

Research Article

The motivation for election petitions in Ghana's electoral politics

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ABSTRACT

There have been surges in election petitions in Ghana's fourth republic. Using the rational choice theory and the mixed methods of research, this paper argues that the self-seeking, personal interest and aggrandizement accounts for the political demagogues' inundation of the courts with election petitions. The outcome of the election petitions has been mixed. Whereas the parliamentary petitions mostly go in favour of the plaintiffs, same cannot be said for the presidential. Election petitions have contributed to electoral politics in Ghana by consolidating democracy, entrenching the judiciary as a democratic pillar and recommendation of reforms to improve future elections. However, these reforms are mostly not implemented hence the fruits of election petitions are not full realized thereby creating a loophole in the system for politicians to always exploit to their advantage.

Keywords: Election petitions, Electoral integrity, Ghanaian politics, Political legitimacy, Electoral malpractices

INTRODUCTION

The 1992 Republican Constitution of Ghana allows for the contestation of election results at all levels. For instance, Article 64(1) intimates that "The validity of the election of the President may be challenged only by a citizen of Ghana who may present a petition for the purpose to the Supreme Court within twenty-one days after the declaration of the result of the election in respect of which the petition is presented (Republic of Ghana, 1992:55). Similarly, Article 99(1) (Republic of Ghana, 1992:78) postulates that the high court shall have jurisdiction to hear and determine any question whether

- A person has been validly elected as a member of parliament or the seat of a member has become vacant; or
- A person has been validly elected as a speaker of Parliament or, having been so elected, has vacated the office of speaker.

From the above, it is obvious that the constitution made room for citizens to challenge the validity of presidents and members of parliament elected. Since the return to democratic governance after the founding elections of 1992, there have been a surge in election petitions in Ghana's body politics. Deploying the rational choice theory, this paper examines the motivation for the continuous increase in election petitions in Ghana. The paper is guided by four-fold research questions:

- Why are election petitions becoming a commonplace in Ghana's electoral politics?
- What are the main issues of contest in election petitions?
- Have the election petitions been beneficial to the plaintiffs?
- Have these election petitions contributed to Ghana's electoral politics?

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Structurally, the rest of the paper is divided into five sections. These are:

- The theoretical taxonomy
- The evolution of election petitions
- The methodology
- The findings and discussions and
- Conclusion and recommendations

THEORETICAL TAXONOMY

The study was conducted within the remit of the rational-choice paradigm. The deployment of Rational-Choice Theory (RCT) was necessitated by its ability to predict and provide sufficient intentional explanations for a variety of political actions (election petition). Besides, in the attempt to establish the motivation for loosing candidates to resort to election petitions in a competitive election, the choice of the theory was deemed appropriate because it possesses a comprehensive fabric of ideas to explain political decisions by political actors. The key proponents of the theory include Downs (1957); Riker (1962); Buchanan and Tullock (1962), etc. For Becker (1976), the theory could best be described as “a unified framework for understanding all human behaviour”. Within the realm of Political Science, the theory has been used to explain election outcomes especially voting behaviour, policymaking process and party politics. Rational choice theory has gained tremendous visibility and influence in the discipline and scholars have extensively employed it to explain why political actors do what they do (Anderson, 2011). The central argument of the theory has been that the actions of political actors arise from a deliberate pursuit of self-interest (Lovelt, 2006). For the rational choice theorists, human beings in general are rational, self-interested, self-calculating and utility maximizers, hence they constantly engage in purposive actions (Ogu, 2013). The theory further provides an intriguing explanation to highlight the capability of the rational political actor to make and act based on cost-benefit analysis. The theorists also hold the view that political actors are not uninformed, confused or irrational choice-makers, and for that reason, they use rational considerations to weigh the consequences and the potential benefits before deciding what to do. Rational choice theory assumes that when the rational political actor is confronted with a decision-making situation, he/she considers a variety of possible alternatives, evaluates the expected consequences of all the alternatives and chooses the alternative that offers the best expectable outcome and with the highest net gains (Oliveira, 2007). In other words, when the rational actor is faced with several courses of action, he/she will always choose the course of action perceived to be more likely to have the best overall outcome (Elster, 1989). It follows that because political actors have reasons for whatever action they take, their behaviour becomes predictable only when we know what motivates them (Hechter, 1997). Similarly, Scolt opined that “people are motivated by the rewards and costs of actions and by the profits that they can make”. In short, the theorists generally argue that political actors do what they do because because of the firm conviction that pursuing their chosen actions will provide more benefits than the associated costs. To this end the adoption of the theory was meant to provided empirical support or otherwise for the theory’s

