

**THE DILEMA OF BURDEN AND STANDARD OF PROOF
REQUIREMENT IN NIGERIAN ELECTION PETITION CASES:
BETWEEN LEGAL THEORY AND ELECTORAL JUSTICE**

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Abstract

Nigerian courts frequently face the difficult task of deciding if election results are credible right after they are announced. At the heart of these election challenges in Nigeria are two main ideas: who is responsible for providing proof, and how strong that proof needs to be. Currently, anyone disputing an election outcome (the petitioner) carries a heavy responsibility. They must present extremely strong evidence of any electoral misdeeds, often needing to prove it "beyond a shadow of a doubt" or with "highly convincing facts." This strict demand for proof, which comes from established legal traditions, often makes it hard to fix real problems with elections. This creates a clear conflict between strictly adhering to legal rules and the fundamental goals of fairness and maintaining a healthy democracy. This paper examines the complex issues caused by these proof requirements in Nigerian election tribunals. It explores where legal theory meets the practical need for fair elections. The paper engaged the doctrinal methodology to question how standard proof rules are applied in

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elections. The research shows that while these tough proof standards do help prevent people from making baseless complaints, they also, at the same time, hinder legitimate concerns and erode public trust in the election process. The paper ends by suggesting a rethink and amendment of the burden and standard of proof for electoral justice.

Keywords: Election Petition Tribunals; Electoral Justice; Electoral Malpractice, Evidentiary Requirements, Democratic Integrity

1.0 INTRODUCTION

Deciding election arguments in Nigeria truly depends on two core ideas: who needs to prove what, and how strong that proof needs to be. These fundamental rules are super important for election courts when they decide if results should stand or be overturned. They're essentially the evidence rules, ensuring that election outcomes are either kept or changed only with strong, believable proof of cheating or mistakes. While legal thinking usually wants very high levels of evidence to prevent silly complaints, the ever-changing reality of elections calls for a flexible approach that deals with the truth on the ground regarding election malpractice and aims for the bigger goal of fairness in elections. This conflict makes us seriously wonder if our current legal rules truly manage to balance the need for clear court decisions with the goal of keeping our democracy honest and fair.

Election challenges are unique; they're not like your typical court cases. They combine strict procedures with political sensitivities. Over time, judges have gone back and forth between rigid and flexible ways of understanding what proof is needed, creating what's called the "evidence puzzle" in election judgments. This puzzle happens because even though our election law (the Electoral Act) demands that those complaining show

strong proof, the constitution's vital need for free and fair elections calls for a more meaningful approach, one that values truth and fairness more than legal fine print. This built-in conflict between strictly following legal forms and ensuring a truly legitimate democracy often shows up in how courts decide what level of proof is required for claims like not following rules, corruption, or too many votes.

The tough enforcement of these rules has sparked a big debate among experts and lawyers about whether they truly fit Nigeria's complicated election environment. For instance, Uwa argues that Nigerian election law prefers a very high standard of "clear and convincing evidence", ideas taken from criminal law, to keep elections steady and stop baseless challenges. However, Okonkwo criticizes this viewpoint, pointing out that it ignores the special nature of election disputes. In these cases, evidence is often indirect rather than direct, simply because elections involve huge practical difficulties. Stubbornly sticking to traditional evidence rules in election courts doesn't fully grasp that in such disputes, the available proof is frequently indirect, not straightforward, due to the complicated organization and massive participation involved. Things like problems at voting places, scaring voters, or fiddling with results rarely happen where someone can easily record them or have clear eyewitnesses. Therefore, a more adaptable evidence system that accepts believable indirect proof as enough when direct proof is almost impossible to get, would do a much better job of achieving fair elections.

Nwankwo argues that the very strictness of rules for proving things often stops good legal complaints from winning. This makes people lose faith in the system and doubt the fairness of elected leaders. In reality, demanding such perfect evidence frequently causes legitimate complaints to be thrown

out, which in turn erodes public trust in our legal processes and weakens the authority of election results. A legal system that cares more about following rigid procedures than about actual fairness in election disputes risks alienating citizens and reducing their belief in our democratic system. Therefore, he suggests that the level of proof needed in election challenges should not be so high that real problems cannot get addressed. Instead, it should strike a sensible balance between how trustworthy the evidence is and ensuring fair elections, so that valid grievances are not ignored just because of inflexible rules.

On the other hand, Adeyemi worries that making proof rules easier could lead to courts being swamped with baseless complaints. This would disrupt the entire election system and put immense strain on the legal process. His view emphasizes the need to protect elections from being exploited through legal tricks, while still making sure real complaints can be resolved quickly. Eze, however, advocates for a more delicate balance. He suggests that judges or panels should adjust proof requirements based on the specific situation, understanding the unique kinds of evidence often found in election disputes, but always ensuring fairness.

2.0 METHODOLOGY

This study employs a conventional legal methodology to investigate the regulations governing the burden of proof and the admissibility of evidence in electoral disputes within Nigeria. The principal sources informing this inquiry consist of core legislative instruments: specifically, Nigeria's Constitution (2011), the Evidence Act (2022), the Electoral Act (2022), and the 2011 Practice Directions for Election Tribunals and Courts. The documents delineate the procedural frameworks for litigation, encompassing the submission of petitions and the presentation of evidence.

The research further draws substantially upon significant judicial pronouncements issued by both lower tribunals and appellate courts.

To augment this investigation, we have also consulted pertinent supplementary materials, such as scholarly articles, authoritative legal textbooks, and expert assessments related to Nigerian electoral legislation and broader legal principles. Our methodological approach involves the systematic compilation, careful interpretation, and critical evaluation of the normative and conceptual frameworks identified within both these primary and secondary legal references.

This particular research design is well-suited for addressing normative questions, especially when the objective is to ascertain the coherence of existing legislation, clarify the precise interpretation of legal provisions, and propose improvements consistent with Nigeria's constitutional tenets and democratic imperatives.

3.0 CONCEPTUAL ANALYSIS OF BURDEN AND STANDARD OF PROOF IN ELECTION TRIBUNAL

The twin concepts of **burden** and **standard of proof** lie at the intersection of procedural fairness and substantive justice. The allocation of burden reflects both moral and pragmatic considerations; moral because it identifies who must justify their claim, and pragmatic because it facilitates judicial efficiency¹. Nokes² expands this theory by arguing that evidentiary

¹ Allen, R. J. (2017). *Burden of proof, uncertainty, and legal reasoning*. Oxford Journal of Legal Studies, 37(4), 721–742.

