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APPLICATION OF ELECTRONIC DEVICES IN ELECTION PROCEEDINGS IN NIGERIA

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Abstract

The enactment of the Electoral Act 2022 is a welcome development for Nigerians and friends of Nigeria because of one peculiar feature, which is the introduction of electronic transmission of results from the polling units as well as other related provisions, contained therein. The provisions of the Act, which provides for the transmission of results from the polling unit envisaged the collation of results from the polling centers as well as the declaration of the results. It is against this background that the authors critically examined the electronic transmission of results which invariably seek to promote credibility of election matters in Nigeria, and specifically focusing on judicial intervention on the use of electronic devices in the conduct of elections. The authors demonstrated the extent to which electronic devices or technologies applied in the Nigerian electoral process as well as the pronouncement of courts has effected on the regime of use of electronic devices in the conduct of elections. The paper considered the concomitant challenges associated with the application of electronic devices and resultant utilization in the Nigerian electoral process usually in the face of electoral disputes in the courts or tribunal. The paper found that while the courts and tribunals in the course of resolving electoral litigations have faithfully or otherwise, accommodated the use of manual methods together with the use of electronic devices, and by so doing, invariably creating a window for election manipulators to operate in a different dimension. The authors concluded by demonstrating that the electoral umpire, INEC have continued to undertake legal, structural and institutional reforms which are not only supportive of the credible electoral process but also reinforced the efficient performance of the technology used in Nigeria, particularly, such measures aimed at making the use of electronic devices or other relevant technological devices for the electronic transmission of results mandatory through necessary amendments to the Electoral Act 2022.

Keywords: election proceedings, electronic transmission, electronic devices, judicial intervention, technological devices

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1. Introduction

It has been a common saying that the court system is the last hope of the common man. The court in Nigeria is a constitutional entity. For instance, section 6 to the Nigerian Constitution provides for the vesting of the judicial powers of the Federation

in the courts.¹ Nigeria is a constitutional democracy with a subsisting federal structure. There are in place, both federal and state courts that are primarily vested with original jurisdictions in areas proper by it.² Ordinarily, most electoral disputes so many a times become subject of protracted litigation in the court room. Consequent on this, the court judges are made to intervene, in order to settle the litigation. Significantly, early and contemporary jurisprudence did succeed in adopting the perspective that judges are the sole priests of the law, the repositories of its ancient rules and traditions.³ However, in the conduct of election matters, the electoral umpire in Nigeria has been the independent national electoral commission.⁴ For many years, the Nigerian INEC has been enmeshed in controversies, which oftentimes operated to taint its image with distrust, dishonesty and operational doubts. INEC has been struggling to erase this odium associated with its entity. Consequent on this, the INEC resorted to applying the use of electronic devices in the conduct of elections, proper by her.

This singular decision to utilize electronics devices raised the hopes of political parties and their supporters. Those that have cause to challenge the decision of the commission as well as litigants have placed so much reliance on the provisions of the Electoral Act that introduced the use of electronic devices in espousing their claims, rights and interests. Before introducing electronic devices, various amendments of the Electoral Act have at one stage or the other made provisions for the use of electronic devices in the conduct of the election, for instance, section 153 of the Electoral Act,⁵ donated power to the Independent National Electoral Commission to issue regulations, guidelines or manuals for the purpose of giving effect to the provisions of the Electoral Act and for its administration thereof. Consequently, the Commission usually issue guidelines and regulations for general elections. These guidelines were issued for the various election cycles of 2015, 2019 and 2023 general elections as well as the Osun and Ekiti States governorship elections of 2022.⁶

In *Okechukwu v Onyeagbu*,⁷ the Court of Appeal considered the purport of the Manual for Election Officials 2007 made pursuant to section 161 of the Electoral Act⁸ which is *in pari-materia* with section 153 of the Electoral Act⁹ and held that:

The Manual for Election Officials 2007 (exhibit AK in the instant case) was published by INEC for the fundamental objective of giving effect to the provisions of the Electoral Act 2006. The guidelines are

¹ A. K. Anya, *The Role of Courts in Application and Enforcement of Law in Nigeria*, Vol. 9 (No. 1) (2017) Port Harcourt Law Journal; Later uploaded and deployed in [ResearchGate.com/anyakingsleyanya](https://www.researchgate.com/publication/328111111)

² *Ibid*, at P. 2

³ *Ibid*, at P. 3

⁴ [Hereafter, The INEC]

⁵ 2010 (as amended)

⁶ Available online at www.inecnigeria.org/wp-content/uploads/2015/01/FINAL

⁷ (2010) All FWLR (Pt. 524) p. 117 at 136-137.

