

**SUPREME COURT OF NIGERIA**  
THURSDAY 9TH OCTOBER, 2003. SC. 122/2003  
**CORAM:- S. M.A. BELGORE, I. L. KUTIGI, A. I. KATSINA-  
ALU, S. O. UWAIFO, N. TOBI, D. O. EDOZIE,  
I. C. PATS-ACHOLONU, JJSC**

1. ALHAJI MOHAMMED DICKO YUSUF ..... APPELLANTS  
2. MOVEMENT FOR DEMOCRACY AND  
JUSTICE (MDJ)  
AND  
CHIEF OLUSEGUN AREMU  
OKIKIOLA OBASANJO & 56 ORS ..... RESPONDENTS

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WORDS & PHRASES - “Subject to” - Meaning - The expression subordinates provisions of the subject section - To the section referred to - Which is intended not to be affected by provisions of the latter (H1)

ELECTION PETITIONS - Federal High Court rules - Application - Scope - The rules shall be applied with modifications - As may be necessary to render them applicable - Vis-a-vis the Electoral Act (H2)

JUDICIAL PRECEDENTS - Authority - Distinction of - Unongo v. Aku - The case is inapplicable in the instance - As it dealt with fixing a period within which a petition must be determined (H3)

ELECTION PETITIONS - Practice & procedure - Rules of court - By para. 14(1) election tribunal is enjoined - To use Civil Procedure Rules of Federal High Court - Relating to amendment of pleadings (H4)

ELECTION PETITIONS - Amendment - Time limit - Electoral Act 2002 para.14(2) - Substantial amendments will not be allowed - After the expiration of thirty days - Following presentation of the petition (H5)

ELECTION PETITIONS - Words & phrases - “Presented” - Meaning - By s. 132 Electoral Act 2002 - From the context it was used - The

**2356** Yusuf v. Obasanjo (2003) 9-10 KLR (pt. 166) 2355; (2003) 16  
word means filed (H6)

ACTIONS - Hearing - Delay in - Effect - A party is not to be punished for such delay - That is not traceable to him (H7)

ACTIONS - Parties - Joinder of - Limitation - Where a statute has specifically provided for parties to an action - Common law principles of joinder of necessary parties - Will not apply (H6)

PLEADINGS - Amendment - Basic principles - An amendment for purposes of determining the real questions in issue - Ought to be allowed by court - Unless it will entail injustice (H6)

SUPREME COURT - Powers - By s. 22 of Supreme Court Act - The court can make necessary order - For determining the real question in an appeal (H10)

SUPREME COURT - Powers - Supreme Court Act s.22 - Invocation of - Basis - The matter must have been raised in lower court - And there must be enough materials before the court - To enable it take a decision (H11)

### ***FACTS***

1<sup>st</sup> petitioner/appellant contested the 2003 presidential election as the flag bearer for the Movement for Democracy and Justice, while 1<sup>st</sup> respondent contested as the flag bearer for the Peoples Democratic Party. Following the declaration of the results which returned 1<sup>st</sup> respondent as the winner of the election, appellants filed this election petition before the Court of Appeal, sitting as presidential election tribunal.

On 21<sup>st</sup> May 2003, while the petition was pending, appellants filed a motion seeking to amend their petition by inter alia joining corporate Nigeria as a respondent to the petition and adding schedule of list of documents intended to be relied on at hearing. For reasons that are not obvious, the tribunal did not hear the motion until 28<sup>th</sup> May 2003. After hearing the motion, the tribunal ruled that no substantial amendment to the petition would be allowed as the time limited for such amendment by the Electoral Act 2002 had elapsed.

Aggrieved, appellants have brought this interlocutory appeal at Supreme Court.

### **ISSUE FOR DETERMINATION**

*“Whether the Court of Appeal misdirected itself on the applicable law and should have granted the prayer for joinder of 57th Respondent and/or any of the amendments Nos. (1) (2) (4) (5) (11) (13) (15) and (17) sought in the motion dated 21st May, 2003, and determined in their Lordships’ Ruling of 5th June, 2003.”*

**HELD** (Unanimously allowing the appeal per **TOBI JSC**)

*WORDS & PHRASES - “Subject to” - Meaning*

**1. As it is, the opening and operative words of paragraph 50 are “subject to the express provisions of this Act.” The words “subject to” have been interpreted by this court a number of times. In *Alhaji Tukur v. Government of Gongola State* (1989) 9 S.C. 1, (1989) 4 NWLR (Pt. 117) 517, this court held that the expression “subject to” is often used in statutes to introduce a condition, a proviso, a restriction, a limitation. The expression subordinates the provisions of the subject section to the section referred to which is intended not to be affected by the provisions of the latter.**

**It is clear from the provision of paragraph 50 of the First Schedule to the Act that the Civil Procedure Rules of the Federal High Court can only be applied to the extent that the Electoral Act allows or permits. (p. 2373 A)**

*Federal High Court rules - Application - Scope*

**2. Paragraph 50 has placed restriction on the application of the Civil Procedure Rules of the Federal High Court. The Rules shall be applied with such modifications as may be necessary to render them applicable in the light of the provisions of the Act. This means that the sky is not the limit in respect of the application of the Civil Procedure Rules of the Federal High Court. From the provision of paragraph 50, it is clear to me that if any of the provisions of the Civil Procedure Rules of the**

**Federal High Court are inconsistent or in conflict with the Electoral Act, 2002, the inconsistency or conflict will be resolved in favour of the provisions of the 2002 Act.**

**In the light of the above construction, I am in total agreement with Mr. Okunloye, SAN, that the provisions of the Federal High Court Rules can apply to election petitions with some restriction.** (p. 2373 E)

*JUDICIAL PRECEDENTS - Authority - Distinction of*

**3. Let me first take the decision of Unongo v. Aku (supra) copiously cited by learned counsel for the appellants and attacked by learned Senior Advocate for the 1st respondent that the decision is inapplicable.**

**I think the learned Senior Advocate is correct. Unongo is not applicable as it dealt with a clearly different issue. Unongo had to do with fixing a period of thirty days within which an election petition must, as a matter of law, be finally determined.**

**The above is clearly not the position here.** (p. 2374 B/H/2375B)

*ELECTION PETITIONS - Practice & procedure - Rules of court*

**4. By paragraph 14(1), an Election Tribunal is enjoined to use the Civil Procedure Rules of the Federal High Court relating to amendment of pleadings. The Civil Procedure Rules will apply in relation to election petition or a reply to the election petition as if for the words "any proceedings" in those provisions there were substituted the words "the election petition or reply". As it is, paragraph 14 (1) does not specifically say that the Civil Procedure Rules are those of the Federal High Court. That is clearly the intention of the draftsman by a community reading of the paragraph with paragraph 50 thereof. Accordingly, an Election Tribunal must use the Civil Procedure Rules of the Federal High Court within the provisions of paragraph 50 of the First Schedule to the Act.** (p. 2376 G)

*ELECTION PETITIONS - Amendment - Time limit*

**5. A joint interpretation of paragraph 14(2) of the First Schedule to the Electoral Act, 2002, and Section 132 thereof, places**

**restrictions on the part of a petitioner in the amendment of his petition. And the restrictions are itemized or enumerated in paragraph 14(2) (a), (i), (ii) and (iii). Since the ipsissima verba of the provisions have been stated above, I need not repeat myself. The meat of it all is that substantial amendments will not be allowed, after the expiration of the period of thirty days, following the presentation of the petition.** B

**The result of the election was declared on 22nd April, 2003. The election petition was filed on 2nd May, 2003, and the motion for amendment of the petition was filed on 21st May, 2003. (See pages 1 to 5 of the Record). Reducing that to arithmetical detail, since the result of the election was declared on 22nd April and the motion for amendment was filed on 21st May, 2003, the motion for amendment was presented within thirty days from the date of declaration of the election. This interpretation is in conformity with the provisions of Order XII Rule 1 of the Federal High Court (Civil Procedure) Rules. (pp. 2377 H/2379 B)** C D

**ELECTION PETITIONS - Words & phrases - "Presented" - Meaning**  
**6. Section 132 uses the word "presented." In my humble view, the word in the context means "filed." Paragraph 2(a) uses the same word, but in the continuous tense of "presenting." In other words, Section 132 provides that an election petition under the Act shall be filed within thirty days from the date the result of the election is declared. Similar interpretation arises in respect of the word, "presenting" in paragraph 14(2) (a) of the First Schedule to the Act. (p. 2379 G)** E F

**ACTIONS - Hearing - Delay in - Effect** G

**7. There is a clear dichotomy or cleavage between a party coming to a court by a relevant court process and the determination of that process by the court. While the former function is that of the litigant, the latter function is that of the court. The moment a party has filed an application in court, it is not within his power to dictate a date for the hearing of the application. As a matter of practice and rules of court, the responsibility of the party stops the moment he files the application,** H

**and the responsibility of the court begins from there in respect of fixing a date and subsequent hearing.**

**Accordingly, it will be a grave injustice to punish a party in litigation for a delay in the hearing of an application, not caused or traceable to him, a delay which, according to the lower court offended paragraph 14 (2) of the First Schedule to the Act. (p. 2380 B)**

*Joinder of parties - Limitation*

**8. The Electoral Act, 2002, has clearly provided for who should be a petitioner and who should be a respondent. In view of the fact that CORPORATE NIGERIA is sought to be joined as a respondent, I will fall back on Section 133 (2) of the Act.**

**It is clear that as CORPORATE NIGERIA, did not take part in the conduct of the Presidential Election which was held on 19th April, 2003, the body does not qualify as a respondent. Where a statute has specifically provided for parties to an action, the common law principles of joinder of a necessary party will not apply. This is because the statute by its specific provisions has stopped or blocked parties not mentioned therein. (pp. 2384 D/2387 E)**

*PLEADINGS - Amendment - Basic principles*

**9. The courts have established basic principles guiding amendment of proceedings. Basically, an amendment for the purposes of determining the real questions in controversy between the parties ought to be allowed by the court unless such amendment will entail injustice.**

**In Alsthom S.A. v. Chief Saraki (2000) 10-11 S.C. 48, (2000) 14 NWLR (Pt. 687) 415, Achike, JSC., of blessed memory, and a very fine Judge, said at page 427:**

