

Local Government Election Petition
Time limit for determination of
Lifeline available to a Petitioner

IN THE LOCAL GOVERNMENT ELECTION PETITION
APPEAL TRIBUNAL OF LAGOS STATE
HOLDEN AT LAGOS
31ST JANUARY, 2013

BEFORE THEIR LORDSHIPS

HON. JUSTICE O.O. OKE	(CHAIRMAN)
HON. JUSTICE K.O. ALOGBA	(MEMBER)
HON. JUSTICE S.B.A. CANDIDE-JOHNSON	(MEMBER)
HON. JUSTICE M.A. DADA	(MEMBER)
HON. JUSTICE H.O. OSHODI	(MEMBER)

CONSOLIDATED APPEAL NOS: EPT/AP/13/2012
EPT/AP/34/2012

BETWEEN:

LAGOS STATE INDEPENDENT ELECTORAL COMMISSION (LASIEC) & 106 ORS	...	...	...	APPELLANTS
V.				
MR. IBRAHIM B. OBANIKORO & 3 ORS	...	...	...	RESPONDENTS

AND

ADEWALE ADENIJI & ANOR.	...	...	...	APPELLANTS
V.				
MR. IBRAHIM B. OBANIKORO & 108 ORS...	...	...	...	RESPONDENTS

The invocation of the substantive statutory power of discretionary enlargement of time is to be triggered at the instance of either party to the proceedings by a Motion on Notice supported by an affidavit; so held the Local Government Election Petition Appeal Tribunal, per CANDIDE-JOHNSON J. in the judgment delivered on 31st January, 2013.

Following the 22nd October, 2011, elections conducted by the Lagos State Independent Electoral Commission (“LASIEC”), into various elective offices in Local Governments and Local Development Areas in Lagos State, Mr. Adeniji who contested the election for the office of the Chairman of Ikoyi/Obalende Local Council Development Area on the platform of the Action Congress of Nigeria (ACN) was declared the winner of the election and returned by LASIEC. Mr. Obanikoro, who was sponsored by the Peoples Democratic Party (PDP) for the said election, was aggrieved by the return; consequently, he filed a Notice of Petition on 14th November, 2011 at the Lagos State Local Government Election Tribunal (“Tribunal”).

After the preliminary procedural steps, the substantive trial of the Petition commenced on 22nd December, 2011. A Preliminary Objection was filed by LASIEC, praying for an order dismissing the Petition for lack of jurisdiction. The ground for the objection was that the life span of the Petition had expired having exceeded the 30 (thirty) days limit stipulated in section 14 of the Local Government Election Tribunal Law of Lagos State (LGETL) for hearing and determination of such Petition.

In considering the Preliminary Objection, the Tribunal viewed Section 14 of the LGETL to be in the nature of the infamous “ouster clauses” and held that the said section is an infraction, by the Legislature, of the Constitutional Safeguards of the doctrine of separation of powers. The Tribunal dismissed the Preliminary Objection on the ground that the said statutory provision was unconstitutional, proceeded with the hearing of the substantive Petition and subsequently gave judgment in favour of Mr. Obanikoro.

LASIEC and others filed an interlocutory appeal against the Ruling of the Tribunal assuming jurisdiction in the matter, while Mr. Adeniji appealed the final decision of the Tribunal. Both appeals were consolidated.

Deciding the interlocutory appeal, the Appeal Tribunal formulated a sole issue for the determination of the appeal thus: *Whether by the provisions of Section 14 Local Government Election Tribunal Law of Lagos State 2001, the time within which to hear and determine the petition has lapsed.*

Section 14 of the LGETL stipulates that an election petition must be heard and determined within 30 days from the date of filing the petition. On the other hand, Section 54 of the LGETL provided for a redemptive saving device to ensure that, at and upon the active discretion of the Election Tribunal, the life span of an Election Petition and the hearing and determination can be enlarged to accord with the elements of fair hearing.

The Appeal Tribunal held that the provisions of Sections 14 and 54 of the LGETL are clear and the Legislative intention readily ascertainable. The invocation of the interpretative jurisdiction of the Appeal Tribunal shows that the intention of the Lagos State Legislature was to infuse a sense of urgency, diligence and timeliness into the conduct of Election Petition proceedings (qua Section 14) whilst simultaneously empowering (qua Section 54) of the Election Tribunal with effectual substantive statutory discretion to moderate and control, by enlargement of time, where deserving or justified, the proceedings and lifespan of an Election Petition in a manner consistent with access to justice and fair hearing. The vision, wisdom and power of Section 54 is that even in the face of the Section 14 delimitation of 30 days time line or limitation period for the hearing and determination of Election Petitions, Section 54 reserves, to the Election Tribunal in the face and in spite of Section 14, power to control and exercise judicial mastery over the Election Petition proceedings. Thus, it was

erroneous for the trial Tribunal, in the exercise of its interpretative jurisdiction to have isolated Section 14 from its legislative relationship to Section 54.

In Lagos State, by the combined harmonious provisions of Sections 14 and 54 Cap L75, if an Election Tribunal finds that owing to deliberate or inadvertent mischief it is not capable of a faithful, diligent, meticulous and timely hearing and determination of an Election Petition and/or that there is no good faith participation, conduct or input from the parties and their lawyers, then by Section 54 Cap L75, a portent discretion, to be exercised judicially and judiciously, resides in the Tribunal or Appeal Tribunal to enlarge the lifespan of the proceedings relative to the hearing and determination of an Election Petition or an Appeal therefrom. By the explicit provisions of Section 54 the invocation of this substantive statutory power of discretionary enlargement of time is to be triggered, at the instance of either party to the proceedings by a Motion on Notice supported by an Affidavit.

The Appeal Tribunal further held that the foregoing notwithstanding, the Counsel who represented Mr. Obanikoro and his sponsoring political party abandoned their Motion on Notice dated 28/12/2011 with Affidavit in support and written address which was filed pursuant to Section 54(1), (2) and (6) of the LGETL seeking an Order of the Tribunal enlarging time within which the Election Petition shall be heard and determined. Instead of pressing to have priority accorded the Petitioners' Motion on Notice for enlargement of time, Counsel representing the Petitioners elected to directly contest the merits of the Notice of Preliminary Objection. The legal strategy of abandoning the only statutory instrument available under the Statutory "life-line" of Section 54 to save the Election Petition and resurrect its lifespan for the hearing and determination of the Petition was an unpardonable blunder.

Bearing in mind the famous legal principle that where there are two motions before a court, one intended to destroy and the other intended to give life, that which saves life is to be first heard and determined by the Court. The Petitioners'

Counsel having failed to infuse Statutory validity to the trial Tribunal's proceedings beyond the 30 days limitation time bar, the entire proceedings, post the 30 days allowed by Section 14 and the judgment thereon are incurably bad and a nullity.

Interlocutory appeal succeeds; substantive appeal succeeds in part.