

**SECTION 137 OF THE ELECTORAL ACT, 2022: A WATERSHED MOMENT OR A
FLY IN THE OINTMENT OF ELECTORAL JUSTICE IN NIGERIA?¹**

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Abstract

This article critically examines the efficacy of Section 137 of the Electoral Act, 2022, a provision designed to revolutionize the proof of non-compliance in Nigerian election petitions by obviating the need for oral evidence where irregularities are manifestly disclosed on electoral documents. Through a doctrinal analysis of the legislative intent and a review of the jurisprudence from the 2023 election petition tribunals, the article argues that while Section 137 represents a significant step towards evidentiary efficiency, its potential has been hampered by divergent judicial interpretations. The article identifies key ambiguities, particularly the meaning of "manifestly disclose" and the persistent requirement for "linking witnesses," which have curtailed the provision's impact. It concludes by proposing jurisprudential and legislative reforms necessary to realign Section 137 with its original objective of streamlining electoral adjudication in Nigeria.

Keywords: Non-compliance, judicial interpretations, oral evidence, reforms and legislative intent.

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1.0 Introduction

Nigeria's vibrant democracy is perennially tested in the crucible of its election tribunals. Post-election litigation, often sprawling, complex, and protracted, has become an intrinsic feature of the political landscape. Historically, petitioners faced a formidable challenge: proving allegations of non-compliance with electoral laws required extensive oral testimony to establish basic facts, even when documentary evidence *prima facie* suggested irregularities. This process is notoriously time-consuming, resource-intensive, and susceptible to procedural delays that can frustrate the quest for justice within the constitutionally mandated timelines for resolving election disputes. The enactment of the Electoral Act, 2022, introduced several reforms aimed at enhancing electoral integrity and streamlining adjudication.

Among these, **Section 137** emerged as a potentially transformative, yet contentious, provision specifically targeting the evidentiary burden in election petitions. It stipulates: *"It shall not be necessary for a party who alleges non-compliance with the provisions of this Act for the conduct of elections to call oral evidence if originals or certified true copies manifestly disclose the non-compliance alleged."*²

This deceptively simple clause promised a revolution in how electoral malpractices are proven in court. By potentially obviating the need for oral testimony where documents "manifestly disclose" non-compliance, it aimed to expedite proceedings, reduce costs, and place greater weight on the official record generated during the election itself. Yet, its application following the 2023 general elections revealed significant interpretative ambiguities and practical hurdles. Was Section 137 the watershed moment in Nigerian electoral jurisprudence it was heralded to be, fundamentally shifting the evidentiary paradigm? Or has it become an unforeseen "fly in the ointment," introducing new complexities and potentially hindering the cause of electoral justice?

This article undertakes a meticulous examination of Section 137. It dissects its legislative intent, analyses its practical application in the 2023 election petitions, evaluates the ensuing

²Section 137, Electoral Act, 2022.

jurisprudential debates, and ultimately assesses its impact on Nigeria's electoral dispute resolution framework.

2.0 Historical Context and Legislative Genesis of Section 137

The cumbersome nature of election petitions in Nigeria has long been a subject of judicial and scholarly concern. Petitioners were often required to call numerous polling unit agents as witnesses simply to tender result sheets (Forms EC8A) and voter registers, and to testify to basic events like the failure to use the Smart Card Reader (SCR) in earlier elections or the Bimodal Voter Accreditation System (BVAS) in 2023, even when the forms themselves lacked required signatures, stamps, or accreditation figures. This practice contributed significantly to the frequent inability of tribunals and courts to conclusively determine petitions within the 180-day timeframe stipulated by the Constitution.

The Justice Uwais Electoral Reform Committee in 2008 and other subsequent review panels had implicitly highlighted the need for such procedural efficiencies.³ Section 137 was conceived as a direct legislative response to this endemic problem. Its core objective is evidentiary efficiency and acceleration. It seeks to reduce reliance on oral testimony, elevate the status of official electoral documents, expedite proceedings, lower costs for petitioners, and focus adjudication on substantive legal arguments. The operative phrases that have since become the locus of judicial interpretation are "manifestly disclose," "non-compliance with the provisions of this Act," and "originals or certified true copies."

3.0 Theoretical Underpinnings: The Promise and The Peril

The discourse surrounding Section 137 reveals a clear dichotomy between its proponents, who view it as a landmark reform, and its critics, who argue that its implementation has introduced new complexities.

³The Electoral Reform Committee, *Report of the Electoral Reform Committee*. Abuja: Federal Government of Nigeria, 2008.

