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THE RELATIONAL IMPACT OF SECTION 65 OF ELECTORAL ACT 2026 ON JUDICIAL ADJUDICATION OF ELECTORAL DISPUTES IN NIGERIA

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Abstract

Section 65 of Electoral Act, 2026 has been a double edge sword in the hand of the electoral body, the Independent National Electoral Commission, during post – election procedure and collation of election results. The paper examined the effects of Section 65 of Electoral Act, 2026 on judicial adjudication of electoral disputes in Nigeria. The paper adopted doctrinal approach by examining constitutions, statutes, books, opinion of authors, journals, dictionaries, conference papers, websites, dailies, periodicals, and etcetera, in order to buttress the effects of Section 65 of Electoral Act, 2026 on judicial adjudication of electoral disputes in Nigeria. The authors argued that apparent gaps in reconciling conflicting regimes of law. The paper maintained the presence of conflicting areas of the law with the constitution of Federal Republic of Nigeria 1999 (as amended). The authors therefore, concluded the need for legislative reforms in ensuring unhindered judicial resolution of electoral disputes in Nigeria.

Keywords: adjudication, electoral, dispute, judicial, judiciary, post-election

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1. Introduction

It used to be the law in Nigeria election was won in the polling unit where the presiding officer after counting the votes at the polling unit, enter the votes scored by each candidate in a form prescribed by INEC. The presiding officer sign and stamp the form or result sheet and it is counter signed by the candidates or their polling agents where available at the polling unit. The presiding officer is expected to announce the result of the election at the polling unit and thereafter deliver the election result and election materials under security to such persons as may be

authorised by INEC.¹ The above provisions of the law are also re-enacted in the instant Electoral Act, 2026.² However, the hue and cry is over the enactment of Section 65 of Electoral Act, 2026 that gave INEC the power to review declaration of results and return of candidate within seven days. The paper examines in-depth this unfettered power granted to Independent National Electoral Commission hereinafter called INEC and its effects on judicial adjudication of electoral disputes in Nigeria.

2. History nature and scope

There are some key technical terms such as adjudication, dispute, electoral, judicial, judiciary and post-election that need clarifications for a clear understanding of this paper.

- a. Adjudication: Adjudication has been described as the action of adjudicating a judge's decision.³ Adjudication in relation to this paper has to do with the court's or election tribunal resolution of electoral disputes in Nigeria. The Constitution of Federal Republic of Nigeria, 1999 (as amended) has granted powers to the courts and election tribunals to resolve disputes emanating from conduct of various elections in Nigeria.⁴
- b. Electoral: Electoral is from election. Election is the act of choosing leaders or representatives from a poll of candidates by process of voting. Section 155 of Electoral Act, 2026 interpreted election to mean any election held under this Act and includes a referendum. It is now an accepted norm that every democratic nation in the world now conducts periodic elections to elect their leaders and representatives. In this paper we are discussing elections in terms of periodic state and National Assembly election, gubernatorial or governorship election and presidential election.
- c. Dispute: Dispute is disagreement, argument, debate or controversy between two or more persons. In the case of *Attorney General, Cross River State v Federal Republic of Nigeria & anor*⁵ the supreme Court, per Ariwoola JSC, while defining dispute held that dispute is a conflict or controversy that has

¹ See Sections 63 and 65 of repealed Electoral Act, 2010 (as amended)

² See Section 60 and 62(1) of Electoral Act, 2026.

³ See The New Webster's Dictionary of the English Language (International Edition, Lexicon Publications Inc., New York 2004) p. 10

⁴ See Sections 239(1) and 285(1) & (2) of 1999 constitution (as amended)

⁵ (2019) EJC (VOL.127) 94 AT 157

given rise to a particular law suit: it is also defined as acts, argument, debate, claims as to rights, whether in law or fact, varying opinion, whether passive or violent or any anxiety or disquiet. In this paper we shall examine dispute between the Petitioner of electoral petition (dissatisfied party with the result declared) and the winner of the election. Also, the electoral management body (INEC) being a statutory party to electoral dispute.

