

SUPREME COURT OF NIGERIA

16TH JULY, 1999. SC. 66/1999

**CORAM:- M. L. UWAIS CJN, A. B. WALL, I. L. KUTIGI,
M. E. OGUNDARE, U. MOHAMMED,
S. O. UWAIFO, E. O. AYoola, JJSC.**

1. PEOPLES DEMOCRATIC PARTY APPELLANTS
 2. MR. BONNIE HARUNA
 - AND
 1. INDEPENDENT NATIONAL ELECTORAL
COMMISSION
 2. THE RESIDENT ELECTORAL
COMMISSIONER, ADAMAWA STATE RESPONDENTS
 3. ALL PEOPLES PARTY
 4. DR. BALATAKAYA
 5. ABDUL RAHMAN ADAMU
-

CONSTITUTIONAL LAW - Constitution - Purport of - A constitution is the organic law of the people - It provides the machinery of government - And gives rights as well as imposing obligations - On the people it is meant for.

CONSTITUTIONAL LAW - Interpretative jurisdiction of the court - Principles guiding the exercise of such jurisdiction - As it applies to the construction of the constitution.

CONSTITUTIONAL LAW - Interpretation - Purposive interpretation - Establish practice of the court - Where the right of a citizen is threatened or violated - Is to ensure that it preserves and protects the right - By providing remedy for the citizen.

INTERPRETATION OF STATUTES - Decree No. 3 of 1999 - Provisions of sections 37 (1) and 40 - By those provisions - The office of Deputy Governor elect is independent of the office of Governor elect -

Where the Governor elect abandons his mandate - The right of the Deputy Governor elect is not extinguished - He is to be sworn in as Governor.

INTERPRETATION OF STATUTES - Decree No. 3 of 1999 - Provisions of Sections 37 (1) and 45 (1) - By those provisions the intention of the law makers - Is that after the election to the offices of Governor and Deputy Governor - If the Governor elect is not available - the Deputy Governor elect should take over from him - By replacing him.

INTERPRETATION OF STATUTES - The word "die" - In section 37 (1) of Decree No. 3 of 1999 - It's meaning and purport.

FACTS

In the Federal High Court, holden at Abuja, the plaintiffs/appellants by an Amended Originating summons sought for the determination of several questions arising from the interpretation and construction of sections 33 - 47, 98 & 102 of the State Government (Basic Constitutional and Transitional Provisions) Decree No. 3 of 1999; declaratory and injunctive reliefs. In effect the plaintiffs questioned the right of the defendants to conduct a bye election to the office of Governor of Adamawa State in the circumstances of this case, and claimed a declaration that the 2nd plaintiff is by law entitled to be sworn in as Governor of Adamawa State. The election to the office of the Governor of Adamawa State took place on the 9th day of January, 1999. The 2nd appellant was a running mate to Alhaji Atiku Abubakar for the offices of Deputy Governor and Governor respectively. They both were sponsored by the 1st appellant. The 4th and 5th respondents were also candidates in the election. They contested for the offices of Governor and Deputy Governor respectively, and were sponsored by the 3rd respondent. At the end of the election, Alhaji Atiku Abubakar and the 2nd appellant were duly returned elected as Governor and Deputy Governor of Adamawa State. While Alhaji Atiku Abubakar was yet to be sworn in as the Governor, he was nominated on 16 January, 1999, by General Olusegun Obasanjo (the presidential candidate of the 1st appellant) as his running mate for the office of vice presi-

dent; which he accepted. Consequent upon this, the 1st respondent wrote Alhaji Atiku Abubakar on 26th. February that the office of the Governor elect had become vacant by virtue of his acceptance to be the running mate of General Olusegun Obasanjo in the presidential election forthcoming and that it would conduct a bye election in due course to the office of the Governor of Adamawa State. Aggrieved by the decision of the 1st respondent, the appellants took out an Originating summons and claimed as aforesaid. The learned trial judge after hearing arguments and submissions of counsel for the parties held that the 2nd appellant was elected on the same conditions as the Governor and that his election could not be unilaterally cancelled by INEC. He accordingly upheld the appellant's claim. He declared that INEC and the Commissioner were not entitled and permitted by law to conduct bye election into the office of Governor of Adamawa State and that the 2nd appellant was entitled to be sworn in as Governor. He granted consequential injunctive reliefs intended to carry into effect the declarations granted. Aggrieved, the respondents appealed to the Court of Appeal, which upheld their appeal and set aside the judgment of the Federal High Court. Alluding to section 37 (1) of Decree No 3 of 1999, the Court of Appeal (per Musdapher, JCA) held that no other circumstances except the death of the Governor will permit a deputy Governor to replace the governor elect under that subsection. Dissatisfied, the appellants have appealed to the Supreme Court raising two issues.

ISSUES FOR DETERMINATION

(1) "Whether the 2nd Appellant is, under and by virtue of section 45 (1) of Decree No. 3 of 1999, entitle to be sworn in as Governor of Adamawa State at the end of the present Transition Programme."

(2) "Whether the election intended to be conducted by the 1st and 2nd Respondents to the office of Governor of Adamawa State is an election specified by law or allowed by law when there is a duly elected Deputy Governor of Adamawa State."

HELD (Allowing the appeal per lead reasons for judgment of **UWAIS CJN**; OGUNDARE, MOHAMMED and UWAIFO, JJSC dissenting)

Constitution - Purport of

1. A Constitution is the organic law or grundnorm of the people. While it seeks to provide the Machinery of government it also gives rights and imposes obligations on the people it is meant for. In Minister of Home Affairs v Fisher, (1980) A. C. 319 at p. 329, the Privy Council remarked

"A Constitution is a legal instrument giving rise, amongst other things, to individual rights capable of enforcement in a court of Law." See also Balarabe Musa v Auta Hamza, (1982) 3 NCLR 229 at p. 250.

Our 1979 Constitution, like Decree No. 3 of 1999, is replete with individual rights. One needs only to allude to sections 30 to 40 (on Fundamental Rights) 61 and 62 (on the qualification for election to the Senate and the House of Representatives) 100 and 101 (on the qualification for election to State House of Assembly) 213 (2) and 220 (1) on the right of a party to a case to appeal to the Supreme Court and the Court of Appeal for illustration. With respect, it will be wrong and out of place for any court to over look or to consider as secondary, any individual's right which has been created by the Constitution (or Decree No. 3 of 1999) for the Constitution contains no such provisions. (p. 2516 C)

Interpretative jurisdiction of the court

2. The controversy in the present case calls for the exercise of the interpretative jurisdiction of the Court. In exercising the jurisdiction as applied to the construction of our Constitution (including Decree No. 3 of 1999) there are principles laid down by precedents to guide us. These are as follows. In the case of Nafiu Rabi v The State, (1981) 2 N.C.L.R. 293 at p. 326, Sir Udo Udoma, J.S.C. observed -

"My Lords, it is my view that the approach of this Court to the construction of the Constitution should be, and so it has been, one of liberalism, probably a variation on the theme of the general maxim ut res magis valeat quam pereat (meaning it is better for a thing to have effect than to be made void). I do not conceive it to be the duty of this court so

to construe any of the provisions of the Constitution as to defeat the obvious ends the Constitution was designed to serve where another construction equally accord and consistent with the words and sense of such provisions will serve to enforce and protect such ends." (parenthesis mine)

Idigbe, J.S.C. remarked on p. 302 - 303 thereof:-

"..... Accordingly, where the question is whether the Constitution has used an expression in the wider or in the narrower sense the court should always lean where the justice of the case so demands to the broader interpretation unless there is something in the context or in the rest of the Constitution to indicate that the narrower interpretation will best carry out its object and purpose."

See also Aqua Ltd. v Ondo State Sports Council, (1988) 4 N.W.L.R. (part 91) 622 at p. 639 per Wali, JSC. (p. 2518 D)

Interpretation - Purposive interpretation

3. Now, for this court to perform its functions under the Constitution effectively and satisfactorily, it must be purposive in its construction of the provisions of the Constitution. Where the Constitution bestows a right on the citizen and does not expressly take away or provide how the right should be lost or forfeited in the circumstance, we have the duty and indeed the obligation to ensure that the enured right is not lost or denied the citizen by construction that is narrow and not purposive. To this end the established practice of this Court is where the constitutional right in particular, and indeed any right in general, of a citizen is threatened or violated, it is for the Court to be creative in its decision in order to ensure that it preserves and protects the right by providing remedy for the citizen - see the cases of Folabi v Folabi, (1976) 1 N.M.L.R. 169 at 177; Afolabi & Ors. v. Governor of Oyo State, (1985) 2 N.W.L.R. (part 9) 734. (p. 2519 B)

Decree No. 3 of 1999 - Provisions of sections 37 (1) and 40

4. As shown earlier on, the 2nd Appellant was elected together with Alhaji Atiku Abubakar as Deputy Governor. By section 40 of Decree No.

3 of 1999 "There shall be for each State of the Federation a Deputy Governor." This provision emphasizes the fact that the office of Deputy-Governor is not simply an appendage to that of the Governor. Once elected, even though on the same ticket as the Governor-elect, the Deputy-Governor-elect becomes sui generis. Section 40 emphatically preserves the office of Deputy-Governor-elect as independent of the office of Governor-elect; hence the provisions in Section 37 subsection (1) of Decree No. 3 of 1999 which states that when a Governor-elect "dies" the Deputy Governor-elect should succeed him. The Decree does not provide that when the Governor-elect "dies" the Deputy Governor elect also automatically "dies" with him. The 2nd Appellant has, therefore, the right to be Deputy Governor as elected. I therefore have no doubt in my mind whatsoever that when Alhaji Atiku Abubakar relinquished or abandoned his mandate to be the Governor of Adamawa State, the right of the 2nd Appellant to be the Deputy Governor of Adamawa State was not affected or extinguished. The attempt by INEC to hold fresh election to the office of Governor of Adamawa State, and by implication for the office of Deputy Governor (since by section 96 (1) (k) of Decree No. 3 of 1999 a gubernatorial candidate alone cannot be elected), as contained in its letter to Alhaji Atiku Abubakar, Exhibit PDP '1', would have unwittingly resulted in depriving the 2nd Appellant of his position of Deputy Governor elect. Section 40 of the Decree is categorical that Adamawa State shall have a Deputy Governor and this had not been made conditional or tied to the availability of Governor-elect. Since the Decree is silent about the effect of the step taken by Alhaji Atiku Abubakar and its consequences on the right of the 2nd Appellant as Deputy Governor elect, it is my view that by his going to the Federal High Court to challenge the decision of INEC, the 2nd Appellant is entitled to a remedy; for ubi jus ibi remedium (that is, there is no wrong without a remedy). The remedy here is for the 2nd Appellant to remain as the Deputy Governor of Adamawa State. And as for the absence or availability of Alhaji Atiku Abubakar, the 2nd Appellant is to be sworn-in as Governor in accordance with the provisions of section 45 subsection (1) of Decree No. 3 of 1999 whenever it comes into operation. For that is a right which he

has acquired as Deputy Governor elect, and which right has been preserved by the provision of section 40 of Decree No. 3 of 1999, quoted above. (p. 2519 G)

Decree No. 3 of 1999 - Provisions of section 37(1) and 45 (1)

5. It is clear from the scheme of Decree No.3 of 1999 as shown by Sections 37 (1) and 45 (1) of the Decree, that the intention of the law markers is that after the election to the offices of Governor and Deputy Governor, if the Governor elect is not available to run his office, the Deputy Governor elect should take over from him by replacing him. In the light of this, therefore, the provisions of section 37 subsection (1) should not have been given a narrow meaning. The 2nd Appellant should not be denied the right to be Deputy Governor and as Deputy Governor to succeed the Governor when the latter is unavailable to occupy the office. This is what the justice of this case demands. (p. 2524 E)

The word "die" - In section 37 (1) of Decree No. 3 of 1999

6. In Collins English Thesaurus in A-Z Form, 2nd Colour Edition, at p. 182, the word "die" is given as synonymous with "breathe one's last, deceased, depart, expire, finish, decay, decline, disappear, dwindle, ebb, end, lapse, vanish, wane, wilt, wither, fizzle out." The meaning given by these words (as underlined) to the word "die" is wide enough, in my opinion, to embrace what Alhaji Atiku Abubakar did in relinquishing his mandate to occupy the office of Governor of Adamawa State. I will, therefore, give the word "die" a wider meaning than had been given to it by the Court of Appeal. Consequently, I hold that by the provisions of section 37 subsection (1) of Decree No. 3 of 1999, the 2nd Respondent as Deputy Governor elect is entitled to be sworn in as Governor of Adamawa State. This accords with the justice of the case. There is no doubt in my mind that the meaning ascribed to the word "die" by the Court of Appeal being narrow had led to injustice and is inconsistent with the scheme of Decree No. 3 of 1999. (p. 2524 G)

NOTABLE POINTS OF INTEREST**UWAIS CJN***1. Distinction between the position of the Governor and that of the Deputy Governor*

B Now section 37 (1) attaches the succession by the Deputy Governor elect to death only, but as seen from the provisions of section 45 subsection (1) of the Decree there are many events that can happen to enable a Deputy Governor to be sworn in as Governor. The subsection provides

C - *"45 (1) The Deputy Governor shall hold office of Governor if the office of Governor becomes vacant by reason of death, resignation, impeachment, permanent incapacity or removal for any other reason."*

D The whole of section 45 including subsection (1) thereof, had not, by the time of our hearing this appeal and delivering judgment, come into operation by virtue of section 3 of the State Governor (Basic Constitutional and Transitional Provisions) (Amendment) Decree, No. 4 of 1999, which amended the provisions of section 149 of Decree No. 3 of 1999.

E This notwithstanding, section 149 is no doubt part and parcel of Decree No. 3 of 1999 and it cannot be disputed that it evinces the intention of the makers of the Decree (No. 3 of 1999) for the Deputy Governor to succeed the Governor. The question is; apart from the declaration of assets and the taking of the prescribed oaths, is there anything to distinguish the

F position of the Governor or Deputy Governor under section 45 (1) of Decree No. 3 of 1999 from the position of the Governor-elect and Deputy Governor-elect before the declaration of the assets and the taking of the oaths? To my mind there is no significant difference whatsoever. Therefore,

G the dividing line between the two positions is thin. (p. 2521 H)

2. The maxim expressio unius est exclusio alterius - Whether useful in the interpretation of the Constitution

H In interpreting section 37 subsection (1) the Court of Appeal adopted the common law maxim of expressio unius est exclusio alterius to hold that death is the only event mentioned in the subsection and therefore the action of Alhaji Atiku Abubakar in abandoning his position as Governor

elect of Adamawa State had not been provided for in the subsection and is not tantamount to being dead. I think this is too narrow an interpretation of the Constitutional provision. By its nature the maxim expressio unius est exclusio alterius is restrictive and one wonders if it should be useful in the interpretation of any constitutional provision where liberal and not narrow interpretation is desirable as a rule. In the case of Chief Obafemi Awolowo v Shehu Shagari & Ors. (1979) 6-9 S.C. 51, Fatai-Williams, CJN had this to say about the use of canons of interpretation, at p. 64 thereof:-

"Some of these "canons" of interpretation take the form of broad general principles only. Consequently, a common feature of most of them is that they are of little practical assistance in settling doubts about interpretation in particular cases. This is partly due to vagueness, but also because, in many cases, where one canon appears to support a particular interpretation, there is another canon, often of equal status, which can be invoked in favour of an interpretation which could lead to a different result.

It is for the above reason that Maxwell's authoritative book on Interpretation of Statutes is not always of much assistance. Indeed, the work contains every point of view. We think that is why the learned author of the twelfth edition aptly observed in the Preface -

'Maxwell might well be subtitled 'the practitioner's armoury'; it is, I trust not taking too cynical a view of statutory interpretation in general, and this work in particular, to express the hope that counsel putting forward diverse interpretations of some statutory provision will each be able to find in Maxwell dicta and illustrations in support of his case.'

See Maxwell on Interpretation of Statutes, 12th Edition pp. 295 - 296.

I am of the opinion, with respect, that the reliance of the Court of Appeal on the maxim led it to deny the 2nd Appellant the right to remain as Deputy Governor elect and to succeed Alhaji Atiku Abubakar as Governor of Adamawa State. (p. 2522 E)

WALI JSC

3. Judges to ascertain the intent of the law makers in interpreting statutes

The current trend today in construing statutory provisions requires judges to ascertain the legislative intent of the law makers, a task somewhat akin to pinpointing the intent of a testator or of disputing parties to a contract. It is the modern view that proper judicial construction of statutory provisions requires recognition and implementation of the underlaying legislative purpose. See Train v. Colorado Public Interest Research Group Inc., 426 U.S. 1, 9-10 (1976). And to do this as Judge Rogger J. Traynor States it, we need "literate, not literal judges." See Muniz v. Hoffman, 422 U.S. 454, 469 (1975). (p. 2529 F)

KUTIGI JSC

D 4. *"Dies" in s. 37 (1) means unavailable*

It appears to me that the word "dies" does not only mean "to stop living, or come to an end of one's life." The Governor-elect in this case has in fact not "died." He has only chosen to abandon or renounce his mandate. He could as well have disappeared altogether or taken seriously ill of say heart-attack, or a stroke and so on, or become permanently incapacitated for one reason or another before taking and subscribing to the Oaths. It would be wrong, I think, to say that in all these instances or situations, fresh elections should hold simply because the Governor-elect has not "died," when in exactly the same or similar situations, it is provided in section 45(1) of the same Decree 3 that -

"45. (1) *The Deputy Governor shall hold office of Governor if the office of Governor becomes vacant by reason of death, resignation, impeachment, permanent incapacity of removal for any other reason.*"

I find that one common denominator for all the situations of "death, resignation, impeachment, permanent incapacity or removal for other reasons," is Unavailability to be sworn-in as Governor. I have no hesitation, therefore, in interpreting or construing the word "dies" in Section 37(1) liberally and widely, simply as meaning "unavailable". There is nothing sacrosanct in the choice of the word "dies" in the subsection, especially now that we have all found ourselves in a situation where

"death" has not actually occurred. (p. 2541 A)

5. The court's interpretation of s. 37 (1) of Decree 3 accords with s. 181 of the 1999 Constitution

It is significant to note here now that the law-maker in its wisdom has since 29th May 1999 provided a fresh or new provision in place of now old Section 37(1) of Decree 3 of 1999 above. The new provision as contained in Section 181 Subsection (1) of the new 1999 Constitution which was only released to the public after our judgment in this case reads -

"181. (1) If a person duly elected as Governor dies before taking and subscribing the Oath of Allegiance and Oath of Office, or is unable for any reason whatsoever to be sworn in, the person elected with him as Deputy Governor shall be sworn in as Governor and he shall nominate a new Deputy Governor who shall be appointed by the Governor with the approval of a simple majority of the House of Assembly of the State."

It would therefore appear that this court's interpretation or Construction of Section 37(1) of Decree 3 of 1999 is clearly in consonance with the new Section 181(1) of the 1999 Constitution, because I venture to say here now that the 2nd Plaintiff would have been entitled to be sworn in, in the morning of 29th May 1999 under the new Section 181(1) which had come into force mid-night on 28th May 1999. This is a clear vindication of the stand taken by this Court. That is as it should have been. (p. 2542 A)

OGUNDARE JSC (Dissenting)

6. A deputy Governor elect can only be sworn in as Governor when the Governor elect dies

The only provision of Decree No.3 that enables a Deputy Governor elect of a State to be sworn in as Governor of the State, in the absence of the Governor elect is subsection (1) of section 37 which, for ease of reference, is reproduced here again. It provides:

"If a person duly elected as Governor dies before taking and

subscribing the Oath of Allegiance and Oath of Office, the person elected with him as Deputy shall be sworn in as Governor and he shall nominate a new Deputy-Governor from the same Senatorial District as that of the deceased Governor who shall with the approval of the House of Assembly of the State be appointed as Deputy Governor. (Underlining is mine)
 B It is the interpretation of the above provision that determines this appeal. (p. 2556 B)

7. *Intention of the legislature - What it means*

C "Intent" or "Intention" of the legislature does not mean what the legislature meant to say, but what the meaning of the words used by the legislature is. It is for the court to find out the express intention of the legislature from the words of the enactment itself; the Court is not at liberty
 D to give a speculative opinion. As Lord Watson put it in Salomon v. Salomon (1897) AC 22, 38:

"'Intention of the Legislature' is a common but very slippery phrase, which, popularly understood, may signify anything from intention embodied in positive enactment to speculative opinion as to what the Legislature probably would have meant, although there has been an omission to enact it. In a Court of Law or Equity, what the Legislature intended to be done or not to be done can only be legitimately ascertained from that which it has chosen to enact, either in express words or
 E
 F *by reasonable and necessary implication."*

Where the meaning of words used is plain, as in section 37(1) of Decree No. 3 under consideration it is not the business of any court to busy itself with any supposed intention - See: Pakala Narayana v. Emperor (1939)
 G PC 47, 51 - an Indian case. (p. 2559 G)

8. *How to interpret s. 37 (1)*

H Assuming, but without conceding, that there is room for interpretation in section 37(1) what then are the rules applicable in the interpretation of a constitution? I hold the view that Decree No. 3 is to a large extent a constitution even though of a transitional nature and not meant to be of permanent endurance. The first rule is that words in constitutions are

ordinarily given their natural, normal, usual, common, popular, general and ordinary sense that is most obvious to the common understanding, and are not usually construed in a technical sense. It was Chief Justice John Marshall who, speaking for the United State Supreme Court in 1824 in Gibbons v. Ogden (1824) 22 US (Wheat.) 1, declared:..... B

That rule, of course, is as good and valid in the interpretation of statutes as of constitutions. The intention of the legislature is to be discerned from the clear and unambiguous words used. It is not competent for the court to modify such clear language in order to bring it into accordance C with its own views as to what is right or reasonable. (p. 2562 C)

9. The word "dies" in s. 37(1) is capable of only one meaning

In my respectful view, the wording of section 37(1) is so clear as to leave no room for any ambiguity. The word "dies" as used in the section D is capable of only one meaning and requires no broad and liberal interpretation to understand what it means. This is more so here that the phrase "deceased Governor" is used in the subsection (1) of section 37. A deceased Governor can only be one that is clinically and biologically dead. E I know of no other meaning of that phrase. (p. 2570 D)

10. The rights of the deputy Governor elect before swearing in

There is no provision in Decree No. 3 with respect to the election of a F Deputy Governor similar to section 35 which is concerned with the election of the Governor. Reading the Decree as a whole, as rightly submitted by Chief Chigbue, particularly section 41 which deals with the election of the Deputy Governor, the scheme is that for the purpose of election, the Running mate has no existence separate from that of the Governorship candidate whose associate he is. The Running mate swims or sinks with his Governorship candidate. If the candidate wins, the Associate wins also. And if the candidate loses, the Associate loses equally, G his popularity with the electorate notwithstanding. That is why the rights H of the Deputy Governor elect (in this case, the 2nd Appellant) before swearing in are subject to be defeated or cancelled by the act of his governor elect (in this case, Alhaji Atiku). There was a marriage be-

tween the two which remained inseparable until they were both sworn in to their respective offices. Therefore, when Alhaji Atiku Abubakar abdicated the mandate given him by the electorate of Adamawa State to be their Governor, by his opting for the higher office of Vice-President, he has, by this act, created a vacancy in the office of Governor of Adamawa State which, in the absence of any provision in Decree No. 3 empowering his Deputy-elect (2nd Appellant) to step into his shoes in the circumstance that has arisen, there has to be an election to fill that vacancy. (p. 2575 C)

MOHAMMED JSC (Dissenting)

11. Use of dictionary in the interpretation of statutes

Section 37(1) of Decree No. 3 of 1999 is clear and unambiguous that a Deputy Governor elect can only be sworn in as Governor when a Governor elect dies. "Dies" in the context used in the section can never mean anything other than what the legislature conveyed, and that is, when the Governor elect is dead, killed or his life came to an end the Deputy Governor elect shall be sworn in as Governor. In the section i.e. Section 37(1) of Decree No. 3 of 1999 the Governor elect is referred to as "deceased". There is no interpretation liberal, broad or wider that can change the meaning of the word "deceased" to anything other than the one whose life had come to an end. If we look at the dictionary the meaning of the word is given as "dead". Reference to dictionary in the construction of Statutes may not always be of help. Lord Coleridge, in the case of R. v. Peters (1886) 16 QBD 636 advised on how to refer to dictionaries in interpreting words in Acts of Parliament in the following opinion:

"I am aware that meanings in dictionaries must not be taken as authoritative exponents of words of Acts of Parliament, but it is a well known rule that such words should be read as used in their ordinary sense, unless the context shows otherwise, we may therefore look to dictionaries in order to ascertain what is the ordinary meaning of the words." (p. 2579 G)

12. *S. 181 of 1999 Constitution rectified the lacuna in Decree No. 3 of 1999*

I agree that failure to provide for a solution to the situation which has arisen in this case is a lacuna in Decree No. 3 of 1999. There was no provision in that law whereby the Deputy Governor elect could be sworn in as Governor if the Governor elect became unavailable (not through death) to take the oath of allegiance and the oath of office on the 29th of May, 1999. Before 1999 Constitution was signed into law this lacuna, I believe, was observed by the Provisional Ruling Council of the Military Administration headed by General Abdulsalami Abubakar. Being the law making body then, the missing part, which would make it possible for a Deputy Governor elect to be sworn in as Governor as had risen in this case, was brought into Section 181 of 1999 Constitution by the Provisional Ruling Council. This is how such a lacuna could be rectified, But until then the court has no power to step into the shoes of the legislature and embark on judicial legislation in order to supply the omission in the statute which inhibits Mr. Bonnie Haruna to be sworn in as Governor of Adamawa State on 29th May, 1999. The court's interpretative jurisdiction is not meant for legislative action for the realization of the intention of the makers of the law. See Mandara (Alhaji) v. Attorney-General of the Federation (1984) 4 S.C. 8. (p. 2580 C)

UWAIFO JSC (Dissenting)

13. *The Deputy Governor elect is not entitle to be made Governor in the circumstances*

A person was elected Governor, and along with him was his associate for the running for that office who was elected as the Deputy Governor. The person elected Governor did not want the office. He wanted to be Vice-President. So he left without waiting to be inaugurated as Governor. The Law says it is only when the person elected as Governor dies before his inauguration into office as Governor that the person elected with him as Deputy Governor can be allowed to become Governor. That is all. The person elected Deputy Governor felt disappointed that those who made the law, or at any rate, those who interpreted it in that simple

manner, did so in order to deny him his victory at the election. He argued that that was not proper. He said further that those who made the Law did not use appropriate words (though they are clear and unambiguous); they did not say enough to include when the person elected Governor ran away or had gone mad or was very ill or decided to take another job or had been put in prison and so on and so forth, and not only when he died. He pleaded with this court to help the law-makers say all that they were believed to have failed to say so that he could be made Governor. This court, by a majority decision, agreed with him and ordered that he be made Governor so as to have no need to hold another election for Governor and Deputy Governor. But I said and recorded it as my decision that he was not entitled to be made Governor in the circumstances. That concludes the symbolic narrative. (p. 2584 D)

AYOOLA JSC

14. Rules of interpretation

It is, in my opinion, expedient to put at the forefront of the approach to the problem a correct appreciation of the developing attitude of the courts to the scope of their interpretive jurisdiction. There is no gainsaying the fact that as far as the English common law is concerned the literal rule developed in the 19th Century continues to be, in a large number of situations, the dominant rule. The golden rule permits modification of the literal sense of the words of the statute where adherence to the literal sense would lead to absurdity. To that extent it is a shift from the literalist approach to interpretation of statutes. The golden rule permits the grammatical and ordinary sense of the words used in a statute to be modified so as to avoid absurdity and inconsistency which adherence to the grammatical and ordinary sense of the words would lead to. (See Grey v. Pearson (1857), 6 H.L.C. 61 at p 106, per Lord Wensleydale.) (p. 2616D)

H REPRESENTATION

Chief C. Chigbue with Tase and J. E. Egemba for 1st and 2nd Appellants
A. B. Mahmud, with Bala for the 1st and 2nd Respondents
C. O. Akpamgbo, SAN with J. Erameh for the 3rd, 4th and 5th Respon-

dents

CASES REFERRED TO

- Minister of Home Affairs v Fisher, (1980) A. C. 319 at p. 329
- Musa v Hamza (1982) 3 NCLR 229 at p. 250 B
- Nafiu Rabiu v The State (1981) 2 N.C.L.R. 293 at p. 326
- Folabi v Folabi (1976) 1 N.M.L.R. 169 at 177
- Afolabi v. Governor of Oyo State (1985) 2 N.W.L.R. (part 9) 734
- Awolowo v Shagari (1979) 6-9 S.C. 51 C
- Muniz v. Hoffman 422 U.S. 454, 469 (1975)
- United Housing Foundation, Inc v. Forman, 421 U. S. 837, 848-49 [1975]
- Salomon v. Salomon (1897) AC 22, 38:
- Pakala Narayana v. Emperor (1939) PC 47, 51
- Ojokolobo v. Alamu (1987) 3 NWLR 377 at p.390 D
- Kpema v State (1986) 1 N.W.L.R. (part 7) 396
- Bello v A-G. of Oyo State (1986) 5 N.W.L.R. (part 45) 828
- Stitch v A-G. of the Federation (1986) 5 N.W.L.R. (part 46) 1007
- Ohuka v The State (1988) 1 N.W.L.R. 539 E
- Udofia v The State (1988) 3 N.W.L.R. (part 84) 533

STATUTES REFERRED TO

State Government (Basic Constitutional and Transitional Provisions) Decree No 3 of 1999; ss.36, 37(1); 40, 41, 45 (1), 96 (1); 149 (as amended). F

Constitution of the Federal Republic of Nigeria, 1999; s. 181 (1).

BOOKS REFERRED TO

- Maxwell on Interpretation of statutes, 12th Edition; pp. 295 - 296. G
- Collins English Thesaurus in A - Z Form, 2nd colour edition; p. 182
- Craeis on statute law, 7th Edition; p. 87
- Basu, commentary on the Indian constitution, 4th Edition, Vol 1; pp. 25 - 27 H
- maBlack's Law Dictionary, 6th edition; p. 1564

LEAD REASONS FOR JUDGMENT BY UWAIS CJN

I allowed this appeal on the 11th day of May, 1999 and reserved my reasons for doing so. I now give the reasons.

The election to the office of the Governor of Adamawa State took place on the 9th day of January, 1999. The 2nd Appellant was a running mate to Alhaji Atiku Abubakar for the offices of Deputy Governor and Governor respectively. They both were sponsored by the 1st Appellant. The 4th and 5th Respondents were also candidates in the election. They contested for the offices of Governor and Deputy Governor respectively, and were sponsored by the 3rd Respondent. At the end of the election, Alhaji Atiku Abubakar and the 2nd Appellant were duly returned elected as Governor and Deputy Governor of Adamawa State.

In the meanwhile the election to the office of President and Vice-President had not taken place. At the 1st Appellant's primary convention General Olusegun Obasanjo was nominated as a Presidential candidate and was obliged to nominate his running mate for the office of Vice-President. He chose Alhaji Atiku Abubakar as the running mate. This was on the 16th day of January, 1999. General Olusegun Obasanjo and Alhaji Atiku Abubakar, who was already Governor-elect of Adamawa State, were sponsored by the 1st appellant as its candidates in the Presidential election which took place on the 27th day of February, 1999. Both General Olusegun Obasanjo and Alhaji Atiku Abubakar, whose candidature was earlier approved by the 1st Respondent, were returned on the 1st day of March 1999 as duly elected President and Vice-President respectively.

