THE POWER OF THE INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC) TO DISQUALIFY A CANDIDATE SPONSORED BY A POLITICAL PARTY FROM CONTESTING AN ELECTION: A REVIEW OF ACTION CONGRESS & ATIKU ABUBAKAR v. INDEPENDENT NATIONAL ELECTORAL COMMISSION

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ABSTRACT

The Supreme Court in the case of Action Congress v. I.N.E.C. recently held inter-alia that although the Independent National Electoral Commission has the power to organize, undertake and supervise all elections in Nigeria, there is nothing in the Electoral Act, 2006 and the Constitution of the Federal Republic of Nigeria, 1999 that gives it power to disqualify a candidate from contesting an election. It is only the Court of law that can disqualify a candidate.

This review will argue that the Supreme Court may be right in holding that on certain grounds for disqualification of a candidate only a pronouncement of a Court of competent jurisdiction will be acceptable. However, it will be shown that this blanket principle may not be applicable to certain provisions in the Electoral Act and the Constitution. In those specific cases, it will be wrong to insist that only a pronouncement of a Court of competent jurisdiction will be a ground for disqualification.

It will also be shown that in the expediency of an election process in Nigeria, to insist on a pronouncement by the Court may unwittingly truncate the electoral process. The paper suggests a review of the position and states that a middle course is preferably.

INTRODUCTION

In order for candidates to be eligible to contest in elections in Nigeria, they are required to meet statutory requirements under the Constitution and the Electoral Act.

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Assuming a candidate does not meet certain requirements under the Law, who can disqualify?

In the recent case of *Action Congress v. Independent National Electoral Commission (INEC)*[1], the Supreme Court held inter-alia that although the Independent National Electoral Commission (INEC) has the powers to organize, undertake and supervise all elections in Nigeria, there is nothing in the Electoral Act, 2006[2] and the Constitution of the Federal Republic of Nigeria, 1999 that empowers the Commission to disqualify a candidate from contesting an election. It is only the Court of Law that can disqualify a candidate.

This review is intended to show that although the Supreme Court was right in holding that only a Court of competent jurisdiction can disqualify a candidate on certain grounds, it is with due respect, not correct to hold categorically that in ALL cases only a pronouncement of the Court will do. There are certain disqualifying factors or requirements which are self executing. In such cases, it is our contention of the writer that the pronouncement of the Court thereon will be unnecessary. The exigencies of our pace of dispensation of justice will also recommend that the INEC be empowered to disqualify a candidate in some cases without the need for obtaining a court pronouncement.

THE DISPUTE AND DECISIONS OF THE COURTS

The case under review will be traced from its institution at the High Court all the way to the Supreme Court.

HIGH COURT

Alhaji Atiku Abubakar was elected in 1999 as Vice-President to Chief Olusegun Obasanjo under the platform of the Peoples Democratic Party (P.D.P.).

During the 2007 presidential election, he sought to contest under the platform of the Action Congress (A.C.). The Independent National Electoral Commission (INEC) purportedly disqualified him although he was validly nominated by his party (A.C.). The Action Congress and Alhaji Atiku Abubakar by an Originating Summons issued in the Federal High Court on 10th January, 2007 applied for the determination of the following questions:

(a) *Whether the Defendant has powers under the provisions of the Constitution of the Federal Republic of Nigeria, 1999 and the Electoral Act, 2006 to conduct any verification of the credentials/papers and/or screening out and/or disqualifying*

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1 (2007) 12 NWLR (Pt. 1048) 222 (hereinafter referred to as AC v. INEC)

2 No. 2

candidates including the 2nd Plaintiff for the 2007 general elections;

(b) *Whether by the provisions of the Third Schedule to the Constitution of the Federal Republic of Nigeria, Item 15 paragraph (a) to (i) and Section 32 of the Electoral Act, 2006 or any other provisions of the Electoral Act, 2006 or any other law, any other person other than the Plaintiff has the exclusive right to verify and or screen its candidates before sponsoring them by forwarding their names to the Defendant;*