- d. Judicial: Judicial has to do with the administration of justice by courts of law. Judicial is relating or pertaining to the legal system. Also judicial has been defined as a descriptive term used to indicate that an action refers, relates, was made by or pertains to a judge or court.⁶ In this paper judicial relates to administration of justice by the courts and election tribunals saddled with the resolution of electoral disputes.
- e. Judiciary: Judiciary is one of the three arms or branches of government. The other two being the legislative and executive arms of government. The judiciary has the primary responsibility of interpreting the laws of the country and judicial adjudication of disputes between persons, government or authority and any person. The judiciary is also responsible for judicial review of actions of the legislative and executive branches of government. There is no doubt that it is only the judiciary that has the jurisdiction or power to carry out judicial adjudication of disputes including electoral disputes in Nigeria. In modern constitutional democracies in the world including Nigeria and the United States of America, the judiciary is created by the constitution.⁷
- f. Post-election: Post-election simply refers to electoral activities after election has taken place. There is usually vote counting, certification of results and declaration of results in the polling units. Post-election consist of after recording and announcement of the result, the presiding officer is expected to deliver the result along with the election materials under security accompanied by the candidates or their polling agents, where available to such person as may be prescribed by INEC⁸ and other collation activities culminating in the announcement of result of an election/declaration of winners. Thereafter,

⁶ <<https://www.law.cornell.edu>> accessed 26/05/2026

⁷ See section 6 of Constitution of Federal republic of Nigeria 1999 (as amended) and Article three of the constitution of the United States of America.

⁸ See Section 62(1) of Electoral Act, 2026

candidates or political parties not satisfied with the result of the election declared can challenge the result by filing election petition within 21 days from date of declaration of result of the election.⁹ The above scenario is a sharp contrast from pre-election matter which consist of electoral activities before the conduct of the election.

There is need to evaluate the Section 65 of the Electoral Act 2026. This will focus on the power of the commission to review declaration. Under and by virtue of Section 65 of the Electoral Act 2026, INEC is empowered to review the declaration and return already made by INEC within seven days where it received report from its officials and it is satisfied that a declaration or return may have been made under duress or knowingly and wilfully contrary to the procedures prescribed under Section 62 (4)-(8) of the Electoral Act 2026.

INEC is expected to exercise its statutory power to review declaration already made within seven days of such declaration. Such review is only exercisable where INEC receives report from its officials and it is satisfied that such declaration may have been made under duress or wilful breach of INEC procedures.¹⁰

INEC prescribed procedures has to do with collation procedures at the collation centres.¹¹ In effect, the procedures empowered INEC collation officers to review results already declared in polling units where there is disputes as regard such results. Comparatively, the repealed Electoral Act, 2022 gave powers to the returning officers to make final decision on questions of unmarked ballot paper, rejected ballot paper and declaration of scores of candidates and the return of a candidate.¹² The proviso to Section 65 of the repealed Electoral Act, 2022 is what was developed to form the extant Section 65 of Electoral Act, 2026.

The intendment of Section 65 of Electoral Act, 2026 is to empower INEC to review results already declared by its returning officer within seven days if it receives report from its officials and INEC is satisfied that the declaration was made under duress or wilful violation of INEC procedures.

In fact, Section 65 of Electoral Act, 2026 is contradictory of Section 60 and 62(1) of Electoral Act, 2026. Section 60 has to do with the presiding officer of INEC who shall

⁹ See Section 285 (5) of the 1999 Constitution (as amended)

¹⁰ See Section 65 and 62(4) – (8) of Electoral Act, 2026

¹¹ See Section 65 and 62(4) – (8) of Electoral Act, 2026

¹² See Section 65 of Electoral Act, 2022

count, record results of polling units in INEC Form EC8A, signed and stamped by the presiding officer and/or countersigned by the candidates or polling agents where available at the polling unit. The presiding officer is also expected to electronically transmit the results of the polling unit to INEC IREV portal. However, where the electronic transmission of polling unit result to INEC IREV portal fails due to communication failure, the polling unit result as recorded in INEC form EC8A shall remain the primary source of collation and declaration of the result.¹³ Thereafter, after recording and announcement of the result in the polling unit, the presiding officer is expected to deliver same with election materials under security and accompanied by the candidates or their polling agents to such person authorised by INEC to receive the result and election material.¹⁴

In view of the above avalanche of provisions participation of INEC officials, candidates or their polling agents and security officials the enactment and application of Section 65 of Electoral Act, 2026 empowering INEC to review the same work done by the same INEC official called into question.

