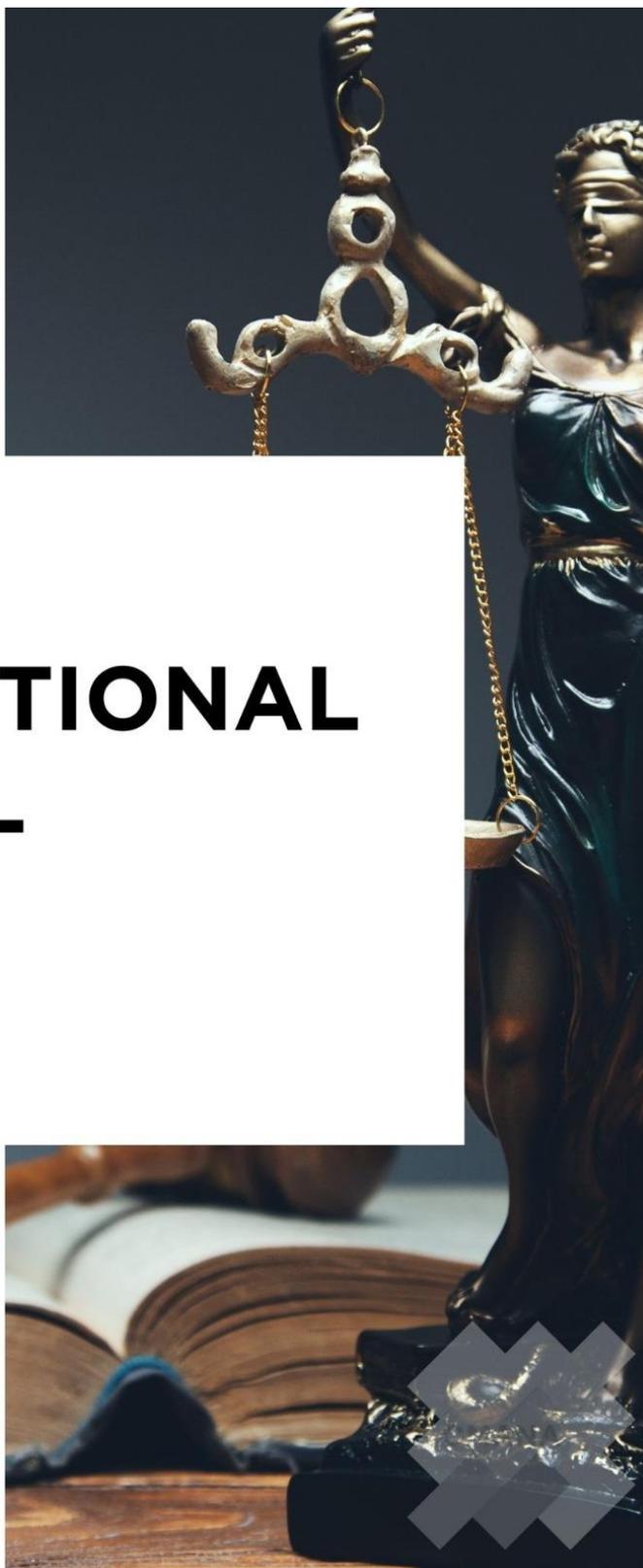
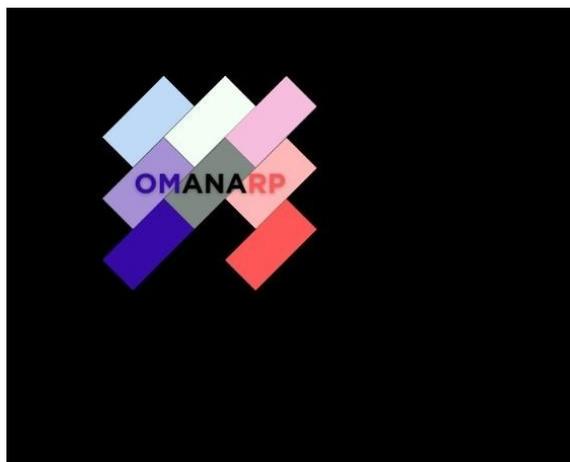
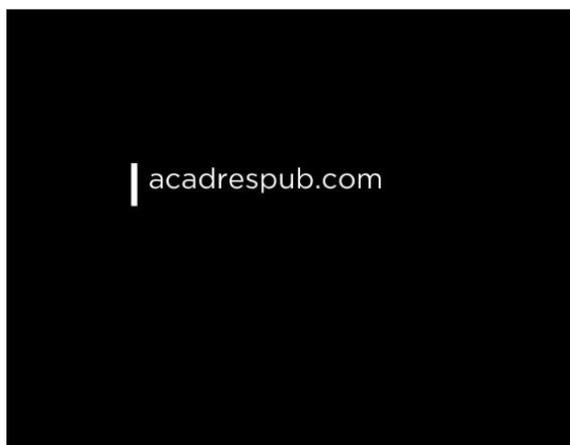