(c) *Whether the Defendant has powers under any law or enactment to disqualify or screen out the 2nd Plaintiff as a candidate or any other candidate for the 2007 general elections;*

(d) *Whether by the provisions of Section 32(5) of the Electoral Act, 2006, any other person or bodies other than a Court of Law can disqualify any candidate from contesting election.*

The Plaintiff sought the following reliefs:-

i. *A DECLARATION that the Defendant has no power under the provisions of the Constitution of the Federal Republic of Nigeria, 1999, the Electoral Act, 2006, and the Independent National Electoral Commission (Establishment, Etc) Act Cap. I5 Laws of the Federation of Nigeria, 2004 to conduct any verification of the credentials/papers and/or screening out and/or disqualifying candidates including the 2nd Plaintiff for the 2007 General Elections.*

ii. *A DECLARATION that by the provisions of Section 32 of the Electoral Act, 2006, only the 1st Plaintiff, a political party has the power to verify and or screen out its candidates before sponsoring them for election by forwarding their names to the Defendant.*

iii. *A DECLARATION that the Defendant has no power under the Constitution of the Federal Republic of Nigeria, 1999, Electoral Act, 2006 and the Independent National Electoral Commission (Establishment Etc) Cap. I5 Laws of the Federation of Nigeria, 2004 to disqualify or screen out the 2nd Plaintiff as a candidate or any other candidate for the 2007 General Elections.*

iv. A DECLARATION that the power to disqualify any candidate sponsored by any political party including the 1st Plaintiff from contesting any election is exclusively vested in the Court as provided for in Section 32(5) of the Electoral Act, 2006.

v. AN ORDER setting aside the directive of the Defendant to all the political parties including the 1st Plaintiff to present their candidates for physical verification and or screening.

vi. AN ORDER of perpetual injunction restraining the Defendant whether by themselves, their agents, privies, officers, or by whosoever from conducting physical verification and or screening of candidates put forward by political parties to contest in the 2007 general elections including the 2nd Plaintiff.

vii. AND for such further or other orders as the Court may deem fit to make in the circumstances.

After addresses by Counsel for both parties, the learned trial Judge, Honourable Justice B. O. Kwewumi in his judgment dated 7th day of March, 2007[3] held that INEC has no power to disqualify candidates under the provisions of the Constitution of the Federal Republic of Nigeria, 1999 and the Electoral Act, 2006. The Court went further to say that:

> *"However, the Defendant under its power to organize, undertake and supervise all elections as provided under Section 15(a) of the 3rd Schedule is not expected to close its eyes to a violation of the Constitution and/or the Electoral Act 2006. It has a duty to ensure that all conditions precedent and requirements stipulated by the Constitution and Electoral Act 2006 are met by candidates intending to participate in such elections[4]".*

The Court in effect held that although INEC can screen or conduct verification of the credentials or papers of a candidate who intend to participate in an election, it cannot disqualify such candidate.
INEC appealed against the judgment to the Court of Appeal. The Action Congress and Alhaji Atiku Abubakar also cross-appealed.

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3 (2007) 2 F.H.C.L.R. 661

4 Ibid at *page 676 paras. A - B*

THE COURT OF APPEAL[5]

The Court of Appeal is its judgment delivered on 3rd April, 2007 allowed the appeal of Appellant and dismissed the cross-appeal of the Respondents. The Court of Appeal stated inter-alia as follows:-

> *"Not only are the words of Section 137 of the Constitution clear and unambiguous, it is common ground that it provides for disqualification of a candidate aspiring to the office of the President or Vice President. What is in contention is whether the Appellant, the body charged with the power to organize, undertake, and supervise all elections to the office of President, Vice President, etc, as well as carry out such other functions as may be conferred upon it by an Act of the National Assembly pursuance of paragraph 15 of the Third Schedule can ensure the observance of the provisions of Section 137(1) of the Constitution[6]".*

The Court of Appeal in dismissing the appeal held that:

