



Placement of placeholders under the nigerian electoral system: A reflection on its legality or otherwise

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Abstract

Nigeria operates a constitutional democracy with the implication of organizing and conducting periodic elections among all the registered Political Parties into some elective national and state public offices such as the office of the President and the Governor into which elections are conducted by the statutory body known as the Independent National Electoral Commission ("The Commission"). Under the appropriate laws, the Commission does make guidelines including the timeframe of when Political Parties must submit the list of names of their sponsored Candidates well ahead of conducting these elections with serious implications for non-compliance. The Presidential Candidates of some Political Parties to beat this deadline as regards submission of the names of their Running Mates, do put up some temporary names with the Commission tagged Placeholders/Dummy Mates. This practice intends to later replace those temporarily placed with their substantive Running Mates. It is the reasons and implications of this practice that is the focus of this work. This paper therefore, using the doctrinal methodology, amongst other issues, answers in the negative, the question of whether a nominated placeholder by a Political Party's Candidate can subsequently be substituted by a substantive Running Mate. This is because the practice of placing a placeholder in the first place is unknown to the Nigerian electoral laws. The work offers some recommendations for improvement in this area of law and practice.

Keywords: Nigeria, election, democracy, political parties, placeholders

Introduction

Under the Nigerian constitutional democracy, the Commission was established and saddled with the responsibility principally to organize and conduct periodic elections into some elective public offices ^[1]. Such public offices include those of the President ^[2], the Governor ^[3], the Senate and the House of Representatives of the National Assembly ^[4] of Nigeria etc which are to be occupied by Candidates to be sponsored by Political Parties ^[5] that are registered by the Commission. Such Political Parties in Nigeria include; the Alliance for Progressive Change (APC), People's Democratic Party (PDP), and Labour Party (LP).

Electoral guidelines and regulations formulated by the Commission are backed by appropriate laws sourced from the Nigerian Constitution ^[6], The Electoral Act ^[7], the respective Political Party's Constitutions ^[8] etc with timetables fixed for conducting the respective party's pre-election activities. These activities include; The Parties' National Convention to elect their national officers and electing their Candidates to contest national and states' elections to be conducted by the Commission.

The task before the Commission, the Political Parties and the Candidates in scaling through the pre-electoral hurdles is no doubt challenging and daunting as it requires effective management of time and human resources particularly concerning the offices of the President and Governors. These two offices are unique because their Candidates are respectively required to mandatorily nominate an associate as their running mate who will occupy the offices of Vice President and Deputy Governor when eventually elected as the case may be.

The choice of a running mate in a multi-ethnic and religious society such as Nigeria, no doubt poses a herculean task especially when given a limited time frame by the Commission. In order therefore to beat the deadline, some Political Parties' Presidential/Governorship Candidates hurriedly often resort to placing with the Commission, which in political parlance is referred to as "Placeholders/Dummy Mates" pending when they settle for appropriate lawful running mates. The APC Presidential Candidate, Senator Bola Ahmed Tinubu, placed one Ibrahim Masari from Kastina state while the Labor Party's Presidential Candidate, Mr. Peter Obi, was also said to have placed one Dr. Doyin Okupe ^[9]. This arrangement was before the Presidential Candidates eventually announced and submitted the names of their respective running mates to their Party and the Commission.

Thus, the two main research questions answered by this paper are; firstly, whether the practice of placing placeholders is legal or known to the Nigerian electoral laws and secondly, whether such Placeholders could subsequently be replaced by substantive Candidates assuming such a Placeholder has not withdrawn either voluntarily or otherwise before the Commission's deadline matures?

This work therefore using the doctrinal methodology, answers these questions and related issues by analyzing the Commission's administrative background arrangement for the 2023 Presidential election and the attempts at beating the Commission's deadline by some Political Parties' Presidential Candidates. The work further defines and examines the implication of some terminologies including Place Holder and whether such are recognized and known under the Nigerian Constitutional and Electoral Laws.

The paper concludes that Placeholders, being not a juristic person known to the law, cannot in law also be substituted subsequently by any legal entity such as the lawfully nominated running mates. For improvement in the practice of law in this field of human endeavours, the paper proffers some recommendations.

