

Chief Awolowo v. Alhaji Shagari

by Surinder S. Boparai*

Introduction:

The Federal Republic of Nigeria had a Parliamentary form of government, modelled after the British example, when it gained independence on October 1st 1960. However, a political system based on the American Constitution was adopted by the country in 1979. The Constituent Assembly, established in October 1977, recommended as follows as regards the election of the executive President¹:

122. – (1) There shall be for the Federation a President.
(2) The President shall be the Head of State, the Chief Executive of the Federation and Commander-in-Chief of the Armed Forces of the Federation.
123. A person shall be qualified for election to the office of President if –
 - (a) he is a citizen of Nigeria by birth; and
 - (b) he has attained the age of thirtyfive years.
124. – . . .
 - (3) Where in an election to the office of President one of the 2 or more candidates nominated for the election is the only candidate after the close of nomination, by reason of the disqualification, withdrawal, incapacitation, disappearance or death of the other candidates, the Federal Electoral Commission shall extend the time for nomination.
 - (4) For the purpose of an election to the said office, the whole country shall be regarded as one constituency.
 - (5) Every person who is registered to vote at an election of a member of a legislative house shall be entitled to vote at an election to the office of President.
125. A candidate for an election to the office of President shall be deemed to have been duly elected to such office where, being the only candidate nominated for the election –
 - (a) he has a majority of Yes votes over No votes cast at the election; and
 - (b) he has not less than one-quarter of the votes cast at the election in each of at least two-thirds of all the States in the Federation,
but where the only candidate fails to be elected in accordance with this section, then there shall be fresh nominations.
126. – (1) A candidate for an election to the office of President shall be deemed to have been duly elected where, there being only 2 candidates for the election –

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¹ *The Constitution of the Federal Republic of Nigeria 1979*, Federal Ministry of Information (Printing Division), Lagos, at pp. 41–43.

- (a) he has a majority of the votes cast at the election; and
- (b) he has not less than one-quarter of the votes cast at the election in each of at least two-thirds of all the States in the Federation.
- (2) A candidate for an election to the office of President shall be deemed to have been duly elected where, there being more than 2 candidates for the election –
 - (a) he has the highest number of votes cast at the election; and
 - (b) he has not less than one-quarter of the votes cast at the election in each of at least two-thirds of all the States in the Federation.
- (3) In default of a candidate duly elected in accordance with subsection (2) of this section there shall be a second election in accordance with subsection (4) of this section at which the only candidates shall be –
 - (a) A candidate who has secured the highest number of votes at any election held in accordance with the said subsection (2) of this section; and
 - (b) one among the remaining candidates who has a majority of votes in the highest number of States,
 so however that where there are more than one candidate with a majority of votes in the highest number of States, the candidate with the highest total of votes cast at the election shall be the second candidate at the election.
- (4) In default of a candidate duly elected under the foregoing subsections, the Federal Electoral Commission shall within 7 days of the result of the election held under the said subsections, arrange for an election to be held –
 - (a) in each House of the National Assembly; and
 - (b) in the House of Assembly of every State in the Federation,
 with a view to determining which of the 2 candidates shall be elected as President, and the candidate who has a simple majority of all the votes cast at such election shall be deemed to have been duly elected as President.²
- (5) Elections to be held in accordance with subsection (4) of this section shall be held on the same day and at the same time throughout the Federation.

However, since the new constitution was to come into force with the inauguration of a civilian administration, the Federal Military Government promulgated an Electoral Decree³ to govern the elections to be held to prepare for a return to civilian rule. Section 34A of the Decree, which prescribed how a President would be elected, laid down the same conditions as section 126 of the proposed new constitution, quoted above.

2 *The Constitution (Amendment) Decree* (No. 104) 1979, issued after the 1979 elections has removed the Electoral College in s. 126 (4) and substituted it with further popular elections.

3 *Decree* No. 73 of 1977, as amended by *Decree* No. 32 of 1978.

Elections and the legal battle:

The Electoral Decree prescribed for the registration of an association as a political party if, among others,⁴

the Electoral Commission is satisfied that it has a properly established branch office in each of at least two-thirds of the states in the Federation and that officers have been duly elected or, as the case may be, appointed to run the affairs of each branch office . . .

The aim of this provision would seem to be that the political parties must have significant followings in most areas of the country. The importance of the above provision lay in the fact that only such recognised national political parties could put up candidates for the office of the President⁵.

