

SUPREME COURT OF NIGERIA
FRIDAY 27TH JUNE, 2003. SC. 116/2003
CORAM:- S. M. A. BELGORE, A. I. KATSINA-ALU,
U. A. KALGO, S. O. UWAIFO, E. O. AYOOLA,
N. TOBI, D. O. EDOZIE, JJSC

1. GENERAL MUHAMMADU BUHARI APPELLANTS
2. ALL NIGERIA PEOPLES PARTY (ANPP)
AND
1. ALHAJI MOHAMMED DIKKO YUSUF
2. MOVEMENT FOR DEMOCRACY AND RESPONDENTS
JUSTICE (MDJ)
-

ELECTION PETITIONS - Joinder of parties - Loser in election - Such person need not be joined as respondent - Merely because petitioner has allegation against him (H1)

STATUTES - Interpretation - Ejusdem generis - The rule is used to confine the scope of general words which follow special words - Within the genus of those special words (H2)

ELECTIONS - Statutes - Ejusdem generis rule - Application - Electoral Act s.133(2) - The rule is inapplicable to the section - As its application will be unduly restricting the scope of the section (H3)

ELECTION PETITIONS - Nature of - Election petition proceedings are sui generis - Hence special provisions made in the Constitution for such petitions - Must be complied with (H4)

ELECTION PETITIONS - Filing - Right of - Electoral Act s.133(1) - Filing of the petition can only be by election candidate(s) - Or by political party that participated in the election (H5)

ELECTION PETITIONS - Filing - Multiple respondents - Propriety - Such respondents must each have been returned in the particular election - Since it is only the return of a candidate that can be questioned under Electoral Act s.131 (H6)

FACTS

This appeal arose from an election petition in respect of the presidential election held on 19th April, 2003, which petition was at the Election Tribunal constituted by Court of Appeal, Abuja Division. The petition was filed by Alhaji M.D. Yusuf and the Movement for Democracy and Justice (MDJ), a political party on the platform of which Yusuf contested. Apart from making Chief Olusegun Obasanjo the 1st respondent, petitioners also joined 1st and 2nd appellants as 3rd and 4th respondents respectively notwithstanding that 1st appellant, who had contested the election on the platform of 2nd appellant political party, had lost in the election. 1st and 2nd appellants, as 3rd and 4th respondents in the proceedings at the tribunal, applied to be struck off the petition on the ground that their joinder offended the provisions of S. 133(2) of the Electoral Act 2002. They argued that they were not necessary parties as envisaged by the provision.

For the respondents, as petitioners, it was argued that since the petition sought the nullification of the entire election, all the parties that scored votes at the election were necessary parties. The tribunal upheld the argument of respondents and refused the application of appellants. Aggrieved, appellants filed appeal at Supreme Court.

ISSUE FOR DETERMINATION

“Whether the appellants were properly joined in the petition.”

HELD (Unanimously allowing the appeal per UWAIFO JSC)

ELECTION PETITIONS - Joinder of parties - Loser in election

1. It is no warrant for bringing in a candidate who lost an election as a respondent because the petitioner has some allegation against him which he wishes to use in his petition as a weapon; or for retaining such candidate in the petition because of the principle of audi alteram partem, so that he would be heard in defence of the allegation. It is basic that the issue of a right to fair hearing for a party will not arise unless there has been compliance with Section 133(2) of the Act which ensures that he is a necessary party. That means, of course, that no allegation can be allowed to be pleaded or made against a person if he is not a necessary party to the petition, or someone who

will need to be called as a witness. But if he is a necessary party, it would offend against the rule of natural justice to dispose of the question involved in a manner to affect his interest without giving him an opportunity of being heard. That was the sense it was reasoned in election petitions, first by Obaseki, JSC., in the case of Obih v. Mbakwe (1984) 1 SCNLR 192 at 204; and later by Belgore, JSC., in the case of Egolum v. Obasanjo (1999) 5 S.C. (Pt. II) 1; (1999) 7 NWLR (Pt. 611) 355 at 397. (p. 1914 B)

STATUTES - Interpretation - Ejusdem generis rule

2. Ejusdem generis rule is an interpretative rule which the court would apply in an appropriate case to confine the scope of general words which follow special words as used in a statutory provision or document within the genus of those special words. In the construction of statutes, therefore, general terms following particular ones apply only to such persons or things as are ejusdem generis with those understood from the language of the statute to be confined to the particular terms. In other words, the general words or terms are to be read as comprehending only things of the same kind as that designated by the preceding particular expressions, unless there is something to show that a wider sense was intended. (p. 1917 E)

Statutes - Ejusdem generis rule - Application

3. I am unable to accept the argument that the ejusdem generis rule will be of help in the interpretation and proper understanding of Section 133(2) of the Act.

It seems to me that if the ejusdem generis rule were to be applicable, then the expression “any other person who took part in the conduct of an election” would have to be restricted to the INEC officials who took part in the conduct of an election. In my view, such restriction could not be justified in the case, for example, of a police officer who was assigned the duty to ensure orderly, peaceful and free conduct of an election in a constituency but assisted instead to stuff ballot boxes with unlawful ballot papers. He is a necessary party who by his role in the conduct of the election can be made a respondent even though not an INEC official because he reasonably falls into the category of “any other person who took part in the conduct of an election.” That category of persons can be identified from the mere understanding

of that phrase without necessarily linking them with INEC officials, or without their being INEC officials through the ejusdem generis rule application. (p. 1918 A / D)

ELECTION PETITIONS - Nature of

B 4. An election petition is heard and determined by an appropriate election tribunal as usually provided by the Constitution. In the 1999 Constitution, such provision is made under Section 285 and the Sixth Schedule to the Constitution. The procedure is largely governed by
C a law made specially to regulate the proceedings. The jurisdiction of an election tribunal to deal with election petitions is of a very special nature different from that in an ordinary civil case.

It is plain that the proceedings are special for which special provisions are made under the Constitution.

D So an election petition is neither seen as a civil proceeding in the ordinary sense nor, of course, a criminal proceeding. It can be regarded as a proceeding sui generis.

It is imperative that in the present petition, the procedure laid down in the Act be strictly complied with except to the extent that it is relaxed or waived under paragraph 49(1) of the First Schedule to
E the Act. (p. 1919 B/ G)

ELECTION PETITIONS - Filing - Right of

F 5. Section 133 which I earlier reproduced provides in subsection (1) for persons who may present a petition. It is either one or both of (a) a candidate at an election; (b) a Political Party which participated at the election. No other person may do so. In the same vein, those who shall be joined to defend the petition in accordance with subsection (2) are the persons whose election (or return) is complained of, referred to as the respondent and any of the INEC officials mentioned in the
G subsection or any other person who took part in the conduct of the election, and in either case the petition complains of their conduct of the election. All such persons are regarded as the statutory respondents, and who only, in my view, qualify as the necessary parties. I think even a cursory reading of *Obih v. Mbakwe* (supra) at p. 204, A-B and *Egolum v. Obasanjo* (supra) at 397 B-C must reveal a total
H support for this view. (p. 1920 A)

ELECTION PETITIONS - Filing - Multiple respondents - Propriety
 6. This provision envisages that the inclusion of such multiple “re-
 spondents” in the same petition shall be deemed to have made the
 election petition a separate petition against each of the respondents.
 But by Section 131(1) of the Act, it is only an election or return of a
 candidate that can be questioned by a petition in which the person B
 elected or returned is joined as a party. See also Section 133(2)
 which talks of the person whose election is complained of; it is such
 a person that is referred to as the respondent. It is therefore clear that
 the deemed separate petition arising from the operation of paragraph C
 45 of the First Schedule to the Act must be in regard to each of the
 respondents elected or returned in the election in question. Such will
 normally happen only where multiple candidates within the same
 electoral area are returned or elected in their respective constituen-
 cies, for example National Assembly candidates. A petitioner, say, D
 a Political Party which participated in the election may file a single
 petition against those elected or returned candidates but the election
 petition “shall be deemed to be a separate petition against each of the
 respondents.” Otherwise, how can an election petition be deemed E
 to be against each or any of the respondents who lost the election?
 What would the cause of action of the petitioner be based on if he
 were to file or be deemed to have filed a separate petition against a
 candidate who did not win an election? (p. 1921 D)

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NOTABLE POINTS OF INTEREST

BELGORE JSC

1. “Other person” means those who partook in the conduct G of the election

The construction of Section 133(2) of Electoral Act (set out earlier
 in this judgment) can be as follows:

- The respondent to an election petition can be H
- (i) the person whose election is complained of,
- (ii) the Electoral Officer, the Presiding Officer, the Returning
 Officer whose conduct is complained of at the election,
- (iii) any other person who took part in the conduct of the

election whose conduct is complained of. (Emphasis is mine)

I believe what beclouds the stance of the petitioner is the last leg as enumerated above. While it is clear the declared winner of the election may be a respondent or any or all the electoral officials, “any other person” in (iii) above may create problem as it has done in this case. But viewed dispassionately in the election process in this country that “other person” may be the police or other security agents deployed to maintain law and order during the election. The 3rd and 4th respondents, now appellants, were not more than candidates at the election, as such candidates, the election was conducted to decide their fate in it by INEC and its officials. The two, by no stretch of imagination, cannot be regarded as conducting the election but were only contesting the election. (p. 1929 A)

KALGO JSC

2. Court lacks jurisdiction over a party not properly joined

I agree with and I am bound by the decision in Egolum’s case that where allegations are made against a party in a case, he should be given a hearing on the principle of audi alteram partem, before any decision is taken on it. This principle is enshrined in our 1999 Constitution in S. 36, but my view here is that that party concerned must be a proper party. If the so called party is not legally or properly joined, whatever allegations are made against him or her are irrelevant, because basically the court has no jurisdiction over him or her even in a case where he or she consented to be a party. Therefore having held earlier that the appellants are not proper parties to the petition of the respondents, it is not incumbent upon them (the appellants) to defend any allegation made against them in the petition, and so it was useless to afford them any opportunity to defend themselves. The only order which should properly be made was to strike them out as respondents from the petition. The Court of Appeal was therefore wrong in my view to leave them as respondents to the petition. (p. 1937 B)

AYOOLA JSC

3. A looser is not necessary party to petition for nullification

Since the purpose of an election petition is to question the election of a candidate, it stands to reason that the person whose election is

questioned; and, where the conduct of officers or persons who took part in the conduct of the election is complained of, as part of the challenge of the election of the candidate, such as well, are, without doubt and in all circumstances, necessary parties, as respondents, to the petition. An unsuccessful candidate, primarily, has no interest to defend in an election petition, the primary purpose of which is the nullification of the election of the successful candidate. There seems to me, therefore, to be ample justification for a reading of Section 133(2) of the Act that leads to the conclusion that an unsuccessful candidate is neither a necessary, nor an indispensable party to an election petition having regard to the issues that would properly arise for determination in such proceeding, provided that all that is sought by the petition is a nullification of the election of the candidate declared as elected. (p. 1940 H)

4. The relief may dictate other respondents outside S. 133(2)

However, the Act empowered the tribunal or court to grant a consequential relief in certain circumstances by virtue of Section 136(2) of the Act which provides as follows:

“If the Tribunal or the court determines that a candidate who was returned as elected was not validly elected on the ground that he did not score the majority of valid votes cast at the election, the Election Tribunal or the court, as the case may be, shall declare as elected the candidate who scored the highest number of votes cast at the election and satisfied the requirements of the Constitution and the Act.” (Emphasis mine)

Should the petitioning unsuccessful candidate claim the seat on the ground that he, and not the person who appeared to have scored the highest number of valid votes, should be declared elected because the latter had failed to satisfy the requirements of the Constitution and the Act, could he have been precluded from raising the issue of the disqualification of the latter simply because the latter, an unsuccessful candidate, was not within the class of persons who are specified as necessary respondents by Section 133(2) of the Act? If he could not be precluded, how would the tribunal or the court determine the question without making the latter a party, if only to answer that limited issue? These are real problems which, although not arising in this case, in my opinion, makes it unsafe to make a

dogmatic and conclusive pronouncement that in all cases only the persons mentioned in Section 133(2) could be made a respondent to an election petition. I think this court should reserve a discretion to the tribunal or the court to determine what meets the justice of each case by drawing a distinction between a necessary party, so prescribed by the Section 133(2) of the Act, and a necessary party, so determined by the tribunal or the court and permitted or ordered to be joined at the discretion of the Tribunal or the court in consequence of the consequential relief that the tribunal or the court is enjoined to grant in the case, in the circumstances specified in Section 136(2) of the Act. (p. 1942 G)

5. S. 136(2) – Wideness of provisions

I have adverted to these problems arising from Section 136(2) to show that this court should not be hasty in holding that Section 133(2) excludes every other person from being made a party to an election petition regardless of the circumstances. Undoubtedly, Section 136(2) had been couched in wide terms and appears to have left a few questions unanswered. For instance, was the intendment of the makers of the Act that the subsection should apply only where the petitioning candidate claims the seat for himself as “the candidate who scored the highest number of votes cast at the election”, even though Section 134(1)(c) permitted him to question the election merely on the ground, among others, that “the respondent was not duly elected by majority of lawful votes” and even though the consequence of establishing that ground is a declaration under Section 136(2), if the candidate with the highest number of valid votes cast at the election satisfies the conditions set out in that subsection. Should a candidate be declared as elected pursuant to Section 136(2), notwithstanding averments of incompetence in the petition, what other avenue of questioning such declaration is available to the STOP petitioner after the period of challenging an election under Section 132 would have elapsed, thirty (30) days “from the date the result of the election was declared”, and, after the tribunal or court is deemed to have satisfied itself that the candidate so declared had not only scored the highest number of valid votes cast at the election, but had also satisfied the requirements of the Constitution and of the act, contrary to any averment in the petition that he had not? (p. 1945 F)

EDOZIE JSC

6. Schedules cannot override the plain words of a statute

In seeking to interpret a particular section of a statute or a subsidiary legislation one does not take the section in isolation but one should approach the question of the interpretation on the footing that the section is part of a greater whole: B

However, in *F.C.S.C. v. Laoye* (1989) 4 S.C. (Pt. II) 1; (1989) 2 NWLR (Pt. 106) 652 at 711, it was held that schedules, tables and forms are useful in the interpretation of provisions in the body of a statute. In cases of ambiguity, they become useful handmaids to interpretation. But they will not override the plain words of the statute. If there is any contradiction, the enacting clause will prevail. It would be quite contrary to the recognised principles of construction of statutes to restrain the operation of clear and unambiguous words or sections by reference to what appears in a schedule, table or form. C
(p. 1966 A) D

REPRESENTATION

Chief M. I. Ahamba, SAN, with E. Etteh, Esq., M.S. Shuaib, Esq., and Y. J. Yowika (Mrs.) and Dr. Ladan), for the Appellants E
A.J. Owonikoko, Esq., with Felix Eki, Esq., and K.C. Olawoyin, Esq.), for the Respondents

CASES REFERRED TO F

Nwobodo v. Onoh (1984) 1 S.C. 195
Ogbuayinya v. Okudo (1979) 6-9 S.C. 32
Onitiri v. Benson (1960) SCNLR 314
Savage v. Uwechia (1972) All NLR 255 G
Ojokolobo v. Alamu (1987) 3 NWLR (Pt. 61) 377
Ombu v. NEC (1988) 5 NWLR (Pt. 94) 323
Okunola v. Ogundiran (2003) 1 WLRN (Pt. 1) 79
Jamal Steel Structures Ltd. v. ACB (1973) NSCC 619
Bronik Motors Ltd. v. Wema Bank Ltd. (1983) 14 NSCC 266 H
Laoye (1989) 4 S.C. (Pt. II) 1; (1989) 2 NWLR (Pt. 106) 652
Unibez (Nigeria) Ltd. v. ACB Ltd. (2003) 6 NWLR (Pt. 816) 402
Egolum v. Obasanjo (1999) 7 NWLR (Pt. 611) 355
Salami v. Chairman L.E.D.B. (1989) 12 S.C. 177

1912 Buhari v. Yusuf (2003) 6 KLR Uwaifo JSC
Aqua Ltd. v. Ondo State Sport Council (1988) 10-11 SC 31

STATUTE & RULES REFERRED TO

Electoral Act 2002, ss. 133, 134 and paragraph 49 of 1st Schedule
Federal High Court (Civil Procedure) Rules, O. 12 r. 1

B Supreme Court Rules, O. 2 r. 1, & O. 8 r. 2

LEAD JUDGMENT BY UWAIFO JSC

C There is an election petition in respect of the presidential election held on 19th April, 2003, pending at the Election Tribunal constituted by the Court of Appeal, Abuja Division, hereinafter referred to as “the Tribunal”. The petition was filed by Alhaji Mohammed Dikko Yusuf and the Movement for Democracy and Justice (MDJ), a registered political party. Alhaji Yusuf contested the presidential election under the MDJ party and lost.