However, Section 65 of Electoral, 2026 is only the report of ‘official’ who may have been compromised that will determine review of declaration already made.¹⁵ Another writer see section 65 of Electoral Act, 2026 as narrowed in scope, limited to reports by INEC officials.¹⁶ Though the new section stripped the returning officer of the powers to take final decision during review process, the danger of operational uncertainty and potentially uneven application has been expressed.¹⁷

3. The relational impact of the power of INEC to review declaration

The pitfall of the power of INEC to review declaration is so profound that its effect is to empower INEC to engage in adjudication of electoral disputes. The pitfalls associated with this statutory power bestowed on INEC are as follows:

¹³ See Section 60 (3) of Electoral Act, 2026

¹⁴ *Ibid* at Section 62(1)

¹⁵ Jide Ajani, ‘fresh alarm over 2027 polls: EX REC lists ‘dangerous’ Sections of Electoral Act 2026’ (interview of Mike Igini, former INEC Resident Electoral Commissioner in Edo and Akwa Ibom States May 3, 2026), <https://www.vanguardngr.com/2026/05/fresh-alarm-over-2027-polls-ex-rec-lists-dangerous-sections-of-electoral-act-2026/> accessed 01/06/2026.

¹⁶ O. Osazee Uzzi, ‘Electoral Reforms And Democratic Consolidation: Interrogating the New Legal Framework’(paper delivered at The Nigerian Bar Association, Benin Branch, Law Week, 02 June, 2026)

¹⁷ Policy And Advocacy Centre, ‘INEC Power to Review Election Results under Section 65 of the Electoral Act 2026’, <https://placng.org/i/documents/inecs-power-to-review-election-results-under-section-65-of-the-electoral-act-2026/>, accessed 01/06/2026

- (a) The Constitution of Federal Republic of Nigeria 1999 (as amended) created the judiciary.¹⁸ The Judiciary is the organ of government that has the constitutional mandate to adjudicate on disputes in Nigeria. This constitutional mandate includes the exclusive original power to adjudicate on electoral disputes in Nigeria.¹⁹

INEC delving into the realm of adjudication of electoral disputes under statutory purview of power to review declaration under Section 65 of Electoral Act 2026 is inconsistent with and it's a violation of Section 6 of 1999 Constitution (as amended). The 1999 Constitution (as amended) is the supreme law in Nigeria and any other law inconsistent with the constitution is void.²⁰ Therefore, *Section 65 of Electoral Act 2026* that is inconsistent with the constitutional judicial adjudicatory powers granted to the judiciary should be declared void.

- (b) *Section 65 of Electoral Act 2026* submitted here is also an affront to candidates' right to fair hearing.²⁰ The Constitution guaranteed to every person the right to fair hearing in the determination of his civil rights and obligations.²¹

INEC in exercising its power to review declaration under and by virtue of Section 65 of Electoral Act 2026 is to consider only report receive from its officials and its satisfaction with the report to establish duress or wilful declaration contrary to laid down INEC procedures.

There is nothing in the law requiring INEC to hear from candidates or their polling agents before reaching a decision to review the declaration already made. Section 65 of Electoral Act 2026 is a flagrant violation of Section 36 (1) of 1999 Constitution (as amended). In the case of *Jegede & Anor v INEC & 3 Ors*,²² the Supreme Court held that the right to fair hearing is a constitutional right which cannot be waived or statutorily taken away.

