

LEGALITY OF PLACEHOLDER ARRANGEMENT IN THE NIGERIAN ELECTORAL PROCESS



INTRODUCTION

The Constitution of the Federal Republic of Nigeria, 1999 (the 1999 Constitution) and the Electoral Act, 2022 place premium on the power of political parties to hold, conduct, administrate and coordinate their primaries (either through election or consensus). This is a necessary procedure for submission of nominated names to the Independent Electoral Commission (INEC) as candidates contesting in a general election. This is the hallmark of democracy.

In our present electoral process, discussions are rife as to the several challenges faced by political parties and candidates alike in respect of substitution of nominated candidates (“candidates”) whose names have been submitted to INEC. There are growing concerns on the rectitude of submitting names of running mates as placeholders alongside Presidential candidates and some other similar arrangements. This is evident in scenarios that played out in the followings:

- a. The intentions of All Progressive Congress (“APC”) to substitute the Senatorial candidate of Bashir Machina with Ahmad Lawan in Yobe North Senatorial District and that of DIG Ekpoudom with Godswill Akpabio in Akwa Ibom North West (Ikot Ekpene Senatorial District),
- b. The APC’s submission of the name of Kabiru Masari along with its Presidential candidate, Senator Bola Ahmed Tinubu with the purport that the Vice-Presidential candidate is a placeholder, pending the nomination of a substantive Vice-Presidential candidate of the party, and

- c. The submission of the name of Dr. Doyin Okupe (the Director-General of Peter Obi Campaign Organisation) by the Labour Party as Vice-Presidential candidate of the party with the intention that he is to be temporary/placeholder vice-presidential nominee of the party until substituted at a later time, etc.

The above examples, amidst many others, have generated debates on how candidates and/or political parties can successfully substitute candidates’ names at INEC and how viable the concept of placeholder appears in Nigeria, particularly as regards the Electoral Act, 2022. The concept of placeholder has generated huge controversies within the political class and other stakeholders which could as a consequence trigger a sluiceway of litigations before a court of competent jurisdiction, especially since the INEC has described it as a Nollywood fantasy which is unknown to Nigeria’s constitutional and legal framework¹.

This article therefore seeks to interrogate this new innovation of placeholder arrangement and the substitution of candidates in the light of the relevant provisions of the Electoral Act, 2022 and other statutory provisions in Nigeria together with judicial decisions. The article further seeks to proffer answers to some of the questions and the news/reports making the rounds in Nigeria on how political parties hope to deal with the situation. Emphasis will be on placeholder/Vice-Presidential nominees of different political parties.

¹ Mr. Mike Igini (Akwa Ibom INEC Resident Electoral Commissioner (REC) of INEC, June 2022 in a radio interview monitored in Uyo, Akwa Ibom.

SUBSTITUTION OF CANDIDATES FOR ELECTIVE POSITIONS IN NIGERIA

The Electoral Act, 2022 provides in Section 33, that a candidate whose name has been submitted to the INEC can be changed or substituted only in the case of death or withdrawal by the candidate in which case, that candidate can be substituted. In the recently decided case of *A.P.C. V. LERE*², the Supreme Court held thus;

“The only instance where the name of a candidate other than the candidate that won a political party’s primary election will be forwarded to Independent National Electoral Commission is where the candidate that won the election withdrew his candidature by notice in writing signed by him and delivered by himself to the political party that nominated him for the election or where he dies before his name is submitted to the Commission or after the name has been submitted and before the elections. In the instant case, at no time did the 1st respondent withdraw his candidature or die.”

It is worthy of note that, such substitution or change by a political party is not automatic upon withdrawal or death of the candidate because Section 33 of the Act further provides that the affected political party will then hold a fresh primary election, within 14 days of such occurrence, to elect another candidate after which the fresh name will be submitted to the INEC.

Now, the question which begs for answer in respect of placeholder Vice-Presidential candidate is whether a fresh primary election can be held for nomination of a Vice-Presidential candidate or whether the entire primaries will be conducted afresh owing to the fact that the Vice-Presidential candidate was merely a subject of

nomination by a candidate? What does the Electoral Act 2022 contemplate in section 33 in respect of substitution of candidate?

WHO IS A CANDIDATE FOR ELECTIVE POSITION?