The 2023 INEC's Pre-Election Preparatory Administrative Requirement from Political Parties.

The law requires that Political Parties shall submit the names of their Candidates to the Commission, not later than 180 days before the date appointed for the general election^[10]. Consequent to this, the Commission as part of its administrative arrangement, gave up till 6 pm on Friday, June 17, 2022, as the deadline for the submission of names of Candidates for the Presidential and National Assembly election and July 15, 2022, for the Governorship and State Assembly Candidates^[11].

The law also allows the Political Parties to withdraw and substitute their Candidates not later than 90 days before the said election. Specifically on this window of withdrawal, the law provides:

A Candidate may withdraw his candidature by notice in writing signed by the Candidate to the political party that nominated him for such election, and the political party shall convey such withdrawal to the Commission not later than 90 days before the election^[12].

It is in fulfilment of Section 31 of the Electoral Act that the Commission gave July 15 2022, as the last day for the withdrawal of Presidential Candidates and replacement of withdrawn Candidates by the Political Parties.

The attempts by the Candidates of some Political Parties to beat the above deadline fixed by the law and enforced by the Commission resulted in a widespread agitation and scramble manifesting in the form of a newfound trend of getting Place Holders, Surrogates, Dummy Mates as stand-in nominees. For instance, on this, the APC Presidential Candidate, Senator Bola Ahmed Tinubu, placed one Ibrahim Masari from Kastina state while the Labor Party Presidential Candidate, Mr. Peter Obi, was also said to have placed his former campaign Director General. These two Presidential Candidates have eventually announced and submitted the names of their respective substantive Running Mates to their party and the Commission within the timeframe stipulated by Sections 29 and 31 of the Electoral Act, 2022.

The steps taken by these Candidates no doubt appeared to be lawful being accommodated within the appropriate Electoral Laws. But what would have been the case, assuming the substitution of those whose names were put as Placeholders was not made and or they gang stand as the lawful nominees, and the Candidates who placed them insist on replacing them with other nominees subsequently settled for by the Candidates and their Political Parties? The answer to this poser will form the subject of discourse in another sub-division of this work.

Definition of some Political Concepts

It is intended in this part of this paper to highlight, define and examine the meaning and to what extent there is a relationship (if any) between the usage of concepts such as Place Holder, Dummy Mate, Candidate and Running Mate within the practice of Nigerian constitutional democracy. It is important to say that the order in which these concepts are

arranged and discussed does not follow any particular formal order.

1. Who is a placeholder?

The APC has introduced a new political term into the Nigerian political vocabulary. It is called a "Place Holder". This refers to a person who is appointed and authorized to act for another. It can also refer to something that temporarily fills a vacant position. A placeholder is someone who holds an office or position, especially as a deputy, proxy, or government official^[13].

2. Who is a Dummy Candidate?

A dummy is defined as a:

Sham; make-believe; imitation, or a person who serves in place of another or who serves until the proper person is named or available to take his place (e.g. dummy corporate directors, dummy owners of real estate^[14].

Thus, a dummy Candidate with names similar to that of a more established Candidate may be fielded by Political Parties to confuse the voters and cut that Candidate's vote share. The dummy Candidate's name also may be deceptively similar to that of a retiring incumbent^[15].

3. Can A Running Mate Candidate in a Presidential Election Be Regarded as a Vice President Yet?

Having regards to the premium placed on the office of the President under the Nigeria Constitution, the Vice President is not a substitute for the President, being an ever-present partner, help and an associate. Worthy of note also is that while the office of President remains perpetual, the same cannot be occupied by a person as a President in perpetuity. Thus every President must have a Vice President and the relationship between the two offices is like a Siamese twins, tied together by the same umbilical cord.

A resort to Section 152 of the Electoral Act 2022 will provide the answer to the question raised in this Subdivision of this paper. That a Candidate for an election is different from the holder of the office of a Vice President is a provision of the Electoral Act which defines a Candidate as follows:

A candidate is a person who has secured the nomination of a Political Party to contest an election for any elective office^[16]

Thus, it is only the winning of an election that changes or translates a Candidate as a running mate to a Vice President. Therefore, a running mate Candidate in a Presidential election does not qualify to be regarded or addressed yet as a Vice President until he wins an election which then translates him to be so addressed or regarded as the Vice President.