Five political parties came to be registered under the Electoral Decree: the National Party of Nigeria, the Unity Party of Nigeria, the Nigerian People's Party, the Great Nigeria People's Party and the People's Redemption Party. Each one of them put up a candidate for the office of the President. The two main candidates were Alhaji Shehu Aliyu Usman Shagari of the National Party of Nigeria and Chief Obafemi Awolowo of the Unity Party of Nigeria. Alhaji Shagari is a member of the Fulani tribe and comes from the former Northern Region. Chief Awolowo, on the other hand, is a Yoruba from the former Western Region.

Nigerians went to the polls on July 7th, 14th, 21th, 28th and August 11th, 1979, to elect members of the Federal Senate, the Federal House of Representatives, the State Assemblies, the State Governors and the President of the Federation, respectively, to return the country to civilian rule after thirteen years of military administration. The results of the first four elections put the National Party of Nigeria in a strong position in twelve states, the Unity Party of Nigeria in six states, the Nigerian People's Party in three states, the Great Nigeria People's Party in two states and the People's Redemption Party in one state.⁶ Alhaji Shagari of the National Party of Nigeria came out at the top in the Presidential poll. He polled 5,688,857 votes – the highest number of votes cast at the election for any candidate.⁷ Next came Chief Awolowo with 4,916,651 votes.⁸ Under the Electoral Decree, as noted earlier, for a candidate to be declared winner he must not only have obtained the highest number of votes at the election but also have »not less than one-quarter of the votes cast . . . in each of at least two-thirds of all the states.« Chief

4 Section 78 (1A) (a).

5 S. 78 (1A), *Electoral Decree*.

The Electoral Decrees were issued only to govern the 1979 elections. The Constitution of Nigeria, 1979, does not prescribe that a presidential candidate must be nominated by a registered political party only. It would seem, therefore, that independent candidates will be able to stand for the office of the President at future elections.

6 Nigeria then consisted of, as it does today, nineteen states. The number of states in our statement exceeds nineteen because in some states two parties were in a commanding position to form a coalition government.

7 Election of President – Declaration of Result of Poll, Federation of Nigeria, Dated August 16, 1979, at p. 1.

8 Ibid.

Awolowo satisfied this condition in only five states.⁹ Alhaji Shagari clearly satisfied this condition in twelve states. In the thirteenth state, which happened to be Kano, he polled 243,423 votes out of 1,220,763 votes cast in the state, that is, only 19.94 % of the total votes cast in Kano.¹⁰ The Election Commission interpreted the words »in each of at least two-thirds of all the states« to mean twelve two-thirds states:¹¹

The Federal Electoral Commission considers that in the absence of any legal explanation or guidance in the Electoral Decree, it has no alternative than to give the phrase »at least two-third of all the states in the Federation« in section 34A sub-section 1(c)(ii) of the Electoral Decree the ordinary meaning which applies to it.

In the circumstance, the candidate who scores at least one-quarter of the votes cast in 12 states and one-quarter of two-thirds, that is, at least one-sixth of the votes cast in the 13th state satisfied the requirement of the sub-section.

Since Alhaji Shagari clearly had more than one-quarter of two-thirds of the votes cast in Kano, his thirteenth state, he was declared elected President of the Federal Republic of Nigeria on August 16, 1979.

Chief Awolowo rejected the election result and filed a petition against the election of Alhaji Shagari. The pivotal question for consideration was the meaning of the words »two-thirds of all the states in the Federation.« A Special Election Tribunal headed by Mr. Justice B. O. Kazeem of the Supreme Court of Nigeria, with Mr. Justice A. L. Aseme and Mr. Justice A. B. Wali as members, heard the petition. Chief Awolowo was cross-examined after the close of his examination-in-chief. He insisted:¹²

... two-thirds of nineteen States is thirteen [States]. If one is speaking of two-thirds of nineteen in the abstract, then it is twelve two-thirds. If we are asked to get two-thirds of nineteen votes, then the answer is thirteen.

Chief Akinjide, Counsel for Alhaji Shagari, successfully pleaded, however, that the petitioner's insistence that two-thirds of nineteen states is thirteen states is not open to him on the pleadings, because if he wanted to rely on that point, it should have been specifically pleaded. But having not pleaded it, he urged the tribunal to expunge from the records everything on the point led in evidence-in-chief, during cross-examination and re-examination, as they go to no issue.¹³

The Election Petition averred that Alhaji Shagari had less than one-quarter of the votes cast at the election in each of at least two-thirds of all the states in the Federation; and as such his election was invalid by reason of non-compliance with section 34A (1) (c) (ii) of the Electoral Decree. The crucial point for determination by the tribunal was what is two-thirds of nineteen states and further whether Alhaji Shagari obtained twentyfive per cent of the votes cast in that number arrived at. Chief Awolowo made two points in this

