

# DOES 1999 CONSTITUTION REQUIRE A PRESIDENTIAL CANDIDATE TO SECURE 25% OF THE VOTES CAST IN FCT, ABUJA?



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- 1.0 Nigerians have been seeking to elect the President and Commander in Chief of the Armed Forces of the Federal Republic of Nigeria, members of the House of Representatives and Senate since Saturday, 25<sup>th</sup> February 2023. The most intriguing so far is the election to the office of the President. The Constitution of the Federal Republic of Nigeria, 1999 (as amended) (*“the 1999 Constitution”*) requires the fulfilment of two major conditions for a candidate to be duly elected as the President where the candidates in the election are more than two. Section 134 (2) of the 1999 Constitution gives the conditions as follows:
- a) The candidate must secure the highest number of votes cast at the election; and
  - b) The candidate must have not less than one-quarter (1/4) of the votes cast at the election in each of at least two-thirds of the States in the Federation and the Federal Capital Territory, Abuja.
- 2.0 If a candidate satisfies the provision of Section 134(2) of the 1999 Constitution, the provision of Section 134 (3) of the 1999 Constitution would not be called in aid, meaning there would be no need for a second election (i.e a re-run/runoff). The question however is whether there is a need for a second election if a candidate scores the highest number of votes cast in the election, secures not less than 25% of the votes cast in at least 24 States, but fails to secure 25% of the votes cast in the FCT.
- In the interpretation of constitutional provisions, the entire provision must be construed together as a whole and not in parts/disjointly and where the words of any section are clear and unambiguous, they must be given their ordinary meaning, unless this would lead to absurdity or conflict with other provisions of the Constitution. This is to ensure that such interpretation would serve the interest of the Constitution and best carry out its object and purpose<sup>1</sup>

<sup>1</sup> HON. IFEDAYO SUNDAY ABEGUNDE v. THE ONDO STATE HOUSE OF ASSEMBLY & ORS (2015) LPELR-24588(SC)

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We submit that Section 134 (2) (b) of the 1999 Constitution is clear and unambiguous. It requires the candidate to secure not less than 25% of the votes in two third of the States and the FCT, Abuja. In ordinary usage, the word ‘and’ (used when referring to the States and FCT in Section 134 (2) (b) of the 1999 Constitution) is conjunctive<sup>2</sup> and suggests that the latter (i.e. FCT, Abuja) is to be added to or taken along with the first (two third of the States). What this simply means is two third of the States in addition to (or +) the FCT, Abuja. This suggests two third of 37 federating units. Thus, out of the 37 Federating units (+ FCT), the candidate must have a spread of 25% in at least 24 units on the authority of *Awolowo v. Shagari* ((SC 62 of 1979) [1979] NGSC 49. Interpreting the constitution as requiring the candidate to secure 25% of the votes cast in the FCT to be declared President is stretching the law to an illogical conclusion. This line of interpretation will suggest an attempt to detach the FCT from the Federating units by giving it a

status not envisaged by the 1999 Constitution.

The spirit of the constitutional requirement being considered is the need to ensure that our President possesses national appeal in order to have legitimacy as a President for all Nigerians. Our submission would be different if Section 134 (2) (b) of the 1999 Constitution requires the candidate to secure 25% of the votes in two third of the States of the Federation “and 25% of the votes in the FCT, Abuja”.

Beyond the foregoing, Section 299 of the 1999 Constitution makes the provisions of the Constitution apply to the Federal Capital Territory, Abuja as if it were one of the States of the Federation. Thus, for the purpose of electing a candidate to the office of the President, FCT, Abuja is construed as a State thereby making the total number of States 37 for the purpose of Section 134 (2) (b) of the 1999 Constitution. Accordingly, the candidate for the office of the President requires 25% of the votes in 24 states (being 2/3

<sup>2</sup> See *DASUKI v DIRECTOR GENERAL STATE SECURITY & ORS* (2019) LPELR - 48113 (CA)

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of all the states in the Federation). In *E. A. OKOYODE v. FEDERAL CAPITAL DEVELOPMENT AUTHORITY*<sup>3</sup> the Court of Appeal held among other things that: “*by virtue of Section 299 of the Constitution of the Federation, the Federal Capital Territory is in law a State. In others words the Federal Capital Territory should be treated as one of the States in the Federal Republic of Nigeria*”. Even though we do not totally agree with this wide interpretation of the Court of Appeal, we are bound to state it as the law as of the day of writing this piece since it has not been upturned by the Supreme Court. It must however be noted that our submission on this issue will not be affected in any material particular, irrespective of the future judgment of the apex court on the subject.

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<sup>3</sup> (2005) LPELR-41123(CA)

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