25% in 25 states- scaling the mandatory constitutional hurdle required in winning presidential elections in Nigeria: a legal opinion

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Abstract

This paper attempts to shed an interpretation light on the seeming mandatory constitutional requirement to score at least 25% votes in at least 25 states out of the 37 federating units of Nigeria. It employed the recently conducted Presidential election in Nigeria as its case study and asked the overarching question whether or not the declared candidate has fulfilled the conditions of the law regarding the constitutional requirement of having and meeting 25% of vote spread in at least two-thirds of votes cast in the states of the federation and the FCT, Abuja and the paper answered in the affirmative based on the interpretation of the constitutional provision and other supporting electoral guidelines. The study found that the FCT, Abuja has no special status, neither do the voters therein enjoy a special voting status within the contemplation of the Nigerian law. The paper concludes that the intention of the drafters of the constitution is that all votes must count and no vote should matter more than the other and that whoever wins the majority of votes cast in a Presidential election should have a base minimal acceptance in two-thirds majority of the federating units across all regions in a pluralistic, multi-ethnic, multi-religious society like ours, as the law was not targeted at elevating the votes of Abuja-resident elites over and above the votes of ordinary people living in the trenches in other parts of the nation.

Keywords: presidential election, constitution, twenty five percent, interpretation, federation, federal capital territory

1. Introduction

An election is a formal, organized choice and an organic process of law for the choosing by vote of a person by the majority of people for a political office or other position in accordance with the provisions of law, put differently, the act of choosing or selecting one or more from a greater number of persons, things, courses or rights [1]. Thus, it is posited that election is a process of law, not of sentiments or emotions. Consequently, it is important to understand the rationale behind a regulation for an election and to know that the electioneering process is itself a product of law and as such must be subject to its dictates and interpretation. The law provides for a change of baton through the ballot every four (4) years in Nigeria [2] and the law governing elections in the country was made in a way to ensure universal adult sufferage, independence and equality of voters irrespective of their locality or location or dwelling place, in such a way that no one counts the vote of the elite twice, whilst the vote of the poor and uneducated are counted once, the votes of those living in FCT or Lagos as weighted or more valuable than the votes of village settlers living in Igbole-Ekiti or the crevices of Sambisa to ensure the declaration of a winner who satisfies the vote counting authority's criteria of a simple majority of votes as the duly elected President-elect. And this is posited as the beauty of democracy, the minority will have their say and the majority will have their way.

Thus, simply appealing to the sentiments of the voting public and being elected by them as their preferred candidate will make one elected across the regions and to have a geographical spread of votes in majority of the geopolitical units as a sign of basic acceptability is deemed enough condition to be so elected. It is axiomatic that a lot of legal acrobatics and fireworks have emanated from the conduct of the 2023 Presidential elections which held on Saturday, the 25th day of February, 2023. The overarching question flowing therefrom is thus whether or not the declared candidate has fulfilled the conditions of the law regarding the constitutional requirement of having and meeting 25% of vote spread in at least two-thirds of votes cast in the States of the Federation and the FCT and my answer as expounded in this paper is a resounding Yes as I will attempt to prove in this scholastic treatise as my modest contribution to the Jurisprudence of elections in Nigeria. It should be noted however that this contribution is a legal one and must not be construed in the shades of politics or deemed an usurpation of the judicial position on the issue, it is purely an academic and a legal opinion, whilst other legal opinions for or against this position is welcome.

2. Assessing the 2023 presidential elections

It is instructive to note that the 2023 Presidential elections witnessed massive turnout as Nigerians were interested in voluntarily electing the right leaders of their choice as it was about the most anticipated election ever held in the history of this country, even though the turnout suggested otherwise [3]. Out of the total 93.47million registered voters, 87.2million collected their Permanent Voters' Cards to be used for identification purposes, whilst only 24.9million people voted in the elections [4]. Like most elections held in Africa, it witnessed both highs and lows. It is thus stated that is an election one can both be right and wrong about. Apart from the

stamping out of vote-buying which was made rather difficult, if not impossible by the timely new Naira redesign policy which saw Nigerians voting their conscience without financial gratification for the first time across the nation [5], even though some pundits opine otherwise as the hardship on Nigerians could make it achieve the opposite as it may now be cheaper to buy votes as a result of the resultant hardship on Nigerians [6].