D Apart from making Chief Olusegun Aremu Okikiola Obasanjo who was elected or returned at the election as the 1st respondent, the petitioners also joined as 2nd, 3rd and 4th respondents respectively the Peoples Democratic Party (PDP), the party under which Chief Obasanjo contested, General Muhammadu Buhari who contested
E the election but was not returned and the All Nigeria People’s Party (ANPP), a party under which General Buhari contested. In addition, all the other 17 candidates who contested and lost together with their respective parties and the Alliance for Democracy (AD) which
F fielded no candidate at the presidential election were joined as the 5th-39th respondents respectively. Furthermore, the Independent National Electoral Commission (INEC), the Chairman of the Commission (Dr. Abel Guobadia, as Returning Officer), and the Resident Electoral Commissioners in 14 of the States of Nigeria were joined as the 40th-55th respondents. Finally, one Dr. Ndidi Okereke-Onyiuke
G described as Co-ordinator, Corporate Nigeria, was joined as the 56th respondent.

H General Buhari and the ANPP as 3rd and 4th respondents in the proceedings at the Tribunal applied to be struck off the petition on the ground that their joinder offended the provision of Section 133(2) of the Electoral Act, 2002, (the Act). They argued that they were not necessary parties as envisaged by that provision. The record of proceedings shows that against that contention, the substance of

the petitioners' argument was stated thus, inter alia:

"We are opposing the application because in an election petition in which the entire election is sought to be voided, all the parties that score votes in the election are necessary parties to the petition.... If we do not join the 3rd respondent in this petition in the event that election of 1st respondent is voided, then the court will look for the person who scored the highest votes next, which is the 3rd respondent. We cited the 3rd respondent in our petition in paragraph 17 ... I urge the court to hold that the present election in which 19 candidates contested, each of them recording votes, a petition seeking to void the entire election is directed not solely at the winner, but also other candidates. They should therefore be made parties, particularly in this case where there is a complaint against the 3rd respondent."

The Tribunal appeared to have found the petitioners' argument valid. It held that since the petition contained allegations against the 3rd respondent, there was an issue of fair hearing involved, having regard, in particular, to a prayer sought against him, which the Tribunal thought would make the 3rd and 4th respondents proper parties to the petition, and which reads as follows:

"WHEREFORE your Petitioners pray jointly and severally that-

(3) IT MAY BE DETERMINED that a FRESH ELECTION be held (excluding the 1st and 3rd Respondents and their political parties who are disqualified from being fielded or from sponsoring candidates as the case may be by reason of their disqualification and contravention of the Electoral Act, (2003) in accordance with the provision of the Electoral Act, 2003". (sic: 2002).

In the ruling by Abdullahi, PCA., the learned President held that "to respect the time honoured principle of audi alteram partem, the 3rd respondent ought to be given opportunity to defend the assertions made by the petitioner in paragraph 17 of the petition. In the same ratio, the 4th respondent ought to remain a party since it sponsored the 3rd respondent, particularly in view of the..... prayer being sought by the petitioner in paragraph 3 of the petition." The Tribunal refused to strike out the said paragraph 17.

It is no warrant for bringing in a candidate who lost an election as a respondent because the petitioner has some allegation

against him which he wishes to use in his petition as a weapon; or for retaining such candidate in the petition because of the principle of audi alteram partem, so that he would be heard in defence of the allegation. It is basic that the issue of a right to fair hearing for a party will not arise unless there has been compliance with Section B 133(2) of the Act which ensures that he is a necessary party. That means, of course, that no allegation can be allowed to be pleaded or made against a person if he is not a necessary party to the petition, or someone who will need to be called as a witness. But if he is a C necessary party, it would offend against the rule of natural justice to dispose of the question involved in a manner to affect his interest without giving him an opportunity of being heard. That was the sense it was reasoned in election petitions, first by Obaseki, JSC., in the case of Obih v. Mbakwe (1984) 1 SCNLR 192 at 204; and later by Belgore, JSC., in the case of Egolum v. Obasanjo (1999) 5 S.C. (Pt. D II) 1; (1999) 7 NWLR (Pt. 611) 355 at 397. In the former case, the question arose whether an incumbent Governor could be proceeded against as the respondent in an election petition since Section 267 of the 1979 Constitution gave him immunity against civil or criminal proceedings. In reacting to a submission in that regard, after Obaseki, E JSC., recited Section 121(2) of the Electoral Act 1982 (similar to Section 133(2) of the Act in question in this appeal), he said:

“It is clear from this Section 121(2) of the Electoral Act 1982 that the 1st respondent being the successful candidate is not the only F statutory respondent. The Chief Federal Electoral Officer and the Returning Officer are also statutory respondents. As he is not the only party to the election petition, if his name is struck out of the petition enquiry, hearing of the question can still proceed but as his right to hold the office is questioned, will it not offend against the rules of natural justice to dispose of the question without giving him an G opportunity of being heard? I think it will. The effect of the submission of Chief Williams being upheld is that Section 121(2)(a) will be held to be in conflict with Section 267(1)(a) of the Constitution and therefore void in so far as incumbent Governors whose re-elections are questioned are concerned.”

H In the latter case, Belgore, JSC., made reference to Section 50(2) of the Presidential Election Decree, 1999, also similar to Section 133(2) of the Act, and said:

“Every person against whom an allegation is made must be confronted with that allegation so that he can offer his defence. That is the purport of Section 50(2) of the Decree No. 6 of 1999 (supra). The petitioner who complains that an Electoral Officer, a Presiding Officer, a Returning Officer or any other person involved in the election by conduct has initiated the election must presume that officer etc., as a necessary party and must make him a party. In paragraphs 9, 10, 12, 13, 14, 15, 16, 17, 18 and 19 of the petition (the petitioner) made many serious allegations including fraud and other electoral offences but the electoral officers, returning officers etc., have not been made parties i.e. respondents to the petition.”

Paragraph 17 of the petition in question which the Tribunal held contained allegations upon which the 3rd respondent ought to be heard is as follows:

‘17. DISQUALIFICATION OF 3RD RESPONDENT RENDERING THE VOTES CAST FOR HIM INVALID AND VOID.

(a) Your petitioner states that 3rd respondent was at all times material a public officer by virtue of being a member of the Council of States - an executive body created under Section 153 of the Constitution of the Federal Republic of Nigeria.

(b) A past head of state of Nigeria is entitled to automatic membership of Council of States for life under paragraph 5(c) of Part I of the third schedule to the 1999 Constitution.

(c) At all times material to this petition and on or about 8th day of April, 2003, (the exact date of which your petitioners cannot immediately recollect, but which was a matter of public knowledge and lavish media coverage), the 3rd respondent, despite having been nominated and cleared as a presidential candidate in the election, the subject matter of this petition, attended a meeting of the Council of States along with other ex-heads of state by virtue of being a member thereof and not otherwise; and not being a sitting president or former president entitled to seek re-election for a second term since the coming into force of the Constitution of the Federal Republic of Nigeria on 29th May, 1999.

(d) The meeting was held in the presidential Villa, in Abuja FCT at which 1st respondent presided as chairman; and the date was less than thirty days before the date on which the election was to hold; yet the 3rd Respondent did not withdraw or renounce his

membership of the said public office as required under Section 137(1) (g) of the 1999 Constitution, in order to avoid disqualification as a candidate at the elections.”

The said 3rd and 4th respondents to the petition, now appellants, have called upon this court to determine whether they were properly joined in the petition as respondents. A second issue, whether the petition itself was competent, was abandoned as a result of the concession made to that issue following the preliminary objection raised by the respondents to the appeal. The subsisting issue, “whether the appellants were properly joined in the petition,” was argued under two grounds of the objection stated thus:

“1. The notice of appeal herein and the subsequent processes were not endorsed for service on necessary parties who participated in the proceedings which is the subject matter of this appeal contrary to Order 2 Rule 1(3) of the Supreme Court Rules.

2. Appellants did not raise an objection to and the lower court did not rule on the competence of paragraph 17 of the petition in the lower court; whereas ground three of their notice of appeal complains about failure of the lower court to strike out paragraph 17 of the petition.”

It is sufficient for me to deal only with ground 2 at this stage. Ground 1 will be resolved later. I find no merit in ground 2 for the simple reason that the Tribunal having refused to strike out paragraph 17 of the petition, the appellants have in ground 3 of their grounds of appeal complained that the refusal was an error in law in that the allegations in paragraph 17 were irrelevant to any of the grounds upon which an election maybe questioned under Section 134(1) of the Act. That is a proper ground of appeal, in my view, upon the circumstances of the refusal of the Tribunal to strike out appellants from the petition. The issue based on the said ground 3 is, in my view, unimpeachable.

In regard to the appeal itself to which I now turn attention, the central argument of the appellants as advanced by their counsel, Chief Ahamba, SAN, is that an election petition being sui generis is governed by a particular law enacted for that purpose with its peculiar provisions which must not be negated by some civil procedure rules. The petition should be between parties strictly within those prescribed in Section 133 of the Act. The learned Senior Advocate has also ar-

gued that the ejusdem generis rule be applied in the interpretation of subsection (2) of the said Section 133, citing *Jamal Steel Structures Ltd. v. ACB* (1973) 8 NSCC 619; *Bronik Motors Ltd. v. Wema Bank Ltd.* (1983) 14 NSCC 266.

I do not intend to spend much time on ejusdem generis rule. I have read the two authorities cited and would like to say that I do not find them useful on the question of how that rule may apply to this case. In the *Bronik* case (*supra*) the way the rule was applied in the *Jamal* case was discussed at length but nothing can be found from that discourse which might assist in the present case as to the appropriateness of that rule. Ejusdem generis rule is an interpretative rule which the court would apply in an appropriate case to confine the scope of general words which follow special words as used in a statutory provision or document within the genus of those special words. In the construction of statutes, therefore, general terms following particular ones apply only to such persons or things as are ejusdem generis with those understood from the language of the statute to be confined to the particular terms. In other words, the general words or terms are to be read as comprehending only things of the same kind as that designated by the preceding particular expressions, unless there is something to show that a wider sense was intended: see *Maxwell on the Interpretation of Statutes*, 12th edn., page 297; *Fawehinmi v. Inspector-General of Police* (2003) 5 S.C. (Pt. I) 63; (2002) 7 NWLR (Pt. 767) 606 at 683.

I am unable to accept the argument that the ejusdem generis rule will be of help in the interpretation and proper understanding of Section 133(2) of the Act. The entire Section 133 provides as follows:

“133.- (1) An election petition may be presented by one or more of the following persons (a) a candidate at an election; (b) a Political Party which participated at the election.

(2) The person whose election is complained of is, in this Act, referred to as the Respondent, but if the petition complains of the conduct of an Electoral Officer, a Presiding Officer, a Returning Officer or any other person who took part in the conduct of an election, such officer or person shall for the purpose of this Act be deemed to be a Respondent and shall be joined in the election petition in his or her official status as a necessary party.”

It seems to me that if the ejusdem generis rule were to be

applicable, then the expression “any other person who took part in the conduct of an election” would have to be restricted to the INEC officials who took part in the conduct of an election. In my view, such restriction could not be justified in the case, for example, of a police officer who was assigned the duty to ensure orderly, peaceful and free
B conduct of an election in a constituency but assisted instead to stuff ballot boxes with unlawful ballot papers. He is a necessary party who by his role in the conduct of the election can be made a respondent even though not an INEC official because he reasonably falls into
C the category of “any other person who took part in the conduct of an election.” That category of persons can be identified from the mere understanding of that phrase without necessarily linking them with INEC officials, or without their being INEC officials through the ejusdem generis rule application.

Notwithstanding my view that the ejusdem generis rule is
D uncalled for here, it is necessary to recall that the submission of Chief Ahamba is that an election petition can only be brought against a person elected or returned who is then regarded as the respondent but if the petition complains of the conduct of certain INEC officials and any other person who took part in the conduct of an election,
E they are necessary parties to be joined in the petition.

Learned counsel for the respondents, Mr. Owonikoko, has argued that Section 133 (2) should be read along with paragraphs 4(1)(a) and 45 of the First Schedule to the Act. Upon such reading,
F he contends, the true intendment of Section 133(2) will be that an election petition can be filed in which the winning candidate and other candidates who lost are made respondents. According to him, they are all interested parties in the petition, by virtue of paragraph 4(1)(a); and that two or more candidates may be made respondents to the same petition, by virtue of paragraph 45.