> *"For the avoidance of any doubt, having regard to the clear provisions of the Constitution and the Electoral Act discussed above, it is my considered view that the Appellant has the power and authority not only to screen candidates sent to it by political parties, but to also remove the name of any candidate that failed to meet the criteria set out by the Constitution without having to go to Court.*
>
> *In the circumstances, the appeal is meritorious and is allowed. Consequently, the cross-appeal fails, and is dismissed. The Respondents claim fails and is hereby dismissed[7]".*

The Respondent/Cross-Appellant (AC and Alhaji Atiku Abubakar) appealed to the Supreme Court.

SUPREME COURT[8]

The issue for determination at the Supreme Court was whether the Defendant has the power to disqualify any candidate sponsored by a political party including the 2nd Plaintiff from contesting an election in the 2007 general elections having regard to the constitutional provisions and the Electoral Act, 2006[9].

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5 *(2007) 6 NWLR (Pt. 1029) 142*
6 Ibid *at page 161*
7 Ibid *at page 162*
8 *(2007) 12 NWLR (Pt. 1048) 222*
9 *Ibid at page 256 Paras. A - B.* Section 137(1) 1999 Constitution and Section 32 Electoral Act, 2006.

The Supreme Court held as follows:

a. *I.N.E.C. cannot claim the power to disqualify any candidate, the 2nd Plaintiff inclusive, by Section 137(1) of the 1999 Constitution.*

b. *There is no provision in the Constitution that confers the power to disqualify candidates on the Defendant either expressly or by necessary implication*[10].

c. *Section 137(1)(i) of the 1999 Constitution is not self-executing. To invoke against any candidate the disqualification therein provided would require an inquiry as to whether the tribunal or administrative panel that made the indictment is of the nature or kind contemplated by Section 137(1) read together with other relevant provisions of the Constitution in particular Section 36(1)*[11].

d. *The disqualification in Section 137(1)(i) clearly involves a deprivation of right and a presumption of guilt for embezzlement or fraud in derogation of the safeguards in Section 36(1) and (5) of the Constitution. The trial and conviction by a court is the only constitutionally permitted way to prove guilt and therefore the only ground for the imposition of criminal punishment or penalty for the criminal offences of embezzlement or fraud. Clearly the imposition of the penalty of disqualification for embezzlement or fraud solely on the basis of an indictment for these offences by an administrative panel of inquiry implies a presumption of guilt, contrary to Section 36(5) of the Constitution of the Federal Republic of Nigeria, 1999. I say again that convictions for offences and imposition of penalties and punishments are matters appertaining exclusively to judicial power. See:* Sokefun v. Akinyemi (1981)1 NCLR 135; Garba v. University of Maiduguri (1986) 1 NWLR (Pt. 18) 550[12].

e. *Paragraph 15(a) of the Third Schedule to the 1999 Constitution empowers INEC to organize, undertake and supervise all elections. There is nothing therein to suggest even remotely the power to disqualify*[13].

10 Ibid at page 259 paras. E - F.
11 Ibid at page 259 paras. G - H
12 Ibid at page 260 paras. B - E
13 Ibid at page 261 para H

f. *Although the power to disqualify is vested in INEC under the Electoral Act, 2002, (Section 21(8) and (9)) there is no similar provision in the relevant Electoral Act, 2006. This is particularly relevant in view of Section 32(4) – (6) of the Electoral Act, 2006*[14].

The Supreme Court allowed the appeal of the Appellants.

It is submitted that by the decision of the Supreme Court neither INEC *a fortiori* nor the Economic and Financial Crimes Commission (EFCC), can disqualify a candidate. Only a Court of Law can do so.

This is particularly relevant because, the basis of disqualification of Alhaji Atiku Abubakar was the investigation purportedly carried out by EFCC in which he was found culpable of conducting himself in a manner unbefitting his office of Vice-President of Nigeria.