Video evidence allegedly abound of scattered violence in perceived strongholds of some political candidates, guided thumbprinting of candidates of some regions, prevalence of underaged voting by almost all the regions, cases of the new electronic voting machine, which was supposed to speed up the process, causing problems for many voters when they tried to upload their votes electronically, alleged shutdown of INEC's portal for about 24hours, technical glitches across board leading to manual collation of results, susceptible to manipulation of votes, opening of polling places several hours late and behind schedule, attacks and alleged intimidation of voters by thugs and armed men, delays in voting, overnight voting, etc [7], but then, this can be deemed a widespread challenge that should affect all the candidates as it appears difficult to rig out an overwhelming majority and the candidates mostly had huge votes in their perceived strongholds, with some springing surprises in the strongholds of their political opponents, much to the assumed credit of the electoral umpires. Whether or not these challenges were substantial enough to invalidate the credibility of the entire electoral process remains a question to be answered by the Presidential Election Petition Tribunal and the Supreme court on appeal in the days ahead.

The main issue for determination in this election thus remains whether or not the Presidential candidate of the All Progressive Congress (APC), Asiwaju Bola Ahmed Tinubu met the constitutional requirement of polling at least not less than one quarter (1/4) or 25% of votes cast in the elections in at least two third (2/3) majority of all the States of the Federation and the Federal Capital Territory (FCT) Abuja; and whether he should have been declared the winner of the Presidential elections as done by the Independent National Electoral Commission (INEC).

This legal imbroglio has led to a division of opinions amongst several Jurists, Scholars, Constitutional Lawyers, political pundits, election monitors and public affairs analysts; Thus, this paper is my modest contribution to the Jurisprudence of law regarding the meeting of the constitutional requirement and the consideration of the legality or otherwise of his declaration in accordance with the provisions of the law. It is against this background that this paper opines in line with the provisions of our laws that the declaration of the APC Presidential candidate and presentation of Certificate of Return to him as the President-elect by INEC on the 1st of March, 2023 follows the enabling law of the land.

This paper seeks to rely on Sections, 134(2) (a&b), 147, 297, 298, 299, 301 and 302 of the Constitution of the Federal Republic of Nigeria, 1999 as amended [8], Sections 25, 47(2), 60(1), (2), (4) and (5); 62; 64(4)(a) & (b); 70; and 148 of the Electoral Act [9]; paragraph 38 of the INEC Guidelines and Regulations [10]; paragraphs 2.8.4; 2.9.0; and 2.9.1; of the INEC Manual For Election Officials, 2023 [11]; legal maxims and other judicial authorities to give an undisputable legal footing to the position advanced by this paper.

Constitutionally, according to Section 134(2) [12], there are two conditions that a political candidate standing a Presidential election must satisfy to be elected; the first is simple majority of votes cast and second- meeting 25% or 1/4 of the total votes cast in 2/3 of the States of the Federation [13]. Results from the results as collated and declared by INEC on the 1st day of March, 2023, showed that Bola Ahmed Tinubu, the candidate of the APC, secured the highest number of votes cast at the presidential election. He is said to have garnered a total of 8,794,726, to allegedly defeat his closest rivals, Alhaji Atiku Abubakar of the People's Democratic Party (PDP), who was stated to have secured a total of 6,984,520; with Mr. Peter Obi of the Labour Party (LP), being credited with 6,101,533 votes [14].

2.1 The conjunctive school of thought and the inclusive school of thought

There are two schools of thought debating this constitutional requirement for winning the Presidential elections and getting a declaration. They are the conjunctive school of thought and the inclusive school of thought. Whilst the former contends that the conjunction 'AND' means that it is compulsory for any candidate to be so declared to meet 25% in FCT, Abuja since it was specifically mentioned in the constitution, irrespective of whether the candidate meets the 25% in 2/3 of the states of the federation, the inclusive school of thought opines that the FCT should be treated as a state of the federation and meeting the 25% vote spread in about 25 states of the federation was sufficient meeting of the constitutional requirement and as such, it would be ridiculous to insist on meeting it at the FCT, Abuja since a simple majority covering up to 25 of 37 of the states or federating units have been met and conferring a "special" status on the voters of the FCT would be taking it to a ludicrous level outside the intention and the intendment of the drafters of our constitution who could never have intended to confer weighted votes or a special status, determining vote status or an electoral college status on the voters living in FCT at the expense of the voters in the other 36 states that make up the Nigerian Federation. It is against this background that the major contention is predicated on the reasoning of the conjunctive interpretation school of thought who thought the 25% spread must be achieved compulsorily also in the Federal Capital Territory, FCT, Abuja, where the total valid votes cast there was 478,923.