explanation. Although the theory is now considered as an umbrella term for various models that seek to explain human behaviour as rational, the three basic and dominant components of all the variants are rationality, self-interest and methodological individualism. For the rational choice theorists, human beings are rational beings and purposeful actors. To them political actors like economic actors always act rationally in pursuit of their own self-interest. They assumed that all individuals engage in courses of actions which they perceive to be the best possible option and one that would yield the highest level of gains when weighed against the cost (Anderson 2011). In the opinion of Scolt, the idea of rationality represents a conscious political actor who engages in an unending “deliberate calculative strategies”. On the strength of this assumption, the proponents have further argued that political actors constantly engage in the calculation of most efficient means of achieving a specified goal (Zuckert 1995). The second basic assumption of the theory is self-interest. The rational choice theorists see individual self-interest as a critical motivating force in all political activities, and always consider it as the starting point of the theory (Ogu 2013). To the theorists, the actions of politicians are not driven by altruistic commitment but rather their own self-interest (Amadae, 2021; Anderson, 2011). They therefore assumed that politicians are endlessly opportunistic as they always look for the avenue to manipulate rules to achieve a preferred outcome (Anderson, 2011). The last assumption of the theory is methodological individualism. The crux of this assumption is that all complex social phenomena can best be explained in terms of the actions of a model individual; hence, the individual decision-maker must be the primary unit of analysis. Thus for the theorists, the explanation of the group or collective actions must be grounded in individual actions (Wittek, 2015). Although the theory has been heavily criticized as being narrow, prescriptive and inferior to the causal explanation view it sought to espouse (Zuckert, 1995; Lovelt, 2006), it has significantly contributed to a fuller understanding of human actions. We therefore examined the motivation for election petitions through the lens of the theory to empirically establish the degree to which the actions of election petitioners in Ghana’s electoral politics were calculative and self-interest driven.

THE EVOLUTION OF ELECTION PETITIONS

Electoral petitions are sanctioned as part of election management universally. Historically, election petition was first brought into the fabric of election administration by Matthew de Cranthorn in 1318 when he contested the election of Robert Buedyn before King Edward II and his Council (Agbevade and Tweneboah-Koduah, 2022; Owusu-Mensah and Frempong, 2015). The concept of election petition has its origin in British electoral history (Jack et al. 2011). The evolution of elections, electoral democracy and the extension of franchise in Britain in the 19th century was associated with power contestation, corruption and improper practices that threatened electoral outcomes (O’Leary, 1961 cited in ‘Nyane, 2018). Historically, the adjudication of election petitions was the preserve of the legislature to the exclusion of the traditional courts and non-judicial in nature (‘Nyane, 2018:4). The partisan nature of legislators down played the credibility of outcomess and diminution of public trust and confidence. This called for a shift from a parliament-based to a judicial resolution of electoral

disputes (‘Nyane, 2018). The judiciary initially resented the arduous task of adjudicating election petitions; however, the transition from the legislative to a judicial electoral dispute resolution mechanism was facilitated for the first time through the Parliamentary Elections Act of 1868. Though the legislation might seem old, it remains relevant in the 21st Century as its tenets are being utilized across the globe (Agbevade and Tweneboah-Koduah, 2022; ‘Nyane, 2018).

Three significant factors have been enumerated as the forces driving the process of election petition adjudication (Huefner, 2007). These factors are fairness of the process, transparency and promptness in petition outcome. Huefner intimated that a delay in election petitions could result in delay in justice. On the continent of Africa, scholarship identified five persistent features that have been associated with the domestic resolution of presidential election petitions (Kaaba, 2015). These features are;

- Incumbent candidates, the candidate sponsored by the governing political party, or the presumptive winner” have always had cases decided in their favour. Classic example is the Ghanaian cases of 2012 and 2020.
- Most cases are dismissed on minor procedural technicalities without consideration of the merits.
- There is misuse of the substantial effect rule.
- The adjudication process is unnecessarily delayed to make the case seem less important, of no value and purpose.
- Judges simply fail to address the issues presented before them by constraining themselves from making appropriate decisions.

Generally, challenging presidential election results through the judiciary has hardly ever been successful. Countries in Africa where election petitions filed against the results of their presidential elections have failed include: Ghana, Uganda, Kenya, Nigeria, Sierra Leone, Zambia and Zimbabwe (Azu, 2015) and Nigeria in the 2023 presidential election. The Cote d’Ivoire case of 2010 was a departure from the norm because the Côte d’Ivoire Constitutional Council reversed the announced results. Studies however, opined that the effect of the Ivorian ruling was similar to other decisions that upheld the results of the other disputed elections. This is because the judgement was made in favour of the incumbent, President Laurent Gbagbo, who had clearly lost the election (See Verdict of the Constitutional Council of Côte d’Ivoire of 3 December 2010 147) (Agbevade and Tweneboah-Koduah, 2022:35; Kaaba, 2015; Owusu-Mensah and Frempong, 2015; Adams and Asante, 2020; Azu, 2015). The single contrary evidence is that of Ukraine where a presidential election petition was upheld in favour of the petitioner (Agbevade and Tweneboah-Koduah, 2022; Azu, 2015).

On the rationale for election petitions, Erlich et al., (2021) found the following as the reasons; overturning election results, managing political reputation, using the court cases as leverage to obtain a government appointment, and fulfilling psychic needs. Against this background, this study examines the motivation for election petitions within the remit of the rational choice theory using Ghana’s electoral politics as a case. The paper does not only

interrogate the rationale for the increase in election petitions at both the parliamentary and presidential levels but also the degree to which these rationales are attained and how the phenomenon have contributed to electoral politics in Ghana.