An Administrative Tribunal was subsequently set up by the Federal Government to look into the allegation against Alhaji Atiku Abubakar. The Administrative Panel indicted him and the Federal Government in a white paper accepted the indictment which was later gazetted.

CONSTITUTIONAL ISSUES IN THE CASE

As shown by the questions for determination as formulated in the Originating Summons and distilled by Court, the only issue that went through from High Court to the Supreme Court was "Whether the Independent National Electoral Commission has the power under the Electoral Act, 2006 and the 1999 Constitution to disqualify any candidate sponsored by a political party from contesting an election".

The qualification of a candidate to contest for an election are elaborately stated in the Constitution of the Federal Republic of Nigeria, 1999[15].

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14 The Electoral Act, 2002 was repealed by the Electoral Act, 2006. See Section 165(a) of the Electoral Act, 2006.

15 See Section 137(1) which provides for qualification for the office of President. However by Section 142(2), the provisions relating to qualification for election of a President shall apply in relation to the office of Vice-President as if references to President were references to Vice-President. Section 182(1) and 187(2) provides for the qualification of the Governor and Deputy Governor, Section 66(1) while section 107(1) provides for that of the House of Assembly of a State

It is submitted that these provisions are mandatory[16] and exhaustive[17]. While it is conceded that the Constitution is exhaustive as to grounds for disqualification of a candidate, some of the provisions are not as clear as to how to give effect to them. A review of Section 137 of the Constitution is necessary. To be disqualified under Section 137(1)(a) the candidate must have voluntarily acquired the citizenship of a country other than Nigeria. This means that proof of voluntary acquisition of the citizenship of that other country has to be proved. Other provisions are:

i. *Section 137(1)(c): the candidate has to be adjudged to be a lunatic or otherwise declared to be of unsound mind;*

ii. *Section 137(1)(d): he is under a sentence of death imposed by any competent Court of Law or Tribunal in Nigeria or a sentence of imprisonment or fine for any offence involving dishonestly or fraud*[18]*;*

iii. *Section 137(1)(e): within a period of less than 10(ten) years before election to the office he had been convicted and sentenced for an offence involving dishonesty or has been found guilty of a contravention of the Code of Conduct.*

iv. *Section 137(1)(f): proof that he is an undischarged bankrupt having been so adjudged or otherwise declared bankrupt under any law in force in Nigeria.*

v. *Section 137(1)(h): he is a member of any secret society*;

It is submitted that these specific provisions would invariably involve the direct intervention of the Court before a candidate for election to the office can be disqualified.

However, it would seem that certain provisions of the Constitution may be "self executing"[19]. A constitutional provision is said to be self-executing when it is

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16 The use of the word "Shall" in the context of these provisions is mandatory - See *Ifezue v. Mbadugha (1984) 1 SCNLR 427, Amadi v. NNPC (2000) 10 NWLR (Pt. 674) 76; Aguisobu v. Onyekwelu (2000) 14 NWLR (Pt. 839) 34.*

17 It is submitted that these provisions are exhaustive. No statute can add to it. Under the doctrine of governing the field, no additional statute can provide for disqualification of a candidate. If any statute makes such provision, it will be inconsistent with the provisions and therefore null and void. See Section 1(3) of the Constitution of the Federal Republic of Nigeria, 1999, *I.N.E.C. v. Musa (2003) 3 NWLR (Pt. 806) 72; A.G. Abia State v. A.G. of the Federation (2003) 3 SCNJ 158.* This view is further reinforced by the fact that if the legislative intent was to make the grounds for disqualification non exhaustive, it would have used the word **"include"** *Din v. A.G. Federation (1986) 1 NWLR (Pt. 17) 471, Uhunmwangho v. Okojie (1989) 5 NWLR (Pt. 122) 471; Artra Industries (Nig.) Ltd. v. N.B.C.I. (1998) 4 NWLR (Pt. 546) 357.*

18 See also Section 137(2) on effect of a pending appeal.

19 Supra above at note 8 (Page 259).

complete in itself and does not need the aid of a supplemental legislation to become fully operative. On the other hand a provision is not self-executing if it appears, upon a proper construction, that it may not become completely operative without supplemental or enabling legislation. A self-executing clause in a statute is one which is effective immediately without the need of intervening Court action, ancillary legislation or other type of implementing action[20].