By a letter dated the 26th day of February, 1999 addressed to Alhaji Atiku Abubakar by the 1st Respondent, the latter stated inter alia that the office of the Governor-elect had become vacant by virtue of his acceptance to be the running mate of General Olusegun Obasanjo in the Presidential election forthcoming and that it would conduct a bye-election in due course to the office of the Governor of Adamawa State. The letter (Exhibit PDP 1) reads thus:-

"INEC/SEC/015

Ref

26th February, 1999

Date:

Alh. Abubakar Atiku, (sic)
Vice Presidential Candidate,
Peoples Democratic Party,
Off Monrovia Road,
Wuse II,
Abuja.

B

Yours Excellency,
Sir,

C

*RE: CONDUCT OF FRESH ELECTION FOR GOVERNOR
OF ADAMAWA STATE*

It has been observed that you were elected The Governor of Adamawa State during the Gubernatorial and State House of Assembly Elections held on Saturday, 9th January, 1999. Recently, you were nominated the Vice President (sic) Candidate of your Party for the forthcoming Presidential election scheduled for Saturday, 27th February, 1999. This you accepted.

D

2. The Commission wishes to inform you that with your acceptance to run the position of the Vice Presidential Candidate, you ceased to be the Governor Elect of Adamawa State and the position is now vacant. It is imperative for you to note that since you had not been sworn-in as the Chief Executive of the State, your Deputy cannot automatically take over the position.

F

3. The Commission will therefore, arrange for the conduct of a bye-election to elect the State Governor of Adamawa State in due course as contained in the Decree establishing INEC and the rules guiding the conduct of such election, please.

G

4. Wishing you the best of luck.

I remain,

H

Yours obediently,

(Signed)

(ALHAJI ADAMU BAWA MU'AZU)
 SECRETARY,
 for: CHAIRMAN, INEC."

Following the receipt of the letter by Alhaji Atiku Abubakar, the
 B 1st and 2nd Appellants, as Plaintiffs, took out an originating summons in
 the Federal High Court, Abuja, (which was later amended) for the deter-
 mination of three questions, which they claimed arose from the con-
 struction and interpretation of sections 33 to 47 inclusive, 98 and 102 of
 C the State Government (Basic Constitutional and Transitional Provisions)
 Decree No. 3 of 1999. The questions and claims by the Plaintiffs, as per
 the Amended Originating Summons, read as follows:-

"1. *Whether the Defendants have the right to conduct a bye
 election to the office of Governor of Adamawa State?*

D (a) *When there is a duly elected Governor and Deputy Governor
 in accordance with the relevant provisions of Decree No. 3 of 1999.*

(b) *When the duly elected Governor is not available to take the
 Oath of Office but the duly elected Deputy Governor is available to be
 E sworn in as Governor of the State in place of the duly elected Governor
 now not available to be sworn in as Governor.*

2. *Whether the letter dated 26th February, 1999 written by the
 1st Defendant to Alhaji Atiku Abubakar (sic) Vice President-Elect of the
 F Federal Republic of Nigeria wherein the 1st Defendant indicated its in-
 tention to hold a bye election in Adamawa State is within the spirit of the
 provisions and the intendment of the provisions of Decree No. 3 of 1999?*

(a) *When Decree No.3 of 1999 makes no provisions whatsoever
 for such a bye election.*

G 3. *Whether the 2nd Plaintiff is by Law entitled to be sworn in as
 Governor of Adamawa State?*

(a) *When he has been duly elected to the office of Deputy Gov-
 ernor of Adamawa State and when the duly elected Governor Alhaji
 H Atiku Abubakar is now not available to be sworn in as Governor of the
 State.*

4. *Whether it is the Oath of Allegiance and Oath of Office which
 makes (sic) a person an elected Governor or an elected Deputy Governor*

or the return of the persons as duly elected after the election?

(a) When Sections 31 and 41 (3) of Decree No. 3 of 1999 which provides (sic) for the taking of such Oaths recognizes (sic) that prior to the taking of the Oaths the Governor and the Deputy Governor have been duly elected.

B

If the answers to questions 1, 2 and 4 are in the negative and the answer to question 3 is in the affirmative, the Plaintiffs claim against the Defendants:

(a) A Declaration that the Defendants are not entitled or permitted by Law to conduct a bye election into the office of Governor in Adamawa State.

C

(b) A Declaration that the 2nd Plaintiff is by Law entitled to be sworn in as Governor of Adamawa State.

(c) An Order of perpetual injunction restraining the Defendants by themselves, agents, servants and or privies or otherwise howsoever from taking any steps or cause to be taken any step(s) towards the conducting of a bye election into the office of the Governor of Adamawa State.

E

(d) An Order of perpetual injunction restraining the Defendants by themselves, agents, servants and or privies or otherwise howsoever from conducting a bye election into the office of Governor of Adamawa State."

F

After hearing arguments and submissions of counsel for the Plaintiffs and the 1st and 2nd Respondents herein, who were the only Defendants to the Amended Originating Summons, the learned trial judge (Auta, J.) held in his ruling as follows with regard to the question whether the Plaintiff (2nd Appellant herein) could step into the shoes of Alhaji Atiku Abubakar as Governor of Adamawa State:-

G

"..... I have already stated that by the Provisions of section 96 (1) and (2) the Deputy Governor is elected under the same conditions with that of the Governor. In fact, the position of a deputy (sic) Governor is very important, as provided under section 40 of the Decree (No. 3 of 1999). It states that there shall be for each State of the Federation a Deputy Governor. Infact by the Provisions of section 41 (1) of the de-

H

cree, (sic) a candidate for the office of the Governor shall not be deemed to have been validly nominated for that office unless he nominates from a Senatorial District other than his own senatorial (sic) District; another candidates (sic) as his associate, for the office of Governor, who is to occupy the office of Deputy Governor. The section makes it clear that if the Governor is elected as Governor, then the Deputy Governor is also elected into the office of Deputy Governor and not Deputy Governor elect. In this case it is not in dispute that Alhaji Atiku Abubakar has been duly elected as Governor of Adamawa State, and therefore the (sic) Mr. Bonnie Haruna has also been elected into the office of Deputy Governor of Adamawa State.

The interpretation of the provision of the Decree dealing with the swearing in of the deputy (sic) Governor, in a situation where there is no petition against his election or order by a competent Tribunal, accords with convenience, reason and justice, for him to be sworn (sic) in as Deputy Governor and then the law will take it (sic) normal course. It is my belief that some people voted in the Governorship election because of the deputy (sic) Governor and not necessarily because of the Governor. Any Court will be failing in its sacred duty not to condemn the unilateral action of INEC of cancelling a duly conducted election which produced duly elected Governor and deputy (sic) Governor. It cannot be doubted that INEC assumed a dictatorial power by trying to cancel the Election (sic) held on Saturday 9th of January, 1999 and without batting an eye are making preparation to hold a second fresh election into the same office on the 19/3/99. I am therefore calling INEC to order by stopping them from holding an Election (sic) on the 20/3/99, (sic) in Adamawa State as it is not provided for under decree (sic) No 3 of 1999. The claims of the Plaintiff (sic) against the Defendant (sic) as stated in the Amended Originating Summons are hereby granted." (parenthesis mine).

The Defendants who felt aggrieved by the ruling appealed to the Court of Appeal. The 3rd, 4th and 5th Respondents herein, who were not parties before the Federal High Court, applied to the Court of Appeal for leave to appeal against the decision of the Federal High Court as

persons aggrieved. Leave was granted to them and they brought the appeal. The two appeals, that is, by the 1st and 2nd Defendants and the 3rd, 4th and 5th Respondents herein, were consolidated and heard together by the Court below with the consent of all the parties.

Four issues for determination by the Court of Appeal were formulated by the 1st and 2nd Respondents herein. The 3rd to 5th Respondents herein also formulated issues for determination which the Court of Appeal (per Musdapher, J.C.A.) found "not dissimilar" to those of the 1st and 2nd Respondents. The Court below opted to adopt the 4 issues formulated by the 1st and 2nd Respondents. The issues were:-

"1. Whether section 37 (1) of the States Government (Basic Constitutional and Transitional Provisions) Decree No. 3 of 1999 authorize a person elected as Deputy Governor to be sworn in as Governor of a state when the person elected as Governor is not available to be sworn in for reasons other than death?"

2. Whether a person elected as Deputy Governor has a legal right to be sworn in as Deputy Governor or Governor, if the person elected as Governor abandons or renounces that mandate before swearing and subscribing to the Oath of allegiance and the Oath of Office.

3. Whether in deciding to conduct fresh elections in Adamawa State in the circumstances of this case, where the person elected has abandoned his mandate amounts to 1st and 2nd Appellants annulling the earlier election.

4. Whether the election proposed to be conducted by the 1st and 2nd Appellant into the office of Governor of Adamawa State is a lawful election recognized by Decree No. 3 of 1999."

However, the Court of Appeal decided to reduce the four issues to two and in doing so ignored issue No. 2 formulated by the 1st and 2nd Respondents which formed the fulcrum or crux of the contention between the parties. The lead judgment of Musdapher, J.C.A. who presided together with Coomassie, Bulkachuwa, Oduyemi and Datti Muhammed, JJCA stated as follows:-

"In my view there are two fundamental issues that call for decision in this matter and these are:-

1. *Whether in the circumstances of this case, there is a provision in Decree No. 3 of 1999 which permits the 2nd respondent to be sworn in as governor (sic) of Adamawa State. If not*

2. *Whether INEC has the legal right to conduct another election to fill in the vacuum created by abandonment of the mandate won by Alhaji Atiku Abubakar."*

In my respectful opinion, it is this omission or misdirection that led to the conclusion reached by the Court of Appeal. However, I shall allude more to this later in this judgment.

In considering issue No. 1 which the Court formulated for itself. Musdapher, J.C.A. stated as follows:-

"There is no dispute that Alhaji Atiku Abubakar and Mr. Bonnie Haruna contested and won the governorship elections of Adamawa State conducted on the 9/1/1999 as Governor and Deputy Governor respectively. There is also no dispute, he must have a qualified running mate. There is also no doubt that they are elected together and there are provisions that when certain events occur, the deputy governor will lawfully step into the shoes of an elected governor. One of such events is the one mentioned under S. 37 (1) of the Decree, it reads:

"(1) If a person duly elected as Governor dies before taking and subscribing the oath of allegiance and oath of office, the person elected with him as Deputy shall be sworn in as Governor and he shall nominate a new Deputy-Governor from the same Senatorial District as that of the deceased Governor who shall with the approval of the House of Assembly of the State be appointed Deputy Governor."

This is a new provision. The 1979 Constitution does not have such a provision.

All the learned counsel are in agreement, that this is a constitutional provision and therefore its construction and interpretation must be made in a way to ensure the effectuation of the purposes of a Constitutional provision."

With regard to the construction of section 37 subsection (1) of Decree No. 3 of 1999, learned Justice held:-

"In my view, and I believe that there is no dispute, that the words

contained in S. 37(1) are clear, precise and unambiguous. It is only when a Governor elect dies or when a person elected as Governor dies before subscribing to Oaths, before he commences his tenure, that the Deputy Governor elect can step into his shoes. The situation under consideration in this matter is not that the Governor elect "dies" but that he has abandoned his mandate for a higher national office before commencing his tenure. The words used in the section are clear and unambiguous, they are not unfamiliar or uncommon words, it is unnecessary to travel beyond the section or the whole Decree for the purposes of construing them. In my view, the grammatical and literal construction would not lead to any absurdity, repugnance or inconsistency with the rest of the Decree. In other words S. 137 (1) (sic) makes a provision for the Deputy Governor to step into the shoes of the governor only if the Governor "dies" before commencing his tenure. The words "dies" and "deceased" have been used in the same section. So unless there is death in the circumstances mentioned, there is no room for the Deputy Governor to succeed the governor under s. 37 (1) of Decree No. 3 of 1999." (emphasis mine).

Again in considering the submission of counsel for the Appellant's thereat (1st and 2nd Respondents herein) that the maxim "expressio unius est exclusio alterius" (that is, the express mention of one person or thing is the exclusion of another) applied in the construction of section 37 subsection (1) of Decree No. 3 of 1999, learned Justice held -

"In my view, the maxim aptly applies. It is clear that it is only when the Governor dies before taking the Oaths that the Deputy can step in as Governor and take the Oath. Such a clear construction is not inconsistent with the other provisions of the Decree in question. Indeed had the legislature intended otherwise, it would have mentioned other incapacities which are enumerated under s. 45 (1) of the same Decree. The legislature could not be said to be unaware of the other circumstances that might arise to incapacitate the Governor from taking the prescribed Oaths and commencing his tenure. For the purpose of clarity, I shall reproduce the provisions of S.45 (1), which reads as follows:

"S. 45(1) The Deputy Governor shall hold office of Governor if

the office of Governor becomes vacant by reason of death, resignation, impeachment, permanent incapacity of removal for any other reason."

S. 37(1) read along with S. 45(1) clearly establish the occurrence of specified events before the Deputy Governor can step into the shoes of the Governor. I have carefully read the decision of the learned trial Judge and in my view, it cannot be said that he relied on S. 37(1) to arrive at his decision. In any event, the learned counsel for the respondents did not rely on 37(1) of the Decree. I am accordingly of the view that S. 37 (1) has no application to the facts of this case."

In conclusion, after holding that the Independent National Electoral Commission had the right to conduct fresh election for the offices of the Governor and the Deputy Governor of Adamawa State, learned Justice ended his judgment thus:-

"In the result I have resolved the two issues formulated by me against the respondents. This appeal accordingly succeeds and I allow it. I set aside the decision of Auta J. delivered on the 17/3/1999 and in its place I answer the questions raised in the Originating Summons as follows:-

1. The 1st and 2nd appellants have the right to conduct a bye-election to the office of Governor of Adamawa State.

2. The letter dated 26/2/1999 is within the spirit of the provisions of Decree No. 3 of 1999, Decree No. 17 of 1998, Decree No. 33 of 1998 and Decree No. 34 of 1998.

3. The 2nd respondent, Mr. Bonnie Haruna is not entitled to be sworn in as Governor of Adamawa State.

4. A person becomes Governor only after subscribing to the oaths of Allegiance and office notwithstanding that he has been elected to the office.

The declarations and injunctive order made by Court below are accordingly set aside. I make no order as to costs."

Dissatisfied with the decision, the Appellants herein brought the present appeal. In view of the urgency demanded by the circumstances of the appeal we decided, on the motion on notice brought by the Appellant, to dispense with the filing of briefs of argument by the parties. The

appeal was therefore argued orally.

In arguing the appeal, Chief Chigbue, learned counsel for the Appellants said that two issues arose for the determination of the appeal. The first being: "whether the 2nd Appellant is, under and by virtue of section 45 (1) of Decree No. 3 of 1999, entitle to be sworn in as Governor of Adamawa State at the end of the present Transition Programme." B Secondly: "Whether the election intended to be conducted by the 1st and 2nd Respondents to the office of Governor of Adamawa State is an election specified by law or allowed by law when there is a duly elected Deputy Governor of Adamawa State." C He referred to the definition of the word "office" in section 148 subsection (1) of Decree No. 3 of 1999 to submit that the Court of Appeal erred in law when it held that a person becomes a Governor only after subscribing to the oath stipulated under section 39 and Schedule 2 to Decree No. 3 of 1999. He contended that D it is not the oath of office that makes a person Governor or Deputy-Governor, but the return by the Returning Officer as elected candidate for the office. He referred in support to the provisions of sections 39 (1), 40 (3) and 45(1) of Decree No. 3 of 1999 and submitted that once a E person is elected on one can deprive him of the office unless he resigns from the office. He cited the case of Obiawuna v. Obi Okudo, (1979) All NLR 105 in support. Learned counsel canvassed, and this is important, that where there is no provision in Decree No. 3 of 1999 to take care of F the situation that arose in this case, there is then a lacuna and the Court should not take a decision which would deprive the Deputy Governor of his office. He submitted on the authority of the following cases - Oyeyemi v. Commissioner of Local Government, (1992) 2 N.W.L.R. (part 226) 661 at p. 684 G-H; The Director SSS v Agbakoba, (1999) 3 N.W.L.R. G (part 595) 314 at p. 361 E - F and Braithwaite v GDM, (1998) 7 N.W.L.R. (part 557); that the 2nd Appellant has a right which enured to him in being elected Deputy Governor and that right cannot be taken away from him. Learned counsel urged us to give broad interpretation to the provisions of Decree No. 3 of 1999 as laid down by the decisions in Nafiu Rabi v The State, (1981) 2 N.C.L.R. 293; Ekpenkhio v Egbadom, (1993) 7 N.W.L.R. (part 308) 717 at pp. 739 H and 740B and In re Shyllon,

(1994) 6 N.W.L.R. (part 353) 735 at p. 751C - G.

In his reply, A. B. Mahmud, learned counsel for the 1st and 2nd Respondents, sought the Court's indulgence to adopt his argument in the Court of Appeal by adopting his brief of argument in that Court. He conceded that in interpreting the provisions of Decree No. 3 of 1999 the canons of construction of the Constitution will apply. He submitted that the primary object of Decree No. 3 of 1999 is to provide the structure of government and not to create individual rights. To that extent section 37 (1) thereof shows the intention to step into the shoes of Governor only where the Governor is dead. He requested us to adopt the maxim expressio unius est exclusio alterius in interpreting the provisions of the section. He referred to the case of Shittu v S-G of Kwara State, (1984) 5 NCLR 661 where it was held by Ekundayo, J. that the maxim applied in the interpretation of the provisions of section 162(2) of the Constitution of the Federal Republic of Nigeria, 1979, Cap. 62 and that the Governor and Deputy Governor of a State were not the same in the exercise of the Executive powers of the State. Learned counsel submitted that section 36(2) of Decree No. 3 of 1999 supports section 37(1) thereof. He argued that except for section 41 of the Decree in all other provisions the Decree is consistent in referring to persons elected as person elected to the office of Governor or Deputy Governor. He submitted that this is the position in our Constitutions of 1979, 1989 and 1995. He contended that there is no lacuna in Decree No. 3 of 1999 even under the provisions of section 37 (1) and (2) thereof. He emphasized that the Decree as Constitution places high premium on oath of office and that is why it makes it condition precedent to performing the functions of the offices of Governor and Deputy Governor.

Learned Senior Advocate, C. O. Akpamgbo, Esq., for the 3rd, 4th and 5th Respondents, in his reply formulated two issues which he said arose in the appeal. They are - "(1) Whether the provisions of sections 37 and 45 of Decree No. 3 of 1999 avail the 2nd Appellant and entitle him to be sworn in as Governor of Adamawa State when the Governor-elect has abandoned or relinquished his mandate; and (2) Whether INEC under the various laws governing it has the power to

conduct an election to the gubernatorial seat in Adamawa State."

Arguing the first issue, learned Senior Advocate stated that section 37 subsection (1) of Decree No. 3 of 1999 is very clear and unambiguous and therefore should be given its primary and grammatical interpretation, which is that where a Governor-elect dies a Deputy Governor B can step into his shoes. In the present case the Governor-elect has not died but merely abandoned the mandate given to him by the people of Adamawa State. He submitted that under the provisions of sections 39, and 45 of Decree No. 3 of 1999 unless both the Governor and the Deputy C Governor subscribe to the oath of office, they cannot be said to be Governor and Deputy Governor. He argued that the provisions of section 45 subsection (1) of Decree 3 of 1999 will only apply after the Governor and Deputy Governor took oath of office and declare their assets. He stressed that if the legislature had intended any other eventuality under D section 37 subsection (1) it would have used words such as "in any other circumstance".

Learned Senior Advocate argued further that in a gubernatorial election a Deputy Governor elect has the right to be a Deputy Governor E but he has no right to be a Governor. Therefore the Deputy Governor in the present case cannot be said to have been deprived of his right to be a Governor. He submitted that there is no right for the 2nd Appellant to be sworn in as Governor in the circumstances of this case. He said that the F Schedules to Decree No. 3 of 1999 cannot be used to explain the clear provisions of the Decree even though the Schedules are part of the Decree. Since the Decree is silent on what has happened in this case, the Supreme Court should not hold that the 2nd Appellant should be sworn in G as Governor, but should apply Common sense interpretation. He canvassed that it is not every slip in a judgment that will result in an appeal being allowed: Although the Court of Appeal used the word "annulled" in its judgment, the error must have caused a miscarriage of justice before H it could affect its decision. He cited the case of Ukejianya v Uchendu (1950) 13 W.A.C.A. 45 at p. 46 in support.

In his final addresses, Chief Chigbue, learned counsel for the Appellants, emphasized that where there is a lacuna in a statute the court

can intervene by filling the gap to preserve the right of a party. He relied on the case of Obioha v Dafe, (1994) 2 N.W.L.R. (part 325) 157 at p. 173C - D. He drew attention to the fact that section 37 (1) of Decree No. 3 of 1999 uses the expression "duly elected" and cited Braithwaite's case B (supra) at p. 338 B - C.

It has been argued on behalf of the 1st and 2nd Respondents that the primary object of Decree No. 3 of 1999 and indeed any of our Constitutions is to provide a framework for governance by elected representatives of the people. That the provisions dealing with elective offices ought not to be viewed as primarily a scheme for creating or vesting rights or privileges in individual or mere occupants of offices. With respect this contention appears to me to be a fallacy. **A Constitution is the organic law or grundnorm of the people. While it seeks to provide the Machinery of government it also gives rights and imposes obligations on the people it is meant for. In Minister of Home Affairs v Fisher, (1980) A. C. 319 at p. 329, the Privy Council remarked -**

"A Constitution is a legal instrument giving rise, amongst other things, to individual rights capable of enforcement in a court of Law." See also Balarabe Musa v Auta Hamza, (1982) 3 NCLR 229 at p. 250.

Our 1979 Constitution, like Decree No. 3 of 1999, is replete with individual rights. One needs only to allude to sections 30 to 40 (on Fundamental Rights) 61 and 62 (on the qualification for election to the Senate and the House of Representatives) 100 and 101 (on the qualification for election to State House of Assembly) 213 (2) and 220 (1) on the right of a party to a case to appeal to the Supreme Court and the Court of Appeal) for illustration. With respect, it will be wrong and out of place for any court to over look or to consider as secondary, any individual's right which has been created by the Constitution (or Decree No. 3 of 1999) for the Constitution contains no such provisions.

Now, for the purpose of contesting gubernatorial election under Decree No.3 of 1999, the interests of a gubernatorial candidate and

those of his running mate, that is, the candidate for election to the office of Deputy Governor, are joint and inseparable. They swim or sink together at the stage of contesting the election. See sections 34 to 41 and 96 of Decree No. 3 of 1999. The gubernatorial candidate cannot stand for the election without a running mate and vice-versa. However, once B the two-some succeed in being elected and are duly returned as so elected, they acquire rights under the Constitution (that is, Decree No. 3 of 1999) that are joint as well as separate. For instance, if an election petition is successfully brought against them and they are found by the Election C Tribunal not to have been validly elected on the vote cast in the election, their election will be nullified - see section 137 of Decree No. 3 of 1999. On the other hand, the rights acquired by the Governor-elect are not the same as those of the Deputy-Governor-elect. For example, the Governor-elect cannot become a Deputy-Governor but the Deputy Governor-elect D can under certain circumstances, become Governor - see Sections 37(1) and 45(1) of Decree No. 3 of 1999.

There are three stage or phases in the process of a person contesting election to become a Governor or Deputy-Governor. The first E stage is before and up to the holding of the election. The second stage is after having been elected but pending the assumption of office. The third stage is on assumption of the office of Governor or Deputy Governor after declaring his assets and taking the prescribed oaths - see sections F 39 and 41 of Decree No. 3 of 1999.

During the first period or stage, if the gubernatorial candidate dies or withdraws from the election or is permanently incapacitated, it seems to me that there has to be a fresh nomination of both a gubernatorial G candidate and his running mate because the latter gets disqualified by reason of the death, withdrawal or incapacity. It again appears to me that if the running mate suffers the same disabilities, the gubernatorial candidate will have to nominate another running mate as the gubernatorial candidate alone is not qualified as such. See Section 96 (1) (k) of Decree H No. 3 of 1999.

In the second stage, which this case is concerned with, section 37 subsection (1) of Decree No. 3 of 1999 provides:-

"(1) If a person duly elected Governor dies before taking the Oath of Allegiance and the Oath of Office, the person elected with him as Deputy shall be sworn in as Governor and he shall nominate a new Deputy-Governor from the same senatorial District as that of the deceased Governor who shall with the approval of the House of Assembly of the State be appointed as Deputy Governor."

Indeed there is no express provision about other events such as mentioned in Section 45 subsection (1) of Decree No. 3 of 1999, namely, resignation, impeachment, permanent incapacity etc. I will return to this latter in this judgment.

In the third stage, section 45 subsection (1) of Decree No. 3 specifically provides the eventualities upon which the Deputy-Governor will succeed the Governor.

The controversy in the present case calls for the exercise of the interpretative jurisdiction of the Court. In exercising the jurisdiction as applied to the construction of our Constitution (including Decree No. 3 of 1999) there are principles laid down by precedents to guide us. These are as follows. In the case of Nafiu Rabi'u v The State, (1981) 2 N.C.L.R. 293 at p. 326, Sir Udo Udoma, J.S.C. observed -

"My Lords, it is my view that the approach of this Court to the construction of the Constitution should be, and so it has been, one of liberalism, probably a variation on the theme of the general maxim ut res magis valeat quam pereat (meaning it is better for a thing to have effect than to be made void). I do not conceive it to be the duty of this court so to construe any of the provisions of the Constitution as to defeat the obvious ends the Constitution was designed to serve where another construction equally accord and consistent with the words and sense of such provisions will serve to enforce and protect such ends." (parenthesis mine)

H Idigbe, J.S.C. remarked on p. 302 - 303 thereof:-

"..... Accordingly, where the question is whether the Constitution has used an expression in the Wider or in the narrower sense the court should always lean where the justice of the case so demands

to the broader interpretation unless there is something in the context or in the rest of the Constitution to indicate that the narrower interpretation will best carry out its object and purpose."

See also Agua Ltd. v Ondo State Sports Council, (1988) 4 N.W.L.R. (part 91) 622 at p. 639 per Wali, JSC; Mohammed v Olawunmi (1990) 2 N.W.L.R. (part 133) 458 at p. 484 per Nnaemeka-Agu, JSC; Chime v Ude, (1996) 7 NWLR (part 461) 379 at p. 432H per Onu, JSC.

Now, for this court to perform its functions under the Constitution effectively and satisfactorily, it must be purposive in its construction of the provisions of the Constitution. Where the Constitution bestows a right on the citizen and does not expressly take away or provide how the right should be lost or forfeited in the circumstance, we have the duty and indeed the obligation to ensure that the enured right is not lost or denied the citizen by construction that is narrow and not purposive. To this end the established practice of this Court is where the constitutional right in particular, and indeed any right in general, of a citizen is threatened or violated, it is for the Court to be creative in its decision in order to ensure that it preserves and protects the right by providing remedy for the citizen - see the cases of Folabi v Folabi, (1976) 1 N.M.L.R. 169 at 177; Afolabi & Ors. v. Governor of Oyo State, (1985) 2 N.W.L.R. (part 9) 734; Kpema v State, (1986) 1 N.W.L.R. (part 7) 396; Aliu Bello v A-G. of Oyo State (1986) 5 N.W.L.R. (part 45) 828; Stitch v A-G. of the Federation, (1986) 5 N.W.L.R. (part 46) 1007; Ohuka v The State, (1988) 1 N.W.L.R. 539; Udofia v The State, (1988) 3 N.W.L.R. (part 84) 533 and the book - The Work of the Supreme Court (1980 - 1988) by Professor I. E. Sagay.

As shown earlier on, the 2nd Appellant was elected together with Alhaji Atiku Abubakar as Deputy Governor. By section 40 of Decree No. 3 of 1999 "There shall be for each State of the Federation a Deputy Governor." This provision emphasizes the fact that the office of Deputy-Governor is not simply an appendage to that of the Governor. Once elected, even though on the same ticket as the Governor-elect, the Deputy-Governor-elect becomes sui generis.

Section 40 emphatically preserves the office of Deputy-Governor-elect as independent of the office of Governor-elect; hence the provisions in Section 37 subsection (1) of Decree No. 3 of 1999 which states that when a Governor-elect "dies" the Deputy Governor-elect should succeed him. The Decree does not provide that when the Governor-elect "dies" the Deputy Governor elect also automatically "dies" with him. The 2nd Appellant has, therefore, the right to be Deputy Governor as elected. I therefore have no doubt in my mind whatsoever that when Alhaji Atiku Abubakar relinquished or abandoned his mandate to be the Governor of Adamawa State, the right of the 2nd Appellant to be the Deputy Governor of Adamawa State was not affected or extinguished.

Although section 37 subsection (1) of Decree No. 3 of 1999 provides that when a Governor "dies" the Deputy Governor should succeed him, there is no express provision any where in the Decree that deals with the situation created by Alhaji Atiku Abubakar. What then becomes of the right acquired by 2nd Appellant to be the Deputy Governor of Adamawa State? Can it be said that as a consequence, that right has also diminished or disappeared? **The attempt by INEC to hold fresh election to the office of Governor of Adamawa State, and by implication for the office of Deputy Governor (since by section 96 (1) (k) of Decree No. 3 of 1999 a gubernatorial candidate alone cannot be elected), as contained in its letter to Alhaji Atiku Abubakar, Exhibit PDP '1', would have unwittingly resulted in depriving the 2nd Appellant of his position of Deputy Governor elect. Section 40 of the Decree is categorical that Adamawa State shall have a Deputy Governor and this had not been made conditional or tied to the availability of Governor-elect. Since the Decree is silent about the effect of the step taken by Alhaji Atiku Abubakar and its consequences on the right of the 2nd Appellant as Deputy Governor elect, it is my view that by his going to the Federal High Court to challenge the decision of INEC, the 2nd Appellant is entitled to a remedy; for ubi jus ibi remedium (that is, there is no wrong without a remedy). The remedy here is for the 2nd Appellant to remain as**

the Deputy Governor of Adamawa State. And as for the absence or availability of Alhaji Atiku Abubakar, the 2nd Appellant is to be sworn-in as Governor in accordance with the provisions of section 45 subsection (1) of Decree No. 3 of 1999 whenever it comes into operation. For that is a right which he has acquired as Deputy Governor elect, and which right has been preserved by the provision of section 40 of Decree No. 3 of 1999, quoted above.