9 Ibid, annex.

10 Ibid.

11 Ibid, at p. 1.

12 Suit No. SET/1/1979, Tribunal No. 3, Lagos State, September 1979.

13 The Tribunal relied upon, among others: *Kalu Njoku v. Ukwu Eme & ors.* [1973] S. C. 293, 300-302; *National Investment & Properties Co. Ltd., v. Thompson Organisation Ltd. & ors.* [1969] N. M. L. R. 99, 104.

respect: (a) that one-quarter relates to the number of votes cast at the election; and (b) that two-thirds relates to territories, that is, all the states of the Federation. He submitted that the word »each« in the phrase »each of at least two-thirds of [nineteen] States« connotes and denotes an integral unit taken separately at a time; therefore, denotes counting not measurement. He further submitted that a state cannot be fractionalised unless the statute creating the states expressly permits it to be so fractionalised and more particularly because a state is a legal person. He referred to the United States Constitution, which requires constitutional amendments to be ratified by three-quarters of the number of the states then in existence, to show that whenever there was a fraction in the number of states required for ratification, one whole state was always required to satisfy the constitutional requirement. Similarly reference was made to the Constitution of India and to other authorities to show that a state being a legal person cannot be fractionated. Chief Akinjide contended, however, that the petitioner had understood the word »States« in the context of International law which was not warranted. He submitted that the word »States« in the Electoral Decree had been used in the context of »Municipal Law« for a state within the Federation of Nigeria, as in the United States of America, was not sovereign in the sense in which a state is in International law. He submitted that the governing word in the relevant sub-section in the Electoral Decree is »votes« and that the word »States« was brought into it merely as a geographical division. The defence also argued that if it was the intention of the legislature that two-thirds of nineteen states should be thirteen states, as contended by the petitioner, it would have expressly said so in the relevant sub-section of the Electoral Decree. The counsel for the respondents submitted that the lawmakers of the sub-section must be taken to have meant what is provided therein. It was further argued that the words used are plain enough and do not admit of any ambiguity or absurdity; that by simple arithmetic »two-thirds of nineteen« cannot be anything more than twelve two-thirds and to say that it should be thirteen would be reading more into the sub-section and thus assuming the role of the legislature.

The Tribunal considered both the »literal« and the more modern »purposive« rules of construction in interpreting statutes. The normal rule, it said, is to adopt the literal construction, which is to intend the legislature to have meant what they have actually expressed without importing any further meaning into it. The object being to discover the intention of Parliament from the language used. It is a corollary to this general rule, it said, that nothing is to be added to or taken from a statute unless there are adequate grounds to justify the inference that the legislature intended something which it omitted to express. A more modern approach, the Tribunal said, is the one put forward by Lord Denning,¹⁴ according to which when a defect appears a judge cannot simply fold his hands and blame the draftsman; he must set out to work on the constructive task of finding the intention of parliament, and he must do this not only from the language of the statute but also from a consideration of the social conditions which gave rise to it and of the mischief which it was passed to remedy, and then he must supplement the written

14 *Seaford Court Estates Ltd., v. Asher*, [1949] 2 K. B. 481.

word so as to give »force and life« to the intention of the legislature. However, the Tribunal quoted decided cases from both England¹⁵ and Nigeria¹⁶ to show that the rule of purposive construction has not found much favour. It concluded that literal construction has been and still is »the accepted canon of statutory interpretation in the highest Court in England and . . . is also approved by the Supreme Court of Nigeria.«¹⁷

The Tribunal, therefore, applied the rule of literal construction to the expression »two-thirds of all the states in the Federation«. It held that,¹⁸

. . . the words used in the subsection are plain enough; and we cannot find any ambiguity therein. It even seems to us to be absurd to read anything more into the plain words of the subsection. In our view, it does not require the opinion of an expert in Mathematics or a computerist to work out what two-thirds of nineteen means. It is enough to say that any student in a Primary School, tutored in the subject of »FRACTION« in simple Arithmetic will have no difficulty in getting twelve two-thirds if asked to find two-thirds of nineteen. The lawmakers of that subsection must, therefore, be taken to have intended nothing more than that; and we so hold. Moreover, we are of the view that if the legislature intended anything to the contrary, they would have provided a »PROVISO« to take care of any possible contingencies.

. . .
Considering the words used in the subsection again, we are satisfied that they are plain enough and unambiguous. . . . Hence to apply them as provided by the legislature will not in our view, create any absurdity. Moreover, we cannot find any gap which has been created in the subsection which if left unfilled will work injustice on any person affected by the subsection. On the contrary we are satisfied that to read more into the subsection is to ask . . . [Alhaji Shagari] to bear more burden in order to be elected than what the legislature expressly requires him to bear. In our view, that will result in doing an injustice to him.