**“The basic principle governing the granting of leave to amend is for the purpose of determining the real issue or issues in controversy between the parties.... The courts have always followed the established principle that the fundamental object of adjudication is to decide the rights of the parties, and not to impose sanctions merely for mistakes they make in the conduct of their cases by deciding otherwise than in ac-**

***cordance with their rights.”***

***In the light of the very generous provisions of the Federal High Court Rules and the case law, the lower court, in my view, ought to have allowed more of the amendments sought.*** (p. 2388 E)

B

***SUPREME COURT - Powers***

***10. I am very much attracted by the above submission and I entirely agree with counsel that this court can invoke Section 22 of the Supreme Court Act in the circumstances of this appeal. By the section, this court may from time to time, make any order necessary for determining the real question in controversy in the appeal, and may amend any defect or error in the record of appeal and shall have full jurisdiction over the whole proceedings as if the proceedings have been instituted and prosecuted in the Supreme Court as a court of first instance.*** (p. 2389 E)

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D

***Supreme Court Act s.22 - Invocation of - Basis***

***11. One consideration for the invocation of Section 22 is that the matter must have been raised in the lower court and that court did not or failed to take the appropriate decision. Another consideration is that there are enough materials before this court to enable it take a decision one way or the other.***

E

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***It is common ground that an application for amendment of the petition was placed before the lower court, and this included the joinder of CORPORATE NIGERIA (LIMITED BY GUARANTEE). Arguments were proffered by counsel. The Record of Appeal, in my view, contains all the relevant materials for this court to consider and make order or orders one way or the other in respect of the amendments sought by the appellants. I therefore resort to the Record of Appeal to make the necessary orders.*** (p. 2390 B/F)

H

**NOTABLE POINTS OF INTEREST**

**TOBI JSC**

***1. Cross reference to section 154 is in error***

The most important provision for the purpose of this appeal is paragraph 14(2). The sub-paragraph makes a cross reference to a non-existent Section 154. It is non-existent because the Act stops at Section 153. The lower court rightly held that Section 154 referred to in paragraph 14 (2) should read Section 132 as it is that Section that provides for time within which an election petition shall be presented. I entirely agree with the lower court. (p. 2377 B)

### **UWAIFO JSC**

#### ***2. It is the petitioner that amends a petition***

It seems to me necessary that in the construction of para. 14(2)(a) above, the question should be asked: who is it that is expected to make an amendment to an election petition? I think it is a person who presented the election petition, i.e., a petitioner. He makes the amendment by introducing all facts or alterations he considers proper or necessary. He does so by indicating this in the court process which he files in court for the purpose of the amendment he had made. All that the said paragraph 14(2)(a) requires of him is to do so, that is to say, make the amendment within the time limited by Section 132 of the Act for presenting an election petition. It is not the court or Tribunal that makes the amendment. Its function is to consider the amendment made within time to the petition. In the course of doing so, it is up to the Tribunal to grant or refuse the amendment so made by the petitioner. That is, when it brings to bear on the motion its judicial power to consider the merits of the amendment. (p. 2400 G)

### **ACHOLONU JSC**

#### ***3. Time is of essence only as to filing of process***

As much as possible but more particularly in an election petition case involving a quest for an adjudication in respect as to the competence of the election, it must be stressed that every minute matter should be given due consideration so that in a desire to handle the matter expeditiously, there may not be a tendency to be over technical in our approach. A wide berth has to be given to the parties and as much as possible it shall be encouraged that such election matters be canvassed on their merits except where there is obvious and manifest irregularity or glaring incompetence which no court by any stretch of imagination can cause to be restructured. Time can only be consid-

ered of essence in respect as to whether the application was made within the time stated by the statute and not necessarily when the court in its inscrutable majesty decides to adjudicate or hear the matter. (p. 2409 G)

**REPRESENTATION**

B

A.J. Owonikoko Esq., with Felix Ebi, Esq., for the Appellants  
Olaseeni Okunloye SAN with O. Aladoluye, Esq., for the 1st Respondent

Roland Otaru, Esq., for 2nd Respondent

A.O. Eghobamien, SAN with A. O. Okeaya-Inneh Esq and D. O. Abanum Esq, for the 40th to 55th respondents

C

**CASES REFERRED TO**

Weldon v. Neal (1889) 19 QBD 394

Pontin v. Wood (1962) 1 All ER 294

Cropper v. Smith (1883) 26 Ch. D. 700

Adeleke v. Awoyini (1962) 1 All NLR 260

Unongo v. Aku (1983) NSCC Vol. 14, 563

Tildslay v. Harper (1878) 10 Ch. D. 393

Irolo v. Uka (2002) 14 NWLR (Pt. 786) 195

Anigala v. Abeh (1999) 7 NWLR (Pt. 61) 454

Machinery Co. v. Cultan (1896) 1 Ch. D. 108

Omeh v. Okoro (1999) 8 NWLR (Pt. 615) 356

Okoya v. Santilli (1990) 2 NWLR (Pt. 131) 172

Ketteman v. Hansel Properties Ltd. (1887) AC 189

Nnonye v. Anyichie (1989) 2 NWLR (Pt.101) 110

Medway Building and Supplies Ltd. (1958) 3 All ER 540

Katto v. Central Bank of Nigeria (1999) 5 S.C. (Pt. II) 21

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**STATUTES & RULES REFERRED TO**

Electoral Act 2002, SS. 132,133 and the schedule

Electoral Act 1982, SS. 129 & 140

Supreme Court Act, S. 22

Federal High Court, Civil Procedure Rules 2000

H

**LEAD JUDGMENT BY TOBI JSC**

The 1st appellant contested the 2003 presidential election on

the platform of the Movement for Democracy and Justice (MDJ). He lost the election to the 1st respondent, Chief Olusegun Obasanjo, who contested the election on the platform of the Peoples Democratic Party (PDP). The appellant did not like the election result. He contested the result by filing an election petition against the 1st respondent and other respondents. He challenged the conduct, result and return of the 1st respondent as the winner of the election.

On 21st May, 2003, the appellant filed a motion before the Presidential Election Tribunal which is for all intents and purposes, the Court of Appeal. He sought for the following prayers:

“1. Leave to join CORPORATE NIGERIA (LIMITED BY GUARANTEE) as 57th Respondent in the petition.

2. Leave to amend the petition to reflect the joinder, and to amend some paragraphs of the petition, etc.

3. An order deeming as properly filed a separately filed amended petition, the necessary filing fees having paid on therefore on the same 21<sup>st</sup> May, 2003.

4. An order permitting to be sub-joined to the petition a schedule of list of documents intended to be relied upon at the hearing of the petition ... (The exact wordings of the prayers in the motion are to be found at pages 2-4 of the records.)

For reasons which are not obvious from the Record, the Presidential Election Petition Tribunal could not take the motion earlier than 28th May, 2003. After hearing arguments from counsel, the Tribunal granted some of the reliefs and refused others. Delivering the Ruling of the Tribunal as a Court of Appeal on 5th June, 2003, the learned President of the Court of Appeal, Abdullahi, PCA., said at pages 74-75 of the Record:

“At this stage, no application for amendment which is capable of giving life to otherwise anaemic petition can be entertained... It follows that outside this period life could not be breathed into otherwise anaemic petition. The court will in the circumstances be guided by this principle in its consideration of the reliefs sought.”

In his concurring Ruling, Oguntade, JCA., said at page 81 of the Record:

“Some of the amendments now proposed by the petitioners/applicants are those that ought to have been sought or within 30 days after the results of the election were announced. The applicants

*filed the application on 21/5/03 which was before the time limited for the purpose. But for some reasons we were not placed to consider the application until 2/6/03 which was after the time limited for the purpose had expired.”*

Nsofor, JCA., in his concurring Ruling, said at page 84 of the Record: B

*“Most certainly to grant the amendments sought, the election petition as amended would have been filed outside, or, in defence of Section 132 of the Act. Would this court competently allow this. I would, respectfully, think not. Why? Only because and because only our duty, as expressed in Latin is...”* C

And finally, Tabai, JCA, in his concurring Ruling at page 88 of the Record, said:

*“The combined effect of Section 132 and paragraph 14 (2) of the Schedule of the Act is that a substantial amendment of an election petition cannot be made after 30 days of the declaration of the result. All such amendments in this application which are substantial in nature cannot therefore be granted.*

And so in an unanimous Ruling, the Presidential Election Tribunal otherwise known as the Court of Appeal, refused to grant what it referred to as “material and substantial amendments” but granted what the learned President of the Court of Appeal called “innocuous” amendments. E

The appeal before us is in respect of the 5th June, 2003, ruling of the tribunal. As usual, briefs were filed and exchanged. The appellants formulated the following issue for determination. F

“Whether the Court of Appeal misdirected itself on the applicable law and should have granted the prayer for joinder of 57th Respondent and/or any of the amendments Nos. (1) (2) (4) (5) (11) (13) (15) and (17) sought in the motion dated 21st May, 2003, and determined in their Lordships’ Ruling of 5th June, 2003. G

The 1st respondent formulated the following issue for determination:

*“Whether the court below has the jurisdiction to make any order amending the petition in the manner sought by the appellant when the time within which the amendment sought could be granted had lapsed and the right to amend the petition had become extinct.”* H

The 2nd respondent formulated the following issue for deter-

mination:

*“Whether the lower court was right in refusing to grant some of the amendments sought by the appellants having regard to the Provisions of Section 132 and paragraph 14 (1) and (2) of the 1st Schedule to the Electoral Act, 2002.”*

B The 40th to 55th respondents formulated the following issue for determination:

*“Whether the court below has the jurisdiction to make any order amending the petition of the appellant.”*

C It appears to me that all the issues formulated by the parties are basically the same as they zero on the amendments sought by the appellants and the subsequent decision of the Tribunal. To me, the issues are the same in the way 12 and a dozen are, or 20 and a score.

Learned counsel for the appellants, Mr. A.J. Owonikoko submitted that paragraph 14 of the First Schedule to the Electoral Act, 2002, must be interpreted subject to the provisions of the Constitution which are (a) superior to and overrides any contrary provisions of the Electoral Act; (b) guarantees separation of powers between the executive, the legislature and the judiciary; (c) guarantees independence of the judiciary from legislative inference (d) guarantees appellants a right to fair hearing on the merits in the determination of their civil rights and obligations, including any question or determination by or against any government or authority. He cited *Unongo v. Aku* (1983) NSCC Vol. 14, 563 at 567 and submitted that the case applies with full force in the determination of this appeal.