Another angle of examining the controversy in this appeal is by interpreting the provisions of section 37 subsection (1) of Decree No. 3 of 1999, as had been done by the Court of Appeal. The section, as had been shown in the afore-mentioned, makes it possible for a Deputy-Governor elect to step into the shoes of the Governor elect on the latter's death, at the time of swearing-in of the Governor elect into office. It is settled that in interpreting the provisions or section of a statute or indeed the Constitution, such provisions or section should not be read in isolation of the other parts of the statute or Constitution. In other words, the statute or Constitution should be read as a whole in order to determine the intendment of the makers of the Statute or Constitution - See the case of Nafiu Rabi v The State, (supra) at p. 326 per Sir Udo Udoma, J.S.C. In the case of Chief Chuba Egolum v General Olusegun Obasanjo, Supreme Court Suit No. 45/1999 (unreported), reasons for judgment delivered on the 14th day of May, 1999, I made the following observation:-

"It is an elementary rule of interpretation of statute (and Constitution) that construction is to be made of all the parts of a statute together and not one part only by itself - see Turquand v Board of Trade, (1886) 11 App. Cas. 286 at p. 291. In the case of Canada Sugar Refining Co. v R. (1898) A.C. 735 it is said at p. 741 thereof -

'Every clause of a statute should be construed with reference to the context and other clauses of the Act so as, as far as possible, to make a consistent enactment of the whole statute or series of statutes relating to the subject-matter.'

Now section 37 (1) attaches the succession by the Deputy Governor elect to death only, but as seen from the provisions of section 45 subsection (1) of the Decree there are many events that can happen to

enable a Deputy Governor to be sworn in as Governor. The subsection provides -

"45 (1) *The Deputy Governor shall hold office of Governor if the office of Governor becomes vacant by reason of death, resignation, impeachment, permanent incapacity or removal for any other reason.*"

The whole of section 45 including subsection (1) thereof, had not, by the time of our hearing this appeal and delivering judgment, come into operation by virtue of section 3 of the State Governor (Basic Constitutional and Transitional Provisions) (Amendment) Decree, No. 4 of 1999, which amended the provisions of section 149 of Decree No. 3 of 1999. This notwithstanding, section 149 is no doubt part and parcel of Decree No. 3 of 1999 and it cannot be disputed that it evinces the intention of the makers of the Decree (No. 3 of 1999) for the Deputy Governor to succeed the Governor. The question is; apart from the declaration of assets and the taking of the prescribed oaths, is there anything to distinguish the position of the Governor or Deputy Governor under section 45 (1) of Decree No. 3 of 1999 from the position of the Governor-elect and Deputy Governor-elect before the declaration of the assets and the taking of the oaths? To my mind there is no significant difference whatsoever. Therefore, the dividing line between the two positions is thin.

In interpreting section 37 subsection (1) the Court of Appeal adopted the common law maxim of expressio unius est exclusio alterius to hold that death is the only event mentioned in the subsection and therefore the action of Alhaji Atiku Abubakar in abandoning his position as Governor elect of Adamawa State had not been provided for in the subsection and is not tantamount to being dead. I think this is too narrow an interpretation of the Constitutional provision. By its nature the maxim expressio unius est exclusio alterius is restrictive and one wonders if it should be useful in the interpretation of any constitutional provision where liberal and not narrow interpretation is desirable as a rule. In the case of Chief Obafemi Awolowo v Shehu Shagari & Ors. (1979) 6-9 S.C. 51, Fatai-Williams, CJN had this to say about the use of canons of interpretation, at p. 64 thereof:-

"Some of these "canons" of interpretation take the form of broad

general principles only. Consequently, a common feature of most of them is that they are of little practical assistance in settling doubts about interpretation in particular cases. This is partly due to vagueness, but also because, in many cases, where one canon appears to support a particular interpretation, there is another canon, often of equal status, B which can be invoked in favour of an interpretation which could lead to a different result.

It is for the above reason that Maxwell's authoritative book on Interpretation of Statutes is not always of much assistance. Indeed, the work contains every point of view. We think that is why the learned author of the twelfth edition aptly observed in the Preface - C

'Maxwell might well be subtitled 'the practitioner's armoury'; it is, I trust not taking too cynical a view of statutory interpretation in general, and this work in particular, to express the hope that counsel putting forward diverse interpretations of some statutory provision will each be able to find in Maxwell dicta and illustrations in support of his case." D

With particular reference to the maxim expressio unius est exclusio alterius it was held that the maxim might not always provide the answer to problems of construction. In the case of Colquhoun v Brooks, (1888) 21 Q.B.D. 52 at 65, Lopez L. J. said:- E

"The maxim "Expressio Unius, exclusio alterius" has been pressed upon us. I agree with what is said in the Court below by Wills, J. about this maxim. It is often a valuable servant, but a dangerous master to follow in the construction of statutes or documents, The exclusio is often the result of inadvertence or accident, and the maxim ought not to be applied, when its application, having regard to the subject-matter to which it is to be applied, leads to inconsistency or injustice. G

I think a rigid observance of the maxim in this case would make other provisions of the statute inconsistent and absurd, and result in injustice. I cannot therefore permit it to govern my decision." (emphasis H mine).

See Maxwell on Interpretation of Statutes, 12th Edition pp. 295 - 296.

I am of the opinion, with respect, that the reliance of the Court

of Appeal on the maxim led it to deny the 2nd Appellant the right to remain as Deputy Governor elect and to succeed Alhaji Atiku Abubakar as Governor of Adamawa State. In keeping with the principle of interpretation of our Constitution, I stated in the case of Abdulkarim v Incar,

B (Nigeria) Ltd., (1992) 2 N.S.C.C. (part 2) 564 at p. 572 as follows:-

"With respect, I think that is too narrow a meaning to be given to the words. It is settled that in the interpretation of any provisions of the Constitution our courts should be liberal so that the intendment of the Constitution can be met. I cannot put this better than had been done by
C *Sir Udo Udoma, in Nafiu Rabiu v The State, (1981) 2 N.C.L.R. 293 at p. 326, where he said -*

"And where the question is whether the Constitution had used an expression in the wider or narrower sense, in my view this Court should
D *whenever possible lean to the broader interpretation, unless there is something in the text or in the rest of the Constitution to indicate that the narrower interpretation will carry out the object and purpose of the Constitution."*

E **It is clear from the scheme of Decree No.3 of 1999 as shown by Sections 37 (1) and 45 (1) of the Decree, that the intention of the law makers is that after the election to the offices of Governor and Deputy Governor, if the Governor elect is not available to run**
F **his office, the Deputy Governor elect should take over from him by replacing him. In the light of this, therefore, the provisions of section 37 subsection (1) should not have been given a narrow meaning. The 2nd Appellant should not be denied the right to be Deputy Governor and as Deputy Governor to succeed the Governor when**
G **the latter is unavailable to occupy the office. This is what the justice of this case demands.**

In Collins English Thesaurus in A-Z Form, 2nd Colour Edition, at p. 182, the word "die" is given as synonymous with "breathe
H one's last, deceased, depart, expire, finish, decay, decline, disappear, dwindle, ebb, end, lapse, vanish, wane, wilt, wither, fizzle out." The meaning given by these words (as underlined) to the word "die" is wide enough, in my opinion, to embrace what Alhaji Atiku

Abubakar did in relinquishing his mandate to occupy the office of Governor of Adamawa State. I will, therefore, give the word "die" a wider meaning than had been given to it by the Court of Appeal. Consequently, I hold that by the provisions of section 37 subsection (1) of Decree No. 3 of 1999, the 2nd Respondent as Deputy Governor elect is entitled to be sworn in as Governor of Adamawa State. This accords with the justice of the case. There is no doubt in my mind that the meaning ascribed to the word "die" by the Court of Appeal being narrow had led to injustice and is inconsistent with the scheme of Decree No. 3 of 1999.

As the remaining issue for determination is whether INEC has the power to order fresh election as indicated in Exhibit PDP 1, I am of the opinion that with the conclusion I arrive at above, it will not serve any useful purpose for me to engage in any exercise to determine the issue. The conclusion does not call for a bye-election.

In the final result, I allow the appeal and set aside the decision of the Court of Appeal in its entirety. In its place I restore the decision of the Federal High Court which granted all the claims of the Plaintiffs (1st and 2nd Appellants herein) against the 1st and 2nd Defendants (1st and 2nd Respondents herein) with N10,000.00 costs against the said 1st and 2nd Defendants only.

It was for these reasons that I allowed the appeal on the 14th day of May, 1999.

WALI JSC

I have had the privilege of reading in advance, the lead Reasons for Judgment of my learned brother Uwais, CJN, and I entirely agree with his reasoning and conclusion for allowing this appeal. I wish however to make the following contribution by way of emphasis.

The facts of this case have been sufficiently stated in the lead reasons for judgment and therefore require no further repetition in this concurring judgment. In the Amended Originating Summons, taken out in the Federal High Court Abuja, the plaintiffs raised and sought for the

determination of the following questions-

"1. Whether the Defendants have the right to conduct a bye election to the office of Governor of Adamawa State?"

B *(a) When there is a duly elected Governor and Deputy Governor in accordance with the relevant provisions of Decree No. 3 of 1999.*

(b) When the duly elected Governor is not available to take the Oath of Office but the duly elected Deputy Governor is available to be sworn in as Governor of the State in place of the duly elected Governor now not available to be sworn in as Governor.

C *2. Whether the letter dated 26th February, 1999 written by the 1st Defendant to Alhaji Atiku Abubakar Vice President-Elect of the Federal Republic of Nigeria wherein the 1st Defendant indicated its intention to hold a bye election in Adamawa State is within the spirit of the*
D *provisions and the intendment of the provisions of Decree No. 3 of 1999?*

(a) When Decree No. 3 of 1999 makes no provisions whatsoever for such a bye election.

E *3. Whether the 2nd Plaintiff is by Law entitled to be sworn in as Governor of Adamawa State?*

(a) When he has been duly elected to the office of Deputy Governor of Adamawa State and when the duly elected Governor Alhaji Atiku Abubakar is now not available to be sworn in as Governor of the
F *State.*

4. Whether it is the Oath of Allegiance and Oath of Office which makes (sic) a person an elected Governor or an elected Deputy Governor or the return of the persons as duly elected after the election?

G *(a) When Sections 31 and 41(3) of Decree No. 3 of 1999 which provides (sic) for the taking of such Oaths recognizes (sic) that prior to the taking of the Oaths the Governor and the Deputy Governor have been duly elected.*

H *If the answers to questions 1, 2 and 4 are in the negative and the answer to question 3 is in the affirmative, the Plaintiffs claim against the Defendants:*

(a) A Declaration that the Defendants are not entitled or permitted by Law to conduct a bye election into the office of Governor in

Adamawa State.

(b) A Declaration that the 2nd Plaintiff is by Law entitled to be sworn in as Governor of Adamawa State.

(c) An Order of perpetual injunction restraining the Defendants by themselves, agents, servants and or privies or otherwise however from taking any steps or cause to be taken any step(s) towards the conducting of a bye election into the office of the Governor of Adamawa State.

(d) An Order of perpetual injunction restraining the Defendants by themselves, agents, servants and or privies or otherwise howsoever from conducting a bye election into the office of Governor of Adamawa State."

At the conclusion of the hearing Auta J, the learned trial judge stated thus:

"The interpretation of the provision of the Decree dealing with the swearing in of the Deputy (sic) Governor, in a situation where there is no petition against his election or order by a competent Tribunal, accords with convenience, reason and justice, for him to be sworn (sic) in as Deputy Governor and then the law will take it (sic) normal course. It is my belief that some people voted in the Governorship election because of the deputy (sic) Governor and not necessarily because of the Governor. Any Court will be failing in its subscribing to the Oaths of Allegiance and office notwithstanding that he has been elected to the office.

The declarations and injunctive order made by Court below are accordingly set aside. I make no order as to costs."

Aggrieved by the Court of Appeal decision, the plaintiffs have now further appealed to this court.

Parties in this case will henceforth be referred to as the appellants and the respondents respectively.

Because of the urgency of the matter and shortage of time the Rules of Court as regards the filing of briefs of argument were waived and parties accordingly presented oral argument.

From the arguments of both counsel it is evident that the thrust of this case is the interpretation of sections 37(1) and 45(1) of the State

Government (Basic) Constitutional and Transitional Provisions) Decree No. 3 of 1999, and these sub-sections provide as follows -

"37 (1) If a person duly elected as Governor dies before taking and subscribing the Oath of Allegiance and Oath of Office, the person elected with him as Deputy shall be sworn in as Governor and shall nominate a new Deputy Governor from the same Senatorial District as that of the deceased Governor who shall with the approval of the House of Assembly of the State be appointed as Deputy Governor."

C 45 (1) *The Deputy Governor shall hold Office of the Governor if the Office of Governor becomes vacant by reason of death, resignation, impeachment, permanent incapacity or removal for any other reason."*

D The State Governor (Basic Constitutional and Transitional Provisions) Decree No. 3 of 1991 shall, herein be referred to as the Decree.

Alhaji Atiku Abubakar and Mr. Bonnie Haruna were the candidates nominated by Peoples Democratic Party for the offices of Governor and Deputy Governor respectively in Adamawa State. At the end of the election both Alhaji Atiku Abubakar and Mr. Bonnie Haruna were duly returned elected as Governor and Deputy Governor. Before the date the two were to be sworn into office, Alhaji Atiku Abubakar was nominated by the Presidential Candidate of 1st plaintiff Chief Olusegun Obasanjo, as his running mate, as Vice-Presidential Candidate, and the latter accepted. The 1st defendant then decided to conduct a fresh election to fill in the vacuum created by the departure of Alhaji Atiku Abubakar.

The argument here by the appellants is that by virtue of the provision of section 37 (1) read together with section 45 (1) and other provisions of the Decree as a whole, the 2nd plaintiff should step in as the Governor elect and be sworn in as the Governor on the appropriate date. The Respondents see it otherwise, more so when section 37(1) of the Decree provides only for a situation where the Governor elect dies.

Both parties seem to concede that in interpreting the provisions of the State Government [Basic Constitutional and Transitional Provisions] Decree No. 3 of 1999, the canon of interpretation of constitutional

provisions should apply. While construing some sections of the 1979 constitution, this court in Nafiu Rabiu v. The State (1980) 8-11 SC 130, particularly at 149, Sir Udo Udoma JSC stated the guiding principle as follows:-

"And where the question is whether the Constitution has used an expression in the wider or in the narrower sense, in my view, this court should whenever possible, and in response to the demands of justice, lean to the broader interpretation, unless there is something in the context or in the rest of the Constitution to indicate that the narrower interpretation will best carryout the objects and purposes of the Constitution."

My Lord, it is my view that the approach of this court to the Construction of the Constitution should be, and so it has been, one of liberalism, probably a variation on the theme of the general maxim ut res magis valeat quam pereat. I do not conceive it to be the duty of this court so to construe any of the provisions of the Constitution as to defeat the obvious ends the Constitution was designed to serve where another construction equally accord and consistent with the words and sense of such provisions will serve to enforce and protect such ends."

With this principle in mind, will it be correct to say that the approach of the Court of Appeal in literal interpretation of section 37(1) of the Decree is right? I answer this poser in the negative and my reasons for doing so are simple.

The current trend today in construing statutory provisions requires judges to ascertain the legislative intent of the law makers, a task somewhat akin to pinpointing the intent of a testator or of disputing parties to a contract. It is the modern view that proper judicial construction of statutory provisions requires recognition and implementation of the underlying legislative purpose. See Train v. Colorado Public Interest Research Group Inc., 426 v. S. I., 9-10 (1976). And to do this as Judge Rogger J. Traynor States it, we need "literate, not literal judges." See Muniz v. Hoffman, 422 U.S. 454, 469 (1975); United Housing Foundation, Inc v. Forman, 421 U. S. 837, 848-49 [1975]; Philbrook v. Glodgett 421 U.S. 707, 713 - 14 [1975] and Connell Construction Co. v. Plumbers and Steamfitters Local 100, 421 U.S. 616 628 [1975].

Where literal interpretation of a word of words used in an enactment will result in an absurdity or injustice, it will be the duty of the court to consider the enactment as a whole with a view to ascertain whether the language of the enactment is capable of any other fair interpretation, B or whether it may not be desirable to put a secondary meaning on such language, or even to adopt a construction which is not quite strictly grammatical. See page 87 - Craies On Statute Law 7th Edition.

Section 37(1) of the Decree used the word "dies" only to facilitate a Deputy Governor elect step into the shoes of the Governor elect C and to be sworn in as the Governor. In the context of the present case, the Governor elect, in the person of Alhaji Atiku Abubakar had abandoned his mandate as Governor elect, a position he could never return to, though he is still alive. This is one of the situation envisaged by section D 45(1) of the Decree.

Alhaji Atiku Abubakar and Mr. Bonnie Haruna were simultaneously elected as Governor and Deputy Governor of Adamawa State by the electorate of that State. Each must have his own supporters that had E voted for him. Each has therefore acquired a right by being elected. If the narrow and literal interpretation applied to section 37(1) of the Decree by the Court of appeal is adopted, the end result will be that Mr. Bonnie Haruna, through no process of a successful election petition lodged F against his election, is being deprived of the mandate given to him by the people of Adamawa State. It is manifest from the fact in this case that principles of justice require that where something is not expressly provided for in an enactment, the court, in interpreting such enactment, will take into consideration the spirit and meaning of the enactment as a whole G and construe it accordingly. See Re Bethlam Hospital (1895) LR 19.

To arrive at a just and fair decision, we must bear in mind the provision of section 45(1) of the Decree, which though not in force at the time this action was instituted, but has adequately provided for a H situation as the one at hand, such as resignation, permanent incapacity or removal for any other reason. The act of Alhaji Atiku Abubakar can be likened to permanent incapacity or even death in the given situation. The word "dies" in section 37(1) of the Decree, in my view, expresses only a

more permanent form of incapacity. If comparison of one clause with the rest of the enactment makes a certain preposition clear and undoubted, it must be construed accordingly so as to make it a constant and harmonious whole. See A. G. v. Silleni [1864] 2 H & C 431, 515. Also in Christopherson v. Latunga [1864] 33 L.J.C.P. 21 123 Willes J. stated the principle as follows -

"..... to adhere to the ordinary meaning of the words used, and to the grammatical construction, unless that is at variance with the intention of the legislature, to be collected from the Statute itself, or leads to any manifest absurdity or repugnance, in which case the language may be varied or modified so as to avoid such inconvenience, but no further."

To adhere to the literal construction put on section 37(1) of the Decree as done by the Court of Appeal, will lead to manifest injustice being visited on the 2nd Appellant. The word "dies" used in that section, and having regard to section 45(1) of the said Decree, needs to be modified to include and cover the situation created by the departure of Alhaji Atiku Abubakar, in order to avoid any inconvenience and manifest injustice to the 2nd Appellant.

Courts may resort to purposive interpretation if they can find in the Statute read as a whole, or in material to which they are permitted by law to refer as aids to interpretation, an expression of legislature's purpose or policy. This intention is manifest in section 45(1) of the Decree. See Chime v. Ude (1996) 7 NWLR (pt. 401) 379.

It is for these and the more elaborate reasons contained in the lead Reasons for Judgment of my learned brother Uwais, CJN, that I find myself unable to agree with the Court of Appeal in putting a literal and narrow construction on section 37(1) of the Decree vis-a-vis its provisions as a whole. I set aside the decision and orders of the Court of Appeal and in place thereof hereby restore the decision and orders of the trial court.

I adopt the order of costs made in the lead Reasons for judgment.

KUTIGI JSC

I found merit in this appeal and allowed it on 14th May 1999. I promised to give my reasons for so doing today which I now proceed to do.

B In the Federal High Court, Holden at Abuja, the Plaintiffs by an Amended Originating Summons sought for the determination of the following questions arising from the interpretation and construction of sections 33-47, 98 & 102 of the State Government (Basic Constitutional and Transitional Provisions) Decree No. 3 of 1999, namely -

C 1. Whether the Defendants have the right to conduct a bye election to the office of Governor of Adamawa State?

(a) When there is a duly elected Governor and Deputy Governor in accordance with the relevant provisions of Decree No. 3 of 1999.

D (b) When the duly elected Governor is not available to take the Oath of Office but the duly elected Deputy Governor is available to be sworn in as Governor of the State in place of the duly elected Governor now not available to be sworn in as Governor.

E 2. Whether the letter dated 26th February, 1999 written by the 1st Defendant to Alhaji Atiku Abubakar Vice President-Elect of the Federal Republic of Nigeria wherein the 1st Defendant indicated its intention to hold a bye election in Adamawa State is within the spirit of the provisions and the intendment of the provisions of Decree No. 3 of 1999?

F (a) When Decree No. 3 of 1999 makes no provision whatsoever for such a bye election.

3. Whether the 2nd Plaintiff is by Law entitled to be sworn in as Governor of Adamawa State?

G (a) When he been duly elected to the office of Deputy Governor of Adamawa State and when the duly elected Governor Alhaji Atiku Abubakar is now not available to be sworn in as Governor of the State.

H 4. Whether it is the Oath of Allegiance and Oath of Office which makes a person an elected Governor or an elected Deputy Governor or the return of the persons as duly elected after the election?

(a) When Section 31 and 41(3) of Decree No. 3 of 1999 which provides for the taking of such Oaths recognizes that prior to the taking

of the Oaths the Governor and the Deputy Governor have been duly elected.

If the answers to questions 1, 2 and 4 are in the negative and the answer to question 3 is in the affirmative, the Plaintiffs claim against the Defendants:

(a) A Declaration that the Defendants are not entitled or permitted by Law to conduct a bye election into the office of Governor in Adamawa State.

(b) A Declaration that the 2nd Plaintiff is by Law entitled to be sworn in as Governor of Adamawa State.

(c) A Order of perpetual injunction restraining the Defendants by themselves, agents, servants and or privies of otherwise howsoever from taking any steps or cause to be taken any step(s) towards the conducting of a bye election into the office of the Governor of Adamawa State.

(d) An Order of perpetual injunction restraining the Defendants by themselves, agents, servants and or privies or otherwise howsoever from conducting a bye election into the office of Governor of Adamawa State."

The application was supported by an affidavit. The pertinent paragraphs read thus -

"3. That on the 9th day of January, 1999 Gubernatorial elections were held in Adamawa State and Alhaji Atiku Abubakar and Mr. Bonnie Haruna were both returned by the Defendants as duly elected Governor and duly elected Deputy Governor of Adamawa State respectively.

4. That on the 16th day of January, 1999 General Olusegun Obasanjo, the then Presidential flag bearer of the 1st Plaintiff nominated Alhaji Atiku Abubakar as his running mate or associate for the just concluded presidential election.

5. That Alhaji Atiku Abubakar obtained clearance from the 1st Defendant, the employer of the 2nd Defendant to contest the election as Vice Presidential candidate and was on Monday, the 1st day of March, 1999 duly returned by the 1st Defendant as the duly elected Vice Presi-

dent of the Federal Republic of Nigeria.

6. That as a result of the developments in paragraph 5 above, the office of Governor of Adamawa State to which Alhaji Atiku Abubakar was duly elected cannot be filled as the said Alhaji Atiku Abubakar can no longer be sworn in as Governor of Adamawa State.

7. That Mr. Bonnie Haruna the duly elected Deputy Governor is still living and available to be sworn in as Governor in the place of Alhaji Atiku Abubakar.

8. That the 1st Defendant by a letter dated 26th February, 1999 addressed to Alhaji Atiku Abubakar through the office of the 1st Plaintiff states that a bye election is to be held at a future date into the office of Governor of Adamawa State as the Deputy Governor, the 2nd Plaintiff cannot take over the office of Governor. A copy of the letter is now shown to me, attached hereto and marked "EXHIBIT PDP 1"

9. That both Alhaji Atiku Abubakar and Mr. Bonnie Haruna are members of the 1st Plaintiff and contested the elections on the platform of the 1st Plaintiff.

10. That I verily believe it is not within the power and authority of the Defendants to conduct a bye election into the office of Governor in Adamawa State."

The Defendants were duly served. They filed no counter-affidavit. At the hearing Counsel on both sides addressed the court extensively. In a reserved Ruling the learned trial judge considered the submissions of counsel and granted all the reliefs claimed by the Plaintiffs when he concluded his Ruling thus -

"The claims of the Plaintiffs against the Defendants as stated in the Amend Originating Summons are hereby granted. This is the order of the court."

Aggrieved by the decision of the trial Federal High Court, the 1st and 2nd Defendants appealed to the Court of Appeal, holden at Abuja. They were later joined by the 3rd, 4th & 5th Defendants who were granted leave to appeal as persons interested vide section 222 of the 1979 Constitution. Both sides filed and exchanged their briefs of argument. The issues formulated in their briefs for determination were not entirely dis-

similar. The Court of Appeal had a look at them and then formulated for itself the following two "fundamental issues" as arising for determination

1. Whether in the circumstances of this case, there is a provision in Decree No. 3 of 1999 which permits the 2nd respondent to be sworn in as governor of Adamawa State. If not;

2. Whether INEC has the legal right to conduct another election to fill in the vacuum created by abandonment of the mandate won by Alhaji Atiku Abubakar."

In a considered judgment the Court of Appeal, made up of five (5) Justices, considered the two issues above and resolved each of them against the Plaintiffs/Respondents. The appeal thus succeeded and was allowed. The decision of the Federal High Court was consequently set aside.

Dissatisfied with the judgment of the Court of Appeal, The two Plaintiffs have now appealed to this court.

Because of the time factor the parties were granted leave by this court to dispense with the filing of briefs of argument as provided by the Rules of Court. The appeal was therefore argued orally.

At the hearing of the appeal, learned Counsel for the Plaintiffs Chief Chigbue submitted two issues for determination by this court thus

"1. Whether the 2nd Plaintiff/Appellant under and by Virtue section 45(1) of Decree 3 of 1999 is entitled to be sworn in as Governor of Adamawa State at the end of the present transition programme.

2. Whether the election intended to be conducted by the 1st and 2nd Defendants/Respondents to the office of Governor of Adamawa State is an election specified by law or allowed by law when there is a duly elected Deputy Governor of Adamawa State."

But having regard to the Judgment of the Court of Appeal which I have carefully studied, I would prefer to adopt here the two issues which court formulated and resolved as shown above. I am doing so because I feel that issue (1) of the Court of Appeal is clearly wider than Chief Chigbue's issue (1) in this court; while issues (2) in the two courts

are more or less saying the same thing though differently worded. The issues now are therefore as follows -

"(a) Whether in the circumstances of this case, there is a provision in Decree No. 3 of 1999 which permits Adamawa State. If not;

B (b) Whether INEC has the legal right to conduct another election to fill in the vacuum created by abandonment of the mandate won by Alhaji Atiku Abubakar."

Chief Chigbue's submissions may be summarized as follows -

C "(a) That the Court of Appeal erred in law when it held that a person becomes Governor only after subscribing to the Oaths of Allegiance and Office. He said a person becomes Governor or Deputy Governor by the return of the election.

D (b) That the 2nd Plaintiff being elected to the Office of Deputy Governor cannot be deprived of that office and that section 37 subsection 1 & 2 of the Decree 3 of 1999 read together permit a Deputy Governor to step into the shoes of a Governor.

E (c) That there is nothing in Decree 3 of 1999 which covers the facts of this case; that there is therefore a lacuna in the law or Decree and that since the 2nd Plaintiff has a vested right or interest, his right or interest should be protected and not to be easily taken away.

F (d) That Decree No. 17 of 1998 as amended by Decree No. 33 of 1998 makes no provision for holding an election in the present situation. That even though INEC is empowered to organize, conduct and supervise elections, it can only do so "as may be specified in any enactment or law," and that there is no provision where the Governor has abandoned or renounced his mandate. A Governor cannot nullify the election of G Deputy Governor.

H (e) That the Decree or laws in this case must be read together as a whole and the office of the Deputy Governor must be preserved even after the Governor must have abandoned his own office and in this case the 2nd Plaintiff ought to be allowed to step into number of cases including amongst others - OGBUNYIYA & ORS V. OBI OKUDO & ORS (1979) ANLR 106, OYEYEMI V. COMMISSIONER FOR LOCAL GOVERNMENT (1992) 2 NWLR (pt. 226) 661 at 684, THE DIRECTOR SSS

V. AGBAKOBA (1993) 3 NWLR (pt. 595) 314 at 361, *BRAITHWAITE V. GDM* (1998) 7 NWLR (pt. 557) 307, *RABIA V. THE STATE* (1982) 2 NCLR 293, *EKPENKHIO V. EGBADOM* (1993) 7 NWLR (pt. 308) 717 *IN RE: SHYLLON* (1994) 6 NWLR (pt. 353) 735, *CHIME V. UDE* (1996) 7 NWLR (pt. 461) 379. We were urged to allow the appeal, set aside the judgment of the Court of Appeal and restore that of the trial Federal High Court.

Mr. Mahmoud, learned Counsel for the 1st & 2nd Defendants responding, submitted that on the facts of this case, the Deputy - Governor cannot take over from the Governor under section 37(1) of the Decree 3 which is very clear and that section 37(2) does not even arise here at all. He said the Court of Appeal properly formulated the two issues which it treated well in its judgment and that the Federal High Court preoccupied itself with the rights of the Deputy Governor at the expense of those of the electorates.

He said Decree No. 3 deals with the form or structure of Government and not rights of a Deputy Governor and should not be construed as such. He said a Governor or a Deputy Governor becomes a Governor or a Deputy Governor as such only after subscribing to the Oaths of Allegiance and Office being conditions precedent. That they are "persons elected to their offices" before the swearing-in. It was also submitted that there is no lacuna in section 37(1) & (2) and that where a Governor abandons his office or refuses to be sworn-in, INEC should conduct a fresh election. That the Decree places great or high premium on declaration of Assets and taking the Oath of Allegiance and the Oath of Office as conditions precedent to becoming a Governor or Deputy-Governor. That it was not INEC that nullified 2nd Plaintiff's election as Deputy-Governor but the abandonment of Office by the elected Governor, and that Decree 17 and 33 of 1998 given INEC full powers to conduct a fresh election in the circumstances of this case. That by abandoning the office of Governor, the office becomes inoperative and if an election is not held, a vacuum would be created. He referred to section 10 of the Interpretation Act and to the case of *SHITTU V. SOLICITOR-GENERAL OF KWARA STATE* (1984) 5 NCLR 661 and *BANDA V. DADI*

(1998) 11 NWLR (pt. 572) 140.

He said the appeal lacks merit and should be dismissed.

Also responding, Mr. Akpamgbo learned Counsel for the 3rd, 4th & 5th Defendants, said Section 37(1) of Decree 3 of 1999 is clear and unambiguous and this court should give it its ordinary, literal meaning to the effect that the Deputy Governor cannot step into shoes of the Governor in the present circumstances, the Governor being alive. That section 37(2) did not apply in this case. It was also submitted that unless and until the Governor or Deputy Governor subscribes to the Oaths of allegiance and Office, they cannot be said to be Governor or Deputy Governor in law. He said section 45(1) of the Decree will only come into play after the Governor or Deputy Governor must have declared their Assets and taken Oaths. That the 2nd plaintiff has only a right to be Deputy Governor. The present situation is not covered by Decree 3 and the court will have to adopt a common sense approach because not every slip in a judgment will result in an appeal succeeding unless the error or slip has occasioned a miscarriage of justice. He said INEC has full authority under Decree 17 and 33 of 1998 to conduct a bye-election in this case. He referred to the case of UKEJIANYA V. UCHENDU (1951) 13 WACA 45 at 46. He said we should uphold the judgment of the Court of Appeal and dismiss the appeal.