It is also submitted that Section 137(1)(b) which provides for disqualification of a candidate who has been elected to such office at any two previous elections is self executing. Once the INEC is aware that a candidate has been elected to a relevant office at any two terms, it should be in a position to disqualify such a candidate.

Another Section which is self-executing and which was the bone of contention in this case under review is Section 137(1)(i) which provides as follows: "He has been indicted for embezzlement or fraud by a Judicial Commission of Inquiry or an Administrative Panel of Inquiry or a Tribunal set up under the Tribunals of Inquiry Act, a Tribunal of Inquiry Law or any other law by the Federal or State Government which indictment has been accepted by the Federal or State Government, respectively".

Respectfully, the learned Justice Katsina-Alu, J.S.C. (as he then was) [21] erred in asserting as follows:

> "It was also contended for the defendant that the ground of disqualification in Section 137(1)(i) is self-executing. I am not impressed by this contention. I think a dispassionate reading of the provision will reveal that it is not self-executing. To invoke against any candidate the disqualification therein provided would require an inquiry as to whether the tribunal or administrative panel that made the indictment is of the nature or kind contemplated by Section 137(1) read together with other relevant provisions of the Constitution in particular Section 36(1), which provides that:
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> > *In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair*

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20 Blacks Law Dictionary (6th Edition, West Publishing Co.) Page 1360: Self executing constitutional provision is defined therein as: 'effective immediately without the necessity of ancillary legislation. Constitutional provision is "self-executing" if it supplies sufficient rule by which right given may be enjoyed or duty imposed enforced; constitutional provision is not "self-executing" when it merely indicates principles without laying down rules giving them force of law.
Stephen Vladeck: "Non-self Executing Treaties and the Suspension Clause ....." (2007) Yale Law Journal, 11, available at http//www.yalelawjournal.org./paf/113/8/vladeckpdf. Assessed on 18th November, 2010. See: *Ishola v. Ajiboye (1994) 6 NWLR (Pt. 352) 506 at 598 for a* differentiation in self-executing and non-self executing portions of the Constitution.

21 Supra above at note 8 (Pages 259 – 260).

hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.

As well as the provision in sub-section (5) of Section 36 that -

"Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty".

The disqualification in Section 137(1)(i) clearly involves a deprivation of right and a presumption of guilt for embezzlement or fraud in derogation of the safeguards in Section 36(1) and (5) of the Constitution. The trial and conviction by a court is the only constitutionally permitted way to prove guilt and therefore the only ground for the imposition of criminal punishment or penalty for the criminal offences of embezzlement or fraud.

Clearly the imposition of the penalty of disqualification for embezzlement or fraud solely on the basis of an indictment for these offences by an administrative panel of inquiry implies a presumption of guilt, contrary to Section 36(5) of the Constitution of the Federal Republic of Nigeria, 1999. I say again that convictions for offences and imposition of penalties and punishments are matters appertaining exclusively to judicial power: see Sokefun v. Akinyemi (1981) 1 NCLR 135; Garba v. University of Maiduguri (1986) 1 NWLR (Pt. 18) 550.

An indictment is no more than an accusation. In Sokefun v. Akinyemi *per Fatayi-Williams, C.J.N. said at page 146 as follows:-*

"It seems to me that once a person is accused of a criminal offence, he must be tried in a court of law where the complaints of his accusers can be ventilated in public and where he would be sure of getting a fair hearing... no other Tribunal, investigating Panel or Committee will do ... if regulations such as those under attack in this appeal were valid, the judicial power could be wholly absorbed by the Commission (one of the organs of the Executive branch of the State Government) and taken out of the hands of the Magistrates and Judges... judicial power will certainly be eroded...The jurisdiction and authority of the courts of this country cannot be usurped by either the Executive or the Legislative Branch of the Federal or State Government under any guise or pretext whatsoever".