Can a Placeholder substitute for Vice President in a Presidential Election?

The point has been made that the two offices of the President and Vice President are like Siamese twins tied together by the same umbilical cord. To this extent, therefore, the relationship between the two offices also actually starts before the conduct of any election hence the Constitution provides that:

...a Candidate for an election to the office of President shall not be deemed to be validly nominated unless he nominates another Candidate as his associate from the same Political Party for his running for the office of President, who is to occupy the office of Vice President and that Candidate shall

be deemed to have been duly elected to the office of Vice President if the Candidate for election to the office of President who nominated him as such associate is duly elected as President...^[17]

Certain basic principles are inherent in the just herein quoted constitutional provisions and they include that: first, every President must have a Vice President. Second, the validity of the nomination of a Candidate for the office of President is predicated solely on him nominating another Candidate who serves as the Vice President. Third, if the nomination to the office of the Vice President is provisional, the same goes for the nomination for the office of the President. Fourth, anything that invalidates the nomination of a Candidate to the office of Vice President equally affects the Candidate for the office of the President. Fifth the Candidate for the office of the President nominates the Candidate for the office of the Vice President and is deemed to have agreed to be bound by any danger inherent in his nominee. Sixth, both the nominee and the nominator must belong to the same Political Party.

Being that the nomination of a Candidate for the office of the President and that of the Vice President is joint, therefore if the nomination of the Candidate for the office of the Vice President is provisional, then that of the President is equally provisional and inchoate. Thus the question posed in this sub-head of this paper is, can a placeholder, being unknown to law and a non-existent entity, be subsequently replaced or substituted by a Vice Presidential Candidates in a Presidential Election? The answer is an obvious NO based on the principles of law held in the following cases:

The Court of Appeal in *Anege & Ors v Alaneme & Ors* ^[18] on whether the Court can grant an amendment for the substitution of a non-existent person with a juristic person, held thus:

...a misnomer when associated with issues of juristic personality and misdescription of names of parties simply means the "wrong use of a name or a mistake in naming a person, place or thing, especially in a legal instrument which should ordinarily lead to a notification of the proceedings. In other words, a misnomer in the context of litigation occurs /where the entity suing or intended to be sued exists but a wrong name is used to describe that entity ^[19].

It was held that a misnomer is said to occur in legal proceedings when the correct person comes or is brought to court under a wrong name, but not when the wrong person sues or is issued in an action ^[20]. The Appellant's complaint in the suit which was filed without a competent defendant was dead *ab initio* and liable to be struck out and the desperate attempt to give life to it was futile. The Supreme Court had recently restated the legal position in *APGA v Ubah & amp. Ors* ^[21]

...if the entity intended to be sued exists but a wrong name is used to describe it, that is a misnomer. In the instant case, and at the time of filing the suit at the lower court, the 2nd Appellant, "Ideato Welfare Association" was non-existent as it was an unincorporated association. Similarly, the "Registered Trustees of Ideato Cultural and Welfare Association" "did not exist when the Respondents' cause of action for this suit arose between 2011-2014. ^[22]

In the case of *Obasi V Mikson Establishment Ltd* ^[23] the Supreme Court has *inter alia* held that:

...naming a non-juristic person as a party is not a misnomer and amending the same to substitute a juristic

person is out of it. This is so because there cannot be a valid amendment of the title of a suit since there never was a legal person who was brought before the court by the action. And since to be competent, a suit must be instituted between a legally juristic person, failing which it is incompetent and a juristic party cannot subsequently be amended to take the place of a non-juristic party originally sued. The correction made by replacing a non-juristic person with one with legal capacity was done without jurisdiction ... ^[24]

The above cases are all to the effect that since a shadowing, ghost and non-recognized "Place Holder" or "Dummy Mate" was never contemplated by the Electoral Act, 2022 as a juristic person, such a ghost cannot therefore be substituted by legal person as a Vice President Running Mate in a Presidential Election.

What are the Legal implications of placing a placeholder/Dummy Mate in the Electoral Process?