The President-elect, Bola Ahmed Tinubu, the candidate of the APC, was said to have secured 90,902 (19.76%) of the votes cast at the FCT; with Alhaji Atiku Abubakar alleged to have 74,194 (16.13%); and Peter Obi said to have 281,717 (61.23%) [15]. According to them, Bola Ahmed Tinubu did not win simply because he did not garner up to 25% votes in FCT, Abuja and should not have been validly declared the winner of the Presidential polls. They are the people who have interpreted section 134(2) b [16] to mean that the winner must score 25 per

cent of the votes cast in FCT Abuja, but the inclusive interpretation school of thought which this paper belongs, vehemently affirm that the interpretation simply treats Abuja as the 37th state of Nigeria and thus 25 per cent in 25 states suffices.

Based on the INEC results, Mr. Bola Tinubu has a minimum of 25 per cent in 30 states of the federation, even though he did not score 25% in the FCT, Abuja; Atiku Abubakar has a minimum of 25 percent in 21 states, while Mr. Gregory Peter Obi scored a minimum of 25 percent in 17 states. The 2/3 of States where the votes cast is required to be 25% out of the 37 states of the federation is 24.666667 states and Bola Tinubu had above 25% in 30 states of the federation. If he had won 25% in 24 states, it is contended that he would not have been declared winner by INEC and the nearest decimal point mathematical interpretation would not have availed him. It is also noted that neither of the two other leading candidates secured that constitutional minimum even if they had a simple majority of the highest votes cast. That is the reality on ground and implication cum interpretation of the results in line with Constitutional stipulation.

Moreso, that Section 14(2) of the 1999 Constitution [17] is to the effect that sovereignty belongs to the people of Nigeria, not the people living in Abuja. To rule or state otherwise will be standing logic and law on their fragile heads.

2.2 Dissecting the constitutional requirement for electing a president in a situation where there are two or more presidential candidates

The Constitution of the Federal Republic of Nigeria, 1999 as amended is clear regarding the requirements to be satisfied to win the Presidential election. The Constitution [18] is the manual of human and governance conduct; any law that runs contrary to it shall be declared null and void to the extent of such inconsistency [19]. As the organic law, the *fons et origo* and the grundnorm, the constitution is the supreme legislative document in Nigeria and no other law supersedes or overrides it [20]. This position was also restated in *Attorney General of Lagos State v Attorney General of the Federation* [21], and *Attorney General of the Federation v Attorney General of Abia State & 35 Ors* [22].

For emphasis, Section 134(2) of the 1999 Constitution [23] provides as follows:

"A candidate for an election to the office of President shall be deemed to have been duly elected, where, there being more than two candidates for the election-

(a) He has the highest number of votes cast at the election; and

(b) He has not less than one-quarter of the votes cast at the election in each of at least two-thirds of all the states in the federation and the Federal Capital Territory, Abuja [24]."

The above provisions have been interpreted differently by the above schools of thought and it is hereby posited that neither is without a basis, no matter how faulty or misguided.

The inclusive school of thought opines that it is not mandatory that a candidate must secure 25% votes in the Federal Capital Territory, since the FCT is not a special state and the voters therein are not graduated or weightier than those of the other States, neither is their votes more essential to winning elections than other voters in other states and locality.

Others who belong to the conjunctive interpretation school of thought disagree on the ground that the express mention of 'AND' the FCT means that is mandatory to score 25% in FCT, Abuja in order to be validly declared winner and a President-elect. An overview of the examined section shows that the law provides for two arms of requirements that are mutually exclusive and the conjunctive connotation of 'and' as used therein only suggests an overall inclusive interpretation of both sections, rather than a compulsive interpretation of the latter to confer validity and legitimacy on the former. That is, (a) the candidate must have the majority of votes cast at the election; and (b) he must have not less than one-quarter of the votes cast at the election in each of at least two-thirds of all states of the federation and the Federal Capital Territory, Abuja.

It is instructive to note that the FCT, Abuja was expressly mentioned as one of the states to replace one of the units to be counted for the purpose of determining the quantum of votes cast which is simple majority and having at least 25% in two thirds of the units, rather than as a special state that must be won for a candidate to be declared a Winner. If the latter was the intention, the constitution [25] would have stated so in plain terms, especially as the latin maxim *'expressio unius est exclusio alterius* which literally means the expression of one thing is the exclusion of the other is rife. This is a common law principle for construing legislation which holds that a syntactical presumption may be made that an express reference to one matter excludes other matters. The fact that the constitution did not expressly state that the FCT was compulsory as a special state that a candidate must win 25% and its being made a second leg condition apart from polling the highest number of lawful votes cast makes that position doubtful.