- (c) Section 65 of Electoral Act 2026 made INEC a Judge in its own cause. It's the same INEC that conducted the election and made declaration of result in the polling unit. The same INEC official make report and the same INEC consider

¹⁸ See Section 6 of 1999 Constitution (as amended)

¹⁹ *ibid* Sections 239 (1) and 285 (1) and (2)

²⁰ *ibid* Section 1 (1) and (3)

²¹ *Ibid* Section 36 (1)

²² (2022) EJSC (Vol. 177) 1 At 64

it without hearing from the candidate or winner in the result declared and the same INEC as Judge reach judgement to review the declaration. That is the greatest injustice and violates the twin pillars of justice; *audi alterem partem* and *nemo judex in causa sua*. *Audi Alterem Partem* requires that in the determination of rights and obligations of parties, such parties must be afforded the opportunity to state their cases before any decision is reached. *Nemo judex in causa sua* on the other hand means no man shall be a judge in his own cause.²³

INEC cannot be a judge in his own cause. INEC should submit such review to judicial adjudication as the judiciary is constitutionally empowered to settle electoral disputes impartially. Under Section 65 (2) of the repealed Electoral Act 2022 a decision of returning officer on review of declaration and return was subject to election tribunal or court review.

- (d) The 1999 Constitution (as amended) granted original exclusive jurisdiction to election tribunal and court of appeal to initiate the adjudication or resolution of electoral disputes.²⁴ The Supreme Court has held that jurisdiction of a court is the authority which a court possesses to decide matters presented in a formal way for its decision. It is the fulcrum, centre pin or the main pillar upon which the validity of any decision of any court stands and around which other issues rotate.²⁵

The provisions for review of declaration and resolution of disputed result under Section 65 and 62 (4)-(8) of Electoral Act 2026 is in conflict with the constitution and the principle that after declaration of result it is only election tribunal and court of appeal that is empowered to resolve electoral disputes arising from declaration of result.

The foundation of election result in Nigeria is Form EC8A (polling unit result). The presiding officer is empowered by law to declare the result in the

²³ N.A Inegbedion and J.O Odion, *Constitutional Law in Nigeria* (2nd ed., Ambik press, Benin City, 2011)

²⁴ See Section 239 (1)(a) and 285(1) and (2) of 1999 Constitution (as amended); see also *Atiku & Anor v INEC & 2 Ors* (2025) EJSC (Vol. 221) 250 AT 375, where the Supreme Court held that the court of Appeal sits as a tribunal or court of first instance in exercising the original jurisdiction vested or conferred on it under the provision of Section 239(1)(a) of the constitution; see also *Opia v Independent National Electoral Commission (INEC)* (2016) EJSC (vol.30) 142 AT 172, where the Supreme court held that Section 285 (1) of 1999 Constitution imbued the election tribunal with exclusive jurisdiction to hear and determine electoral disputes.

²⁵ *Atiku & Anor v INEC & 2 Ors* (2025) EJSC (vol, 221) 250 AT 292 – 293

polling unit in the presence of candidates or their polling agents and security officials. We submit that once the result is so declared it is only the election tribunal or court of appeal that can resolve any dispute that emanate from such declaration of result.²⁶

Section 65 of Electoral Act, 2026 empowering INEC to review declaration and resolve disputed result under Section 62 (4)-(8) is over-reaching of judicial powers of the judiciary and unconstitutional. INEC does not have business to cancel or review the result already announced by INEC. Elections should be won or lost in the polling unit and not collation centre resolution.

- (e) The power of INEC to review declaration within seven days of the declaration also violated Section 285 (5) of 1999 Constitution (as amended) which makes it mandatory that election petition shall be filed within 21 days after the date of the declaration of result of the election. Once a declaration is made any dispute leave the purview of INEC as the constitution require that any candidate or political party dissatisfied with the declaration should file election petition before election tribunal or court to challenge the declaration made by INEC.
- (f) Lack of independence and financial autonomy for INEC can lead to serious abuse of power to review declaration already made by INEC. The present situation in Nigeria where the INEC Chairman and National Commissioners that govern INEC are appointed by the President who also fund INEC makes INEC solely dependent on the incumbent President. It is questionable that the President who is also a contestant in the electoral game, also appoints the electoral umpire/referee (INEC). The President also provides funding for INEC. A study has revealed that the weak autonomy of EMBs that make the commission's agent of election frauds.²⁷ The study has established that INEC violations/errors of election are very high in Nigeria.²⁸

²⁶ *Slyva v Independent National Electoral Commission (INEC) (2017) EJSC (Vol.65) 116 AT 186; see also Faleke v Independent National Commission (INEC) (2017) EJSC (Vol. 64) 82 AT 146.*

²⁷ J. T. Omenma, O. O. Ibeanu, and I. E. Onyishi, 'Disputed Elections and the Role of the court in Emerging Democracies in Africa: The Nigerian Example', *Journal of politics and Democratization*, <<https://www.researchgate.net/publication/316696495>> accessed 18/06/2026.