Learned counsel submitted that it was a misdirection on the part of their Lordships in the lower court for them to have predicated their refusal of the amendment on the punitive line of reasoning that held sway in military era. Citing *Omeh v. Okoro* (1999) 8 NWLR (Pt. 615) 356 at 369, counsel submitted that the case was good for the time it was decided, but it was wrong for the lower court to have followed it in preference to *Unongo v. Aku* (supra). He argued that since the ruling has occasioned a miscarriage of justice, this court should reverse it. He cited *Irolo v. Uka* (2002) 14 NWLR (Pt. 786) 195 at 238.

Counsel contended that if this court agrees with his submission on the ruling, then it can take into consideration the six guidelines he has enumerated at paragraph 4.15 of the brief.

It was the submission of learned counsel that the lower court failed to direct itself to the Federal High Court Rules, an act which caused a miscarriage of justice. To learned counsel, if the court had invoked the Federal High Court Rules, it would have granted the amendments sought. He cited *Maersk Line v. Addide Investment Ltd.* (2002) 4 S.C. (Pt. II) 157, (2002) 11 NWLR (Pt. 778) 317 at 359. B

Counsel took some of the amendments sought and submitted that their Lordships ought to have granted the motion. He submitted that once real justice of the case demands it, a court has power to grant amendment of pleadings at any stage of the proceeding, in order that real matters in controversy between parties, shorn of manifest errors, mistakes and slips, are adequately brought to focus and determined. He cited *Alsthom S.A. v. Saraki* (2000) 10-11 S.C. 48; (2000) 14 NWLR (Pt. 687) 415 at 424 and *Anigala v. Abeh* (1999) 7 NWLR (Pt. 61) 454 at 469. He urged the court to allow the appeal. D

Learned counsel for the 1st respondent, Mr. Seeni Okunloye, SAN, submitted that election petitions are neither civil nor criminal proceedings but proceedings *sui generis*. He cited *Orubu v. NEC* (1988) 12 S.C. (Pt. III) 1; (1988) 5 NWLR (Pt. 94) 323 at 347. The applicable rule to the petition is the First Schedule to the Electoral Act, 2002 and not necessarily the Federal High Court Rules as contended by the counsel for the appellants, learned Senior Advocate argued. He cited *Governor of Kaduna State v. Kogoma* (1982) 3 NCLR 206. E

F Relying on paragraph 14 (2) of the First Schedule to the Act, learned Senior Advocate submitted that the court lacks the jurisdiction to grant an amendment of a substantial nature after the period for presenting an election petition has lapsed. He cited *Ogundiran v. Olalekan* (1998) 8 NWLR (Pt. 561) 321; *Umar v. Nakata* (1999) 3 G NWLR (Pt. 596) 558; *Omeh v. Okoro* (1999) 8 NWLR (Pt. 615) 356 and *Oduola v. Ogunjobi* (1986) 2 NWLR (Pt. 23) 508. To learned Senior Advocate, the appellants' intention that the jurisdiction of the court is preserved or that the provisions of paragraphs 14 must be read subject to the Constitution on account of the fact that the appellant filed his application before the expiration of the time for presenting petition, is clearly erroneous and smacks of grave misconception of procedural rules. H

The filing of an application does not confer jurisdiction on the

court as jurisdiction is covered by statute and where a statute prohibits the court from exercising a particular jurisdiction after a particular time, the jurisdiction must not be exercised at that time, learned Senior Advocate contended. It is not enough for the applicant to file his application before the expiration of time, he has the extra duty to ensure that the court exercises its jurisdiction over such an application within time; otherwise the court would lose the jurisdiction to grant the application, counsel reasoned. He cited *Buwaje v. Adediwura* (1976) S.C. 143; *CCB (Nig.) Plc v. A-G Anambra State* (1992) 8 NWLR (Pt. 261) 558 at 560 and 561; *Okolo v. Anyako* (1999) 3 NWLR (Pt. 594) 289 and *Eguamwese v. Amaghaizemen* (1993) 9 NWLR (Pt. 315) 1.

Learned Senior Advocate made reference to the arguments at paragraphs 4.14 and 4.23 of the appellants' brief and submitted that they are incompetent as they attempt to touch the merits of the application before the lower court. Counsel also contended that the arguments in the paragraphs are not covered in the grounds of appeal and must therefore be ignored. He cited *Exquisite Ind. Ltd. v. Owners of M.V. Bacoliner* 1-3 (1998) 5 NWLR (Pt. 549) 335 at 345. He urged the court to dismiss the appeal.

Learned counsel for the 2nd respondent, Mr. Roland Otaru, submitted that from the tenor of the provisions of Section 132 of the Electoral Act, 2002, read conjunctively with paragraph 14(1) and (2) of the First Schedule to the Act, the lower court was right in refusing some of the amendments prayed for by the appellants as same were substantial amendments which could not be brought after the expiration of the time limited by the Act as same would have been in contravention of the provisions of the Act. He cited *Anigala v. Abeh* (1999) 7 NWLR (Pt. 611) 454 at 470. He did not see the applicability of *Unongo v. Aku* (supra) in this appeal.

Arguing that paragraph 14(1) and (2) of the First Schedule to the Act is not an interference by the Legislature on the functions of the courts, counsel made reference to what he called similar provision in Section 27 (2) (a) of the Supreme Court Act, Cap. 424, Laws of the Federation of Nigeria and cited the following cases on the interpretation of the subsection; *Ododiyen v. Hispanic Construction (Nig.) Ltd.* (1986) 5 NWLR (Pt. 39) 127; *Amudipe v. Arijodi* (1978) 9 - 10 S.C. 22; *Buwaje v. Adediwura* (1976) 6 S.C. 143 and

Ezeadukwa v. Maduka (1997) 8 NWLR (Pt. 518) 635.

On the issue of joinder of CORPORATE NIGERIA, learned counsel submitted that CORPORATE NIGERIA cannot be joined in the case, having regard to the provisions of Section 133 (2) of the Act, as it did not take part in the conduct of the presidential election; and that granting the appellants' request will be in contravention of the provisions of paragraphs 4, 14(1) and (2) of the First Schedule to the Act. He urged the court to dismiss the appeal. B

Learned counsel for the 40th to 55th respondents, Mr. A.C. Eghobamien, SAN, dealt in some considerable detail on the principles of amendment. He enumerated specific principles in paragraph 4 of the brief and made reference to the following cases: Baker Ltd, v. Medway Building and Supplies Ltd. (1958) 3 All ER 540 at 546; Cropper v. Smith (1883) 26 Ch. D. 700 at 710; Machinery Co. v. Cultan (1896) 1 Ch. D. 108 at 112; Tildslay v. Harper (1878) 10 Ch. D. 393 at 396-397; Weldon v. Neal (1889) 19 QBD 394 at 396; Kurtz v. Spence (1888) 36 Ch. D. 774; Ketteman v. Hansel Properties Ltd. (1887) AC 189 at 220; Adeleke v. Awoyini (1962) 1 All NLR 260 at 262; Foko v. Foko (1968) NMLR 441; Adetutu v. Aderohunmu (1984) 6 S.C. 92; Laguro v. Toku (1992) 2 NWLR 278; Pontin v. Wood (1962) 1 All ER 294 at 298; and Aguda's Practice and Procedure (2nd ed.) page 35 and The English Annual Practice 1999, Order 20 rule 8 (7). C

Dealing with Section 132 of the Act and paragraph 14 of the First Schedule to the Act, the English Annual Practice White Book (1999) page 380 (Order 20 Rule 8 (75) where the authors examined Section 35 (2) of the Limitation Act, 1980 of England, learned Senior Advocate submitted that a fine and tedious line must be drawn between the principle that an amendment can be made at any stage of the proceedings and the principle that an amendment cannot be made to introduce a new action or a new party. F

To learned Senior Advocate, while the former deals with the court's powers to amend a claim that has been properly constituted, the latter deals with the court's powers not to allow new claims. They appear inconsistent but they are not, learned Senior Advocate contended. He submitted that a party cannot be allowed to amend a new claim or introduce a new party otherwise it renders the whole essence of the limitation law otiose. He urged the court to dismiss the H

appeal.

In his Reply Brief to 1st respondent's brief, Mr. Owonikoko submitted that the decision in Unongo's case remains the present position on the constitutional prohibition against any timekeeper legislation that seeks to interfere with the independence of the judicial arm by limiting the time within which it must hear and determine a cause or matter legitimately before it. There is no reason why such a prohibition must not apply with equal potency to both interlocutory and substantive hearing.

Learned counsel submitted that the principles of limitation law canvassed in paragraph 5.11 of the 1st respondent's brief are not applicable to the issue for determination in this appeal. He cited *A.G. Abia v. A.G. Federation* (2002) 3 S.C. 106; (2002) 6 NWLR (Pt. 763) 264 and *Chief Babalola, Election Law and Practice*, pages 312 D and 313

On the submission that the appellants were tardy in getting the lower court to fix an early date for the motion to amend the petition, learned counsel submitted that (1) the point was never canvassed in the lower court and the decision herein appealed against did not so decide. (2) The respondent requires leave to argue the point as a fresh point of law in the Supreme Court. No such leave was sought by the respondent. (3) The fresh point involves a consideration of mixed law and facts, whereas the present appeal is on ground of law alone.

He referred to Order 6 Rule (1) (b) of the Supreme Court Rules and cited the case of *A-G Oyo State v. Fairlakes Hotels Ltd.* (1988) 12 S.C. (Pt. I) 1; (1988) 5 NWLR (Pt. 92) 1 at 29. Still on the issue of tardiness on the part of counsel in filing the application for amendment, learned counsel pointed out that the Supreme Court held in *CCB (Nig.) Ltd v. AG Anambra State* cited by counsel for the 2nd respondent, that (tardiness by counsel in procuring date for an urgent action, which is not concluded herein) must never be used to punish a litigant.