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CONSTITUTIONAL IMPLICATIONS OF THE 25% THRESHOLD OF VOTES CAST IN THE FEDERAL CAPITAL TERRITORY IN PRESIDENTIAL ELECTION

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ABSTRACT

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Obtaining at least 25% of votes cast in the Federal Capital Territory (FCT) in presidential elections in Nigeria has been a contentious issue in Nigerian politics. This paper examines the significance and implications of this provision, which has sparked intense debate among political analysts, legal experts, and stakeholders. Through a critical analysis of the Constitution of the Federal Republic of Nigeria 1999, electoral laws, and past election results, this study concedes that FCT possesses no special character that could suggest or make it seek or sustain a status other than that of a Territory, or an entity superior to other States in Nigeria such that obtaining 25% in it would be a determining factor in the determination of the winner of a presidential election contested by more than two candidates.

Keywords: Nigerian presidential election, Federal Capital Territory, 25% votes, electoral reform, democracy.

INTRODUCTION

The 2023 Presidential Election in Nigeria has thrown up interesting constitutional questions. The first is whether a candidate for election to the office of the President of the Federal Republic of Nigeria must in addition to obtaining one-quarter (25%) of the votes cast in the election in the Federation, also obtain one-quarter (25%) of the votes cast in the Federal Capital Territory, Abuja (FCT) to be deemed duly elected. The second, and corollary to the first, is whether the FCT has special status with respect to states and territories in Nigeria such as to be the determining factor in the winning of election into the office of the President of the Federal Republic of Nigeria - for which a candidate for an election to the office of President "shall" be deemed to have been duly elected where he obtains one-quarter (25%) of the votes cast in the election in the FCT.

While these questions are not strange, the 2023 Nigerian Presidential Election has accentuated them, and in particular, the hushed conversation on the status of the Federal Capital Territory, Abuja. The decision of the Presidential Election Petition Court (PEPC) affirmed by the Supreme Court of Nigeria, as regards the one-quarter (25%) win in the FCT in the matter of Peter Obi v INEC and 3ors (and Atiku Abubakar v INEC and 3 ors) call for a more robust interrogation of the subjects. Therefore, this article sets out to set the stage for a further and better conversation with the view to deepening the conversations around the subjects.

The contestation as to whether a candidate for election to the office of President must obtain one-quarter (25%) of the votes cast at the election in the FCT and whether the

FCT has special status was initiated by the provision of S.134 (2) (b) of the Constitution of the Federal Republic of Nigeria 1999 (CFRN 1999) which deals with the requirement for the election of a President where there are more than two candidates (i.e. three and above candidates) running for the office. The CFRN 1999 (S.134 (2) had set out the following as the criteria for winning a Presidential Election in a contest where there are more than two candidates (i.e., between three or more candidates):

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 each of at least two-thirds of all the States in the Federation and the Federal Capital Territory, Abuja.

By this provision, it is only the candidate for an election to the office of President, in a contest where there are three or more candidates for the election that has obtained (a) the highest number of votes cast at the election; and (b) has not less than one-quarter of the votes cast at the election each of at least two-thirds of all the States in the Federation and the Federal Capital Territory, Abuja that shall be deemed to have been duly elected.¹ This is mandatory such that if no candidate meets that requirement, no candidate can be deemed to have been duly elected and so returned. In which case the only remedy is to hold a second election conducted in accordance with subsection (4) of S. 134.²

The exercise here is not to explore the entire constitutional requirement for the election of the President of the Federal Republic of Nigeria, but the angle of the electoral process that relates to obtaining “one-quarter of the votes cast at the election each of at least two-thirds of all the States in the Federation and the Federal Capital Territory, Abuja” where more than two candidates i.e. three or more candidates vying for the office.

The article is doctrinal and employs both primary and secondary data and sundry literature on the subject to drive home its analysis. The article is presented in sections: section one presents an overview of the subject of this research. Section two addresses the parties' respective positions on the issue of 25% vote's factor in the Nigerian Presidential Election. Section three looks at the Presidential Election Petitions Court analysis of the parties' respective positions on the issue of 25% vote's factor in the Nigerian Presidential Election as it relates to

the determination of the petitions. Section four explores other possible interpretations open to S.134 (2) of the CFRN 1999. Section five takes a closer look at the status of the FCT with respect to essential provisions of the CFRN 1999. Section six is a concluding thought on the subject of the article.