⁸ 2006

⁹ 2010 (as amended)

undoubtedly meant to be strictly constructed and adhered to by the electoral officials concerned in the process and procedure for election.

Furthermore, the INEC Regulations and Guidelines for the Conduct of Elections 2019 specifically in Clause 10 (A) provides that in accordance with section 49 (2) of the Electoral Act, a person intending to vote shall be verified to be the same person on the Register of voters by use of the Smart Card Reader (SCR) in the manner prescribed in these Regulations and Guidelines. This provision makes the use of smart card reader which is an electronic device in the accreditation process a mandatory requirement of some sort. It further provides in clause 10 (b)¹⁰ that any poll official who violates the provision of Clause 10 (a)¹¹ shall be deemed to be guilty of an offence and shall be liable to prosecution. Clause 10 (c)¹² of the guideline further provides that accreditation and voting shall commence at 8.00 am and close at 2:00 pm, provided that all voters already on the queue by 2:00 pm shall be allowed for accreditation and voting. These processes have to be done simultaneously, but unfortunately, the noble interventions were strictly not adhered to during the conduct of elections.

Despite the failure or refusal of election officials to adhere to the Electoral Act or Guidelines as the case may be, the court always intervened when matters relating to the provisions of either the Act or the Guidelines are brought before it. Drawing attention from the above, there is need to demonstrate the intervention in two selected cases as regards the use of electronic devices in the conduct of elections, particularly as it relates to the electronic transmission of results.

2. Nature and Scope of Electronic Transmission

Electronic transmission connotes the process of dispatching data through electronic means. Consequently, electronic transmission of data in Nigeria, is the sum total of dispatching electoral data through electronic means. It should be noted that the Electoral Act in Nigeria introduced the use of electronic devices in the conduct and transmission of electoral information. For instance, the power to transmit electoral data is vested in the INEC.¹³ Some of the powers of INEC include the verification of voters on the Register of voters by use of the Smart Card Reader¹⁴ in the manner prescribed in the Regulations and Guidelines. The smart card reader is an electronic device and it is recognised in the accreditation process as a mandatory requirement. It often follows that the legal burden to effect compliance with the provisions of the electoral Act as well as the incidental regulations and guidelines, usually fall on the judiciary, especially in cases of infractions and interpretations of the provisions of the Act and incidental regulations and guidelines.

Therefore, the need or otherwise to electronically transmit the results of an election as a matter of compulsion traditionally came within the radar of the intervention of the

¹⁰ INEC Regulations and Guidelines for the Conduct of Elections 2019

¹¹ Ibid.

¹² Ibid.

¹³ Section 153 of the Electoral Act

¹⁴ [Hereafter, The SCR]

judiciary, for instance, in the consideration and determination of recondite issues on whether the presiding officer in a polling unit must transmit the particulars or number of accredited voters recorded by the BVAS to the INEC data base. The court observed per Emmanuel Akomaye Agim, JSC that:

There is no part of the Electoral Act or the INEC Regulations and Guidelines for the Conduct of Elections 2022 that requires that the Presiding Officer of the election in a Polling unit transmit the particulars or number of accredited voters recorded by the BVAS to the INEC data base or anywhere.¹⁵

The court further observed that regulation 38 of the Regulation provides that ‘on completion of all the Polling Unit voting and results procedures, the Presiding Officer shall: (i) Electronically transmit or transfer the result of the Polling Unit, direct to the collation system as prescribed by the Commission, (ii) Use the BVAS to upload a scanned copy of the EC 8 A to the INEC Result Viewing Portal (IReV) as prescribed by the Commission, and (iii) Take the BVAS and the original copy of each of the forms in tamper evident envelope to the Registration Area/Ward Collation Officer in the company of Security Agents. The Polling Agents may accompany the Presiding Officer to the RA/Ward Collation Centre.’¹⁶