State of the art literature on election petitions in Ghana

Ghana like other democratic countries across the globe have come to accept the use of election petitions as a tool to addressing election related impasse. It is instructive to note that the first election petition in Ghana was in 1970. It was filed by Joe Appiah the 1969 losing UNP parliamentary candidate for Atwima Amansie against the election of Edward Akufo-Addo. Joe Appiah had argued that the conduct of the presidential election in camera in Parliament was not transparent. The petition was heard by a five-member panel comprising Acting Chief Justice Justice E.A.L. Bannerman, Justice A.N.E. Amisshah, Justice George S. Lassey, Justice K.E. Sakyi and Dr. S.K.B. Asante. The petitioner was represented by Joe Reindorf and J.N. Heward-Mills. The petitioner lost the case and was fined seventy-five New Cedis (N¢ 75) (Frempong, 2017). In spite of this, studies on the subject matter is now evolving. There are a handful of studies which are: the role of the judiciary in election petitions (Adams and Asante, 2020); presidential election petition and electoral reforms (Gyampoh et. al, 2022; Gyampoh, 2017); presidential elections and democratic consolidation (Agbevade and Tweneboah-Koduah, 2022; Asante and Asare, 2016); presidential election petition and the ramifications for future elections (Owusu-Mensah and Frempong, 2015); conditions under which Ghanaian courts will invalidate presidential election results (Azu, 2015).

Discussing the role of the Judiciary in the adjudication of election petitions, Adams and Asante (2020:250-251) examined the role of the judiciary in election petitions. They identified the interpretation of some electoral laws, clarification of procedures and basis for dismissing some petitions as part of the roles played by the Courts in election petitions. They also amplified the roles of other stakeholders like the politicians, legal practitioners and the staff of the Electoral Commission in election petitions. Negligence of some experienced legal practitioners in filing election petitions and EC staff not doing due diligence in their roles accounted for the withdrawal of election petitions (Adams and Asante, 2020).

The Ghanaian political demagogues’ confidence in democratic institutions such as the judiciary have resulted in the filing of election petitions at the various courts of jurisdiction, however, a chunk of these petitions have been dismissed by the courts due to procedural errors (Adams and Asante, 2020). To Adams and Asante, election petitions have benefitted the judicial system because it has made them to be innovative and creative in enriching Ghana’s democratic landscape.

On election petition and the future of electoral reforms, Gyampoh averred that the outcome of the 2012 presidential election revealed a number of loose ends in the electoral process which are inimical to Ghana’s quest for free and fair elections. In response, the Electoral Commission requested for proposals for which thirty-eight (38) stakeholders submitted twenty-five (25). Some of these proposals were accepted with slight modifications, others

scheduled for further deliberation with political parties for acceptance and implementation (Gyampoh, 2017). While the proposals on continuous voter registration, the usage of biometric verification devices for voter registration and exhibition, the extension of the period of notice for voter registration, the reduction of the number of voters per polling station – as well as the move to shift elections from December to November, which was turned down by parliament were sufficiently made public, scanty or no information was provided regarding the implementation of the other electoral reform proposals for the 2016 general elections. Ayee has argued that the peaceful conduct of the 2016 general elections could not be credited to the implementation of serious electoral reform proposals because only few electoral reform proposals were implemented. Because of this, Graham et al. (2017), opined that the 2016 elections were “miraculously successful,” since “no concrete and detailed proposals for electoral reform were implemented” In their estimation, even though the general elections seemed to be free, fair, credible, and transparent, the entire electoral processes were on “auto-pilot”.

On presidential election petitions and democratic consolidation, Asante and Asare espoused that Ghana made a great leap towards democratic consolidation through the 2012 presidential election petition. They applauded how the conflicting parties subjected themselves to the full rigour of the laws of the country to resolve their differences. Similarly, Agbevade and Tweneboah-Koduah opined that both the 2012 and 2020 presidential election petitions served as a catalyst for democratic maturity in Ghana. However, Agbevade and Tweneboah-Koduah intimated that the actions of the jurist who decided the cases were at variance in contributing to electoral reforms in Ghana. Their argument was premised on the fact that the panel of judges in the 2012 presidential election petition made far reaching recommendations which to some extent shaped the conduct of the 2016 and 2020 elections, however, the judges in the 2020 presidential election petition did not make any recommendation to improve future elections to consolidate Ghana’s democracy.

Gyampo et al. 2022 just like Agbevade and Tweneboah-Koduah comparatively examined the 2012 and 2020 presidential election petitions. Whereas the latter looked at it from the democratic consolidation perspective, the former examined it from electoral reform point of view. Gyampo et al. intimated that the flaws in the 2012 electoral processes were exposed at the Supreme Court and featured in the final judgment of the court in a manner that allowed the Electoral Commission to initiate moves towards electoral reforms. However, the challenges of the 2020 elections, though exposed at the courts, were never featured in the final judgment of the Supreme Court and will have implications for future electoral reforms in Ghana. The authors argued that the rigid application of the letter of the law by the Supreme Court and the relegation to the background of the thorny issues of electoral challenges in the 2020 elections would water down any effort of electoral reforms. This would then make the future of any attempt to fine-tune the electoral processes unimpressive.

Owusu-Mensah and Frempong focused on the 2012 presidential election petition and the ramification for future elections in Ghana. In their view, the 2012 presidential election petition unearthed the

extent of weaknesses within the political system, particularly the trust deficit in democratic institutions with emphasis on the judiciary. The ruling by the Supreme Court conveyed to all political actors that electoral politics in Ghana have been reduced to “polling station politics”. It revealed that state institutions charged with the responsibilities of delivering public goods could not be trusted with any meaningful post electoral adjudication. To them, the ruling signifies that in future elections all participating political parties should marshal all available lawful mechanisms to ensure that the rights of voters and votes are well protected during the elections to prevent postelection judicial disputes settlement. Electoral politics goes beyond polling station politics, however, it is instructive to note that the essence of every electoral process is to win election to form government and polling stations are the micro units where votes are cast before compilations are done at collation centres. Therefore, excessive focus on polling stations is in the right direction but steps must be taken to strengthen all institutions and processes in electoral politics.