² Nokes, G. (2019). *Onus and persuasion: Reconsidering the dual burden of proof*. International Journal of Evidence and Proof, 23(4), 284–302.

thresholds also serve a sociopolitical function; they balance the risk of error between parties and prevent unjust outcomes.

The burden and standard of proof in Nigerian election tribunals present a contradiction that significantly influences the outcomes of election petitions. Constitutional framework and electoral laws place the burden squarely on petitioners to prove allegations of irregularities with compelling evidence³. This standard implies a clear and convincing evidence, thereby imposing a high threshold as applicable to criminal proceedings.⁴ While this ensures that election outcomes are not easily overturned without sufficient proof, it also means petitioners face considerable hurdles, especially in environments where electoral malpractice is covert or documentation is scarce.⁵

3.1 The General Nature of Burden of Proof

Within the framework of Evidence Law, the concept of the burden of proof constitutes a foundational element in the dispensation of justice. In its operational context, it denotes the obligation incumbent upon a party to substantiate the veracity of a contested factual proposition or series of propositions before a judicial body. This established doctrine is predicated on the fundamental tenet that the individual making an assertion bears the responsibility for its substantiation, a legal maxim that underpins all

³ Buhari v. Obasanjo (*Supra*)

⁴ C. Okonkwo, *Reconsidering Evidentiary Standards in Election Petitions* [2019] African Journal of Electoral Dynamics vol.11, no. 4, 70.

⁵ A. Uwa, “The Burden of Proof in Nigerian Election Tribunals,” *Nigerian Law Review* 37, no. 1 (2017): 106.

adversarial proceedings, encompassing both civil and criminal jurisdictional spheres.⁶

By Section 131(1) of the Evidence Act, it is the responsibility of each litigant seeking a judicial ruling respecting a particular legal entitlement or obligation based on the factual claims they make. This clause clearly states that the party making an affirmative claim first bears the major evidentiary burden rather than the corporation simply disputing it. Therefore, if a party makes a claim, whether in a criminal indictment, civil action, or election challenge, it is the proponent's responsibility to provide evidence to support that allegation. This idea has been consistently upheld by judicial authorities. Notably, the appeal court decided in the *Haruna v. Modibbo* case that election results are deemed prima facie legal until supporting evidence provides.

"Whoever asks any court to make judgment as to any legal right or liability reliant on the existence of facts which he states must prove that those facts exist," according to Section 131(1) of the Evidence Act. This clause makes it very evident that the burden of proof first rests with the party asserting the positive of an issue rather than the side simply denying it. Thus, where a party makes an allegation, whether in an election petition, civil claim, or criminal charge, the responsibility of proving that assertion lies with him. Courts have consistently upheld this position. In *Haruna v. Modibbo*, where the Court of Appeal held that election results are presumed regular until the contrary is proven.

⁶ C. Tapper, *Cross and Tapper on Evidence* (12th edn, Oxford University Press, 2010) 124.

The legal (or persuasive) burden and the evidentiary burden (also known as the burden of production) are the two main categories of burden of proof. While the evidential burden refers to the duty to present sufficient evidence to raise an issue for the court's consideration at a specific stage of the proceedings, the legal burden is the obligation that rests permanently on a party to establish a case to the required standard throughout the trial.

In civil proceedings, the plaintiff or claimant usually has the burden of proving their case on the balance of probability. After that, it is the defendant's responsibility to disprove the evidence. In contrast, the prosecution carries the full legal burden of establishing the accused's guilt beyond a reasonable doubt during criminal proceedings under section 135(1) of the Evidence Act and the constitutional presumption of innocence under section 36(5) of the 1999 Constitution.

3.1.1 Burden of Proof in Election Petitions

Burden of Proof, as with civil and criminal trials, applies *mutatis mutandis* in Election cases. Burden of proof in election petition tribunals occupies a distinct position in our electoral jurisprudence. It constitutes the evidential framework on which the validity or nullity of elections is determined. Election petitions are by nature *sui generis*, that is, they are governed not entirely by the ordinary rules of civil or criminal procedure but by their own peculiar statutory provisions and judicial principles. These notwithstanding, the principles of burden and standard of proof as provided for in the Evidence Act 2011 are applicable unless expressly excluded by the Electoral Act 2022.

Burden of proof in election petitions refers to the legal duty imposed on the petitioner to establish or prove the facts upon which the petition is based.

Section 131(1) of the Evidence Act provides that *he who asserts must prove*. Thus, the initial legal burden lies upon the petitioner who alleges that an election was invalid by reason of non-compliance, irregularities, or corrupt practices⁷. This is because election results declared by the Independent National Electoral Commission (INEC) are presumed to be regular. In *Haruna v. Modibbo*,⁸ the Court of Appeal held that “the onus lies on the petitioner to displace the presumption that the election was regularly conducted”.

In *Buhari v. Obasanjo*⁹ the Court held that an election is presumed to have been regularly conducted until the contrary is proved, thereby placing the burden squarely on the petitioner to rebut that presumption with credible evidence. The rationale, as the Court observed, is that the conduct of elections is an act of public officers who are presumed to have performed their official duties regularly unless proven otherwise.¹⁰ Similarly, in *Awolowo v. Shagari*¹¹, the apex court emphasised that the petitioner must discharge the burden of proving not only that non-compliance occurred but also that such non-compliance substantially affected the result of the election.

According to Akinola¹², this presumption is a judicial safeguard against frivolous challenges that may destabilize the electoral process. The implication of the above principle is that where a petitioner fails to lead

⁷*Imam v. Sheriff & Ors* [2004] LPELR-7315 (CA) Pp 132-134, Paras F-B.

⁸ [2004] 16 NWLR (PT. 900) 487

⁹ [2005] 13 NWLR (Pt. 941) 1,

¹⁰ *Ibid*

¹¹ (1979) 6–9 SC 37.

¹² A. Akinola, ‘*Proof and presumption in Nigeria Electoral Jurisprudence*’ Nigerian Law Review (2016) 8 (2) 44

credible evidence to sustain a claim for non-compliance or any of the grounds specified in the Act, the petition will fail. The task of establishing or fulfilling this condition is a heavy and tasking one on the petitioner which in most cases, most petitioners have been unable to satisfy thereby leading to a dismissal of the petition which would ordinarily succeed if this burden were to be on a balance of probability¹³.