3.1. Section 137 as an Evidentiary Watershed

Proponents view Section 137 as a landmark reform for several compelling reasons. It promises to revolutionize the proof of non-compliance by dismantling the rigid requirement for oral testimony for apparent irregularities, allowing tribunals to draw inferences directly from the flawed document itself.⁴ This fundamental shift has the potential to drastically accelerate the adjudicatory process, a crucial factor for meeting constitutionally mandated timelines.⁵ Furthermore, it significantly reduces the financial and logistical burdens on petitioners, who no longer need to assemble hundreds of witnesses just to state the obvious, thereby enhancing access to electoral justice.⁶ The section also promotes documentary integrity by creating a stronger incentive for INEC officials to meticulously complete forms, knowing that omissions could be deemed “manifest” non-compliance.⁷ It aligns Nigerian practice with modern litigation trends and promotes the efficient use of judicial resources.⁸

3.2. Emerging Challenges: The Provision as a Complicating Factor

Despite its laudable goals, the implementation and interpretation of Section 137 during the 2023 election petitions exposed significant challenges. The crux of the controversy lies in the elusive meaning of “manifestly disclose.” Tribunals adopted varying interpretations, ranging from a strict view requiring the non-compliance to be glaring and incontrovertible from the document alone, to a more liberal view where it is readily apparent even if it requires a simple inference. This ambiguity led to inconsistent application.

A major hurdle was that even under a liberal view, tribunals consistently held that Section 137 did not automatically shift the burden of proof to INEC or the winner to explain the irregularity, nor did it absolve the petitioner from demonstrating the *substantial effect* of the non-compliance on

⁴C. V. Nwankwo, Section 137 of the Electoral Act 2022: A Game Changer for Proof of Non-Compliance in Election Petitions? *Nigerian Journal of Jurisprudence and Contemporary Law*, (2023) 8(1), 55-70.

⁵E. Azinge, *Tight Timelines and the Quest for Electoral Justice: Can Section 137 Help?*. Paper presented at the NBA-SPIDEL Conference on Electoral Jurisprudence, 2023, Lagos.

⁶Centre for Democracy and Development, *Nigeria Election Report: The 2023 General Elections*, 2023, Abuja.

⁷Independent National Electoral Commission (INEC), *Training Manual for Presiding Officers and Assistant Presiding Officers*, 2022.

⁸R. Moeketsi, *The Use of Documentary Evidence in Election Disputes: A Comparative Analysis*, *International Journal of Evidence & Proof* (2019) 23(4), 287-305; Civil Society Legislative Advocacy Centre (CISLAC), *Post-2023 Elections: Recommendations for Electoral Reform*, 2023; Hon. Justice A. B. Mohammed (Rtd.), *Reflections on Judicial Economy in Election Petitions Post-2023*, Keynote Address, National Judicial Institute Workshop, 2023.

the election result, as required by Section 134(1) of the Electoral Act.⁹ The provision also proved ineffective for proving critical issues like over-voting, as tribunals required witnesses to link BVAS reports to specific result sheets (EC8A), a comparison not covered by Section 137 alone.¹⁰ In practice, witnesses were still often needed to link documents, provide context, and contest authenticity, leading critics to argue that the section eliminated very little oral testimony.¹¹ This inconsistency and limited impact were particularly evident in the highest-profile petitions, where Section 137 played a minor role.¹²

4.0 Jurisprudential Analysis: The 2023 Election Petitions as a Testing Ground

The 2023 election petitions provided the first major testing ground for Section 137, yielding a rich, albeit conflicting, body of case law that reveals the stark divide in judicial attitudes towards the provision.

4.1. A Purposive Approach: Instances of Robust Application

There were several notable instances where tribunals robustly applied Section 137 to find non-compliance and set aside results based solely on documentary irregularities. In *Peoples Democratic Party (PDP) v. Independent National Electoral Commission (INEC) & 2 Ors.*¹³ at the National Assembly Election Petition Tribunal in Oyo State, the court cancelled results from polling units where the result sheets (EC8A) lacked the signatures of the Presiding Officer and/or party agents. The tribunal held that this omission constituted non-compliance that was "manifestly disclosed" on the face of the certified true copies, and no oral evidence was required to prove this breach. Similarly, in *All Progressives Grand Alliance (APGA) v. INEC & 2 Ors.*¹⁴ at the Anambra State House of Assembly Election Petition Tribunal, results from affected units were nullified because the EC8As were not signed by the Presiding Officer. The tribunal invoked Section 137,

⁹*Labour Party (LP) & Anor. v. INEC & 2 Ors. (2023)*, Governorship Election Petition Tribunal, Abia State. (Unreported).

¹⁰*Action Democratic Party (ADP) v. INEC & 2 Ors. 2023*, National Assembly Election Petition Tribunal, Kano State. (Unreported).