G An election petition is heard and determined by an appropriate election tribunal as usually provided by the Constitution. In the 1999 Constitution, such provision is made under Section 285 and the Sixth Schedule to the Constitution. The procedure is largely governed by a law made specially to regulate the proceedings. The
H jurisdiction of an election tribunal to deal with election petitions is of a very special nature different from that in an ordinary civil case: see *Onitiri v. Benson* (1960) SCNLR 314 at 317. It is plain that the

proceedings are special for which special provisions are made under the Constitution: see *Oyekan v. Akinjide* (1965) NMLR 381 at 383, a decision of this court. Election petitions are distinct from the ordinary civil proceedings: see *Obih v. Mbakwe* (supra) at p. 200 per Bello, JSC., at p. 211 per, Eso and Aniagolu, JJSC. It is such that in certain circumstances the slightest default in complying with a procedural step which otherwise could either be cured or waived in ordinary civil proceedings could result in fatal consequences to the petition. Examples are: *Benson v. Allison* (1955-56) WRNLR 58; *Emenue v. Nkerenwen* (1966) 1 All NLR 63 which were decided on failure to give security before presenting a petition as required by the rules; *Ige v. Olunloyo* (1984) 1 SCNLR 158, decided on application to amend the prayers sought in a petition, which application was brought out after the time allowed for filing the petition. So an election petition is neither seen as a civil proceeding in the ordinary sense nor, of course, a criminal proceeding. It can be regarded as a proceeding sui generis.

It is imperative that in the present petition, the procedure laid down in the Act be strictly complied with except to the extent that it is relaxed or waived under paragraph 49(1) of the First Schedule to the Act.

Section 131(2) of the Act requires that the person elected or returned be joined as a party. Section 133 which I earlier reproduced provides in subsection (1) for persons who may present a petition. It is either one or both of (a) a candidate at an election; (b) a Political Party which participated at the election. No other person may do so. In the same vein, those who shall be joined to defend the petition in accordance with subsection (2) are the persons whose election (or return) is complained of, referred to as the respondent and any of the INEC officials mentioned in the subsection or any other person who took part in the conduct of the election, and in either case the petition complains of their conduct of the election. All such persons are regarded as the statutory respondents, and who only, in my view, qualify as the necessary parties. I think even a cursory reading of *Obih v. Mbakwe* (supra) at p. 204, A-B and *Egolum v. Obasanjo* (supra) at 397 B-C must reveal a total support for this view.

The principle is well settled that in the construction of statutory provisions, where a statute mentions specific things or persons, the

intention is that those not mentioned are not intended to be included. This is the *expressio unius est exclusio alterius* rule, meaning that the express mention of one thing in a statutory provision automatically excludes any other which otherwise would have been included by implication: see *Ogbuayinya v. Okudo* (1979) 6-9 S.C. 32; *Udoh v. Orthopaedic Hospital Management Board* (1993) 7 NWLR (Pt. 304) 139. Again, going by the principle of community construction of the provision of a statute, it is useful to consider some relevant provisions of the Act that may help in the proper understanding of those in contention: see: *Ojokolobo v. Alamu* (1987) 3 NWLR (Pt. 61) 377; *Aqua Ltd. v. Ondo State Sport Council* (1988) 10-11 S.C. 31; (1988) 4 NWLR (Pt. 91) 622 at 641-647; *Salami v. Chairman L.E.D.B.* (1989) 12 S.C. 177; (1989) 5 NWLR (Pt. 123) 539 at 550-551. It will therefore be necessary to consider related sections of the Act as well as paragraphs of the First Schedule thereto to ascertain whether the appellants were necessary parties to the petition as envisaged by Section 133 of the Act.

The learned counsel for the appellants, Mr. Owonikoko, has placed reliance on paragraphs 4(1)(a) and 45 of the First Schedule to the Act to argue that all those who contested the election even though not elected are parties interested to be made respondents. Para. 4(1)(a) states-

“4(1) An election petition under this Act shall -
(a) specify the parties interested in the election petition.”

In my view, the persons who can justifiably be regarded as parties interested in the election petition are the petitioner(s) and the statutory respondent(s). It will make no sense to use the phrase “parties interested” loosely without regard to S. 133(2) of the Act as this may justify, for instance, the inclusion of the family members of candidates who contest and even persons who voted by claiming to be close to such candidates and therefore interested in the petition.

As for paragraph 45 relied on by Mr. Owonikoko it reads -
“45. Where two or more candidates may be made respondents to the same petition and their case may, but for all purposes (including the taking of security) the election petition shall be deemed to be a separate petition against each of the respondents.”

Again, this provision envisages that the inclusion of such multiple “respondents” in the same petition shall be deemed to have

made the election petition a separate petition against each of the respondents. But by Section 131(1) of the Act, it is only an election or return of a candidate that can be questioned by a petition in which the person elected or returned is joined as a party. See also Section 133(2) which talks of the person whose election is complained of; it is such a person that is referred to as the respondent. It is therefore clear that the deemed separate petition arising from the operation of paragraph 45 of the First Schedule to the Act must be in regard to each of the respondents elected or returned in the election in question. Such will normally happen only where multiple candidates within the same electoral area are returned or elected in their respective constituencies, for example. National Assembly candidates. A petitioner, say, a Political Party which participated in the election may file a single petition against those elected or returned candidates but the election petition “shall be deemed to be a separate petition against each of the respondents.” Otherwise, how can an election petition be deemed to be against each or any of the respondents who lost the election? What would the cause of action of the petitioner be based on if he were to file or be deemed to have filed a separate petition against a candidate who did not win an election?

In further pressing the purpose of paragraph 45, Mr. Owonikoko argued that multiple respondents, including candidates who lost an election, would need to be before the Tribunal as parties so that in an appropriate case Section 136(2) of the Act could be applied to adjudge the next candidate to the respondent whose election is voided and to declare him elected if he satisfied the necessary conditions. Section 136(2) reads:

“(2) If the Tribunal or the court determines that a candidate who was returned as elected was not validly elected on the ground that he did not score the majority of valid votes cast at the election, the Election Tribunal or the court, as the case may be, shall declare as elected the candidate who scored the highest number of valid votes cast at the election and satisfied the requirements of the Constitution and this Act.”

I do not think paragraph 45 is intended for that purpose at all. It is under paragraph 4(1)(c) that the particulars of candidates and the votes they scored should be specified in the election petition. It says:

“4(1) An election petition under this Act shall -

(c) state the holding of the election, the scores of the candidates and the person returned as the winner of the election.”

A provision similar to paragraph 45 of the First Schedule to the Act can be found in subsection (9) of Section 13 of the now
B repealed Municipal Elections (Corrupt Practices) Act, 1872 of England. It has been given judicial consideration and interpretation. In *Lovering v. Dawson, Walker and Poulton* (No.1) (1875) 10 LR. CP. 711, that provision was considered. At page 718, Lord Coleridge,
C C.J., with whom Brett, Grove and Lindley, JJ., agreed, observed as follows:

“Subs. 9 of S. 13, which provides that ‘two or more candidates may be made respondents to the same petition, and their cases may be tried at the same time, but for all purposes of this Act such petition shall be deemed to be a separate petition against each
D respondent’, confirms the argument arising from earlier provisions. It is plain, as it seems to me, that, when they are made respondents, it must mean in a petition complaining of the undue election of the persons against whom the petition is presented.”

That is exactly what I have demonstrated that paragraph 45
E can mean upon a proper understanding.

That same case, *Lovering v. Dawson, Walker and Poulton* (supra) supports my view that this appeal ought to succeed. The case dealt with a similar problem as the one in the present appeal. I need
F not state the facts since they are reflected in the observation of Lord Coleridge, C.J., other than say (1) that the election petition in that case was brought out on a provision similar to Section 133 under consideration in this appeal; (2) that a person who lost election was joined as a respondent in an election petition brought against those who were elected or returned; (3) that objection was taken at the
G hearing of the petition to his joinder by the person who lost but was overruled; (4) that an appeal was taken in respect of the joinder. At pages 716-718, which I shall set out, in extenso, as it is in the Report of the judgment, Lord Coleridge said inter alia:

I am of opinion that our judgment in this case should be for
H the respondent. This a municipal election petition for the borough of Maidenhead. The petition was against three persons who had been candidates at the election, two only having been elected, the

third having coalesced and canvassed with them, but not having succeeded. No question arises as to Dawson and Walker, who were properly found guilty of bribery. The only question is as to Poulton, who objected at the trial before the barrister appointed to try the petition that he had no seat to defend, and ought not to have been joined as a respondent. The barrister, however, allowed the case to go on in the form in which it was presented to him, and has stated the facts in a special case, reserving to us the question whether, under the Municipal Elections (Corrupt Practices) Act, 1872, Poulton was properly made a respondent in the petition: and he goes on to direct that, in the event of the court being of the opinion that he was so properly joined, then he was to pay to the petitioner his proportion of the costs of and incidental to the petition in common with Dawson and Walker; but that, in the event of the court being of opinion that Poulton was improperly joined as a respondent, he was to receive his costs of and incidental to his defence. The whole question arises upon the words of the statute. I am of opinion that Poulton could not properly be so joined..... The Act of Parliament upon which this question turns has been very elaborately argued before us; every provision that could throw any light, however remotely, upon it has been brought to our notice and carefully considered. The second part of the Act, which deals with election petitions, commences at S. 12, which enacts that "the election of any person at an election for a borough or ward may be questioned by petition before an election court constituted as hereinafter in this Act provided, and hereinafter in this Act referred to as the 'court', on the ground that the election was as to the borough or ward wholly avoided by general bribery, cheating, undue influence, or personation, or on the ground that the election of such person was avoided by corrupt practices or offences against this Act committed on the election, or on the ground that he was at the time of the election disqualified for election to the office for which the election was held, or on the ground that he was not duly elected by a majority of lawful votes." Section 13 enacts a sort of procedure, - "The following provisions shall have effect with reference to the presentation of a petition complaining of an undue election." When the section speaks of a petition complaining of an undue election, it manifestly did not contemplate making any person a respondent except a person petitioned against. It begins by setting

out who may present a petition, and states that the petition shall be in the prescribed form. The prescribed form does not contemplate making any one a respondent except with reference to the due or undue return of the party petitioned against. The section goes on, “the terms ‘petitioner’ and ‘respondent,’ as hereinafter used in this Act include respectively any one or more persons by whom a petition is presented, and anyone or more persons against whose election a petition is presented.” Poulton is not a person against whose election this petition was presented..... There are other provisions in the Act which look the same way. Taking the whole of S. 13 together, I am of opinion that it is only a person whose seat is sought or whose election is disputed that can be made a respondent, - apart, of course, from the returning officer: S. 13, subs. 6.

This elaborately stated observation shows how in this appeal Section 133(2) of the Act should be interpreted, and, in my opinion, tends towards a clear direction to take for the resolution of the central issue upon which the appeal may be properly decided.

I shall at this juncture revert to the consideration of ground 2 of the preliminary objection which I said earlier in this judgment I would leave till later. Mr. Owonikoko’s objection to the notice of appeal is that it was endorsed for service only in respect of 1st and 2nd respondents to the petition, whereas there were 5th to 56th respondents who ought to have been served. Reliance was placed on Order 2, r. 1 (3) of the Supreme Court Rules which says:

“When under these Rules any notice of other application to the court, or to the court below, is required to have an address for service endorsed on it, it shall not be deemed to have been properly filed unless such an address is endorsed on it.”

The argument is that since the 5th to 56th respondents were not included in the notice of appeal, and consequently it was not endorsed with their addresses for service, the notice of appeal cannot be deemed properly filed. Reference was made to Order 8, r. 2(1) which says inter alia that a notice of appeal shall state “the exact nature of the relief sought and the names and addresses of all parties directly affected by the appeal, and shall be accompanied by a sufficient number of copies for service on all such parties.”

Apart from the point whether it is open to learned counsel for the 3rd and 4th respondents to this appeal to raise this issue as if on

behalf of the said 5th to 56th respondents to the petition, it is plain to me that the appellants' position is that the 5th to 56th respondents are in the same situation as the appellants, being unnecessary parties to the petition, and ought not to be bothered with this appeal. The appellants cannot therefore, be expected to regard them as parties directly affected by the appeal particularly as they are not seeking in this appeal to have the 5th to 56th respondents struck off the petition. The parties directly affected by the appeal are the 3rd and 4th respondents to the petition (as appellants) and the petitioners (as respondents). That has been adequately explained in the course of the resolution of this appeal. I find the preliminary objection to be without merit and overrule it. B
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It is manifest that Section 133 of the Act places no obligation on a petitioner(s) to make any candidate who lost an election or any Political Party, whether of a candidate elected or returned or of a candidate who lost or which may not have fielded any candidate for the particular seat, a respondent other than the statutory respondents envisaged under subsection (2) as identified in this judgment. As a matter of strict adherence to procedure, all such persons or Political Parties can neither be respondents nor are they necessary parties. Para. 4(1)(a) and (c) and para. 45 of the First Schedule to the Act do not warrant any other interpretation being given to Section 133(2). In respect of para. 4(1)(c), it is enough to supply the particulars in the body of the petition without joining the said candidates as parties to the petition. Such particulars shall be in respect of candidates who were validly nominated and who upon that basis contested the election, not any other candidates upon whom votes were wasted. It is from such proper candidates' particulars that an order under Section 136(2) may be made based on the valid votes cast at the election. However, if there is any doubt or controversy as to whether all the candidates necessary to be pleaded under para. 4(1)(c) were pleaded, this is better resolved upon admissible evidence at the trial of the petition at which stage the Tribunal would decide the competency of the petition if that still remained an issue. This has nothing to do with joinder of parties. D
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I have come to the conclusion that the appellants were improperly joined as 3rd and 4th respondents to the petition. The Tribunal was therefore in error not to have struck them out. This

appeal accordingly succeeds. I hereby make an order striking out the 3rd and 4th respondents from the petition. I award in this appeal to the appellants N2,500.00 as costs in the Tribunal and N10,000.00 costs in this court against the respondents.

B

BELGORE JSC

C Both the appellants and the respondents were participants as candidates at the Election for the Office of the President of the Federal Republic of Nigeria held country-wide on the 19th day of April, 2003. The election was conducted by The Independent National Electoral Commission (hereinafter referred to as “INEC”), whose Chairman, Dr. Abel Guobadia, was the Returning Officer. The Returning Officer announced Chief Olusegun Aremu Okikiola Obasanjo D as having scored the highest number of votes cast at the Election and therefore elected to be the next President of Nigeria. General Muhammadu Buhari, a candidate of All Nigeria Peoples’ Party won the next largest number of votes cast at the election. General Buhari E never legally challenged the return. However, Alhaji Muhammadu Dikko Yusuf, who contested the election as a candidate of Movement for Democracy and Justice went to Court of Appeal, a court with jurisdiction to hear in first instance election petition on Presidential Election, with a petition to challenge the return of Chief Olusegun F Aremu Okikiola Obasanjo as elected. He set out many reasons why the said return should be voided. The petitioner however extended his dragnet of respondents in the petition beyond Chief Obasanjo; included are seventeen other candidates who contested the election and failed with him, with their respective political parties including Alliance for Democracy which never fielded a candidate. Also joined G as respondents are Dr. Abel Guobadia (Chairman of INEC) and INEC itself, Resident Electoral Commissioners in fourteen states of the Federation, and one Dr. Ndidi Okereke - Onyiuke described as Coordinator, Corporate Nigeria.