The burden of proof in election petitions as with civil cases is two-dimensional. First, there is the legal (or persuasive) burden, which remains permanently on the petitioner throughout the proceedings. Second, there is the evidential burden, (Production burden) which may shift between the petitioner and the respondent as evidence is adduced. Once the petitioner adduces *prima facie* evidence establishing irregularities, the evidential burden shifts to the Independent National Electoral Commission (INEC) or the respondent candidate, as the case may be to refute such evidence or justify the election process.¹⁴

As the matter develops, the burden of proof may change between the parties. The burden of proof switches on the opposing party to refute or deny any evidence that a party has presented to support a position. This shifting responsibility is justified by the equitable necessity to preserve procedural balance in adjudication while ensuring that no party is unfairly taxed beyond what justice requires.

¹³ *Leke & Alatise, Burden of Proof in Election Petition in Nigeria and the Implication of Section 137[2023] NAUJILJ*, (34)

¹⁴ *Aregbesola v. Oyinlola* (2011) 9 NWLR (Pt. 1253) 458; see also *Mogaji v. Odofin* (1978) 4 SC 91

The burden of proof is essentially both procedural and substantive. It serves a dual purpose: ensuring fairness between litigants and providing a logical framework for judicial decision-making. The courts must therefore apply it not merely as a technical rule, but as a means of achieving justice consistent with the objectives of the Evidence Act and the Constitution. As Chukwuma observes, “the burden of proof is not a weapon of oppression but an evidentiary compass designed to direct the court towards the truth.” Judicial pronouncements reveal a persistent struggle to balance legal doctrine with democratic ideals. For example, in *Adeleke v. Buhari*,¹⁵ the tribunal emphasized strict compliance with evidentiary requirements, reaffirming the primacy of legal certainty. Conversely, the court in *Onnoghen v. INEC*¹⁶ took a more purposive stance, considering the total circumstances in assessing the validity of evidence to protect electoral justice. These conflicting approaches underscore the dilemma facing election tribunals, caught between upholding rigid legal standards and addressing substantive fairness.

The practical realities in Nigerian elections; such as voter intimidation, ballot tampering, and delayed results; complicate the proof process.¹⁷ Petitioners frequently encounter difficulties in obtaining reliable evidence within tight procedural timelines, weakening their cases despite credible claims. This scenario risks disenfranchising voters and eroding trust in democratic institutions.¹⁸ Consequently, legal scholars argue for a more pragmatic interpretation of proof obligations, urging tribunals to adopt

¹⁵ [2019] Nigeria Election Petition Tribunal, Suit No. EPT/LA/01/2019.

¹⁶ [2018] Nigeria Supreme Court, Appeal No. SC/123/2018.

¹⁷ T. Adeyemi, *Protecting Electoral Integrity through Legal Rigor* [2018] *Journal of Nigerian Legal Studies* vol.22, no. 1, 92.

¹⁸ Nwankwo, *Evidentiary Challenges in Electoral Petitions* [2020] *Electoral Studies Quarterly* 15, no. 3, 58.

flexible evidentiary standards tailored to the electoral context without compromising judicial integrity.¹⁹

3.1.2 Standard of Proof in Election Petitions

Election petitions suits are *sui generis* and are determined by their own rules and the Electoral Act, the standard of proof is the same as in ordinary civil proceedings which is on the balance of probability and preponderance of evidence. A petitioner succeeds on the strength of his case and not on the weakness of his opponent's case.²⁰

The standard of proof in election petition proceedings defines the degree or level of persuasion required of the petitioner by law to establish the truth of allegations made in the petition. However, in the case *Lanlehin v. Akanbi*,²¹ it was held per Shaibu, JCA that “in election petition trial, the standard of proof is proof beyond reasonable doubt where the petition is brought on grounds which are criminal in nature. But where the grounds are civil in nature, the standard of proof is preponderance of evidence and balance of probabilities. Above all, the obligation is discharged only through presentation of credible evidence²².”

While the burden of proof determines who bears the duty to prove, the standard of proof dictates how much evidence is required to discharge that duty²³. In our Nigerian election jurisprudence, the applicable standard

¹⁹ F. Eze, *Towards a Balanced Proof Standard* [2019] *Journal of African Political Studies* vol.30, no. 1 (2019): 65; See also the case of *Hassan & Anor. v. INEC & Ors* [2019] LPELR- 49207 (CA) Pp. 11-13, Paras E-E.

²⁰ *Jega v. APC & Ors* [2022] LPELR-58934(CA) Pp. 90-91, Paras. C-A

²¹ [2015] LPELR- 42147

²² *Ucha & Anor v. Elechi & Ors* [2012] LPELR-7823 (SC)Pp.39-40, Paras D-C,

²³ *Hassan & Anor. v. INEC & Ors* [2019] LPELR- 49207 (CA)

depends on the nature of the allegations and the relief sought.²⁴ Where, the allegation is Civil in nature (eg. non-compliance with electoral procedures) the standard of proof is on the balance of probabilities.²⁵ In the case of *Awuse v. Odili*²⁶ where a petitioner alleges non-compliance with the provisions of the Electoral Act, it was held that they must establish the facts with cogent and credible evidence that fits the balance in their favour. On the other hand, where the allegation is criminal in nature, such as ballot snatching, multiple voting, forgery or Bribery, the standard of proof is higher. Such allegations must be proven beyond a reasonable doubt.²⁷

The Supreme Court ruled in *Abubakar v. Yar'Adua* that, although though election petitions are essentially civil processes, the petitioner must meet the higher bar of proof beyond a reasonable doubt when the petition alleges the commission of a crime. The Court further reasoned that this dual criterion guarantees that the electorate's will as represented through the vote box can only be invalidated by credible and established charges. Similarly, in *Aregbesola v. Oyinlola*, the Court of Appeal observed that “the standard of proof in election matters is not one to be taken lightly; the petitioner must not only prove irregularities but must link them to the results and show that they substantially affected the outcome.