. . .
As the dominant requirement in the election is the number of votes cast in each of the states, »two-thirds state« would be synonymous with two-thirds of the total votes cast in that state and not the physical or territorial area of such state. . . .

Alhaji Shagari had obtained 243, 423 votes in Kano state. The total number of votes cast in Kano were 1,220,763. Two-thirds of the total votes cast in Kano work out to be 813,842 votes, and twentyfive per cent of this figure is 203,406.5 votes. Since Alhaji Shagari had obtained more votes than this last figure, the Tribunal dismissed Chief Awolowo's Election Petition.

Chief Awolowo appealed to the Supreme Court of Nigeria.¹⁹ A Full Bench of seven judges, under the chairmanship of the newly appointed Chief Justice of the Federation, Mr. Justice Fatayi Williams, heard the appeal. The main plank of the arguments of the appellant was that the Tribunal was in error in its interpretation of the words: »not less than one-quarter of the votes cast at the election in each of at least two-thirds of all the States in the Federation«, in the Electoral Decree. As an alternative to his submission that two-

15 *Stork v. Frank Jones [Tripton] Ltd.*, [1978] 1 W. L. R. 231; *Magor & St. Mellons Rural District Council v. Newport Corporation*, [1951] 1 All E. R. 1018 (H. L.).

16 *Animashawun v. Osuma & ors.*, [1972] All N. L. R. 363; *Okumagba v. Egbe*, (1965) 1 All N. L. R. 62.

17 *Supra* n. 12, at p. 8 of the judgement.

18 *Ibid*, at p. 8-9.

19 Suit No. SC. 62/1979 (unreported).

thirds of nineteen states is thirteen states and not twelve two-thirds states the petitioner made an alternative submission:

On the premise that two-third of nineteen States is twelve two-third States, submit that one-quarter of the votes cast at the election in each of at least twelve two-third States is equal to one-fourth of the votes cast at the election in each of the twelve States plus one-fourth of the votes cast in two-third of the thirteenth State . . . and cannot be equal to one-sixth of the votes cast in Kano State.

He submitted, thus, that only two-third of the votes received by Alhaji Shagari in Kano State should be used in computing whether he had received one-fourth of two-third of all the votes cast in Kano State.

The defence argued, on the other hand, that, in section 34A (i) (c) (ii), the words »at least« add nothing to the meaning of the sub-section and that the words »in each of« qualify the votes obtained by the candidates before the nineteen states are later divided by two-thirds and that they do not govern the word »state«. It was contended, therefore, that there should be no scaling down of Alhaji Shagari's votes because the Decree provides only for a comparison of what he »has« in »votes« with one-quarter of the votes cast in two-third of Kano state. It was further submitted that the Federal Military Government prescribed the fraction »two-third« deliberately in order to make the ratio constant, no matter how many states make up the Federation in the future. This was based on the fact that the Federal Military Government had, in a similar situation, laid down a round figure in the First Schedule to the Companies Decree, 1968, and could have, if it so wanted, prescribed a round figure of thirteen states to be used in the computation under section 34A when it promulgated the Electoral Decree. Finally, it was submitted, that even if the court were to hold that one-quarter of nineteen states means thirteen states, Alhaji Shagari should be held to have been validly declared elected to the office of the President in view of section III sub-section (1), which reads as follows:

An election shall not be invalidated by reason of non-compliance with Part II of the Decree if it appears to the Tribunal having recognisance of the question that the election was conducted substantially in accordance with the provisions of the said Part II and that the non-compliance did not affect the result of the election.

Section 34A of the Electoral Decree, it may be mentioned, is in Part II of the Decree.

The Supreme Court delivered its judgement on September 26, 1979. Justices Mohammed Bello, Chukunweike Idigbe, Ayo Irikefe, Mohammadu Uwais and Chief Justice Fatayi Williams agreed with the decision of the Tribunal and dismissed the appeal. Justice Andrews Obaseki, in a separate judgement, also dismissed the appeal but for different reasons. Justice Kayode Eso, on the other hand, was for allowing the appeal.

The majority judgement was delivered by Chief Justice Fatayi Williams. He expressed the view that a statute should always be looked at as a whole and that the words used in a statute should be read according to their meaning as popularly understood at the time the statute became law. In the context of Nigeria, where the rate of promulgation of Decrees has been prolific during the last few years, the Chief Justice said, it would be safe to adhere to the view once expressed by the late Lord Evershed, M. R., that »the

length and detail of modern legislation has undoubtedly reinforced the claim of literal construction as the only safe rule« of statutory interpretation. Turning to the case in hand, he said,²⁰

... we must realise that we are interpreting a particular statute passed under special circumstances. For the purpose of the Decree under consideration, a Returning Officer, in our view, should be primarily concerned with the total number of votes cast by the voters in each of the nineteen States, of the Federation, bearing in mind that the entire Federation is each candidate's constituency. From the total number of votes cast throughout the country, he will identify the candidate who has the highest number of votes ... After this, he will find the votes which this candidate has scored in each State ...