H Curiously, this interlocutory appeal in this court from the election petition before Court of Appeal is between General Buhari (who is 3rd respondent in the petition) and All Nigeria People’s Party (the fourth respondent to the petition) as appellants, and Alhaji Mu-

hammadu Dikko Yusufu and Movement for Democracy and Justice as respondents. At the hearing of the petition in Court of Appeal, the third and fourth respondents (now appellants before us) applied to be struck out of the petition because they were not necessary parties. They relied on the provision of Section 133 (2) of the Electoral Act, 2002, which reads: B

“(2) The person whose election is complained of is, in this Act, referred to as the Respondent, but if the petition complains of the conduct of an Electoral Officer, Presiding Officer, a Returning Officer or any other person who took part in the conduct of an election, such officer or person shall for the purpose of this Act be deemed to be a respondent and shall be joined in the election petition in his or her official status as a necessary party.” C

The contention of the petitioners to the application of these two respondents (now appellants) to be struck out of the petition, is that the present appellants “were parties to the election who scored votes” and were necessary parties to the petition. Further, if they did not join 3rd and 4th respondents to the petition, and the election of Chief Obasanjo is finally voided, the Court of Appeal might declare the 3rd respondent of Peoples Democratic Party as elected, because he would be the next person with highest votes cast at the election. Further, as the petitioner wanted to void the entire election, all other candidates in the election ought to be joined as respondents. This argument appeared ingenious to Court of Appeal which upheld the joinder of the present appellants. This led to the appeal now subject of this judgment. D E F

It must be pointed out that the prayers of the petitioners is that the entire election be voided because “the 1st and 3rd respondents are disqualified” from contesting the election and a fresh election be conducted by the INEC. Court of Appeal adverted its mind more to the time-honoured principle of audi alteram partem and was of the view that with regard to the prayers of the Petitioner the 3rd and 4th respondents ought to be heard. The principle is based on the very foundation of what is right and just, because nobody should be accused, tried and found liable without being heard. However, the principle ought not be overstretched, otherwise it will be a floodgate for wild and frivolous joinders. It must be seen to be absolutely necessary to join a party if it will colour the resultant decision if a party G H

is not joined. The 3rd and 4th respondents, just as the Petitioner, contested the election and were declared losers, but they never petitioned; it seems they are not in the least desirous of going to court to petition as provided for in the Electoral Act and the Constitution of the Federal Republic of Nigeria, 1999. How could they be harmed by any decision they never contested at the Electoral Tribunal, in this case, Court of Appeal. In instances like this the unwilling election loser should not be dragged before the Tribunal if he elected to avoid the court.

In the appeal to this court, the appellants raised two issues for determination, to wit:

- (a) whether the appellants were properly joined in the petition.
- (b) whether the petition itself was competent.

The appellants, on appreciating the defects in the argument on the issue (b) above, especially on the canon of construction based on ejusdem generis, withdrew or abandoned the issue and it was accordingly struck out. What then remained is issue (a). The construction of Section 133(2) of Electoral Act (set out earlier in this judgment) can be as follows:

- The respondent to an election petition can be
 - (i) the person whose election is complained of,
 - (ii) the Electoral Officer, the Presiding Officer, the Returning Officer whose conduct is complained of at the election,
 - (iii) any other person who took part in the conduct of the

election whose conduct is complained of. (Emphasis is mine) I believe what beclouds the stance of the petitioner is the last leg as enumerated above. While it is clear the declared winner of the election may be a respondent or any or all the electoral officials, “any other person” in (iii) above may create problem as it has done in this case. But viewed dispassionately in the election process in this country that “other person” may be the police or other security agents deployed to maintain law and order during the election. The 3rd and 4th respondents, now appellants, were not more than candidates at the election, as such candidates, the election was conducted to decide their fate in it by INEC and its officials. The two, by no stretch of imagination, cannot be regarded as conducting the election but were only contesting the election. (The emphasis is mine).

The respondents to this appeal posit that the joinder was

correct. In this argument they attempted to rely on the decision of this court in Egolum v. Obasanjo (1999) 5 S.C. (Pt. I) 1; (1999) 7 NWLR (Pt. 611) 355 which in the context of that case was right. But unfortunately this court was quoted out of context and I am happy my learned brother, Uwaifo, JSC., has quoted fully the relevant portion of that judgment in his lead judgment. I find the quoted portion of no relevance or help in this appeal. B

The respondents in this appeal must be congratulated for a beautiful brief of argument; however in the face of what the Electoral Law and the Constitution provide, the appeal has great merit, and in view of the lead judgment of my learned brother, Uwaifo, JSC., which is the view of this panel, I allow it. The appellants are unnecessary parties to the petition and they are struck out of it. C

I award N2,500.00 as costs in the court below and N10,000.00 as costs in this court to appellants against respondents. D

KATSINA-ALU JSC

I have had the advantage of reading in draft the judgment delivered by my learned brother, Uwaifo, JSC. I entirely agree with it. E

The respondents herein filed a petition against the return of Chief Olusegun Obasanjo by the Independent National Electoral Commission. The respondents as petitioners joined the appellants herein as the 3rd and 4th respondents in the petition and made allegations against the 1st appellant, that is, the 3rd respondent. The appellants unsuccessfully sought to have their names struck out on the ground that they are not necessary parties. This appeal is against the refusal by the Court of Appeal to strike out the 3rd and 4th respondents (appellants). F G

This appeal turns upon the proper interpretation of Section 133(2) of the Electoral Act. Section 133 provides as follows:-

“133.- (1) An election petition may be presented by one or more of the following persons-

- (a) a candidate at an election;
- (b) a Political Party which participated at the election.

(2) The person whose election is complained of is, in this Act, referred to as the Respondent, but if the petition complains of the conduct of an Electoral Officer, a Presiding Officer, a Returning Officer H

or any other person who took part in the conduct of an election, such officer or person shall for the purpose of this Act be deemed to be a Respondent and shall be joined in the election petition in his or her official status as a necessary party.”

I think the law is now settled. It is a cardinal rule of interpretation of a statutory provision that it must be given its clear and ordinary meaning’ Subsection 2 of Section 133 of the Electoral Act which I have reproduced above provides for persons who may be respondents in an election petition. The first set of respondents is the person whose election is complained of. The second set is made up of an Electoral Officer, a Presiding Officer, a Returning Officer whose conduct the petition complains of and any other person who took part in the conduct of the election. These are collectively referred to as ‘Statutory Respondents’. When subsection 2 speaks of the person whose election is complained of, it clearly did not contemplate making any person a Respondent except a person petitioned against, that is, the person declared the winner of the election. I think it is quite elementary really. I cannot envisage a situation under which a person who lost an election will present a petition against another loser. That brings me to para. 45 of the 1st Schedule to the Act. It reads:

“45. Where two or more candidates may be made respondents to the same petition and their case may, but for all purposes (including the taking of security) the election petition shall be deemed to be a separate petition, against each of the respondents.”

This provisions envisages that where two or more candidates are made respondents to the same petition, the petition shall be deemed to be a separate petition against each of the respondents. As I have already stated, it is only an election or return of a candidate that can be questioned by an election petition in which the person elected or returned is joined as a party - see Section 131(1) of the Act. See also Section 133(2). It can therefore be seen clearly that the operation of para. 45 of the First Schedule to the Act must be in regard to each of the respondents elected or returned in election in question. As I have already pointed out, the Act does not envisage a situation in which a petition is presented against the loser of the election. In the English case of *Lovering v. Dawson, Walker and Poulton* (No. 1) (1875) 10 LR, CP 711, a similar provision was considered. In his judgment, Lord Coleridge, CJ., held as follows:

“Subs. 9 of S. 13, which provides that ‘two or more candidates may be made respondents to the same petition, and their cases may be tried at the same time, but for all purposes of this Act such petition shall be deemed to be a separate petition against each respondent,’ confirms the argument arising from earlier provisions. It is plain, as it seems to me, that, when they are made respondents, it must mean in a petition complaining of the undue election of the persons against whom the petition is presented.”

I am of the opinion that the appellants were not necessary parties. They were improperly joined as 3rd and 4th respondents to the petition. The Tribunal was clearly in error not to have struck them out. This appeal succeeds and I also allow it.

I hereby make an order striking out the 3rd and 4th respondents from the petition. I abide by the order for costs made by my learned brother, Uwaifo, JSC.

KALGO JSC

I have read in advance the judgment of my learned brother, Uwaifo, JSC., just delivered. I agree with him that there is merit in this appeal and it ought to be allowed.

The only issue which arises in this appeal from all what has transpired in the Court of Appeal is whether the appellants, who were 3rd and 4th respondents in the petitioners/respondents petition, were properly joined as respondents in that petition. The 3rd respondent/appellant was not the winner of the election complained of and was only sponsored for the election by the 4th respondent/appellant. However in paragraph 17 of the 1st petitioner/ respondent’s petition, the following statements or allegations were made:-

“(a) Your petitioner states that 3rd respondent was at all times material a public officer by virtue of being a member of the Council of States - an executive body created under Section 153 of the Constitution of the Federal Republic of Nigeria.

(b) A past head of state of Nigeria is entitled to automatic membership of Council of States for life under paragraph 5(c) of Part I of the Third Schedule to the 1999 Constitution.

(c) At all times material to this petition and on or about the 8th day of April, 2003, (the exact date of which your petitioners cannot immediately recollect, but which was a matter of public knowledge

and lavish media coverage), the 3rd respondent, despite having been nominated and cleared as a presidential candidate in the election, the subject matter of this petition, attended a meeting of the Council of States along with other ex-heads of state by virtue of being a member thereof and not otherwise; and not being a sitting president or former president entitled to seek re-election for a second term since the coming into force of the Constitution of the Federal Republic of Nigeria on 29th May, 1999.

(d) The meeting was held in the Presidential Villa, in Abuja, FCT, at which 1st respondent presided as chairman; and the date was less than thirty days before the date on which the election was to hold; yet the 3rd Respondent did not withdraw or renounce his membership of the said public office as required under Section 137(1) (g) of the 1999 Constitution, in order to avoid disqualification as a candidate.”

The totality of the allegations, as seen from above is to disqualify the 3rd respondent/appellant from the elections which took place on the 19th of April, 2003, and that the 4th respondent/appellant could not properly sponsor him for that election.

The 1st petitioner/respondent ended his petition by asking the court for the following reliefs:

“1. IT MAY BE DETERMINED that 1st respondent was not duly or validly elected and/or returned as the president of the Federal Republic of Nigeria pursuant to the election held on 19th April, 2003;

2. IT MAY BE DETERMINED that the election was void;

3. IT MAY BE DETERMINED that a FRESH ELECTION be held (excluding the 1st and 3rd Respondents and their political parties who are disqualified from being fielded or from sponsoring candidates as the case may be by reason of their disqualification and contravention of the Electoral Act, 2003) in accordance with the provision of the Electoral Act, 2003.

4. IT MAY BE DETERMINED that 41st - 55th respondents (as Officials of the Independent National Electoral Commission), and the 2nd, 4th and 56th respondents who directly AND NEGLIGENTLY misconducted the election or their contravention of the provision of the Electoral Act, 2003, be recommended for criminal prosecution by the Attorney-General pursuant to Section 144 of the Electoral Act, 2003.

5. AND for such other or further orders as may be adjudged meet and proper in the circumstances”.

It is also clear from the above that even if the petition succeeds and the reliefs granted, the 3rd respondent/appellant may only be affected by reliefs (2) and (3).

In the motion on notice filed by the respondents/appellants the relief prayed for is:- B

“Striking out the 3rd and 4th respondent (sic) who are not properly joined as Respondents in this petition, and for any other order or orders as this Honourable Court may deem fit and proper in the circumstances”. (Underlining mine) C

The motion was filed on the 22/5/2003 and there was nothing to show that it was amended before 27/5/2003 when it was heard by the Court of Appeal. It is clear to me therefore that the only specific relief prayed for by the appellants was the striking out of their names as parties to the petition as they were not properly joined. Learned counsel for the petitioners/ respondents (hereinafter referred to as respondents) submitted orally and in his brief that the question of the competence of the petition did not arise in the Court of Appeal and nothing was said about it in the ruling of the Court of Appeal complained against. He therefore asked the court to strike out ground of appeal 4 in the notice of appeal and issue 2 in the appellants’ brief. Learned counsel for the appellants conceded to this submission, rightly in my view, and ground of appeal 4 and issue 2 were then struck out. So we are now left to consider only issue 1 of the appellants which reads:- D

“Whether the appellants were properly joined in the petition”. E

Learned counsel for the appellants argued that their complaint was predicated on the express provisions of Section 133(2) of the Electoral Act, 2002 (hereinafter referred to as the Act). Learned counsel submitted in his brief and in this court that an election petition being a proceeding sui generis must be conducted in accordance with the peculiar law which governs it and as such it is not open to any person to go outside the relevant law under the guise of protecting his or her civil rights and obligations. Counsel pointed out that any petition filed under the Act must be in compliance with the provisions of the Act. In the instant appeal, to determine who is a proper party, whether as petitioner or respondent, to an election petition, the F

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provisions of Section 133 of the Act must be resorted and adhered to. Learned counsel for the appellants however submitted that the liberal interpretation of that section given by the Court of Appeal in this case, is too wide and beyond the intendment of the law makers and the Act itself. Counsel further submitted that the Court of Appeal was wrong to leave the appellants as respondents in this case on the only ground that an allegation has been made against the 1st appellant in the petition for which he is required to define himself on the principle of audi alteram partem. Counsel further submitted that when a party is not properly joined in a suit, any allegations made against him become incompetent and irrelevant.

Learned counsel for the respondents submitted orally in court and in his brief that although S. 133(2) of the Electoral Act, 2002, states who the parties to an election petition are or would be, the enshrined provisions of the 1999 Constitution on fair hearing overrides any contrary provisions in the Act. Counsel argued that the Court of Appeal was right in giving S. 133(2) a wide and liberal interpretation thereby overruling the preliminary objection against the joinder of the appellants as respondents in the petition, on the basis that allegations were made against them and so they should be given the opportunity to defend themselves. He relied on the decision of this court in Egolum v. Obasanjo (1999) 5 S.C. (Pt. I) 1; (1999) 7 NWLR (Pt. 611) 355. Counsel also referred to paragraph 45 of the First Schedule to the Act and submitted that in a petition where there are more than one respondents as in this case, there is deemed to be a separate petition against each of such respondents. Finally, learned counsel contended that the proper thing the appellants should have done in this matter was to ask the Court of Appeal to consolidate the respondents' election petition with their own or challenge the competence of the respondents' petition. Since they failed to do both, counsel argued there is no substance in their appeal and it ought to be dismissed.