The 25% votes factor in the Nigerian Presidential Election

In the aftermath of the keenly contested 25th February 2023 Presidential Elections in Nigeria, the element of one-quarter of the votes cast at the election i.e., 25% score in the FCT has been made very significant. This stems from the contention of the Petitioners³ that it is compulsory for the purpose of the declaration of a candidate as the duly elected President of Nigeria that he must in addition to obtaining one-quarter of the votes cast at the election in at least two-thirds of all the States in the Federation, also obtain same in the FCT. This position of the Petitioners has its foundation in their interpretation of the provisions of S. 134(2)(b) of CFRN 1999 which provided thus:

- (2) 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 each of at least two-thirds of all the States in the Federation and the Federal Capital Territory, Abuja.

The contestation at the Presidential Election Petition Court (PEPC) was centered on the question as to whether the requirement of a candidate for an election to the office of President scoring “not less than one-quarter of the votes cast at the election each of at least two-thirds of all the States” extended to the FCT. Put differently, whether it is mandatory that a candidate for an election to the office of President must, in addition to obtaining not less than one-quarter of the votes cast at the election each of at least two-thirds of all the States, to also obtain “one-quarter of the votes cast” in the FCT. This argument was premised on the use of “and” in relation to the inclusion of FCT in subsection 2(b) of section 134 of CFRN 1999. The Petitioners had argued that:

for the reason that the presidential election of 25th February 2023 was contested by more than two (2) candidates, a candidate shall be declared a winner only if he scores the highest number of votes cast at the

¹ (S.134(2) (a & b) CFRN 1999

² See S. 134 (3) CFRN 1999

³ Peter Obi & Ano v Independent National Electoral Commission & 3ors. Petition Number CA/PEPC/03/2023

election; and he has not less than one quarter of the votes cast at the election in each of at least two-third of all states in the Federation and the Federal Capital Territory, Abuja. In this petition, the 2nd Respondent, besides not scoring the majority of lawful votes cast at the election, did not obtain at least one-quarter of the votes cast in the Federal Capital Territory, Abuja and ought not to have been declared and returned elected....⁴

Consequently, the Petitioners sought:

that it be determined that on the basis of the remaining votes (after discountenancing the votes credited to the 2nd Respondent) the 1st Petitioner scored a majority of the lawful votes cast at the election and had not less than 25% of the states of the Federation, and the Federal Capital Territory, Abuja and satisfied the constitutional requirement to be declared the winner of the 25th February 2023 Presidential Election.⁵

That it be determined that the 2nd Respondent having failed to score one-quarter of the votes cast at the Presidential Election in the Federal Capital Territory, Abuja was not entitled to be declared and returned as the winner of the Presidential Election on 25th February 2023.⁶

An order cancelling the election and compelling the 1st Respondent to conduct a fresh election at which the 2nd, 3rd, and 4th Respondents shall not participate.⁷

For the purpose of this discussion, we shall concentrate on ground number three dealing with the subject matter of this paper - which is that “the 2nd Respondent was not duly elected by the majority of the lawful votes cast at the election” because he did not obtain - not less than one-quarter of the votes cast at the election in the Federal Capital Territory, Abuja.

In reaction to the Petitioner’s Petition challenging the outcome of the Presidential Election the Respondents submitted that the contention of the Petitioners that for a candidate to be declared a winner of Presidential Election he must score not less than one quarter of the votes cast in the FCT is misconceived. They submitted that this issue being one of interpretation of the provisions of S.134(2) CFRN 1999, the Supreme Court of Nigeria has

admonished against an interpretation of stultifying narrowness and encouraged a more liberal and broad interpretation. To support their position, they cited *Rabiu v State*;⁸ *Global Excellence Comm. Ltd v Duke*;⁹ *AG of Bendel State v AG of the Federation & Ors*;¹⁰ and *Maihaja v Gaidam*.¹¹ They also cited S. 134(2) CFRN 1999 and contended that, conceding that a candidate in a Presidential Election scoring at least one-quarter of the votes in the FCT is a mandatory requirement before a candidate can be declared winner of a Presidential Election, as the Petitioners deemed to have been purport of subsection 2(b) of S. 134 of CFRN 1999, will be to ignore other salient provisions of that section (S. 134 of CFRN 1999) all of which must be read together to find the intention of the legislature. They pointed out that the provisions of S. 132(4) CFRN 1999 states that for the purpose of an election to the office of the President, the whole of the Federation shall be regarded as one constituency, while S. 318 of CFRN 1999 has defined the Federation as the Federal Republic of Nigeria, which by S. 2 of the CFRN 1999 is one indivisible and indissoluble sovereign entity consisting of States and a Federal Capital Territory.