This is more discombobulated by the fact that any part or provision of the constitution must be interpreted together to give same its intended meaning [26]. In *Attorney General of Lagos State v Attorney General of the Federation* [27], the interpretation to be placed on Section 162 subsection (5) was re-affirmed.

It is noted that the courts are accustomed to affirming that the interpretation placed on the subsection by the plaintiff was too restrictive and does not take into consideration other relevant provisions of the constitution. It is contended that the cardinal principle of interpreting the constitution is that the provisions of the constitution must be read together and not disjointedly. To support this viewpoint, submissions in the decisions in the cases of *Ifezue v Mbadugha* [28], and *A.G of Ogun State v Aberuagba* [29], should be considered. Similarly, *Kalu v State* [30] and *Mohammed v Olawumi* [31], further affirm this position.

Furthermore, there are two instances contemplated in the provision dealing with where there are only 2 candidates; and where there are more than 2 candidates. In both situations, any of the candidates must satisfy both conditions of 25% in 25 States, the FCT inclusive as being treated as one of the states and not that one must satisfy 25% in the FCT, Abuja which is traditionally a Northern State. It is therefore posited that to state

otherwise will be unwittingly conferring a special voting status on the dwellers of the FCT, the seat of power, or giving a disadvantage to any candidate not from the North or someone not accepted by the bulk of the elitist rich living in the capital city to the disadvantage of the voters in the rural areas, which is clearly not the intention of the law makers or within the contemplation of the law drafters, because if it was so, they would have expressly stated same without any ambiguity.

In addition, the situation provided by subsection (3) [32] for where the candidates fail to satisfy the requirements of simple majority and 25% in two thirds of the 37 states or federating units to hold a second election in accordance with sub section (4); and the candidates shall be the highest vote scorer, followed by the next highest vote scorer; to be held within 7 days of the results of the foregoing elections subject to the fulfilment of the constitutional conditions thus further confirms that the conditions were made to ensure the most popular candidate with the highest lawful votes emerges, rather than the candidate who polls 25% compulsorily at the FCT, Abuja, if not, the re-run would have been conducted in FCT, Abuja alone as the battle ground with an electoral college status, but the constitution provides that it be conducted country wide, thus, knocking off the presumption of special voting status for the FCT, Abuja.

It is further stated that this was why by sub section (5) [33] of the section under review, where a candidate is not still elected, then within another 7 days, the National Electoral Commission (INEC) shall conduct another election; and this time, if a candidate simply has a majority of the votes cast, he shall be declared winner, with the 'special' FCT, Abuja still not expressly mentioned as the battle ground. This confirms the position that Abuja was only mentioned as one of the 37 States to have 25% in either of, not as a compulsory place to be won or obtaining 25% in by a candidate for the purpose of being declared, but as an afterclap to ensure both a simple majority and a minimum spread of 25% across 2/3 spread of the nation, with no state being conferred a higher status above the other.

In other words, once a simple majority of lawful votes is achieved in 24.666667 states of the federation, it is immaterial that a candidate must have 25% in the FCT or else, the argument must be extended to the fact that a candidate must win Lagos or have 25% therein, the commercial capital, win or have 25% in Kano, the most populous state or Rivers, the oil rich source or other states with presumed special status, in order to be validly declared the winner of the presidential elections. Also, in the event that the capital city is relocated to another region other than Abuja to favour another ethnic candidate, would the argument still be tenable that a candidate must achieve 25% spread win in Abuja or any such replacing State?

3. Assessing the import of the 25% constitutional requirement and ascribing a fitting legal interpretation

The central argument of this legal knot is deciphering the mathematical expression requirement of meeting 25% in two thirds of the states. The wordings of the constitution are quite clear, direct, succinct and unambiguous. The law demands for not less than one-quarter of the votes cast at the elections in each of at least 2/3 of all the states and the Federal Capital Territory, Abuja being counted as one of the States for the purpose of such states' categorisation. By a judicial mathematical analysis, 2/3 of 37 States is 24.666667 States, with the FCT, Abuja being counted as one of the states.