Section 133(2) of the Electoral Act, 2002, (again referred hereafter as the Act) provides:-

2. The person whose election is complained of is, in this Act, referred to as the Respondent, but if the petition complains of the conduct of an Electoral Officer, a Presiding Officer, a Returning Officer or any other person who took part in the conduct of an election;

such officer or person shall for the purpose of this Act be deemed to be a respondent and shall be joined in the election petition in his or her official status as a necessary party". (Underlining mine)

There is no doubt at all that an election petition is a proceeding which is sui generis and is not to be treated as a normal civil proceeding. It is conducted under the peculiar provisions of the relevant electoral law and is not particularly related to the ordinary rights and obligations of the parties concerned. See *Obi v. Mbakwe* (1984) 1 SCNLR. Having said this, I now look very closely at the provisions of S. 133(2) of the Act.

For the purpose of determining who may be sued as respondents under the Act, S. 133(2) is the only relevant provision and is in my view divided into 2 parts. The first part referred to the person "whose election is complained of", and this must only mean the person who was successful or was announced as winner of the election and no other. It does not, in my view, mean that an unsuccessful candidate at an election whose election involved some malpractices or non-compliance with the electoral law can be sued as respondent in an election petition. That was not the intendment of the electoral law, as it would have no effect on the election itself and the complaint would not have been against the election of the successful party. Therefore, by the first part of the sub-section, it is my respectful view that only the person who succeeded at the election complained of can be sued as respondent.

The second part of the subsection speaks generally about the conduct of the elections by the electoral officers or other persons involved. The subsection made a list of officers who might be involved in the "conduct of an election" and ended up by saying that if the complaint is about the way the election was conducted, then all those officers and the other persons involved in the conduct of the election can be joined in their official capacities etc., as necessary parties and be sued as respondents. This is very clear and needs no further clarification but will definitely not include a candidate in the election like the 1st appellant.

From the interpretation of subsection (2) of S. 133 of the Act above, I am satisfied that the 3rd respondent cannot be a proper respondent under the first part of that subsection because he was not the successful party at the election being complained against from

the contents of the respondents' petition. I am also satisfied that he cannot be properly joined as a respondent in the petition because he did not fall into the class of any of the election officials or other persons who took part in the conduct of the election to be necessary parties thereof, even under the principle of ejusdem generis. I am also of the view that the 4th respondent, having sponsored the 3rd respondent to contest the election, occupies the same position as the 3rd respondent in relation to the petition.

It was argued by the learned counsel for the Respondents that by virtue of the provisions of paragraph 45 of the First Schedule to the Act, a petitioner can join several candidates as respondents. Counsel cited various decisions of this court to support this proposition. I have gone through those cases carefully but found that they do not fall within what transpired in this case. I do not intend to go into any detail in respect thereof but suffice it to say that I do not think that Paragraph 45 mentioned above applies to the facts and circumstances of this particular case. It was also argued by the learned counsel for the Respondents that since there were allegations made concerning the qualification of the 3rd Respondent as a candidate in the elections, the Court of Appeal was right to allow him to have the opportunity to defend himself as a Respondent. The case of *Egolum v. Obasanjo* (1999) 5 S.C. (Pt. I) 1; (1999) 7 NWLR (Pt. 611) 353 was cited in support. I agree with and I am bound by the decision in *Egolum's* case that where allegations are made against a party in a case, he should be given a hearing on the principle of audi alteram partem, before any decision is taken on it. This principle is enshrined in our 1999 Constitution in S. 36, but my view here is that that party concerned must be a proper party. If the so called party is not legally or properly joined, whatever allegations are made against him or her are irrelevant, because basically the court has no jurisdiction over him or her even in a case where he or she consented to be a party. Therefore having held earlier that the appellants are not proper parties to the petition of the respondents, it is not incumbent upon them (the appellants) to defend any allegation made against them in the petition, and so it was useless to afford them any opportunity to defend themselves. The only order which should properly be made was to strike them out as respondents from the petition. The Court of Appeal was therefore wrong in my view to leave them as respondents

to the petition.

From all what I have been saying above, it is my respectful view that although Section 133(2) did not appear to have suspended the general principle of law regarding parties to a case, it is exhaustive as to who the respondents to an election petition could be. In this case, the 3rd and 4th respondent could not properly be joined as respondents and I so hold. B

For the above reasons and those ably set out in more detail by my learned brother, Uwais, JSC., in the leading judgment, I also find merit in this appeal and I allow it. I set aside the ruling of the Court of Appeal delivered on 27/5/2003 and strike out the names of the appellants as 3rd and 4th respondents in the petition now pending before the Court of Appeal, Abuja. I abide by the order of costs made in the leading judgment. C

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AYOOLA JSC

The main question raised, as it seems to me, in this appeal is: whether the names of the appellants may be struck out of the petition on the ground that they were improperly made respondents. In the court below application was made by the appellants, General Muhammadu Buhari and All Nigeria Peoples Party (ANPP), to strike their names out of the election petition brought by the respondents, Alhaji Mohammed Dikko Yusuf and Movement for Democracy and Justice, in the following circumstances. E

At an election held on 19th April, 2003 for the purpose of electing a President, Chief Olusegun Aremu Okikiola Obasanjo was returned as elected as President. By a petition filed on 2nd May, 2003 in the Court of Appeal, the respondents in this appeal questioned the election on the grounds described in the petition as follows: (i) "Fundamental unconstitutionality as to campaign finance"; (2) "Fundamental unconstitutionality as to illegal canvassing for votes; (3) "Fundamental unconstitutionality as to illegal deployment of police and armed forces personnel to supervise conduct of the election"; (4) "Statutory illegalities in the conduct of the election; (5) "Undue and unlawful voting" and (6) "Undue return". To all these he added, as touching the appellants, "Disqualification of 3rd respondent rendering the votes cast for him invalid and void." Apart from Chief Obasanjo who was named as 1st respondent to the petition, there were added F

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55 other respondents, including the Independent National Electoral Commission, Dr. Abel Guobadia (Returning Officer), and 14 Resident Electoral Commissioners). The appellants were named 3rd and 4th respondents, respectively. In the petition, apart from the reliefs that it may be determined that Chief Obasanjo was not duly or validly
B elected and/or returned as the President; a declaration that the election was void; and that the named officials of INEC be recommended for criminal prosecution; there was added a prayer (3) that:

“It may be determined that a FRESH ELECTION be held
C (excluding the 1st and 3rd Respondents and their political parties who are disqualified from being fielded or from sponsoring candidates as the case may be by reason of their disqualification and contravention of the Electoral Act, 2003) in accordance with the provision of the Electoral Act, 2003.”

It may be observed, for the purpose of this appeal, that the
D disqualification alleged in the prayer was as to a ‘FRESH ELECTION’ and not in regard to the election to which the petition related.

On the appellants’ application to have their names struck out of the petition, the Court of Appeal ruled that the 1st appellant ought to be given opportunity to defend the assertion made by the
E respondent in paragraph 17 of the petition, that is, that 1st appellant was disqualified to be a candidate. Consequently, the court below refused the appellants’ application.

By virtue of Section 131(1) of the Electoral Act, 2003 (“the
F Act”) an election petition is the only means of questioning an election or a return at an election. If the Election Tribunal or the court before which an election petition is tried determines “that a candidate who was returned as elected was not validly elected on any ground” it can nullify the election, but if the election of a candidate is nullified on the ground that he was not validly elected because he did not score the
G majority of valid votes cast at the election, the Election Tribunal or the court, as the case may be, ‘shall declare as elected the candidate who scored the highest number of valid votes cast at the election and satisfied the requirement of the Constitution’ and the Act.

Normally, by virtue of Sections 131 and 133 of the Act the
H parties to an election petition are the petitioner or, as the case may be petitioners, who is a candidate or are candidates at an election; or, a Political Party which participated at the election, while the re-

spondent or, as the case may be respondents, who is or are (i) the person or persons whose election is or elections are complained of; and, if the petition complains of the conduct of an Electoral Officer, (ii) a Presiding Officer, a Returning Officer or any other person who took part in the conduct of an election. The question is whether the purely procedural provisions of Section 131(2) exclude any person outside the class specified therein from being made a respondent to an election petition, whatever the circumstances may be. The excluded class would include any Political Party, including that which had sponsored the successful candidate, and an unsuccessful candidate who, obviously, cannot be “a person whose election is complained of”.

There is no doubt that by virtue of Section 133(2) of the Act and the nature of issues that would normally arise from an election petition and the main reliefs that can be prayed for by the petition, the persons mentioned in Section 133(2) are necessary parties to the petition. A necessary party is one whose participation in the proceedings is indispensable. I refer to the meaning of “necessary parties” and “indispensable parties” in Black’s Law Dictionary as follows:

“Necessary Parties. In pleading and practice, those persons who must be joined in an action because, inter alia, complete relief cannot be given to those already parties without their joinder. Fed R. Civil P. 19(a).

Necessary parties are those who must be included in action either as plaintiffs or defendants, unless there is a valid excuse for their nonjoinder. City of Hutchinson for Human Relation Commission of Hutchinson v. Hutchinson, Kansas Officer of Kansas State Employment Service, 213 Kan. 399, 517 P.2d 117, 122. Those persons who have such an interest in controversy that a final judgment or decree cannot be made without either affecting their interests or having the controversy in such a condition that its final adjudication may be wholly inconsistent with equity and good conscience. Royal Petroleum Corp. v. Dennis, 160 Tex 392, 332 S.W 2d 313, 314. A “necessary party” is one whose joinder is required in order to afford the plaintiff the complete relief to which he is entitled against the defendant who is properly suable in that county. Orange Associates, Inc. v. Albright, Tex Ci v. App., 548 S.W. 2d 806, 807.”

Indispensable Parties. One without whose presence no ade-

quate judgment can be entered determining rights of parties before a court. Insurance Co. of North America v. Allied Crude Vegetable Oil Refining Corp., 89 N.J. Super, 518, 215, A. 2d 579, 588. Those who have such an interest in the controversy that the court cannot render a final decree without affecting their interests. Ohmart v. Dennis, 188
 B Neb 260, 196 NW 2d 184.

Those who must be joined because non joinder prejudices their rights and those of parties already joined such that the action cannot continue without them. Wright Farms Const., Inc. v. Kreps,
 C D.C.Vt 444 F. Supp. 1023, 1028. Those without whom the action cannot proceed, and must be joined even if by such joinder the court loses jurisdiction over the controversy. Milligan v. Anderson, C.A. Oke. 522 F2d 1202, 1205. Fed R. Civil P. 19".

Since the purpose of an election petition is to question the election of a candidate, it stands to reason that the person whose
 D election is questioned; and, where the conduct of officers or persons who took part in the conduct of the election is complained of, as part of the challenge of the election of the candidate, such as well, are, without doubt and in all circumstances, necessary parties, as
 E respondents, to the petition. An unsuccessful candidate, primarily, has no interest to defend in an election petition, the primary purpose of which is the nullification of the election of the successful candidate. There seems to me, therefore, to be ample justification for a reading
 F of Section 133(2) of the Act that leads to the conclusion that an unsuccessful candidate is neither a necessary, nor an indispensable party to an election petition having regard to the issues that would properly arise for determination in such proceeding, provided that all that is sought by the petition is a nullification of the election of the candidate declared as elected. However, the question that needs be dwelt upon, for a while, is whether it is necessarily a misjoinder, in
 G all circumstances to make a person outside the class mentioned in Section 133(2) a party, as respondent, in the petition.

Passages from the Maidenhead Case, Lovering v. Dawson (No. 1) (1875) LR 10 CP 711 seem to be a convenient starting point for a discussion of that question. That case has been cited and extensively quoted in the judgment of my learned brother, Uwaifo, JSC. I
 H need only highlight some passages in the judgments in the case. The case was also relied on in Halsbury's Laws of England (4th Edn),

Vol. 15, para. 755 for the proposition that:

“An unsuccessful candidate cannot be made a respondent to an election petition against his will.”

To my mind, that statement implies that an unsuccessful candidate can be made a respondent to an election petition with his consent or if he does not object to his being so made. The proposition of law stated above was extracted from the passage in the judgment of Lord Coleridge, C. J, in the Maidenhead Case, where, at page 717, he said:

“I am of the opinion that Poulton could not properly be so joined. If the question now before us had been exactly the converse of that which we decided in the Oldham Case, *Yates v. Leach*, LR 9 CP 605, it may be that our decision would be different. If Poulton had come forward to claim a seat, - if he had insisted upon making himself a respondent, - it may be that we should have held that he had taken upon himself all the liabilities which attach to a respondent. But it by no means follows that the converse of the proposition is true, - that, without any act or consent on his part, and against his will, a man can be made a respondent, so that the petitioner may gain rights against him.”

However, notwithstanding the qualified nature of the exclusion of an unsuccessful candidate as a respondent contained in that passage, Lord Coleridge, C.J., in regard to Section 13 of the Corrupt Practices (Municipal Election) Act, 1872, considered in that case, which, as in Sections 131(1) and 133(2) of the Act, provided for the presentation and the form of the petition, and also for the persons who may be parties to it, went on to say at p. 717-718:

“Section 13 enacts a sort of procedure, - ‘The following provisions shall have effect with reference to the presentation of a petition complaining of an undue election.’ When the section speaks of a petition complaining of an undue election, it manifestly did not contemplate making any person a respondent except a person petitioned against xxx Taking the whole of S. 13 together, I am of opinion that it is only a person whose seat is sought or whose election is disputed that can be made a respondent - apart, of course, from the returning officer. Section 113 subs. 6”

That the purpose of an election petition is to question the validity of the declaration of a candidate as elected however, does

not, in my view, answer the concern which influenced the decision of the court below, which is - whether a person who may be affected by a consequential relief in the case should not be accorded an opportunity of being heard. Were the relief that a tribunal or court be able to grant upon a successful election petition limited to a nullification of an election petition, there would have been no reasonable ground for the concern of the court below. However, the Act empowered the tribunal or court to grant a consequential relief in certain circumstances by virtue of S. 136(2) of the Act which provides as follows:

“If the Tribunal or the court determines that a candidate who was returned as elected was not validly elected on the ground that he did not score the majority of valid votes cast at the election, the Election Tribunal or the court, as the case may be, shall declare as elected the candidate who scored the highest number of votes cast at the election and satisfied the requirements of the Constitution and the Act.” (Emphasis mine)

Should the petitioning unsuccessful candidate claim the seat on the ground that he, and not the person who appeared to have scored the highest number of valid votes, should be declared elected because the latter had failed to satisfy the requirements of the Constitution and the Act, could he have been precluded from raising the issue of the disqualification of the latter simply because the latter, an unsuccessful candidate, was not within the class of persons who are specified as necessary respondents by Section 133(2) of the Act? If he could not be precluded, how would the tribunal or the court determine the question without making the latter a party, if only to answer that limited issue? These are real problems which, although not arising in this case, in my opinion, makes it unsafe to make a dogmatic and conclusive pronouncement that in all cases only the persons mentioned in Section 133(2) could be made a respondent to an election petition. I think this court should reserve a discretion to the tribunal or the court to determine what meets the justice of each case by drawing a distinction between a necessary party, so prescribed by the Section 133(2) of the Act, and a necessary party, so determined by the tribunal or the court and permitted or ordered to be joined at the discretion of the Tribunal or the court in consequence of the consequential relief that the tribunal or the court is enjoined to grant in the case, in the circumstances specified in Section 136(2) of the

Act.