They also referred to S. 299 of CFRN 1999 which provides that the provisions of CFRN 1999 shall apply to the FCT as if it were one of the States of the Federation. They submitted that S. 299 of CFRN 1999 has been interpreted and the status of the FCT, has been clearly determined in *Suleiman v APC*;¹² *Bakari v Ogundipe*;¹³ *Baba-Panya v President, FRN*;¹⁴ and *Okoyode v FCDA*.¹⁵ They further submitted that if the provisions of Sections 134(2)(b) and 299 of CFRN 1999 are read together, it will be clear that the intendment of S. 134(2)(b) of CFRN 1999 in specifying “all the States of the Federation and the FCT, Abuja” is not for the FCT, Abuja to be considered separately as requiring that a candidate must score not less than one quarter in the FCT, Abuja before he is declared winner in a Presidential Election. They added that the word “and”, as used in S. 134(2)(b) of the CFRN 1999, has been judicially interpreted, citing the cases of *Buhari v INEC & ors*;¹⁶ and *Dasuki v Director General, State Security & Ors*.¹⁷ They argued that the provision of S. 134(2)(b) of CFRN 1999 as it relates to the requirement of having not less than one quarter of the votes in each of at least two-thirds of all the States in the Federation and the FCT Abuja ought to be taken as an

⁴ Paragraph 81 of Petitioner’s Petition i.e. *Peter Obi & Ano V Independent National Electoral Commission & 3ors Petition Number CA/PEPC/03/2023*

⁵ Paragraph 102 (1) (iii) Petitioner’s Petition i.e. *Peter Obi & Ano V Independent National Electoral Commission & 3ors Petition Number CA/PEPC/03/2023*

⁶ Paragraph 102 (2) Petitioner’s Petition i.e. *Peter Obi & Ano V Independent National Electoral Commission & 3ors Petition Number CA/PEPC/03/2023*

⁷ Paragraph 102 (3) Petitioner’s Petition *ibid*

⁸ (1981) 2 NCLR 293

⁹ (2007) 16 NWLR (pt. 1056) 22 at 41 – 42

¹⁰ (1982) 3 NCLR 1

¹¹ (2018) 4 NWLR (pt. 1610) 454 – 492, para b

¹² (2023) 5 NWLR (pt. 1877) 211 at 255

¹³ (2021) 5 NWLR (pt. 1768) 1 at 31

¹⁴ (2018) 15 NWLR (pt. 1643) 395

¹⁵ (2006) All FWLR (298) 1200 at 48 – 50, para. D – E

¹⁶ (2008) LPELR – 814 (sc) at 77 – 78, para. E – B

¹⁷ (2019) LPELR – 49133 (CA)

aggregate of all the states in the Federation and the FCT, Abuja, comprising of the 36 States in the Federation plus the FCT, Abuja, making the 37th State. Consequently, they urged the court to so hold and discountenance the Petitioners' contention on the issue.¹⁸

Arguing per contra, the Petitioners submitted that when examining S. 134(2)(b), S. 299 of the CFRN 1999 must be considered. They submitted that the word "and" as used in S. 134(2)(b) CFRN 1999 is conjunctive as judicially interpreted in a litany of cases that include *Abubakar v Yarádua*.¹⁹ According to them, the language of the CFRN 1999 is clearly to the effect that for a Candidate to be declared the winner of the Presidential Election, that Candidate must secure at least one-quarter of the votes cast in two-third of the entire 36 States of the Federation, which is 24 States, and that Candidate must also secure not less than one-quarter of the votes cast in the FCT. They argued that the conditions in S.134 (b) CFRN 1999 are conjunctive and must be interpreted as such.

Refereeing to *Okoyode v FCDA supra*; and *Panya v President supra*, which were cited by the Respondents, the Petitioners submitted that those decisions were only on S. 299 of CFRN 1999 and none of them interpreted S. 299 of CFRN 1999 together with S. 134(2) of CFRN 1999 and they cannot wholly guide the interpretation on the combined effect of those provisions. They argued that the purposive interpretation of the provisions of Sections 134(2) and 299 of CFRN 1999 is that obtaining 25% of FCT is an additional standalone requirement for the election into the office of the President, more so, as S. 3 and Part 11 of the Second Schedule of CFRN 1999 lists the States of the Federation, and FCT in not included as a State. Consequently, they submitted that S. 299 of CFRN 1999 cannot be read in isolation of its remaining part which relates to the Executive, Legislative and Judicial power and cited *Iwuchukwu & Anor v AG Anambra State & Anor*;²⁰ and *Grand Systems Petroleum Ltd v Access Bank Plc*²¹ in support of their position. Furthermore, they submitted that while S. 299 of CFRN 1999 is a general provision, S. 134(2)(b) of CFRN 1999 is a specific provision on the condition for the declaration of a Presidential Candidate as winner of the Election.²²