3. Forms of Electronic transmission and Applications in Electoral matters in Nigeria

A. INEC data base and back-end server

The issue whether INEC data base or back-end server is a record of accredited voters or a part of the accreditation process in electoral matters in Nigeria is paramount. The court has held that there is no part of the Electoral Act or the INEC Regulations and Guidelines for the Conduct of Elections 2022 that makes INEC data base or back end server a part of the accreditation process or record of accredited voters.¹⁷ The INEC data base is a post-election record created by S.62 of the Electoral Act and named therein as the National Election Register of Election Results for the purpose of keeping reliable and verifiable records of past election results polling unit by polling unit.

B. Proof of allegations of non-accreditation/improper accreditation

There is need to prove allegations of non-accreditation and/or improper accreditation. In this regard, there is a specific quality of evidence of non-accreditation/improper accreditation/over voting under the Electoral Act, 2022, to wit:

...the evidence required to prove that voting was allowed without accreditation or that there was improper accreditation are the

¹⁵ Oyetola & anor. v INEC & Ors. (2023) LPELR 60392 (SC) Pp. 18, 20 Paras. (E)–(F)

¹⁶ Supra, at P. 21, Paras. (A)–(F)

¹⁷ Oyetola & anor. v INEC & Ors. (2023) LPELR 60392 (SC) Per Emmanuel A. Agim JSC at Pp. 18 – 20 Paras (A)–(D)

register of voters, BVAS and the polling unit result in Form EC8A and that the evidence required to prove that there was over-voting are the record of accredited voters in the BVAS and the Polling Unit result in Form EC8A.¹⁸

C. The Proof of record of accreditation

It has been argued whether BVAS machine(s) must be produced to prove record of accredited voters. To this end, the court held thus:

...it is the number of accredited voters recorded in the BVAS that the number of accredited voters recorded in the result in Form EC8A must be compared with or verified from to determine if there was over-voting in a polling unit. For practical purposes and for ease of reference an original or certified true copy of an INEC certificate of the record of number of accredited voters of the BVAS for each polling unit can be produced from an examination of the record of the BVAS machines and tendered in evidence along with the BVAS machines. In any case, Regulation 48(a) having expressly and specifically mentioned the election documents or instrument with which the number of accredited voters recorded in Form EC8A is to agree with or to be compared with, only that document and no other shall be evidence for that purpose.¹⁹

D. The Status of the Collation System and the INEC Result Viewing (IReV) Portal in election matters

In view of the previous holdings of the Court and juxtaposing same with the perception of an average Nigerian on transmission of results, the next issue to ascertain is the essence and status of the Collation System and the INEC Result Viewing (IReV) Portal in the conduct of an election. The court also observed that:

As their names depict, the Collation System and the INEC Result Viewing Portal are part of the election process and play particular roles in that process. The Collation System is made of the centres where results are collated at various stages of the election. So the polling units results transmitted to the collation system provides the relevant collation officer the means to verify a polling unit result as the need arises for the purpose of collation. The results transmitted to the Result Viewing Portal are to give the public at large the opportunity to view the polling unit results on the Election Day. It is clear from the provisions of Regulation 38 (i) and (ii) that the Collation System and Result Viewing Portal are different from the National Electronic Register of Election Results. The Collation System and Result Viewing Portal are operational during the election as part of the process. The

¹⁸ Oyetola & Anor, *supra*, at paras. (A)-(F)

¹⁹ Oyetola & anor. v INEC & Ors. (2023) LPELR 60392 (SC) Per Emmanuel A. Agim JSC at Pp. 16 – 18 Paras (C)-(D)

National Electronic Register of Election Results is a post-election record and is not part of the election process.²⁰

E. Transmission of Results to INEC data base by a Presiding Officer

The Court also ventilated its mind on whether a Presiding Officer is required to transmit the accredited voters in a polling unit or the polling unit result during election to the INEC data base as part of the election process. Consequent on the above, the court held that there is no part of the Electoral Act requiring the Presiding Officer to transmit the accredited voters in a polling unit or the polling unit result during election to the INEC data base as part of the election process.

