

SUBSTITUTION OF A CANDIDATE'S NAME BY A POLITICAL PARTY:

A REVIEW OF THE COURT OF APPEAL'S DECISION IN INEC V. PDP & ORS (2022) LPELR-57379 (CA)

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INTRODUCTION

The Independent National Electoral Commission (INEC) recently released its Timetable and Schedule of Activities for the 2023 General Elections (“the Timetable”). Based on the Timetable, INEC stated that the last day for the withdrawal of a candidate for Governorship or State House of Assembly election is 12 August 2022, whilst the last date for the withdrawal of a candidate for President or National Assembly election is 15 July 2022.

Generally, the Courts have held that a timetable and schedule of activities issued by INEC shall have the force of law if they do not conflict with the provisions of the Electoral Act. The Court of Appeal stated this position in *Satumari v. Ndume* (2019) LPELR-(48875) 1 at 32.

Section 31 of the Electoral Act, 2022 provides that a candidate may withdraw his candidature by notice in writing signed by him and delivered personally by the candidate to the Political Party that nominated him for the election, and the Political Party shall convey such withdrawal to the Commission not later than 90 days to the election. In addition, section 33 of the Electoral Act, 2022 states that a Political Party shall, within 14 days of the withdrawal of a candidate, hold a fresh primary election to produce and submit a fresh candidate to the Commission for the election concerned.



Interestingly, whilst section 31 of the Electoral Act, 2022 permits a candidate to withdraw from an election not later than 90 days to the election, INEC's Timetable seems to have curtailed the right of a candidate in the 2023 general elections to withdraw from the election within the timeframe provided in the Electoral Act. Since INEC has already published 12 August 2022 as the last date for the withdrawal of a candidate for the Governorship or State House of Assembly election in its Timetable, this means that INEC expects candidates to announce their withdrawal from the 2023 election at least 211 days to the general election, which is scheduled to take place on 11 March 2023.

In *INEC v. PDP & Ors* (2022) LPELR-57379 (CA), the Court of Appeal considered the validity of INEC's Timetable and schedule of activities for the 2022 Federal Capital Territory Area Council Elections vis-à-vis the power of a Political Party to substitute its candidate who withdrew from the election.

SUMMARY OF THE FACTS OF INEC V. PDP & ORS

The 1st Respondent (PDP) nominated the 3rd Respondent as its Councillorship candidate for the Quarters Ward of Gwagwalada Area Council in the Federal Capital Territory Area Council Elections, which took place on 12 February 2022. The 1st Respondent also submitted the 3rd Respondent's name to the Appellant (INEC) as its candidate for the election.

Before the elections took place, the 3rd Respondent withdrew his candidature because he was no longer a member of the PDP. Accordingly, PDP wrote a letter to INEC submitting the name of the 2nd Respondent as its replacement for the 3rd Respondent who had withdrawn his candidacy. However, upon receiving the letter of substitution from the 1st Respondent, INEC rejected the substitution on the ground that the last day for political parties to substitute their candidates under the Timetable and Schedule of Activities for the 2022 Federal Capital Territory (FCT) Area Councils Election had expired on 26 June 2021.

PDP commenced a suit against INEC at the High Court of the Federal Capital Territory, challenging INEC's refusal to allow the substitution of its candidate on the ground that the substitution was validly carried out under the provisions of the Electoral Act, 2010.



The High Court delivered its judgment in favour of the PDP by holding that INEC was wrong to have rejected the substitution of the PDP's candidate for the election since the substitution was carried out within 52 days from the date of the election following the provisions of section 35 of the Electoral Act, 2010 (as amended), which provides, thus:

“A candidate may withdraw his candidature by notice in writing signed by him and delivered by himself to the political party that nominated him for the election and the political party shall convey such withdrawal to the Commission not later than 45 days to the election.”

”

The High Court also held that INEC could not lawfully rely on its Timetable, which made it mandatory for candidates to withdraw at least 242 days before the election, as the Timetable could not supersede the provision of section 35 of the Electoral Act.

INEC was dissatisfied with the High Court's judgment, and it appealed to the Court of Appeal. Instructively, the Court of Appeal dismissed INEC's appeal and upheld the High Court's decision.

TAKE AWAY FROM THE COURT OF APPEAL'S DECISION IN INEC V. PDP & ORS



From the Court of Appeal's decision, we can deduce that the provision in INEC's Timetable and Schedule of Activities for the 2023 General Elections regarding the last date for the withdrawal of candidates in the 2023 elections is unlawful since it contradicts the provision of section 31 of the Electoral Act, 2022.

Therefore, INEC must amend the Timetable to comply with the provisions of section 31 of the Electoral Act, 2022, which permits the withdrawal of a candidate not later than 90 days before the election. The amendment of the Timetable would also help to prevent litigation arising from INEC's insistence to rely on the last date for the withdrawal of candidates as contained in its Timetable for the 2023 general elections.



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