Chief Chigbue in reply said reliance on section 10 of the Interpretation Act by Mr. Mahmoud is placed since the by-election to be held is not particularized under Decree 3 of 1999. He also said since the situation herein is not covered by the Decree, there is a lacuna which can only be cured by a proper interpretation of the Decree by the court. We were once again urged to allow the appeal.

I have already set out above the two issues to be resolved in this appeal.

From the submissions of Counsel on both sides, the first issue I believe is whether or not by virtue of Section 37(1) of Decree 3 of 1999, the 2nd Plaintiff is entitled to be sworn-in as Governor of Adamawa State. The second issue on doubt is whether the election intended to be conducted by the 1st and 2nd Defendants to the office of Governor of

Adamawa State is one specified or allowed by law. It is clear to me that once the first issue succeeds, there will be no need to consider the second issue. As I said the two issues now before us are exactly the same two issues which the Court of Appeal formulated for itself and considered. That court answered the first issue in the negative, and then proceeded to answer the second in the affirmative as shown above. I will now proceed to consider the issues.

ISSUE (a)

We are concerned here with the meaning and effect of Section 37 subsection (1) of Decree 3 of 1999. In other words we have been called upon to construct or interpret the provision of section 37(1) which reads thus -

"37. (1) If a person duly elected as Governor dies before taking and subscribing the Oath of Allegiance and Oath of Office, the person elected with him as Deputy shall be sworn in as Governor and shall nominate a new Deputy Governor from the same Senatorial District as that or the deceased Governor who shall with the approval of the House of Assembly of the State be appointed as Deputy Governor."

There is no dispute whatsoever as shown by the affidavit evidence before the Federal High Court, that one Alhaji Atiku Abubakar and the 2nd Plaintiff contested and won the Governorship election in Adamawa State as Governor and Deputy Governor respectively. It is also not disputed that the person elected as Governor of Adamawa State, Alhaji Atiku Abubakar, has renounced or abandoned his mandate before commencement of his office when he accepted to be the running mate of the Presidential candidate in the presidential elections which he also later won. It is also undisputed that both Alhaji Atiku Abubakar and the 2nd Plaintiff are still very much alive and therefore not dead.

Counsel on both sides agreed and I agree with them too, that Section 37(1) above is a Constitutional provision. Being a Constitutional provision therefore its construction and interpretation must be one of liberalism. It must be broad and wide as will best carry out the objects and purposes of the Constitution (see for example NAFIU RABIU V. KANO STATE (1980) 8-11 S.C. 130; ATTORNEY-GENERAL OF

BENDEL STATE V. ATTORNEY GENERAL OF THE FEDERATION
(1981) 10 S.C. 1., MOHAMMED V. OLAWUNMI (1990) 2 NWLR (Pt. 133) 458.

There is no doubt that Section 37(1) above prescribes inter alia
B that -

*"If a person duly elected as Governor dies before taking and
subscribing the Oath of Allegiance and Oath of Office the person elected
with him as Deputy shall be sworn in as Governor"*

C Going by the literal interpretation, one can simply say that be-
cause Alhaji Atiku Abubakar is alive and not dead therefore Section 37(1)
does not apply. That is exactly what the Court of Appeal did. It gave a
literal and therefore a very narrow and restrictive meaning to the word
"dies". In my view that is an unsafe and dangerous approach. A literal
D interpretation as I see it is by nature narrow and restrictive and if adopted
without care, it may not fulfil or advance the intention, spirit, objects,
and purposes of the Constitution.

In the case of NAFIU RABIU V. KANO STATE (supra), this
E court per Udoma, J.S.C., on page 149 said -

*"..... where the question is whether the constitution has
used an expression in the wider or in the narrower sense, in my view,
court should whenever possible and in response to the demands of jus-
F tice, lean to the broader interpretation, unless there is something in the
rest of the Constitution to indicate that the narrower interpretation will
best carry out the objects and purposes of the Constitution."*

He continued thus -

*"..... it is my view that the approach to the Construction of
G the Constitution should be, and so it has been, one of liberalism
I do not conceive it to be the duty of this Court to construe any of the
provisions of the Constitution as to defeat the obvious ends the Constitu-
tion was designed to serve where another construction equally in accord
H and consistent with the words and sense of such provisions will serve to
enforce and protect such ends."*

I entirely agree. This principle has been followed by this court
in many cases. I intend to apply it in the interpretation of Section 37(1)

above. It appears to me that the word "dies" does not only mean "to stop living, or come to an end of one's life." The Governor-elect in this case has in fact not "died." He has only chosen to abandon or renounce his mandate. He could as well have disappeared altogether or taken seriously ill of say heart-attack, or a stroke and so on, or become permanently B incapacitate for one reason or another before taking and subscribing to the Oaths. It would be wrong, I think, to say that in all these instances or situations, fresh elections should hold simply because the Governor-elect has not "died," when in exactly the same or similar situations, it is provided in section 45(1) of the same Decree 3 that - C

"45. (1) The Deputy Governor shall hold office of Governor if the office of Governor becomes vacant by reason of death, resignation, impeachment, permanent incapacity or removal for any other reason."

I find that one common denominator for all the situations of D "death, resignation, impeachment, permanent incapacity or removal for other reasons," is Unavailability to be sworn-in as Governor. I have no hesitation, therefore, in interpreting or construing the word "dies" in Section 37(1) liberally and widely, simply as meaning "unavailable". There is E nothing sacrosanct in the choice of the word "dies" in the subsection, especially now that we have all found ourselves in a situation where "death" has not actually occurred.

I am aware that section 45(1) comes into play after the swear- F ing-in of both the Governor and the Deputy-Governor, while section 37(1) comes into play before the swearing-in. But we must not forget that this being a Constitution, the whole document must be read together as a whole and the words or phrases used must be construed in such a way G as will enforce, fulfil and protect as well and advance the ends that they are intended to serve. I believe the purpose of the provisions in both Section 37(1) and Section 45(1) above, is to avoid a vacuum being created in the office of the Governor as Chief Executive of the State and to provide for a smooth succession if and when the need arises. And so it H must be.

I will therefore answer issue (a) in the affirmative and say that the 2nd plaintiff is by virtue of the provision of Section 37(1) of Decree

3 of 1999, entitled to be sworn-in as Governor of Adamawa State.

It is significant to note here now that the law-maker in its wisdom has since 29th may 1999 provided a fresh or new provision in place of now old Section 37(1) of Decree 3 of 1999 above. The new provision
B as contained in Section 181 Subsection (1) of the new 1999 Constitution which was only released to the public after our judgment in this case reads -

*"181. (1) If a person duly elected as Governor dies before taking and subscribing the Oath of Allegiance and Oath of Office, or is unable for any reason whatsoever to be sworn in, the person elected with him as Deputy Governor shall be sworn in as Governor and he shall nominate a new Deputy Governor who shall be appointed by the Governor with the approval of a simple majority of the House of Assembly of
C the State."*
D

It would therefore appear that this court's interpretation or Construction of Section 37(1) of Decree 3 of 1999 is clearly in consonance with the new Section 181(1) of the 1999 Constitution, because I venture
E to say here now that the 2nd Plaintiff would have been entitled to be sworn in, in the morning of 29th May 1999 under the new Section 181(1) which had come into force mid-night on 28th May 1999. This is a clear vindication of the stand taken by this Court. That is as it should have
F been.

ISSUE (b)

Having answered issue (a) in the affirmative, issue (b) no longer arises. It is therefore struck-out by me.

I have read before now the reasons for judgment just rendered
G by the Hon. The Chief Justice of Nigeria. I agree with him. And it is for those reasons and others stated by me above that I allowed this appeal on 14th May 1999.

H

OGUNDARE JSC (Dissenting)

On 14th May 1999 I dismissed this appeal and indicated then that I would give fuller reasons for my so doing today. Here then are my reasons.

On 9th January 1999, gubernatorial elections were held in all the 36 States of the Federation, Adamawa State being one of such States. At the gubernatorial election conducted by the 1st Respondent in Adamawa State on that day, Alhaji Atiku Abubakar was the gubernatorial candidate of the 1st Appellant political party while the 2nd Appellant (Mr. Bonnie Haruna) was his running mate. The 4th (Mr. Bala Takaya) and 5th (Abdul Rahman Adamu) Respondents were the gubernatorial candidate and running mate respectively of the 3rd Respondent political party. Alhaji Atiku Abubakar and the 2nd Appellant were declared duly elected governor and deputy governor respectively of the State. Under the Transition to Civil Rule programme they were to take office on 29th May 1999 when they would be sworn-in. On 16th January 1999, however, General Olusegun Obasanjo the candidate of the 1st Appellant at the presidential election stated for 27th February 1999, nominated Alhaji Atiku Abubakar as his running mate at the said presidential election. The latter accepted the nomination. The 1st Respondent, the Independent National Electoral Commission (INEC for short) on becoming aware of the situation addressed a letter dated 26th February 1999 to Alhaji Atiku Abubakar, paragraphs 2 and 3 of which read:

"2. The Commission wishes to inform you that with your acceptance to run the position of the Vice Presidential Candidate, you ceased to be the Governor Elect of Adamawa State and the position is now vacant. It is imperative for you to note that since you had not been sworn-in as the Chief Executive of the State, your Deputy cannot automatically take over the position."

3. The Commission will therefore, arrange for the conduct of a bye-election to elect the State Governor of Adamawa State in due course as contained in the Decree establishing INEC and the rules guiding the conduct of such election, please."

The presidential election of the 27th February 1999 went in favour

of General Obasanjo and both he and Alhaji Atiku were declared elected President and Vice-President respectively of the Federal Republic of Nigeria.

The 4th Respondent filed a petition against the governorship election results for Adamawa State. While the petition was pending before the Election Tribunal, the 1st Respondent addressed a letter dated 8th March 1999 to the 3rd Respondent. The letter reads:

"Following the void created with the election of the Governor-elect of Adamawa State, i.e. Alhaji Atiku Abubakar as vice-President-elect, the Commission has fixed Saturday 20th March, 1999 to conduct bye-election in Adamawa State, among others.

In this connection, your party should please furnish the Commission's headquarters with your nominees for the position of Governor/Deputy Governor in Adamawa State not later than Thursday 11th March, 1999 to facilitate screening and other processes leading to the bye-election. "

Consequent upon this letter the 4th Respondent filed a Notice of Motion to Withdraw Petition "on the ground of the recent political development in the State and the announcement by the 4th Respondent (i.e. INEC) that there is going to be a bye-election to the office of the Governor in Adamawa State". The petition was, however, subsequently dismissed on the preliminary objection of Alhaji Atiku and the 2nd Appellant.

The reaction of the Appellants to the 1st Respondent's intention to conduct a bye-election was different. After writing a letter through their counsel to the 1st Respondent objecting to the planned bye election, they took out an originating summons in the Federal High Court, Abuja against the 1st and 2nd Respondents and claimed, by their amended originating summons as hereunder:

"1. Whether the Defendants have the right to conduct a bye-election to the office of Governor of Adamawa State.

(a) When there is a duly elected Governor and Deputy Governor in accordance with the relevant provisions of Decree No. 3 of 1999.

(b) When the duly elected Governor is not available to take the Oath of office but the duly elected Deputy Governor is available to be

sworn in as Governor of the State in place of the duly elected Governor now not available to be sworn in as Governor.

2. *Whether the letter dated 26th February, 1999 written by the 1st Defendant to Alhaji Abubakar Atiku (sic) President-Elect of the Federal Republic of Nigeria wherein the 1st Defendant indicated its intention to hold a bye election in Adamawa State is within the spirit of the provisions and the intendment of the provisions of Decree No. 3 of 1999.* B

(a) *When Decree No. 3 of 1999 makes no provision whatsoever for such a bye election.*

3. *Whether the 2nd Plaintiff is by Law entitled to be sworn-in as Governor of Adamawa State.* C

(a) *When he has been duly elected to the office of Deputy Governor of Adamawa State and when the duly elected Governor Alhaji Abubakar Atiku (sic) is now not available to be sworn in as Governor of the State.* D

4. *Whether it is the Oath of Allegiance and Oath of Office which makes a person an elected Governor or an elected Deputy Governor or the return of the persons as duly elected after the election.* E

(a) *When Sections 31 and 41(3) of Decree No. 3 of 1999 which provide for the taking of such Oaths recognize that prior to the taking of the Oaths the Governor and the Deputy Governor have duly elected. If the answers to questions 1, 2 and 4 are in the negative and the answer to question 3 is in the affirmative, the Plaintiffs claim against the Defendants:* F

(a) *A Declaration that the defendants are not entitled or permitted by Law to conduct a bye election into the office of Governor in Adamawa State.* G

(b) *A Declaration that the 2nd Plaintiff is by Law entitled to be sworn in as Governor in Adamawa State.*

(c) *An Order of perpetual injunction restraining the Defendants by themselves, against, servants and or privies or otherwise howsoever from taking any steps or cause to be taken any step(s) towards the conducting of a bye election into the office of the Governor of Adamawa State.* H

(d) *An Order of perpetual injunction restraining the Defendants by themselves, agents, servants and or privies or otherwise however from conducting a bye election into the office of Governor of Adamawa State."*

At the conclusion of trial, the learned trial Judge in a reserved ruling, found in Plaintiffs' favour and ordered -

"(a) *That 1st and 2nd Defendants are not entitled or permitted by law to conduct a bye election into the office of Governor in Adamawa State.*

(b) *That 2nd Plaintiff is by law entitled to be sworn in as Governor of Adamawa State.*

(c) *That the 1st and 2nd Defendants in this suit by this suit themselves, agents, servants and privies or otherwise howsoever are hereby restrained from taking any steps or cause to be taken any step(s) towards the conducting of a bye election into the into the office of the Governor of Adamawa State.*

(d) *That the 1st and 2nd Defendants in this suit by themselves, agents, servants, and or privies or otherwise howsoever are hereby restrained from conducting a bye election into the office of Governor of Adamawa State."*

Being dissatisfied with his decision, the 1st and 2nd Respondents appealed to the Court of Appeal (Abuja Div). On the application of the 3rd - 5th Respondents for leave to appeal as persons interested in the matter, they were, by order of court, made co-appellants. The parties filed and exchanged their respective Briefs of arguments and at the oral hearing of the appeal, learned counsel appearing for them proffered oral arguments in elucidation of the arguments in their respective Briefs. In a reserved judgment, the Court of Appeal in a unanimous decision held that section 37(1) of Decree No. 3 of 1999 had no application to the facts of the case. It found in favour of the appellants before it and adjudged as hereunder:

"1. *The 1st and 2nd appellants have the right to conduct a bye election to the office of Governor of Adamawa State.*

2. *The letter dated 26/2/1999 is within the spirit of the provisions of Decree No. 3 of 1999, Decree No of 1998, Decree No. 33 of 1998*

and Decree No. 34 of 1998.

3. *The 2nd respondent, Mr. Bonnie Haruna is not entitled to be sworn in as Governor of Adamawa State.*

4. *A person becomes Governor only after subscribing to the Oaths of Allegiance and Office notwithstanding that he has been elected to the office.* B

The declarations and injunctive order made by the Court below are accordingly set aside."

The present Appellants have now appealed to this Court upon six grounds of appeal which without their particulars read: C

"(1) *The Court of Appeal erred in law when it held that a person becomes Governor only after subscribing to that Oaths of Allegiance and Office notwithstanding that he has been duly elected to the office when the State Government (Basic Constitutional and Transitional Provisions) Decree No. 3 of 1999 does not make the subscription to the Oaths a condition precedent for entering upon the offices of Governor and Deputy Governor by persons duly elected to the said offices.* D

(2) *The Court of Appeal erred in law when it held that Section 45(1) of Decree No 3 of 1999 has been deferred and does not let the 2nd Appellant translate himself into the steps of the Governor and that he is not entitled to be sworn in as Governor when the said Section allows the Deputy Governor to hold the Office of Governor in the event of its being vacant.* F

(3) *The Court of Appeal erred in law when it held that the 1st and 2nd Respondents have the right to conduct a bye election to the office of Governor of Adamawa State when a Governor and Deputy Governor have been duly elected under Decree No. 3 of 1999.* G

(4) *The Court of Appeal erred in law when it held that the letter dated 26/02/99 written by the 1st Respondent to Alhaji Abubakar Atiku (sic) is within the spirit of the Provisions of Decree No. 3 of 1999, Decree No. 17 of 1998, Decree No. 33 of 1998 and Decree No. 34 of 1998 when the said letter declared that there is a vacancy in the Governorship of Adamawa State that will enable it conduct a bye-election, when there is a duly elected Deputy Governor to assume the office of Governor if it* H

becomes vacant by Alhaji Abubakar Atiku's (sic) election as Vice-President and his subsequent inability to subscribe to the Oaths of allegiance and Office of the Governor of Adamawa State.

(5) The Court of Appeal erred in law when it held that:-

B *'There is no doubt that the office of the Deputy Governor is an important office constitutionally provided and a person cannot qualify to be elected as a Governor without him nominating an associate or running mate. But where the Governor elected as in this case abandons and renounces his mandate, in my view, the mandate of the Deputy Governor becomes inoperative. It is clear, to me, that it is Alhaji abubakar Atiku (sic) by renouncing the mandate o f the people who annulled the election'. In my view, the people of Adamawa State entered into a social contract with Alhaji Abubakar Atiku (sic) and elected him as their Governor to conduct the affairs of the State on their behalf. Even though to qualify to contest the election he was legally bound to nominate another person as his running mate, in my view, the contract is between Alhaji Abubakar Atiku (sic) and the people of Adamawa State.....' "*

E *(6) The Court of Appeal erred in law when it held that Section 37(2) of Decree No. 3 of 1999 does not apply to the case before it when the said Section 37(2) specifies when the 1st Respondent can conduct an election for a new Governor prior to the subscription to the Oaths of Allegiance and Office by the person duly elected as Governor and Deputy Governor respectively."*

G Because of the urgency of the matter the appeal was heard on oral arguments although learned counsel for the Respondents adopted their Briefs filed before the Court of Appeal. Learned leading counsel for the Appellants, Chief Chike Chigbue formulated two questions for our consideration, to wit:

H 1. Whether the 2nd Appellant is under and by virtue of section 45(1) of Decree No. 3 of 1999 entitled to be sworn in as Governor of Adamawa State at the end of the present Transition Programme; and

2. Whether the election intended to be conducted by the 1st and 2nd Respondents to the office of the Governor of Adamawa State is an election specified by law or allowed by law when there is a duly elected

Deputy Governor of Adamawa State.

Although learned leading counsel for the Respondents also framed questions for our consideration, these questions are no more than variants of the above two questions, which in my respectful view, are adequate for the purpose of this appeal, having regard to the grounds of appeal filed B and the judgment appealed against.

The facts are not in dispute. The appeal is essentially on law and revolves on the meaning(s) to be attached to sections of various Decrees cited before us, particularly the State Government (Basic Constitutional and Transitional Provisions) Decree, 1999 No. 3 of 1999 (herein in this C judgment is referred to as Decree No. 3 or the Decree simpliciter)

QUESTION (1):

Chief Chigbue submitted that the Court below was in error when it held that a person duly elected a governor only became a holder of that D office when he subscribed to the oath as stipulated in section 39 and Schedule 2 to Decree No. 3 of 1999. Learned counsel submitted that a person becomes a governor by virtue of the return at the election. He referred to section 39(1) and 41(3) and submitted that once a person is E elected to an office, the office cannot be taken from him unless he refused to subscribe to the oath of office. He cited to us the case of Ogbunyiya & Ors. v Obiokudo & Ors. (1979) ANLR 105. He further submitted that it appeared there was a lacuna in Decree No. 3 and urged F the Court to interpret its provisions in a manner that would not deprive the 2nd Appellant of his right as Deputy Governor. He added that the 2nd Appellant had a vested right as Deputy Governor which could not be taken away by implication. Learned counsel relied on Oyeyemi v. Commissioner for Local Government (1992) 2 NWLR 661, 684 G-H; Director of SSS v. Agbakoba (1999) 2 NWLR 314, 361 E-F; Braithwaite v. GDM (1998) 7 NWLR 307. He also cited Rabiu v. The State (1981) 2 NCLR 293; Ekpenkhio v. Egbeidon (1993) 7 NWLR 717, 739 H - 704B; and In re Shyllon (1994) 6 NWLR 735, 751 C - G. Learned counsel H urged the Court to resolve this question in favour of the Appellants.

A. B. Mahmoud Esquire, learned leading counsel for the 1st and 2nd Appellants adopted the arguments in his Brief before the Court be-

low. He submitted that under section 37(1) of Decree No.3 a deputy governor-elect is entitled to assume the office of the Governor only in the circumstance where the governor-elect dies before he is sworn-in. He submitted that the maxim: expressio unius est exclusio alterius (the expressed mention of one thing implies the exclusion of another) applied to the interpretation of section 37(1) of Decree No. 3. Learned counsel submitted that section 37 provides for the situation before the swearing-in of the governor-elect while section 45 of the Decree provides for the situation after swearing-in. Mr. Mahmoud referring to section 36(2) of the Decree, submitted that both the governor-elect and deputy-governor elect would not be holders of their respective offices until they subscribed to their oaths of office. He urged us to resolve Question (1) [which is his own Issues (1) and (2)] in favour of the Respondents.

D Clement Akpamgbo Esquire, SAN for the 3rd, 4th and 5th Respondents also adopted the arguments in his Brief in the Court below. Learned Senior Advocate submitted that section 37(1) of Decree No. 3 is clear and unambiguous and urged the Court to give it its ordinary, grammatical interpretation. He argued that the only situation where the deputy-governor would step into the shoes of the governor-elect was where the latter died before being sworn in as governor. He added that as Alhaji Atiku Abubakar who was elected as governor on 9th January 1999 was still alive, section 37(1) would not avail the 2nd Appellant. Learned Senior Advocate submitted that section 37(2) envisaged the situation where both died before being sworn-in and as both of them are still alive in this case, that sub-section, too, would not apply. He submitted that until the governor elect and deputy governor elect were sworn in, they were not governor and deputy-governor respectively in law under sections 39 and 45 of the Decree. He submitted that section 45(1) would only apply where the governor-elect and deputy-governor elect had taken their respective oaths of office and declared their assets. Learned Counsel submitted that 2nd Appellant had no right to be sworn in as governor.

I have read the Briefs filed in the Court below and have considered the submissions made therein and in oral arguments before us. I need set out at this stage the sections of Decree No. 3 relevant to the

determination of the Question (1) under consideration. They are:

Section 36

"36(1) Subject to the provisions of this Decree, a person shall hold office of the Governor of a State until -

*(a) when his successor in the office takes the Oath of that of- B
fice;*

(b) he dies whilst holding office;

(c) the date when his resignation from office takes effect; or

*(2) Subject to the provisions of subsection (1) of this section, the Governor shall vacate his office at the expiration of a period of 4 C
years commencing from the date when.*

(a) in the case of a person first elected as Governor under this Decree, he took the Oath of Allegiance and the Oath of office; and

*(b) the person last elected to that office took the Oath of Alle- D
giance and the Oath of Office or would, but for his death, have taken such Oaths.*

*(3) If the Federation of Nigeria is at war in which the territory of Nigeria is physically involved and the Head of State, Commander-in- E
Chief of the Armed Forces considers that it is not practicable to hold election, the National Assembly may by resolution extend the period of 4
years mentioned in subsection (2) of this section, from time to time, but no extension shall exceed a period of 6 months at any one time.* F

Section 37:

*37.- (1) If a person duly elected as Governor dies before taking and subscribing the Oath of Allegiance and Oath of Office, the person elected with him as Deputy shall be sworn in as Governor and he shall G
nominate a new Deputy-governor from the same Senatorial District as that of the deceased Governor who shall with the approval of the House of Assembly of the State be appointed as Deputy Governor.*

*(2) Where the persons duly elected as Governor and Deputy H
governor of a State die before the inauguration of the House of Assem- bly, the Commission shall immediately conduct an election for a Governor of the State in which the candidates shall be nominated from the same Senatorial Districts as those that produced the Governor and Deputy*

Governor who have died.

Section 39(1):

39.- (1) A person elected to the office of the Governor of a State shall not begin to perform the functions of that office until and
B unless he has declared his assets and liabilities in accordance with the code of conduct and has subsequently taken and subscribed the Oath of Allegiance and Oath of Office prescribed in Schedule 2 to this Decree.

Section 41:

41.- (1) In any election to which the foregoing provisions of
C this Part of this Decree relate, a candidate for the office of governor shall not be deemed to have been validly nominated for that office unless he nominates from a Senatorial District other than his own Senatorial District, another candidate as his associate for his running for the office
D of Governor, who is to occupy the office of Deputy Governor; and that candidate shall be deemed to have been duly elected to the office of Deputy Governor if the candidate who nominated him is duly elected as Governor in accordance with the said provisions.

(2) The provisions of this Part of this Decree relating to qualification for election, tenure of office, disqualifications, declaration of assets and liabilities and Oath of Governor, except subsection (1) (d) and (f) of section 96 of this Decree and the Oath of Governor, shall apply in
E relation to the office of Deputy Governor as if references to Governor
F were references to Deputy Governor.

(3) The Deputy Governor shall not being to perform the functions of that office until and unless he has declared his assets and liabilities and he has subsequently subscribed the Oath of Allegiance and Oath
G of office as prescribed by this Decree,

Section 45 (1) & (2):

45.- (1) The Deputy Governor shall hold office of Governor if
H the office of Governor becomes vacant by reason, of death, resignation, impeachment, permanent incapacity or removal for any other reason.

(2) Where any vacancy occurs in the circumstances mentioned in subsection (1) of this section during a period when the office of deputy Governor of a State is also vacant, the Speaker of the House of Assembly

of the State shall hold office of Governor of the State for a period of not more than 3 months, during which there shall be an election of a new Governor of the State who shall hold office for the remaining part of the 4 years provided for under section 36(2) of this Decree.

Section 149 as amended by Decree No. 4 of 1999.

149.- (1) This Decree may be cited as the State Government (Basic Constitutional and Transitional Provisions) Decree 1999 and shall

(a) in the case of -

- (i) section 2(2), 12, 22, 32, 33(3) and (4), 42 to 93, and*
- (ii) Schedules 1 and 3,*

come into force on the date the Governors are sworn in and the Houses of Assembly of States are inaugurated; and

(b) in the case of any other section and Schedule not specified in specified in paragraph (a) of this subsection, be deemed to have come into force on 2nd November 1998.

(2) For the avoidance of doubt, until the sections and Schedules specified in subsection (1)(a) of this section come into force, the provisions of the Constitution of the Federal Republic of Nigeria 1979, as amended, and of any other Decree, shall apply with respect to the matters contained in those sections and Schedules."

I will begin by explaining that Decree No. 3 set up a scheme of governance for the States in the Federation in which the Governor is the dominant figure. While the legislative powers of each State are vested in the House of Assembly of the State (section 2(2) of the Decree), the totality of the executive powers of the State is vested in the Governor - see Section 33(3). The provisions of the Decree are directed to ensuring that there is no vacuum, at any time, in the office of the governor. Hence, section 37 of the Decree makes provisions for succession in the event of the governor elect dying before he was able to take his oath of office. And after taking the oath of office and declaring his assets, sections 44 and 45 provide for the discharge of his duties in his absence in certain circumstances. It is possible for there to be a vacuum in the office of the

deputy-governor until another is appointed by the governor with the approval of the House of Assembly. But not that of the governor.

Turning now to the case on hand, there is no doubt that by his acceptance of nomination as the running mate of General Obasanjo in the presidential election and his subsequent election as the Vice-President of the Federation, Alhaji Atiku Abubakar had renounced, by conduct, his election as the governor of Adamawa State. A vacancy was thereby created. I think the 1st Respondent was right when in its letter of 8th March 1999 it described the situation arising as creation of a "void". The all important question that follows is how vacancy or void is to be filled. The 1st Respondent thought there should be a governorship election to fill it. The Appellants thought differently; they were of the view that the 2nd Appellant, as the deputy governor elect, was to succeed to the office of governor on the D-Day, that is, May 29, 1999.

The governorship election held in Adamawa State on 9th January 1999 was for the election of a governor. Alhaji Atiku Abubakar emerged victorious. By operation of law - section 41(1) of Decree No.3 - the 2nd Appellant who was Alhaji Atiku's associate for the running for the office of governor, was deemed to have been duly elected to the office of deputy-governor by the election of Alhaji Atiku. As he was not elected to the office of governor by the electorate of Adamawa State, the 2nd Appellant could only succeed to that office if it is so provided in the Decree.

Before I proceed further, let me at this stage consider the submission of Chief Chigbue that both Alhaji Atiku Abubakar and the 2nd Appellant had become the Governor and Deputy Governor respectively of Adamawa State from the date of the return of their election. With profound respect to learned counsel, I find no substance whatsoever in this submission. They were neither in law nor in fact Governor or Deputy Governor but Governor elect and Deputy Governor elect respectively. They would only become Governor and Deputy Governor respectively after they had declared their assets and subscribed the Oath of Allegiance and Oath of Office prescribed in Schedule 2 to the Decree - see Section 39(1) of the Decree. The tenure of office of a governor or a deputy

governor does not begin until the above conditions are met - see section 36 of the Decree. To further buttress this view of mine I refer to section 37 which speaks of "person duly elected as Governor" and "person elected with him as Deputy". Section 45, on the other hand speaks of "Deputy Governor" and "Governor" simpliciter. See also the definition of these expressions in section 148 of the Decree which runs thus:

"Governor' or 'Deputy Governor' means the Governor of a State or Deputy Governor of a State and includes the Administrator of a State."

It is a well-known fact that at all times relevant to this case there was an Administrator of Adamawa State who was in law and fact the Governor of the State. Surely there could be no two Governors of a State at the same time, if chaos is not to be the order of the day. The case of Ogbunyiya v. Obiokudo (supra) relied on by Chief Chigbue is of no assistance to him. Section 128 of the 1963 Constitution (as amended) being construed in that case speaks of -

"A judge of the Supreme Court, Federal Court of Appeal and of the High Court of Lagos"

This Court, per Idigbe JSC, contrasted the wording with

"a person appointed to be a Judge of the Supreme Court, Federal Court of Appeal and of the High Court of Lagos"

and held at page 117 of the report that -

"The employment of the phrase in brackets in the above quotation would indicate that a person appointed to be a judge becomes one (i.e. such a Judge) only after oath has been made and subscribed by him. Here, however, the language of section 128 aforesaid is directed to the entering by a judge (not by a judge designate) upon the duties of his office (not, upon his office)."

This Court further distinguished the case from the Indian case of Shabbir v. The State (1965) A.I.R. (Allahabad) 97 at 99 where the wording of section 128 of our Constitution (in force in 1977) is different to section 219 of the Constitution of India (in force in 1965). Sections 37 and 39 of Decree No. 3 speak of "a person duly elected as Governor" and "a person elected to the office of the Governor". If Part 3 of Decree No. 3 which deals with the offices of Governor and Deputy Governor is read as a

whole, one cannot subscribe to the view that a person elected to either office becomes from the date of the election return the holder of such office. He only becomes such a holder when the tenure of his office begins. Section 36 which deals with tenure of office does not relate this
B to the date of the election.