²⁸ *Ibid*

Section 65 of Electoral Act 2026 granting statutory powers to INEC to review its own declaration already made in a situation where it's a notorious EMB that lack independence and autonomy is akin to handing over a sword to INEC to interfere with result of the election.

Section 65 of Electoral Act 2026 in our view is a dangerous sword in the hand of INEC that can lead to tampering with the result already declared in the polling unit or any stage of collation of result of election without observing the principles of natural justice and right of fair hearing of all candidates in the electoral process.

- (g) Corruption of EMB officials: INEC presiding officers at the polling units and collation officers at collation centres are all INEC ad-hoc staff. They are not permanent staff or public officers working in INEC. They are recruited by INEC on ad-hoc basis during each circle of election to participate in the conduct of particular election. The ad-hoc staff is recruited from the general public, tertiary institutions, infiltrated politicians and even incumbent government also get in ad-hoc staff. The ad-hoc staff penetrates INEC electoral processes with diverse and hidden agenda.

A published study of 2003, 2007 and 2011 election in Nigeria showed that INEC ad-hoc staff violations/errors accounted for very high percentage of fraud in the three cycles of elections.²⁹ The argument was canvassed that the power to review results declared under duress, for instance, was demonstrated when INEC headquarters cancelled the premature declaration of a winner in the Adamawa State 2023 governorship election.³⁰

4. Conclusion and recommendation

In order to ensure that the power granted to INEC by *section 65 of Electoral Act 2026* to review declaration does not conflict with the 1999 constitution (as amended), ensure fairness to all parties/candidates, free and fair election, to make polling unit result count and just adjudication of electoral disputes in Nigeria, we advocate the following way forward:

²⁹ J. T. Omenma, et al

³⁰ S. T. Anyide, 'Scrutinising Nigeria's Electoral Trajectory: The Electoral Act 2022, The 2023 polls, and the Judiciary's verdict,' *Kashere Journal of politics And International Relations*, vol. 3, issue 4 December, 2025

The Appointment of INEC Chairman, National Commissioners and Resident Electoral Commissioners of INEC should be removed from the President of Federal Republic of Nigeria. The Constitution should be amended to reflect the above to ensure impartiality and independence of INEC in the conduct of elections in Nigeria. It is advocated that the appointment should be done by the National Judicial Council (NJC) that is better placed to appoint Nigerians of proven integrity without partisan leaning.

INEC should also be granted financial autonomy by constitutional amendment. The present situation where INEC go cap in hand to the incumbent government begging for finance to conduct elections makes *Section 65 of Electoral Act 2026* a double edge sword which INEC can be compelled by the incumbent government to use in their favour to compromise result of election from the polling unit.

There is urgent need to amend Section 65 of Electoral Act 2026. The proposed amendment should ensure that adjudicatory powers of INEC is removed and handed over to election tribunal or court, the principle of natural justice and right of fair hearing should be granted to all parties/candidates before any review of declaration already made is carried out and power of review should end with declaration made under duress in Section 65(a) of Electoral Act 2026. Section 65(b) of Electoral Act 2026 should be expunged from the law as it conflicts with established principles and it is surplusage of INEC observance of post-election procedures in Section 62(1) and Section 60 of Electoral Act 2026.

For instance, in the case of *Abubakar & Anor v INEC & Ors*, the Supreme Court noted that:

The Law is trite that there is a presumption of correctness and regularity in favour of the results of election declared by the Independent National Electoral Commission in the conduct of an election. This means that except it is proved or rebutted that such results are correct, they are accepted for all purpose by the election tribunal or court. The onus, of course is on the petitioner to prove the contrary.³¹

Before the enactment of *Section 65 of Electoral Act 2026* that makes declaration of result from polling unit uncertain and capable of interference by INEC and its collation officers in the name of review of declaration, the established principle was

³¹ (2021) *EJSC* (Vol. 162) 40 at 110

that result of polling unit as contained in Form EC8A was sacrosanct. In case of *Sylva v Independent National Electoral Commission (INEC)* the Supreme court held that, 'where a poll has been taken and a result is announced, INEC cannot cancel the result already announced. It is only the election tribunal or the court that can annul such a result upon a petition being laid before it.'³²

Section 65 of Electoral Act 2026 is at variance with *Section 60 and 62(1) of Electoral Act 2026*. The proviso to *Section 60(3) of Electoral Act 2026* is crystal clear that Form EC8A (polling unit result) shall at all times remain the primary source of collation and declaration of result.