The effect of the above pronouncement is that section 137(1)(i) is not self executing.

It is submitted that where a party has been indicted, he can challenge such indictment and the white paper issued thereon. He does not have to be disqualification before challenging his disqualification.

If a candidate has been indicted for embezzlement or fraud by a Judicial Commission of Inquiry or an Administrative Panel of Inquiry or a Tribunal and such indictment has been accepted by the Federal or State Government respectively, there is no further need for a judicial intervention before the candidate can be disqualified by INEC. This is because, the issue of the White paper is conclusive for that purpose. A candidate who has been so indicted and upon which a white paper has been issued by the relevant government has a right to challenge the white paper by way of judicial review[22].

The writer therefore submit that to the extent that Alhaji Atiku Abubakar was indicted by Administrative Panel of Inquiry and a white paper issued, the Court of Appeal's decision is preferred.

It will be a blanket statement of law to say that the INEC cannot disqualify a candidate as stated by both the trial Court and the Supreme Court.

POWER OF INEC

Paragraph 15 of the Third Schedule to the Constitution provides for powers of the INEC as follows:

> *"The Commission shall have power to –*
>
> (a) *organise, undertake and supervise all elections to the offices of the President and Vice President, the Governor and Deputy Governor to the membership of the Senate, the House of Representatives and the House of Assembly of each State of the Federation;*
>
> (b) *register political parties in accordance with the provisions of this Constitution and an Act of the National Assembly;*
>
> (c) *monitor the organization and operation of the political parties, including their finances;*

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22 Note that the findings and the white paper can be challenged on the ground of breach of fundamental rights of the candidate e.g. right to fair hearing as protected under the Section 36 of the 1999 Constitution. *Daggash v. Bulama (2004) 4 All FWLR (Pt. 212) 1666.* In *Abdullahi v. Hashida (1999) 4 NWLR (Pt. 600) 638 at 646 paras. C – D* the Court held that issuance of a white paper is a usual mode of accepting recommendation of a panel of inquiry be it at the Federal, State or Local Government.

(d) *arrange for the annual examination and auditing of the funds and accounts of political parties, and publish a report on such examination and audit for public information;*

(e) *arrange and conduct the registration of persons qualified to vote and prepare, maintain and revise the register of voters for the purpose of any election under this Constitution;*

(f) *monitor political campaigns and provide rules and regulations which shall govern the political parties;*

(g) *ensure that all Electoral Commissioners, Electoral and Returning Officers take and subscribe the oath of office prescribed by law;*

(h) *delegate any of its powers to any resident Electoral Commissioner; and*

(i) *carry out such other functions as may be conferred upon it by an Act of the National Assembly".*

The contention in this case under review was whether INEC that is empowered in paragraph 15(a) of the Third Schedule to the Constitution to orangise, undertake and supervise all elections to the office of the President and Vice President, the Governor and Deputy Governor of a State, and to the membership of the Senate, House of Representatives and the House of Assembly of each state of the Federation as well as carry out such other functions as may be conferred upon it by an Act of the National Assembly can ensure the observance of the provisions of Section 137(1) of the Constitution.

It is submitted that if INEC is empowered to organize, undertake and supervise the election, it must have the power to screen and possibly disqualify a candidate. If a candidate has served two terms, it will not require a Court to disqualify that candidate. INEC will possess this information. It will therefore be too legalistic to wait until the election of such a candidate is challenged before he can be disqualified. It should be noted that the expenses involved in terms of time and finance will not recommend a situation whereby INEC has to close its eyes to such a breach.

It is further submitted that even in such cases where a candidate has been convicted by a Court or is an undischarged bankrupt, and INEC has credible information of such, it can disqualify the candidate. INEC has the capacity to maintain a database with relevant information on candidates for an election, similar to the security

agencies. INEC may also obtain a certified true copy of the said judgment from court[23].