The only provision of Decree No.3 that enables a Deputy Governor elect of a State to be sworn in as Governor of the State, in the absence of the Governor elect is subsection (1) of section 37 which, for
C ease of reference, is reproduced here again. It provides:

*"If a person duly elected as Governor dies before taking and subscribing the Oath of Allegiance and Oath of Office, the person elected with him as Deputy shall be sworn in as Governor and he shall nominate a new Deputy-Governor from the same Senatorial District as that of the
D deceased Governor who shall with the approval of the House of Assembly of the State be appointed as Deputy Governor. (Underlining is mine)*
It is the interpretation of the above provision that determines this appeal.

In my respectful view, the words of sub-section (1) of section
E 37 are clear and unambiguous and leave no room for applying any of the rules of interpretation. As Scott LJ put it in Croxford v. Universal Insurance Co. (1936) 2KB 253, 281:

*Where the words of an Act of Parliament are clear, there is no
F room for applying any of the principles of interpretation which are merely presumptions in cases of ambiguity in the statute."*

Bell, in his work, Dictionary Law of Scotland under the title Statute expressed the same view when he wrote that strictly speaking there is no place for interpretation or construction except where the words of the
G statute admit of two meanings. See also: Sussex Peerage Case (1844) 65RR 11; 8 E.R. 1034 where the Judges declared:

*"If the words of the statute are of themselves precise and unambiguous, then no more can be necessary than to expound those words in
H their natural and ordinary sense. "*

In an Indian case by Basu in his Commentary on the India Constitution (4th edition) Vol 1 at page 27 - Ralla Raun v. East Punjab (1949) 12 FLJ 3, 11, it was there declared:

"But when the words of a statute are clear and unambiguous, and they are not unfamiliar or uncommon words as may aptly be described as 'terms of art', it is unnecessary to travel beyond the Act for the purpose of construing them."

The position of this Court is not different either. For in Attorney General of Bendel State v. Attorney-General of the Federation And Ors. (1982) 2 NCLR 1, 77-78 this Court, per Obaseki JSC, laid down some principles to guide in the interpretation of the Constitution. Among these is the principle that -

"The language of the Constitution where clear and unambiguous must be given its plain evident meaning."

Earlier, in Ogbunyiya & Ors. v. Obiokudo & Ors. (supra) this Court per Idigbe JSC, had declared:

"One of the cardinal rules of construction of written instruments is that the words of a written instrument must in general be taken in their ordinary sense notwithstanding the fact that any such construction may not appear to carry out the purpose which it might otherwise be supposed was intended by the maker or makers of the instrument. The rule is that in construing all written instruments the grammatical and ordinary sense of the words should be adhered to, unless that would lead to some absurdity or some repugnancy or inconsistency with the rest of the instrument; the instrument has to be construed according to its literal import unless again there is something else in the context which shows that such a course would tend to derogate from the exact meaning of the words. On the above principles on construction of written instruments, the contents of Exhibit SC(1) can have no other meaning than that the appointment of Nnaemeka-Agu J. as a Judge of the Federal Court of Appeal was intended to and did, take effect from the 15th day of June, 1977. An express provision in an instrument excludes any stipulation which would otherwise be implied with regard to the same subject matter - expressum facit cessare tacitum. In the circumstances, there is no room for the view, in the face of the express language (of Exhibit SC (1)) that the appointment of Nnaemka-Agu J. as Judge of the Federal Court of Appeal was intended to take effect at a date subsequent to the 15th June, 1977, or

that as a measure of convenience the Judge was to continue to function as a High Court Judge until such time as he may conveniently function in his new office in the Federal Court of appeal."

Again, in Ifezue v. Mbadugha (1984) 1 SCNLR 427; (1984) 5 SC.79,101

B Bello JSC, (as he then was) said:

".....where the words of any section are clear and unambiguous, they must be given their ordinary meaning unless this would lead to absurdity or be in conflict with other provisions of the Constitution and effect must be given to those provisions without any recourse to any other consideration;"

C In Oke v. Atoloye (1985) 2 NWLR 578 this Court again held that the provisions of section 4 of the Constitution (Amendment) (No.2) Decree 1976 are clear and unambiguous and they should be given their plain literal meaning. Obaseki JSC, at pages 590-591, declared:

"The provisions of section 4(1), (2), (3) and (4) of the Decree clearly provide the answer to the objection raised by the appellants. The provisions are formulated in clear, simple and unambiguous terms that any interpretation other than that provided by the plain literal meaning of the words used is unwarranted."

F In a recent case, Oviawe v. integrated Rubber Products Nigeria Ltd. & Anor (1997) 3 NWLR 126 at 139, Mohammed JSC in the lead judgment of this Court said:

G "*The rule of construction of Acts of parliament is that they should be construed according to the intent of the parliament which passed the Act. If the words of the statute are in themselves precise and unambiguous then no more can be necessary than to expound those words in the natural and ordinary sense. The words themselves alone, do in such a case, best declare the intention of the lawgiver per Tindal, C.J., when advising the House of Lords on the Sussex Peerage Claim (1844) C1 & Fin 85 at 143."*

H Lastly, in Braithwaite v. GDM & Ors. (supra), a case cited to us by Chief Chigbue, Ayoola, JCA (as he then was) in his lead judgment observed at p.326 of the report:

"If the words are plain and unambiguous recourse to interpreta-

tive aids by use of preamble, title, context and purpose will not be necessary."

It cannot be disputed that the provisions of section 37(1) are clear and unambiguous. Nor can it be seriously argued that they lead to absurdity or are in conflict with other sections of the Decree. On absurdity, I like to recall what this Court, per Bairamian, JSC said in Okumagba v. Egbe (1965) 1 ANLR 62, 67 where a Chief Magistrate replaced the words "another candidate" appearing in an electoral regulation with the words "any candidate":

"Feeling that the appellant deserved to be punished, the Chief Magistrate replaced the words 'another candidate' by the words 'any candidate' and thus enabled himself to punish the appellant. In effect he amended the regulation; but amendment is the function of the legislature, and the courts cannot fill a gap which comes to light by altering the words of a regulation to make it read in the way they think it should have been enacted. As Lord Bacon said in his essay on Judicature, the office of a judge is jus dicere, not jus dare - to state the law, not to give law - and the courts below should not have gone in for 'judicial legislation'."

The learned Chief Magistrate invoked the argument from absurdity for the course he took. That should be used with great caution, for what may seem absurd to one may not seem absurd to another, and with respect we cannot look on the plain sense of the regulation as absurd merely because it does not cover the facts of the present case. It may be deficient, but it cannot on that account be branded as absurd, and the argument from absurdity was misapplied to bend the regulation to a sense it could not bear, and the decisions of the courts below had to be set aside."

"Intent" or "Intention" of the legislature does not mean what the legislature meant to say, but what the meaning of the words used by the legislature is. It is for the court to find out the express intention of the legislature from the words of the enactment itself; the Court is not at liberty to give a speculative opinion. As Lord Watson put it in Salomon v. Salomon (1897) AC 22, 38:

"Intention of the Legislature' is a common but very slippery

phrase, which, popularly understood, may signify anything from intention embodied in positive enactment to speculative opinion as to what the Legislature probably would have meant, although there has been an omission to enact it. In a Court of Law or Equity, what the Legislature intended to be done or not to be done can only be legitimately ascertained from that which it has chosen to enact, either in express words or by reasonable and necessary implication."

Where the meaning of words used is plain, as in section 37(1) of Decree No. 3 under consideration it is not the business of any court to busy itself with any supposed intention - See: Pakala Narayana v. Emperor (1939) PC 47, 51 - an Indian case. The Privy Council declared in Attorney-General for Ontario v. Attorney-general for Canada (1912) AC 571,583;

"In the interpretation of a completely self-governing Constitution founded upon a written organic instrument, such as the British North America Act, if the text is explicit the text is conclusive, alike in what it directs and what it forbids."

The authorities both in this Country and in other common law jurisdictions are agreed on the approach of the courts to provisions of statutes, including written constitutions, which are, on their face, clear and unambiguous and that is to give effect to such provisions. Where the intention of the legislature is to be looked for, it can only be found in the words used and not in any speculative opinion of the Court. It is not for the Court to determine what the legislature meant to say but what it actually said. Nor is the court to read something into such provisions on the grounds of policy - Vacher & Sons v. London Society of Compositors (1913) AC 107, 118 - expediency or justice (U.S. v. Brunett, 53 F 2d 219) or political exigency (Amalgamated Society of Engineers v. Adelaide Steamship Company (1920) CLR 129, 142) , motives of the framers or possibility of abuse of power (Bank of Toronto v. Lambe (1887) 12 App Cas 575, 586). In Vacher v. London Society of Compositors (supra) Lord Macnaghten observed:

"Some people may think the policy of the Act unwise and even dangerous to the community. Some may think it at variance with principles which have long been held sacred. But a judicial tribunal has

nothing to do with the policy of any Act which it may be called upon to interpret. That may be a matter for private judgment. The duty of the Court, and its only duty, is to expound the language of the Act in accordance with the settled rules of construction."

"It is in the end the wording of the Constitution itself that is to be interpreted and applied" - per Viscount Radcliffe in Adegbenro v. Akintola (1963) AC 614,632.

Sub-section (1) of section 37 means what it says and that is that where the Governor elect dies before taking and subscribing his oaths of office, the person elected with him as Deputy shall be sworn in as Governor. To die is to stop living, to come to the end of one's life. Thus the only instance provided for in the Decree when a Deputy Governor elect can be sworn in as Governor is where the Governor elect dies before taking and subscribing his oaths of office. Alhaji Atiku Abubakar is still living; he is not dead. He has only abdicated the mandate given him by the electorate of Adamawa State to govern the State as their Governor. By what stretch of interpretation can it be said then that the situation created by him amounts to his dying and, therefore, comes within the clear and unambiguous provision of section 37(1) ? None that I can find. Short of rewriting section 37(1) of the Decree - which is not the function of the Court but of the lawmaker or legislature - the only reasonable conclusion one can, in my respectful view, reach is that the side section 37(1) does not avail the 2nd Appellant. It may be that some people may have sympathy for the plight of the 2nd Appellant or may feel he was ditched by the ambition of Alhaji Atiku for higher office. But as Foster Sutton, FCJ put in in Ahmed v. Kassim (1958) NSCC 11,:

"The underlying principle is that the meaning and intention of legislation must be collected from the plain and unambiguous expression used therein rather than from any notions which may be entertained as to what is just or expedient."

It is not surprising, therefore, that Chief Chigbue, for the Appellants did not base his case on section 37(1) but rather on section 45(1). But as I have pointed out earlier in this judgment that provision cannot help him because - (1) it refers to Governor and Deputy Governor and

not to Governor elect and Deputy Governor elect; and (2) section 45(1) by virtue of Decree No. 4 of 1999 which amended section 149 of Decree No. 3, was not to come into force until "the date the Governors are sworn in and the Houses of Assembly of States are inaugurated," that is, not earlier than 29th May 1999. And by this date the 1999 Constitution would have come into force and section 45(1) would become otiose. Sections 2(2), 12, 22, 32, 33(2) and (4), 42 to 93 of the Decree and Schedules 1 and 3 thereof are as good as being non-existent.

Assuming, but without conceding, that there is room for interpretation in section 37(1) what then are the rules applicable in the interpretation of a constitution? I hold the view that Decree No. 3 is to a large extent a constitution even though of a transitional nature and not meant to be of permanent endurance. The first rule is that words in constitutions are ordinarily given their natural, normal, usual, common, popular, general and ordinary sense that is most obvious to the common understanding, and are not usually construed in a technical sense. It was Chief Justice John Marshall who, speaking for the United State Supreme Court in 1824 in Gibbons v. Ogden (1824) 22 US (Wheat.) 1, declared:

"As men whose intentions require no concealment generally employ the words which most directly and aptly express the ideas they intend to convey, the patriots who framed our Constitution, and the people who adopted it, must be understood to have employed words in their natural sense, and to have intended what they have said. "

Justice Brewer, speaking for the same Court in 1906, remarked that Marshall's words

"though spoken more than four score years ago, are still the rule of construction of constitutional provisions.

See Hodges v. United States (1906) 203 US1. Speaking in the same vein, Chief Justice Hughes in Wright v. United States (1938) 302 US 583 said:

"The first principle of constitutional construction is to honour the deliberate choice of words and their natural meaning."

And in Board of County Commissioners v. Rollings (1889) 130 US 662, the United States Supreme Court again said:

"To get at the thought or meaning expressed in a Con-

stitution, the first resort, in all cases, is to the natural signification of the words."

The attitude of the United States Supreme Court is not different to that of this Court. In Ojokolobo v. Alamu (1987) 3 NWLR 377 at p.390, Nnamani JSC delivering the lead judgment of this Court which was concerned with the interpretation of section 258(4) of the Constitution of the Federal Republic of Nigeria 1979 (as amended), declared:

"It is a cardinal rule of the construction of statutes that words should be given their ordinary natural meaning."

That rule, of course, is as good and valid in the interpretation of statutes as of constitutions. See Basu on his Commentary on the India Constitution (4th Edition) Vol. 1 at pages 25-26. The intention of the legislature is to be discerned from the clear and unambiguous words used. It is not competent for the court to modify such clear language in order to bring it into accordance with its own views as to what is right or reasonable. The saying is Boni judicis est dicere, non jus dare. As Willes J put it in In Abel v. Lee (1871) 6L.R & C.P365, 371:

"No doubt the general rule is that the language of an Act of Parliament is to be read according to its ordinary grammatical construction, unless so reading it would entail some absurdity, repugnancy, or injustice. One recognizes that rule where the repugnance arises between the words of the section to be construed and those of some other section in the same Act or in some other Act which is in pari materia with it. But I utterly repudiate the notion that it is competent to a judge to modify the language of an Act of Parliament in order to bring it in accordance with his views as to what is right or reasonable. No such duty is imposed upon him."

In Young & Co. v. Mayor, etc, of Leamington (1882) 8 QBD 579, 585 (1883) 8 App Cas 517, the plaintiff entered into a contract in writing but not sealed by the defendant corporation and executed works approved by the defendants and supervised by their engineer. Section 174 of the Public Health Act 1875 required that contracts entered into by a sanitary authority for a sum over #50 must be under seal. Plaintiff's contract was over that sum. In an action by the plaintiff to recover under the contract

the Court of appeal, per Lindley, LJ observed:

"It may be said that this is a hard and narrow view of the law: but my answer is that Parliament has thought it expedient to require this view to be taken, and it is not for this or any other Court to decline to give effect to a clearly expressed statute, because it may lead to apparent hardship."

Even on this principle of interpretation also the words of section 37(1) cannot be said to convey any meaning other than that it is only in the situation where the Governor elect dies before he is sworn-in can the Deputy-Governor elect step into his shoes and be sworn in as Governor. To find otherwise is to do violence to the language of sub-section (1) of section 37. In my opinion, we have in section 37(1) a simple case where the enacting words are capable of the Respondents' construction which found favour with the Court below and not reasonably capable of the Appellants' construction being urged in this Court.

Again Chief Chigbue has urged on us that there was a lacuna in the law and urged this Court to fill the lacuna by reading into section 37(1) other circumstances mentioned in section 45(1). My simple reply is that a court has no power to fill any gap disclosed in a legislation for to do so would be to usurp the function of the legislature - see: Magor and St. Mellons R.D.C. v. Newport Corporation (1952) AC 189 HL overruling the Court of Appeal per Denning L.J., as he then was, where he had said (1950) 2 All ER 1226, 1236:

"We sit here to find out the intention of Parliament and of Ministers and carry it out and we do this better by filling in the gaps and making sense of the enactment than by opening it up to destructive analysis."

Reacting to this passage in the judgment of Denning LJ, Lord Simonds, at pages 190-191, after setting out the passage, went on to say:

"The first part of this passage appears to be an echo of what was said in Heydon's Case (1584) 3 Co. Rep. 7a, 300 years ago, and, so regarded, is not objectionable. But the way in which the learned Lord Justice summarizes the broad rules laid down by Sir Edward Coke in that case may well induce grave misconception of the function of the court.

The part which is played in the judicial interpretation of a statute by reference to the circumstances of its passing is too well known to need restatement; it is sufficient to say that the general proposition that it is the duty of the court to find out the intention of Parliament - and not only of Parliament but of Ministers also - cannot by any means be supported. The duty of the court is to interpret the words that the legislature has used; those words may be ambiguous, but, even if they are, the power and duty of the court to travel outside them on a voyage of discovery are strictly limited: see, for instance, Assam Railways & Trading Co. Ltd v. Inland Revenue Commissioners, [1935] A.C. 445. and particularly the observations of Lord Wright Ibid. 458.

Continuing, the noble Lord at p.191 said:

"The second part of the passage that I have cited from the judgment of the learned Lord Justice is no doubt the logical sequel of the first. The court, having discovered the intention of Parliament and of Ministers too, must proceed to fill in the gaps. What the legislature has not written, the court must write. This proposition, which restates in a new form the view expressed by the Lord Justice in the earlier case of Seaford Court Estates Ltd. v. Asher [1949] 2 K.B. 482, 498-9. (to which the Lord Justice himself refers), cannot be supported. It appears to me to be a naked usurpation of the legislative function under the thin disguise of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Acts."

See also: Okumagba v. Egbe (supra) but see now Pepper (Inspector of Taxes v. Hart) (1993) 1 All E.R. 42 for the current view in England. And see also Buchanan & Co. v. Babco Shipping Ltd. (1977) 2 WLR 107 where Lord Denning, M.R. at page 112 of the Report made reference to the view on interpretation advocated by him in Seaford Court Estates Ltd. v. Asher (1949) 2 KB 481, 498-499 and Magor and St. Mellons Rural District Council v. Newport Corporation (supra). The noble and learned Master of the Rolls observed at page 112:

"This article 23, paragraph 4, is an agreed clause in an international convention. As such it should be given the same interpretation in

all the countries who were parties to the convention. It would be absurd that the courts of England should interpret it differently from the courts of France, or Holland, or Germany. Compensation for loss should be assessed on the same basis, no matter in which country the claim is brought."

Not done with, the learned Master of the Rolls went on at pages 112-113:

"They adopt a method which they call in English by strange words - at any rate they were strange to me - the 'schematic and teleological' method of interpretation. It is not really so alarming as it sounds. All it means is that the judges do not go by the literal meaning of the words or by the grammatical structure of the sentence. They go by the design or purpose which lies behind it. When they come upon a situation which is to their minds within the spirit - but not the letter - of the legislation, they solve the problem by looking at the design and purpose of the legislature - at the effect which it was sought to achieve. They then interpret the legislation so as to produce the desired effect. This means that they fill in gaps, quite unashamedly, without hesitation. They ask simply: what is the sensible way of dealing with this situation so as to give effect to the presumed purpose of the legislation? They lay down the law accordingly. If you study the decisions of the European Court, you will see that they do it every day. To our eyes - shortsighted by tradition - it is legislation, pure and simple. But, to their eyes, it is fulfilling the true role of the courts. They are giving effect to what the legislature intended, or may be presumed to have intended. I see nothing wrong in this. Quite the contrary. It is a method of interpretation which I advocated long ago in Seaford Court Estates Ltd. v. Asher [1949] 2 K.B. 481, 498-499. It did not gain acceptance at that time. It was condemned by Lord Simonds in the House of Lords in Magor and St. Mellons Rural District Council v. Newport Corporation [1952] A.C. 189, 191, as a naked usurpation of the legislative power.' But the time has now come when we should think again. In interpreting the Treaty of Rome (which is part of our law) we must certainly adopt the new approach. Just as in Rome, you should do as Rome does. So in European Community, you should do as the European Court does. So also in inter-

preting an international convention (such as we have here) we should do likewise. We should interpret it in the same spirit and by same methods as the judges of the other countries do. So as to obtain a uniform result. Even in interpreting our own legislation, we should do well to throw aside our traditional approach and adopt a more liberal attitude. We B should adopt such a construction as will 'promote the general legislative purpose' underlying the provision. This has been recommended by Sir David Renton and his colleagues in their most valuable report on *The Preparation of Legislation* (1975) (Cmmd. 6053) 135-148. There is no C reason why we should not follow it at once without waiting for a statute to tell us."

Roskill L.J. in his own judgment observed at p.114:

"This case is, therefore, of considerable importance, for although D we are primarily concerned with the interpretation of an English statute, we cannot lose sight of the fact that the Convention, translated into other languages, may fall to be interpreted in the courts of other countries. Mr. Johnson, for the plaintiffs, helpfully referred us to a commentary on the Convention published in the English language by Dr. Loewe of Austria, E [Commentary on the Convention of May 19, 1956, on the Contract for the International Carriage of Goods by Road (CMR), Roland Loewe], which mentions that the commentary has been published in French and F Russian as well as in English. Clearly it is desirable that judicial decision in different countries should, so far as possible, be kept in line, just as the courts of this country have endeavoured in the last half century to align their decisions upon the Hague Rules with those of other countries (especially Common wealth countries) which have given statutory effect G to those rules, as this country did in the Carriage of Goods by Sea Act 1924."

Coming to the proper interpretation to place on the Article 23 of the Convention under consideration, and after setting out the two possible interpretations of it, the learned Lord Justice went on to say at page 118: H

"Why then, in those circumstances, when one is in doubt as to the true construction of the English text of the convention, should one deprive oneself of the assistance that is readily to hand in its French text,

even though as I have already said we are concerned to construe a United Kingdom statute? As Lawton L.J. points out in his judgment, in Post Office v. Estuary Radio Ltd. [1968] 2 Q.B. 740 this court in a judgment delivered by Diplock L.J., at p.760, said that it was legitimate to look at the French and Spanish texts of the convention there in question to resolve an ambiguity in the English Order in Council. It seems to me that following this decision and being in doubt which is the right interpretation to put upon the relevant English phrase, I am entitled to look at the French text of the Convention (which so far as I can see from the Convention is of equal validity with the English) in order to gain what assistance I can from its terms. There I find the words 'les autres frais encourus à l'occasion du transport de la marchandise'. It does not require a profound knowledge of the French language to gain assistance from these French words for they are quite general in their nature and wide in their compass and in my view quite clearly entitle the plaintiffs to recover the excise duty in question. See also in this connection what Diplock L.J. said at p. 757 of the report in the Post Office case as to the relationship of the language of international conventions and that of the municipal law designed to give effect to such conventions."

Lawton L.J. adopted the approach of Roskill L.J., that is, calling in aid the French version of the Convention in interpreting the English version. None of the two Lord Justices went along with Lord Denning in his approach to interpretation as enunciated in the second passage above. That passage, at best, an obiter dictum.

It will be noticed that the two Lord Justices of the English Court of Appeal faced with two possible interpretations of Article 23, called in aid the French version of the Convention - an international convention - in resolving the difficult question of interpretation that arose in the case. The situation that arose in Buchanan & Co. v. Babco Shipping Ltd. (supra) was quite different from the situation that has arisen in this case where the question of ambiguity in section 37(1) of Decree No. 3 does not arise. There is logic in what the Court of Appeal did in that case. As there was ambiguity in the English version of Article 23 of the Convention, the Court was right to call in aid the French text of the Convention

(which is clear and unambiguous) in order to synchronise its interpretation with that in the other countries that have adopted the Convention, thereby producing a uniform interpretation to the articles of such international convention. It does not require Lord Denning's approach, which runs against the weight of judicial opinion, to arrive at that conclusion. B

But is there really a lacuna in section 37(1) simply because some or all the circumstances other than death listed in section 45(1) are not mentioned in section 37(1)? I rather think not. Having regard to the ambit of section 37(1) that it covers the position before the swearing in of the Governor elect, it is not surprising that those other circumstances listed in section 45(1) are not contained in section 37(1). Impeachment, permanent incapacity and removal for any reason would clearly not apply to a Governor elect if regard is had to sections 42 and 43 of the Decree. Nor would it come into the contemplation of any reasonable D
lawmaker that a man who has expended so much money and energy in fighting for the office of Governor would, after winning, but before being sworn in, and while still in the euphoria of victory, just walk away from the office by declining to hold the office. To contemplate such a E
situation at the time Decree No. 3 was being promulgated would make the Nigeria politician sui generis and a proper case study in human behaviour! With the facts of this case in hindsight, the Provisional Ruling Council appeared to have taken care of the situation in section 181(1) of F
the new Constitution of the Federal Republic of Nigeria, 1999. What appears to be forgotten is that if elections to all the elective offices created in the transition Decrees were held on the same day, the Alhaji Atiku Abubakar saga would never have occurred. I am not here concerned G
with the construction of section 181 (1) of the new Constitution which is not applicable in this case. I think however, that the non- inclusion in section 37(1) of those other circumstances is deliberate as the situation that had arisen in this case could not have been foreseen nor would have arisen if elections to all elective offices were held on the same day. H

Again, it has been urged on us to apply a broad and liberal interpretation to section 37(1) . I recall in this regard the pronouncement of that erudite Justice of this Court, Sir Udoma JSC in Nafiu Rabiu v. The

State (1981) 2 NCLR 293, 326. He said:

"My Lords, it is my view that the approach of this court to the construction of the Constitution should be, and so it has been, one of liberalism, probably a variation on the theme of the general maxim et res magis valeat quam pereat. I do not conceive it to be the duty of this court so to construe any of the provisions of the Constitution as to defeat the obvious ends the Constitution was designed to serve where another construction equally in accord and consistent with the words and sense of such provisions will serve to enforce and protect such ends. (emphasis mine)

But as I have earlier observed, there is no room in this case for the application of rules of construction, the provision of section 37(1) being clear and unambiguous. In any event "a liberal interpretation must be capable of being reasonably predicated on the words actually used in the Constitution" - see: B. O. Nwabueze, Constitutional Law of the Nigerian Republic (London 1964) at page 306. In my respectful view, the wording of section 37(1) is so clear as to leave no room for any ambiguity. The word "dies" as used in the section is capable of only one meaning and requires no broad and liberal interpretation to understand what it means. This is more so here that the phrase "deceased Governor" is used in the subsection (1) of section 37. A deceased Governor can only be one that is clinically and biologically dead. I know of no other meaning of that phrase.

Before I end my consideration of Question (1), I need to comment briefly on the submission of learned counsel for the Respondents that the maxim expressio unius est exclusio alterius applies to exclude in section 37(1) all incapacities other than death mentioned in section 45(1) of the Decree. This submission found favour with the Court below. For Musdapher, JCA who read the lead judgment of that Court with which the other Justices agreed, said and I agree with him:

"In my view, the maxim aptly applies. It is clear that it is only when the Governor dies before taking the Oaths that the deputy can step in as Governor and take the Oath. Such a clear construction is not inconsistent with the other provisions of the Decree in question. Indeed

had the legislature intended otherwise, it would have mentioned other incapacities which are enumerated under s.45(1) of the same Decree. The legislature could not be said to be unaware of the other circumstances that might arise to incapacitate the Governor from taking the prescribed Oaths and commencing his tenure."

As helpful as this maxim (otherwise worded, expressum facit cessare tacitum) may sometimes be as aid to construction of written instruments, including constitutions, see: Whiteman v. Sadler (1910) AC 514, 527 per Lord Dunedin; Ogbunyiya & Ors. v. Obiokudo & Ors. (supra) per Idigbe, JSC the courts are always cautious in employing it - see Saunders v. Evans, 8 HL Cas 721, 729 per Lord Campbell; Colquhoun v. Brooks (1888) 21 QBD 52, 65 per Lopes L.J. Like any other aid to interpretation of statutes, it raises only a presumption which may be rebutted by other provisions in the statute as was the case in Colquhoun v. Brooks (supra). Where general words are used in a written instrument, it is necessary, in the first instance, to determine whether those general words are intended to include other matters besides such as are specifically mentioned, or to be referable exclusively to them, in which latter case only can the maxim be properly applied - see Patch v. Tulin 15 M & W 110; 153 ER 782 Skinner v. Shew (1893) 1 Ch 413, 424. I think the maxim can safely be applied in the present case, if there is need for so doing. There is an express provision in section 37(1) which, in my respectful view, excludes any stipulation which might otherwise be implied with regard to the incapacity that would enable a Deputy Governor elect to step into the shoes of his Governor elect. It cannot be said that the exclusio is the result of inadvertence or accident nor can the application of the maxim render other provisions of the Decree inconsistent or absurd. This is so because section 45(1) is only intended to apply to the post inauguration period and not before inauguration. Such cases as Colquhoun v. Brooks (supra) are inapplicable here.

It is for the reasons I give herein that, with diffidence but without any hesitation, I find myself unable to subscribe to the conclusion reached by my Lord the Chief Justice of Nigeria, the draft or whose reason for judgment I had the advantage of reading before now. Short of

this Court enacting what I prefer to call judicial legislation, - and this is not the function of a court - I cannot, in all honesty, interpret subsection (1) of section 37, or any other provision of Decree No. 3 for that matter, so as to conclude that the 2nd Appellant, on the facts of this case, was B entitled to be sworn in as Governor of Adamawa State, a position he was never elected to by the electorate of that State. I, therefore, answer Question (1) in the negative.

QUESTION (2):

C The thrust of Chief Chigbue's arguments is that the election proposed by the 1st Respondent is not one specified by law and relied on section 4(1)(a) of Independent National Electoral Commission (Establishment, etc.) Decree 1998, No. 17 of 1998 as amended by section 2 of Independent National Electoral Commission (Establishment, etc.) (Amendment) Decree 1998, No.33 of 1998 which provides:

"The functions of the Commission shall be to -

(a) organise, conduct and supervise -

(i) the elections into the office of Chairmen and Vice-Chairmen E of Local Government Councils and Area Councils, membership of the Local Government Councils and Area Councils, office of Governor and Deputy Governor, membership of the Houses of Assembly of the States, the office of President and Vice-President and membership of the Senate F and House of Representatives as may be specified in any enactment or law;

(ii) the elections into such other offices as may be specified in any enactment or law; and

(iii) all matters pertaining to those elections as may be provided G in any other enactment or law;"

Learned counsel submitted that the INEC has right to conduct election but it must be elections specified by law and contended that sections 35, 37(2) and 45(2) specified the elections the INEC could conduct to the H office of Governor and Deputy Governor. He referred to paragraph 28(2) of Schedule 6 to Decree No.3 and submitted that the election the INEC proposed to conduct in Adamawa State was not specified in the Decree. Learned counsel also referred to section 102 of the Decree and submitted

that a Governor could not by his action annul the election of his Deputy. He submitted that the Court below was in error in this respect and cited Tafawa Balewa v. Muazu & Ors. Appeal No. CA/J/74/99 - a judgment of the Court of Appeal (Jos Division) delivered on 20th March 1999 (as yet unreported). He further submitted that sections 40 and 41(1) and (3) preserved the rights of the Deputy Governor. Learned counsel was of the view that on 29th May 1999 when section 45(1) would come into force, the Deputy Governor (that is 2nd Appellant) could take advantage of its provisions. He submitted that Decree No. 3 must be read as a whole and cited Chima v. Ude (1996) 7 NWLR 379, 432H. He urged the Court to allow the 2nd Appellant hold the office of Governor on 29th May 1999 and relied on Braithwaite v. G.D.M. (supra) at 325 F-G and 338 B-C in support.

Mr. Mahmoud for the 1st and 2nd Respondents adopted the arguments in his Brief in the Court below. He opined that there was no annulment of any election but that this was a case of deliberate action of an elected official refusing to take office. Learned counsel submitted that under section 4 of Decree No. 17 of 1998, as amended, the INEC had a right and duty to conduct an election whenever the occasion requires such a course of action as in the case here.