It was the submission of learned counsel that it is grossly unfair to even blame anybody about the supposed delay which respondents are dramatizing. The delay is imaginary and misconceived in the first place in the light of the position taken in the brief of the appellants, learned counsel contended. He reiterated the fact that

the application to amend the petition was filed within time; the amended petition was also filed within time, and a deeming order was duly sought by appellants' counsel to obviate any prejudice to his client in case the business of court did not permit expeditious hearing. Counsel pointed out that as at the time the application was to be heard there was a preliminary objection to the petition by counsel to 40th - 55th respondents and the lower court elected to take the objection first. B

On the issue of arguing the merits of the appeal, learned counsel contended that the appeal is all about failure of the Court of Appeal to determine the merit of the application for amendment of election petition. To counsel, it has nothing to do with election petition being *sui generis*. Relying on Section 22 of the Supreme Court Act, counsel submitted that the section affords a straight answer to the submission of the 1st respondent that the merit of the amendment should not be argued in the appeal. It is a deserving case in which this court will be doing complete justice by allowing the amendments, learned counsel urged. C D

Counsel contended that all the necessary conditions for this court to deal with the merits of the application are present; conditions which he enumerated at paragraph 1.19 of the Reply Brief. He cited *Aderemi v. Y.R.S. Ike- Oluwa and Sons Ltd.* (1993) 8 NWLR (Pt. 309) 27. E

In his Reply Brief to the 2nd respondent's brief, Mr. Owonikoko submitted that **CORPORATE NIGERIA (LIMITED BY GUARANTEE)** is sought to be joined because of its involvement in illegal campaign/ electoral funding of the 1st and 2nd respondents. He cited Section 221 of the Constitution and the case of *Buhari v. Yusufu* (2003) 6 S.C. (Part II) 156. F G

In his Reply Brief to the appellant's brief, learned Senior Advocate, Mr. Okunloye, argued that the appellant's reply brief went beyond the purview of a reply brief as it raised fresh issue of facts and fresh points of argument outside the issue in the 1st respondent's brief. Citing *Essien v. The Commissioner of Police* (1996) 5 NWLR (Pt. 449) 489, learned Senior Advocate submitted that that is not generally allowed in a reply brief. Without specifically pointing out the fresh points raised by Mr. Owonikoko in the whole reply brief, in re-opening the issue raised in the preliminary objection, including H

the decision of this court in *Orubu v. NEC* (1988) 12 S.C. (Pt. II) 1; (1988) 5 NWLR (Pt. 94) 323.

It is my understanding that the case of *Orubu v. NEC* (supra) was raised in respect of the preliminary objection. Since the preliminary objection has been withdrawn and struck out, *Orubu* goes with  
 B it and therefore no more relevant for our consideration.

I think I should start with the applicable rules in this appeal. I say this because there is an apparent confusion arising from the submission of counsel. Mr. Owonikoko submitted that both the Electoral  
 C Act and the Federal High Court (Civil Procedure) Rules, 2000, are applicable in determining whether or not to grant an amendment to the petition. He specifically made the point in the penultimate paragraph (paragraph 5.4) of his brief that the failure of the court below to apply the rules of the Federal High Court to determine the ap-  
 D plication for joinder and amendment on the merit has occasioned a miscarriage of justice.

Mr. Okunloye, SAN, did not agree with the above submission of Mr. Owonikoko. He submitted that the applicable rule to the peti-  
 E tion in this appeal is the First Schedule to the Electoral Act, 2002, and that it is erroneous for the appellants to contend that the provisions of the Federal High Court Rules apply to the proceedings in the petition without any restriction. To him, the express provision of para-  
 graph 50 of the First Schedule to the Electoral Act, 2002 makes the application of the Federal High Court Rules subject to the provisions  
 F of the Electoral Act and rules contained in the Schedule thereto. It does not appear that Mr. Otaru or Mr. Eghobamien specifically dealt with the issue.

What does the Electoral Act, 2002, say on the issue? Para-  
 G graph 50 of the First Schedule to the Act is in the following terms:

*“Subject to the express provisions of this Act, the practice and procedure of the Tribunal or the Court in relation to an election pe-  
 H tion shall be as nearly as possible, similar to the practice and procedure of the Federal High Court in the exercise of its Civil Jurisdiction, and the Civil Procedure Rules shall apply with such modification as may be necessary to render them applicable having regard to the provisions of this Act, as if the petitioner and the respondent were respectively the plaintiff and the defendant in an ordinary civil ac-  
 tion.”*

**As it is, the opening and operative words of paragraph 50 are “subject to the express provisions of this Act.” The words “subject to” have been interpreted by this court a number of times. In *Alhaji Tukur v. Government of Gongola State* (1989) 9 S.C. 1, (1989) 4 NWLR (Pt. 117) 517, this court held that the expression “subject to” is often used in statutes to introduce a condition, a proviso, a restriction, a limitation. The expression subordinates the provisions of the subject section to the section referred to which is intended not to be affected by the provisions of the latter.** See also *Oke v. Oke* (1974) 1 All NLR (Pt. 1) 443 at 450; *LSDPC v. Foreign Finance Corporation* (1987) 1 NWLR (Pt. 50) 413 at 461; *Aqua Ltd. v. Ondo Sports Council* (1988) 10-11 S.C. 31; (1988) 4 NWLR (Pt. 91) 622; *Olusemo v. Commissioner of Police* (1998) 11 NWLR (Pt. 575) 547.

**It is clear from the provision of paragraph 50 of the First Schedule to the Act that the Civil Procedure Rules of the Federal High Court can only be applied to the extent that the Electoral Act allows or permits.** In other words, the Civil Procedure Rules of the Federal High Court do not have life of their own, outside the Electoral Act, 2002. By paragraph 50, they are parasitic on the Electoral Act, and in the area of adjectival law, on the first Schedule to the Act.

This is not all. **Paragraph 50 has placed restriction on the application of the Civil Procedure Rules of the Federal High Court. The Rules shall be applied with such modifications as may be necessary to render them applicable in the light of the provisions of the Act. This means that the sky is not the limit in respect of the application of the Civil Procedure Rules of the Federal High Court. From the provision of paragraph 50, it is clear to me that if any of the provisions of the Civil Procedure Rules of the Federal High Court are inconsistent or in conflict with the Electoral Act, 2002, the inconsistency or conflict will be resolved in favour of the provisions of the 2002 Act.**

**In the light of the above construction, I am in total agreement with Mr. Okunloye, SAN, that the provisions of the Federal High Court Rules can apply to election petitions with some restriction.** That is the positive conclusion from the negative sub-

mission of Mr. Okunloye. Having said that, it does not appear to me that Mr. Owonikoko put the position as extreme and as blunt as Mr. Okunloye credited to him. In my understanding of Mr. Owonikoko both the 2002 Act and the Federal High Court Rules apply. It was at the penultimate paragraph of his brief that he pointed out that it was because the lower court failed to apply the rules of the Federal High Court to determine the application for joinder and amendment on the merit that caused a miscarriage of justice. I sound repetitive but repetition also has an advantage of driving a point to clarity.

***Let me first take the decision of Unongo v. Aku (supra) copiously cited by learned counsel for the appellants and attacked by learned Senior Advocate for the 1st respondent that the decision is inapplicable.*** The issue in Unongo v. Aku (supra) was that the Electoral Act of 1982 provided that an election petition should be determined within a period of thirty days. The Supreme Court held that Sections 129 (3) and 140 (2) of the Electoral Act deprive the petitioner of his fundamental right to fair hearing guaranteed by Section 33(1) of the Constitution by limiting the period which an election petition must be disposed of and on this account the two sections are unconstitutional and invalid. It was in that circumstance that Uwais, JSC., (as he then was), held: that any electoral enactment which specifies a time constraint on the court to determine an election petition, as distinguished from the time for filing same (which must include time for determining interlocutory applications filed within the time allowed in the course of determining the petition) is to say the least very absurd and indeed defeats the intention of the Constitution and the Electoral Act itself, which is to enable an aggrieved candidate to seek redress in court.

Mr. Owonikoko submitted that Unongo applies with all force in the determination of this appeal. Mr. Okunloye, learned Senior Advocate, submitted that Unongo forcefully relied upon by the appellants is totally inapplicable to this case. To the learned Senior Advocate, it is indeed very curious that the appellants failed to see the distinction in that case from the present case.

***I think the learned Senior Advocate is correct. Unongo is not applicable as it dealt with a clearly different issue. Unongo had to do with fixing a period of thirty days within which an election petition must, as a matter of law, be finally***

**determined.** That is the first leg of what Uwais, JSC., (as he then was), said, and relating it to the last portion of the dictum makes the sentence read thus:

*“Any electoral enactment which specified a time constraint on the Court to determine an election petition ... is to say the least very absurd and indeed defeats the intention of the Constitution and the Electoral Act itself, which is to enable an aggrieved candidate to an election to seek redress in court.”* B

**The above is clearly not the position here.** The position in this appeal was touched by Uwais, JSC., (as he then was), in passing because he knew that it was not the issue before the court. And the operative words for the purpose of this appeal, in the language of Uwais, JSC., (as he then was), are “as distinguished from the time for filing same.” The word “same” in the text is a proverb and it is used in the place of the words “election petition.” That is the position here. C Uwais, JSC., (as he then was) did not say that it is unconstitutional to specify a period for filing an election petition. As a matter of law, the dictum is clearly to the effect that it is constitutional to do so. What the learned Justice of the Supreme Court described as absurd, and I entirely agree with him, is the fixing of a period for the determination of an election petition. That is certainly against all known principles of fair hearing as the court, by the provision, is hemmed to a fixed date within which it must, as a matter of law, deliver judgment. D

It would appear to me that the decision in Unongo and a few others following, might have resulted in the most encouraging and assuring absence of the regimental fixation of time within which to determine an election petition in the present Electoral Act. That is a development for which the Legislature receive my Kudos. That is how it should be in a democracy. And since that obnoxious provision which Uwais, JSC., (as he then was), referred to as absurd is not in the Electoral Act, 2002, Mr. Owonikoko should not take us back, as it is good to move forward, and forward we must move. I think I should drop Unongo for good. We now know why the lower court did not take Unongo, a position which Mr. Owonikoko did not like and he expressed his displeasure when he said that the lower court “conveniently but rather strangely ignored it in their ruling.” Although there was nothing wrong for that court to examine Unongo as I have done here, I cannot fault the Justices for not doing so. Unongo is E F G H

clearly not in issue in this appeal and I so hold.