Recent examples have shown that waiting till a Court's pronouncement is made will mean that individuals would be in office illegally. How long will the Courts take to make a pronouncement? We have examples of a "Governor" staying illegally in office for about three and half years of a four years tenure[24].

The Nigeria situation is peculiar. An influential candidate of a political party or a sponsored candidate by one of the so called "god-fathers" may be nominated irrespective of the fact that he is an ex-convict. If INEC cannot screen and disqualify such a candidate, we may have a situation where criminals, fraudsters and convicts will take over governance.

ELECTORAL ACT, 2006 AND POWER OF INEC TO DISQUALIFY CANDIDATES

In this case reliance was placed on Section 32(4), (5) and (6) of the Electoral Act, 2006 to hold that INEC cannot disqualify a candidate. It provides as follows:-

> *"Any person who has reasonable grounds to believe that any information given by a candidate in the affidavit is false may file a suit at the High Court of a State or Federal High Court against such person seeking a declaration that the information contained in the affidavit is false;*
>
> *If the court determines that any of the information contained in the affidavit is false, the court shall issue an order disqualifying the candidate from contesting the election.*
>
> *A political party which presents to the Commission the name of a candidate who does not meet the qualifications stipulated in this section, commits an offence and is liable on conviction to a maximum fine of ₦500,000.00".*

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23 Judgments/Rulings of Court are public documents. Certified True Copies can be obtained from Court. See Section 225(1) Evidence Act and *Sanyaolu v. I.N.E.C. (1999) 7 N.W.L.R. (Pt. 612) 600* where it was held that previous conviction is proved in judicial proceedings by the production of a certificate of conviction, signed by the Registrar or other Officer of the Court having custody of the judgment.

24 See the example in Ekiti State. The Judgment was only delivered on 15th October, 2010. In Osun State, the judgment was delivered on 26th November, 2010. The same scenario was seen in Edo State.

Respectfully, the interpretation of this provision by the High Court and Supreme Court to the effect that only the Courts should exclusively have the power and jurisdiction to disqualify a candidate sponsored by his political party is erroneous[25].

It is only in cases which are not self executing as discussed above, that Section 32(4), (5) and (6) of the Electoral Act, 2006 will come to operation. A candidate seeking elective office is expected to answer questions such as whether he is a member of a secret society or has been convicted by a Court of Law for dishonesty or fraud. If a candidate answers in the negative, an opposing candidate may swear to an affidavit challenging the information. In such a case, a competent court, as an impartial body, vested with jurisdiction under the Constitution[26] shall be empowered to determine the claims and opposition and make appropriate declarations and orders.

Judicial intervention will be irrelevant if the facts are common knowledge or can be verified by INEC. This can be done independent of judicial intervention. The costs in terms of tax payers' money and time expended makes it unjust to wait for judicial pronouncement on every case of non-qualification.

CONCLUSION

Conceding that under the provisions of the Constitution of the Federal Republic of Nigeria, 2009 and the Electoral Act, 2006, the Independent National Electoral Commission cannot disqualify a candidate in certain circumstances without an order of Court. It will be expedient and practical for the INEC to be empowered to disqualify a candidate in some circumstances.

Respectfully, it is not correct to state as a general principle that INEC cannot under any circumstance disqualify a candidate. The decisions of the Federal High Court (Per Kwewumi, J.) and the Supreme Court are too widely stated.

A better view will be that in certain circumstances where it is clear that a candidate, although validly nominated by the political party is unqualified for the elective position, INEC should be able to disqualify the candidate. It is not expedient for aggrieved parties to wait until after an election to challenge the qualification before the appropriate Electoral Tribunal. The recent cases of candidates almost exhausting a term of 4(four) years should call for a rethink in this case.

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25 See Ogbuagu, J.S.C. at Page 285.

26 Sections 6(6) and 36(1) of the Constitution of the Federal Republic of Nigeria, 1999, *Sofekun v. Akinyemi (supra), Garba v. University of Maiduguri (supra)*