tribunals by ***Gani Fawehinmi, SAN***

THE most controversial and dubious general elections ever held in the history of Nigeria have ended. The Judicial Tribunals will now commence to right the wrongs heinously perpetrated during the general elections.

The various tribunals have been set up pursuant to Section 285 of the Constitution of the Federal Republic of Nigeria, 1999, to deal with grievances arising from the Governorship, National Assembly and State Assembly Elections. Appeals from these Tribunals go to the Court of Appeal, which is the final court in those elections i.e. Governorship, National Assembly and State Assembly. There is no further appeal from the Court of Appeal to the Supreme Court. However, any grievance against the Presidential Election by any candidate is made to the Court of Appeal by way of petition and the decision of the Court of Appeal can be appealed against to the Supreme Court by a dissatisfied petitioner or respondent.

Brazing and bizarre corruption by highly placed public officers at the Federal and in the States caused the unprecedented Electoral robbery in the April 2007 Elections. Our failure as a nation to punish corruption and corrupt practices clearly manifested itself in the April 2007 Elections. The unfathomable scale of the electoral robbery was a measure of the large-scale corruption in our society.

Since 1999, our political leaders have taken umbrage under the immunity clause of the Constitution under Section 308 to render ineffective the express provisions of Section 15(5) of the same Constitution, which emphatically abhors all corrupt practices and abuse of power. Since these political chief executives cannot be removed from office, however corrupt they might be, they have become so swollen-headed in their brigandage; so daring and diabolical in their dictatorial use of power and so shameless in their ungodliness.

Unfortunately, the downright dishonesty of some of the Judges who were involved in 2003 Election Tribunals gave the Nigerian people much worry. I will refer to two instances: The first was the Anambra South Senatorial Election Tribunal, which looked into the grievances of a contestant Prince Nicholas Ukachukwu against the election of Dr. Ugochukwu Uba. The Tribunal found for Prince Nicholas Ukachukwu against Dr. Ugochukwu Uba. Dr. Uba appealed to the Court of Appeal. Meanwhile, he had been sworn in as a Senator. The matter came before the Court of Appeal and the Court of Appeal of three Justices, Hon. Justice Okwuchukwu Opene, Hon. Justice David Adedoyin Adeniji and Hon. Justice Kumai Bayang Akaahs disagreed among themselves.

Two of the Justices Hon. Justice Okwuchukwu Opene and Hon. Justice David Adedoyin Adeniji gave judgment to Dr. Ugochukwu Uba and the third Justice, Hon. Justice Kumai Bayang Akaahs, the youngest of them disagreed and dissented and gave judgment to Prince Nicholas Ukachukwu. After the appeal, the National Judicial Council (NJC) received petitions that two of the three Justices took bribe. The National Judicial Council established under Section 153 of the Constitution of the Federal Republic of Nigeria, 1999 set up a committee headed by late Justice Kolawole a retired Justice of the Court of Appeal. After a thorough investigation by the Committee it was found that Justice Okwuchukwu Opene who presided at the Court of Appeal took a bribe of N15,000,000.00 (Fifteen million Naira) and Justice David Adedoyin Adeniji took a bribe of N12,000,000.00 (Twelve million Naira) and three unascertained Ghana-must-Go bags and that Justice Kumai Bayang Akaahs the youngest of them refused to take bribe. He rejected corruption and did the Judiciary proud.

Consequently, the National Judicial Council (NJC) recommended to the President of the Federal Republic of Nigeria that these two justices, Hon. Justice Okwuchukwu Opene and Hon. Justice

David Adedoyin Adeniji were guilty of corruption and abuse of office and that they should be sacked as Justices of the Court of Appeal. On the 3rd of May, 2005, the President acting under Section 292 of the Constitution of the Federal Republic of Nigeria, 1999, dismissed those two Justices from the Judicial Bench of Nigeria.

The Second instance was the Akwa Ibom State Governorship Election Tribunal set up after the 2003 Governorship Election. There were five members of the Tribunal. Whilst the proceedings were still pending in the Tribunal, on the 10th July, 2003 the petitioner petitioned the Chief Justice of Nigeria who is the Chairman of the National Judicial Council (NJC) complaining that four of the five members of the Tribunal i.e. the Chairman, Hon. Justice M. M. Adamu (a Lady), Hon. Justice D. T. Ahura, Hon. Justice A. M. Elelegwa and Chief Magistrate O. J. Isede had been compromised with large sums of money as bribe by the Governor of Akwa Ibom State, Obong Victor Attah.

The National Judicial Council (NJC) investigated the complaints through a committee set up for that purpose and found that the allegations were true and that the Chairman of the Election Tribunal and three other members received bribes during the sitting. They were accordingly dismissed from the judicial Bench. One Judge who was not a member of the Tribunal, Hon. Justice C.P.N. Senlong of the Federal High Court was also dismissed for corruption and abuse of office because he was found to have associated with one of the contestants in a corrupt manner. These two examples of judicial corruption must not be allowed to happen or re-occur in the new Tribunals for the 2007 Elections.

The Tribunals should also bear in mind that there are two sets of people who were unconstitutionally injured during the electoral robbery. First, the voters. By Article 13 of the African Charter on Human and Peoples Rights Cap. A9, Laws of the Federation of Nigeria, 2004 which became part of our laws on 17th March, 1983 and which was confirmed by the Supreme Court as part of our laws in the case of *Abacha v. Fawehinmi* (2000) 6 NWLR (Pt.660) 228 which provides that: "13(1) Every citizen shall have the right to participate in the government of his country, either directly or through freely chosen representatives in accordance with provisions of the law,"

The voters have a fundamental right. The voters whose votes were not made to determine who should govern them either at the centre or in the States have no locus standi to petition the tribunals. This is one instance of a wrong without a remedy. How can the voters approach the tribunals set up under the same Constitution when they are not contestants? This puts another responsibility on the tribunals to ensure that "any robber" in the electoral robbery does not profit by its corruption, abuse of power and the denial of the voters to choose their representatives or leaders.

The second set of injured Nigerians are those who contested but were robbed of victory. They have a right of access to the Tribunals to ventilate their grievances under the appropriate provision of the Constitution of the Federal Republic of Nigeria, 1999. They obviously have locus to lay their grievances before the respective Tribunals. Let it go down in history that the Nigerian Judiciary through its tribunals in 2007 must courageously and honestly right the wrongs inflicted on the electorate of Nigeria during the most fraudulent polls in the Nation's history.

I would like to remind lawyers who will appear before these tribunals of the role and responsibility placed on them by the first indigenous Nigerian lawyer, Christopher Sapara Williams, born on 19th July, 1855, enrolled in Nigeria on 30th January, 1888 and died on 15th March, 1915 that: "The Legal Practitioner lives for the direction of his people and the advancement of the cause of his country."

Chief Fawehinmi is a Senior Advocate of Nigeria (SAN)