PEPC Position

¹⁸ See pages 304 to 306 of **PEPC (CONSOLIDATED)** the judgment in *Peter Obi v INEC CA/PEPC/03/2023; CA/PEPC/04/2023; CA/PEPC/05/2023*

¹⁹ (2008) 19 NWLR (pt. 1120) 7

²⁰ (2015) LPELR – 24487 (CA)

²¹ (2015) 3 NWLR (pt. 1446) 317 at 346, parras e-h

²² See P 306 – P 308 **PEPC (CONSOLIDATED)** the judgment in *Peter Obi v INEC CA/PEPC/03/2023; CA/PEPC/04/2023; CA/PEPC/05/2023*

Relying on the Supreme Court's decision in *FRN v Nganjiwa*,²³ which has to do (among other issues) with avoidance of "mere technical rules of interpretation of statutes" in the interpretation of the Constitution "so as not to defeat the principles of government enshrined therein," "unless there is something in the text or in the rest of the Constitution to indicate that a narrower interpretation will best carry out the objects and purpose of the Constitution," the PEPC noted that that attention is to be paid to "the principles upon which the Constitution was established rather than the direct operation or literal meaning of the words used as held in *Global Excellence Comm. Ltd v Duke* (supra); and in *Bronik Motors Ltd v Wema Bank Ltd*.²⁴

The PEPC observed that the Petitioners' interpretation of S. 134(2)(b) of CFRN 1999 was founded "principally on a fixation with the word 'and' appearing between the phrase 'he has not less than one quarter of the votes cast at the election in each of at least two-third of the States of the Federation,' and 'the FCT, Abuja,' is fallacious, if not outrightly ludicrous." The PEPC referred to the preamble to the CFRN 1999 and the Directive Principles of State Policy contained therein - which summarily proclaims equality between citizens. The PEPC observed that the "equality of rights in every citizen as stated in the provision cannot by any means be read to exclude equality of the weight and value of their votes."²⁵

According to the PEPC "... the futility and hollowness in the argument of the Petitioners that the votes of the voters in the FCT, Abuja have more weight than other voters in the country, to the extent that their votes purportedly have a veto effect on the other votes, is rendered bare."²⁶ The PEPC stated (p322) that the "punctuation mark employed by the framers immediately after the part of that provision ending with 'Federation' ... is a semicolon whose function in a sentence is to separate independent clauses of a compound sentence" [*semicolon was defined in the Meriam Webster's online dictionary mine*].²⁷

Consequently, the PCPC held "without any equivocation, that in a Presidential Election, polling one quarter or 25% of total votes cast in the Federal Capital Territory Abuja is not a separate precondition for a candidate to be deemed as duly elected under Section 134 of the CFRN 1999. In

²³ (2022) LEPELR - 58066 (SC)

²⁴ (1983) LPELR – 808(SC)

²⁵ The provision here refers to the preamble to the CFRN 1999 and the directive principles of state policy

²⁶ Page 320 **PEPC (CONSOLIDATED)** the judgment in *Peter Obi v INEC CA/PEPC/03/2023; CA/PEPC/04/2023; CA/PEPC/05/2023*

²⁷ Page 322 **PEPC (CONSOLIDATED)** the judgment in *Peter Obi v INEC CA/PEPC/03/2023; CA/PEPC/04/2023; CA/PEPC/05/2023*

consequence, issue 4 is also resolved against the Petitioners and in favour of the Respondents.”²⁸

In consideration of the arguments put forward by the Petitioners and the Respondents, the PEPC held the view that it was sufficient for the declaration of a candidate as the duly elected President of the Federal Republic of Nigeria if he meets the requirement of S. 134 (2) of CFRN 1999 that prescribed obtaining the highest number of votes cast at the election; and not less than one-quarter of the votes cast at the election each of at least two-thirds of all the States in the Federation, even if the candidate did not obtain one-quarter of the votes cast at the election in the FCT Abuja. By that position of the PEPC in agreeing with the position of the Respondents and upholding the declaration by the Independent National Electoral Commission (INEC) of the candidate that obtained one-quarter of the votes cast at the election each of at least two-thirds of all the States in the Federation but did not obtain one-quarter of the votes cast at the election in FCT as prescribed by S. 134(2)(b), the PEPT had set the FCT aside as being equal with other states in Nigeria i.e. that the FCT is equal with other states in Nigeria therefore has no special status.