Section 33 of the Electoral Act 2022 is clear that only candidates can be changed or substituted in the event of withdrawal or death. Section 33 limited the scope of candidate to those whose names have been submitted to INEC by their respective political parties pursuant to section 29 of the Act. It must be emphasized that the process of nominating a candidate has been aptly captured under section 84 of the Act. Section 84(1) mandates political parties seeking to nominate candidates to hold primaries for aspirants to all elective positions. Section 84(2) provides that “*procedure for the nomination of candidates by political parties for the various elective positions shall be by direct, indirect primaries or consensus.*” In the same vein, Section 152 of the Act defines a candidate to mean “*a person who has secured the nomination of a political party to contest an election for any elective office.*”

It does appear that from the above provisions, a running mate (vice-presidential or deputy governorship candidate) is not a product of nomination by a political party as recognized under section 84 (1) and (2) of the Act and may not be susceptible to the application of section 33 of the Act. To give further impetus to the suggestion above, section 33 of the Act contains a proviso to the effect that upon the withdrawal or death of a candidate, “*the political party affected shall, within 14 days of the occurrence of the event, hold a fresh primary election to produce and submit a fresh candidate to the Commission for the election concerned.*” A running mate is not chosen by way of primary election

² (2020) 1 NWLR (Pt. 1705) 254 (P.286, paras.A-D)

but oftentimes selected by a candidate for elective position, where applicable³.

The above suggestions accord with literal interpretation of the Electoral Act 2022. Under this canon of interpretation, the law enjoins that words should be given their natural, ordinary and plain meaning as this exemplifies more the intention of the legislature⁴. Where literal interpretation is adopted, it may appear that running mate (placeholder) can be changed or substituted without the hazzles of strict compliance with the provisions of section 33 of the Act. That way, the requirement of withdrawal or death and subsequent fresh primaries within 14 days of the event may not apply.

Contrariwise, the literal interpretation may not meet the minimum standard of democratic process for election of President or Governor in Nigeria. Under the Constitution, nomination of a candidate for election as President or Governor is not complete or valid until a running mate is nominated to contest alongside the candidate under a joint ticket. Section 142(1) of the Constitution provides thus;

“In any election to which the foregoing provisions of this part of this Chapter relate, a candidate for an election to the office of President shall not be deemed to be validly nominated unless he nominates another candidate as his associate from the political party for his running for the office of President, who is to occupy the office of Vice-President...”

Similar provision is contained in section 187 (1) of the Constitution for Governor and his running mate. Juxtaposing the above provisions with section 29 of the Electoral Act, submission of names of candidate for

President and Governor of a State to INEC will only be valid after the candidate has nominated a running mate to contest with him and whose name is included in the list to be submitted to INEC. This is what happens in practice and which accords with purposive interpretation of a statute. In *MARWA & ORS V. NYAKO & ORS*⁵, the Supreme Court *Per Dahiru Musdapher JSC* (later *CJN*) held thus;

“Every legal document including the Constitution has a purpose without which it is meaningless. This purpose, or ratio legit, is made up of the objectives, the goals, the interests, the values, the policy and the function that by law it is designed to actualize. It is the duty of the judge to give the meaning of the words that best realizes its purpose and intent and intendment.”

The implication of the above authority is that any other interpretation of the Electoral Act 2022 that does not seek to bring it within the intendment of the Constitution will be an obvious inconsistency and null. The courts do not lend any interpretation of a statute such that will defeat or impoverish a provision of the Constitution, or indeed will lead to absurdity⁶. The law is expressed in the Latin maxim *ut res magit valeat quam pereat* – it may rather become operative than null.

A broader and more purposive interpretation of section 33 of the Electoral Act favours the argument that a running mate is a candidate who can only be changed or substituted upon his withdrawal or death. In any event, the name of a running mate is submitted to INEC alongside that of the Presidential or Gubernatorial candidate. Upon the submission, he becomes a Vice-Presidential or Deputy-Governorship candidate for the election and contesting for a specific elective office.

³ Sections 142(1) and 187(1) of the Constitution.

⁴ *Marwa & Ors v. Nyako & Ors* (2012) LPELR-7837(SC)

⁵ (2012) LPELR-7837

⁶ *Ifezue v. Mbadugha* (1984) 1 SCNLR 427.

What is more, the intendment of section 33 of the Act is to stem the tide of arbitrary substitution of candidates for election after submission of their names to INEC. To make the section operative and/or effective in relation to the elective office of the Vice-President or Deputy-Governor, a contestant for the office whose name has been submitted to INEC is, by all known rules of interpretation, a candidate for the election.