¹¹Yiaga Africa, *Watching The Vote 2023: Report on the Nigerian General Elections*, Abuja, 2023; *Social Democratic Party (SDP) v. INEC & 2 Ors. 2023*, Governorship Election Petition Tribunal, Niger State. (Unreported).

¹²*Peoples Democratic Party (PDP) & 2 Ors. v. INEC & 2 Ors. 2023*, CA/PEPC/03/2023 (PEPC Judgment).

¹³National Assembly Election Petition Tribunal, Oyo State. (Unreported). See also Vanguard Nigeria, "Tribunal Sacks Oyo Rep Over Invalid Result Sheets," September, 2023.

¹⁴State House of Assembly Election Petition Tribunal, Anambra State. (Unreported).

stating that the need for a signature was a clear statutory requirement and its absence was a manifest breach.

The Plateau State National Assembly Election Petition Tribunal in *All Progressives Congress (APC) v. Peoples Democratic Party (PDP) & 2 Ors.*¹⁵ also applied this principle to result sheets that lacked the official INEC stamp, finding the non-compliance self-evident. Beyond signatures and stamps, the Kaduna State House of Assembly Election Petition Tribunal in *Peoples Redemption Party (PRP) v. INEC & 2 Ors.*¹⁶ invalidated results where there were alterations and cancellations on the result sheets without the requisite counter-signing by party agents, ruling that this irregularity was manifest on the document. These cases represent the provision's ideal application, where the judiciary gives effect to the legislative intent to rely on the documents themselves for clear procedural breaches.

4.2. A Restrictive Approach: Judicial Reluctance and Limitations

Conversely, a significant number of tribunals adopted a restrictive approach, effectively turning down the application of Section 137. The Presidential Election Petition Court (PEPC) in *Labour Party (LP) & Anor. v. INEC & 2 Ors.*¹⁷ provided a pivotal example. While the petitioners alleged that numerous result sheets uploaded to the INEC Results Viewing (IReV) portal were illegible, blurred, or missing, the court held that this did not "manifestly disclose" non-compliance with the Electoral Act. It reasoned that the Act did not explicitly make uploading a mandatory step for the validity of an election, and the legibility of an upload was not a ground for invalidating an election. The court required direct evidence linking the quality of the upload to a specific breach of the Act, which was not provided. This highlights a key limitation: what is "manifest" to a layperson may not be deemed a statutory breach by a court.

Furthermore, in *Action Democratic Party (ADP) v. INEC & 2 Ors.*¹⁸ at the Kano State National Assembly Election Petition Tribunal, the petitioner attempted to use Section 137 to prove over-voting by presenting the BVAS report and the corresponding EC8A. The tribunal rejected this,

¹⁵National Assembly Election Petition Tribunal, Plateau State. (Unreported). See also, The Punch, "Tribunal Nullifies PDP's Victory in Plateau Over Non-Compliance," August, 2023.

¹⁶State House of Assembly Election Petition Tribunal, Kaduna State. (Unreported).

¹⁷Ibid (n 12), 400 - 410.

¹⁸National Assembly Election Petition Tribunal, Kano State. (Unreported).

holding that while each document individually might be clear, proving over-voting required a witness to testify and link the two documents, establishing that the BVAS report was for the exact same polling unit as the EC8A. This “linking witness” requirement became a major loophole that preserved the need for oral testimony in many scenarios. The Kebbi State Governorship Election Petition Tribunal in *All Progressives Congress (APC) v. Peoples Democratic Party (PDP) & 2 Ors.*¹⁹ took a similarly strict view, requiring oral evidence to confirm that apparent irregularities on documents were indeed breaches of the law and not mere clerical errors, effectively neutering Section 137’s potential.

5.0 Analysis of the Divergent Jurisprudence and its Implications

The divergent judicial approaches reveal a fundamental tension between a purposive interpretation aimed at achieving efficiency and a conservative, literalist interpretation that maintains the status quo of evidential burden. The cases that successfully applied Section 137 correctly focused on the provision's core purpose: to eliminate the absurdity of calling a witness to point out a missing signature or stamp. This aligns perfectly with the legislative intent to reduce unnecessary witness testimony for facts that are incontrovertibly established by the official record. The judiciary in these instances acted as a partner in procedural reform.

However, the cases that rejected its application, particularly the PEPC's stance on IReV uploads and the widespread insistence on “linking witnesses” for over-voting, demonstrate a reluctance to fully embrace the evidentiary shift. This creates a significant paradox: a provision designed to avoid calling witnesses for apparent facts is rendered moot if a witness is still required to “manifestly disclose” the link between two apparent facts. This judicial caution may stem from a desire to avoid nullifying elections on what may be perceived as technicalities without a full contextual understanding. However, it undermines the very efficiency and accessibility the section was designed to create.