The cynosure of this appeal is paragraph 14 of the First Schedule to the Electoral Act, 2002. It is the first line. It is also the bottom line. The appeal clearly zeros on the construction this court will place on it. In view of the centrality and importance of the paragraph, I reproduce the provisions for ease of reference:

*“14(1) Subject to sub-paragraph (2) of this paragraph, the provision of the Civil Procedure Rules relating to amendment of pleadings shall apply in relation to an election petition for a reply to the election petition as if for the words ‘any proceedings’ in those provisions there were substituted the words ‘the election petition or reply.’*

*(2) After the expiry of the time limited by*

*(a) Section 154 of this Act for presenting the election petition, no amendment shall be made*

*(i) introducing any of the requirements of sub-paragraph (1) of paragraph 4 of this Schedule not contained in the original election petition filed; or*

*(ii) effecting a substantial alteration of the ground, for, or the prayer in, the election petition; or*

*(iii) except anything which may be done under the provisions of sub-paragraph (3) of this paragraph, effecting a substantial alteration of or addition to, the statement of facts relied on to support the ground for, or sustain the prayer in the election petition; and*

*(b) paragraph 12 of the Schedule for filing the reply, no amendment shall be made -*

*(i) alleging that the claim of the seat or office by the petitioner is incorrect or false; or*

*(ii) except anything which may be done under the provisions of sub-paragraph (3) of this paragraph, effecting any substantial alteration in or addition to the admissions or the denials contained in the original reply filed, or to the facts set out in the reply.”*

**By paragraph 14(1), an Election Tribunal is enjoined to use the Civil Procedure Rules of the Federal High Court relating to amendment of pleadings. The Civil Procedure Rules will apply in relation to election petition or a reply to the election petition as if for the words “any proceedings” in those provisions there were substituted the words “the election petition or reply”. As it is, paragraph 14 (1) does not specifically say**

***that the Civil Procedure Rules are those of the Federal High Court. That is clearly the intention of the draftsman by a community reading of the paragraph with paragraph 50 thereof. Accordingly, an Election Tribunal must use the Civil Procedure Rules of the Federal High Court within the provisions of paragraph 50 of the First Schedule to the Act.*** B

The most important provision for the purpose of this appeal is paragraph 14(2). The sub-paragraph makes a cross reference to a non-existent Section 154. It is non-existent because the Act stops at Section 153. The lower court rightly held that Section 154 referred to in paragraph 14 (2) should read Section 132 as it is that Section that provides for time within which an election petition shall be presented. I entirely agree with the lower court. C

Let me pause here to say that it is sad that the Act made reference to a non-existent section. While this may be taken as a slip of the mind and not of the head, it is a very serious one for which the draftsman should accept full responsibility. Numbers or names of Sections play a major role in legal drafting as they are the hub of the draftsman. For a legal draftsman to be that careless to mention a non-existent section is to say the least unfortunate. This has arisen as a result of careless proof reading and that is bad, very bad indeed. I say no more on this, but I hope that the draftsman will be more crafty, careful, and elegant in the drafting of bills because the provisions which finally ripen into an Act are the basis for the courts interpretation. In this situation it is good that the courts can place their hands on the real section. The courts should have found themselves in a helpless or hopeless situation if there was no Section 132 to bail them out in the interpretation of paragraph 14 (2). I do hope that the draftsman will initiate an amendment immediately, and I so urge. G

Let me continue with the interpretation of paragraph 14 (2) in its amended content. As it is, the sub-paragraph makes a cross reference to Section 132. What does Section 132 say? The section provides as follows:

*“An election petition under this Act shall be presented within thirty (30) days from the date the result of the election is declared.”* H

***A joint interpretation of paragraph 14(2) of the First Schedule to the Electoral Act, 2002, and Section 132 thereof, places restrictions on the part of a petitioner in the amend-***

**ment of his petition. And the restrictions are itemized or enumerated in paragraph 14(2) (a), (i), (ii) and (iii). Since the ipsissima verba of the provisions have been stated above, I need not repeat myself. The meat of it all is that substantial amendments will not be allowed, after the expiration of the**

**B period of thirty days, following the presentation of the petition.** Paragraph 14(2)(b) deals with restriction for amendment of a reply and this has to do with the respondent. Since that is not the issue, I shall not go into the sub-paragraph.

**C** I return to paragraph 14(2)(a). What is the practical effect of the sub-paragraph as it relates to this appeal? This will take me on a short exercise in arithmetical calculation. Let me first reproduce the relevant paragraphs of the affidavit sworn by the 1st appellant, Alhaji Yusufu.

**D** “2. That I was a candidate in the presidential election held on 19th June, 2003, by the Independent National Electoral Commission at which 1st Respondent was returned as the winner in a result declared on 22nd April, 2003.

**E** 3. That being dissatisfied with the conduct of the election 1st and 2nd petitioner/appellant filed a petition in the court below on the 2nd day of May, 2003, in which we are seeking amongst other reliefs that the 1st respondent did not win majority of lawful votes at the election and that the entire election be voided on grounds of **F** fundamental unconstitutionality, illegalities, corrupt practices and sundry irregularities.

4. That on 21st day of May, 2003 an application was filed in the registry of the court below seeking to amend the petition in the manner set out in the motion and as underlined in the then **G** proposed amended petition.

5. Arguments on the motion was taken by the full court below on 28th day of May, 2003 and a reserved ruling thereon was delivered on 5th June, 2003.”

**H** As it is, paragraph 2 averred that the presidential election was held on 19th June, 2003. I take this as a typographical error and I change it to 19th April, 2003. I think I am entitled to take judicial notice of the fact that the Presidential election took place on 19th April, 2003, and not 19th June, 2003. That is one way to make the averment in paragraph 2 reasonable, particularly the last leg thereof.

There cannot be an election where the election date is 19th June and the result is 22nd April. This is what paragraph 2 has erroneously averred. Since an election has to be conducted before a result, paragraph 2 does not make any sense. Fortunately, that is not an issue in controversy and I will not pursue it any further.

**The result of the election was declared on 22nd April, 2003. The election petition was filed on 2nd May, 2003, and the motion for amendment of the petition was filed on 21st May, 2003. (See pages 1 to 5 of the Record). Reducing that to arithmetical detail, since the result of the election was declared on 22nd April and the motion for amendment was filed on 21st May, 2003, the motion for amendment was presented within thirty days from the date of declaration of the election. This interpretation is in conformity with the provisions of Order XII Rule 1 of the Federal High Court (Civil Procedure) Rules** which provides in part as follows:

*“1. Where by any enactment or any order or rule of court, any special order, or the course of the court, any limited time from or after any date or event is appointed or allowed for the doing of any act or the taking of any proceeding, and such time is not limited by hours, the following rules shall apply-*

*(a) the limited time does not include the day of the date of or the happening of the event, but commences at the beginning of the day next following that day;*

*(b) the act or proceeding must be done or taken at least on the last day of the limited time;...”*

Since Section 132 provides for a maximum period of thirty days, the motion for amendment, in my humble view, was filed within time.

**Section 132 uses the word “presented.” In my humble view, the word in the context means “filed.” Paragraph 2(a) uses the same word, but in the continuous tense of “presenting.” In other words, Section 132 provides that an election petition under the Act shall be filed within thirty days from the date the result of the election is declared. Similar interpretation arises in respect of the word, “presenting” in paragraph 14(2) (a) of the First Schedule to the Act.**

I can still go further in respect of paragraph 14(2)(a). The sub-

paragraph provides inter alia in the negative that “no amendment shall be made” after the expiry of the time limited by Section 132 of the Act. It looks clear to me that the legal duty of the petitioner is to make the amendment within a period of thirty days from the date the result of the election is declared. In my view, the amendment is made the moment the application for amendment is filed in court. By the use of the word “made”, it is also my view that the draftsman did not anticipate the adjudicatory role of the court in determining the application with the option of granting or refusing it. ***There is a clear dichotomy or cleavage between a party coming to a court by a relevant court process and the determination of that process by the court. While the former function is that of the litigant, the latter function is that of the court.***

I think this is where the lower court, with the greatest respect, got it wrong. The court loaded into paragraph 14(2)(a) a burden the draftsman did not apportion to the appellants and a burden it cannot carry. ***The moment a party has filed an application in court, it is not within his power to dictate a date for the hearing of the application. As a matter of practice and rules of court, the responsibility of the party stops the moment he files the application, and the responsibility of the court begins from there in respect of fixing a date and subsequent hearing.*** Although an applicant may take further steps to ask for a specific date for the hearing of the application he must succumb to the date the court gives. He could be lucky if the court accepts his date.

In CCB (Nig.) Plc, v. A.G. of Anambra State (supra) Olatawura, JSC., accurately stated the procedure in these words:

***“The registry is to give a hearing date. The hearing date given that will prejudice the right of the litigant must be avoided. It is for this reason that counsel is advised to pray for a date that will not compromise the right of his client.”***

***Accordingly, it will be a grave injustice to punish a party in litigation for a delay in the hearing of an application, not caused or traceable to him, a delay which, according to the lower court offended paragraph 14 (2) of the First Schedule to the Act.*** Happily paragraph 14(2) does not anticipate such sanction against the appellants. Putting the position bluntly, paragraph 14(2) does not apply against the appellants in this appeal because

the appellants complied with the period stipulated in Section 132 in presenting the application for amendment. It is because of the wrong application of paragraph 14(2) that the lower court found itself invoking wrongly paragraph 14(2) (a), particularly (i) and (ii) thereof.