This approach, it is submitted is overly rigid and inimical to electoral justice. The insistence on a quasi-criminal standard in what is essentially a civil proceeding²⁸ will often leads to unjust dismissals of an otherwise

²⁴ *Nwobodo v. Onoh* [1984] 1 SCNLR 1

²⁵ Section 134 of the Evidence Act; See *APC v. INEC & Ors*[2023] LPELR- 61374 (CA))

²⁶ [2005] 16 NWLR (PT.952) 416

²⁷ section 135 of the Evidence Act; *Dandam & Anor* [2019] v INEC & Ors LPELR-4951 (CA)

²⁸ *Kamba & Anor v. Kamba & Ors* [2023] LPELR-61546(CA)

meritorious petitions, especially where systemic irregularities make direct proof is impossible.²⁹

Several factors contribute to the dismissal of seemingly meritorious cases due to failure to meet this high standard of proof. One critical aspect is the requirement to prove specific allegations polling unit by polling unit. It is worthy to note that general allegations or blanket statements of irregularities are often insufficient. Petitioners are expected to tender relevant electoral materials, such as voter registers, result sheets (Forms EC8A, EC8B, EC8C, EC8D, EC8E), and other documents, and to call witnesses from each affected polling unit to substantiate their claims. The failure to adduce evidence in support of grounds challenging an election is fatal to a petition, as highlighted in the case of *LP & Anor. v. INEC & Ords.*³⁰ For example, if a petitioner claims that a candidate did not score the majority of lawful votes cast, they must meticulously present evidence of unlawful votes, demonstrate how these unlawful votes were counted, and then show that if these votes were discounted, the declared winner would not have met the constitutional requirements.³¹ This often involves a forensic analysis of results and a clear demonstration of how the figures were manipulated or incorrectly recorded.

In essence, while a petitioner in an election petition may genuinely believe that his case is *meritorious* based on unscientific evidence or public perception, the courts demand concrete, admissible and persuasive evidence that meets the prescribed legal standard which if not satisfied by

²⁹ F. Eze, *Legal Formalism vs. Electoral Justice in Nigeria*, [2018] 29(2) *Journal of African Political Studies* 45, 52.

³⁰ [2023] LPELR-61254 (CA) P.50, Para A-F

³¹ *Isah v. Umar & Ords* [2023] LPELR-61381 (CA) Pp 22-23, Paras C-E

the petitioner would have a supposed meritorious petition dismissed³². This criticism underscores the tension between legal formalism and substantive justice, particularly where electoral malpractices are widespread but difficult to prove through direct evidence.³³

The courts should periodically adopt a flexible and contextual interpretation of the standard of proof to close this gap. For example, in *INEC v. Atuma*, the Court of Appeal held that while allegations of crime must indeed be proved beyond a reasonable doubt, the general allegation of non-compliance with the Electoral Act is subject only to the civil standard of balance of probabilities. This distinction allows tribunals to assess evidence more pragmatically without sacrificing fairness or the integrity of elections. The standard of proof in election petition tribunals is designed to protect both the credibility of electoral processes and the finality of electoral outcomes. By requiring clear, cogent, and credible evidence before invalidating an election, the law seeks to maintain public confidence in democratic institutions while ensuring that the courts are not used as tools for political vendetta. Chukwuma³⁴ observes that “the law demands a standard of proof that preserves the legitimacy of democratic choices, even as it opens a judicial path for redress against proven irregularities.”

3.1.3 Reassessing the Balance between Legal Formalism and Electoral Justice

The proposition that the standard of proof in election petition tribunals serves to protect the credibility and finality of electoral outcomes, though

³² *ANPP & Anor. v. PDP & Ords* [2006] LPELR-7588P. 27 Paras B-C

³³ Leke & Alatise (*Supra*)

³⁴ O. Chukwuma, *Electoral Law and Nigeria's Democracy* (Lagos: Nigerian Law Publications, 2015) 118.

theoretically sound, betrays a latent danger of subordinating electoral justice to procedural rigidity. The requirement of “clear, cogent, and credible evidence” before setting aside an election result is doctrinally appealing but practically exclusionary in contexts like Nigeria, where electoral malpractices are often subtle, systemic, and shielded by institutional inefficiencies. In such circumstances, the stringent evidentiary standard becomes an obstacle to justice rather than its safeguard.

It is argued here that this doctrinal strictness unintentionally compromises the substantive justice that election petitions are supposed to provide, even if it is intended to avoid pointless petitions and maintain democratic stability. The nature of electoral disputes inherently differs from conventional civil or criminal cases; evidence of rigging, vote suppression, or falsification is rarely direct and often depends on circumstantial or inferential proof due to the logistical and administrative opacity of electoral processes. By demanding a level of proof nearly equivalent to criminal proceedings, tribunals risk insulating electoral irregularities from judicial scrutiny, thus legitimising flawed mandates.

The heavy burden of proof imposed on petitioners frequently undermines voter confidence and the legitimacy of elected offices. The pursuit of electoral truth, which is crucial to democratic legitimacy, should not be subordinated to the courts' emphasis on maintaining election finality, despite their best efforts. The rationale for judicial restraint must not be used as a cloak for injustice since supporting an election contaminated by illegality under the guise of evidentiary orthodoxy would elevate proceduralism above justice.

What is needed is a contextual and justice-oriented reinterpretation of the standard of proof in election petition tribunals, one that recognises the peculiar evidentiary constraints of electoral disputes while maintaining fidelity to fairness. This approach accords with Eze's proposition for a *calibrated balance* that privileges substantive justice over mechanical adherence to legal theory³⁵. Only by embracing such a pragmatic standard can tribunals fulfill their constitutional role as guardians of the electoral will and restore public confidence in democratic adjudication.

3.2 The Dilemma of Doctrinal Strictness

The burden on petitioners to prove irregularities “beyond reasonable doubt” where the allegation border on criminality is a derivative from the classical evidentiary theory.³⁶ Though, election petitions are not like the conventional disputes between private parties; they are public-interest litigations that determine the legitimacy of democratic governance. Thus, applying the standard of proof as in criminal trial to inherently administrative or procedural electoral allegations transforms election tribunals into “fortresses of technicality” rather than forums of justice.

This rigidity becomes especially problematic in contexts where electoral malpractice occurs covertly or through institutional complicity. Unlike ordinary civil or criminal trials where direct witnesses and documents are readily produced, electoral infractions seldom produce direct witnesses or documentary trails. Malpractices such as ballot stuffing, intimidation, or the falsification of electronic results often occur in circumstances where

³⁵ F. Eze, “Legal Formalism vs. Electoral Justice in Nigeria” (2018) 29(2) *Journal of African Political Studies* 45, at 49.