Mr. Akpamgbo, SAN for the 3rd, 4th and 5th Respondents also adopted arguments in his Brief in the Court below. He submitted that the INEC, finding itself in the situation that arose in this case when Alhaji Atiku, by conduct, renounced his election as Governor of Adamawa State, was entitled pursuant to section 2(a) of Decree No. 33 of 1998 and section 35 of Decree No. 3 to conduct a governorship election in Adamawa State. Learned Senior Advocate submitted that the nomination of a deputy as running mate was a qualification requirement of a governorship candidate for without such nomination the governorship candidate would not be duly nominated. He submitted that the Court below was right to hold that the 1st Respondent had the right to conduct the proposed election.

I have carefully considered the submissions of learned counsel. Section 4(1)(a) of Decree No. 17 of 1998 (as amended) gives INEC the general power and duty to conduct elections into a number of elective

offices mentioned therein. But section 35 of Decree No. 3 which provides-

"An election to the office of the Governor of a State shall be held on a date to be appointed by the Commission." (underlining is mine)

deals specifically with election into the offices of the Governor of a State. Section 35 does not speak of "The election" but of "An election" which presupposes that there may be more than one election. It allows for the INEC to conduct an election into the office of Governor of a State whenever the occasion calls for it. Some of such occasions are given in the Decree and Schedule 6 thereto but these are not conclusive. A reading of the two Decrees in the manner suggested by Chief Chigbue will only lead to absurdity. His submission, with respect, is unacceptable to me. I agree with the submission of Mr. Mahmoud that whenever the occasion requires it, such as where there is a vacancy in the office of the Governor and there is no one empowered by law to succeed thereto, as in this case, the INEC has the power, and indeed the duty, to conduct an election to fill the void. It is my view that the 1st Respondent was within its rights to write its letters of 26th February 1999 and 8th March, 1999 earlier mentioned in this judgment, the latter conveying its intention to conduct an election into the office of the Governor of Adamawa State to fill the void created by Alhaji Atiku's act.

Chief Chigbue has suggested that by conducting a new election the election of the 2nd Appellant would be annulled and his right thereby adversely affected. I do not think he is right here either. The expression "vested rights" is defined in Black's Law Dictionary (Sixth edition) at page 1564 as meaning -

"In constitutional law, rights which have so completely and definitely accrued to or settle in a person that they are not subject to be defeated or cancelled by the act of any other private person, and which it is right and equitable that the government should recognize and protect, as being lawful in themselves, and settle according to the then current rules of law, and of which the individual could not be deprived arbitrarily without injustice, or of which he could not justly be deprived

otherwise than by the established methods of procedure and for the public welfare. Such interests as cannot be interfered with by retrospective laws; interests which it is proper for state to recognize and protect and of which individual cannot be deprived arbitrarily without injustice. American States Water Service Co. of California v. Johnson, 31 Cal. App.2d B 606, 88 P.2d 770, 774. Immediate or fixed right to present or future enjoyment and one that dose not depend on an event that is uncertain. A right complete and consummated, and of such character that it cannot be divested without the consent of the person to whom it belongs, and fixed C or established, and no longer open to controversy. State ex rel. Milligan v. Ritter's Estate, Ind.App., 46 N.E.2d 736,743." (underlinings are mine)

There is no provision in Decree No. 3 with respect to the election of a Deputy Governor similar to section 35 which is concerned with the election of the Governor. Reading the Decree as a whole, as rightly submitted D by Chief Chigbue, particularly section 41 which deals with the election of the Deputy Governor, the scheme is that for the purpose of election, the Running mate has no existence separate from that of the Governorship candidate whose associate he is. The Running mate swims or E sinks with his Governorship candidate. If the candidate wins, the Associate wins also. And if the candidate loses, the Associate loses equally, his popularity with the electorate notwithstanding. That is why the rights of the Deputy Governor elect (in this case, the 2nd Appellant) before F swearing in are subject to be defeated or cancelled by the act of his governor elect (in this case, Alhaji Atiku). There was a marriage between the two which remained inseparable until they were both sworn in to their respective offices.

Therefore, when Alhaji Atiku Abubakar abdicated the mandate G given him by the electorate of Adamawa State to be their Governor, by his opting for the higher office of Vice-President, he has, by this act, created a vacancy in the office of Governor of Adamawa State which, in the absence of any provision in Decree No. 3 empowering his Deputy- H elect (2nd Appellant) to step into his shoes in the circumstance that has arisen, there has to be an election to fill that vacancy. And as there cannot be a valid nomination of a governorship candidate without his

nominating an associate to run with him, the right of the 2nd Appellant as the Deputy Governor elect has been defeated or cancelled by the act of Alhaji Atiku Abubakar his inseparable marriage partner. That right is not a fundamental right enshrined in and protected by the constitution and he cannot, therefore, claim that that right is inviolate.

The interdependence of the fortunes of a Governor elect and his Deputy Governor elect is highlighted by the case of Tafawa Balewa v. Muazu & Ors. (supra) cited to us by chief Chigbue. There the Deputy-Governor elect was held to be disqualified from standing for election. The factual situation that thereby arose was that the Governor-elect stood for election without a qualified running mate. This affected too the qualification of the Governor elect. The Court of Appeal, rightly in my view, ordered a fresh election. I would think that the reverse situation would lead also to a fresh election, notwithstanding that the act of "disqualification" of the Governor elect took place after and not before, the election.

For the reasons I give above I answer Question (2) in the affirmative.

And it is for all the reasons I give in this judgment that I too answer the questions raised in the Appellants' amended Originating Summons in the same manner as the Court below, rightly in my view, answered them. And it is for the same reasons that I dismissed the appeal on 14th May, 1999.

MOHAMMED JSC (Dissenting)

I dismissed this appeal on the 11th of May, 1999 and stated briefly that I would give my reasons for doing so on 16th July, 1999. I hereby give my reasons.

I have had the advantage of reading the draft judgments of my Lords Uwais CJN, and Ogundare, J.S.C. Both have covered adequately the facts of the case and submissions of counsel for the respective parties. I do not intend to repeat the facts and those submissions in my judgment except where I deem it necessary for the sake of emphasis.

The pertinent questions for the determination of this appeal are

as follows:

1. Whether Section 37(1) of the States Government (Basic Constitutional and Transitional Provisions) Decree No. 3 of 1999 authorizes a person elected as Deputy Governor to be sworn in as Governor of a State when the person elected as Governor is not available to be sworn in for reasons other than death. B

2. Whether the election proposed to be conducted by the 1st and 2nd Respondents to the office of Governor of Adamawa State is an election recognized by law or allowed by law when there is a duly elected Deputy Governor of Adamawa State. C

In considering the issues for the determination of this appeal, identified above, I am not unmindful of the fact that Decree No. 3 of 1999, although a Constitutional Legislation had been promulgated for the sole purpose of transition to the Civil Rule Programme. During the transition the Independent National Electoral Commission (INEC), by virtue of its powers under the Independent National Electoral Commission (Establishment, etc) Decree No. 17 of 1998 as emended by Decree No. 33 of 1998, organized, conducted and supervised elections into: D

"The office of Chairmen and Vice chairmen of Local Government Councils and Area Councils, membership of the Local Government Councils and Area Councils, office of Governor and Deputy Governor, membership of the Houses Assembly of the States, the office of President and Vice-President and membership of the Senate and House of Representatives." E F

Where need had arisen bye-elections were also organized and supervised by INEC.

In dealing with the first issue, the big question is whether the 2nd Appellant, Mr. Bonnie Haruna, could be sworn in as Governor of Adamawa State after Alhaji Atiku Abubakar had relinquished his mandate as elected Governor of that State? To answer the question I must refer to the provisions of Section 37(1) of the State Government (Basic Constitutional and Transitional Provisions) Decree No. 3 of 1999 which I shall hereinafter refer to as Decree No. 3 of 1999. Section 37(1) of Decree No.3 of 1999 reads: G H

"(1) If a person duly elected as Governor dies before taking and subscribing the oath of allegiance and oath of office, the person elected with him as Deputy shall be sworn in as Governor and he shall nominate a new Deputy-Governor from the same Senatorial District as that of the deceased Governor who shall with the approval of the House of Assembly of the State be appointed Deputy Governor."

By the provisions of section 37(1) of Decree No. 3 of 1999 a Deputy Governor elect can only be sworn in as governor when a Governor elect dies before he is sworn in as Governor. In this case, Alhaji Atiku Abubakar is still alive and kicking. In fact he assumed a higher office by winning the seat of Vice President of the Federation after Obasanjo was declared the winner of the Presidential Election conducted on 27th of February, 1999.

It is clear that there is no specific provision in Decree No.3 of 1999 or any other law where a Deputy Governor elect can be sworn in as governor when the Governor elect is live and not dead. Learned counsel for the appellants, Chief Chigbue, canvassed before us that where there is no provision in Decree No.3 of 1999 to take care of the situation that arose in Adamawa State, there is then a lacuna and the Court should not take a decision which would deprive the Deputy Governor of his office. He supported this submission by reference to the cases of Oyeyemi v. Commissioner of Local Government (1992) 2 N.W.L.R. (Part 226 661 at 684; The Director SSS v. Agbakoba (1999) 3 NWLR (Part 595) 3 + 4 at 361 and Tunji Braithwaite v. GDM (1998) 7 NWLR (Part 557) 307.

Can the court fill in the gap where there is a lacuna in a statute as we are being asked to do by Chief Chigbue? The straight answer is obviously "No". Denning L.J. (as he then was) tried to fill in the gap in the case of Magor and St Mellons R. D. C. v. New port Corporation (1952) A.C. 189 wherein he said;

"We sit here to find out the intention of Parliament and of Ministers and carry it out and we do this better by filling in the gaps and making sense of the enactment than by opening it up to destructive analysis."

Lord Simonds in his judgment in which the judgment of Den-

ning L.J. was reversed held that the duty of the court was to interpret the words that the legislature had used. Those words may be ambiguous, but even if they are, the power and duty of the court to travel outside them on a voyage of discovery are strictly limited. I agree entirely with the opinion of Lord Simonds. The office of a judge is not to legislate, but to ascertain and give effect to the intention that the legislature has expressed in the Act even if that intention appears to the court injudicious - See Wear River Commissioners v. Adamson (1877) 1 A.C. 734 at 764. In Okumagba v. Egbe (1965) 1 All NLR 62 at 67 it was held that the office of a judge is to state the law and not to legislate. Where the court therefore substituted the words "any candidate" for "another candidate" it was held that that was an act of legislation. There are many decided authorities on the rules governing interpretation of statutes. The guiding principles are that Statutes should be construed according to the intent of the legislature which promulgated the Act. If the words of the Statute are in themselves precise and unambiguous then no more can be necessary than to expound those words in their natural and ordinary meaning - See Awolowo v. Shagari (1979) 1 All NLR, 120 and Owena Bank Nigeria Plc. v. N.S.E. Limited (1991) 8 NWLR Part 515. In the case of Woodward v. Watts (1853) 118 English Reports, 836, Lord Campbell C.J. held:

"The golden rule in the construction of an Act of Parliament is to put on the words of it their natural and grammatical construction, although that may lead to inconvenience, and mischief, it being for the judges to construe Acts of Parliament and not legislate, and for the legislature to provide a remedy when one is wanted."

Section 37(1) of Decree No. 3 of 1999 is clear and unambiguous that a Deputy Governor elect can only be sworn in as Governor when a Governor elect dies. "Dies" in the context used in the section can never mean anything other than what the legislature conveyed, and that is, when the Governor elect is dead, killed or his life came to an end the Deputy Governor elect shall be sworn in as Governor. In the section i.e. Section 37(1) of Decree No. 3 of 1999 the Governor elect is referred to as "deceased". There is no interpretation liberal, broad or wider that can

change the meaning of the word "deceased" to anything other than the one whose life had come to an end. If we look at the dictionary the meaning of the word is given as "dead". Reference to dictionary in the construction of Statutes may not always be of help. Lord Coleridge, in the case of R.v. Peters (1886) 16 QBD 636 advised on how to refer to dictionaries in interpreting words in Acts of Parliament in the following opinion:

"I am aware that meanings in dictionaries must not be taken as authoritative exponents of words of Acts of Parliament, but it is a well known rule that such words should be read as used in their ordinary sense, unless the context shows otherwise, we may therefore look to dictionaries in order to ascertain what is the ordinary meaning of the words."

I agree that failure to provide for a solution to the situation which has arisen in this case is a lacuna in Decree No. 3 of 1999. There was no provision in that law whereby the Deputy Governor elect could be sworn in as Governor if the Governor elect became unavailable (not through death) to take the oath of allegiance and the oath of office on the 29th of May, 1999. Before 1999 Constitution was signed into law this lacuna, I believe, was observed by the Provisional Ruling Council of the Military Administration headed by General Abdulsalami Abubakar. Being the law making body then, the missing part, which would make it possible for a Deputy Governor elect to be sworn in as Governor as had risen in this case, was brought into Section 181 of 1999 Constitution by the Provisional Ruling Council. Section 181 of 1999 Constitution which is in pari materia with Section 37(1) of Decree No. 3 of 1999 reads:

"181(1) If a person duly elected as Governor dies before taking and subscribing the Oath of Allegiance and Oath of office, or is unable for any reason whatsoever to be sworn in, the person elected with him as Deputy Governor shall be sworn in as Governor and he shall nominate a new Deputy Governor who shall be appointed by the Governor with the approval of a simple majority of the House of Assembly of the State.

(2) Where the person duly elected as Governor and Deputy Governor of a State die or are for any reason unable to assume office before the inauguration of the House of Assembly, the Independent National

Electoral Commission shall immediately conduct an election for a Governor and Deputy Governor of the State."

This is how such a lacuna could be rectified, But until then the court has no power to step into the shoes of the legislature and embark on judicial legislation in order to supply the omission in the statute which inhibits Mr. Bonnie Haruna to be sworn in as Governor of Adamawa State on 29th May, 1999. The court's interpretative jurisdiction is not meant for legislative action for the realization of the intention of the makers of the law. See Mandara (Alhaji) v. Attorney-General of the Federation (1984) 4 S.C. 8. Where the wording of a Statute is found to be clear and unambiguous it is neither necessary nor permissible to look further: Nabhan v. Nabhan (1967) 1 All NLR 47.

I will say that the maxim expressio unius est exclusio alterius is pertinent in determining the intention of the legislature when section 37(1) of Decree No. 3 of 1999 was enacted. This is because in the rules of construction of statutes words in the enactment should be given their ordinary and natural meaning as generally used and as they would have been ordinarily understood the day after the statute was passed. See Sharpe v. Wakefield (1888) 22 QBD 241 at 242.

We have been urged to look into section 45(1) of Decree No. 3 of 1999 in order to find answer to the omission in the provisions of section 37(1) of Decree No. 3. Section 45(1) reads:

"45(1) The Deputy Governor shall hold office of Governor if the office of Governor becomes vacant by reason of death resignation, impeachment, permanent incapacity or removal for any other reason."

Reading Section 45(1) above and comparing it with Section 37(1) of Decree No. 3 it would show that the omission to provide for the Deputy Governor elect to be sworn in as Governor in Section 37(1) when the office of Governor elect becomes vacant for reasons other than death was deliberate. Since other causes have been mentioned elsewhere in the same statute the maxim expressio unius est exclusio alterius (meaning - the expression of one thing is the exclusion of another) will aptly be applied. However at the time the court below considered this appeal an amendment to INEC Decree No. 17 of 1998 had made the

commencement of S.45(1) to come into force on the date the Governors were to be sworn in. The deferment of the operation of Section 45(1) through an amendment to Decree No. 3 of 1999 clearly shows that for the purpose of Transition to Civil Rule Programme the section is not relevant. It is therefore erroneous to refer to Section 37(1) as an aid to the construction of the provisions of Section 37(1) of the Decree.

It has been submitted by the appellants counsel that Mr. Bonnie Haruna had acquired a right under the Constitution to be sworn in as Deputy Governor when the result of the Gubernatorial election in Adamawa was announced. The learned counsel went further and submitted that when the Constitution bestows a right on a citizen unless a specific legislation is made the right is not to be taken away. I agree that the Constitution had bestowed a right on Mr. Bonnie Haruna to be sworn in, But as Deputy Governor. It is quite plain, from the language of the Constitution, that Mr. Bonnie Haruna could only be sworn in as Governor if Alhaji Atiku Abubakar dies. But as I mentioned earlier, in this judgment, Alhaji Atiku Abubakar is very much alive. Since it is not Mr. Bonnie Haruna's right to be sworn in as Governor by virtue of the provisions of the Constitution it will be an error to interpret the Constitution and gratuitously grant him a right which the Constitution did not recognise.

xx

A bestowed right can only be a right if it is recognised by the constitution. I will be extending the provisions of Section 37(1) of Decree No.3 of 1999 if I agree that Mr. Bonnie Haruna could be sworn in as Governor in the circumstances of the facts of this case.

Mr Bonnie Haruna's right to be sworn in as Deputy Governor has not been taken away, but it cannot be enforced by the operation of the law. It is like a case caught up by the Limitation Act. A party has a right to sue but due to operation of Law, under the Limitation Act, the right is extinguished.

Finally, in interpreting the Constitution nothing is to be read into it on the grounds of policy, expediency, political exigency, and convenience. We are not to assume the warrantable liberty of varying the ordinary words used for the purpose of making the Act consistent with

any views of our own. I will therefore answer that by the provisions of Section 37(1) of Decree No. 3 of 1999 it is only when Governor elected dies that the Deputy Governor elect could be sworn in as Governor.

Issue Two:

Following my decision above the offices of both the Governor B and Deputy Governor of Adamawa State are now vacant. INEC wrote a letter to Alhaji Atiku Abubakar when he accepted to stand as Vice President to General Obasanjo for the Presidential election on 27th February, 1999. The Commission explained in its letter that it would arrange and C conduct an election for the office of State Governor of Adamawa State. The Appellants questioned whether the election intended to be conducted by INEC to the office of Governor of Adamawa State is an election specified or allowed by law when there is a duly elected Deputy Governor D of Adamawa State.

This matter is now simple. I have declared the office of Governor and Deputy Governor of Adamawa State vacant. There is no dispute over the power of INEC to organise, conduct and supervise elections and bye-elections for any of the elective offices specified in Section 2(a) E of Decree No. 33 of 1999. Once any of those offices becomes vacant or is declared vacant by a court or tribunal competent under the law to so declare INEC can move in and organise an election to fill in the void. I agree with the learned justice of the Court of Appeal, Dahiru Musdapha, F JSC, that Section 10(1) & (2) of the Interpretation Act, Cap 192, Laws of the Federation of Nigeria, explains how INEC could use its general powers to conduct any election to any of the elective offices enumerated in section 2(a) of Decree No. 33 of 1999. The section reads as follows: G

"10(1) Where an act confers a power or imposes a duty, the power may be exercised and the duty shall be performed from time to time as occasion requires.

(2) An enactment which confers power to do any act shall be construed as also conferring all such other powers as are reasonable necessary to enable that act to be done or are incidental to the doing of it. " H

It is for these reasons and fuller reasons in the judgment of my learned brother, Ogundare, J.S.C. which I had the privilege to read in

draft, that I agreed to dismiss this appeal on 14th May, 1999. It is also for the same reasons, with utmost respect, I am unable to agree with the opinion of my learned brother, Uwais, the Chief Justice, in allowing this appeal.

B —————

UWAIFO JSC (Dissenting)

This is, in my view, a very simple case which has been fought all the way on appeal to this court. The appeal was heard on 11 May, 1999. C Since these reasons for judgment have not been given in a particularly short form, I have considered it necessary to give at the opening stage the facts of the case and the conclusion I have reached in summary and illustrative form before I proceed to state all the relevant facts and to D give full reasons for the judgment I delivered on 14th May, 1999 based on the issues canvassed on this appeal by all the parties.

A person was elected Governor, and along with him was his associate for the running for that office who was elected as the Deputy E Governor. The person elected Governor did not want the office. He wanted to be Vice-President. So he left without waiting to be inaugurated as Governor. The Law says it is only when the person elected as Governor dies before his inauguration into office as Governor that the F person elected with him as Deputy Governor can be allowed to become Governor. That is all.

The person elected Deputy Governor felt disappointed that those who made the law, or at any rate, those who interpreted it in that simple manner, did so in order to deny him his victory at the election. He argued G that that was not proper. He said further that those who made the Law did not use appropriate words (though they are clear and unambiguous); they did not say enough to include when the person elected Governor ran away or had gone mad or was very ill or decided to take another job or H had been put in prison and so on and so forth, and not only when he died. He pleaded with this court to help the law-makers say all that they were believed to have failed to say so that he could be made Governor. This court, by a majority decision, agreed with him and ordered that he be

made Governor so as to have no need to hold another election for Governor and Deputy Governor. But I said and recorded it as my decision that he was not entitled to be made Governor in the circumstances. That concludes the symbolic narrative. I now turn to the appeal with details.

On 14 May, 1999, I dismissed the appeal brought against the judgment of the Court of Appeal, Abuja Division, in this case, thereby refusing to accept the argument of the 2nd appellant who had been elected the Deputy Governor, that he be ordered to be sworn in as the Governor of Adamawa State in place of the person elected the Governor who is alive but has renounced his mandate, having not made himself ready and available for the purpose of being sworn into office, and I awarded costs of N10,000.00 in favour of the 1st and 2nd respondents. I deferred giving the reasons for my decision till today. In stating the reasons, I shall make all the facts of the case known as well as state the relevant arguments presented on behalf of the parties by their counsel.

On 9 January, 1999, the Independent National Electoral Commission (INEC) conducted the governorship elections in all the states of the Federal Republic of Nigeria, including Adamawa State. Alhaji Atiku Abubakar was the candidate for the officer of Governor of Adamawa State on the platform of the Peoples Democratic Party (PDP). He nominated as his associate for his running for that office, Mr. Bonnie Haruna, now the 2nd appellant, who was to be deemed elected to the office of Deputy Governor in case Alhaji Atiku Abubakar was duly elected as Governor as provided under s. 41(1) of the State Government (Basic Constitutional and Transitional Provisions) Decree No. 3 of 1999 (Decree No. 3 of 1999). Alhaji Atiku Abubakar was duly elected as the Governor of Adamawa State, and with him Mr. Bonnie Haruna as the Deputy Governor.

While Alhaji Abubakar was yet to be sworn in as the Governor, he was nominated on 16 January, 1999 by General Olusegun Obasanjo on the platform of the PDP as his associate for his running for the office of president of the Federal Republic of Nigeria, which he accepted. Following this, INEC wrote to Alhaji Abubakar on 26 February, 1999 that not having yet been sworn in as Governor, his Deputy could not be sworn

in as Governor in his place. After the Presidential election of March 1, 1999 which General Obasanjo won, and with him Alhaji Abubakar as the vice-President, INEC made preparations to hold the governorship election of Adamawa State on 20 March, 1999.

B The PDP and Mr. Haruna (both now appellant) sought to stop any further governorship election in Adamawa State. They took out an originating summons on 3 March, 1999 at the Federal High Court, Abuja against the 1st and 2nd respondents which was framed as follows:

C *"1. Whether the Defendants have the right to conduct a bye election to the office of Governor of Adamawa State?"*

(a) When there is a duly elected Governor and Deputy Governor in accordance with the relevant provisions of Decree No. 3 of 1999.

D *(b) When the duly elected Governor is not available to take Oath of office but the duly elected Deputy Governor is available to be sworn in as Governor of the State in place of the duly elected Governor now not available to be sworn in as Governor.*

E *2. Whether the letter dated 26th February, 1999 written by the 1st Defendant to Alhaji Atiku Abubakar Vice President-Elect of the Federal Republic of Nigeria wherein the 1st Defendant indicated its intention to hold a bye election in Adamawa State is within the spirit of the provisions and the intendment of the provisions of Decree No. 3 of 1999?"*

F *(a) When Decree No. 3 of 1999 makes no provision whatsoever for such a bye election.*

G *(b) When he has been duly elected to the office of Deputy Governor of Adamawa State and when the duly elected Governor Alhaji Atiku Abubakar is now not available to be sworn in as Governor of the State.*

3. Whether the 2nd plaintiff is by Law entitled to be sworn in as Governor of Adamawa State?"

H *(a) When he has been duly elected to the office of Deputy Governor for Adamawa State and when the duly elected Governor Alhaji Atiku Abubakar is now not available to be sworn in as Governor in the State.*

4. Whether it is the Oath of Allegiance and Oath of office which

makes (sic) a person an elected Governor or an elected Deputy Governor or the return of the persons as duly elected after the election?

(a) When Sections 31 and 41(3) of Decree No. 3 of 1999 which provides (sic) for the taking of such Oaths recognises (sic) that prior to the taking of the Oaths the Governor and the Deputy Governor have been duly elected. B

If the answers to questions 1, 2 and 4 are in the negative and the answer to question 3 is in the affirmative, the plaintiffs claim against the Defendants:

(a) A Declaration that the Defendants are not entitled to or permitted by Law to conduct a bye-election into the office of Governor in Adamawa State. C

(b) A Declaration that the 2nd plaintiff is by Law entitled to be sworn in as Governor of Adamawa State. D

(c) An order of perpetual injunction restraining the Defendants by themselves, agents, servants and or privies or otherwise howsoever from taking any steps or cause to be taken any step(s) towards the conducting of a bye election into the office of the Governor of Adamawa State. E

(d) An order of perpetual injunction restraining the Defendants by themselves, agents, servants and or privies or otherwise however from conducting a bye election into the office of Governor of Adamawa State." F

In my respectful view, having regard to the substance of the questions raised and the reliefs stated in the said originating summons together with the affidavit in support, this is a case which should easily have been resolved against the appellants without any elaborate proceedings other than the straightforward interpretation of the relevant sections of Decree No. 3 of 1999, particularly s. 37(1). But there were differing arguments, some of which I would consider clearly untenable and would have dismissed instantly. However, they weighed with the learned trial judge. He seemed to have adopted an approach of reproach of INEC in his judgment and denounced any interpretation of s. 37(1) of Decree No.3 of 1999 that would deny the 2nd appellant his claim that he was entitled to be sworn in as the Governor of Adamawa State. G H

On 17 March, 1999, at the Federal High Court, Abuja, the learned trial judge, Auta, J., gave judgment for the appellants. He restrained INEC from holding the proposed election. The 1st and 2nd respondents appealed to the Court of Appeal. The 3rd, 4th and 5th respondents were granted leave to appeal against the decision as interested parties. All the five Justices of the Court of Appeal came to the conclusion that s. 37(1) of Decree No. 3 of 1999 which provides that it is only when a person elected as Governor dies before taking and subscribing the Oath of Allegiance and Oath of Office that the person elected as Deputy Governor shall be sworn in as Governor was clear and unambiguous. Musdapher JCA, who read the leading judgment, summed up in a simplified from quite admirably, in my view, the position of the law as it relates to ss.37(1) and 45(1), when he said in these words:

"In my view, the people of Adamawa State entered into a social contract with Alhaji Atiku Abubakar and elected him as their Governor to conduct the affairs of the State on their behalf. Even though to qualify to contest the election he was legally bound to nominate another person as his running mate, in my view, the contract is between Alhaji Atiku Abubakar and the people of Adamawa State. The law has provided for only two instances when the running mate will lawfully benefit from that social contract (a) when the Governor elect dies before commencing the tenure and (b) when he is removed for any reason under s. 45(1) of the Decree after assuming office.

The law in my view, is clear, the maxim EXPRESSIO UNIUS EST EXCLUSIO ALTERIUS would also apply here. When the legislature has mentioned the circumstance, when a Deputy Governor will inherit the seat of the Governor under s. 37(1) and 45(1) it means that all other situations including the present one are excluded. The law has clearly stated the circumstances of the succession to the office of Governor by the Deputy Governor. In my view any other circumstance which is not specifically mentioned is excluded."

That court accordingly set aside the decision of the Federal High Court and ruled that the 2nd appellant was not entitled to be sworn in as Governor of Adamawa State. It further ruled that the 1st and 2nd respondents

had the power to conduct a bye-election to that office.

On appeal to this court, the appellants sought and were granted leave to dispense with the filing of briefs of argument and to argue the appeal orally. This was on 11 May, 1999. Issues were formulated then and there, and the appeal was argued by all the parties that same day. The appellants stated two issues, in the words of their counsel, Chief Chigbue, thus: (1) whether the 2nd appellant is under and by virtue of s. 45(1) of Decree No. 3 of 1999 entitled to be sworn in as Governor of Adamawa State at the end of the present transition programmes; and (2) whether the election intended to be conducted by the 1st and 2nd respondents to the office of Governor of Adamawa State is an election specified or allowed by law when there is duly elected Deputy Governor of Adamawa State.

Mr. Akpamgbo SAN as counsel for the 3rd-5th respondents also stated two issues for determination as follows: (a) whether ss.37 and 45 of Decree No.3 of 1999 avail the 2nd appellant and entitle him to be sworn in as Governor of Adamawa State when the Governor-elect has abandoned or relinquished his mandate; and (2) whether INEC under the various laws governing it has the power to conduct an election to the gubernatorial seat in Adamawa State.

I think I need only summarise the argument of counsel and deal with any aspect of it as necessary. Chief Chigbue, in regard to issue 1, referred to the definition of 'office' in s. 148(1) of Decree No. 3 of 1999 which says that when used with reference to the validity of an election means any office the appointment to which is by election under Decree No. 3 of 1999. He then submitted, based on that definition, that a person does not become Governor or Deputy Governor by virtue of the statutory Oaths taken to assume that office but by virtue of the election.

If this submission is right, which certainly is not, then as soon as an election takes place and a person is declared an elected governor or Deputy Governor, there is the prospect, while the incumbents are still in office, of having two Governors or two Deputy Governor in a State for a given period. It also means the ceremony of the Oaths before assum-

ing office is unnecessary and of no constitutional relevance. Chief Chigbue was unable, in my opinion, to explain away why the provisions in s.39(1) and s.41(3) of Decree No. 3 of 1999 were made and observed. Those provisions regulate what must be further accomplished by an elected
B persons before being able to perform the functions of the office to which he is elected. Section 39(1) states:

*"39(1) A person elected to the office of the Governor of a State shall not begin to perform the functions of that office until and unless he
C has declared his assets and liabilities in accordance with the Code of conduct and has subsequently taken and subscribed the Oath of Allegiance and Oath of office prescribed in Schedule 2 to this Decree."*

Similarly, section 41(3), which concerns a person elected to the office of the Deputy Governor, states:

*"41 (3) The Deputy Governor shall not begin to perform the
D functions of that office until and unless he has declared his assets and liabilities and he has subsequently subscribed the Oath of Allegiance and Oath of Office as prescribed by this Decree."*

E Without fulfilling these conditions, an elected person cannot be known as Governor or Deputy Governor as the case may be. The mere success at the election cannot make him so.