It is at this stage that the Returning Officer ought to determine what is two-third of nineteen States. This is a matter of law ...

The Chief Justice emphasised that a person called upon to interpret any kind of statute should not, for any reason, attach to its statutory provision, a meaning which the words of the statute cannot reasonably bear. If the words used in the statute are capable of more than one meaning, he said, then the person interpreting the statute can choose between these meanings, but beyond that he must not go. It was held that,²¹

not only is the meaning of the general words used in section 34A plain enough, there is also no reason for doubting the intention of the Federal Military Government ...

The majority found »unassailable justification« for the view adopted by the Returning Officer, for the following reasons:²²

The Federal Military Government divided the Federation into nineteen States in 1976 ... The Decree ... also specified the geographical area of each of the nineteen States. Less than two year later ... the same Government promulgated the Electoral Decree ..., the original section 34 (2) (i) (b) of which contained the following words: »he has not less than one-quarter of all the votes cast at the election in each of at least two-thirds of all the States within the Federation«.

Although the section was later amended ... the above words were not amended, except for the deletion of the word »all« in the first line thereof, as they could have been amended, by adding a proviso using words similar to those used in ... the Companies Decree, 1968 ... That being the case the Federal Military Government must be deemed to know that two-thirds of nineteen States will be twelve two-third States.

... as between thirteen States and twelve two-thirds States, the figure of twelve two-thirds, considering all the circumstances, appears to us to be the intention of the Federal Military Government ... Furthermore it is, we think, fallacious to talk of fractionalisation of the physical land area of a State when the operative words of section 34A (1) (c) (ii) relate undoubtedly to the votes cast by the voters in the State at the election. It is also fallacious to talk of scaling down the votes cast for ... [Alhaji Shagari] in Kano State by one-third. That argument, if we may say so, overlooks the clear and unambiguous words of section 34A (1) (c) (ii) which provide FIRST for ascertaining the total number of votes cast for ... [Alhaji Shagari] by the voters of Kano State, before comparing this figure obtained thereby with two-thirds of all the votes cast in Kano State in order to determine whether the votes received by him are not less than one-quarter of two-thirds of all the votes cast in Kano State.

...

20 Ibid, at p. 16 (majority judgement).

21 Ibid, at p. 17.

22 Ibid, at pp. 17-18.

Chief Justice Williams pointed out that quite apart from the compliance with the provisions of section 34A that the majority had found, there was indisputable evidence to the effect that Alhaji Shagari secured more votes throughout the country than each of the other four candidates, that this countrywide vote is more geographically spread than those of the other four candidates, that Alhaji Shagari scored at least twentyfive per cent of the votes cast in twelve and two-thirds states out of the nineteen states comprising Nigeria, and that the percentage of votes secured by Alhaji Shagari in respect of the votes cast in the whole of the Kano State falls short of twentyfive per cent by only a little over five per cent. In view of this, the Chief Justice said,²³

... there is no doubt that, even if we had found that there had been non-compliance with ... [section 34A (1) (c) (ii)], we would have invoked the provisions of section III subsection (1) of the Decree and held that the election ... was conducted substantially in accordance with the provisions of section 34A (1) (c) (ii) which is within Part II of the Decree.

Accordingly, the majority dismissed the appeal.

Justice Kayode Eso, however, disagreed with the majority both on the interpretation of section 34A (1) (c) (ii) and the application of the non-compliance provision in section III. He identified the problem for decision to be: »what are »two-thirds of all the states in the Federation« in the context of the Decree?« He identified, for the purpose of answering this question, three »real issues«:²⁴

- (i) Under the Decree, should two-thirds of Kano State mean two-thirds of the physical territorial area of Kano State?
- (ii) should two thirds of Kano State be, as the Tribunal has held ... »synonymous with two thirds of the total votes cast in that state and not the physical or territorial area of the state«? or
- (iii) should the thirteenth State be the whole of Kano State -territorial and physical ...

Justice Eso opined that in all cases of interpretation of statutes, the interpretation should be according to the intent of them that made them. In this respect he clearly was in agreement with the other judges hearing the appeal as well as with the Election Tribunal. However, he was of the view that a »State« is divisible and pointed out in this respect that the Electoral Decree itself divides Kano State, for example, into eight divisions/districts, and further that the word »State« had been used in distinction to »votes« and, therefore, the two are not synonymous. He was of the view that geographical spread can only be measured by a quantum of physical states. Accordingly, he concluded, that for a candidate to be declared a winner he must not only have the highest number of votes cast at the election but must also have at least one quarter of the votes cast for all the candidates in not less than twelve two-thirds »physical states«. However, he argued since there is no provision for the division of a state into units of three or multiples of three in the Decree or in any other enactment,²⁵

²³ Ibid, at p. 18.