Learned Senior Advocate for the 1st respondent, Mr. Okunloye made the point that the appellants ought to have taken further action by way of reminding the court of the urgency of the application, that is to say, that the application was liable to time. He cited CCB (Nig.) Plc v. A.G. Anambra State (supra) what Olatawura, JSC., said in extenso as follows:

*"It is my view that in application of this nature, where time is of essence, it is not enough for counsel to file the application, but must ensure that the application is heard within that statutory period. The simple way is to draw the attention of the Registrar to it and urge him to show the application to the Presiding Justice. Where counsel feels that the registrar may not act timeously, it is still within the bounds of propriety for counsel to seek audience with the presiding Justice ..."*

*"...under Section 25 (2) of the Court of Appeal Act 1976, the time within which to file notice of application for leave to appeal (i.e. in the case of interlocutory decision) is fourteen days. Both the application and leave sought must be filed and heard within that period."*

I must point out with some worry that learned Senior Advocate jumped a very major part of the dictum of Olatawura, JSC., and that part deals with the legal effect of a petitioner not taking the steps the learned Justice of the Supreme Court enumerated above. He correctly said at page 561:

*"However it will be contrary to all principles to allow litigants to suffer for the mistake of the court registry."*

I expected the learned Senior Advocate to also give us the benefit of this court's reasoning as stated above but he thought differently. It is said that he thought differently. I will drop that aspect.

The above dictum reminds me of what Oguntade, JCA., said at page 81 of the Record on what might have caused the inability of the court taking the application timeously. I quote him once again at the expense of prolixity:

*"The applicants filed the application on 21/5/03 which was before the time limited for the purpose. But for some reasons we were not placed to consider the applicant until 2/6/03 which was*

*after the time limited for the purpose had expired.”*

As I indicated earlier, it is not clear on the Record what caused the delay hearing of the application and it appears nobody is prepared to talk about it. I will not talk about it too. But the point made by Olatawura, JSC., is pungent and it is that litigants, in our context, the appellants, must not be allowed “to suffer for the mistake of the court registry,” if it was a mistake of the court registry in the instant case.

The Court of Appeal, Enugu Division, considered a generally similar issue in *Chief Emesim v. Hon. Nwachukwu* (1999) 6 NWLR (Pt. 605) 154, as it relates to the inability or failure of the court to hear an election petition within the statutory period. I will state the facts of the case in some considerable detail.

The appellant and the 1st respondent contested the December 5, 1998, Local Government Election. The 1st respondent was declared winner. Dissatisfied, the appellant filed a petition which he lost. He appealed to the Court of Appeal. It was not in dispute that the Appeal was filed on January 25, 1999, which was within the time prescribed by the Local Government (Basic Constitutional and Transitional Provisions) Decree No. 36 of 1998. The Decree further provided that appeals arising from decisions of Election Tribunals shall be determined within thirty days. The appellant filed his brief on February 2, 1999, and the case was fixed for February 22, 1999, for hearing. The appellant filed a motion for leave to file additional grounds of appeal, a motion which was also fixed for February 22, 1999.

However, it became impossible for the Court of Appeal to hear both the motion and the appeal on the adjourned date because the Justices had to leave for Abuja on a very important official assignment. The appeal was therefore adjourned at the instance of the court. On February 25, 1999 when the court resumed sitting, the issue was raised as to the competence of the court to hear the appeal. Counsel for the appellant urged the court to hear the appeal despite the effluxion of time as the appellant had done all that was required of him to ensure that the appeal was heard and determined within thirty days. The respondents urged the court to strike out the appeal, relying on paragraph 2(2) of Schedule 5 to the Local Government (Basic Constitutional and Transitional Provisions) Decree No. 36 of

1998.

The Court of Appeal, in a majority judgment, (Tobi and Galadima, (JJCA.)) Ubaezonu, JCA, (dissenting), held that the provisions of paragraph 2(2) of Schedule 5 to the Local Government (Basic Constitutional and Transitional Provisions) Decree No. 36 of 1998, which stipulates that an election petition shall be heard within thirty days from the date on which the petition is filed, is designed to punish a party who has contributed to the failure on the part of the Court of Appeal to hear the appeal within the stipulated period of thirty days.

Delivering the leading judgment of the court, I said at page 168:

*“Both Senator Anah, SAN, and Mr. Amaechina submitted very strongly that the appeal should be struck out, I ask: what is the wrong of the appellant to deserve such a sanction or punishment? Should or must the appellant suffer because this court was unable to hear the appeal which was ready for hearing way back early this month? As I indicated earlier, the appeal was earlier fixed for 22nd February, 1999, but could not be heard because the Justices of the Division were engaged in a very important official assignment. Is it the fault of the appellant that the matter was not heard that day? If so, where is that fault? If the appellant was not at fault, then why should the big axe of striking out his appeal fall upon him? Can that be justice? Certainly if the appeal was taken on the 22nd of February, 1999, this whole furore should have not found itself in the judicial process. Should the appellant suffer for what he has not contributed in the slightest way, I ask once again. My sense of justice condemns such a position.”*

The case of Chief Emesim v. Hon. Nwachukwu (supra) is of persuasive authority and I understandably persuade myself to endorse the views expressed as the correct position of the law. I therefore adopt the decision.

And that takes me to the specific issue of joining the 57th respondent, CORPORATE NIGERIA (LIMITED BY GUARANTEE). The first prayer of the motion filed on 21st May, 2003, is in respect of CORPORATE NIGERIA. Let me reproduce it once more:

*“AN ORDER granting leave to the petitioners/applicant to join CORPORATE NIGERIA (LIMITED BY GUARANTEE) of No. 19 Ajasa Street, Onikan, Lagos as the 57th Respondent in this petition.”*

The second prayer specifically asked to amend nineteen areas or aspects of the petition, some of them affect CORPORATE NIGERIA. The second amendment sought is to add to paragraph 4 of the petition that “56th and 57th respondents were campaign finance agents/financiers of the 1st respondent at the said election.

B In rejecting the prayer for joinder of CORPORATE NIGERIA, Abdullahi, PCA., said at page 78 of the Record:

“Prayer 1 is seeking to join Corporate Nigeria (Limited by Guarantee) to the petition. In effect the petitioner is asking for, without so applying for it, an extension of time to petition against that company outside the time petition could competently be brought. Similarly, material or substantial facts would have to be urged against it. Furthermore, petitioner has to seek reliefs against it out of time and contrary to express provisions of paragraph 14 (2)(a) of First D Schedule of the Electoral Act No. 2002. This prayer does not avail the petitioner and it is refused. See *Ige v. Olunloyo* (1984) 1 S.C. 258.”

***The Electoral Act, 2002, has clearly provided for who should be a petitioner and who should be a respondent. In view of the fact that CORPORATE NIGERIA is sought to be joined as a respondent, I will fall back on Section 133 (2) of the Act.*** The sub-section provides as follows:-

“The person whose election is complained of is, in this Act, F 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 G her official status as a necessary party.”

In the recent case of Buhari and Ors v. Yusufu and Ors. (2003) 6 SC (Pt. II) 156, this court took time to interpret the provision of Section 133 (2) of the Electoral Act. The court held that by the provision of Section 133 (2), a candidate who lost an election cannot be H a respondent under the subsection. In view of the importance of Section 133 (2) in determining the joinder of CORPORATE NIGERIA, I will take time to quote what this court said on the ambit of the subsection, in extenso.

Delivering the lead judgment of the court, Uwaifo, JSC., said

at page 168:

*“Section 131(2) of the Act requires that the person elected or returned be joined as a party. Section 133 which 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 persons 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.”*

Belgore, JSC., in his contribution said at page 177:

*“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.”*

Katsina-Alu, JSC., in his contribution, said at page 179:

*“It is a cardinal rule of interpretation of a statutory provision that it must be given its clear and ordinary meaning. Sub-section 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 persons 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.”*

Kalgo, JSC., in his contribution, said at pages 184 and 185:

B “For the purpose of determining who may be sued as respondent 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  
C “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  
D 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 subsection, 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 other persons involved in the conduct of the election can be joined in their official capacities etc., as  
E 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.”  
F

Edozie, JSC., in his contribution, said at page 214:

G “Guide 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  
H 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.”

And finally, I made the following contribution on the subsection at page 204:

*“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... 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.”*

**It is clear that as CORPORATE NIGERIA, did not take part in the conduct of the Presidential Election which was held on 19th April, 2003, the body does not qualify as a respondent. Where a statute has specifically provided for parties to an action, the common law principles of joinder of a necessary party will not apply. This is because the statute by its specific provisions has stopped or blocked parties not mentioned therein.**

Falling back on a combined interpretation of paragraphs 14 and 50 of the First Schedule to the Electoral Act, 2002, takes me to Order XXXII of the Federal High Court Civil Procedure Rules. The Order is in the following terms:-

*“The Court may at any stage of the proceedings, either of its own motion or on the application of either party, order any proceeding to be amended, whether the defect or error be that of the party applying to amend or not; and all such amendments as may be necessary or proper for the purpose of eliminating all statements which may tend to prejudice, embarrass, or delay the fair trial of the suit, and for the purpose of determining in the existing suit the real ques-*

*tions or question in controversy between the parties, shall be so made. Every such order shall be made upon such terms as to costs or otherwise as shall seem just."*

The above order is so generously worded that it can take care of almost all, if not all types of amendments that are made for the purpose of determining the real questions in controversy between the parties. In the often cited English case of Cropper v. Smith (1883) 26 Ch. D. 700 at 710-711, Bowen, LJ., said:

*"It is a well established principle that the object of the court is to decide the rights of the parties, and not to punish them for mistakes they make in the conduct of their cases by deciding otherwise than in accordance with their rights... I know of no kind of error or mistake which, if not fraudulent or intended to overreach, the Court ought not to correct, if it can be done without injustice to the other party. Courts do not exist for the sake of discipline, but for the sake of deciding matters in controversy, and I do not regard such amendment as a matter of favour or grace... It seems to me that as soon as it appears that the way in which a party has framed his case will not lead to a decision of the real matter in controversy, it is as much a matter of right on his part to have it corrected if it can be done without injustice, as anything else in the case is a matter of rights."*

**The courts have established basic principles guiding amendment of proceedings. Basically, an amendment for the purposes of determining the real questions in controversy between the parties ought to be allowed by the court unless such amendment will entail injustice.** See Adetutu v. Aderonhumnu (1984) 1 SCNLR 515; Amadi v. Aplin (1972) 4 S.C. 228; Ojah v. Ogboni (1976) 4 S.C 69; Ogidi v. Egba (1999) 10 NWLR (Pt. 621)42.