This pronouncement of the PEPC approved by the Supreme Court of Nigeria leaves much to be desired. And may have inadvertently set the stage for possible unnecessary bifurcation of the CFRN 1999. In their interpretation of subsection 2(b) of S.134 of CFRN 1999, the PEPC had read “and” as contained in that subsection 2(b) as disjunctive rather than conjunctive. Whereas they have the authority to so hold, one wonders why the same measure was not applied in their interpretation of the “and” linking subsection 2(a) to subsection 2(b) of S.134 of CFRN 1999 - in which case it would have been sufficient to deem as duly elected a candidate for an election to the office of President that has the highest number of votes cast at the election without more. By this interpretation, the PEPC had conceded that it was necessary that a candidate for an election to the office of President to 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 each of at least two-thirds of all the States in the Federation regardless of what the candidate scored in the FCT. Applying the PEPC’s position and admitting “and” as disjunctive, the accurate interpretation of the provisions of S. 134(2) would be that it was sufficient for a candidate for an election to the office of President to be deemed to have been duly elected where - there being more than two candidates for

the election (if) he has the highest number of votes cast at the election, only. By the same stroke, such a candidate need not obtain - 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 (with or without obtaining one-quarter of the votes cast in the FCT) to be deemed to have been duly elected. Conversely, a candidate would have to obtain the highest number of votes cast at the election; and also obtain not less than one-quarter of the votes cast at the election each of at least two-thirds of all the States in the Federation to be deemed to have been duly elected. In this instance obtaining one-quarter of the votes cast in the FCT would be compulsory.

What other interpretation(s) is S. 134 (2) amenable to For the purpose of this discussion, the provisions of s. 134(2) is reproduced verbatim:

- (2) 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 each of at least two-thirds of all the States in the Federation and the Federal Capital Territory, Abuja.

A thorough look at the above subsection indicates that the subsection has two prongs identified as “a” and “b.” Whereas “a” deals with the scoring of the highest votes, “b” deals with the scoring of one-quarter (25%) of the votes cast at the election in each of at least two-thirds of all the States in the Federation and the FCT. Sub, subsection (b) is indicative that for a successful meeting of the set requirements, a candidate to be deemed to have been duly elected should have scored one-quarter (25%) of the votes cast in two-thirds of the entire states of Nigeria - which amounts to 24 states. This one-quarter (25%) of the votes cast requirement extends to the FCT. The intriguing question here is whether the provision of the sub, subsection (2)(b) is a single requirement or has created an additional requirement similar to the requirements created in and by subsections (“a” and “b”). Treating sub, subsection (b) in isolation would indicate of an additional requirement - which is that 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 he, in addition to obtaining not less than one-quarter of the votes cast at the election in two-thirds of all the States also obtains same in the FCT. Whereas it would be great to have a candidate for an election to the office of President also obtain not less than one-quarter of the votes cast at the election in the FCT, it appears to be a strain on the system that may not be expedient. The curious question here is should not obtaining not less than one-quarter of the votes cast at

²⁸ See Page 325 of PEPC (CONSOLIDATED) the judgment in Peter Obi v INEC CA/PEPC/03/2023; CA/PEPC/04/2023; CA/PEPC/05/2023

the election in the FCT be sufficient to preclude the declaration as duly elected, a candidate that has obtained the highest number of votes cast at the election (Ss. 2(a); and also obtained not less than one-quarter of the votes cast at the election in two-thirds of all the States in the Federation (or more) who did not obtain one-quarter of the votes cast at the election the FCT in the same election. The answer to the above question would most probably be that it is an unnecessary enlargement of the requirements for election into the office of the President of Nigeria.

However, treating subsection (b) in conjunction with subsection (a) would indicate of no additional requirement - which is that a candidate for an election to the office of President shall be deemed to have been duly elected where there are more than two candidates for the election has obtained the highest number of votes cast at the election; and also obtained not less than one-quarter of the votes cast at the election two-thirds of all the States. Where this is the case, it would not be necessary to obtain not less than one-quarter of the votes cast at the election in the FCT as that would amount to overstretching the provisions of that section of the CFRN 1999. Here, it would be important to suggest that if that was the intendment of the CFEN 1999, the element of not less than one-quarter of the votes cast at the election in the FCT would have been made the third requirement and inserted as sub subsection "c." This is more so very relevant in an election where a candidate that had not obtained one-quarter of the votes cast at the election in the FCT has obtained the highest number of votes cast at the election; and has also obtained not less than one-quarter of the votes cast at the election in more than two-thirds of all the States in the Federation. Under this circumstance, insisting that a candidate for an election to the office of President, who has obtained the highest number of votes cast at the election; and has also obtained not less than one-quarter of the votes cast at the election in just two-thirds of all the States in the Federation without obtaining same in the FCT might be understandably considerable. However, to insist that a candidate for an election to the office of President that has the highest number of votes cast at the election; and has obtained one-quarter of the votes cast at the election in more than two-thirds of all the States in the Federation, incidentally, without obtaining one-quarter of the votes cast at the election in the FCT would smell of injustice or misappropriation of juridical liberty.