This can be explained for instance thus; if I ask that my househelp should give me 2/3 of the fruits comprising 25 mangoes and 12 oranges in the store and she brings me 25 fruits, comprising 20 mangoes and 5 oranges, I lose the right to complain that she only gave me 5 oranges and not 8 mangoes which should have been 2/3 of 12 oranges, provided the totality of fruits (oranges and mangoes inclusive) she gave me was 25 which is over and above the 24.66667 which should be 25 of 37 of the fruits to be divided and shared. It would become a different situation where and if I had expressly spelt it out that she should give me 25% of Mango and 25% of Oranges, then, she has to give me exactly that, based on the percentage per group. This is so as the only reason I mentioned oranges separately was because it is not a mango, but it is still a fruit which should be mentioned for the sake of nomenclature, categorisation and specification and not that it is deemed a better fruit in the mindset, view and estimation of the law givers and guideline instructors as in the case of the conditions for winning elections.

A more apposite example is if I ask my househelp to give me two thirds of 37 fruits- all mangoes planted and harvested from any of my designated 37 spots- (36 different locations of my farms and my orchard) and she delivers 25 fruits, (all mangoes only from my farms, leaving out the one in my orchard), based on my instruction, she has successfully satisfied the provisions of my instruction, it is immaterial if the fruit, (mango) in the ones she kept for me does not fully constitute part of the mangoes that make up the required percentage as no mango is more valuable than the other, merely by reason of its location of planting without me stating so, since, the votes, just like mangoes are equal and the same, it would be wrong to elevate the one planted in the orchard as higher in value than the one planted on the other 36 farms, if I wanted it to be so, I would state so clearly. This is because equity looks at the substance, not the form [34]. What matters is that the candidate gets 25% votes in 25 out of 37 units, not particularly that 25% votes in a part of a special unit should be declared a valid *sine qua non* to making the candidate electable. That's the difference. What the law states in essence is that the candidate must have 25% of votes in those states, with the FCT, Abuja being deemed and regarded as a state for the purpose of the election, not that the candidate must win FCT, Abuja as a special state of compulsive win. The situation would be different if however the candidate won 25% in 24 states alone without winning up to 25% in the FCT, Abuja, but the candidate had up to 25% in about 30 states of the federation, so the position of not winning Abuja does not count, diminish or alter the win, except of course, one can show any part of the constitution that confers a higher voting status on dwellers and inhabitants of the FCT Abuja over and above the voting public in the other states of the federation. It is thus re-affirmed that the law does not

contemplate that the candidate must win or score 25% in every state and the FCT, Abuja, but just to demonstrate a clear win and achieve 25% in about 25 states out of the 37 states, with Abuja being deemed and treated as one of those States for the purpose of the calculation and nothing more.

It is further noted that the jurisprudence behind this provision is to ensure that the President as the number one citizen of the Nation, enjoys a reasonable range of widespread acceptance by majority of the people he seeks to govern, across the regions by having not just a clear simple win, but also being accepted by the barest minimum of 25% in at least 25 states out of the component federating units of equal status. To confirm that it is not compulsory for a candidate to achieve 25% win in FCT as one of the 25 states, one needs to examine Sections 2(2), 3(1) & (4), 48, 297, 298, 299, 301, and 302 of the 1999 Constitution [35].

Section 2(2) CFRN 1999 [36] provides that:

"Nigeria shall be a Federation consisting of states and a Federal Capital Territory."

The section mentioned the FCT as one of the federating units and even mentioned it after mentioning states, thus, the FCT is an addendum to the federating units called States, it is not higher in status than it, neither can the votes therefrom be rated higher than the votes obtained from the major components of the federation- the states. Section 3(1) & (4) of the Constitution of the Federal Republic of Nigeria 1999 as amended further provides for the 36 states of the Federation whilst the FCT, Abuja was mentioned as an afterthought in section 3 (4) as defined in Part II of the First Schedule to the constitution [37].

Section 48 of the Constitution of the Federal Republic of Nigeria also provides that the Senate shall consist of three Senators from each state and one from the Federal Capital Territory, Abuja, thus confirming the smaller status in size if anything of the FCT, rather than the special or bigger status the conjunctive school of thought wants to disingenuously and desperately confer on it for its selfish purpose. Similarly, Section 297, (1&2) of the Constitution of Nigeria [38] sets out the boundaries of the FCT, Abuja as defined in Part II of the First Schedule to the Constitution and vests the ownership of all lands comprised in the Federal Capital Territory, Abuja in the Government of the Federal Republic of Nigeria, just like other States' lands are vested in the respective State Governors because the FCT Abuja is being administered by a Minister acting on behalf of the President, rather than a Governor and not because it is a special federating unit.