³⁶ Cross, R., & Tapper, C, *Cross and Tapper on evidence* (2018). (13th ed.). Oxford University Press.

official evidence is under the control of the electoral body; the Independent Electoral Commission (INEC).³⁷ Consequently, demanding *proof beyond reasonable doubt* in such situations ignores the asymmetry of access to evidence between petitioners and respondents.

The requirement for a “clear, cogent, and credible evidence” before invalidating an election, though designed to preserve electoral stability, inadvertently creates a barrier to justice. According to Chukwuma³⁸ “the requirement of high proof, while doctrinally noble, often becomes a judicial shield for irregular elections.” This has led to a proliferation of decisions where petitions are dismissed despite credible evidence of malpractice, merely because they fail to meet an impracticable evidentiary threshold.³⁹ The result is that citizens view election tribunals not as protectors of electoral integrity but as institutions that legitimise flawed outcomes through procedural orthodoxy. Thus, the strict application of standards of proof, though grounded in the need for judicial restraint, risks eroding democratic legitimacy.

3.3 The Case for a Contextual Interpretation

To reconcile legal doctrine with democratic imperatives, there is a growing consensus that the burden and standard of proof in election petitions must be contextually interpreted.⁴⁰ A contextual interpretation recognises that evidentiary strictness should be calibrated to the practical realities of electoral litigation rather than applied mechanically.

³⁷ Okonkwo, A. (2021). *Evidentiary paradoxes in Nigerian election petitions: A doctrinal critique*. *Journal of Contemporary Legal Studies*, 12(2), 141–165.

³⁸ Chukwuma, I, *Electoral disputes and evidentiary injustice in Nigeria* (2020) *Journal of African Law and Policy*, 9(1), 47–71.

³⁹ *Adeleke v. Buhari* (Supra)

⁴⁰ See Eze and Uwa (Supra)

Caution must be taken that excessive relaxation of proof standards may invite a flood of unmeritorious petitions, thereby destabilising the electoral process as aptly posited by Adeyemi.⁴¹ Nonetheless, the aim is not to whittle down evidentiary integrity but to strike a pragmatic balance. Tribunals should assess the **quality** of circumstantial or documentary evidence with due regard to the constraints under which petitioners operate, particularly where direct evidence is unavailable due to administrative opacity or violence.

This pragmatic approach finds judicial support in *INEC v. Atuma*.⁴² In the case, the Court of Appeal adopted a purposive interpretation, distinguishing between civil allegations of non-compliance (provable on the balance of probabilities) and criminal allegations which requires a higher standard of proof. The Court held that claims based on non-compliance should not attract criminal standards of proof unless they explicitly allege fraud. This decision of the court represents an incremental shift from formalism toward judicial realism, acknowledging the need to preserve the integrity of electoral adjudication without rendering it inaccessible.

In contrast, the Kenyan Supreme Court took an even more active position in *Raila Odinga v. Independent Electoral and Boundaries Commission*. It stated that the burden of proof changes on the electoral authority to defend the process's integrity after the petitioner presents reliable evidence of irregularities. This "burden-shifting" strategy lessens procedural injustices

⁴¹ O. Adeyemi, *Reassessing evidentiary rigour in Nigerian election petitions: The need for procedural balance*. (2020) Nigerian Law Journal, 14(2), 85–107.

⁴² [2019] 17 NWLR (Pt. 1701) 342,

and more accurately captures the unique characteristics of election petitions.

Similarly, the Ghanaian Supreme Court in *Nana Addo Dankwa Akufo-Addo v. John Dramani Mahama*⁴³ emphasised that determining electoral disputes requires prioritising the “will of the electorate” over mechanical proceduralism. The Court acknowledged that technical strictness must yield to substantive truth where democratic legitimacy is at stake. The South African Constitutional Court on the other hand echoed this principle in the case of *New National Party of South Africa v. Government of the Republic of South Africa*⁴⁴, insisting that legal standards must serve, not stifle, the democratic process.

These comparative developments underscore the need for judicial flexibility in interpreting evidentiary requirements. As Mensah⁴⁵ notes, a justice-oriented evidentiary framework is essential for consolidating electoral legitimacy in transitional democracies.

3.4 Legal Certainty and Democratic Fairness

The judiciary in Nigeria has often justified its strict evidentiary approach as a means of safeguarding legal certainty; the idea that elections, once declared, should not be lightly overturned. This rationale, while defensible, inadvertently prioritises the finality of results over their factual accuracy. The Nigeria Supreme Court has reasoned that only proof beyond reasonable doubt could displace the electorate’s will as expressed through the ballot

⁴³ [2013] SCGLR 73

⁴⁴ [1999] 3 SA 191 (CC),

⁴⁵ D Mensah, *Substantive justice and the will of the people: The evolution of Ghana’s electoral jurisprudence*. (2022), *African Journal of Law and Society*, 8(1), 55–77.

box⁴⁶. While this principle ensures stability, it risks legitimising flawed outcomes where malpractices cannot be conclusively demonstrated due to evidentiary constraints. This judicial caution, if left unchecked, may institutionalise injustice through evidentiary orthodoxy. The courts' preoccupation with procedural perfection must not eclipse their constitutional duty to protect the franchise. As the Supreme Court once warned in *Akinfosile v. Ijose*⁴⁷, "courts must not allow technicalities to defeat the ends of justice." The same spirit must inform modern electoral adjudication.

Similarly, Chukwuma⁴⁸ contends that legal certainty cannot exist in isolation from public confidence. Where the judiciary's evidentiary posture consistently frustrates legitimate grievances, it delegitimises both the court and the democratic process. The standard of proof, therefore, must evolve beyond a rigid doctrinal tool into a contextual instrument of justice; one that balances the probability of error against the societal cost of injustice.

3.5 Toward a Contextual Model of Electoral Proof

The way forward lies in developing a contextual model of proof that harmonises doctrinal discipline with democratic accountability. This model, already engaged in comparative jurisdictions, emphasises proportionality and fairness, which is that the standard of proof should correspond with the seriousness of the allegation and the practical accessibility of evidence.

⁴⁶ *Abubakar v. Yar'Adua* [2008] 19 NWLR (Pt. 1120) 1,

⁴⁷ [1960] SCNLR 447

⁴⁸ I. Chukwuma, *Electoral disputes and evidentiary injustice in Nigeria* (2020) *Journal of African Law and Policy*, 9(1), 47–71.