Azu discussed the conditions under which the Ghanaian courts would invalidate presidential elections results. He also interrogated a number of extra-legal matters that appear to be considered by the judges during the adjudication of presidential election disputes. The outcomes from the judgments of both 2012 and 2013 presidential elections petitions in Ghana and Kenya, respectively revealed apparent breaches of the key electoral laws.

It further found that while the Kenyan Supreme Court unanimously ruled that the non-compliance was insignificant to affect the validity of the results and therefore failed to grant a declaration of invalidation, the jurists in Ghana were divided in their ruling, though majority of them held the position of their counterparts in Kenya. The ruling of judges is not always based on law. Extra-legal matters such as public policy and public interest sometimes influenced judges in their verdicts.

This assertion was clearly echoed when Justice Atuguba intimated that “the Judiciary in Ghana, like its counterparts in other jurisdictions, does not readily invalidate a public election but often strives in the public interest to sustain it” (Supreme Court Verdict, 2012; Presidential Election Petition Judgement, 2013).

From the above review, the following are obvious; Adams and Asante concentrated on parliamentary election petitions, while the rest Gyampoh, Asante and Asare and Owusu-Mensah and Frempong focused on the 2012 presidential election petitions. Agbevade and Tweneboah-Koduah did a comparative study of the 2012 and 2020 presidential election petitions.

Azu did a comparative study of the 2012 and 2013 presidential election petitions of Ghana and Kenya respectively. This study does not only combine both parliamentary and presidential election petitions but also strives to examine the motivation for election petitions among the Ghanaian political demagogues and how these has shaped electoral politics using the rational choice as the theoretical framework.

MATERIALS AND METHODS

Methodology

The study employed the mixed methods research. The method allowed for the integration of both quantitative and qualitative researches in the study. This method is chosen because it permits data obtained from each method to mutually illuminate (Bryman, 2012). The triangulation approach of mixed methods is deployed to enhance the confidence of the findings because quantitative data for the study is checked and corrected by qualitative data and vice versa and made provision to compare each data and findings in aggregate terms (Silva and Wright, 2008 cited in Bryman, 2012). The mixed method was utilized for purposes of offset, completeness and process (Bryman, 2012).

The study used a sample size of 255 respondents using the simple random sampling method for the quantitative data while purposive and reputational sampling were used to sample for qualitative data. Data collection was done using questionnaire and elite interview for the quantitative and qualitative data respectively. Data was collected between June, 2022 and August, 2023. Qualitative data was analyzed using content analysis from which themes were generated. The quantitative data was analyzed using the Statistical Package for the Social Sciences (SPSS). Open-ended questions were converted to close ended ones based on themes and fed into the Statistical Package for the Social Sciences (SPSS). The findings of the study are presented in frequency distribution tables with detail discussions to help achieve the research objectives and answer the research questions.

FINDINGS AND DISCUSSIONS

The study sought to address four key questions as indicated.

Why are election petitions becoming a commonplace in Ghana's electoral politics?

Election petitions at both the presidential and parliamentary levels are gaining grounds in Ghana's electoral politics. It is important to state that different dynamics account for parliamentary and presidential election petitions.

First, the parliamentary election petitions, multiple factors account for this. Some are discussed below.

One, the interest of Ghanaians in the diaspora have developed in contesting for parliamentary seats, as Ghana's democracy appears to have been consolidated and stabilized. When Ghana returned to multiparty democracy in January 1993 following the founding elections of 1992, many Ghanaians whether at home or abroad did not believe that the democratic experiment was going to last because of previous failed attempts (1969 and 1979 each lasting on average two years then a coup d'état was staged). With this hindsight, when the Fourth Republic started in 1993, many citizens did not have the faith that it will survive and endure. However, these people were proven wrong. As a result, many Ghanaian's living outside especially in the advanced democracies of the West

felt that they could become Members of Parliament and Ministers of State in Ghana. Unfortunately, most of these people have acquired citizenship abroad and have become dual citizens of Ghana and other countries. Many of them also doubted their chances of winning their seats in the first attempt so did not bother to denounce the citizenship of their countries of residence. As a result, most of them were either reluctant to denounce or delayed in denouncing their foreign nationality before filing their nominations to contest. In most cases, this become an issue if the person wins the seat. This is at variance with the constitutional provision in Article 94(2a) which forbids people who owe allegiance to a country other than Ghana from becoming Members of Parliament. As a result, their elections were challenged at the High Courts. Classic examples are the cases of Adamu Dramani Sakande of Bawku Central Constituency between 2009 and 2012 and James Gyakyere Quayson of Assin North during the 2020 elections. In both cases, the courts held that the elected MPs contravened the constitutional provision because they failed to denounce their UK and Canadian citizenships respectively before contesting. Consequently, the results were nullified and bye-elections were held.