IS PLACEHOLDER ARRANGEMENT A CONCEPT COGNIZABLE UNDER THE NIGERIAN ELECTORAL LAWS?

Recently the presidential candidates of the APC and Labour Party nominated their running mates and submitted the names to INEC as candidate to meet up with the deadline for submission of political parties' candidates names (Presidential and Vice-Presidential candidates)⁷. There are confirmed reports making the rounds that the names of the Vice-Presidential candidates will be subsequently substituted with substantive names. This concept has been described by the candidates and other political observers as "placeholder" arrangement.

A Placeholder is an official appointed temporarily to a position, with the understanding that he will not seek office in their own right,⁸ but holds the office until a substantive appointment or election is made into that office. Placeholder is a concept that is somewhat recognized and has been applied in the United States of America (USA) and often occurs in cases where a senator dies in office or leaves before the expiration of their term.

The concept of placeholder is alien to the Nigerian electoral laws particularly the 1999 Constitution of Nigeria and the Electoral Act, 2022. Other than stated above where substitution of candidates can be made in compliance with the parameters recognized under the Electoral Act 2022, there is no provision in the Electoral Act or indeed any other law where placeholder arrangement is recognized as constituting part of Nigerian electoral process. What then happens with the arrangements made by APC and Labour Party who nominated Vice-Presidential candidates as placeholders?

The arrangement under reference may be resolved within the context of section 33 of the Electoral Act 2022 on substitution of candidates for election. As argued above, where a narrow construction of section 33 of the Electoral Act is adopted, then a running mate who is holding fort as a placeholder is not a candidate within the context of the Electoral Act 2022. Therefore, the requirement of withdrawal or death and subsequent conduct of primaries may not be applicable for substitution of such placeholder running mate. This will lend itself to arbitrariness and the mischief sought to be cured in the Electoral Act 2022 may well be accentuated. It is arguable if this is the intendment of the Electoral Act 2022.

Where the broader view is adopted, the placeholder running mate is a candidate on a joint ticket with the Presidential candidate. Even though his nomination is not by way of primary election or consensus arrangement, yet he shares same inseverable fate with the Presidential candidate because of the joint ticket. We are of the view that withdrawal or death of one affects the validity of nomination of the other. In *PDP &*

⁷ The power given to a presidential candidate to nominate a running mate is constitutional and provided under Section 142 (1) of the 1999 constitution of the Federal Republic of Nigeria, (As Amended)

⁸ Amira, Dan (July 16, 2010). "Carte Goodwin, 36, Gets to Be a Senator for a Few Months". *New York Magazine*.

*ORS V. DEGI-EREMIENYO & ORS*⁹, the apex Court in voiding the election of David Lyon as Governor-elect of Bayelsa State on account of disqualification of the Deputy-Governor-elect, held per *EJEMBI EKO JSC* as follows:

“The sum total is that the joint ticket of the 1st and 2nd respondents sponsored by the 3rd respondent was vitiated by the disqualification of the 1st respondent. Both candidates disqualified are deemed not to be candidates at the governorship election conducted in Bayelsa State.”

Similarly, in *DIRI V. ANDP & ORS*¹⁰, where the Deputy-Governorship candidate was found to be below 35 years of age which does not meet the constitutional qualification for the office under section 177(b) of the Constitution, the Court of Appeal, per *OBANDE OGBUINYA JCA*, held thus;

“In a word, the first respondent’s two Deputy Governorship candidates were not validly nominated on the footing of underage. Incidentally, their invalid nomination was not personal to them. In the view of the law, it contaminated the purity of the nomination of its Gubernatorial candidate, Hon. Lucky King-George, and soiled it with invalid nomination in line with the prescription of Section 187 (1) of the Constitution, as amended, see PDP v. Degi-Eremienyo (unreported) Appeal No: SC/2020; Wada v. Bello (supra). In the aggregate, the three candidates, which the first respondent paraded as its candidates for the offices of Governorship and Deputy Governorship, share the same misfortune of invalid nomination. The foregoing, with due reverence, demolishes the first respondent’s

defeasible defence and dazzling argument. Both are disabled from birth. They cannot fly.”