I am inclined to believe that it was in the light of such consideration that the court below reasoned that:

“... to respect the time-honoured principle of audi alteram partem, the third respondent ought to be given opportunity to defend the assertions made by the petitioner in paragraph 17 of the petition.” B

Similar consideration was present in the mind of Brett, J., in the Maidenhead Case (supra) at p. 722, when he said:

“I am far from saying that in an inquiry between a petitioner and a respondent, the investigation might not involve a charge against a third person, and that without such third person having notice or an opportunity of being heard in his defence: and, further, I admit that there are no words in this Act or in the rules which would seem specifically to require notice to be given to such third person, even though his conduct at the election should become the subject of inquiry. But I do not accept the suggestion that any disability could be imposed upon him upon the result of such inquiry, without giving him an opportunity of defending himself; for there are no words in this Act, as there are in the Parliamentary Elections Act, 1868, expressly providing for notice to be given in such a case. I take it to be contrary to the first principle of English jurisprudence and English law that a man should be condemned unheard. I should hold, therefore, that, by necessary implication, no decision of a tribunal created by this Act would bind a third person, unless he had notice of the proceedings affecting him, and full opportunity of being heard”. C D E F

In the same case Lindley, J., at p. 725 while agreeing that “it appears to me not to be reasonable that a man whose election is not in question should be a respondent in a petition questioning the validity of an election”, nevertheless, went on to say: G

“Whatever disability an unsuccessful candidate may incur by corrupt practices at the election, these can hardly entail any personal consequences upon him without having had an opportunity of defending himself.”

For my part, but for the provisions of Section 136(2) of the Act a one-line endorsement of the judgments in the Maidenhead Case (supra) would have sufficed to dispose of this appeal. But then, we have Section 136(2) which, in my opinion, this court should not gloss over and make the general and rather sweeping pronouncement H

based either on a reading of Section 131(1) and Section 133(2) of the Act in isolation of Section 136(2) of the Act and on the Maidenhead Case (supra) in which the English court did not have to grapple with the exact type of situation that might arise as a result of application of provisions of the same nature as are contained in Section 136(2) of the Act.

To argue that the principle *audi alteram partem* operates only as between the parties mentioned in Section 133(1) and (2) of the Act begs the question whether; - if by the application of Section 136(2) an issue arises which may affect the interest of a person not within the class mentioned in Section 136(2) that person should not be heard before the issue is determined. Section 136(2) comes into question not as part of the petitioner's case for the purpose of establishing the ground of nullification of an election, but in consequence of his having successfully established a particular ground of nullification, namely: that the impugned election was invalid because the candidate declared as elected had not been elected on a majority of valid votes cast at the election. The candidate who would benefit from the application of Section 136(2) would of necessity, has been an unsuccessful candidate. In a great number of cases, if that unsuccessful candidate was the petitioning candidate claiming the seat for himself there would be no problem. If the unsuccessful candidate, who, ostensibly, was the person entitled to the declaration envisaged in Section 136(2), is not the petitioning candidate, should the petitioning unsuccessful candidate be precluded from contending that that other unsuccessful candidate was not entitled to be declared as elected by virtue of Section 136(2) because the latter had not fulfilled the rest of the conditions for his being so declared, notwithstanding that, in terms of Section 136(2), he had scored the highest number of valid votes cast at the election?

In my view, a petitioning unsuccessful candidate cannot be precluded from raising such issue. A party is entitled to be heard, not only on the relief he claims, but also on any relief that the tribunal or the court may be empowered to give as consequential to that relief. The declaration that the tribunal or court is empowered to make pursuant to Section 136(2) is such consequential relief. If the petitioning candidate cannot be precluded from raising the issue, there is no reason of justice that would create a situation that would shut

out the unsuccessful candidate, who would otherwise have benefited from the application of the subsection, from an opportunity of being heard.

I have adverted to these problems arising from Section 136(2) to show that this court should not be hasty in holding that Section 133(2) excludes every other person from being made a party to an election petition regardless of the circumstances. Undoubtedly, Section 136(2) had been couched in wide terms and appears to have left a few questions unanswered. For instance, was the intendment of the makers of the Act that the subsection should apply only where the petitioning candidate claims the seat for himself as “the candidate who scored the highest number of votes cast at the election”, even though Section 134(1)(c) permitted him to question the election merely on the ground, among others, that “the respondent was not duly elected by majority of lawful votes” and even though the consequence of establishing that ground is a declaration under Section 136(2), if the candidate with the highest number of valid votes cast at the election satisfies the conditions set out in that subsection. Should a candidate be declared as elected pursuant to Section 136(2), notwithstanding averments of incompetence in the petition, what other avenue of questioning such declaration is available to the STOP petitioner after the period of challenging an election under Section 132 would have elapsed, thirty (30) days “from the date the result of the election was declared”, and, after the tribunal or court is deemed to have satisfied itself that the candidate so declared had not only scored the highest number of valid votes cast at the election, but had also satisfied the requirements of the Constitution and of the act, contrary to any averment in the petition that he had not?

In my opinion, until the Act is amended to clarify the position, and I hope that will be soon, the better option is neither one that, out of undue legalism, will restrict a petitioner in persuading the tribunal or court that a consequential relief in terms of Section 133(2) should not be granted, nor one that would lead to the trial of an issue in the absence of a person that would be affected by the result of the resolution of that issue, nor even one that would curtail the power of the tribunal or the court to make a declaration which it is mandated to do by Section 136(2); but one that would reserve to and preserve the discretionary jurisdiction of the tribunal or court

to add a party or permit a party to be added as a party to the matter in line with the power granted by 0.12 rule 5(1) of the Federal High Court (Civil Procedure Rules) which was made applicable by paragraph 50 of the First Schedule to the Act, as may be dictated by the circumstances, and subject to the rules for the exercise of such discretion. Although proceeding in an election petition may be sui generis; application of the Federal High Court (Civil Procedure Rules) has been made permissible by paragraph 50 of the First Schedule, subject to the express provisions of the Act. Although Section 133(2) stated that some persons are referred to as respondents or deemed to be respondents by the Act and are thereby necessary parties to an election petition there is no express provision of the Act excluding the discretion to add further parties for the purpose of being heard in respect of a relief which the tribunal or court is empowered to grant in such petition.

It is manifest from the opinion I have hitherto expressed, that although I agree that, where there is no occasion for the application of Section 136(2), there is no room for addition of parties other than those described as respondent or deemed respondent in Section 133(2), I am unable to go to the extent that in a case where the application of Section 136(2) is a live issue, a person whose incompetence to be declared as elected pursuant to that subsection is canvassed in the petition cannot be brought into the proceedings, if only for the limited purpose of the issue that may arise from the application of the subsection. I think he can.

However, in this case, I agree that the names of the appellants ought to have been struck out from the petition by the court below, only because the main ground of the petition was to declare the entire election a nullity. I do not see any ground that would necessitate recourse to Section 136(2). Since the substantive matter is still before the court below, I need not say more than that or elaborate more, other than to say that, where the challenge is to the validity of an entire election, as counsel for the respondents claimed to be the case, there would be no occasion for the tribunal or court to declare any candidate as elected pursuant to Section 136(2) of the Act and there would therefore, have been no need to bring into the proceedings any other unsuccessful candidate as respondent, notwithstanding any allegation that may have been made, irrelevantly, against such

candidate in the petition.

For the reasons which I have just stated, and for the reasons stated in the judgment of my learned brother, Uwaifo, JSC., in resolving issues in the appeal, other than the one I have commented upon above, I agree with my learned brother, Uwaifo, JSC., that this appeal should be allowed. The appellants were improperly joined as respondents and their names ought to have been struck out from the petition by the court below. I too allow the appeal and strike out the appellants' names from the petition. I award N10,000 costs to the appellants.

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TOBI JSC

I have read in draft the leading judgment of my learned brother, Uwaifo, JSC., and I agree with him that this appeal should be allowed. Let me add this bit of mine.

The petitioners who are respondents in this court filed an election petition against a number of parties. They are 56 in number. The two appellants are some of them. They are General Muhammadu Buhari (3rd respondent) and All Nigeria Peoples' Party (4th respondent).

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The petitioners asked for the following remedies:

"1. IT MAY BE DETERMINED that 1st Respondent was not duly or validly elected and/or returned as the president of the Federal Republic of Nigeria pursuant to the election held on 19th April, 2003;

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2. IT MAY BE DETERMINED that the election was void;

3. IT MAY BE DETERMINED that a FRESH ELECTION be held (excluding the 1st and 3rd Respondents and their political parties who are disqualified from being fielded or from sponsoring candidates as the case may be by reason of their disqualification and contravention of the Electoral Act, 2002) in accordance with the provision of the Electoral Act 2002.

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4. IT MAY BE DETERMINED that 41st - 55th respondents (as officials of the Independent National Electoral Commission), and the 2nd, 4th and 56th Respondents who directly AND NEGLIGENTLY mis-conducted the election or their electioneering, in respect of the election, in contravention of the provision of the Electoral Act, 2003,

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be recommended for criminal prosecution by the Attorney-General pursuant to Section 144 of the Electoral Act, 2003.

In an application dated 22nd May, 2003, the appellants, who are the 3rd and 4th respondents asked the Court of Appeal to strike out their names on the ground that they were not properly joined as respondents in the petition. Arguments were advanced by counsel for the parties as at page 57 of the Record. The Court of Appeal rejected the application. Delivering the ruling of the court, Abdullahi, PCA., said at page 58 of the Record:

“Having considered the learned submissions made by learned counsel and having regard to the position of the law and authorities cited, I respectfully have the view, that to respect the time honoured principle of audi alteram partem, the 3rd respondent ought to be given opportunity to defend the assertions made by the petitioner in paragraph 17 of the petition. In the same ratio, the 4th respondent ought to remain a party since, it sponsored the 3rd respondent, particularly in view of the respondent prayer being sought by the petitioner in paragraph 3 of the petition.”

Dissatisfied with the ruling of the Tribunal, the respondents as appellants appealed to this court. Briefs were filed and duly exchanged. The appellants formulated the following two issues for determination.

“(a) Whether the appellants were properly joined in the petition.

(b) Whether the petition itself was competent.”

The respondents adopted the first issue formulated by the appellants, that is, whether the appellants were properly joined in the petition.

Chief M.I. Ahamba, learned Senior Advocate for the appellants, said that issue (a) covers grounds 1, 2 and 3 of the grounds of appeal and queries the propriety of the joinder of the appellants as 3rd and 4th respondents in the petition. He relied on Section 133(2) of the Electoral Act, 2002.

Disagreeing with the ruling of the Tribunal, learned Senior Advocate made the following submissions. I need to reproduce them for ease of reference:

“(i) It is one thing to be a proper party in a suit, and another to give such a party a fair hearing. It is submitted that whether a person

is a proper party or not precedes the question whether fair hearing can be given to the party or not. This is because once a person has not been properly joined in a suit any allegation against him in the suit becomes incompetent.

(ii) An election petition is a proceeding that is *sui generis*. Consequently it is conducted under the peculiar law governing it, with its peculiar provisions. It is not open for any person to sue or to be sued the issue not being that of protecting civil rights or obligations. In the instant case, Section 133(1) restricted those who may file a petition to two, namely

- (a) A candidate
- (b) A registered political party.

Can a person outside these two be allowed to maintain a petition only because he has averred in the petition facts which ordinarily would have enabled him to have *locus standi* to maintain a civil action? The answer, it is submitted, is in the negative

(iii) The law is clear that in interpreting a statute the courts should give effect to the natural meaning of the clear and unambiguous words used in the statute. See *Aqua Ltd. v. Ondo State Sports Council* (1988) 10-11 S.C. 31; (1988) 4 NWLR (Pt. 91) 622 at 641. If the legislature had intended that everyone against whom an allegation was made, outside those referred to directly or by implication in Section 133(2), could become a party, there would have been no need for Section 133 of the Act. It is therefore submitted that the liberal interpretation given to the sub-section ran counter to the clear intendment of the Act that is to restrict parties to participants in the election either as candidates, or sponsors as petitioner, and the declared winner and officials as respondents.

(iv) The Justices of the Court of Appeal failed to apply the *ejusdem generis* rule of interpretation”

In the light of the above submission, learned Senior Advocate urged the court to hold that the appellants were not properly joined to the petition and that their names should be struck out from the petition.

On Issue (b), learned Senior Advocate contended that the grounds upon which the petition was brought were not stated in any portion of the petition. Relying on Section 134(1) of the Electoral Act, learned Senior Advocate urged the court to strike out the petition.

Learned counsel also called the attention of the court to the following authorities in respect of the case for the appellants: Jamal Steel Structures Ltd. v. ACB (1973) NSCC 619 at 627; Bronik Motors Ltd. v. Wema Bank Ltd. (1983) NSCC 220; Nwobodo v. Onoh (1984) 1 S.C. 195; Ombu v. NEC (1988) 5 NWLR (Pt. 94) 323 at 347 and Egolum v. Obasanjo (1999) 5 S.C. (Pt. I) 1; (1999) 7 NWLR (Pt. 611) 355 at 397, 404-405.

Mr. A.J. Owonikoko, learned counsel for the respondents, raised a preliminary objection in the respondents' brief. He relied initially on four grounds. He however abandoned ground 4. He dealt with the following three grounds:

"1. The notice of appeal herein and the subsequent processes were not endorsed for service on necessary parties who participated in the proceedings which is the subject matter of this appeal contrary to Order 2 Rule 1(3) of the Supreme Court Rules.

2. Appellants did not raise an objection to and the lower court did not rule on the competence of paragraph 17 of the petition in the lower court; whereas Ground three of their notice of appeal complains about failure of the lower court to strike out paragraph 17 of the petition.

3. No objection was taken as to the competence of the petition in the lower court; and no ruling was delivered on that issue in respect whereof appellants has filed ground four in their notice of appeal."

On the incompetence of the notice of appeal, learned counsel contended that non-service and non-endorsement of address for service is an intrinsic defect which cannot be cured. Relying on Order 2 Rule 1 (3) of the Supreme Court Rules, learned counsel submitted that the notice of appeal is incompetent and therefore cannot be deemed properly filed, as it goes to the root and props of the appeal and robs the court of the jurisdiction to entertain same.

Counsel also argued that ground 3 does not relate to the decision of the Tribunal. He submitted that the grounds of appeal against a decision must relate to the decision and should constitute a challenge to the ratio of the decision. He relied on Saraki v. Kotoye (1992) 3 NSCC 331 at 345 and Oba v. Egberongbe (1998) 8 NWLR (Pt. 615) 485 at 489. Learned counsel urged the court to strike out the entire appeal based on ground 1 of the preliminary objection.