F. The Relevance of the Voters' registers for the proof of non-accreditation

On whether the register of voters for each polling unit is relevant evidence to prove alleged non-accreditation of voters, especially where there is conflict between the record of accredited voters in BVAS machine and ticked names in the register of voters? The court held that it is worth stating that in the event of a conflict between the record of accredited voters in the BVAS machine and ticked names in the Register of voters due to human errors in the ticking of the names in the Register of voters, the BVAS Record shall prevail.

4. Electronic Transmission of results in the 2019 Presidential election

The judgment of the court in the case of *Abubakar & anor. v INEC & ors.*,²¹ focused on election petition appeal brought before it. The facts of the case revealed that the petition brought against the result of the Presidential Election conducted by INEC (1st Respondent) on the 23rd day February 2019 which was declared on the 27th February, 2019 as well as the 2nd Respondent sponsored by the 3rd Respondent, was declared and returned as the winner thereof. The Petitioners who participated in the election were aggrieved by the outcome and approached the Court vide their Petition dated and filed the 18th day of March 2019. After the usual exchanges and arguments on the preliminary issues taken, the matter went into full trial and parties filed and adopted their final written addresses on 21st August 2019. Two of the issues canvassed for the determination of the Court were related to the use of electronic devices for the conduct of the election. These issues were:

- a) Whether the presidential election conducted by the 1st respondent on 23rd February, 2019 was invalid by reason of corrupt practices.

²⁰ Supra, at P. 22, para. (A)-(F)

²¹ (2019) LPELR-48488(CA)

- b) Whether the presidential election conducted by the 1st Respondent on 23rd February, 2019 was invalid by reason of non-compliance with the Electoral Act,²² as well as the electoral guidelines 2019 and manuals issued for the conduct of elections.

It was obvious that the issues for determination centred on electronic transmission.

Furthermore, the relevance of smart card readers and collation of results was also called for determination of the court. It is important to mention that the electronic device in use as at this period was the ‘Smart Card Reader and the central servers.’ In distilling the issues, the court responded to the question on the burden placed on a petitioner to prove that smart card readers and a central server were used in an election. Significantly, the relevance of smart card readers and collation of results were construed to be dependent on the content or use of Smart Card Readers in the following:

...In an election to the office of the President or Governor whether or not contested in any contested election to any other elective office, the result shall be ascertained by counting the votes cast for each candidate and subject to the provisions of Sections 133, 134 and 179 of the Constitution, the candidate that receives the highest number of votes shall be declared elected by the appropriate Returning Officer. Section 74 provides that every result form completed at the Ward, Local Government, State and National levels in accordance with the provision of this Act or any Guidelines issued by the Commission shall be stamped, signed and counter-signed by the relevant officers and polling agents at those levels and copies given to the police officers and the polling agents, where available.²³

It therefore follows that the resultant effect of the above is that collation of results are to be done manually and declaration of such results are to flow from the figures as entered in the relevant forms at various levels of collection. It is not dependent on the content or use of a smart card Reader for the transmission of election results. Hence Section 74 specifically provided that every result form completed at the polling unit, ward, local government, state and national levels shall be stamped, signed and countersigned by the relevant officers and polling agents at those levels and copies given to the police officers and polling agents where available.²⁴

INEC is also vested with powers to transmit the result of an election from all the Polling Units across the Nation via Smart Card Readers. Following this provision, the court espoused a clear position on the interpretation of the use of Smart Card Readers in an election, on whether section 52 (2) of the Electoral Act²⁵ empowers INEC to

²² 2010 (as amended)

²³ *Abubakar & Anor. v INEC & Ors.*, *Supra*

²⁴ *Ibid*, Per Samuel Chukwudumebi Oseji, JCA at Pp. 363, 384 (Paras. (A)–(D))

²⁵ 2010 (as amended) *supra*

transmit the result of an election from all the Polling Units across the Nation via Smart Card Readers into INEC server. The court observed that for the umpteenth time the recent decision on the point in *Mahmud Aliyu Shinkafi & Anor v Abdul-Azeez Abubakaryari & Ors*²⁶ has settled the issue beyond resurrection. Further, *Udom Gabriel Emmanuel v Umana Okon Umana & Ors*,²⁷ now reaffirmed the position of the law.