Leveraging the above authorities and further fortified by section 142(1) of the Constitution, we are of the view that where the Vice-Presidential candidate withdraws, as in the case of placeholder arrangement, the political party will have to conduct a fresh primary to nominate both the Presidential and Vice-Presidential candidates whose names will be forwarded to INEC in substitution for the hitherto candidates. This appears to be the only plausible way to satisfy the requirement of our electoral laws and in particular section 33 of the Electoral Act.

We hold the informed view that the Electoral Act 2022 has not made it impossible to substitute a running mate, especially where the latter voluntarily withdraws or dies before the general election. We suggest that more liberal or simpler mode of conducting the subsequent primaries may be adopted to wit, primaries by consensus where the same Presidential candidate will be nominated and who will, in turn, nominate another running mate. This is so because, by the provisions of **Section 84 (2) of the Act**, a candidate can be nominated by direct, indirect primaries or consensus. Therefore, in conducting fresh primaries with the aim of substituting a vice-presidential candidate, the procedure of consensus nomination can be adopted subject to the conditions stipulated under **Section 84 (9) – (11) of the Act**.

It is worthy of mention that the proviso to section 34 (3) of the Electoral Act may appear to contradict section 33 of the Act. Section 34 provides for death of a candidate and power of INEC to suspend the election for a given period of time. Sub-section (3) thereof provides thus;

“If after the commencement of polls and before the announcement of the final result and declaration of a winner, a candidate dies –

⁹ (2020) LPELR-49734(SC)

¹⁰ (2020) LPELR 50947(CA)

(a) *the commission shall, being satisfied of the fact of the death, suspend the election for a period not more than 21 days; and*

(b)

Provided that in the case of presidential or gubernatorial or Federal Capital Territory Area Council election, the running mate shall continue with the election and nominate a new running mate”

The above provision permits the running mate to continue with the election upon the death of a Presidential or Governorship candidate after commencement of voting exercise, and for the hitherto running mate to nominate another running mate without the process of fresh primaries or consensus. This is a uniquely different scenario necessitating a special provision. Whilst section 33 is a general provision on substitution upon event of withdrawal or death of a candidate, the proviso to section 34 (3) above is specific to candidates for Presidential, Gubernatorial or Chairmanship of Federal Capital Territory Area Councils elections. It is the law that the provisions of a general nature must yield to those of a special one. This is expressed in a Latin maxim *generalia specialibus non derogant*. Therefore, being a special provision, the proviso to section 34(3) of the Act is not in conflict with nor does it whittle the effect of section 33 of the Act.

CONSEQUENCES OF REFUSAL TO WITHDRAW BY A PLACEHOLDER RUNNING MATE

The Electoral Act is very explicit on when a candidate can be substituted or changed by a political party and the conditions thereto. The implication is that a candidate cannot be arbitrarily substituted notwithstanding the arrangement made by the sponsoring political party. Thus, where a candidate's name is submitted to INEC as

a placeholder or is nominated to hold the post for someone else, the political party may be jinxed if such placeholder candidate refuses to withdraw and does not suffer the unfortunate fate of death. It will be an illegality to force a substitution on an unwilling and uncooperating candidate. This is the downside of placeholder arrangement.

CONCLUSION

It is clear that the concept of placeholder, though recognized in some jurisdictions like the USA, is not tenable in Nigeria but a change or substitution of candidate can be permitted only when it is done in strict compliance with the Electoral Act, 2022 on grounds of death or withdrawal of a candidate. However, where a withdrawal is executed by a candidate, the political party has the obligation to convey such withdrawal to the INEC not later than 90 days to the general election¹¹.

The authors are eager to see how Nigerian Courts will navigate the murky waters of the placeholder arrangement in the likely event that suits are filed for redress arising from fallout of the arrangement.

¹¹Section 31 of the Electoral Act, 2022

ABOUT THE AUTHORS



HARRISON OGALAGU
Associate Partner, Tope Adebayo LP
P: +234 (0) 8090797782
E: h.ogalagu@topeadebayollp.com



AKINBOBOLA AKINLUYI
Associate, Tope Adebayo LP
P: +234 (0) 8131606077
E: a.akinluyi@topeadebayollp.com

Do you need to get in touch with us, to know how we can help you and your business?
Please contact us using any of the details provided below:

TOPE ADEBAYO LLP

25C Ladoke Akintola Street, G.R.A. Ikeja Lagos, Nigeria
p: +234 (1) 628 4627
e: info@topeadebayollp.com
w: www.topeadebayollp.com