Under this approach, allegations of corrupt practices such as bribery or forgery should indeed attract the criminal standard of proof, consistent with Section 135(1) of the *Evidence Act 2011*. However, claims of non-compliance or administrative irregularities should be judged on the balance of probabilities, considering circumstantial and documentary.⁴⁹

Tribunals should also adopt burden-sharing mechanisms, whereby once a petitioner establishes a credible *prima facie* case, the burden of proving the credibility of the electoral process shifts to the electoral body or respondent to produce contrary proof. This would align Nigerian practice with the dynamic proof doctrine recognised in other jurisdictions like in Kenya.⁵⁰ Further, where procedural flexibility is adopted; including mandatory pre-hearing disclosure of electoral materials, expert testimony, and electronic evidence authentication; would enhance transparency and reduce evidentiary imbalances. Such reforms would not compromise judicial integrity; it will instead, strengthen it by enabling tribunals to reach outcomes that reflect both truth and fairness.

3.6 Reconciling Doctrine with Justice

The dilemma of burden and standard of proof on petitioners in Nigerian election petitions reveals a deeper philosophical conflict between law as certainty and law as justice. The jurisprudence has traditionally privileged certainty, often at the expense of equity. As Dicey⁵¹ opined, the rule of law must serve the ends of justice, not the reverse.

⁴⁹ *INEC v. Atuma* (Supra)

⁵⁰ *Raila Odinga v. Independent Electoral and Boundaries Commission* [2017] eKLR (Kenya); M Mutua, (2021). *Dynamic burden and proportional proof in Kenyan electoral jurisprudence*. *East African Law Review*, 17(2), 119–145.

⁵¹ A V Dicey, *The rule of law and the constitution* (2020) (Revised ed.) Cambridge University Press.

To reconcile these competing narratives, courts in Nigeria must adopt a purposive evidentiary philosophy; one that acknowledges the *sui generis* nature of electoral disputes and the societal stakes involved. The judicial attitude must shift from mere guardianship of procedure to stewardship of democracy. This does not entail lowering the standard irresponsibly but applying them with contextual sensitivity.

The legitimacy of an election is not gauged by the flawless procedure but by the credibility of the electioneering process. Reinterpreting evidentiary rules through this lens will not only restore public faith and confidence in electoral justice but position the judiciary as a true guarantor of democratic tenets.

4.0 COMPARATIVE PERSPECTIVES AND THE PROPOSED CONTEXTUAL MODEL FOR PROOF IN ELECTION PETITION CASES

The challenge of reconciling evidentiary rigor with electoral justice is not peculiar to Nigeria. Across many Commonwealth jurisdictions, courts and writers have struggled to determine how high proof thresholds should be when determining election petitions that replicate both civil and quasi-criminal issues. A comparative analysis of select jurisdictions, India, Kenya, Ghana, and South Africa, reveals a gradual but deliberate and firm shift toward contextual and proportional models of burden and standard of proof. These models seek to uphold legal certainty while ensuring that procedural orthodoxy does not stifle or encumber democratic accountability.

4.1 India: The Dual-Standard Framework under the Representation of the People Act

One of the most structured evidentiary regimes in election petition cases is that provided for under Indian Jurisprudence. The Representation of the People Act⁵², establishes two distinct categories of electoral infractions: *ordinary irregularities* and *corrupt practices*. The distinction determines the applicable standard of proof in each case.

The Supreme Court of India in *S. Subramaniam Balaji v. State of Tamil Nadu*, affirmed that while general irregularities or administrative non-compliance are treated as civil wrongs, provable on the preponderance of probabilities, corrupt practices such as bribery, undue influence, or forgery attract the standard of proof of beyond a reasonable doubt. This dual-standard model ensures proportionality; the greater the gravity of the allegation, the higher the evidential burden required to be proved by the petitioner.

Applying this logic in *Jagjit Singh v. Kartar Singh*, the Indian Supreme Court clarified that where allegations border on criminality, the proof must be as cogent as in criminal proceedings. However, in *Harkirat Singh v. Amrinder Singh*, the Court cautioned against importing unnecessary technicalities, stressing that elections are the essence of democracy, and adjudication must not sacrifice justice on the altar of formality.

Sharma and Rao⁵³ observe that this bifurcated standard balances the competing imperatives of accuracy and efficiency. They argued that this

⁵² 1951

⁵³ V Sharma & M Rao, *Dual proof standards and electoral integrity: The Indian experience*. (2019)*Asian Journal of Law and Society*, 6(3), 242–264

approach prevents courts from trivialising allegations of electoral malpractices while ensuring that technical evidentiary barriers do not shield electoral misconduct. This calibrated approach offers valuable lessons for Nigeria, where judicial practice has often conflated the civil and criminal standards to the petitioner's detriment.

4.2 Kenya: The Dynamic Burden and Proportional Proof Doctrine

The Kenyan Supreme Court created revolutionary precedents that changed electoral adjudication after the controversial elections of 2013 and 2017, offering a more adaptable and rights-based method of doing so. In *Raila Odinga v. Independent Electoral and Boundaries Commission*, the Court recognised that while the petitioner bears the initial burden to establish irregularities, the evidential burden dynamically shifts once credible evidence is produced. Thereafter, the electoral body assumes the duty to justify the legitimacy of its conduct during the election being challenged.

The Court further held that the applicable standard of proof varies depending on the nature of the allegation; where the allegation is on ordinary electoral irregularities, they are proved on a balance of probabilities, and if it is based on allegations of criminality or corrupt practices, the required standard is proof beyond a reasonable doubt.

However, the Court added that because elections are public-interest matters implicating constitutional values, the threshold for proof, though civil, must be "slightly above the balance of probabilities but below reasonable doubt." Mutua referred to this complex term as "proportional evidentiary standard," which he said is designed to reflect both fairness and public accountability.

The petitioner's limited access to official documents is acknowledged by the Kenyan judiciary's pragmatic philosophy; therefore, once the petitioner raises credible doubt, the electoral commission must rebut it with transparency. This approach ensures that procedural technicalities do not override substantive truth, aligning with the constitutional right to free and fair elections under Article 81 of the *Kenyan Constitution 2010*.