**In Alsthom S.A. v. Chief Saraki (2000) 10-11 S.C. 48, (2000) 14 NWLR (Pt. 687) 415, Achike, JSC., of blessed memory, and a very fine Judge, said at page 427:**

*"The basic principle governing the granting of leave to amend is for the purpose of determining the real issue or issues in controversy between the parties.... The courts have always followed the established principle that the fundamental object of adjudication is to decide the rights of the parties, and not to impose sanctions merely for mistakes they make in*

***the conduct of their cases by deciding otherwise than in accordance which their rights.”***

***In the light of the very generous provisions of the Federal High Court Rules and the case law, the lower court, in my view, ought to have allowed more of the amendments sought.***

I think the court was unable to do so because of the conclusion it reached in the construction of paragraph 14 (2) of the First Schedule to the Act.

What should this court do in the circumstances? Mr. Owonikoko has urged us to invoke our Section 22 jurisdiction. He submitted at paragraph 1, 19, pages 12 and 13 of the Reply Brief that “Section 22 of the Supreme Court Act affords a straight answer to the submission of the Respondent that the merit of the Amendment should not be argued in this appeal.” He said:

*“This is a deserving case in which your lordships will be doing complete justice by allowing the amendments. Upon a proper appeal as we contend that ours herein is, Your Lordships as the final court can, and indeed will feel justified, to determine the merit of any matter which a lower court has been adjudged wrong in failing to decide; once some features of the case meet certain conditions as outlined in judicial authorities.”*

See also paragraph 4.14 of Appellants’ Brief.

***I am very much attracted by the above submission and I entirely agree with counsel that this court can invoke Section 22 of the Supreme Court Act in the circumstances of this appeal. By the section, this court may from time to time, make any order necessary for determining the real question in controversy in the appeal, and may amend any defect or error in the record of appeal and shall have full jurisdiction over the whole proceedings as if the proceedings have been instituted and prosecuted in the Supreme Court as a court of first instance.***

In *Ediaghonya v. Dumez (Nig.) Ltd.* (1986) 3 NWLR (Pt. 31) 753, Karibi-Whyte, JSC., in his leading judgment said at page 764:

*“..... I think in the exercise of the general powers vested in this court by Section 22 of the Supreme Court Act, 1960, we can exercise full jurisdiction over the whole proceedings and deal with this case in the same manner in which the trial Judge ought to have*

*dealt with it.”*

See also *Omisade v. Akande* (1987) 2 NWLR (Pt. 55) 158; *Igboho Irepo Local Government Council and Community v. The Boundary Settlement Commissioner* (1988) 1 NWLR (Pt. 69) 189; *Adeyemi v. Y.R.S. Ike-Oluwa and Sons Limited* (1993) 8 NWLR (Pt. 309) 27.

***One consideration for the invocation of Section 22 is that the matter must have been raised in the lower court and that court did not or failed to take the appropriate decision. Another consideration is that there are enough materials before this court to enable it take a decision one way or the other.***

***It is common ground that an application for amendment of the petition was placed before the lower court, and this included the joinder of CORPORATE NIGERIA (LIMITED BY GUARANTEE). Arguments were proffered by counsel.*** In *Adeyemi v. Y.R.S. Ike-Oluwa and Sons Limited* (supra) this court held that before determining whether the conditions surrounding an appeal before it are conducive to the exercise of its general powers under Section 22 of the Supreme Court Act, Cap. 424, Laws of the Federation of Nigeria, 1990, as if the proceedings had been instituted and prosecuted before it as a court of first instance, one consideration is the availability before it of all the necessary materials on which to consider the appellant’s application, for example, the motion on notice and all affidavits in support, exhibits to the affidavits including judgment of the High Court and the proposed grounds of appeal to the Court of Appeal.

***The Record of Appeal, in my view, contains all the relevant materials for this court to consider and make order or orders one way or the other in respect of the amendments sought by the appellants. I therefore resort to the Record of Appeal to make the necessary orders.***

In the light of the above, it is my view that CORPORATE NIGERIA (LIMITED BY GUARANTEE) cannot be joined as a party as that body does not come within the provision of Section 133 (2) of the Electoral Act. I hereby make the following orders in the light of the only issue formulated by the appellants for determination of this appeal:

Prayer 1

The prayer is refused. Appeal on the prayer is hereby dismissed.

Prayer 2(1)

The prayer is refused. Appeal on the prayer is hereby dismissed.

Prayer 2(2)

The prayer is granted only to the extent of adding to paragraph 4 the 56th respondent. The prayer is refused in respect of the 57th respondent.

Prayer 2(4)

This prayer is refused as the amendment sought relates to CORPORATE NIGERIA (LIMITED BY GUARANTEE). Appeal on the prayer is hereby dismissed.

Prayer 2(5)

This prayer is refused as the amendment sought relates to CORPORATE NIGERIA (LIMITED BY GUARANTEE). Appeal on the prayer is hereby dismissed.

Prayer 2(11)

This prayer is granted. Appeal on the prayer is allowed.

Prayer 2(13)

This prayer is refused as the amendment sought relates to CORPORATE NIGERIA (LIMITED BY GUARANTEE). Appeal on the prayer is hereby dismissed.

Prayer 2(15)

This prayer is granted. Appeal on the prayer is allowed.

Prayer 2(17)

This prayer is granted. Appeal on the prayer is allowed.

In view of the fact that the lower court granted prayers 2(3), (6), (7), (9) and (19), and no appeal was filed on them, this court will not deal with them. In sum, the appeal succeeds in part. I make no order as to costs.

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### **BELGORE JSC**

I am in full agreement with the judgment of my learned brother, Niki Tobi, JSC., that S. 133 (2) of Electoral Act has specifically set out the necessary parties to an election petition. Thus Corporate Nigeria did not participate in conducting the election and as such is not a necessary party. Therefore, I agree with the conclusions reached by

Tobi, JSC., in allowing this appeal in part and I adopt them as mine.  
I also make no order as to costs.

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**KUTIGI JSC**

B The record clearly shows that the Presidential Election Petition  
herein was filed on 2nd May, 2003, while the motion for Amend-  
ment of the Petition to which was attached the Proposed Amended  
Petition (Exhibit MDJ), was filed on 21st May, 2003). Both the Peti-  
C tion and the motion for Amendment were therefore both filed within  
the prescribed period of 30 days as provided under Section 132 of  
the Electoral Act, 2002, which reads-

“132. An election petition under this Act shall be presented  
within thirty (30) days from the date the result of the election is de-  
D clared.”

It is common ground that the result of the presidential election  
herein was declared on 22nd April, 2003.

The motion to amend the petition though filed on 21/5/2003  
was not heard by the tribunal until 28/5/2003 and the ruling thereon  
E delivered on 5/6/2003. The lead ruling with which the other Justices  
concurred, was delivered by Umar Abdullahi, President, Court of  
Appeal. It is clear on reading through the ruling that what weighed  
heavily on his mind in his consideration of the motion was the por-  
tion which read thus-

F “.. Section 132 of the Act provides that an election petition can  
be brought within 30 days of the declaration of the result. It follows  
from the provisions of paragraph 14(2) of the First Schedule read  
jointly with Section 132 of the Act that no amendment would be  
G effected on the petition outside 30 days of the declaration of the  
result introducing substantial or material alteration or prayer.

*It follows that outside this period life could not be breathed  
into otherwise anaemic petition. The Court will in the circumstance  
be guided by this principle in its consideration of the reliefs sought.”*

H I have already set out Section 132 of the Act above.

Now, Paragraph 14(2) (a) of the First Schedule to the Act pro-  
vides thus-

“14(2) After the expiry of the time limited by-  
(a) Section 132 of this Act for presenting the election petition,

*no amendment shall be made:*

*(i) introducing any of the requirement of sub-paragraph (1) of paragraph 4 of this Schedule not contained in the original election petition filed, or*

*(ii) effecting a substantial alteration of the ground for or the prayer in, the election petition, or* B

*(iii) except anything which may be done under the provisions of sub-paragraph (3) of this paragraph effecting a substantial alteration of or addition to the statement of facts relied on to support the ground for, or sustain the prayer in the election petition;...”* C

I agree with the Tribunal that Section 132 read with paragraph 14(2) of the First Schedule to the Act means that substantial amendments will not be allowed after the expiration of the period of thirty (30) days from the date the result of the election is declared. But I have stated above that both the Petition and the motion to Amend the Petition were filed within time. In fact the amendments were made by the petitioners and the amended petition was filed along with the motion within time. That complied with paragraph 14(2), in my view, and it was up to the Tribunal to thereafter consider the amendments on the merits. It would appear therefore that paragraph 14(2) (supra) will not apply against the applicants/appellants in this case because they have done all that is expected of them under the law by filing both the Petition and the motion to Amend within 30 days. It was the Tribunal itself which decided to hear the motion on 28/5/2003, and deliver the ruling on 6/6/2003 as shown above. Litigants should not be made to suffer for sins of the tribunal or court (See for example CCB (Nig.) Plc. v. Att. Gen. Anambra State (1992) 8 NWLR (Pt. 261) 558. It is not therefore proper for the Tribunal to have simply struck-out any proposed amendment on that ground alone. The tribunal, I believe, ought to have taken each proposed amendment separately and consider each on its merit based on generally accepted and established principles relating to amendment of any proceeding, particularly the relevance and materiality of the amendment sought (see for example Taiwo & Ors. v. Akinwunmi & Ors. (1975) 4 S.C. 143, Loufti v. Czarniko (1952) 2 AER 823. H

I agree with appellant's counsel that under Section 22 of the Supreme Court Act, we have all the necessary powers to deal with the motion to Amend the Petition in the same manner as the Tribu-

nal ought to have dealt with it.

It is in the light of the above as well as the judgment of my learned brother, Tobi, JSC., which I read before now, that I agree to allow the appeal in part. I endorse the orders made in the said judgment. I also make no order as to costs.

B

### KATSINA-ALU JSC

I have had the advantage of reading in draft the judgment of my learned brother, Niki Tobi, JSC., in this appeal. I entirely agree with it. I will however say a few words of mine for sake of emphasis.

This appeal is an interlocutory appeal in a presidential election filed at the Court of Appeal. It is an appeal from a ruling of that court refusing leave to amend some parts to the election petition. The petitioners filed the petition on 2nd May, 2003. On 21st May, 2003, the petitioners filed an application to amend the petition. The amendment sought was for the following prayers:

“1. Leave to join *CORPORATE NIGERIA (LIMITED BY GUARANTEE)* as 57th respondent in the petition.