Two, the inefficiencies within the Electoral Commission of Ghana. The Ghana Electoral Commission has a very high reputation in the world for holding free, fair, transparent and peaceful elections. The one expression they use is credible election and this reputation is very well deserved in comparison with other African countries. Ghana has not experienced any major post-election violence arising from massive irregularities in the conduct of elections. During general elections, the EC employs temporary staff who are not well vexed in the operations of the Commission hence fallible thereby creating room for election petitions. A typical example happened in 1996 when Rebecca Adotey was erroneously declared as the winner of the Ayawaso West Wuogon Constituency parliamentary seat. The opponent of Rebecca Adotey, Mr. George Isaac Amo of the NPP who won but mistakenly declared loser filed a petition at the High Court on December 23, 1996 to have Rebecca Adotey's declaration reversed. The EC of Ghana admitted that indeed it was the plaintiff who secured the highest number of votes and should therefore have been declared the winner of the election. The EC alluded to the mistake that a computational error on the part of the EC staff. Unfortunately, the judiciary gave the final verdict in favour of the plaintiff after Rebecca Adotey had completed the term as a member of parliament. This is because of the delay in the judicial process.

Three, difficulty in the application of specific electoral laws in specific situations. This also stems from the deployment of temporary staff by the EC who are not conversant with the electoral laws. A few examples, what is a rejected ballot? And a ballot is rejected when a voter has selected a candidate in a way that makes it impossible to determine who the voter intended to cast the ballot for.

If the polling station staff make a mistake in determining a rejected ballot, this can affect the outcome of the election and can be a basis to challenge elections at a High Court. There are several instances where polling station staff either may not be able to interpret and apply election laws correctly or they show bias in the application

of the law. A candidate perceiving a wrong treatment may go to court.

The fourth cause of election petitions has to do with the abuse of discretion power on the part of electoral staff leading to over-voting. The biometric voter registration means that persons turning up at the polling station to vote must be identified biometrically. Therefore, a voter is eligible to vote only if the biometric machines are able to validate the identity of the voter. Unfortunately, there have been several cases when some people could not be identified biometrically and the EC officials have had to use their discretion to determine whether they should vote or not. In some cases, the decision taken on allowing people to vote without biometric verification have resulted in unrealistic and sometimes outrageous turnouts that have led to petitions.

With respect to presidential election petitions, the factors mostly bother on irregularities such as over voting, transposition of results etc. Irregularities in themselves cannot invalidate an election result, for irregularities to result in invalidation they must occur on a

massive scale with the magnitude to affect the outcome. The court would have to determine whether those polling stations where these were recorded was so massive that they could overturn the election results. Over voting was on a large scale during the 2012 elections so the NPP went to court to seek remedy. This even account for the divided judgements of the jury where four out of the nine judges favoured a rerun and the other five upheld the results as declared by the EC.

Another factor accounting for the rise in election petitions is the duopolistic nature of Ghana's electoral politics where the two dominant political parties (NDC and NPP) are increasingly taking commanding height of votes in both presidential and parliamentary elections whilst the smaller political parties are getting weaker (Table 1). This have created a keen competition between the two giant parties for supremacy. As a result, they are in court to challenge the slightest electoral problem. For instance, after the 2020 elections, the NDC and the NPP went to court battling over sixteen (16) parliamentary seats across the country.

Table 1. Parties and seats won in parliament in the Fourth Republic.

Year/Party	NDC	NCP	EGLE	NPP	PCP	CPP	PNC	DPP	IND
1992	189	8	1						2
1996	133			61	5		1		
2000	92			100		1	3		4
2004	94			128		3	4		1
2008	116			107		1	2		4
2012	148			123		0	1		3
2016	106			169					
2020	137			137					1

What are the main issues of contest in election petitions?

First, infraction of electoral procedures. For instance, in the 2012 presidential election petition, the NPP argued that the EC allowed voting to take place in several polling stations across the nation without biometric verification. The plaintiff averred that this contradicted the Constitutional Instrument (C I) 75 Regulations 30(2). In the same 2012 election petition, the NPP espoused that the EC employed the services of Superlock Technologies Limited (STL), an information technology company, without notifying the Inter-Party Advisory Committee (IPAC). They argued that this contradicted conventional practices in Ghana, where such major decisions were transparently discussed with the IPAC. According to the petitioners, the EC failed to discuss the issue with IPAC because they wanted to rig the elections in favour of the NDC presidential candidate (Asante and Asare 2016). Also, several Statement of Poll and Declaration of Results Forms (also called pink sheets) had an identical serial number. The petitioners claimed that this was illegal and an electoral fraud, as all pink sheets were expected to have unique serial numbers. The petitioners further raised issues of widespread incidences where presiding officers failed to sign the results declared on the pink sheets in

contravention of CI 75, Regulation 36(2). In addition, the petitioners claimed that the principle of one man, one vote was violated as some people engaged in multiple voting under the watch of the EC. Finally, they noted as dubious the change in the total number of registered voters from 14, 031, 680 before elections to 14, 158, 890 on December 9, 2012 when the results were declared by the EC (Gyampo et al, 2022; Baneseh, 2015; Alidu 2014).

Second, non-compliance with constitutional requirements. The petitioner (John Dramani Mahama) pointed out that the elections on 7 December 2020 did not result in any candidate obtaining the 50% plus one vote required for the election of a president. At the Supreme Court, the petitioner argued that the declaration by the chairperson of the EC and also the first respondent in the suit, New Patriotic Party flag bearer, Nana Akufo Addo as president-elect, violated Article 63(3) of the 1992 Constitution. This article requires the winner to obtain more than 50% of total valid votes cast. He further argued that, in declaring the election results, the Chairperson (first respondent and the returning officer for the presidential elections), violated the constitutional duty imposed on her by Articles 23 and 296(a) of the 1992 Constitution to be fair,

candid, and reasonable. Mr. Mahama also alleged that the EC collation of the presidential election results was ‘unfair, untruthful and unreasonable’. The petitioner further noted that the said declaration was made arbitrarily, capriciously and with bias in favour of the second respondent, contrary to Article 296(b) of the 1992 Constitution, and in complete disregard of the allegations of vote padding. Furthermore, the petitioner argued that the declaration of results was made without regard to due process of law as required under Articles 23 and 296(b) of the 1992 Constitution (Gyampo et al, 2022; Mahama 2020).