In a recent decision in *Okereke v Umahi and Ors*,²⁸ the court observed on the card reader that:

Prior to the authorisation of its use by the Guidelines and Manual of the Electoral Act, 2010 (as amended) in Sections 49 (1) and (2), (sic.) it has been ordained an analogue procedure for the accreditation process. As a corollary to the procedure outlined above, the Act, in Section 53 (2) enshrined the consequences for the breach, negation or violation of the accreditation procedure in Section 49. With the advantage of hindsight, INEC, pursuant to its powers under the said Electoral Act, authorized the deployment of the said card readers. Even with the introduction of the said advice, that is, the card reader machine, the National Assembly, in its wisdom, did not deem it necessary to bowdlerize, or even amend, Section 49 from the Electoral Act so that the card reader procedure would be the sole determinant of a valid accreditation process contrariwise, from the corrigendum No. 2 made on March 28, 2015, amending paragraph 13 (b) of the Approved Guidelines, it stands to reason that the card reader was meant to supplement the voter's register and was never designed or intended to supplant, displace or supersede it.

The court further observed that:

Indeed, since the Guidelines and Manual, which authorized the use and deployment of the electronic card reader machine, were made in exercise of the powers conferred by the Electoral Act, the said card reader cannot, logically, depose or dethrone the voters' register whose juridical roots are, firmly, embedded or entrenched in the self-same Electoral Act from which it (the voters' register), directly, derives its sustenance and currency. Thus, any attempt to invest it (the card reader machine procedure) with such overarching pre-eminence or superiority over the voters' register is like converting an auxiliary procedure-into the dominant method procedure-of proof, that is, proof of accreditation. This is a logical impossibility. I have no reason for departing from the above pronouncements which I adopt as part of my reasoning in this appeal. I, therefore, vacate the judgment of the lower Court woven on the said exhibit 317. I, entirely, endorse, the conclusion of the trial Tribunal that "the burden to establish non-accreditation of 1,222,836 votes was on the petitioners squarely," page

²⁶ Unrep. SC. 907/2016 delivered on 8th January 2016

²⁷ (2016) 12 NWLR (Pt. 1526) 179 at 237 (E)-(H) to 239 (A) per Nweze JSC

²⁸ Unrep. judgment of the Court in appeal No. SC.1004/2015 of February 5, 2016

3768, Vol. 4 of the record. They failed to do so because as the trial Tribunal found “the petitioners relied heavily or solely on the number of accredited voters as contained in exhibit 317 (the card reader report) to conclude that there were only 438,127 accredited voters for the 11th April Governorship election in Akwa Ibom State.” I, also, agree with the trial Tribunal that it was “presumptuous, fallacious ... and (a) jurisprudential absurdity for the petitioners to ascribe to exhibit 317 such magnitude of credence.” With respect, the lower Court was, equally, caught in this web of “presumptuous fallacious...jurisprudential absurdity” of ascribing “to exhibit 317 such magnitude of credence.”²⁹

The court further observed that:

The submissions of the Learned Senior Counsel to the Petitioners on import of Section 52(2) of the Electoral Act 2010 as amended and on Exhibit P27, P28, P33 and P74-P80 are not well founded.³⁰

Furthermore, on the vexed issue of whether the law requires or mandates INEC to operate a website wherein it can post election results, the court held that:³¹