²⁴ Suit No. SC. 62/1979 (unreported), Dissenting Judgement, at p. 12.

²⁵ Ibid, at pp. 18–21.

... the obvious thing the ... [Federal Election Commission] and the Returning Officer should do, and my unhesitating answer to the question, what should they do, is to interpret the words »in each of at least two-thirds of nineteen states« to mean in each of at least thirteen States. This, with the greatest respect, can be the only intention of the legislator.

...
I cannot find any other logical interpretation besides the one I have just given as I find every other one to be illogical and ... leading to absurdity.

Justice Eso argued that if the literal meaning of the words used in section 34A (1) (c) (ii) is sought and the words »two thirds state« are made synonymous with two-thirds of the total votes cast in that state, one is substituting quantum of votes for the second prerequisite of the election of the President which requires a geographical spread that has to be measured by the quantum of States. It appeared to him that what the Tribunal, and indeed the majority of the Supreme Court, had done was to adopt, in fact, the canon of interpretation, which neither party urged, and which the Tribunal itself expressly rejected, that is, »purposive« interpretation.

The dissenting judgement found serious error in the Tribunal taking the figure which represents two-thirds of all the votes cast in Kano and then comparing it, for the purpose of finding a proportional score by Alhaji Shagari, with one hundred per cent of his score in the entire Kano state. If two-thirds state is synonymous with two-thirds of the votes cast in the state, Justice Eso argued, then it would be correct to obtain the twelve two-third states by taking two-thirds of all the votes cast in each of the nineteen states. If that be so, he said, a candidate, to qualify, must have his twentyfive per cent of the two-thirds votes scored in every one of the nineteen states. Accordingly, he urged, that the interpretation placed on section 34A (1) (c) (ii) by the Tribunal could not possibly be correct.²⁶

Finally, Justice Eso also disagreed with the majority judgement as regards the application of section III on the basis of non-compliance with Part II of the Electoral Decree so as to validate an election provided there had been substantial compliance with the provisions of the said Part II and the non-compliance did not affect the result of the election. It was his contention that if Alhaji Shagari had not satisfied the requirement of section 34A (1) (c) (ii) then the Electoral Commission was duty bound, under section 34A (3), to arrange for an election by the prescribed Electoral College within seven days of the nationwide election. Until the result of this election by the second electorate is known, he argued, there is no election yet of the President and, hence, the question of the application of section III does not arise:²⁷

... where it is necessary to have an election under section 34A and that election has not been held, then there cannot be a »return«. Return has been defined as the declaration of the result of the election in accordance with the appropriate provisions of the Decree. ... it is well settled that the words »the result of the election« means success of one candidate over others.

²⁶ Ibid, at p. 27.

²⁷ Ibid, at p. 34.

It is my view that this result could not be known until that second election has not been held and it is not within the realm of the Court to conjecture what the result of that election held under subsection 3 [three] of section 34A would be. . . . If votes still have to be counted as provided for by section 34A (3) before ascertaining the results and declaration of the election, . . . the stage has not been reached when one could invoke section III of the Decree as an election has to be . . . held first before it could appear to the Tribunal that that election was conducted substantially in accordance with the provisions of Part II and that the result of that election has not been affected by such non-compliance.

Thus, Justice Eso found himself dissenting from the majority judgement on almost all important issues.

Justice Andrews Obaseki, in his concurrent judgement, agreed with the majority that the appeal should be dismissed but for different reasons.²⁸ He agreed with the Tribunal and the other judges of the Supreme Court hearing the election petition that in interpreting the Electoral Decree, the duty of the Court is to interpret the words used to convey the intention of the Supreme Military Council and give effect to that intention. Justice Obaseki pointed out that only a few situations calling for interpretation of statutes have arisen in the superior courts in Nigeria and in those few cases the Supreme Court has inclined to the literal rule.²⁹

Obaseki, J., identified the issue in the appeal to revolve around the correct interpretation of section 34A (1) (c) (ii) of the Electoral Decree and its correct application to the facts of the case in hand. He was of the view that the reference in the said section to one-quarter of the votes cast in each of at least two-thirds of all the states in the Federation, can only mean the votes cast within the geographical area set out under the Constitution, and where Kano state is concerned within the geographical area of Kano state. He justified this on the ground that under the Electoral Decree unless a registered voter is within the proper geographical area his vote will not be taken.³⁰ He found himself,³¹

. . . unable to accept the proposition that votes are synonymous with States or that two-thirds of state can be ascertained by a calculation of what two-thirds of the total votes cast in the state is.