Comparatively, it can be inferred that the issues of contention during the 2012 and 2020 election petitions were significantly

based on infractions of the 1992 Constitution and Constitutional Instrument 75 (for 2012 election). Whereas the 2012 election petitioners based their infractions on Article 49(3) of the constitution and Regulation 36(2) of the C.I. 75, the NDC’s focus was on Articles 63, 23 and 296 of the 1992 Constitution of Ghana in the 2020 elections.

Regarding parliamentary election petitions, the issues under contention can be grouped under five headings. These are dual citizenship, computational error, electoral malpractices, disallowance not to vote by EC and alleged corruption. Table 2 presents these issues showing the constituencies and the years.

Table 2. Issues of contention during parliamentary election petitions, constituency and year.

No	Issue for election petition	Constituencies	Year of election
1	Dual citizenship	Bawku Central, Assin North	2008; 2020
2	Computational error	Ayawaso West Wuogon; Techiman South	1996; 2020
3	Electoral malpractices	Techiman South, Savelugu, Pusiga, Banda, Jomoro, Krachi West, Tano South, Tarkwa Nsuaem, Essikado Ketan, Tema West, Zabzugu and Sefwi Wiawso	2020
4	Disallowance by EC not to vote	Beum; Hohoe	2020
5	Alleged corruption	Kintampo North	2020

Has the election petitions been beneficial to the plaintiffs?

The issue of beneficent outcome in election petition varies in terms of presidential and parliamentary. On the face value, one might argue that the petitioners in presidential elections have not benefited because the results were not overturned. However, a deeper reflection revealed that they had some gains. For instance, during the eight (8) months hearing of the 2012 elections, the presidential candidate with his running mate were in court. This sustained the party, kept them as leaders and subsequently gave them the advantage to be re-elected as flagbearer of the NPP for the 2016 elections. Same can be said of John Mahama of the NDC

in 2020. Through the petition, he also sustained the interest and confidence of the NDC members and won the flagbearer race to contest the 2024 elections on the ticket of the NDC.

At the parliamentary level, most of the petitioners won. For example, in 1996, George Isaac Amo was successful even though the verdict was delayed. In the case of those who petitioned against the dual citizenship of both Adamu Sekande and James Gyakyere Quayson, the courts ruled in their favour and nullified the results for bye-elections to be held. However, majority of the petitioners in the cases presented in Table 2 above lost. This mixed finding is corroborated with the quantitative data presented in Table 3 below.

Table 3. Have the filing and hearing of election petitions inured to the benefit of election petitioners?

Valid	Frequency	Percent	Valid Percent	Cumulative percent
No	122	47.8	47.8	47.8
Yes	133	52.2	52.2	100
Total	255	100	100	

The above Table 3 sought to establish the degree to which filing of election petition benefited the petitioners. One hundred and twenty-two (122) of the respondents representing 47.8% responded in the negative while 133 representing 52.2% responded in the positive.

Other benefits that the presidential election petitioners derived from the petition were that the presidential candidates looked good before their party supporters as they painted the picture as if they won the election but some invisible hands caused their defeat. In addition, their presence in court also aided them in demonstrating

to their followers that they did their best to secure victory but the courts said otherwise. These benefits in the long run helped to boost the confidence level of these candidates, maintained their support base and gave them advantage in their respective party primaries. The rulings and the recommendations helped the political parties to identify their mistakes, learnt lessons and strategized to win the elections. For instance, the ruling that elections are won at the polling stations energized the NPP to put in maximum effort by appointing and training competent and loyal party members as its polling agents during the 2016 elections. This partly accounted for the party's victory. The opposition NDC has also adopted the mantra, elections are won at the polling stations not at the court hence they will police the 2024 elections very well.

The findings conform to the views expressed by Erlich et al., (2021) about the motivation for election petition. Even though no presidential election petition has overturned the declared results as found in the literature on election petitions, but parliamentary ones have been reversed. Petitioners have equally used the petitions to boost their political reputation and psyche themselves up for the

next election. For instance, after the declaration of the verdict of the 2012 election petition on August 29, 2013, the chief petitioner Nana Addo Dankwa Akufo-Addo said, "I am sure there are many people wondering what I envisage for my political future. I intend to take some time out of the hurly burly of politics, get some rest, reflect and then announce whatever decision I come to in the not too distant future". He continued, "To my party, the NPP, I say we have a lot to be proud of, there are more than three years left in this political cycle to be a worthy opposition and also position ourselves for the battle of 2016. The battle continues to be that of the Lord's" (Baneseh, 2015).

How have these election petitions contributed to Ghana's electoral politics?

This section seeks to answer the question as to whether election petitions have contributed to electoral politics in Ghana. Majority of respondents quantitatively answered in the affirmative as shown in Table 4 below.

Table 4. Have election petitions contributed to Ghana's electoral politics?