Albeit and for purpose of posterity, I will emphasize again that to all intents and purposes the law requires or mandates the 1st Respondent to operate a website under Section 71 of the Electoral Act which provides thus; “S.71. The commission shall cause to be posted on its notice board and website, a notice showing the candidate at the election and their scores; and the person declared as elected or returned at the election.” The above set out provisions used the word shall which connotes mandatories or command. See *Shettima v Goni* (2011) 18 NWLR (Pt. 1279) 413; *Ugba & Ors. v Suswan & Ors.* (2012) LPELR-9726 (SC); *Onochie v Odogwu* (2006) 6 NWLR (Pt. 975) 65 at 89. Furthermore, the posting of the results must be on the notice board and website. The word ‘and’ is conjunctive which means that the result must not only be posted on the notice board, but also on the website. A website is defined by the English Dictionary as “a computer connected to the internet that maintains a series of web pages on the world wide web.” It also defines a server as “a digital computer that provides workstations on a network with controlled access to shared resources.” In the light of the above clarifications, it will not be out of place to emphasise that as a fact duly proved as earlier indicated and by law as per the Electoral Act 2010 (as amended), there exists a website managed and controlled by the 1st Respondent.

From the foregoing, it is crystal clear that while the guidelines made provision for the use of electronic devices, same was not absolutely captured in the Electoral Act,³²

²⁹ Unrep. Judgement, *supra*

³⁰ Per Mohammed Lawal Garba JCA at Pp. 187, 214 Paras (C)-(E)

³¹ *Supra*, Per Samuel Chukwudumebi Oseji, JCA at Pp. 384, 385 Paras (E)-(F)

³² 2010 (as amended)

hence it made room for political actors to manoeuvre their ways out of the use of electronic devices for the transmission of results under the regime of the Electoral Act.³³

5. Electronic Transmission and the OSUN State 2022 Election

The election for the Governor of Osun State held in 2022 under the new Electoral Act regime and the outcome of the election was challenged up to the level of the apex Court. The facts of the case of *Oyetola & anor. v INEC & ors.*³⁴ is that an appeal was filed at the Supreme court against the decision of the Court of Appeal which emanated from the decision of the Osun State Governorship Election Petition Tribunal following an election held on 16th July 2022. It is noteworthy that the electronic device used during this election was the Bimodal Voter Accreditation System (BVAS), and the Electoral Act of 2022 had been passed into law and assented to by President Muhammadu Buhari. As usual, INEC issued Guidelines and Regulations and Manuals for the conduct of the election.

In the petition, the grounds of appeal were based on the same allegation of facts of non-compliance with the Electoral Act and INEC Regulations, Guidelines and Manuals in election in 744 polling units across 10 Local Government Areas of Osun State. The petitioners' case was that the elections in 744 polling units in 10 Local Government Areas were characterized by widespread non-use of the Bimodal Voter Accreditation System (BVAS) for accreditation of voters, that the presiding officers in the polling units permitted voting in many of the polling units without accreditation and/or verification with the use of BVAS and that there was no proper accreditation of voters in the said 744 polling units, of which about 173,655 of the votes cast were from voters not validly accredited as well as the fact that accreditation with BVAS was not done for a large number of voters in the 744 polling units, and that the failure to use BVAS to accredit and verify voters in any polling unit rendered the election and results from the election in such unit void, and that the total number of accredited and verified voters recorded in the BVAS are at variance with the total number of votes cast in the forms EC8A for each of the 744 polling units, that the results in the Form EC8A for each unit show that the number of votes cast exceed the number of accredited voters recorded in the BVAS, that in the counting of the votes cast in each polling units and the collation of the results of the election, it is the number of accredited voters recorded in the Bimodal Voter Accreditation System (BVAS) and transmitted directly from the polling units by the BVAS to the back end server or data base and the votes or results so recorded by the BVAS and transmitted directly from polling units by the BVAS to the back end server or data base that should be taken into account, that that the BVAS transmits on the spot information of duly accredited voters to the data base of 1st Respondent and the information from such data base form the valid basis for voters to partake in the voting process by casting their votes for candidates of their choice, that the votes credited to the 1st appellant and 2nd

³³ Ibid.