The construction that two-thirds of nineteen states . . . is twelve two-third states . . . is unreal. . . . [The Federal Election Commission] did not delimit any two-third state, whether in Kano or elsewhere. . . .

. . .

. . . the result declared in respect of the two-third state was more in the imagination than in reality. It might have been possible for . . . [Alhaji Shagari] to receive all the votes he received in the whole of Kano state in the imaginary two-third state if it had been delimited, ascertained and identified but he was not given the opportunity . . . I am firmly of the opinion that it was not the intention of those who promulgated the . . . Decree that votes should be collected outside the area of each of two-third of nineteen states to ensure the attainment of the qualifying percentage in each state. In my view, that which the law has forbidden was what has been done in the ascertainment of the percentage of votes received by . . . [Alhaji Shagari] in . . . Kano state . . .

28 Suit No. SC. 62/1979 (unreported), Concurrent Judgement, at p. 1.

29 *Aimashawun v. Osuma & ors.*, [1972] 1 All N.L.R. 363.

30 ss. 44–46, *Electoral Decree*, 1977.

31 *Supra* n. 28, at p. 27.

Justice Obaseki expressed the view that the word »each« in section 34A (1) (c) (ii) qualifies a whole state and not a fraction of a state and to interpret it otherwise is to overlook the disharmony between the word »each« and the fraction »two-third«; two-third of nineteen, to avoid any disharmony, gives thirteen. The words »States in the Federation«, he said, can only refer to the land area and not votes.

In interpreting section 34A (1) (c) (ii) Justice Obaseki was clearly of the same mind as Justice Eso. However, he sided with the majority as regards the application of section III of the Electoral Decree to the case in hand. Obaseki, J., took the view that when the Decree speaks of »affecting the result« in section III it means tilting the result in favour of the petitioner. Once a petitioner alleges a particular non-compliance and averred in his prayer that it was substantial it is his duty, he said, so to satisfy the court or tribunal having cognizance of the question. Justice Obaseki held that the petitioner had failed to discharge that duty and accordingly dismissed the appeal:³²

There is no evidence that the non-compliance with section 34A (1) (c) (ii) one of the provisions of Part II has affected the result, that is, but for the non-compliance the petitioner would have won, to enable . . . declare the result invalid. The petitioner pleaded a substantial non-compliance, that is, failure to obtain one-quarter of the votes cast in each of at least two-thirds of all the States in the Federation. But the evidence established this non-compliance in only one state. . . . In this appeal, the appellant has failed to satisfy the Tribunal and this Court that the non-compliance has affected the result of the election or has prevented a majority of votes in his favour with effect and for that reason the appeal must fail.

Thus, Chief Awolowo's appeal to the Supreme Court of Nigeria failed by a majority of six to one.

Alhaji Shehu Usman Shagari was sworn in as the first Executive President of Nigeria on October 1, 1979. The same day Nigeria returned to civilian rule after thirteen years of military administration.

CONCLUSION:

Chief Awolowo v. Alhaji Shagari and Others, will, undoubtedly, go down as one of the more important cases in the legal history of Nigeria. It is important to note that of the ten eminent jurists who heard Chief Awolowo's petition, the three justices constituting the Special Presidential Election Tribunal and the seven judges sitting as a Full Bench of the Supreme Court of Nigeria, nine accepted the validity of Alhaji Shagari's election. Eight of these nine justices were agreed as to the correct interpretation of section 34A (1) (c) (ii) of the Electoral Decree, as amended. Unfortunately, however, views continue to be expressed to the effect that the decision of the Special Election Tribunal and the majority decision, on appeal, of the Supreme Court of Nigeria were the result of a compromise between law and political expediency.³³ It is all the more unfortunate that these at-

³² Ibid, at pp. 30–31.

³³ For example: M. O. Adediran, *Awolowo v. Shagari – a case of Compromise between Law and Political Expediency* (unpublished paper [1980]), University of Ife, Nigeria.

tacks mainly follow tribal-cum-regional divisions reminiscent of the pre military rule era.