Valid	Frequency	Percent	Valid percent	Cumulative percent
No	49	19.2	19.2	19.2
Yes	206	80.8	80.8	100
Total	255	100	100	

From Table 4, 206 respondents representing 80.8% were of the opinion that election petitions have shaped electoral politics in Ghana while a paltry 49 respondents representing 19.2% expressed contrary views. The reasons adduced by the proponents can largely be put in three broad headings. These are

- The role of the judiciary in the democratic process was brought to the fore,
- Democratic consolidation and continuity.
- Set the stage for electoral reforms.

The role of the judiciary in the democratic process

The judiciary is one of the arms of government, an autonomous and independent institution established by constitutions of countries. It is also one of the governance and democratic institutions. It is responsible for the adjudication of cases and settlement of disputes. It is also clothed with the power of interpreting the laws and administering justice (Asah-Asante and Brako, 2019).

The Constitution of Ghana in Articles 64(1) and 99(1) empowers the judiciary to hear election related disputes at the presidential and parliamentary levels respectively. The judiciary in all the election petitions across the country discharged these roles creditably by providing a free, fair and transparent environment to the parties

(plaintiffs and respondents) to argue out their cases. They demonstrated ample mastery of the law by not only applying the spirit and letter of the constitution but also other relevant legal frameworks such as Constitutional Instruments, Political Party's Act and rulings from other jurisdictions to ensure that justice was done in all the cases. Other roles of the judiciary in election petition cases were the interpretation of electoral laws, clarification of procedures and the basis of dismissing cases (Adams and Asante, 2020:250-251). These act of the judiciary revealed its mettle in the democratic process most especially since the 2012 presidential election petition was a novelty in the Fourth Republic. The live broadcasting of the court proceedings on daily basis helped to enlighten the citizens to appreciate the issues and ensured transparency and participation which are ingredients of democracy.

Democratic consolidation and continuity

The term democratic consolidation is a nebulous concept with no exact agreement on its meaning among scholars (Gunther et al., 1996). Ghana since the return to multiparty democracy in 1993 have been referred to as a consolidated democracy because it has passed the Huntington's turnover test of democratic consolidation by successfully transitioning political power from one political party to another back to back and excelling in the minimalist view of democratic consolidation. The emergence of election petition have taken Ghana a notch higher on the ladder of democratic

consolidation from the maximalist view. This maximalist view goes beyond the conduct of periodic elections to other factors that allow for democratic endurance. In the Fourth Republic, there have been electoral disputes but in most cases, the conflicting parties did not go onto the streets to settle the impasse as witnessed in other countries, but rather, they resorted to the law courts to have their grievances addressed (Agbevade and Tweneboah-Konduah, 2021, Asante and Asare, 2016). This act by the political actors in itself is a show of trust in the legal system which is also a maximalist perspective of democratic consolidation. The use of election petitions has not only contributed to democratic consolidation but also ensured continuity in democratic governance because Ghana did not suffer democratic backsliding or decay due to the electoral disputes.

Set the stage for electoral reforms

For the purposes of this paper, electoral reform is defined as any change in the operations of the electoral system aimed at improving it and making it more responsive to the expectations of the electorates and enhancing the impartiality, inclusiveness, transparency, integrity or accuracy of the electoral process (International IDEA 2006; Jacobs and Leyenaar 2011). Since the return to multiparty democracy in 1993, Ghana has implemented electoral reforms on incremental basis to enhance her electoral politics. Election petitions *i.e.* presidential or parliamentary have all brought about one reform or the other. For instance, one of the Supreme Court judges indicated, “After this case, elections in Ghana will not be the same. The petitioner in Chief during the 2012 election hearing also remarked, “We can hopefully look forward to an improved electoral process in our country (Baneseh, 2015).

True to these, the verdict as delivered by the President of the panel of jurist stated, “This petition, however, has exposed the need for certain electoral reforms. I mention some of them. The voters’ register must be compiled and made available to the parties as early as possible; a supplementary register may cater for late exigencies; the calibre of presiding officers must be greatly raised up; the pink sheet is too elaborate, a much simpler one is necessary to meet the pressures of the public, weariness and lateness of the day at the close of a poll etc.; the carbon copying system has to be improved upon; the Biometric Device System must be streamlined to avoid breakdowns and the stress on the electorate involved in an adjournment of the poll; and invalidating wholesale votes for insignificant excess numbers is not the best application of the administrative principle of the proportionality test” (Supreme Court verdict on election petition, 2013).

This verdict set the tone for electoral reforms. The EC as the principal Election Management Body (EMB) in Ghana invited proposals for electoral reforms from 38 key stakeholders including political parties, faith-based organisations, professional bodies, and civil society organizations. About 25 proposals for electoral reforms were submitted by the Institute of Economic Affairs to the EC on November 30, 2013. The EC subsequently inaugurated the

Electoral Reform Committee (ERC) in January 2015 to look into the reforms. The ERC submitted its report to the EC proposing 41 electoral reforms in April 2015 which the EC accepted (See Gyampo 2017 and Gyampo et al. 2022 for details). However, most of these electoral reforms were not implemented compelling scholars to refer to the EC and the 2016 elections as been auto-pilot and a miracle (Graham et al 2017).

Those who argued that election petitions did not contribute to electoral politics in Ghana adduced reasons such as the repetition of the mistakes pointed out by the courts during the hearing. Respondents argued that some issues pointed out were repeated during the 2016 and 2020 elections. The EC also could not implement the recommendations of the jury and the electoral reforms afterwards hence minimum impact of the petition felt in the 2016 and 2020 elections. Others also averred that the rulings have always been against the plaintiff. The time consuming nature and keeping governments in limbo due to uncertainty of the petition outcome. This have denied governments precious time in rolling out major policies for national development. The NDC government in 2013 for instance was cautious for eight months in implementing policies due to the petition. This situation has worsened an existing case of no fix electoral cycle calendar for serious governance business. Till date, the NDC alludes to the eight months of its governance time wasted at the Supreme Court in 2013.