On the other hand, an interpretation of the sub subsection that concedes of the insistence that a candidate for an election to the office of President must in addition to obtaining the highest number of votes cast at the election; and obtaining not less than one-quarter of the votes cast at the election in more than two-thirds of all the States in the Federation; and obtaining not less than one-quarter of the votes cast at the election in the FCT

would inadvertently not only place the FCT above states of the federation but also give the FCT a supper status not anticipated by the CFRN 1999.

On the status of the FCT

As indicative of the contestations in the 2023 Presidential Election Petition rounds in Nigeria and for those who hold the opinion that for a candidate for an election to the office of President to be deemed duly elected obtaining not less than one-quarter of the votes cast at the election in the FCT is an additional requirement - a consideration as to whether the FCT has special status would be needful. It should of course be an interesting inquiry for those who do not agree that obtaining not less than one-quarter of the votes cast at the election in the FCT is an additional requirement.

The first part of this inquiry would be to explore the rationale for the designation of the FCT as a Territory rather than a State. According to the Cambridge Dictionary,²⁹ Territory (as relevant to this discussion) was defined as a large area that has some local government but fewer rights than a Province or a State. Whereas in the *Black's Law Dictionary, 2nd Ed (online)*³⁰ Territory was defined as:

A part of a country separated from the rest, and subject to a particular jurisdiction. In American law. A portion of the United States, not within the limits of any state, which has not yet been admitted as a state of the Union, but is organized, with a separate legislature, and with executive and judicial officers appointed by the president.³¹

The foregoing definitions of Territory; and the designation of the FCT as a Territory in the first instance presupposes that it:

Consists of a large area

1. has some local government
2. has fewer rights than a Province or a State.

In the second instance, it presupposes that:

1. it is a part of a country separated from the rest, and subject to a particular jurisdiction
2. it is not within the limits of any State
3. it has not yet been admitted as a State of the federation

²⁹

<https://dictionary.cambridge.org/us/dictionary/english/territory>

³⁰ <https://thelawdictionary.org/territory/>

³¹ The definition referred to the case - See Ex parte Morgan (D. C.) 20 Fed. 304; People v. Daniels, 6 Utah, 2S8, 22 Pac. 159, 5 L. R. A. 444; Snow v. U. S., 18 Wall. 317, 21 L. Ed. 784. See <https://thelawdictionary.org/territory/>

4. it is organized
5. has a separate Legislature, Executive, and Judicial Officers appointed by the President.

Cumulatively a Territory consists of a large area; has some local government; has fewer rights than a Province or a State; is a part of a country separated from the rest, and subject to a particular jurisdiction; it is not within the limits of any State; it is not yet been admitted as a State of the Union; it is organized; has a separate Legislature, Executive and Judicial Officers appointed by the President. In the case of FCT as a Territory, these features are present. Here, the Territory designated as FCT has an Area measuring about 7,315 KM²; has Six Area Councils;³² far less than any State in Nigeria; has fewer rights than a State in the sense of the non-availability of the structure of a full State, its affairs are supervised by the Nigerian National Assembly; is a part of Nigeria different from the rest; it is not under the control of any State; however it is not yet designated as a State in Nigeria although it is organized with its own separate Legislature, Executive and Judicial Officers appointed by the President.

The CFRN 1999 purposely designated the FCT as a Territory and made it different from a State,³³ and designated Nigeria as a Federation consisting of States and a Federal Capital Territory.³⁴ It made provision for one only one Senator as against three Senators provided for States.³⁵ The FCT is also made separate for the purpose of deeming to have been duly elected, a candidate for an election to the office of President;³⁶ for the purpose situating the Headquarters of Political Parties;³⁷ for the purpose of designating a High Court for the FCT,³⁸ appointment of Chief Judge and Judges of the High Court of the FCT³⁹ and constitution of the High Court of the FCT.⁴⁰ The CFRN 1999 also made general provisions for FCT,⁴¹ and designated it as the Capital of the Federation and seat of the Government of the Federation,⁴² among other provisions.