It is submitted that the words in section 34A are clear and admit of no ambiguity. „Two-thirds“ of nineteen states is clearly twelve two-third states. It does not seem correct to say that a state must be taken as a whole. The states requirement would seem to be only a way of identifying a geographical area. What is essential in a geographical spread is for a candidate to have at least one-quarter of the votes cast in it; a state without a consideration of votes is meaningless. The word »each« in section 34A (1) (c) (ii) of the Electoral Decree refers to a geographical unit and cannot be said to require that a state be taken as a whole even in the ambit of municipal law. Should the votes obtained by Alhaji Shagari in Kano state have been reduced by one-third before comparing them with two-thirds of all the votes cast in that state? It is submitted that even if that ought to have been done, the result, in view of section III of the Electoral Decree, would have still been the same.

Alhaji Shagari obtained more votes than any other presidential candidate in the country as a whole. He also achieved a much larger geographical spread than any other candidate: whereas he obtained a clear one-quarter of the total votes cast in at least twelve states, Chief Awolowo, his runner up, had one-quarter of the votes in only five states of the Federation. Moreover, Chief Awolowo's main support came from a corner of the country inhabited mostly by people of his ethnic group. The new election provisions clearly aim at having as President, not a tribal baron, but a person with a wide acceptance among the various ethnic groups in Nigeria. Alhaji Shagari was clearly the only candidate who satisfied this policy requirement. Chief Awolowo conceded before the Special Electoral Tribunal that his prayer for the holding of a second election by the prescribed Electoral College was »otiose«. One, therefore, fails to see the real purpose of his appeal, except, as the majority judgement of the Supreme Court said, »perhaps, to enable this Court to interpret the words, percentage, and fraction, used in section 34A subsection (1) (c) (ii) of the Electoral Decree«.³⁴ Chief Awolowo refused to recognise Alhaji Shagari as the country's duly elected President long after the Supreme Court verdict on the point and, unfortunately, his supporters have continued to cause minor disturbances on the point even to this day.³⁵

It would seem desirable, in view of the controversy generated over the interpretation of section 34A (1) (c) (ii) of the Electoral Decree, to amend the same provision in Nigeria's constitution and prescribe that the geographical spread required will be to the nearest whole number of states in the Federation. A person can be elected President of Nigeria only for two terms of four years each.³⁶ President Shagari can be reasonably expected to be a presidential candidate again in 1983. His second term of office would seem to be the best time for the constitutional amendment proposed above.

34 Supra, n. 19, at p. 18 (majority judgement).

35 See: *Daily Sketch*, November 25, 1980, p. 3: »Headmaster asks for Police Protection«.

36 ss. 127 (2) & 128 (1) (b), *Constitution of Nigeria*, 1979.

Chief Awolowo v. Alhaji Shagari

by *Surinder S. Boparai*

For a candidate to be elected President of Nigeria he must not only obtain the highest number of votes cast in the entire country but must also receive »not less than one-quarter of the votes« cast in at least »two-thirds of« the nineteen states that constitute the Federation of Nigeria. At the last Presidential election, held in August 1979, Alhaji Shagari satisfied the first condition and clearly obtained one-quarter of the votes cast in twelve states. In a thirteenth state, however, he obtained only 19.94 per cent of the votes cast in that state. Therefore, the question arose as to what is two-thirds of nineteen states? The Election Commission held it to mean »twelve two-third states« and since Alhaji Shagari obtained more than one-quarter of the two-thirds of the votes cast in the thirteenth state, declared him elected President. This was challenged by Chief Awolowo, the candidate with the next highest votes, first before a Special Presidential Election Tribunal and next, in appeal, before the Supreme Court of Nigeria.

Chief Awolowo's main contention was that two-thirds of nineteen states is thirteen states and, in the alternative, on the premise that two-thirds of nineteen states is twelve two-third states, that only two-third of the votes received by Alhaji Shagari in his thirteenth state should be used in computing whether he had received one-fourth of two-third of all the votes cast in that state. The Special Tribunal, consisting of three eminent Justices, unanimously rejected the Chief's arguments and upheld the Election Commission's declaration. The Supreme Court, on appeal, concurred and dismissed the appeal by a majority of six to one.

Political Parties in the Countries of the Arabian Maghreb

by *Gerhard Moltmann*

The main countries of the arabian Maghreb, Morocco, Algeria and Tunisia, by the same origin, language, religion and history, have very much in common which is also confirmed in their constitutions by the acknowledgement of the Maghrebian Unity. Nevertheless they have chosen separate ways to their national structures and political institutions. Thus, with regard to the system of their political parties, they are showing a very interesting and different picture. The kingdom of Morocco which is still most affected to the old traditions, acknowledges the pluralism of political parties explicitly in Art. 3 of the Constitution of 1972. Eight political parties participated in the last elections. Amongst them the National Group of Independants (*Rassemblement National des Indépendants – RNI*) became the most successful. It represents the young educated generation engaged in free professions or in the public service. The result of the elections was vastly influenced by the Western Sahara conflict appealing very much to the natio-