³⁴ (2023) LPELR-60392(SC)

respondent in the 744 polling units are vitiated and void for non-compliance with the mandatory provisions of the Electoral Act on accreditation and verification of voters in the elections and that upon deduction of the unlawful votes in the 744 polling units, it is the 1st petitioner and not the 2nd respondent who scored majority of the votes cast in the election and satisfied the requirements for election as Governor of Osun State and ought to have been so declared.

The tribunal granted the petition of the appellants against the election of the 2nd and 3rd respondents and held that the 1st appellant and not the 2nd respondent won the election of Governor of Osun State. On appeal to the Court of Appeal, the decision was set aside and the election of the 2nd respondent was restored.

The appeal to the Supreme Court was commenced when the appellants filed a notice of appeal against the judgment of the Court of Appeal delivered on 24-3-2023 in Appeal No. CA/AK/EPT/GOV/01/2023 allowing the appeal to it against the judgment of the Osun State Governorship Election Tribunal delivered on 27-1-2023 in Petition No. EPT/OS/GOV/01/2022. A notice of cross-appeal was equally filed on 6th April, 2023 against the judgment of the Court of Appeal dismissing the cross-appeal to it against the judgment of the Tribunal. Issues were canvassed for the determination of the Court by both parties.

Following the above, the court stated that INEC is also vested with powers to transmit the result of an election from all the Polling Units across the Nation via Smart Card Readers. Consequently, the court espoused a clear position on the interpretation of the use of Smart Card Readers in an election, on whether section 52 (2) of the Electoral Act³⁵ empowers INEC to transmit the result of an election from all the Polling Units across the Nation via Smart Card Readers into INEC server.

6. Conclusion

It has been demonstrated that the use of Electronic or technological devices for the transmission of results in the Nigeria electoral process has greatly improved the electoral process as well as the fact that resort to electronic transmission of results has immensely contributed to the electoral credibility of Nigeria by considerably reducing the incidence of over-voting, which has ensured more electoral participation. Furthermore, the use of electronic devices has enhanced transparency as well as erasing of electoral malpractices to the barest minimum. However, the challenges associated with electronic transmission of results through the use electronic devices in the Nigerian electoral process include lack of adequate funding, manipulation by corrupt ill-motivated officials, lack of integrity by ad-hoc staff, poor IT skills by INEC officials, cyber-attacks, and et cetera.

However, it is recommended for the use of fit for purpose, tested, specific target oriented and safe technology in the conduct of elections as an indispensable measure to electoral credibility in Nigeria. In elections, like many aspects of human life, technology plays a vital role. INEC has through the use of technology made a reasonable improvement in carrying out its activities, which has in no small measure

³⁵ 2010 (as amended) *supra*

enhanced its efficiency in the conduct of elections. For instance, register of voters is fully biometric; the accreditation of voters during elections is now electronic, although together with the manual method. The nomination of candidates by political parties for elections, the accreditation of observers and the media are all done online. Significantly, there is still prospect for the improvement of the conduct of elections, which include the need for the Commission to urgently institute a robust legal framework that enables rather than inhibits electronic transmission of results specifically, and full electronic voting generally. In order to achieve this objective, three specific areas that an amendment is required in the Electoral Act are:

- I. There should be robust provisions that enable the Commission to introduce relevant technologies at the right time. Consequently, provisions that refer to specific technologies, such as the Smart Card Reader, which could become obsolete, inapplicable or irrelevant in the future should be avoided.
- II. Sections of the Electoral Act that entrenches the manual processes should be amended to make both manual and electronic methods legitimate and discretionary for the Commission.
- III. The Electoral Act should make electronic verification of voters (accreditation) based on biometric features the basis for allowing voters to cast their votes. The current situation whereby manual accreditation takes precedence over biometric accreditation via electronic means undermines the full benefits of the application of technology to elections.
- IV. Public trust is essential for any successful deployment of electoral technologies. The confidence of citizens and election stakeholders in the electronic devices deployed by INEC like the BVAS and the IReV web portal influences voter participation in elections as well as the acceptability of electoral outcomes.
- V. The aggregation, analysis, visualization and broadcast of real-time election results counter fake news and disinformation during and after elections. It is important for critical stakeholders to establish a single source of truth for election results in the 2023 elections.