³² S. 303 CFRN 1999. Please note that Area Councils is defined to mean each of the administrative areas within the Federal Capital Territory, Abuja – see - S. 318 (1) CFRN 1999; see also Part 11 (1)(2) CFRN 1999

³³ S.2(2) CFRN 1999

³⁴ See also S. 3(4)5) CFRN 1999

³⁵ S. 48 CFRN 1999. See also s. 300 CFRN 1999 wherein it was stated that the FCT is entitled to one senatorial district and as many Federal Constituencies as may be due under S.49 CFRN 1999

³⁶ S. 133 and S 134 CFRN 1999

³⁷ S. 222(f) CFRN 1999

³⁸ S. 255 CFRN 1999

³⁹ S. 256 CFRN 1999

⁴⁰ S. 258 CFRN 1999

⁴¹ S. 297 CFRN 1999

⁴² S. 298 CFRN 1999

The above expose clearly indicates, in consonance with the attributes of a Territory, that the FCT is short of the attributes of a State in Nigeria by its size (7,315 KM); its number of *Local Governments* (six Area Councils); non-availability of the general structure of a full State e.g., an elected Governor; supervision of its affairs by the Nigerian National Assembly; its non-designation as a State in Nigeria. The obvious conclusion derivable from the forgoing examination of the FCT is that, besides not being so designated, it is less than a State in Nigeria. It possesses no special character that could suggest or make it seek or sustain a status other than that of a Territory, or an entity equal or superior to States in Nigeria.

Without conceding that there is, for the purpose of covering the field, it would be good to explore other legal and social issues to see if there could be identified any extenuating circumstance(s) that could sustain an argument for an enhanced status for the FCT aside that provided by the CFRN 1999 - without disregard for the fact that the Constitution is the grand norm.

25% of votes in FCT to win a presidential election: (not less than one-quarter of the votes cast at the election each of at least two-thirds of all the States in the Federation and the Federal Capital Territory, Abuja.) s.134(2)(b) CFRN 1999: this has been extensively discussed earlier in this work.

Provision for the FCT in the Electoral Act 2022: given that the Electoral Act 2022 is inferior to the CFRN 1999, it is but an act of surplusage (or should I say inquisitiveness) for the purpose of a full discussion to look at the Electoral Act 2022. Does the fact that the Electoral Act 2022 made provisions specific to the FCT confer any special status on the FCT? The answer to that question is an emphatic No. Specific provision made for the FCT in the Electoral Act is by virtue of the fact that it is the National Assembly, the makers of the Electoral Act that have supervisory responsibility over the affairs of the FCT. Laws or provisions made in that regard are not in reverence of the place of the FCT but as a matter of discharge of responsibility placed on the National Assembly to supervise the FCT.

The right of the native/original inhabitants of the FCT: whether there are such a people in present-day Nigeria is questionable. The CFRN 1999 or its predecessors did not recognize the existence of such people. Neither has any law ever done so. The people inhabiting the FCT before its designation as the Federal Capital Territory were resettled in neighbouring states, making it difficult to sustain any argument in that regard. Reference made to the FCT or Abuja in the CFRN 1999 has been with respect to its place as the Federal Capital Territory. And no reference was ever made to it with respect to the

original inhabitants or any perceived rights that are or may be due to them. Therefore, putting any contestation as the indigeneship of the FCT or Abuja is an exercise in futility.

Conclusion

The 2023 Presidential Election in Nigeria has brought to the forefront critical constitutional questions regarding the expectation that a presidential candidate must obtain 25% of votes cast in the Federal Capital Territory (FCT), Abuja to be declared and returned as duly elected. This article examined the provision of S.134 (2)(b) of the Constitution of the Federal Republic of Nigeria 1999 (CFRN 1999), which sets out the criteria for winning a Presidential Election. The analysis has shown that the FCT has no actual special status in the electoral process, notwithstanding its significant implications for the legitimacy and declaration of return on elections to the office of the president.

The decision of the Presidential Election Petition Court (PEPC) and the Supreme Court of Nigeria in the matter of Peter Obi v INEC and 3ors did highlight the need for a more robust interrogation of the subject; and this article took its lead to set the stage for a further and better conversation on the issues, with a view to deepening the conversation around the subject.

Ultimately, this article argues that the 25% threshold requirement in the FCT is a critical component of the electoral process, and its retention or abolition has significant consequences for Nigerian democratic governance. As such, it is essential to approach this issue with caution and careful consideration, taking into account the potential impact on the legitimacy and representativeness of the presidency. To that end, it is suggested that S.134 (2) of CFRN 1999 should be amended to clearly present and reflect the true intendment of the constitution in this regard, which at the moment is contentious. Part of what may be done in a possible reform is to reduce the possibility of construing some “ands” as conjunctive and other “ands” as not conjunctive as was the case in PEPC’s construing of the “and” at the end of S.134 (2) (a) as conjunctive while construing the “and” linking the “... States in the Federation *and* the Federal Capital Territory” in S.134 (2) (b) as not conjunctive. This may be achieved by holding the FCT equal to other states in Nigeria in which case there would be no need to mention FCT in S.134 (2) (b), the other would be to give FCT a special status that would make obtaining 25% in FCT a distinct determining factor in presidential elections. This would require the creation of a subsection “c” for S.134 (2) CFRN 1999.