The power of judicial review granted to election tribunal or court to review the power of INEC to review declaration under section 65(2) of the repealed Electoral Act 2022 should be restored with legislative reform of *Section 65 of Electoral Act 2026*.³³ INEC should not be handed a sword without review by way of judicial review of its actions and inactions under *Section 65 of Electoral Act 2026*.

The Electoral Act should address issue of INEC recruitment of ad-hoc staff for conduct of elections. The Electoral Act should be amended by way of legislative reforms to enable INEC to have enough funding to recruit more qualified staff for conduct of election. In the recruitment process of ad-hoc staff INEC should not recruit every Tom, Dick and Harry. INEC should consider making use solely of members of corps member (NYSC) as ad-hoc staff as they have proved very effective in the past. INEC should also deliberately insulate or isolate its ad-hoc staff from the influence of politicians. The essence of getting the recruitment of ad-hoc staff right is that INEC will be saved the embarrassment of using compromised officials to conduct election. That in turn will dispense with *Section 65 of Electoral Act 2026* as there will be no compromised and incompetent officials leading to reports for review of declaration already made by INEC officials.

There is also the need to have the right water tight security during the electoral process. *Section 62(1) of Electoral Act, 2026* made provision for the presiding officer

³² (2017) EJSC (Vol. 65) 116 at 186; See also *Faleke v Independent National Electoral Commission (INEC)* (2017) EJSC (Vol. 64) 82 at 130

³³ Hon. Justice Mohammed Baba Idris, 'The Repositioning for Effective Justice Delivery And Democratic Stability in Nigeria,' (Keynote Address at Nigerian Bar Association, Benin Branch Law Week, 1st June, 2026)

to deliver polling unit result along with election materials under security to such person as may be prescribed by INEC after the recording and announcement of the result. If security is tight and effective there will be no need for situation of under duress provided for in *Section 65(a) of Electoral Act, 2026*.

It is also further advocated the building of strong institutions in Nigeria to address the issues of declaration of result under duress and breach of laid down procedures for election raised by *Section 65 of Electoral Act 2026*. The EMB (INEC), Security Agencies, telecommunication networks and other institutions responsible for seamless election need to be strong and effective. It is submitted here that if the EMB and Security Agencies are strong institutions with capacity and capability there will be no need for *Section 65 of Electoral Act 2026* seeking to review declaration of result already made by the same EMB (INEC). There should be legislative and executive intervention to make our EMB and security agencies work instead of empowering EMB to interfere or tamper with declaration of result already made by INEC in presence of candidates or their polling agents and security agencies.

It is also advocated that the judiciary should be repositioned for effective adjudication of electoral disputes in Nigeria. Independence of the judiciary is the first challenge militating against effective adjudication of electoral disputes in Nigeria. Independence of Judiciary should be strengthened in constitutional, statutory provisions and deeds of the government in Nigeria. Delay in the administration of justice, inadequate funding and deficient infrastructure, corruption and ethical concerns, political interference, technological deficiency and slow digital transformation, insecurity and limited access to justice, failure to obey court orders and judgments are some challenges confronting the judiciary that has been identified by eminent jurist and Justice of Supreme Court of Nigeria. It is advocated here that if the above challenges are tackled and addressed the judiciary no doubt will become more effective in judicial adjudication of electoral disputes in Nigeria.

Our finding has shown that *Section 65 of Electoral Act 2026* is a double edge sword and booby trap in the hand of EMB. If our advocacy and suggestions for legislative reforms are implemented the looming dangers in *Section 65 of Electoral Act 2026* will be avoided so that votes recorded in polling unit will count without interference by INEC in future elections in Nigeria.