¹⁹Governorship Election Petition Tribunal, Kebbi State. (Unreported).

This interpretation suggests that for many tribunals, “manifestly disclose” is confined to a single, self-contained document and cannot extend to a conclusion drawn from comparing two authentic INEC documents, a stance that severely curtails the provision’s utility.

6.0 Proposed Reforms: Realigning Section 137 with its Legislative Intent

For Section 137 to fulfill its potential as an evidentiary watershed, several steps are crucial, all aimed at reinforcing its original purpose of minimizing superfluous oral testimony.

The foremost need is for jurisprudential clarity. The Supreme Court of Nigeria must provide a definitive and purposive interpretation of “manifestly disclose.” This interpretation should explicitly state that for clear, procedural breaches visible on the face of a single INEC document such as missing signatures, stamps, or mandatory data no oral evidence is required to prove the fact of non-compliance.²⁰ Furthermore, the Supreme Court should address the “linking” issue, ruling that where a petitioner presents certified true copies of two INEC documents from the same polling unit (e.g., a BVAS report and an EC8A), the tribunal can and should compare them to determine if over-voting is manifest without requiring a witness to formally link them, unless the authenticity of the documents is genuinely contested.

To strengthen this, a legislative amendment could be considered to explicitly state that once non-compliance is found to be “manifestly disclosed,” an evidential burden shifts to INEC or the respondent to provide a satisfactory explanation for the irregularity.²¹ This would truly catalyze the intended shift.

On an institutional level, INEC must enhance its document management. The commission must rigorously enforce compliance by its officials in properly completing, signing, and stamping all statutory forms.²² Fewer irregularities on the documents mean fewer grounds for petition and a more robust electoral record. Concurrently, judicial capacity building is essential. Mandatory training for election tribunal judges should focus on the legislative history and clear intent of Section 137, encouraging a consistent and bold application that prioritizes evidentiary efficiency

²⁰Nigerian Bar Association - Section on Public Interest and Development Law (NBA-SPIDEL), *Proposed Amendments to the Electoral Act 2022 & Recommendations*, 2023, Lagos.

²¹International IDEA, *Nigeria Electoral Process Review 2023: Technical Assessment Report*, 2023, Stockholm.

²²Independent National Electoral Commission (INEC), *Report of the 2023 General Election*, 2023, Abuja.

over procedural conservatism.²³ Finally, legal practitioners must be sensitized through NBA, the Nigerian Law Society (NLS) and INEC workshops on how to strategically frame petitions to maximize the use of Section 137 for clear-cut documentary breaches, while understanding its limitations for allegations of fraud or corruption.²⁴

7.0 Conclusion

Section 137 of the Electoral Act, 2022, was conceived as a potential watershed in Nigerian electoral adjudication. Its core ambition — to dispense with the need for superfluous oral testimony when the official electoral documents themselves glaringly reveal breaches of the law — represented a significant philosophical and practical shift towards efficiency and documentary primacy. In this aspiration, it held the promise of expediting justice, lowering barriers to challenging flawed elections, and enhancing accountability for INEC officials.

The reality of its application in the 2023 election petitions, however, revealed it to be more of a complex navigational marker within the ointment of electoral litigation than a decisive watershed. The extensive case review shows a judiciary at odds with itself. While some tribunals embraced its revolutionary potential to nullify results based on unsigned or unstamped forms without witness testimony, others, including the pivotal PEPC, retreated to a conservative stance that required oral evidence for linkages and contextual proof, thereby diluting the section's impact. The provision's effect was constrained by the persistent ambiguity surrounding “manifestly disclose” and the judiciary’s unwavering insistence that petitioners still prove the substantial effect of any proven non-compliance.

Therefore, Section 137 is not yet the unequivocal watershed its drafters envisioned, but neither is it merely a disruptive fly in the ointment. It occupies a middle ground: a significant step forward in recognizing the probative value of official documents, yet a step hampered by interpretative friction and a judicial reluctance to fully let go of the old, witness-centric model. Its true potential remains partially untapped. The path to redemption lies in jurisprudential clarity from the Supreme Court, targeted judicial training, and a more confident application of the provision by tribunals.

²³National Judicial Institute (NJI), *Report on the Workshop on Adjudication of Election Disputes Arising from the 2023 General Elections*, 2023, Abuja.

²⁴Legal Defence and Assistance Project (LEDAP), *Training Manual on Election Petition Litigation under the Electoral Act 2022*, 2023, Abuja.

Through consistent, purposive application that honors the legislature's intent, Section 137 can evolve from a promising but contested innovation into a mature and effective tool for achieving swifter, more accessible, and more document-centric electoral justice in Nigeria. Its journey from aspiration to impactful reality continues.