Chief Chigbue further submitted that there appears to be a la-
F cuna in s. 37(1) of Decree No. 3 of 1999 and urged the court to interpret that section along with all relevant sections of the Decree in such a way as not to deprive the Deputy Governor of his office. He contended that the 2nd appellant had a vested right as Deputy Governor which should not be taken away by implication. He relied on Oyeyemi v Commissioner
G for Local Government (1992) 2 NWLR (pt. 226) 661 at 684; The Director SSS v Agbakoba (1999) 3 NWLR (Pt. 595) 314 at 361. He argued that the maxim expressio unis exclusion alterius is only an aid to interpretation and that it does not apply in the present circumstances. He
H urged the court to give the constitutional provision in s. 37(1) a broad interpretation on the authority of Nafiu Rabi v The State (1981) 2 NCLR 293; Ekpenkhio v Egbadon (1993) 7 NWLR (pt. 308) 717 at 739-740; In re Shyllon (1994) 6 NWLR (pt. 353) 735 at 751.

Mr. Mahmoud, counsel for the 1st and 2nd respondent, conceded that in interpreting the relevant sections of Decree No. 3 of 1999, they should be read as a whole. He submitted that the said Decree does not create individual rights as such which the 2nd appellant can claim in regard to the office of the Governor of Adamawa State. According to B him, the Decree is concerned largely with the rights and interests of the citizens as to how who is to govern them gets into office. Also, that there are two stages for elected persons, namely, the stage before they assume office and the stage when they are in office. The only occasion, C he said, on which a person elected Deputy Governor can be sworn in as Governor before the person elected Governor takes his Oaths, is when that person dies as provided under s. 37(1) of the Decree; otherwise a vacancy is created in the Governorship seat, contending that s. 37(1) is clear and unambiguous. But on the other hand, s. 45(1) which governs D the situation after the swearing-in of the Governor and Deputy Governor, he submitted, provides for contingencies other than death in which a Deputy Governor can be sworn in place of the Governor.

Mr. Akpamgbo SAN for the 3rd-5th respondents, arguing along E the same lines as Mr. Mahmoud, added that the person who was elected Governor of Adamawa State was not dead but has taken a position which shows he will not take and subscribe the Oaths necessary for assuming the office of Governor. That being the case, he said, the 2nd appellant F cannot under s. 37(1) be sworn in as Governor. He argued that s. 37(1) is unambiguous and has made no provision for 'any other circumstance' than the death of the person elected as Governor before the person elected as the Deputy Governor can be sworn in his place.

I shall now consider the merit of issue 1 raised by the appellants G which the two counsel for the respondents have reacted to. The 2nd appellant claims to have a vested right as Deputy Governor which he argues should not be taken away by implication. I think this is clearly a misconception. It is difficult to understand whether such alleged vested H right as Deputy Governor is what he believes entitled him to be sworn in as Governor or that he should be recognised and sworn in only as Deputy Governor in order to enjoy that office as of right even in the absence of

the elected Governor with whom he paired during election who would have been sworn in as Governor. So, even in the sense of the logic of such a claim to a vested right as Deputy Governor, it does not advance the case of the 2nd appellant to be sworn in as Governor.

B However, considering the merit in law of a claim to a vested right in a public office, it has been held that public offices are created for the benefit of the public, and not created or granted for the benefit of the incumbent, who has no contractual, vested or property right in the office: see Lanza v Wagner 97 ALR 2d 344 (1962), a decision of the New York Court of Appeals. I think this was the point Mr. Mahmoud made in his submission that Decree No. 3 of 1999 does not create rights of individuals as such in reaction to Chief Chigbue's contention of the 2nd appellant's vested right. He urged the court to bear in mind in construing the relevant sections of the said Decree that it is dealing with and considering an instrument which controls and regulates the powers and functions of government, including the conditions for attaining a particular office in the interest of the public rather than the interest of any individual. I think there is substance in that submission.

It is not that there are no individual rights under the constitution. Those are created, specified or acknowledged rights thereunder. They cannot be denied in contravention of the constitution without due consequence therefore. That is elementary. But no one can claim a vested right in any public office except the right that emerges when the conditions for accession to that office are fulfilled, as well as the right to observe proper statutory procedure to put an end to the tenure in that office. It is clearly inappropriate, in my view, in a situation like this case to talk of a vested right when indeed what the appellants are seeking is what many will agree certainly looks like a destroyed or perverted, but which I will say is an utterly indefensible, interpretation of a plain constitutional provision to enable the 2nd appellant to assume and office for which he does not qualify.

It must be recognised that Decree No. 3 of 1999, with particular reference to sections 34, 36, 37, 38, 39, 41, 42, 43, 44 and 45, is about how a person gets to occupy an elective office as regards the conditions

that must be fulfilled or what circumstances will need to take place before he can be said to qualify to assume and exercise the functions of that office, and as to his tenure in that office. If certain events happen or do not happen thereby debarring him, or creating obstacles in his way, from getting to that office, then in terms of the provisions of the said Decree, he will not get there. It is those terms as a whole the court should give effect to and not the simple assertion by a person that he has won an election. Winning an election is just a stage towards getting to the office of Governor or Deputy Governor according to the relevant provisions of the Decree.

Sections 39(1) and 4 1(3) of Decree No. 3 of 1999 which have earlier been reproduced in this judgment show respectively that a person elected as Governor or as Deputy Governor has (1) to declare his assets and liabilities and (2) subsequently to take and subscribe the Oath of Allegiance and Oath of office, before he shall begin to perform the functions of that office. If a person elected to the office of the Governor of a State dies before taking and subscribing the Oath of Allegiance and Oath of Office, section 37(1) of the Decree makes provision as to what should happen. The said s. 37(1) is stated in very simple and clear language. It reads:

"37(1) If a person duly elected as Governor dies before taking and subscribing the Oath of Allegiance and Oath of office, the person elected with him as Deputy shall be sworn in as Governor and he shall nominated a new Deputy Governor from the same Senatorial District as that of the deceased Governor who shall with the approval of the House of Assembly of the State be appointed as Deputy Governor." (Emphasis mine).

It is only one circumstance, namely the death of the person elected Governor and no other will permit such swearing in. The emphasis I have placed on the words 'dies' and 'deceased' is to bring to mind that the law-maker thought not only of the person elected Governor dying but also his Senatorial District where his Deceasedness has created a vacancy. The only focus was on his ceasing to live, that is to say, biologically and clinically dead as a human being, and what becomes of his Senatorial

District. Of course, I am prepared to accept that it is possible and permissible to regard as dead, a person who has turned a mere vegetable and is only alive through life-sustaining medical gadgets or machines as a result of advancement in medical science. A liberal interpretation in such a case of the constitutional provision in question will rightly acknowledge a person in that condition as dead. This is because such a person, at best, marginally retains consciousness but is otherwise dead once the gadgets or machines are switched off. That falls within the purview of liberal interpretation.

In interpreting the provision of s. 37(1) of Decree No. 3 of 1999 which is obviously not misleading, the rule is that the words should be given their ordinary, plain and natural meaning. In that exercise, there is no need and no room for applying any other principles of interpretation which are resorted to to discover the true intention of the law-maker when faced with ambiguous and difficult words or phrases used in a statute or a constitution. As said by Ogwuegbu JSC in National Bank of Nigeria Ltd. v. Weide & Co. (Nig) Ltd (1996) 8 NWLR (Pt. 465) 150 at 165, ".....where the words of a legislature (sic) are clear, there is no room for applying any of the principles of interpretation which are merely presumptions in cases of ambiguity in the statute." This was said in the course of the construction of ss. 220(2) and 221(1) of the 1979 Constitution, the learned Justice concluding, "I am satisfied that the words used in section 220(2) are unambiguous and ought to be received the construction according to their plain meaning. Section 220 cannot be read and construed in isolation from section 221, while section 220(1) deals with appeals as of right, section 22(1) deals with appeals with leave. The specific provision made by the legislature in section 220(2) must have been deliberate and for good reasons." In Shell Petroleum Development Co (Nig) Ltd v. Federal Board of Inland Revenue (1996) 8 NWLR (Pt. 446) 256 at 258, Uwais CJN observed as follows: "For the principle of construction of statute is that if the words of the statute are plain, precise and unambiguous, they should be giving their ordinary and natural meaning - see Lawal v. G.B. Ollivant (1972) 3 SC 124 at p. 137; Aya v. Henshaw (1972) 5 SC 87 at p. 95; Queen v. Onuegbu (1957) SCNLR 130; 2 FSC

10 at p.12 and Toriola v Williams (1982) 7 SC 27 at p. 46."

It may be of interest to refer to the case of Pepper (Inspector of Taxes) v Hart (1993) 1 All ER 42 decided by the House of Lord as to when it may be necessary to adopt what is termed the Purposive Approach to interpretation of a statute. The House had to interpret in that case, certain sections of the Finance Act 1976. Those sections concerned the correct assessment of income tax payable by certain members of the teaching staff of a private boys' school, where the school operated a concessionary fees scheme for the sons of those masters. It was recognised that the relevant sections of that Act were ambiguous or obscure. The House of Lords held that having regard to the purposive approach to the construction of legislation the courts had adopted in order to give effect to the true intention of the legislature, the rule prohibiting the courts from referring to parliamentary material as an aid to statutory construction should, subject to any question of parliamentary privilege, be relaxed so as to permit reference to parliamentary material where (i) the legislation was ambiguous or obscure or the literal meaning led to an absurdity, (ii) the material relied on consisted of statements by a minister or other promoter of the Bill which led to the enactment of the legislation together, if need be, with such other parliamentary material as was necessary to understand the statements and their effect, and (iii) the statement relied on were clear.

As I already indicated, certain sections of the Act which the House had to interpret were considered to be clearly ambiguous because the 'expense incurred in or in connection with' the provision of in-house benefits, as stated in one particular section, could be interpreted as being either the marginal cost caused by the provision of the benefit in question or as a proportion of the total cost incurred in providing the service both for the public and for the employer. It was found that the parliamentary history of the Act and statements made by the Finance Secretary to the Treasury during the committee stage of the Bill made it clear that parliament had passed the legislation on the basis that the effect of the relevant sections was to assess in-house benefits, and particularly concessionary education for teachers' children, on the marginal costs to the employer

and not on the average costs of the benefit to the taxpayer.

It will therefore be seen that the purposive approach of interpretation approved by the House of Lords in that case was because, first, the language of the legislation was ambiguous or obscure, second, that there were parliamentary materials available to be consulted and, third, those materials were clear and useful. It was in those circumstances Lord Griffiths observed at page 50:

"The days have long passed when the courts adopted a strict constructionist view of interpretation which required them to adopt the literal meaning of the language. The courts now adopt a purposive approach which seeks to give effect to the true purpose of legislation and are prepared to look at much extraneous material that bears on the background against which the legislation was enacted. Why then cut ourselves off from the one source in which may be found an authoritative statement of the intention with which the legislation is placed before parliament."

It is my respectful view that the purposive approach to the interpretation of legislation as fully expounded in Pepper v Hart (supra) deserves to be given appropriate consideration by this court at the right time in our democratic experience. This will be when statements by the responsible minister or other promoter of a Bill and such other parliamentary material may be available and found useful. But I think such purposive approach is irrelevant to the present case for the obvious reasons that s. 37(1) of Decree No.3 of 1999 does not need any extraneous aid to the interpretation of it, any necessary ministerial statements or parliamentary materials cannot possibly be available. In any case, the line of decisions of this court on the preference for the literal interpretation of statutes whose words are clear, precise and unambiguous is intimating and cannot be ignored by sheer resort to another principle of interpretation which may in a sense tend to overrule or undermine those other decisions indirectly and without justification. I have merely discussed Pepper v Hart (supra) to reinforce the point that there is no cause for the interpretation of s. 37(1) by any extraordinary approach.

It is, perhaps, necessary to emphasise that this principle of literal

interpretation applies both to the construction of a statutory provision and of a constitutional provision. That is to say, when the words are given their ordinary, precise and natural meaning, there is hardly any necessity to resort to any other principles of interpretation. This was applied in National Bank of Nigeria Ltd v Weide & Co. (Nig.) Ltd (supra) B by Ogwuegbu JSC as has just been shown earlier. In Adams v Bolin 33 ALR 2d 1102 (1952), the Arizona Supreme Court, per La Prade, J., said at p. 1103:

"Nothing is more firmly settled than under ordinary circumstances, where there is involved no ambiguity or absurdity, a statutory or constitutional provision requires no interpretation." C

The idea of adopting a Liberia or broad interpretation to a constitution, as advocated by Chief Chigbue, usually involves accepting an extended definition of words or phrases to cover reasonably possible broad etymological meaning, or of circumstances to cover such eventualities due to changing times, different social environments and advancement in human endeavours not fully contemplated or which were overlooked at the time the constitution was drawn up and provided for specifically. This is what, in my respectful view, Sir Udo Udoma JSC had in mind when he spoke about the need for a liberal interpretation of the constitution in Nafiu Rabi'u v The State (1981) 2 NCLR 293 in considering the full meaning of the word 'decision' in s. 277(1) of the 1979 constitution, as to whether it covers 'acquittal' not specifically mentioned therein, but yet amounts to a determination which 'decision' was said to mean, when he observed at p. 326 at follows: D E F

".... the function of the constitution is to establish a framework and principles of government, broad and general in terms, intended to apply to the varying conditions which the development of our several communities must involve, ours being a plural, dynamic society, and therefore, mere technical rules of interpretation of statutes are to some extent inadmissible in a way so as to defeat the principles of government enshrined in the constitution. And where the question is whether the constitution has used an expression in the wider or in the narrower sense, in my view, this court should whenever possible, and in response to the G H

demands of justice, lean to the broader interpretation, unless there is something in the text or in the rest of the constitution to indicate that the narrower interpretation will best carry out the objects and purposes of the constitution.

Bit is my view that the approach of this court to the construction of the constitution should be, and so it has been, one of liberalism, probably a variation on the theme of the general maxim *ut res magis valeat quam pereat*. I do not conceive it to be the duty of this court so to
C construe any of the provisions of the constitution as to defeat the obvious ends the constitution was designed to serve where another construction equally in accord and consistent with the words and sense of such provisions will serve to enforce and protect such ends."

There is nothing in the above-quoted passage and the authorities
D relied on by Sir Udo Udoma JSC, in my view, to suggest that clear and unambiguous terms of our constitution may be rewritten or added to by the courts in an attempt to give them a 'liberal' or 'broad' interpretation other than in the full sense in which he interpreted the word 'decision' in
E the context it was used. I cannot conceive that there was any intention in that passage to render the meaning of constitutional provisions subject to what the courts decide to do with them at will; or to invite the courts to expand plain words to have connotations beyond the appreciation and
F imagination of the ordinary person. Such so-called liberal or broad approach is an unwarranted novelty in the present case which is easily capable of subverting the essence of the constitution. I must here refer to the observation of Terrell, J., in expressing the opinion of the Florida Supreme Court in *Ervin v Collins* 59 ALR 2d 706 (1956) at p. 710 as
G follows:

"We are called on to construe the terms of the constitution, an instrument from the people, and we are to effectuate their purpose from the word employed in the document. We are not permitted to color it by
H the addition of words or the engrafting of our views as to how it should have been written. The point of our concern at this time has to do solely with the eligibility, election and term of Governor. As pointed out by the chancellor, it must be presumed that those who drafted the constitution

had a clear conception of the principles they intended to express, that they knew the English language and that they gave careful consideration to the practical application of the constitution and arranged its provisions in the order that would most accurately express their intention."

I think these observations very much speak for the circumstances of the present case and I most respectfully endorse them as the proper approach to the interpretation of the clear terms of the constitutional provision as contained in s. 37(1) of Decree No. 3 of 1999. The observations relive those of Marshall C.J. in Gibbons v Ogden 22 U.S. (wheat) 1 (1824) that: "As men whose intentions require no concealment generally employ the words which most directly and aptly express the ideas they intend to convey, the patriots who framed our constitution and the people who adopted it, must be understood to have employed words in their natural sense, and to have intended what they have said."

It is without dispute, if only to repeat myself, that the only condition under which a person elected Deputy Governor can be sworn in as Governor by virtue of s. 37(1) of Decree No. 3 of 1999 is when the person elected Governor dies before taking and subscribing the Oath of Allegiance and Oath of office. That Law was in force at the time of nomination for and election of Governor and Deputy Governor, and persons aspiring to those offices are deemed to have accepted the terms of the Law, particularly the clear terms of s. 37(1). To make it abundantly clear, as I have said, that the incident of death is the only condition under s. 37(1), the word 'dies' is used in connection with a person duly elected as Governor, and the word 'deceased' is further used in connection with his Senatorial District. It must be accepted that the law-maker's intention was sufficiently and unambiguously expressed in simple language. A reading of the two subsections of s. 37 provides a reinforcement that the single incident within the contemplation of the law-maker in that section is that of death before inauguration. That appears to me to make the circumstance of death in the provision of s. 37 as a whole the deliberate choice of the law-maker. Subsection (2) provides that:

"(2) When the persons duly elected as Governor and Deputy Governor of the State die before the inauguration of the House of As-

sembly, the Commission shall immediately conduct an election for a Governor of the State in which the candidates shall be nominated from the same Senatorial Districts as those that produced the Governor and Deputy Governor who have died."

B On the other hand, the law-maker thought of and made provision for other eventualities apart from death after inauguration in s. 45(1) as follows:

"45(1) The Deputy Governor shall hold office of Governor if the office of Governor becomes vacant by reasons of death, resignation, C impeachment, permanent incapacity or removal for any other reason."

I repeat the submission on behalf of the appellants by Chief Chigbue that there appeared to be a lacuna in s. 37(1). He therefore urged this court to interpret the provision thereof along with all relevant D sections of the Decree, to use his words, "in such a way as not to deprive the Deputy Governor of his office." I have already said I am unable to accept this submission because the 2nd appellant is not asking that the office of Deputy Governor be saved for him to assume it in the circum- E stances of this case. But more importantly, that submission calls for an interpretation outside the clear words of the Decree in question to be adopted by this court which implies that words should be read into the relevant provisions. It appears to me that there is no justification for the F appellant to want to avoid the inevitable effect to him in the present situation of the provision of s. 37(1) when it is merely a consequence of the conditions set down by the law-maker as to the process and procedure for accession or otherwise to the office of Governor in a given circumstance. To want to get there in any other way than what the Law provides is to attempt to circumvent the people's mandate. G

As I have earlier stated, the law is (and I do not think this has been departed from) that when the language of a statute is clear and unambiguous, the courts are precluded from reading or importing any H other words into it but are obligated to perform their function of giving effect to the language through which the legislature has made its intention known. It is not part of the function of the courts or judges to overrule the words of a statute when they are simple to understand and

then arrive at a result, which when looked at, amounts in essence to making a law never intended, for judges are to declare what the law is from the words of a statute and not assume the role of the legislature by a faulty or strained interpretation of them: hence jus dicere, not jus dare. In Ojokolobo v Alamu (1987) 3 NWLR (pt. 61) 377 at 402, Obaseki JSC B observed:

"In the area of construction, the primary concern of the courts is the ascertainment of the intention of the legislature or law makers. From this function, the court may not resile however ambiguous or difficult of application the words of the law or Act may be, the court is bound to place some meaning upon them. If the language is clear and explicit, the court must give effect to it, for in that case, the words of the statute speak the intention of the legislature. Its function is jus dicere, not jus dare. The words of a statute must not be overruled by judges." C D

And in Egbe v Alhaji (1990) 1 NWLR (pt. 128) 546 at 581, the same learned Justice said:

"One of the cardinal principles of interpretation is to give the words of the statute when unambiguous their ordinary grammatical meaning. It is therefore not the function of the court or judge to import words which do violence to the intent and meaning of the statutory provisions." E

It is beyond dispute that judges are entitled and indeed bound when construing the terms of any provision found in a statute or the constitution to consider any other parts of that Law which throw light upon the intention of the legislature or law-maker and which may serve to show that the particular provision ought not to be construed as it would be, if considered alone and apart from the rest of that Law. This is to enable a clear picture of the purport of the said Law to be presented. This is particularly so where general and imprecise words are used thereby creating problems of ambiguities: see Aqua Ltd. v Ondo State Sports Council (1988) 4 NWLR (pt. 91) 622 at 641- 642; Attorney-General, Bendel State v. Aideyan (1989) 4 NWLR (Pt. 118) 646 at 668; Salami v Chairman L.E.D.B (1989) 5 NWLR (Pt. 123) 539 at 550-551; Coloquhoun v Brooks (1889) 14 App. Cas. 493 at 506. But if words used in the provision of a statute are found to have no other meaning than their F G H

ordinary, natural and grammatical meaning, then on a through and strict construction of them, the courts would be bound to apply the result of that construction to achieve the intention of the law-maker: see Attorney-General, Lagos State v Dosunmu (1989) 3 NWLR (pt. 111) 552 at 580-581; Nwosu v Imo State Environmental Sanitation Authority (1990) 2 NWLR (pt. 135) 688 at 715; Chime v Ude (1996) 7 NWLR (pt. 461) 379 at 437.

Chief Chigbue's contention is that the courts should come out decisively to fill the lacuna he spotted in s. 37(1) and he claims that when that is done, the 2nd appellant should get the benefit of it and be entitled to be sworn in as the Governor of Adamawa State. What this means is that s. 37(1) should not have provided only for the event of the death of the person elected as Governor but ought to have provided for other eventualities such as the person elected as Governor putting himself in a position not to be able to take and subscribe the Oath of Allegiance and Oath of Office. This must amount to reading words into the clear and unambiguous provision of a statute in such a blatant and elaborate way. It is equivalent to the court making law, no longer interpreting it; it amounts to filling a perceived gap in a statute - supplying the casus omissus as such a gap is sometimes called. This contention by learned counsel will need to be considered fully.

Looking at s. 37(1) of Decree No. 3 of 1999 again and again, I am befuddled by any argument which does not recognise at once that the death before inauguration of the person elected Governor is the only condition specified that would entitle the person elected Deputy Governor to be sworn in as the Governor. That clearly excludes any other condition and inevitably makes the maxim expressio unius est exclusio alterius apply; that is to say, the express mention of the one thing implies the exclusion of the other. It means therefore if the person elected Governor is not dead before inauguration but for any reason whatsoever has become unable to take and subscribe the Oath of Allegiance and Oath of Office of Governor, as Alhaji Atiku Abubakar has, the person elected as Deputy Governor i.e. the 2nd appellant, Mr. Bonnie Haruna, is not entitled at all to be sworn in as Governor. That maxim is analogous to the

rule of construction that words are not to be read into the language of a statute which is clear and unambiguous by judges as they are not entitled to overrule such a statute.

But argument was canvassed by Chief Chigbue to play down the maxim expressio unius est exclusio alterius by referring to the observation of Wills, J., in Colquhoun v Brooks (1887) 19 Q.B.D. 400 at 406, cited by Idigbe JSC in Nafiu Rabiu v The State (supra). The observation of Wills, J., may be quoted as follows:

"I may observe that the method of construction summarised in the maxim 'Expressio unius exclusio alterius' is one that certainly requires to be watched. Perhaps few so-called rules of interpretation have been more frequently misapplied and stretched beyond their due limits. The failure to make the 'expressio' complete very often arises from accident, very often from the fact that it never struck the draftsman that the thing supposed to be excluded needed specific mention of any kind; and the application of this and every other technical rule of construction varies so much under differing circumstances, and is open to so many qualifications and exceptions, that it is rarely that such rules help one to arrive at what is meant."

It is not easy to understand that Wills, J., may have addressed the operation of that maxim in such a negative way following the position he took in that case until more facts and circumstances of the case are given as I shall now do. Under a certain Tax Act provision, the duty payable was "For and in respect of the annual profits or gains arising or accruing to any person residing in the United Kingdom from any kind of property whatever, whether situate in the United Kingdom or elsewhere" That provision was regarded by Stephens J. with whom Wills, J. sat in that case to be plain and unambiguous. But Wills, J., sought to add to those words "except such part of those profits and gains as the person entitled thereto may not bring into the United Kingdom." He then came to the conclusion that unless profits made outside the United Kingdom were brought into the country they were not taxable. This was rejected by Stephens, J., on the ground that that was not so stated in the relevant provisions of the said Tax Act. In the result, and in accordance with the

old practice in the court of Exchequer, Wills, J., being the junior judge withdraw his judgment and Stephens, J.'s represented the judgment of the court. The House of Lords upheld Stephen, J's judgment: see Colquhoun v Brooks (1889) 14 App. Cas. 493.

B What Wills, J. further observed in this judgment, which was regarded only as a dissent in the Law Reports, makes it clearer that he intended to fill what he considered a gap in the Act with his words judged upon his own expedience. He went all out to suggest that there must be a mistake in the Act because he could not understand why there should
C have been a different treatment of some taxable profits made in certain circumstances as against others. He said (19 Q.B.D. at p. 414):

*"I can conceive no reason why a distinction should have been made in favour of the profits of foreign securities as compared with those
D of a foreign business, and why the profits of the business should be taxable whether remitted to the partner resident or not, whilst the profits of the foreign securities or possessions should escape taxation unless remitted. No ground of principle for such a distinction has been or can be
E suggested. There is not reason, therefore why the maxim, expressio unius exclusio alterius, should apply; whereas the provisions made in respect of the tax upon profits of foreign possessions or securities are in strict accordance with what I have shewn to be a recognised principle of English
F Law. It is far easier to suppose that the omission of any special mention of the case of a person resident here and not receiving the whole or part of the profits of a business carried on abroad by a firm of which he is a partner is an accident, than that there should, in respect of an isolated case of this kind be a departure without express words from a well-established
G principle regulating the application of Acts of Parliament in general and, as has been shewn, repeatedly recognised and acted upon in respect of fiscal statutes."*

H It is true that the maxim is only an aid to the construction of written document as also observed in Nafiu Rabi v The State (supra) at p. 303. This was emphasised by Chief Chigbue with what appeared a derisive accent on the word 'only'. I do not see how it would have been anything other than an aid, just as any other of construction. They play

their role in any given context. Without their appropriate use, written documents may be given false interpretation. The maxim in question is quite strong. Hence the privy Council approved the observation of Mr. Justice Hargrave in Drinkwater v Arthur 10 Sup. Court, N.S.W. 193 that if there be any one rule of law clearer than another, it is this, that where the legislature has expressly prescribed one or more particular modes of dealing with a matter, such expression always excludes any other mode, except as specifically authorised: see Blackburn v Flavell (1881) 6 App. Cas. 628 at 634. And Lord Dunedin in Whiteman v Sadler (1910) AC 514 at 527 said that "express enactment shuts the door to further implication. 'Expressio unius est exclusio alterius.'" It is obvious to me that Wills J's resentful estimation of the maxim cannot stand against the weight of the foregoing authorities. Of course, when it is possible to show that there was no intention to exclude any other matters by the mere mention of one or other specific thing, then such other matters will not be excluded from the interpretation of a document or provision of a statute. This will depend on the true text of the subject-matter of interpretation. But when such interpretation, or indeed any interpretative approach, will amount to creating a situation which could hardly have been intended, that may be seen as going outside the function of interpretation and regarded, oftentimes unfortunately erroneously, as verging on manipulation.

An example of a proper occasion on which a request that the maxim or principle be applied was refused can be found in Nafiu Rabi v The State (supra) where the observation of Wills, J., was considered. Provisions were made in some sections of the 1979 constitution about the right to appeal (whether with leave or as of right) from 'decisions' in any civil or criminal proceedings. Then s. 277(1) made certain definitions, one of which was as follows:

"decision" means, in relation to a court any determination of that court and includes judgment, decree, order, conviction, sentence or recommendation.

A person charged with murder was acquitted by the trial court. The appeal against that acquittal by the prosecution to the Court of Appeal was allowed and he was convicted of murder. He then appealed to this

court.

One of the grounds canvassed was that the word 'acquittal' was not mentioned in the definition of 'decision' under s.277(1) of the constitution and therefore no appeal could have been taken against a verdict of acquittal since by the other relevant provisions of the said constitution, appeal shall lie only from decisions. The appellant said since the word 'acquittal' did not appear in the definition of 'decision' the maxim that what was specifically mentioned excluded all other matters not mentioned applied: expressio unius exclusio alterius. This court held that the maxim did not apply because 'acquittal' being a determination made by a court and therefore as aspect of 'decision' by the definition in s. 277(1), it was clearly reasonable to regard 'acquittal' as a decision. This was an obviously indisputable occasion for the exclusion of the application of that maxim. It was not a question of filling any gap in the relevant provisions but identifying and applying the meaning of words as used therein. It is clearly inappropriate, in my view, to urge the observations of Sir Udoma JSC in Nafiu Rabi case on us in order to give a so-called liberal or broad interpretation to s. 37(1) in the present case. Indeed, such urging is paralogistic.

On the other hand there is the situation where a material particular is not or is deemed not provided for in express terms. That may be seen as a gap or what is called a casus omissus. What the court will do in such circumstances is compelled largely by the principle that the function of the court is to interpret the law and not to legislate. It is a dangerous incursion into the provision of the legislature for any court not to observe that principle. If the language of statute is clear, judges usually will steer clear of making any 'Judicial legislation'. This is because as said in Understanding Statutes by Crabbe, first edn., page 29:

"It would cost them the respect and approval of society. Charles Lewis has pointed out that the judges themselves have too much respect for language and semantics generally and for conventions of the constitution to want to replace them with a scheme of their own making. Responsible judges will therefore do no violence to the language of a statute if it is clear."

The views of Lord Diplock, Lord Edmund-Davis and Lord Scarman in Duport Steel Ltd & Ors v Sirs & Ors (1980) 1 All ER 529 are, in my opinion, of some relevance and I feel they deserve not only a reference to them but a lifting of passages from their judgments. Lord Diplock said at pp.541-542:

"My Lords, at a time when more and more cases involving the application of legislation of legislation which gives effect to policies that are the subject of bitter public and parliamentary controversy , it cannot be too strongly emphasised that the British constitution, though largely unwritten, is firmly based on the separation of powers: parliament makes the laws, the judiciary interpret them..... the role of the judiciary is confined to ascertaining from the words that parliament has approved as expressing its intention what that intention was, and to giving effect to it. Where the meaning of the statutory words is plain and unambiguous it is not for the judges to invent fancied ambiguities as an excuse for failing to give effect to its plain meaning because they themselves consider that the consequences of doing so would be inexpedient, or even unjust or immoralUnder our constitution it is parliament's opinion on these matters that is paramount it is at least possible that parliament, when the Acts were passed, did not anticipate that so widespread and crippling use as has in fact occurred would be made of sympathetic withdrawals of labour and of secondary blacking and picketing in support of sectional interests able to exercise 'industrial muscle'. But if this be the case it is for parliament, not for the judiciary, to decide whether any changes should be made to the law as stated in the Acts.

.....
It endangers continued public confidence in the political impartiality of the judiciary, which is essential to the continuance of the rule of law, if judges, under the guise of interpretation, provide their own preferred amendments to statutes" (Emphasis mine)

And Lord Edmund-Davis at pp. 547-548 said that:

" a judge's sworn duty to 'do right by all manner of people after the laws and usages of this realm' sometimes puts him in difficulty, for certain of those laws and usages may be repugnant to him . When that

situation arises, he may meet it in one of two ways. First, where the law appears clear, he can shrug his shoulders, bow to what he regards as the inevitable, and apply it. If he has moral, intellectual, social or other twinges in doing so, he can always invoke viscount Simonds, L.C., who once said:

'For to me heterodoxy or, as some might say, heresy, is not the more attractive because it is dignified by the name of reform. Nor will I easily be led by an undiscerning zeal for some abstract kind of justice to ignore our first duty, which is to administer justice according to law, the law which is established for us by Act of parliament or the binding authority of precedent.