The First Legal implication of placing a placeholder by a Political Party is that if the nomination of the Candidate for the office of the Vice President is provisional, then that of the President is equally provisional. This is because the nomination of a Candidate for the office of The President and that for the Vice President is joint ^[25]. The second legal implication of placing a placeholder is that a Political Party bears the consequence of not submitting at all or submitting an invalid Candidate for an election. This is borne out by the provision of Section 131 (c) of the 1999 Constitution to the effect that a Candidate for an election to the office of President must be sponsored by a Political Party. Section 84 (1) of the Electoral Act, 2022, states that a Political Party seeking to nominate Candidates for election shall organize and hold primaries for the aspirants under the supervision of the Commission. On its own, Section 29(1) of the same Electoral Act, 2022 mandates every Political party to submit to the Commission, not later than 180 days before the date appointed for a general election, the list of Candidates it is sponsoring in that general election.

Thirdly, since the submission of a Candidate's name by a Political Party to the Commission constitutes a definite and unambiguous statement of the intent of a Political Party to have that Candidate only as its representative in the election, the nomination of a Candidate and submission of his name by a Political Party to the Commission, therefore, seals the sponsorship of a Candidate for an election. Once the window of nomination closes, all parties become *functus officio*.

Conclusion and Recommendations.

This paper has proved the point that the Nigerian Constitution as well as the Electoral Act, do not provide for a Place Holder or Dummy Mate as a Candidate for an election and as such, is unknown to law. He is an unknown person, who has the seal of a political party to occupy the position of an unknown person; thus a mere faceless Surrogate. The practices of placing these faceless surrogates in provisional arrangements by the politicians in collaboration with their Political Parties have several legal implications which have also been discussed in the paper. Indeed, the paper has asserted a clear position in law, based on superior courts of law decisions that a placeholder cannot substitute for a substantive Vice President in a Presidential election and ditto for a Deputy Governor in a Governorship

election. The following recommendations are therefore offered for improvement in this area of law and practice:

In the first place, since place holder or whatever designation it is named is unknown to law, then the placement should be disallowed, discouraged and made punishable as one of the electoral offences. This will stop its further practices since the saying is true that where there is no law, there is no sin/offence.

Secondly, it is recommended that every withdrawal of Candidates of whatever category before the final submission of names by the Political Party to the Commission should be done according to the law in strict compliance with the provisions of Sections 29 (1), 31 and 33 of it is mandatory that a candidate who wishes to withdraw his candidature must do so in writing. The political party of the candidate must communicate the withdrawal to the commission. Moreover, a new primary election should be conducted within 14 days of the candidate's withdrawal. It is crucial to strictly comply with this requirement. strictly complied with. Strict compliance with the provisions of the Electoral Act herein cited would have saved an ugly scenario that played out sometime in 2022 in the APC Yobe state of Nigeria North Senatorial District between Senator Ahmed Lawan, an incumbent Nigerian Senate President and one Mr. Machina, who contested and won the said Senatorial primary seat having been duly nominated. The ugly political development following the due nomination of Mr. Machina was an allegation that the APC as their common Political Party, tried crudely to replace Mr. Machina's name with that of the current Senator Ahmed Lawan who did not even contest the said Senatorial primary nomination election but rather contested for the Presidential primary nomination election and lost out. Having therefore lost the party's Presidential primary nomination election, he tried to use his influence to displace Mr. Machina's nomination already secured when the said Mr. Machina had not resigned his secured nomination for the said senatorial seat.

Therefore, flowing from this ugly scenario that played out and discussed herein between Senator Ahmed Lawan and Mr. Machina in APC Yobe North Senatorial District, is our third recommendation based on Section 30 of the Election Act, 2022 which provides that:

A Candidate for "an election" shall be nominated in writing by such number of persons whose names appear on the register of voters in the constituency as the Commission may prescribe^[26].

By this provision, a Candidate cannot be a nominee for two different elective offices that is, as a Presidential and a Senatorial nominee simultaneously. Should anybody who does this get away with it unpunished even when he has made a mockery and rubbished the already heavily tainted democratic process? This exactly is what the Senate President, Mr. Ahmed Lawan allegedly has attempted to do. This is worse, when the personality involved in this and any breach of the Electoral Law is so highly placed hence should be punished if found guilty as we must get our Electoral Law, practices and system right as a nation.