4.3 Ghana: Substantive Justice and the Will of the Electorate

Ghana's electoral jurisprudence has developed toward substantive fairness and voter-centric reasoning, notwithstanding its roots in the English common law tradition. In *Nana Addo Dankwa Akufo-Addo v. John Dramani Mahama*, the Ghanaian Supreme Court faced difficult evidentiary issues stemming from claims of extensive irregularities in the 2012 presidential election. The Court held that while the petitioner must discharge the burden of proving irregularities, such proof need not attain the criminal standard of *proof beyond reasonable doubt* unless the allegations allege fraud or deliberate falsification. More importantly, the Court adopted a pragmatic interpretive lens, declaring that the judiciary's paramount duty in election petitions is to safeguard "the sovereign will of the people." This marked a significant shift from rigid formalism to democratic proportionality.

Ghana's Supreme Court consciously avoided the trap of excessive legalism by balancing evidentiary rigour with democratic realism.⁵⁴ The Court's decision underscored that justice in electoral disputes must transcend technical proof to ensure public confidence in the judiciary. The Ghanaian

⁵⁴ Mensah, D. (2022). *Substantive justice and the will of the people: The evolution of Ghana's electoral jurisprudence*. *African Journal of Law and Society*, 8(1), 55–77.

model thus privileges substantive legitimacy; the belief that the declared winner genuinely represents the people's will over procedural perfection. Practically, this approach encourages courts to assess the cumulative impact of irregularities rather than dismissing petitions for lack of evidence on isolated incidents. The Ghanaian experience therefore suggests that contextual flexibility, not procedural rigidity, is the key to preserving democratic trust.

4.4 South Africa: Constitutional Supremacy and Proportional Proof

Section 19 of the Constitution of the Republic of South Africa guarantees the right of every citizen to free, fair, and regular elections, while the courts have been vigilant in ensuring its effective protection. This model represents the constitutionalisation of evidentiary principles in electoral matters.

In *New National Party of South Africa v. Government of the Republic of South Africa*, the Constitutional Court affirmed that evidentiary rules must always serve the broader objectives of constitutional democracy. Justice Yacoob held that legal standards should be applied “in a manner that advances, not frustrates, the enjoyment of electoral rights.” The Court warned that procedural formalism should never obscure the constitutional imperative of fairness and inclusion in election matters.

In *Kham v. Electoral Commission*⁵⁵, the above reasoning was extended, emphasising that proof standards in electoral disputes must be proportional to the alleged violation and its impact on the election's integrity. This constitutionalised approach effectively subordinates evidentiary rigidity to

⁵⁵ [2016] ZACC 37

democratic values. Similarly, Murray⁵⁶ argues that South Africa’s proportional doctrine of proof represents “a mature synthesis between evidentiary law and constitutional morality.”

The South African framework is instructive for Nigeria because it explicitly integrates constitutional supremacy into evidentiary reasoning. Nigerian courts, though equally bound by constitutional principles, often interpret standard of proof requirements without reference to broader democratic values. Incorporating this normative linkage could enhance both judicial legitimacy and democratic credibility.

4.5 Comparative Lessons for Nigeria

The comparative analysis across jurisdictions reveals several convergent lessons relevant to Nigeria’s electoral jurisprudence. These includes:

1. **Proportionality of Proof:** All jurisdictions recognise that standards of proof must correspond to the seriousness of the allegation and the public importance of the dispute. India and Kenya explicitly differentiate between civil irregularities and corrupt practices.
2. **Dynamic Burden-Shifting:** Kenya’s and South Africa’s models emphasises shifting the evidential burden to electoral authorities once *prima facie* irregularities are shown. This innovation mitigates asymmetry in access to evidence; a persistent challenge in Nigeria’s petition cases.
3. **Substantive Democratic Justice:** Ghana’s jurisprudence demonstrates that the ultimate purpose of electoral adjudication is

⁵⁶ Murray, C. (2021). *Evidentiary proportionality in constitutional adjudication: Lessons from South Africa*. *Public Law Review*, 42(3), 301–320.

to protect the will of the electorate's and not merely to enforce procedural orthodoxy.

4. **Constitutional Contextualisation:** South Africa exemplifies how evidentiary standards can be aligned with constitutional rights, transforming procedural doctrines into instruments of justice.

Together, these principles offer Nigeria a workable template for electoral reforms; one that retains the rule of law while infusing it with democratic realities and sensibility.

5.0 THE PROPOSED CONTEXTUAL MODEL OF PROOF FOR NIGERIA

Drawing from these comparative insights, a Contextual Model of standard of Proof (CMSP) is proposed in this paper to guide Nigerian election petition tribunals. The CMSP integrates doctrinal clarity with practical flexibility, structured around four key principles:

- i. **Dual-Track Proof Standard:** Allegations of corrupt practices such as bribery, undue influence, falsification of results should attract proof beyond reasonable doubt, consistent with Sections 134–135 of the *Evidence Act 2011*. Allegations of non-compliance or administrative irregularities should be determined on the balance of probabilities, as was done in *INEC v. Atuma*.
- ii. **Dynamic Burden of Proof:** it should be that a petitioner who establishes a *prima facie* case through credible evidence; whether oral, documentary, or electronic; the evidential burden of proof should automatically shift to the Independent Electoral Commission (INEC) to rebut the allegation. This approach

draws directly from *Raila Odinga v. IEBC*⁵⁷ and aligns with the equitable doctrine that “he who is in possession of peculiar knowledge must produce it.”

iii Proportional Proof Evaluation

Election tribunals should assess the weight of evidence proportionally to the scale and nature of the alleged irregularity. Isolated discrepancies should not be made to invalidate an entire election unless it is proven to have substantially affected the overall result of the election.⁵⁸ It follows therefore that, cumulative irregularities demonstrating a consistent pattern of malpractice should suffice to discredit an election, even if each instance individually appears minor.

iv. Constitutional Anchoring

Interpretation of evidence must be guided by constitutional values of fair hearing, political participation, and democratic legitimacy under Sections 14 and 36 of the *1999 Constitution*. This mirrors South Africa’s constitutionalised evidentiary reasoning, ensuring that standard of proof remains an instrument of justice rather than barriers to it.

Collectively, the Contextual Model of Standard of Proof aim to recalibrate Nigerian electoral jurisprudence toward balanced adjudication; one that respect the sanctity of procedure without sacrificing the substance of democracy.