He prayed in the alternative that at least ground 3 in the notice of appeal and Relief (c) in paragraph 4 at pages 50 to 51 of the Record, be struck out.

Dealing with the only issue in the brief, learned counsel submitted that the appellants' objection in the lower court and their arguments in this appeal proceeded on the erroneous view that Section 133(3) of the Electoral Act, and that section only is the warrant for making a person a respondent in a petition. Appellants have failed to acknowledge, counsel argued, that there are other provisions in the Act which must be read together to get the true intendment of Section 133(2). B
C

Counsel urged the court to reject the restrictive submissions of appellants and endorse the liberal and contextual interpretation approach adopted by the lower court. It is a cardinal rule of interpretation of a statutory provision that it must be given its clear and ordinary meaning, but such meaning as will not lead to absurdity or bring it in conflict OR disharmony with other provisions of the same statute, counsel argued. He relied on *Attorney-General of the Federation v. Guardian Newspaper Limited* (1999) 5 S.C. (Pt. III) 59, (1999) 9 NWLR (Pt. 618) 187 at 264 and *Egolum v. Obasanjo* (1999) 5 S.C. (Pt. I) 1, (1999) 7 NWLR (Pt. 611) 355 at 404-405. D
E

Learned counsel submitted that contestants other than the declared winner in an election can be made respondents in a petition, nay must be made respondents, where the entire election is sought to be voided. He relied on paragraph 45 of the First Schedule to the Electoral Act and the cases of *Okunola v. Ogundiran* (2003) 1 WLRN (Pt. 1) 79 at 82 and *Obi v. Mbakwe* (1984) 15 NSCC 127 at 134 and submitted whether a candidate should be made a respondent in a petition depends on whether a complaint cognizable under the Act as a ground for presenting the petition has been made against him; or even more so, where the outcome of the case will affect him as a candidate in the election. In either of these circumstances, the interest of such contestant will surely be affected by the determination of the election petition to his prejudice if he is not joined, counsel reasoned. F
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Dealing with the averment in paragraph 11 of the affidavit in support of the appellants' preliminary objection, learned counsel contended that what the appellants should have done in the circumstances was not to seek striking out the matter but to apply for

consolidation of the two petitions as in *Okunola v. Ogundiran* (supra).

Learned counsel also argued that since the entire election, and not just the result of one candidate declared winner is the subject of the election petition, the joinder of the appellants was proper. He relied on Section 134(1)(b) of the Act and paragraph 17 of the petition. He submitted that the principle that litigation must have an end denies the petitioner the indulgence of making their case in installments; rather they are obliged to fully capture their grievances against the election at a go, just as in normal civil proceedings. He relied on *Savage v. Uwechia* (1972) All NLR 255 at 262.

It was the submission of counsel that the right to fair hearing enshrined in the Constitution of the Federal Republic of Nigeria overrides any or contrary provision of law, substantive or adjectival. He relied on *Unibez (Nigeria) Ltd. v. ACB Ltd.* (2003) 6 NWLR (Pt. 816) 402. He urged the court to dismiss the appeal.

In answer to the preliminary objection, learned Senior Advocate for the appellants denied that there were no addresses for service on the respondents in this appeal. He pointed out that address for service in respect of the Notice of Appeal are at page 52 of the Record while the address for service in respect of the brief of argument is at page 3 of the brief. He contended that only those affected by the appeal need be made parties, and since the dispute is between the appellants and the petitioners/respondents who made them parties in the petition, there was proper notice, as the appeal has nothing to do with the other respondents. To counsel, it will be unjust to involve the appellants in unnecessary expenses to serve the other respondents who have no interest whatsoever in the complaint of the appellants.

Let me first take the preliminary objection. Learned counsel for the respondents invoked Order 2 Rule 1(3) of the Supreme Court Rules in respect of the first ground of objection. The sub-rule provides that where under the Rules any notice of other application to the court, or to the court below is required to have an address for service endorsed on it, it shall not be deemed to have been properly filed unless such an address is endorsed on it. I see at the new page 63 which was formerly page 52 of the Record, the addresses of the 1st and 2nd petitioners/respondents on the one hand and the addresses of the 3rd and 4th respondents/appellants on the other, as c/o National Administrative Secretary, MDJ National Headquarters, Plot

142, Alexander Crescent, Wuse Zone II, Abuja, and ANPP National Secretariat, Plot 274 Central Area Behind NICON Plaza, Abuja, respectively.

In my view that satisfies the provision of Order 2, Rule 1(3) of the Supreme Court Rules. I entirely agree with learned Senior Advocate that in order to reduce cost, there is no need to serve those parties who are not affected by the appeal, and they are more than fifty, In election petitions where the Act requires the joining of a large number of respondents, there is obvious need to cut down on cost in interlocutory appeals like the one before us by a restricted service if the appeal does not directly affect some of the parties. I do not think such a miserly approach hurts Order 2 Rule 1(3) of the Rules of this court.

The second ground of objection relates to paragraph 17 of the petition. The Ruling of the Tribunal touched paragraph 17. That could have possibly influenced the appellants to deal with the paragraph in ground 2. But that is not, in my view, of any importance. The important thing is that paragraph 17 directly affects the merits of the petition and this court cannot take it at this interlocutory stage. Accordingly, the ground of appeal, whether proper or not, is of no significance. I will return to paragraph 17 in this judgment.

Ground 3 of the objection deals with the competence of the appeal as raised in ground 4 of the Grounds of Appeal. Ground 4 reads:

“The Court of Appeal was in error by not striking out the petition No. CA/A/EP/1/2003 for non-compliance with Section 134(1) of the Electoral Act, 2002, and paragraph 4(1)(d) of the First Schedule to the Act, the petition (sic) having failed to state the grounds upon which the petition was brought.”

Ground 3 of the objection is as follows”

“No objection was taken as to the competence of the petition in the lower court; and no ruling was delivered on that issue in respect whereof appellants has (sic) filed ground four in their Notice of Appeal.”

I think, counsel for the respondents has a point here. It is elementary law that a ground of appeal is based on issues duly raised by the parties as decided by the court. Where as in this appeal, an issue is not raised at the court of first instance and duly decided, an appellant

cannot arrogate any grievance to himself, because in law there is no basis for such grievance. Although the issue as to the competence of a petition can be raised on appeal, as it touches on jurisdiction, it does not appear to me that this is one of such situations, as the appeal is essentially on the Ruling of the Tribunal, and specifically on the interpretation of Section 133(2) of the Electoral Act. The Tribunal had no opportunity to deal with the issue of competence of the petition. This ground is meritorious. In sum, the objection on grounds 1 and 2 fails. The objection on ground 3 succeeds and accordingly issue No. 2(b) based on ground 4 is struck out.

And so the straight fight is on issue (a), and it is whether the appellants were properly joined in the petition. That is the fulcrum of this appeal and Section 133(2) of the Electoral Act is the hub. The subsection provides:

“The person whose election is complained of is, in this Act, referred to as the Respondent, but if the petition complains of the conduct of an Electoral Officer, a Presiding Officer, a Returning Officer or any other person who took part in the conduct of an election such officer or person shall for the purpose of this Act be deemed to be a Respondent and shall be joined in the election petition in his or her official status as a necessary party.”

I would like to look at Section 133(2) in three limbs. The first limb is the expression “the person whose election is complained of”. This limb, in my humble view, means the person who was declared winner of the election. And that person in the language of the subsection is the respondent. The second limb of the subsection enumerates other persons who will be deemed as respondents, if the petition complains of their conduct in an election. They are an Electoral Officer or Presiding Officer, or a Returning Officer. These are the officials involved in the conduct of the election. The third limb, as the expression implies, anticipates any other person who participated in the conduct of the election, other than an Electoral Officer, a Presiding Officer or a Returning Officer.

As it is, Section 133(2) provides for the word “conduct” twice. The word conveys two different meanings in the subsection. While the first meaning of the word is behaviour, the second meaning is management, in the sense of taking part in the election, as opposed to either being a candidate or a voter. In my view, both meanings do

not relate to a person who is a candidate in the election. A person who is a candidate cannot at the same time be a person who can or should conduct the election. That is not within the tenor and spirit of the Electoral Act as it is clearly against the natural justice rule and public policy. Neither Section 133(2) nor any other section of the Electoral Act anticipates such a situation. B

The Tribunal in its Ruling touched the principle of *audi alteram partem*. The principle of *audi alteram partem* can be invoked in respect of a case where a person ought to be joined as a necessary party but is denied the right to be joined. The principle, in my humble C view, cannot apply in respect of a person, who by statute, is not and cannot be a party to an action.

Related to the above is the area of fair hearing canvassed by learned counsel for the respondents. The fair hearing principles entrenched in Section 36 of the Constitution, like the twin principles D of natural justice, can only be invoked in situations where a person who ought to be joined is denied joinder because the plaintiff is either frightened of the case the person will present or wants to obtain cheap victory outside the person. In such a situation, a court of law E will hold that refusal or failure to join the person constitutes denial of hearing and Section 36 of the Constitution will become handy. In my view, that is not the situation here as the appellants, who do not come within Section 133(2) of the Act, cannot be said to be denied F fair hearing. After all, the principles of fair hearing are most lively principles of our constitutional law which must be applied to live situations and not in *vacuo* or in a vacuum. There is no basis for the application of the principles in this appeal, and I so hold.

The main object of all statutory interpretation is to discover G the intention of the lawmaker which is deducible from the language used. Once the language is clear and unambiguous, the Judge will give an ordinary or literal interpretation to it. The underlying principle of statutory interpretation is that the meaning of a legislation must be collected from the plain and unambiguous expressions used therein H rather than from any notions which may be entertained as to what is just and expedient. The literal construction must be followed unless this would lead to absurdity and inconsistency with the provisions of the statute as a whole. See generally *Ahmed v. Kassim* (1958) 3 FSC 51; *Lawal v. G.B. Ollivant* (1972) 3 S.C. 124; *Onashile v. Id-*

owu (1961) All NLR 313; Awolowo v. Shagari (1979) 6-9 S.C. 51; Ojokolobo v. Alamu (1987) 3 NWLR (Pt. 61) 377; Garba v. F.C.S.C. (1988) 1 NWLR (Pt. 71) 449; Idehen v. Idehen (1991) 6 NWLR (Pt. 198) 132.

A court of law, in the exercise of its interpretative jurisdiction, must stop where the statute stops. A court of law has no jurisdiction to go beyond a clear and unambiguous statutory provision by adding what the statute does not provide or intend to provide. Where a statute specifically provides for parties in an action, a court of law has no jurisdiction to enlarge the specific statutory provision to accommodate other parties not within the contemplation of the statute, however desirous such a situation or position may be.

Learned Senior Advocate for the appellants urged this court to invoke the *ejusdem generis* rule in the interpretation of Section 133(2) of the Act. He submitted that the Tribunal was wrong in failing to apply the rule of interpretation. *Ejusdem generis* is a canon of construction providing that when general words follows the enumeration of persons or things of a specific meaning, the general words will be construed as applying only to persons or things of the same general class as those enumerated. See Garner, B.A., *A Dictionary of Modern Legal Usage*, Second Edition, page 308. See also *Nasr v. Bouari* (1969) 1 All NLR 37; *Board of Customs and Exercise v. Vaila* (1970) 2 All NLR 53; *Bucknor Maclean v. Inlaks limited* (1980) 8-11 S.C. 1; *Jamal v. African Continental Bank* (1973) 11 S.C. 77. The *Ejusdem generis* rule does not apply in the construction of Section 133(2), and learned Senior Advocate, with the greatest respect, was wrong in submitting that the Tribunal failed to apply the rule. The court rightly failed to apply the rule because the rule does not apply at all.

I think learned Senior Advocate rightly submitted that an election petition is a proceeding that is *sui generis*, as it is of its own kind possessing an individualistic character, unique or like only to itself. In other words, the proceeding has no affinity with any action known to the common law and therefore the common law principles of joinder of parties may not necessarily or invariably apply, particularly in the light of Section 133(2) of the Act. The common law principles of joinder will however avail a party where the enabling statute is silent as to who is a plaintiff or defendant. And if I may add,

most statutes are silent on that.

And that takes me to some of the cases cited by learned counsel for the respondents, cases which dealt essentially with the position of the Nigerian common law. Counsel cited the case of Savage v. Uwechia (supra) on the common law principle that a plaintiff has no right to bring an action in installments. The common law principle that a plaintiff has no right to bring an action in installments when he is fully aware of the full gamut or dimension of his litigation, will not apply where a statute clearly provides for persons who can be respondents in the action. In such a case, a plaintiff cannot take cover under the common law principle and sue those who are not named as respondents in the enabling statute. The court will certainly strike out those who are not specifically, or by necessary implication, mentioned in the statute.

Learned counsel for the respondents also cited the case of Egolum v. Obasanjo (supra), particularly the dictum of Belgore, JSC., at page 387 in the following terms:

“The principle of our law is that no person shall be guilty without being given an opportunity to defend himself. Every person against whom an allegation is made must be confronted with that allegation so that he can offer his defence.

Counsel stopped where it is convenient for him and therefore for the case of the respondents. He did not continue with the dictum of the learned Justice. I will complete it by quoting the next two sentences thus:

“That is the purport of Section 50(2) of the Decree No. 6 of 1999 (supra). The petitioner who complains that an Electoral Officer, Presiding Officer, a Returning Officer or any other person involved in the election by conduct has initiated the election must presume that officer etc. as a necessary party and must make him a party.”

And that completes the picture. The same position taken by Belgore, JSC., in Egolum is taken in this appeal, and this time not in the context of Section 50(2) of Decree No. 6 of 1999, but in the context of Section 133(2) of the Electoral Act, 2002.

Learned counsel submitted in the respondents’ brief that the Tribunal “merely followed the decision of this Honourable Court when it held that the 3rd and 4th Respondents/Appellants herein were properly joined in the petition... see as determined by this great and

honourable court, the question of who must be made a party to a presidential election petition - *Egolum v. Obasanjo* (1999) 5 S.C. (Pt. I) 1; (1999) 7 NWLR (Pt. 611) 355 per Belgore, JSC., at 397.”

With the greatest respect, this court did not decide in *Egolum* that a presidential candidate who lost an election must be joined as a party to the election petition. That was not the issue in *Egolum* and this court could not have decided on it. The main issue in *Egolum* was whether the appellant who did not contest the presidential election of 1999 had the locus standi to bring an action challenging the election of the 1st respondent, General Olusegun Obasanjo, an issue which involved the interpretation of Section 50(1) of the Presidential Election (Basic Constitutional and Transitional Provisions) Decree No. 6 of 1999. This court held in the case that only a person falling within the provisions of Section 50(1) of the Decree has the locus standi to present a petition under the Decree, and that in addition, the petitioner should go further to specify how he acquired the right to present the petition.