Fourthly, since the incident in which both Senator Ahmed Lawan and Mr. Machina were allegedly involved as stated herein may be a prime case for pre-election litigation matter under the Nigeria Election Law^[27], it is recommended that the law in this area should be set in motion and pursued expeditiously. In doing this, Mr. Machina and all those having similar cases should be on alert and encouraged to

prosecute such matters diligently to their logical conclusion within the stipulated period. Such pre-election matters should commence at the Federal High Court within 14 days of the purported and wrongful substitution of the name to the Commission being the time the cause of action arises^[28]. It is our recommendation also that the Electoral Act and the Constitution should be amended to provide that Presidential and Governorship Candidates of a Political Party should not have their Running Mates from the same religion or faith. This is because of the sensitivity of religion in the Nigerian setting and the secularity basis of the Nigerian Constitution^[29].

Finally, it is recommended that the Commission should devote more time and resources to discharging the functions conferred upon it under the Constitution and to rigorously conduct voters and civic education, promoting knowledge of the sound democratic electoral process and conducting referendum as may be required of it under the laws^[30].

It is hoped that the implementation of the herein proffered recommendations together with other valuable ideas derivable from the different sectors of Nigeria and in the Diaspora, will no doubt check the several electoral malpractices including that of placing Place Holders/Dummy Mates thereby advancing the Nigerian electoral practices among the committee of Nations.

References

1. See S.153 and paras. 14 & 15, part 1 of the 3rd schd. to the Constitution of the Fed. Rep. of Nig 1999 (As Amended) subsequently referred to as ("The 1999 Constitution"). See also, SS.2 &75 of the Electoral Act, 2022.
2. Ibid at S.130 of the 1999 Constitution.
3. Ibid at S.176
4. Ibid at SS.47-49
5. Ibid at ss.221-222. See further also Ibid at SS.142 (1) & 187(1)
6. See fn.1 Ibid
7. See particularly for the purpose herein; SS.29 (1)31,33, 84(1) and 152 of the Electoral Act, 2022.
8. See for example, chapter VIII of the PDP Constitution and Article 20 of the APC Constitution which respectively provide for holding of the respective party congress for electing their officers and for nomination of their Candidate who will be fielded to contest for elective public offices.
9. See generally, THIS DAY NEWSPAPER LAWYER WEEKLY PULLOUT MAGAZINE of Tuesday 28 and July 5, 2022, with the publication by Dr. Mike Ozekhome, SAN titled: Placing "Place Holders" placeless (part 1) & (part 2) at pages vi and vi respectively.
10. See S.29(1) of the Electoral Act, 2022
11. See fn.9 Ibid.
12. See S.31 of the Electoral Act, 2022
13. See generally (part 1) of fn.9 (supra)
14. See Henry Campbell Black, M.A; Black's law Dictionary (1990; 6th(ed) USA, St Paul Minn. West Publishing Co.) P.502
15. See fns. 9 &13, Ibid.
16. See S.152 of the Electoral Act, 2022
17. See S.142(1)of the 1999 Constitution. See also S.187 (1) of the same 1999 Constitution for the office of Deputy Governor.

18. (2020)LPELR -50445 (CA).
19. Ibid. per Lawal Shuaibu, JCA at 19-22
20. See Emespo J. Continental ltd. V Corona S.Mba & amp; Co (2006)II NWLR (pt. 991)at 378. See also, Nwabueze v NIPOST (2006)8 NWLR(pt.983) 480 at 526-527
21. (2019) LPELR-48132 (SC)
22. Ibid.
23. (2016) LPELR (SC)
24. Ibid
25. See SS.142(1) and 187 (1) of the 1999 Constitution.
26. S.30 (1) Electoral Act, 2022. (Emphasis supplied by us).
27. Se s. 285 (14) (a)of the 1999 Constitution, & S.84 (14) of the Electoral Act 2022
28. See S. 84 (14). Electoral Act, 2022. See APC v Lere (2020) INWLR (pt. 1705) 254 esp. the holding at pg. 279 by His Lordship Per Rhodes Vivour. See also Garba v APC (2020) 2 NWLR (pt. 1708) at 345-360
29. See S.10 of the 1999 Constitution.
30. See fn.1 (supra) and S.2 Electoral Act. 2022