6.0 FINDINGS, CONCLUSION, AND RECOMMENDATIONS

⁵⁷ *Raila Odinga v. IEBC (Supra)*

⁵⁸ *Awolowo v. Shagari* (1979) 6–9 SC 51

6.1 Findings

The analysis undertaken in this paper reveals several critical insights into the evidentiary challenges confronting Nigerian election petition tribunals.

6.1.1 Evidentiary Rigidity and Democratic Deficit.

Firstly, Nigerian courts continue to apply excessively rigid evidentiary standards, derived from classical civil and criminal distinctions, without adequate contextual adaptation. The imposition of *proof beyond reasonable doubt* for allegations incidental to election petitions such as corrupt practices has often rendered the judicial process impractical for petitioners. This rigidity not only obstructs justice but also presents a democratic deficit, as genuine grievances are dismissed on technical grounds.

6.1.2 Doctrinal Ambiguity and Jurisprudential Inconsistency

Courts in Nigeria oscillate between civil and criminal proof standards without a coherent doctrinal justification. For instance, while the court in the case of *Abubakar v. Yar'Adua* recognise that election petitions are civil in nature, in *Aregbesola v. Oyinlola*, the court revert to criminal proof thresholds even in civil allegations. This inconsistency erodes predictability and public confidence in electoral adjudication.

6.1.3 Asymmetry of Access to Evidence

Petitioners often face significant obstacles in obtaining election materials such as Forms EC8A–EC8E, accreditation reports, and electronic data because these documents are in the custody of INEC or its agents. The absence of clear procedural mechanisms for timely access undermines equality of arms and renders the burden of proof excessively onerous.

Courts, rather than mitigating this inequity, have frequently reinforced it through narrow interpretations of evidentiary obligations⁵⁹

6.1.4 Comparative Insight: Contextual and Proportional Proof

Comparative analysis reveals that other Commonwealth jurisdictions have moved beyond strict evidentiary orthodoxy toward contextual and proportional frameworks. In India, the *Representation of the People Act* distinguishes between ordinary irregularities and corrupt practices, applying corresponding standard of proof. Kenya adopts a dynamic burden-shifting model while Ghana and South Africa emphasises substantive justice and constitutional proportionality. These models collectively affirm that contextual interpretation enhances both fairness and legitimacy.

6.1.5 Need for a Contextual Model of Proof

Lastly, Nigeria lacks a formalised contextual evidentiary model that balances procedural certainty with democratic justice. Judicial approaches remain fragmented, relying on outdated doctrines ill-suited to modern electoral complexities. This deficiency underscores the urgency of adopting a Contextual Model of Standard of Proof (CMSP); a framework that integrates proportionality, burden-shifting, and constitutional anchoring.

6.2 CONCLUSION

The jurisprudence of burden and standard of proof in Nigerian election petitions stands at a crossroads. While rooted in the noble objective of ensuring electoral stability, its current doctrinal posture often privileges technical regularity over substantive justice. The persistent judicial insistence on onerous proof thresholds has created what may be described

⁵⁹ *Haruna v. Modibbo* [2004] 16 NWLR (Pt. 900) 487 (CA).

as an “evidentiary paradox”: the law demands certainty in contexts where certainty is practically unattainable.

This study has demonstrated that the solution lies not in abandoning evidentiary discipline but in redefining its application through context-sensitive interpretation. Election petitions are not ordinary civil suits; they are constitutional proceedings that determine the legitimacy of governance itself. Accordingly, the evidentiary standards governing them should reflect the constitutional imperatives of fairness, transparency, and the people’s sovereignty.

Comparative experiences from India, Kenya, Ghana, and South Africa illustrate that it is possible to balance doctrinal precision with democratic realism. These jurisdictions treat evidentiary standards as flexible instruments of justice rather than rigid barriers to it. Nigerian law must therefore evolve from procedural formalism toward a jurisprudence of contextual justice; one that respects the rule of law while advancing democratic legitimacy.

In essence, electoral justice cannot flourish where evidentiary rules operate as shields for illegality. True democracy demands not only free and fair elections but also fair and realistic mechanisms for adjudicating their disputes. The future of Nigeria’s democratic consolidation thus depends on the judiciary’s willingness to reimagine evidentiary doctrines as vehicles for justice rather than instruments of exclusion.

6.3 RECOMMENDATIONS

In light of the above findings, the study offers the following recommendations aimed at recalibrating Nigeria’s electoral system toward both procedural fairness and democratic efficacy:

(a) Statutory Reform

The National Assembly should amend the *Electoral Act 2022* and *Evidence Act 2011* to clearly codify the dual-track proof standard. The statute should expressly provide that:

- i. Allegations of non-compliance **or** administrative irregularities be adjudicated on a *balance of probabilities*; and
- ii. Allegations of corrupt practices are proved *beyond reasonable doubt*.

This legislative clarification will eliminate judicial ambiguity and enhance uniformity across tribunals.

(b) Judicial Reorientation

The Nigerian judiciary must consciously adopt a contextual and purposive interpretive philosophy in election petitions. Tribunals should view evidentiary standards not as rigid rules but as flexible instruments for achieving equitable outcomes. Courts should distinguish between the nature of allegations and apply corresponding proof thresholds accordingly.

(c) Burden-Shifting and Procedural Access.

Election petition tribunals should institutionalise a burden-shifting mechanism where, upon a petitioner’s *prima facie* demonstration of irregularities, the evidential burden automatically shifts to INEC or the respondent. This will ensure procedural equity. Furthermore, INEC should

be statutorily mandated to grant petitioners timely access to electoral materials to prevent evidentiary asymmetry.

(d) Training and Judicial Capacity Building

The National Judicial Institute (NJI) should integrate comparative electoral jurisprudence **and** evidentiary reform modules into its training curriculum for judges. Continuous professional development would help judicial officers appreciate evolving international trends and apply evidentiary doctrines more pragmatically.

(e) Constitutional Anchoring of Evidentiary Principles

Future constitutional amendments should explicitly link the right to electoral justice with the right to fair hearing under Section 36 of the *1999 Constitution (as amended)*. Such constitutional anchoring would require courts to interpret evidentiary standards consistently with democratic values and the protection of political rights.

(f) Academic and Institutional Collaboration

Universities, law faculties, and legal research centers should partner with INEC and the judiciary to conduct empirical studies on evidentiary practices and their democratic implications. These collaborations would promote evidence-based reforms and align Nigeria's legal framework with global best practices.