Many Rivers to Cross

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INEC’S decision to conduct elections next year in Kogi, Adamawa and other states against the expectations of the governors who returned to office after a rerun of the governorship election, throws up some issues fundamental to our democracy, the conduct of elections and the rule of law. These issues need to be examined as we head for our fourth general elections only four months from now, if only to avoid knocking our heads against this same problem in the very near future. The issues revolve around the integrity of the judiciary as an institutional protector of the sanctity of the ballot box. The record of the judiciary in this regard so far is spotty. I can find no way to put it sweetly. It has been comprehensively complicit in the cynical and criminal abridgement of the people’s right to choose their representatives in the executive and the legislative branches of government. Thanks to the mealy-mouthed judgements by the courts, men and women who were not elected by the people are spending four years in office in the executive and the legislative branches. Some cheaters spent more than three years in the legislature before they were finally forced to go. The apparent confusion in the case of the governors arose from the interpretation of section 180 (2) of the constitution. It provides that “the governor shall vacate his office at the expiration of a period of four years commencing from the date when… (he) took the oath of allegiance and oath of office.” In all the cases here, the courts nullified the elections, sacked the governors from office and ordered a new election within 90 days. In all the cases, the former governors were allowed to rerun. And in all cases, the governors returned to office on taking a new oath of office. The logical conclusion is that the governors took office on the basis of a new election and therefore, the clock started ticking with the second oath of office. Their elections were nullified because in the eyes of the law, they were not properly elected and, therefore, could not hold the office of governor. In none of those cases did the courts say that if a governor was re-elected, he would not need a new oath of office but simply continue from where he left off three months earlier. The governors were thus left to believe that they ran afresh for office and won afresh. I do not think the governors are naïve. Some of the affected governors have said INEC usurped the powers of the judiciary in its interpretation of the law. They are right. The commission should seek a judicial guidance on the position of the law on this matter. It is the province of the judiciary to interpret the law. It does not share that duty with any other organ of government. Our democracy will benefit from our patience with the law. That is the only true path to the rule of law. If the judiciary is asked to resolve this sore point, it should also resolve some of the problems gnawing at the roots of our democracy. The tardiness in the disposal of election cases is one. In several cases, this allowed usurpers to keep out the legitimate representatives of the people from office. Perhaps, the early conduct of the elections might help to solve this problem. We would do well not to be so hopeful, knowing the funny ways of our courts. The other problem the judiciary should resolve is this: If a governor’s election is nullified on the basis of electoral irregularities to which he, his party and INEC are clearly complicit, is it right in law to allow him to re-contest the election? The answer to that is not rocket science. If a man is arrested for entering through the window to steal, I can think of no judge cynical enough to strike off the charge and ask the thief to go through the door, steal and then be brought back to him. In the cases under reference, only governor Murtala Nyako of Adamawa State was clean. The nullification of his election was merely technical. It had nothing to do with irregularities or the integrity of the conduct of the governorship election in his state. The courts so affirmed. It was nullified because the night before the election the resident electoral commissioner told the people in a radio and television broadcast that Nyako’s main opponent in AC would not run. Remember, those were the days of lawless garrison politics. Only Nyako, therefore, was, if we understand the intentions of the framers of the law, qualified for a rerun. We need to settle this nasty problem. Even if it makes a legal sense to leave matters as they stand, it is an assault on common sense. The courts cannot punish wrong-doers and reward them at the same time.

Then there is the problem of the judiciary speaking from both sides of the mouth. Sokoto provides the best example of this. Governor Wamako’s election was nullified because the courts found that he was not properly nominated as a PDP candidate. Indeed, he was already the candidate of another political party. This was a clear disability that effectively disqualified him but the courts allowed him to re-contest as if the initial disability was automatically cured by his re-contesting. The case is stalled in the court. He sits pretty in office and about to complete his disputed four years in office.

Then there is this other problem. If the election of a governor is nullified, he leaves office, albeit temporarily. But if the election of a legislator is nullified, he remains in office to pursue his appeal. This, as we have seen in several cases, allowed such legislators to manipulate the system in collaboration with the leadership of the legislatures to frustrate the legitimate representatives of the people. Perhaps the constitution bars a uniform application of the law here. But it seems neat, right and proper that a legislator whose election is nullified should vacate his office pending the determination of his appeal by a superior court. I rest my case. SMS: 08055001912