In my humble view, learned counsel has given a burden to *Egolum* which it cannot carry. While *Egolum* was essentially on the locus standi of a petitioner, this appeal deals with whether a person who participated in an election and failed can be made a respondent. I think the two cases are different and should be taken differently. By citing the dictum of Belgore, JSC., counsel is impressing on this court that a contrary decision will result in an inconsistency on the part of this court. That is wrong. I have mentioned above that Belgore, JSC., was consistent when he correctly held that “the petitioner who complains that an Electoral Officer, a Presiding Officer, a Returning Officer or any other person involved in the election by conduct has initiated the election must presume that officer etc.... as a necessary party and must make him a party.”

Let me also take the case of *Obi v. Mbakwe* (supra), cited by learned counsel for the Respondents. He quoted the following dictum of Obaseki, JSC., at page 134 of the judgment

“It is clear from Section 121(2) of the Electoral Act, 1982, that the 1st Respondent, being the successful candidate is not the only statutory respondent..... As he is not the only party to the election, if his name is struck out of the petition enquiry, hearing of the question can still proceed but his right to hold the office is questioned, will it not

offend the rules of natural justice to dispose of the question without giving him an opportunity of being heard? I think it will”.

The case is quite different from this one. In Obi, the main issue was whether a Governor is immune from election petition proceedings. The petitioner questioned the right of the respondent, Governor Mbakwe, to hold the office of Governor. In other words, the respondent won the election and he had to defend his victory. It was in that circumstance that this court applied the rules of natural justice. That is not the situation in this appeal. The presidential election was not won by the 1st appellant and Section 133(2) of the Electoral Act, 2002, does not include him as a respondent. In the circumstances, Obi is inapposite.

I indicated earlier in this judgment that I will return to paragraph 17 of the petition. I now return to it. The paragraph reads:

“(a) Your petitioner states that 3rd respondent was at all times material a public officer by virtue of being a member of the Council of States - and (sic) executive body created under Section 153 of the Constitution of the Federal Republic of Nigeria.

(b) A past head of state of Nigeria is entitled to automatic membership of Council of States for life under paragraph 5(c) of Part I of the third schedule to the 1999 Constitution.

(c) At all times material to this petition and on or about 8th day of April, 2003, (the exact date of which your petitioners cannot immediately recollect, but which was a matter of public knowledge and lavish media coverage), the 3rd respondent, despite having been nominated and cleared as a presidential candidate in the election, the subject matter of this petition, attended a meeting of the Council of States along with other ex-heads of state by virtue of being a member thereof and not otherwise; and not being a sitting president or former president entitled to seek re-election for a second term since the coming into force of the Constitution of the Federal Republic of Nigeria on 29th May, 1999.

(d) The meeting was held in the Presidential Villa, in Abuja, FCT, at which 1st respondent presided as chairman; and the date was less than thirty days before the date on which the election was to hold; yet the 3rd Respondent did not withdraw or renounce his membership of the said public office as required under Section 137(1) (g) of the 1999 Constitution, in order to avoid disqualification as a

candidate at the elections.”

Although the Tribunal touched paragraph 17 in its Ruling as basis for a possible defence on the part of the 1st appellant, General Buhari, it will be premature at this stage for this court to consider the paragraph because it has so much to do with the merits of the matter. It is trite law that courts of law cannot entertain the merits of a matter in an interlocutory appeal which will not finally determine the matter. This is clearly an interlocutory appeal which is on the issue of joinder and the cynosure of the interpretation is Section 133(2) of the Act. This court is not therefore in a position to take the averments in paragraph 17 which deal essentially with alleged disqualifications of the 1st appellant, General Buhari. This court is not there yet and no party can successfully push us there. We will not agree.

Learned counsel for the respondents also relied on paragraph 45 of the first Schedule to the Act as basis for two or more contestants being made respondents in an election petition. The paragraph is in the following terms:

“Where two or more candidates may be made respondents to the same petition and their case may, but for all purposes (including the taking of security) the election petition shall be deemed to be a separate petition against each of the respondents.”

My learned brother in his leading judgment has examined the English case of *Lovering v. Dawson, Walker and Poulton* (No. 1) (1875) 10 LR Cp 711, a very apt and appropriate case. I entirely agree with the conclusion he arrived at in resolving the purports of paragraph 45 of the First Schedule to the Act.

Learned counsel also called our attention to Section 134(1)(b) of the Act, again as basis of correctly joining the appellants. The subsection does not say that a person who failed an election can be joined in an election petition. That is the crux of this appeal and a general section such as Section 134(1)(b) cannot help the respondents.

One final point I would like to make is whether a person who failed an election should be sued in an election petition. In view of the fact that an election petition challenges the election of a candidate, I do not think a person who fails in the election or who is defeated in the election should be made a respondent in the election petition.

It is for the above reasons and the more comprehensive

reasons given in the leading judgment that I too allow the appeal. I hereby strike out the names of the 3rd and 4th respondents, and they are General Muhammadu Buhari and All Nigerian Peoples Party (ANPP), from the petition. I award N10,000.00 costs to the respondents in this appeal and N2,500.00 in the Tribunal.

B

EDOZIE JSC

On the 19th of April, 2003, the Independent National Electoral Commission conducted an election throughout the country for the election into the office of the President and Vice President of the Federal Republic of Nigeria. There were several contestants among whom were Chief Olusegun Obasanjo sponsored by the Peoples Democratic Party (PDP), General Muhammadu Buhari, who contested under the platform of All Nigeria People's Party, and Alhaji M. D. Yusuf, sponsored by the Movement for Democracy and Justice (M.D.J.). At the conclusion of the election, Chief Olusegun Obasanjo was on 22nd April, 2003, declared as the winner.

In consequence of that, an election petition No. CA/A. EP/1/2003 was on 2nd, May, 2003, filed in the Court of Appeal, Abuja, to challenge the result of the election. The two Respondents in this appeal were the Petitioners while the fifty-six Respondents in the petition included the co-contestants at the election, and the political parties that sponsored them as well as the various electoral officials that took part in the conduct of the election.

In paragraph 17 of the petition, it was alleged that General Muhammad Buhari the 3rd Respondent in the petition was disqualified as a candidate on the ground of his being a public officer by virtue of his membership of the Council of States as a past head of state. The petition concluded in paragraph 20 with the following prayers

“20 Wherefore Your Petitioners pray jointly and severally that-

(1) It may be determined that 1st respondent was not duly or validly elected and/or returned as the president of the Federal Republic of Nigeria pursuant to the election held on 19th April 2003;

(2) It may be determined that the election was void;

(3) It may be determined that a fresh election be held (excluding the 1st and 3rd Respondents and their political parties who are disqualified from being fielded or from sponsoring candidates as the case may be by reason of their disqualification and contravention of the Electoral Act, 2003).

B (4) It may be determined that 41st - 55th (as officials of the Independent National Electoral Commission), and the 2nd, 4th and 56th respondents who directly AND NEGLIGENTLY mis-conducted the election or their contravention of the provision of the Electoral Act, 2003, be recommended for criminal prosecution by the Attorney-General pursuant to Section 144 of the Electoral Act, 2003.

C (5) AND for such other or further orders as may be adjudged meet and proper in the circumstances”

Upon their being served the petition, the Appellants herein who were respectively the 3rd and 4th Respondents in the petition through their counsel Chief M.I. Ahamba, SAN, filed simultaneously a memorandum of conditional appearance and a motion on notice to strike out the 3rd and 4th Respondents on the ground that their joinder offends Section 133(2) of the Electoral Act 2002.

D On 27th May, 2003, the Court of Appeal took arguments from counsel on the motion on notice and refused to strike out the 3rd and 4th Respondents in the petition in a ruling which that court concluded thus:-

E “Having considered the learned submissions made by learned counsel and having regard to the (position) of the law and the authorities cited, I respectfully have the view that to respect the time-honoured principle of audi alteram partem, the 3rd respondent ought to be given opportunity to defend the assertions made by the petitioner in paragraph 17 of the petition. In the same ratio, the 4th Respondent ought to remain a party since, it sponsored the 3rd Respondent particularly in view of theprayer being sought by the petitioner in paragraph 3 (sic) to read 20(3) of the petition.”

F In the light of this, it is my view that the application has no merit and it is accordingly refused.”

G It is this ruling by the Court of Appeal that is the subject matter of this appeal by the 3rd and 4th Respondents who are now the Appellants in this appeal. There are four grounds sub-joined to the Notice of Appeal and from Appellant’s brief of argument. The

Petitioners before the Court of Appeal who are now the Respondents to this appeal have reacted with a preliminary objection and a Respondents' brief in which they attacked the Appellants' second issue for determination and the grounds from which they were distilled. At the hearing of the appeal on 17th July, 2003, during which counsel for the parties adopted their respective briefs of argument, the learned leading counsel for the appellants conceded to the Respondents' preliminary objection to the competence of the appellants' second issue for determination, which is hereby struck out. This now leaves the Appellants' first issue for determination as the sole issue for consideration. That issue which is also adopted by the Respondent is "Whether the appellants were properly joined in the petition".

On this issue, the contention of the Appellants both in the court below and in this court is that Section 133 subsection 2 of the Electoral Act, 2002, restricted the Respondent in an election petition to the person declared as elected and those officials or persons who took part in the conduct of the election if there is any complaint against their conduct. It is submitted that since the appellants did not come within the purview of the subsection, their joinder was inappropriate. It was further submitted that the court below was in grave error by adopting a liberal approach in holding as it did that since allegation had been made against the 1st Appellant, he and his sponsor the 2nd Appellant should be given opportunity to defend themselves in defence to the rule of fair hearing. It was argued that once a person has not been properly joined in a suit, any allegation against him in the suit becomes irrelevant.

On the authority of *Aqua Ltd. v. Ondo States Council* (1988) 10-11 S.C. 31; (1988) 4 NWLR (Pt. 91) 622 at 641, it was contended that in interpreting a statute, the courts should give effect to the natural meaning of the clear and unambiguous words used in the statute stressing that if the legislature had intended that everyone against whom an allegation was made outside those referred to directly or by implication in Section 133(2) could become a party, there would have been no need for Section 133 of the Electoral Act, 2002.

In response to the above submission, it was pointed out in the Respondents' brief that there are other provisions in the Electoral Act, 2002, other than Section 133 subsection (2) which must be read together to arrive at the true intendment of the subsection. The cases

of Attorney-General of the Federation v. Guardian Newspaper Ltd. (1999) 5 S.C. (Pt. II) 59; (1999) 9 NWLR (Pt. 618) 187 at 264 and Egolum v. Obasanjo (1999) 5 S.C. (Pt. I) 1; (1999) 7 NWLR (Pt. 61) 355 were alluded to as authority that it is a cardinal principle of interpretation that a statute should be construed as a whole in such a manner as not to lead to absurdity. Paragraph 45 of the First Schedule to the Act was cited to support the proposition that contestants other than the declared winner in an election can be made respondents in a petition. It was contended that whether a candidate should be made a Respondent in a petition depends on whether a complaint cognisable under the act as a ground for presenting the petition has been made against him or the outcome of the case will affect him as a candidate in the election. Finally, it was submitted that the lower court was justified in refusing to strike out the Appellants from the petition on the ground that since an allegation was made against the 1st Appellant he and the 2nd Appellant that sponsored him were entitled to a fair hearing.

Having given due considerations to the submissions of counsel on both sides, it seems to me that the merit or otherwise of this appeal revolves on the interpretation of Section 133 subsection (2) of the Electoral Act, 2002, and Paragraph 45 of the first schedule thereto and they read as follows:-

“133(2) The person whose election is complained of is, in this Act, referred to as the Respondent, but if the petition complains of the conduct of an Electoral Officer, a Presiding Officer, a Returning Officer or any other person who took part in the conduct of an election, such officer or person shall for the purpose of this Act be deemed to be a respondent and shall be joined in the election petition in his or her official status as a necessary party.”

Paragraph 45 of the First Schedule to the Act:-

“Where two or more candidates may be made respondents to the same petition and their case may, but for all purposes (including the taking of security) the election petition shall be deemed to be a separate petition against each of the respondents”

Dealing with subsection 2 of Section 133, it is to be borne in mind that it is a cardinal rule of interpretation that where the words of a statute are clear or unambiguous those words shall be so construed as to give effect to their ordinary or literal meaning and

enforced accordingly. See *Berliet (Nig.) Ltd. v. Kochalla* (1995) 9 NWLR (Pt. 420) 478, 488; *Ekeogu v. Aliri* (1991) 3 NWLR (Pt. 179) 258; *Okumagba v. Egbe* (1965) 1 NMLR 62. Guided by this principle, it seems to me that the persons who may be made Respondents in an election petition are circumscribed by subsection 2 of Section 133 of the Electoral Act, 2002. Those persons as enumerated in the subsection are the persons duly elected and any of the electoral officers or persons whose conduct at the election is complained of in the petition. A candidate who lost at the election is not within the contemplation of the subsection; it is immaterial that an allegation was made against him. The subsection does not accommodate such a person and one cannot read into a statute what is not there. B C

With respect to Paragraph 45 of the First Schedule to the Electoral Act (supra), it is conceded that a statute must be read and interpreted as a whole in order to extract the meaning of any particular part or expression. In seeking to interpret a particular section of a statute or a subsidiary legislation one does not take the section in isolation but one should approach the question of the interpretation on the footing that the section is part of a greater whole: See *James Orubu v. National Electoral Commission* (1988) 12 S.C. (Pt. III) 1; (1988) 5 NWLR (Pt. 94) 323; *Chima & Anor. v. Nelson Ude & 2 Ors.* (1996) 3 NWLR (Pt. 461) 379 at 417. However, in *F.C.S.C. v. Laoye* (1989) 4 S.C. (Pt. II) 1; (1989) 2 NWLR (Pt. 106) 652 at 711, it was held that schedules, tables and forms are useful in the interpretation of provisions in the body of a statute. In cases of ambiguity, they become useful handmaids to interpretation. But they will not override the plain words of the statute. If there is any contradiction, the enacting clause will prevail. It would be quite contrary to the recognised principles of construction of statutes to restrain the operation of clear and unambiguous words or sections by reference to what appears in a schedule, table or form. Furthermore, it is trite law that one way in which repugnancy can be avoided in the interpretation of statutes is by regarding two apparently conflicting provisions as dealing with distinct matters or situations: *T.K. Worgan & Son Ltd. v. Gloucestershire County Council* (1961) 2 QB 123 at 132. D E F G H

Bearing the foregoing principles in mind, I am, with respect, unable to agree with the contention of the Respondents' counsel that Paragraph 45 of the First Schedule to the Electoral Act (supra)

is authority for the joinder of a candidate who lost at an election as a Respondent in the election petition. I am prepared to accept that the Appellants are on firm ground in their contention that from the clear words of subsection (2) of Section 133 of the Electoral Act (supra) a candidate not returned at an election cannot be joined as
B a Respondent in a petition against that election.

For these and the more detailed reasons set out in the lead judgment of my learned brother, Uwaifo, JSC., I will, and do hereby allow the appeal with the consequential orders made in the lead
C judgment.

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