CONCLUSION

The study was underpinned by four research objectives within the context of the rationale choice theory to examine election petitions in Ghana. The findings were discussed along the lines of both presidential and parliamentary election petitions. Factors such as stabilized and consolidated nature of Ghana’s democracy coupled with the influx of Ghanaian diasporas unsure of their chances of winning parliamentary elections hence did not denounce their dual citizenship, inefficiencies in the EC leading to electoral irregularities, computing errors, inappropriate application of electoral regulations among others. Other reasons identified were the competitive duopolistic nature of Ghana’s Fourth Republic and abuse of discretionary power by EC officials accounted for election petitions being rampant in Ghana.

The beneficent outcome of election petitions is mixed. Whereas the petitioners in presidential elections lost the bid to overturn the results as it is the case in other studies, petitioners in parliamentary petitions have mostly benefited. Politicians have usually used electoral petitions to their advantage by boosting their confidence; secure a comeback, please their supporters and maintain their political reputation. This implies that the filing of election petitions is done by politicians for their self-interest and benefit as espoused by the rational choice theory.

On the contribution of election petitions to Ghana’s electoral politics, the findings were mixed as a handful intimated that it has

not made any significant contribution because the Courts' recommendations were not implemented as electoral reforms as the same challenges kept recurring in every election. On the contrary, the role of the judiciary to the democratic process, consolidation and stabilization of democracy and initiation and implementation of electoral reforms to enhance Ghana's democracy were enumerated as some contributions of election petitions to Ghana's electoral politics.

RECOMMENDATIONS

Based on the findings, the study recommends that politicians aspiring for political positions should be honest, diligent and uneconomical in disclosing information about themselves during the filing of nominations. Similarly, EC officials should also do due diligence when accepting nomination forms to reduce the likelihood of false information. There should be capacity development for the EC staff both permanent and temporary on the electoral laws, ethics and professionalism to minimize or eliminate the efficiencies from the EMB. The need for a third force in Ghana's politics to eradicate the extreme competitive duopoly being experienced in the Fourth Republic.

REFERENCES

- Adams S, Asante W (2020). The judiciary and post-election conflict resolution and democratic consolidation in Ghana's Fourth Republic. *J. Contemp. Afr. Stud.* 38: 243-256.
- Agbevade A, Tweneboah-Koduah D (2022). Presidential election petitions in Ghana: A catalyst for democratic maturity. *African J Pol Sci Int Relat.* 16: 33-42.
- Alidu SM (2014). Party politics and electoral malpractice in Ghana's election 2012. *Journal of Scientific Research and Reports*, 3: 1449-1464.
- Asante W, Asare BE (2017). Ghana's 2012 election petition and its outcome: A giant leap towards democratic consolidation. *Selected issues in Ghana's democracy.* 1: 107-122.
- Ayee JR (2017). Ghana's elections of 7 December 2016: A post-mortem. *Afr. Int. Aff.* 24: 311-330.
- Azu M (2015). Lessons from Ghana and Kenya on why presidential election petitions usually fail. *Afr. Hum. Rights. Law. J.* 15: 150-166.
- Downs A (1957). *An economic theory of democracy.* Harper and Row, 28.
- Erlich A, Kerr N, Park S (2021). Weaponizing post-election court challenges: Assessing Losers' s Strategic motivations.
- Elster J, Jon E (1989). *The cement of society: A study of social order.*
- Graham E, Gyampo R, Faanu P, Yobo E (2017). The third peaceful transfer of power and democratic consolidation in Ghana. *J. Pan. Afr. Stud.* 10: 99-128.
- Puhle HJ, Diamandouros NP, Gunther R (1996). O'Donnell's "Illusions": a rejoinder. *J. Democr.* 7: 151-159.
- Van Gyampo RE (2017). The state of electoral reforms in Ghana. *Africa Spectr.* 52: 95-109.
- Van Gyampo RE, Agbevade A, Graham E (2022). Election petition and the future of electoral reforms in Ghana. *J. Afr. Elec.* 21: 120-141.
- Hechter M, Kanazawa S (1997). Sociological rational choice theory. *Annu. Rev. Sociol.* 23: 191-214.
- Huefner SF (2007). Remedying Election Wrongs. *Harv. J. Legis.* 44: 265.
- Kaaba OB (2015). The challenges of adjudicating presidential election disputes in domestic courts in Africa. *Afr. Hum. Rights. Law. J.* 15: 329-354.
- Nyane H (2018). A critique of proceduralism in the adjudication of electoral disputes in Lesotho. *J Afric Elect.* 17: 1-24.
- Ogu MI (2013). Rational choice theory: Assumptions, strengths and greatest weaknesses in application outside the western milieu context. *Arabian. J. Bus. Manag. Rev.* 1: 90-99.
- Oliveira A (2007). A discussion of rational and psychological decision-making theories and models: The search for a cultural-ethical decision-making model. *Elect. J. Bus. Ethics. Org. Stud.* 12: 12-17.
- Zuckert CH (1995). On the 'rationality' of rational choice. *Political. Psychol.* 179-198.