'Alternatively, a judge may be bold and deliberately set out to make new law if he thinks the existing legal situation unsatisfactory. But he risks trouble if he goes about it too blatantly, and if the law has been declared in statutory form it may prove too much for him, dislike it though he may."

Lord Scarman had this to say at p.551:

".....in the field of statute law the judge must be obedient to the will of parliament as expressed in its enactments. In this field parliament makes and unmakes the law the judge's duty is to interpret and to apply the law, not to change it to meet the judge's idea of what justice requires. Interpretation does, of course, imply in the interpreter a power of choice where differing constructions are possible.

But our law requires the judge to choose the construction which in his judgment meets the legislative purpose of the enactment. If the result is unjust but inevitable, the judge may say so and invite parliament to reconsider its provision. But he must not deny the statute. Unpalatable statute law may not be disregarded or rejected, merely because it is unpalatable. Only if a just result can be achieved without violating the legislative purpose of the statute may the judge select the construction which best suits his idea of what justice requires."

These views above-quoted are not new. They have been expressed in different forms on various occasions and in several cases. Similar views have been held in this court. It has, however, become

necessary to recall them because of the implication of what the appellants have sought to achieve by their argument. It is clearly the law that in the interpretation of a statute, the liberty of a judge to intrude with his idea of where the justice of the matter lies is very limited. He is guided by the language of the statute in his endeavour to discover the intention of the legislature. When the language of the statute is clear and unambiguous, the judge cannot go outside it to adopt a construction which will lead to rejecting or denying the purpose of the legislature. The judge must read the statute in its simple, plain, ordinary, natural and grammatical meaning. If there is ambiguity in the language used which makes differing constructions of the statute possible, the judge will call in aid the appropriate rules of interpretation to give such effect to the statute that best suits what justice requires. In all this, a judge is not entitled to import words to supply what has not been provided for in the statute.

In the great art of governmental affairs, where the legislature, the executive and the judiciary co-exist, it is a misstep for one of them to act in contempt of the other in performing its duty. It is likely to lead to collision if one were to encroach upon the province of the other. When this happens blatantly, and worse still often, then it not only lead to loss of public confidence in the intruder but it also, ultimately, may precipitate a constitutional crisis. The judiciary has over the years succeeded in ensuring that its well-oiled self-restraining mechanism precludes it from deviating from its traditional role of law-interpreting to law-making which is the function of the legislature. That is why the inclination of even some of the most unconventional judges in this area of judicial duty has been promptly nipped in the bud whenever it tended to foray into law-making through statutory interpretation of a skewed nature.

This was amply demonstrated in the case of Magor & St. Mellons Rural District Council v Newport Corpn (1950) 2 All ER 1226, a decision of the Court of Appeal. There, Denning L.J. went the distance of saying, at p. 1236, what a judge should do if he discovered a lacuna in a statutory provision or an order made by Ministers based on it, as follows:

"We do not sit here to pull the language of parliament and of Ministers to pieces and make nonsense of it. That is an easy thing to do,

and it is a thing to which lawyers are too often prone. We sit here to find out the intention of parliament and Ministers and carry it out, and we do this better by filling in the gaps and making sense of the enactment than by opening it up to destructive analysis."

B This means, what the legislature did not say, or what is conceived by the judge it should have said, should be added to the provision of the statute to make the sense the judge conceives.

This approach was promptly and decisively rejected by the House of Lords on appeal: Magor & St. Mellons Rural District Council v Newport corporation (1952) AC 189. Lord Simond's reacted at pp. 190-191 to Denning L.J's proposition as follows:

" 'We sit here', he say, ' to find out the intention of parliament and of Ministers and carry it out, and we do this better by filling in the gaps and making sense of the enactment than by opening it up to destructive analysis.' The first part of this passage appears to be an echo of what was said in Heydon's Case (1584) 3 Co. Rep. 7a 300 years ago, and, so regarded, is not objectionable. But the way in which the learned Lord Justice summarizes the broad rules laid down by Sir Edward Coke in that case may well induce grave misconception of the function of the court. The part which is played in the judicial interpretation of a statute by reference to the circumstances of its passing is too well known to need restatement; it is sufficient to say that the general proposition that it is the duty of the court to find out the intention of parliament - and not only of parliament but of Ministers also - cannot by any means be supported. The duty of the court is to interpret the words that the legislature has used; those words may be ambiguous, but, even if they are, the power and duty of the court to travel outside them on a voyage of discovery are strictly limited: see, for instance, Assam Railways & Trading Co. Ltd v Inland Revenue Commissioners (1935) AC 445, and particularly the observations of Lord Wright.

H The second part of the passage that I have cited from the judgment of the learned Lord Justice is no doubt the logical sequel of the first. The court, having discovered the intention of parliament and of Ministers too, must proceed to fill in the gaps. What the legislature has

not written, the court must write. This proposition, which restates in a new form the view expressed by the Lord Justice in the earlier case of Seaford Court Estate Ltd v Asher (1949) 2 KB 481, 498-9 (to which the Lord Justice himself refers), cannot be supported. It appears to me to be a naked usurpation of the legislative function under the thin disguise of B interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act." This court cannot therefore add to or depart from the language of s. C 37(1) of Decree No. 3 of 1999. In the result, it is clear that the 2nd appellant is not entitled to be sworn in as Governor of Adamawa State.

When an elected Governor is not available, for reasons other than death, to take the Oaths and the person elected Deputy Governor D cannot in the circumstances be sworn in as Governor, than there is a vacancy in the Governorship seat. INEC has the power and duty to conduct election into that office by the normal procedures: announcement of date of election, nomination of candidates by parties, such candidates choosing their running mates, clearance of candidates by INEC, E election taking place, declaration of results and return of winner by INEC.

Section 2 (a) of Decree No. 33 of 1998 empowers INEC to organise, conduct and supervise the elections, among others, into the office of Governor and Deputy Governor of a State. Section 35 of Decree No. 3 of 1999 specifically states that an election to the office of the F Governor of a State shall be held on a date to be appointed by INEC. Again, such powers and duties of INEC are to be exercised and performed from time to time as occasion requires. This is provided for in s. G 10(1) & (2) of the Interpretation Act, 1964, Cap. 192, Vol.10, Laws of the Federal Republic of Nigeria, 1990 as follows:

"10. (1) Where an enactment confers a power or imposes a duty, the power may be exercised and the duty shall be performed from time to time as occasion requires.

(2) An enactment which confers powers to do any act shall be construed as also conferring all such other powers as are reasonably necessary to enable that act to be done or are incidental to the doing of

it."

Issue 2 raised by the appellants cannot therefore arise once the conclusion is reached or a situation has arisen that the Governorship seat of a State is vacant. No one can successfully contest the mandate of INEC to hold an election into office. It was for the above reasons I dismissed this appeal on 14 May, 1999.

AYOOLA JSC

C I have had the privilege of reading in draft the reasons for judgment delivered by the Honourable Chief Justice of Nigeria. I agree with the reasons for decision which he gives and I gratefully adopt them. However, in view of the manifest importance of the issues raised in this D appeal, touching as it were on the approach of the court to its interpretive jurisdiction in constitutional adjudication, I would make some comments on some aspects of the issues, albeit not in as much details as the Hon. Chief Justice has already done. I am content to adopt his summation of E the background facts and of the arguments of counsel.

The main question raised by this appeal came before this court on a second appeal from the Court of Appeal which unanimously allowed an appeal from the decision of the Federal High Court. The Federal High F Court had granted the declarations sought by the appellants, Peoples Democratic Party " (1st Appellant") and Bonnie Haruna ("2nd Appel- G lant"), in terms that the first two respondents, Independent National Electoral Commission ("INEC") and The Resident Electoral Commissioner Adamawa State ("the Commissioner"), also respectively referred to as "the 1st and 2nd respondents" where convenient, were not entitled to be permitted by law to conduct a bye-election into the office of Governor of Adamawa State and that the 2nd appellant was by law entitled to be sworn in as Governor of that State.

H Upon his nomination by his party, the 1st appellant, as Vice Presidential candidate in the Presidential election held on 27th February, 1999, INEC by a letter dated 26th February, 1999 had written to Alhaji Atiku Abubakar, who together with his running-mate, the 2nd appellant, were

on 9th January, 1999 elected respectively, Governor and Deputy-Governor, of Adamawa State, to inform him that he having accepted to be a Vice Presidential candidate in the Presidential election then scheduled for 27 February, 1999 had ceased to be Governor Elect of Adamawa State, that the position was vacant, that as he had not been sworn in as the Chief Executive of the State, the Deputy-Governor elect could not automatically take over the position and that INEC therefore arrange for the conduct of a bye-election to elect the State Governor of Adamawa State. Aggrieved by the decision of INEC, the appellants commenced proceedings by originating summons seeking answers to several questions and the declaratory and injunctive reliefs which have been fully set out in the judgment of the Chief Justice of Nigeria. It had not been suggested that he had no standing to bring such action. No doubt, it must be taken to be common ground that his interest has been affected by the position taken by INEC.

The trial Judge, Auta, J., being of the view that the 2nd appellant was elected on the same conditions as the 1st appellant and that his election could not be unilaterally cancelled by INEC upheld the appellant's claim. He declared that INEC and the Commissioner were not entitled and permitted by law to conduct a bye-election into the office of Governor of Adamawa State and that the 2nd appellant was entitled to be sworn in as Governor. He granted consequential injunctive reliefs intended to carry into effect the declarations granted.

The respondents appealed to the Court of Appeal which upheld their appeal and set aside the judgment of the Federal High Court. Musdapher, JCA. who delivered the leading judgment of that court with which Coomasie, Bulkachuwa, Oduyemi and Datti Muhammed, JJCA, concurred, encapsulated the issues for determination as follows:

"(1) Whether in the circumstances of this case, there is a provision in Decree No.3 of 1999 which permits the 2nd respondent to be sworn in as governor of Adamawa State, if not

(2) Whether INEC has the legal right to conduct another election to fill in the vacuum created by abandonment of the mandate won by Alhaji Atiku."

Alluding to section 37(1) of the State Government (Basic Constitutional and Transitional Provisions) Decree 1999, ("the Decree") Musdapher, JCA, held that "No other circumstances except the death of the Governor will permit a Deputy Governor to replace the Governor elect under section 37(1)," He said:

"It is clear that it is only when the Governor dies before taking the oaths that the deputy can step in as Governor and take oath. Such a clear construction is not inconsistent with the other provisions of the Decree in question. Indeed had the legislature intended otherwise, it would have mentioned other incapacities which are enumerated under section 45(1) of the same Decree."

On the appeal to this court, arguments turned, largely, on the interpretation of the Decree. Learned counsel for the appellants, Chief D Chigbue, canvassed a liberal construction of the Decree while Mr. Mahmud and Mr Akpamgbo, SAN, respectively counsel for the first and second respondents and the third to fifth respondents, canvassed a literalist approach, focussing more on the question whether the words in section E 37(1) of the Decree are plain and unambiguous or not.

Subsection 1 of section 37 of the Decree provides as follows:

"If a person duly elected as Governor dies before subscribing the Oath of Allegiance and Oath of Office, the person elected with him as Deputy shall be sworn in as Governor and he shall nominate a new Deputy-Governor from the same Senatorial District as that of the deceased Governor who shall with the approval of the House of Assembly of the State be appointed as Deputy Governor."

Subsection 2 of section 37 of the Decree provides that :

"Where the persons duly elected as Governor and Deputy-Governor of a State die before the inauguration of the House of Assembly, the Commission shall immediately conduct an election for a Governor of the State in which the candidates shall be nominated from the same Senatorial Districts those that [produced the Governor and Deputy-Governor who have died."

By the Decree the only elected officers of the Executive arm of Government are the Governor and Deputy Governor. Notwithstanding

that the Deputy-Governor is deemed elected upon the election of the Governor, the Decree conferred on the person so deemed to be elected the statute of an elected officer of the executive. Section 37(1) of the Decree does not expressly prohibit the succession of the Deputy Governor elect to the office of Governor where the Governor Elect has declined to take that office. Section 37(2) does not authorise INEC to conduct an election for a Governor of the State except when there is a total failure of the election to the executive office of the state in the sense that none of the persons elected to hold that office is available, by reason of death, to hold the office. There is no express provision in either of the subsections as to what would happen should the eventuality that has arisen not be of the death of the persons elected as Governor or Deputy-Governor but of both of them or, as the case may be, the Governor elect becoming unwilling or unavailable to take and subscribe the Oath of Allegiance and Oath of Office ("Oaths of office"). It is the absence of express provisions in this regard that constituted a gap in the law.

The respondents have taken the position that such absence of express provision notwithstanding, the person elected Deputy Governor should not be sworn in as Governor, and have argued that INEC had the power to conduct fresh elections to the office of Governor. There being nothing in the Decree which expressly supports that argument, it can only be urged on the basis of implication. Similarly, it is also a matter of implication whether a person elected Deputy Governor should be sworn in as Governor in such circumstances. Before considering which implication is valid having regard to the rest of the Decree, it is convenient to make some prefatory remarks. First, an argument that the inability of the person elected to the office of Governor to take the oaths of office other than by reason of death leads to a vacancy in the office which can only be filled by the conduct of a fresh election is based on wrong premise as it only assumes that the Deputy Governor elect has no rights or say whatsoever in the matter. INEC by addressing its letter of 26th February, 1999 to Alhaji Abubakar Atiku seemed to have taken that position right from the onset. Secondly, the only circumstance specified by section 37(2) of the Decree, expressly, as empowering INEC to conduct an

election for a Governor after a subsisting election of the Governor and Deputy Governor was when both of them had died before the inauguration of the House of Assembly. Thirdly, no provision of the Decree stipulated that the tenure of office of the person elected Deputy Governor is dependent or conditioned on the person elected Governor taking his oaths of office. The Decree has failed to spell out explicitly a great deal that, with the benefit of a hindsight, would have been explicitly set out in the Decree. Consequently, no assistance can be derived from a literalist approach to the problem and no useful purpose is served by arguing that once the provisions of section 37(1) are plain and unambiguous the problem of making the Decree fulfil its purpose is solved. To argue that the words used in section 37(1) and section 37(2) are unambiguous and plain in their meaning does not provide a solution to the problem engendered by the manifest gap in the statute.

It is, in my opinion, expedient to put at the forefront of the approach to the problem a correct appreciation of the developing attitude of the courts to the scope of their interpretive jurisdiction. There is no gainsaying the fact that as far as the English common law is concerned the literal rule developed in the 19th Century continues to be, in a large number of situations, the dominant rule. Typical of the attitude of that era was the opinion of Lord Esher in R. v. Judge of the City of London Court (1892) 1 Q.B. 273 at 290 that:

"If the words of an Act are clear, you must follow them, even though they lead to a manifest absurdity. The court has nothing to do with the question whether the Legislature has committed an absurdity."

As recent as 1951 Lord Simonds in Magor and St. Mellons v. Newport Corporation (1951)2 All E.R. 839 was prepared to say:

"The duty of the court is to interpret the words that the legislature has used. Those words may be ambiguous, but, even if they are, the power and duty of the court to travel outside them on a voyage of discovery are strictly limited: see, for instance, Assam Railways & Trading Co. Ltd v. Inland Revenue Commissioners (1935) A.C. 445:"

In passing, it may well be noted that the words of Lord Simonds, as indeed the principles which he was espousing, are not to be treated as

engraved on a tablet of stone, indelible and irreversible. The opinion of Lord Simonds is now to be read in the light of the case of Pepper v Hart (1983) 1 All E.R. 42 heard by a House of Lords consisting of seven Law Lords (of whom one dissented) which shows that judges in order to find the intention of parliament, can now consult Hansard to construe the meaning of words used in an enactment. B

Later rules of interpretation which have, emerged in the English common law are the "golden rule" and the "mischief rule". I have deliberately used "English common Law" because it cannot be said that all common law jurisdictions have a uniform approach to interpretation of statutes. The interpretive approach of English law, until recently virtually language and tradition bound, is not the same as the interpretive approach of the American legal system which is purposive or as that of the Indian legal system which in aspects of constitutional adjudication often tends to be purposive and creative. C D

The golden rule permits modification of the literal sense of the words of the statute where adherence to the literal sense would lead to absurdity. To that extent it is a shift from the literalist approach to interpretation of statutes. The golden rule permits the grammatical and ordinary sense of the words used in a statute to be modified so as to avoid absurdity and inconsistency which adherence to the grammatical and ordinary sense of the words would lead to. (See Grey v. Pearson (1857), 6 H.L.C. 61 at p 106, per Lord Wensleydale.) The mischief rule, as noted by Professor Cross, may be adopted when: F

"The facts of a case may be such that, although there is no room for serious argument about the literal meaning of the words of a statute, and although an application of those words would not produce an absurdity, the result will plainly be contrary to the purpose of the legislation in question." (See Cross: *Precedent in English Law* (1961) p. 182). G

As early as 1584 it was laid down in Heydon's case (1584), 3 Rep. 7a that: H

"..... the office of all the judges is always to make such construction as shall suppress the mischief and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief,

and Pro privato commodo, and to add force and life to the cure and remedy, according to the true intent of the makers of the act, pro bono publico."

Although references have been made to these rules of interpretation, It is well to bear it in mind that the so-called rules are guides. It is wise to recall the view expressed by Lord Du Parq in Cutler v. Wandsworth Stadium Ltd (1949) 1 All E.R. 544, 550 that:

"It must be remembered, however, that the courts have laid down, indeed, not rigid rules, but principles which have been found to afford some guidance when it is sought to ascertain the intention of parliament."

Every legal system fashions its own approach to interpretation. In my view, the guidelines afforded by the so-called rules of interpretation developed in England should be adopted and applied here with a good deal of discernment and after an appreciation of the factors and reasons that shaped them. It is well to note that literalist approach to statutes in England is the product of a combination of factors prominent among which are: historical factors too numerous to enumerate in this judgment but which have been usefully summarised in Dias: Jurisprudence, 4th Edition, pp 222 - 224; the abundance of details in ,modern English statutes which influenced the attitude of English courts to cassu omisus; the character of statutes which came for interpretation in the formative period of the rules; the fact that in consonance with the nature of the common law, principles of interpretation themselves continue to grow and are subject to modification and relaxation attributable to several factors, some of which in recent times must be attributed to the demand of U.K.'s membership of the European Union and consequently, the exposure of the English legal system to the influence of the approach of continental civil law countries to interpretation; and, significantly, the fact that the English courts are seldom concerned with the interpretation of statutes which are constitutional. The laws of the constitution in English being largely part of the common law, the English court does not have much need to divine the spirit of a written constitution in order to do justice in constitutional adjudication. It is for these reasons that I, for my

part, will shorn uncritical reliance on the guidelines that may be gathered from English decisions without carefully advert to the factors which shaped the English approach and considering whether they, or, which of them, are relevant to our legal system so as to allow them to influence our approach. I do hasten to add that there is much to be gained in following the English guidelines in the interpretation of documents and of statutes in private law and even, of statutes in public law which are not constitutional in nature. Nevertheless, I am of the firm belief that to adopt the same guidelines lock, stock and barrel, as it were, in the interpretation of statutes of a constitutional nature in our legal system is to ignore the written nature of our constitution in which condescension to details is unusual, if not impossible.

For my part, I venture to think that when we, in interpretation of our written constitution, insist on liberal or purposive interpretation, the approach which translates that attitude into practical significance should, in the few cases such as the present one, where occasion demands it, be nearer the European approach described by Lord Denning with undisguised admiration and acceptance in Buchanan and Co. Ltd v. Babco For-warding and Shipping (UK) Ltd (1977) 2 W.L.R. 107, 112 as follows:

"They adopt a method which they call in English by strange words - at any rate they were strange to me - the 'schematic and teleological' method on interpretation. It is not really so alarming as it sounds. All it means is that the judges do not go by the literal meaning of words or by grammatical structure of the sentence. They go by the design or purpose which lies behind it. When they come upon a situation which is to their mind within the spirit - but not the letter - of the legislation, they solve the problem by looking at the design and purpose of the legislature - at the effect which it was sought to achieve. They then interpret the legislation so as to produce the desired effect. That means they fill in gaps, quite unashamedly, without hesitation. They ask simply: what is the sensible way of dealing with this situation so as to give effect to the presumed purpose of the legislation? They lay down the law accordingly. If you study the decisions of the European court, you will see that they do

it every day. To our eyes - shortsighted by tradition - it is legislation, pure and simple. But to their eyes, it is fulfilling the true role of the courts. They are giving effect to what the legislature intended, or may be presumed to have intended. I see nothing wrong in this . Quite the contrary. It is a method I advocated long ago in Seaford Courts Estates Ltd v. Asher (1949) 2 K.B. 481, 498 - 9. It did not gain acceptance at the time. It was condemned by Lord Simonds in the House of Lords in Magor and St Mellons Rural District Council v. Newport Corporation (1952) A.C. 189, 191, as a 'naked usurpation of the legislative power'. But the time has come when we should think again."

Lord Roskill in that case agreed with Lord Denning.

A result which may not be too different from the continental approach described above is arrived at by a liberal and purposive use of construction by implication, where the true intention of the lawmaker will be given effect to notwithstanding the omissions by the draftmans of the law to state in express words the intention of the lawmaker. There was occasion to do that in The Attorney General v. Jobe (Privy Council Appeal No 37 of 1982 - Judgment delivered by Lord Diplock on 26 March, 1984) in which the Privy Council in an appeal from the Court of Appeal of the Gambia (per Lord Diplock) having observed that:

"The draftmanship of those provisions of sections 8 and 10 of the Act, which their Lordships have just been examining, is characterised by an unusual degree of ellipsis that has made it necessary to spell out explicitly a great deal that is omitted from the actual words appearing in the sections and has to be derived by implication from them.",
went on to say:

"Where as in the instant case, omissions by the draftsman of the law to state in express words what, from the subject matter of the law and the legal nature of the processes of institution which it deals, can be inferred to have been parliament's intention, a court charged with the judicial duty of giving effect to parliament's intention, as that intention has been stated in the law that parliament has passed, ought to construe the law as incorporating , by necessary implication, words which would give effect to such inferred intention, wherever to do so does not contra-

dict the words actually set out in the law itself and fail to do so would defeat parliament's intention by depriving the law of all legal effect."

In deciding the case at hand, resort to the literalist approach is neither desirable nor helpful. Recourse to foreign decisions in which such approach has been adopted, with out regard to history, legal tradi- B
tion and the character of the law or statute concerned in such cases can be misleading. There are enough cases in our jurisdiction which show that where constitutional interpretation is concerned a flexible and liberal approach is to be preferred. A good deal of these cases have been men- C
tioned in the judgment of the Honourable Chief Justice of Nigeria. Con-
ception of a purposive and liberal approach should not be limited to giv-
ing an extended meaning to words, though that may be part of it where it
meets the occasion, but also should be one in which the court looks at
the whole statute and gives effect to the norms that are express or im- D
plicit in and can be discovered within the four concerns of the statute
itself.

Before I proceed with a further consideration of the matter at
hand, it is convenient to say at this stage that the maxim expressio unius E
est exclusio alterius relied on by Mr. Mahmud as part of his argument is
merely a presumption and not a rule of law. Like all presumptions largely
founded on commonsense, it is a mere aid to interpretation. In this case,
the maxim when applied to section 37(1) of the Decree is capable of F
producing results favourable to the respondents, while when applied to
section 37(2), it produces different result, this time in favour of the ap-
pellants, with the result that when applied to those several provisions at
the same time a deadlock result . Subsection 1 of section 37 of the G
Decree did not expressly provide that the Deputy Governor elect shall be
sworn in as Governor other than if the Governor elect died before sub-
scribing the oaths of office. Similarly, subsection 2 of section 37 did not
expressly provide that INEC shall conduct an election for a Governor of H
a State other than where the persons elected Governor and Deputy have
both died before the inauguration of the House of Assembly. If the De-
cree is read as a whole it will readily be seen that this is a case in which
the maxim offers no assistance.

The Decree in several of its provisions stated the occasions in which INEC was empowered to conduct elections for Governor. These are as provided in section 37(2), and section 45(2). Where an election Tribunal has nullified an election pursuant to section 137(1) of the Decree an occasion would also have arisen for INEC to conduct an election. An occasion to conduct an election must arise according to specific provisions of the Decree first before INEC can fix a date for an election to be held pursuant to section 35 which does not itself specify the occasions when an election can be held. There is nothing in the Decree which empowered INEC to conduct an election in such circumstance as arose in this case. Consequently, the respondents were driven to seek refuge in section 4(1) of Decree No. 17 of 1998 as amended by Decree No. 33 of 1998 which describes the functions of INEC as being to organise, conduct and supervise elections inter alia into the office of Governor and Deputy Governor of a State "as may be specified in any enactment of law." It is evident that the power to organise, conduct and supervise elections neither includes the power to determine when an occasion would arise for the exercise of that power, nor the power to render an election of a person to an office under the constitution as of no effect. That was why the sections of the Decree which I have referred to, took pains to spell out when INEC should conduct an election for governor and Deputy Governor. It is also clear that nothing in the Decree gave power to INEC to declare vacancies in the offices of Governor and Deputy Governor after an election has been duly held.

The question is how best to construe the Decree as a whole in order to fulfil its design and purpose as intended by the lawmaker. The office of the Deputy Governor is created by section 40 of the Decree. It is clear from the provisions of sections 36 and 41(2) of the Decree that the tenure of office of the Deputy Governor is not dependent on that of the Governor. The manifest scheme and spirit of the Decree in so far as the offices of the Governor and the Deputy Governor are concerned, is to provide against a gap in the executive office of the State, except it is inevitable by reason of a vacancy occurring in both elective offices at the material time. This, in substance, is the essence and intendment if sec-

tions 37(1); 44 and 45(2) of the Decree.

A reasonable legislature would have been amazed if it had been told that although the Deputy Governor was fit to be sworn in as Governor if the Governor elect had dropped dead an hour to the time he could have subscribed the oaths of office, he was not fit to be sworn in if the same Governor elect, instead of dropping dead, had chosen to terminate his desire to be a Governor. The distinction between the consequence of a Governor elect dying and his refusing to assume office which we are urged to imply seems to me not to have any rational basis. It will not be right to imply that the legislature would have legislated an irrational distinction. Where there are no gaps in the statute and the words are plain, the irrationality or absurdity of a statute may not be the concern of the court. However, where there is occasion for the court to resort to implication, the court should not hold as implicit in a statute, that which is irrational, unreasonable, absurd or inconvenient.

In my view, the respondents can only feel comfortable with the position they canvassed on this appeal by ignoring the rights of the person elected as Deputy Governor and the provisions of sections 41 (1) and 96 (1) (k) of the Decree which make it mandatory for a candidate for the office of Governor to nominate from a Senatorial District other than his own, a running mate for the office of Governor. The result is that where there was an elected Deputy Governor with a right to be sworn in as such, there cannot be an election for the office of Governor.

Certain propositions are fundamental to our laws and our system of justice. One is that a person whose rights and interests are likely to be affected by a decision must be heard before a decision is taken. Another is that statutes should not be lightly presumed to have taken away a legal right. The 2nd appellant who was deemed to have been elected Deputy Governor cannot be deprived of that office by a fiat of INEC without express provision of the Decree empowering INEC so to do, nor would it be right to presume that the intention of the Decree is that in the event that had happened he should by reason of the act of the Governor Elect declining to be sworn in as Governor, be deemed also to have abandoned his right, implicit in the Decree, to embark on his

tenure, at least as Deputy Governor. For my part I am unable to accept as correct or just an interpretation of the Decree or a reading into the Decree by implication, anything that would work injustice to the person elected Deputy Governor. The fallacy in the position taken by the respondents is in assuming that the Governor and the Deputy Governor swim or sink together for all purposes. It is clear from the provisions of the Decree that although they may swim or sink together for the purposes of winning an election, once they have swam to the shore of electoral victory, they map out their independent fortunes which may include one of them deciding not to take the office to which he had been elected. Had the legislature wanted them to swim or sink together for all purposes express provisions would have been made to that effect.

The absence of any provision empowering INEC to conduct an election for Governor when a Deputy Governor was alive and had not declared an intention to renounce the executive office to which he has been elected and the retention of the provisions of section 41 (1) and section 96 (1) (k) without any modification as a qualification to be by a governorship candidate, raised a clear implication that the intention of the legislature was not to have an election to the office of Governor as long as there existed someone who could by his being elected Deputy Governor step into office of the Governor. I cannot read section 41(1) and 96 (1) (k) as implying that a person who has been elected to the office of Deputy Governor should be deprived, at least, of the right of occupying that office. In my view, where a statute is capable of being read as upholding and preserving a right, it should not be read as taking away such right in the absence of express provisions to that effect.

Were the legislature to put its intention into words in such a situation as has arisen in this case there is no doubt, judging from the rest of the Decree in relation to the office of the Deputy Governor, that it would have provided that the Deputy Governor should be sworn in as Governor if for any reason the Governor elect could not assume office. It is evident that the desire to be sworn in as Governor could "die" by reason of physical death of the person elected as by his voluntary choice as had happened in this case. The whole tenor of the Decree, as has been

said, is to ensure, as far as possible, that there is always someone to assume or occupy the executive office of the State. That was why the office of the Deputy Governor was created. To construe the Decree as depriving the Deputy Governor elect not only of the expectation that he would be the person to be sworn in as Governor should the Governor B elect decline to be sworn, but also of occupying even the office to which he has been elected is to impute what is unreasonable to the legislature.

In the course of his oral argument before this court, Mr. Mahmoud, learned counsel for the 1st and 2nd respondents submitted that the 2nd appellant had no right. If he is understood as suggesting that C a person who has won an election has no right which the law will protect, then,, I feel no hesitation in holding that he is wrong. There are various classes of rights. There are proprietary rights and non-proprietary rights. There are rights protected by private law as well as rights D protected by public law. A person who is elected to an office acquires a right protected by public law to assume that office. It is a right which only person elected have and which a person not elected does not have. It can only be taken away by clear and express provisions of the law. E Any proposition that a person elected to a political office, such as that of the Deputy Governor which is relevant to this case has no right, is not only fallacious but dangerous to the democratic process. To say that such person has no enforceable right to assume that office would strike F at the very root of democracy and render the process of election a sham. A statute should not be read as impliedly removing a right which it had itself created. In this case, the Decree which has set out in several of its provisions the incidents of an election to the office of Deputy Governor, G cannot be interpreted as nullifying such incidents when there is no express provision to that effect. One of those incidents is that the person elected is entitled to commence his tenure of office. In my view, from the totality of the provisions of the Decree, discerning the spirit of the Decree therefrom, and considering the character of the Decree as one H dealing with an important aspect of governance of the State in which a deadlock is undesirable, it was clear that this was a case in which, it was implicit in the Decree that to give efficacy to the Decree the Deputy

Governor elect should be sworn in as Governor where the desire of the Governor elect to assume office had been terminated not only by physical death but also by other reasons, voluntary or involuntary, other than an annulment of the election by law as expressly provided in the Decree.

B The necessary concomitant of the 2nd appellant's right to retain his office as Deputy Governor was that he should be sworn in as Governor in such eventuality as has happened in this case.

 It was for these reasons and the fuller and more detailed reasons
C given by the Honourable Chief. Justice of Nigeria, that I too allowed the appeal on the 14th day of May, 1999.

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