Furthermore, Section 298 of the 1999 Constitution of the Federal Republic of Nigeria [39] provides that the Federal Capital Territory, Abuja shall be the Capital of the Federation and the seat of the Government of the Federation and as such, it enjoys an equal status with other federating units that make up the Nigerian Federation. Importantly, this was why Section 299 of the Constitution of the Federal Republic of Nigeria 1999 as amended [40] provides that the provisions of the constitution shall apply to the Federal Capital Territory, Abuja as if it were one of the States of the Federation; and accordingly-

(a) all the legislative powers, the executive powers and the judicial powers vested in the House of Assembly, the Governor of a State and in the courts of a State shall, respectively, vest in the National Assembly, the President of the Federation and in the courts which by virtue of the foregoing provisions are courts established for the Federal Capital Territory, Abuja; (b) all the powers referred to in paragraph (a) of this section shall be exercised in accordance with the provisions of this Constitution; and (c) the provisions of this Constitution pertaining to the matters aforesaid shall be read with such modifications and adaptations as may be reasonably necessary to bring them into conformity with the provisions of this section [41]. "

From the foregoing, it becomes strange how the FCT which was brought to be at par with the other states by virtue of this provision of the 1999 constitution will suddenly be elevated over and above the benchmark of its emulated supremacy as a special status component of the federation that now suddenly enjoys weighted votes, compulsory 25% requirement to the exclusion of other states and an unforeseen, backdoor determining factor and ultimate condition for winning the seat of power without an express mention of same by the constitution.

Thus, the application of the FCT as a state, but the corresponding powers donated to the President in lieu of the Governor, to the Vice-President in lieu of the Deputy Governor, to the National Assembly in lieu of a State House of Assembly in accordance with Section 301 of the 1999 Constitution [42] is thus not to confer any higher status on the FCT, Abuja, but because of the absence of corresponding officers and offices in the FCT. It was in furtherance of this that Section 302 of the Constitution of the Federal Republic of Nigeria provides that the President may, in exercise of the powers conferred upon him by section 147 of the Constitution [43], appoint for the Federal Capital Territory, Abuja a Minister who shall exercise such powers and perform such functions as may be delegated to him by the President, from time to time. Thus, it is restated the Minister is to the FCT, what the Governor is to the State, none is higher or bigger than the other. The law is clear regarding the 25% of votes cast in two-thirds of the votes cast in the federating units, not in the number of inhabitants or the registered voters.

4. Assessing the legal status of the federal capital territory, Abuja

The Federal Capital Territory is one of the federating units that make up the Nigerian Federation. It is defined in Part II of the First Schedule to the constitution. Section 299 of the 1999 Constitution which is in Chapter VIII, corresponds with the provisions of Section 297 of the 1999 Constitution. Section 299 of the constitution states that "the provisions of this constitution shall apply to the Federal Capital Territory, Abuja as if it were one of the States of the Federation [44]."

Thus, If one posits that a mistress should be treated as though she was one of the wives, it means, she automatically attains the status, rights, obligations and enjoys the privileges conferred on the wives and nothing more, it does not mean she should be elevated more than the comparative threshold of privileges so conferred simply because she is an

unconventional partner. More, part 11 of the constitution also defines the FCT as a land area of its own, governed by the Minister, with a distinct land mass like any other state, thus making it another part of the enclave known as Nigeria. Thus, the addition of meeting 25% in FCT Abuja which began in the 1979 Constitution is to confer the status of the state enjoyed by other states on the FCT, Abuja and not to elevate same above other states which hitherto enjoyed the privilege of achieving 25% in 24-25 of them. This is particularly so as the Federal Military Government of Nigeria, promulgated decree No. 6 on 4th February, 1976, which initiated the removal of the Federal Capital from Lagos to Abuja through a nationwide broadcast, but this was not implemented physically till it was done in the year 1991 [45]. Thus, including the FCT, Abuja was in fulfilment of the declaration and not to serve as an additional constitutional conundrum for declaring a Presidential candidate a winner of the elections. It is against this background that the court held in *Baba-Panya v President, Federal Republic of Nigeria* [46], that the FCT, Abuja is to be treated like a state and that it is not superior or inferior to any state in the federation. In this case, the Appellant filed a suit at the Federal High Court, Abuja, asking the court to determine whether by the combined provisions of Section 147(1), (3), (14) and 299 of the 1999 constitution, the indigenes of the FCT, Abuja, are entitled to a Ministerial appointment and whether the continued refusal or failure by previous and current Presidents to so appoint an indigene of FCT, Abuja, as Minister of the Federation was tantamount to a flagrant violation of the Constitution. The court held that *inter alia* that by the combined effect of the provisions of Sections 299, 147(1) and (3) and 14(3) of the constitution of the Federal Republic of Nigeria, 1999, it is obligatory or mandatory for the President of Nigeria to appoint at least one Minister from the indigenes of FCT, Abuja as a Minister to represent them in the Federal Executive Cabinet of the Federation. Failure to appoint any Minister from amongst the indigenes of FCT, Abuja, was thus deemed a flagrant violation of the Constitution [47].

It is noted that the provisions of the constitution when interpreted together are aimed at ensuring equal and fair participation of all states in the recognition of the diversity of the people of the country and the need to ensure national unity, guarantee equality of votes, promote a sense of belonging among all the voting public and residents constituting the Federation irrespective of how remote or close to the seat of power they are. Thus, it will be unpatriotic to state by any stretch of human imagination that the same constitution that confers equality of rights will intend unfairness, inequality of votes and voters and weighted votes for some other citizens by virtue of their mere habitation in the seat of power. Thus, any contrary interpretation will destroy the constitutional import of one man, one vote.

The sure-footed premise of this judgment is thus simply that whatever is applicable to states in the federation shall equally be applied to the FCT and not that the FCT will get a superior status of having her electorates determine who is declared winner by mandatorily attaining 25% votes therein- a situation that is not applicable to other states of the federation. If the constitution therefore requires votes cast in at least two-thirds states in the federation, including the FCT, Abuja, it is sufficient if 25% votes is achieved in up to 24.666667 states with or without the FCT. To state otherwise will be against the law, letter and intendment of the law.

This also coheres with *Bakari v Ogundipe* [48], where the Supreme Court held *inter alia* that Abuja, the Federal Capital of Nigeria, has the status of a state and should be treated as though it is one of the states of the federation [49] and the ruling of the Abuja Division of the Court of Appeal in *Ona v Atanda* [50], From the foregoing, section 299 of the 1999 Constitution [51] is the law that confers the rights of the states on the FCT, no other provision in the Constitution elevated the FCT above the other 36 states in the 1999 Constitution. There is therefore no contradiction or ambiguity regarding the proper status of the FCT, Abuja as one of the states or units that make up the Nigerian Federation. It is in line with this viewpoint that it is restated that the entire job of the judiciary is to interpret the law and not to fabricate same. The courts must therefore only be enjoined to interpret the provisions of the law entirely, taking into cognisance the intention, spirit and purpose of the provision as envisaged by the legal draftsmen [52].

The argument by the inclusive school of thought that Section 134(2)(b) of the Constitution is to the effect that the use of the word "ALL" in the first leg of the provision treats the Federal Capital Territory, Abuja, as one of the component states of the federation and this position is correct. The proponents contended that since the FCT is to be constitutionally treated as a state of the federation, it means there is no additional requirement to meet the 25% constitutional requirement therein or the constitution would have expressly provided so. The Supreme Court has affirmed this position in a plethora of cases like *Okoyode v FCDA* [53] and *A.G., Abia State v A.G of the Federation* [54].

Thus, the reference of the conjunction 'and' used in section 134(2)(b) of the Constitution only means that the candidate should get 25% in about 25 of any of the states of the federation, with the FCT, Abuja being deemed as one of those states, not that after generally meeting the 25% in two thirds of all the states of the federation, the candidate must also go further to meet the constitutional 25% requirement in FCT, Abuja in order to be deemed validly elected as President-elect. That would be an extreme position with no rational basis.

Also, in *Chief Obafemi Awolowo v Alhaji Shehu Shagari & Ors*, [55] the Supreme Court held that a state is an indivisible entity. There is no way the court would approximate 24.6 to 25, just like the 12 2/3 of 19 in Shagari's case. It will equally lead to offending one's sensibility for the law to be construed in such a way that the FCT, Abuja would now be elevated over and above the other states of the Federation as that cannot be the true intention of the law or its makers. Of a truth, it is absurd to think that the reference to the FCT, Abuja as one of the federating units makes it a specific provision that should override or supersede a general provision as interpreting same will run afoul of the original intention of the law and provision itself. This is rather a case where a subset must be interpreted in line with the main set. Thus, subsection (b) must be

interpreted as an under-riding provision of the main provision in section (a) requiring that the candidate must score the highest number of lawful votes cast.

This was why the Court held in *Buhari v INEC* [56] where Per Tobi JSC held amongst other things that no Judge is permitted to flirt with politicians in the performance of their duties when discharging their judicial functions in determining who was validly elected without going outside legal stipulations and in *Buhari v Obasanjo* [57], the Supreme Court held that where a candidate wins the highest number of votes cast in at least two thirds of the 36 States in the Federation and the Federal Capital Territory, Abuja, such a candidate is deemed to be elected and there was no ambiguity in the provision and even if there was one, the court was bound to adopt a construction which is just, reasonable and sensible. Thus, the only reasonable, just and sensible interpretation of the section is that all the states and the FCT are deemed equal and scoring 25% in any 24.66667 of them was sufficient enough to declare a candidate a winner by INEC. It would be interesting to get an additional judicial pronouncement to affirm this position as this appears to be the first time a Presidential candidate would not be achieving 25% in the FCT, Abuja since the advent of the Fourth Republic.

Thus, it is reiterated that the reference to the 36 states differently and collectively as 'States' was done because of administrative, categorisation and nomenclature convenience, rather than mentioning them one after the other and listing the 37th state which is the FCT, Abuja by its real name, rather than because it has any special voter-validation character or attributes of a more special state as a *primus inter pares* or first amongst equals, especially as the policy behind naming FCT, Abuja a state is to allow for inclusion- the “and in” has been argued to be interpreted as inclusive rather than conjunctive.

5. Concluding remarks

The concept of weighted votes or special status state by reason of locality is unknown to Nigerian Law. Section 299 of the Constitution of the Federal Republic of Nigeria states that the provisions of this constitution shall apply to the FCT, Abuja as though it were one of the states of the federation, thus, it cannot be correct to treat the FCT, Abuja higher than the other states, the constitution deemed it as its equal. There must therefore be a careful consideration of the terms 'same' and 'similar' in making a judicial pronouncement on this legal conundrum. If the intention of the constitution is also to make any Presidential candidate to compulsorily poll 25% in FCT, Abuja as a special status state with the votes there being deemed more special than the other states of the federation, an urgent constitutional amendment must be made to reflect this crucial distinction.

Until this is done, the FCT must be treated as any other state, not higher or lower in status than it, its votes and voters can also not be deemed more special than votes obtained in any other states of the federation. If this is not done, anyone who wins in all the 36 states of the federation in Nigeria would one day be declared unelected merely by reason of not polling 25% in the FCT, Abuja. The FCT, Abuja albeit central is a traditional home of the people of Northern Nigeria, where the Nigerian elites predominantly reside.

The Constitution of the Federal Republic of Nigeria attests to the equality of the Nigerian people irrespective of race, religion, gender or location. Section 42(2) of the 1999 Constitution of the Federal Republic of Nigeria [58] provides that no citizen of Nigeria should be discriminated against merely by the reason and circumstances of his birth, thus, the fact that a Nigerian was not born, bred and voting in FCT, Abuja should not validly reduce the quality of his voting strength, value and vitality. It remains to be seen how the FCT with just six, (6) area councils will be held the electoral hotbed and validity center for validly electing the Nigerian President with such status not being conferred on the other states of the federation. If this anomaly is not swiftly addressed by the Supreme Court, Nigeria will witness an unprecedented influx of transfer of voters' cards by an exodus of Nigerian voters from other interstices and crevices of the nation to the Nation's capital city, so they can also have the super voters' status unwittingly conferred on residents of the FCT in Abuja by a wrong interpretation of the Law.

Many lawyers who have argued otherwise, shy away from the inequitable character of placing the votes in Abuja over that of other states. The central question defying an answer remains what gives the votes in FCT, Abuja more electoral value than the ones obtained in the other states? Does it mean that if a candidate wins the 36 states of the Federation, but fails to win 25% in Abuja, does that mean the candidate loses? It’s farcical and ludicrous to answer in the affirmative.

It is thus submitted without equivocation that the FCT, Abuja is constitutionally one of the states of the Federation and should be treated as such. The Constitution did not intend to make winning in FCT, Abuja a condition precedent to winning the Presidential elections as the President is to govern Nigeria, not just Abuja- if it did, it would lead to unforeseen, untold, dangerous consequences- Politicians would exploit it with no end and voters’ resident in Abuja would be more Nigerian that other Nigerians, much to the chagrin and the consternation of the Law drafters.

Lastly, the intention of the drafters of the Constitution is that all votes must count and no vote should matter more than the other and that whoever wins the majority of votes cast in the Presidential election should have a base minimal acceptance in two thirds majority of the federating units across all regions in a pluralistic, multi-ethnic, multi-religious society like ours, the law was not targeted at elevating the votes of Abuja-resident elites over and above the votes of ordinary people living in the trenches in other parts of the nation.

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