2. Leave to amend the petition to reflect the joinder, and to amend some paragraphs of the petition, etc.

3. An order deeming as properly filed a separately filed amended petition in terms of proposed amended petition, the necessary filing fees having paid on therefore on the same 21st May, 2003.

4. An order permitting to be sub-joined to the petition a schedule of list of documents intended to be relied upon at the hearing of the petition... (The exact wordings of the prayers in the motion are to be found at pages 2-4 of the records).”

In its ruling, the learned President of the Court of Appeal, Umar Abdullahi, PCA, said:

“Prayer 1 is seeking to join *Corporate Nigeria (Limited by Guarantee)* to the petition. In effect the petitioner is asking for, without so applying for it, an extension of time to petition against that company outside the time petition could completely be brought. Similarly, material or substantial facts would have to be urged against it. Furthermore, petitioner has to seek reliefs against it out of time and contrary to express provisions of paragraph 14(2) (a) of First Sched-

*ule of the Electoral Act No. 4 of 2002. This prayer does not avail the petitioner and it is refused. See Ige v. Olunloyo (1984) 1 S.C. 258.*

*Since prayers 2, 4, 5 and 13 are contingent upon the success of the first prayer, which has been unsuccessfully urged upon us, they also fail and are hereby refused.*

*Prayer 3 is respectfully innocuous. It is not seeking to intro- B  
duce any substantial or material fact and for that reason the petitioner is permitted to amend sub-paragraphs 10(a), (b) and (d) of his petition to the extent indicated in the application.*

*Prayers 6 and 7 do not offend the provisions of paragraph C  
14(2)(a) of the Electoral Act, 2002, and are permitted to the extent prayed for in the application. In other words, the petitioner is allowed to amend paragraphs 10(g) and (j) respectively of the petition.*

*The petitioner in prayers 8, 10, 11, 12 and 14 is respectfully, D  
to our minds, merely seeking to plead evidence. It is trite that evidence need not be pleaded. The Court can, therefore, not accede to the applicant's prayer in this connection. The respective reliefs sought in those prayers cannot be granted and are, therefore, refused.*

*The court notes that prayer 9 is a mere typographical error, E  
the petitioner is consequently granted leave to correct the word "Deployment" to read "Deployment" in paragraphs 12 of the petition.*

*Prayer 15 for the insertion of the words - Imo, Ogun, immediately after the words - "Cross River" in paragraph 16(a) of the petition is not permissible. It will entail introduction of material or sub- F  
stantial alteration in respect of those new States of Ogun and Imo. In the result, prayer 15 fails and it is refused by us.*

*Prayer 16 succeeds, since addition or insertion of the word "unknown" immediately after the word "person" in line 2 of the sub- G  
paragraph 16(b) is merely making a clarification. It seems to us consistent to the phrase "other than officials of the 10th Respondent....." in the petition. We, therefore allow the amendment for reasons of clarity.*

*Prayer 17 cannot be acceded to for obvious reason. It would, H  
if allowed, introduce additional material fact to the petition. This prayer equally fails and is refused.*

*The next prayer is relief 18 which cannot be granted for two reasons. Firstly, there is no evidence that the respondents are in cus-*

today or possession of these documents which from their copious description are no doubt in the petitioner's possession or custody. He could, therefore, bring them to court and tender the various newspaper in his own right. Secondly, the Rules of our various High Courts contain provisions for giving notice to adversary to produce documents in court. The relief is also vague or outrightly silent as to the identity of which of the 56 respondents the notice is directed at or intended to.

The 19th relief is equally innocuous. It is merely meant to amend the description of the Electoral Act in prayers 20(3) and (4) of the petition to read Electoral Act No. 4, 2002. The amendment is granted accordingly, since the respondents have not shown that they were ever misled by the description.

The Court considers it unnecessary to subjoin to the amended petition an annexure containing newspaper publications and their subjects intended to be relied upon at the hearing of the petition."

Earlier on in his ruling, the learned President of the Court of Appeal reasoned thus:

".....Section 132 of the Act provides that an election petition can be brought within 30 days of the declaration of the result. It follows from the provisions of paragraph 14(2) of the First Schedule read jointly with Section 132 of the Act no amendment would be effected on the petition outside 30 days of the declaration of the result introducing substantial or material alteration or prayer."

With all due respect, I think the court below misread paragraph 14(2) of the First Schedule of the Electoral Act, 2002. It provides thus:

- "14(2) After the expiry of the time limited by-
- (a) Section 132 of this Act for presenting the election petition, no amendment shall be made:
    - (i) introducing any of the requirement of sub-paragraph (1) of paragraph 4 of this Schedule not contained in the original election petition filed, or
    - (ii) effecting a substantial alteration of the ground for or the prayer in, the election petition, or
    - (iii) except anything which may be done under the provisions of sub-paragraph (3) of this paragraph effecting a substantial alteration of or addition to the statement of facts relied on to support the

*ground for, or sustain the prayer in the election petition.”*

Section 132 of the Act provides the period within which an election petition may be brought. It provides as follows:

*“132. An election petition under this Act shall be presented within thirty (3) days from the date the result of the election is declared.”*

Paragraph 14(2) of the First Schedule is to the effect only that no amendment shall be made after the expiry of the 80 day period, stipulated in Section 132. In my view an amendment is said to be made when the application for amendment is filed in court. I think this is obvious. The duty of a litigant or party ends when he has filed his application in court. It is the responsibility of the court to fix a date when it would hear it and hear it. In the context of the present case what this means is that no application for amendment of the petition should be made after 22nd May, 2002. The truth of the matter however is that the petitioners filed their motion on 21st May, 2003. It was clearly within time.

I am clearly of the view that paragraph 14(2) of the 1st schedule has only set a time limit for bringing an application for amendment of the petition. That provision has not, by any stretch of imagination, specified a time frame within which the court or Tribunal shall determine the application. Learned counsel for the petitioners/appellants fell into this error when he contended that the case of Unongo v. Aku (1983) NSCC Vol. 14, 563 is on all fours with the present case. The issue in Unongo v. Aku (supra) was that the Electoral Act of 1982 provided that an election petition should be determined within thirty (30) days. This court per Uwais, JSC. (as he then was), said:

*“Any electoral enactment which specified a time constraint on the court to determine an election petition... is to say the least very absurd and indeed defeats the intention of the Constitution and the electoral Act itself, which is to enable an aggrieved candidate to an election to seek redress in court.”*

This court declared Sections 129 (3) and 140(2) of the Electoral Act of 1982 unconstitutional and invalid.

In the instant case, the petitioners/appellants filed their application to amend the petition within time. That is all that they were required to do. The responsibility to determine the application was that of the court or Tribunal. The Electoral Act of 2002 has not speci-

fied a time constraint on the court to determine it. The court however had a duty to hear and determine it expeditiously.

What then should this court do in the circumstances? Learned counsel for the petitioners/appellants has urged us to invoke Section 22 of the Supreme Court Act. For this court to invoke Section 22 of the Supreme Court Act, it must be shown that the matter in consideration was raised in the lower court and that court did not or failed to decide it. It must also be shown that fresh evidence is not required. It is common ground that arguments and submission were copiously proffered by counsel for the parties in respect of the application for amendment of the petition. In this regard I am in agreement with my learned brother, Niki Tobi, JSC., that a case has been made for the invocation of Section 22 of the Supreme Court Act. I also endorse all the orders made by him.

In the circumstances, I also allow the appeal in part. And I too make no order as to costs.

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### **UWAIFO JSC**

I read in draft the judgment of my learned brother, Tobi, JSC., and completely agree with him that the appeal succeeds in part. The facts relevant to the appeal and the arguments of counsel have been fully stated and examined in the said judgment. I find no need to go over them except where necessary to mention any of them.

The short point I wish to take first is, what is the true meaning of paragraph 14(2)(a) of the First Schedule to the Electoral Act, 2002? The said paragraph reads thus:

*“(2) After the expiry of the time limited by -*

*(a) Section 154 (sic: 132) of the Act for presenting the election petition, no amendment shall be made:*

*(i) introducing any of the requirements of sub-paragraph 4 of this Schedule not contained in the original election petition filed, or*

*(ii) effecting a substantial alteration of the ground for, or the*

*prayer in, the election petition; or*

*(iii) except anything which may be done under the provisions of sub-paragraph (3) of this paragraph, effecting a substantial alteration of or addition to, the statement of facts relied on to support the ground for, or sustain the prayer in the election petition.”*

Section 132 provides that: “An election petition may be presented within thirty (30) days from the date the result of the election is declared.” It is not in dispute that the Presidential Election result in question was declared on 22nd April, 2003. The petitioners in this case had 30 days within which to appeal against it. The 30 days will be calculated from 23rd April to end on 22nd, May, 2003. Paragraph 50 of the First Schedule to the Act provides that subject to the express provisions of the Act, the Civil Procedure Rules of the Federal High Court shall apply, mutatis mutandis, in relation to an election petition. Order XII, r. 1 of the said Rules provides inter alia:

“1. *Where by an enactment or any order or rule of court, any special order, or the course (sic) of the court, any limited time from or after any date or event is appointed or allowed for the doing of any act or the taking of any proceeding, and such time is not limited by hours, the following rules apply -*

*(a) the limited time does not include the day of the date or the happening of the event, but commences at the beginning of the day next following that day;*

*(b) the act or proceeding must be done or taken at least on the last day of the limited time.”*

Section 15(2)(a) of the Interpretation Act (Cap. 192) Laws of the Federation of Nigeria, 1990, makes similar provision. See also Nnonye v. Anyichie (1989) 2 NWLR (Pt.101) 110 at 120-121. The petition was filed on 2nd May, well within time. Any amendment to the petition must be made not later than 22nd May which was the last day of the limited time.

The petitioners/appellants made some amendments to their petition and on 21st May filed a motion, to which the amended petition was attached, in the Presidential Election Tribunal (the Tribunal) constituted by the Court of Appeal for the necessary orders to grant the amendment. The Tribunal did not take the motion until 28 May, 2003, which was outside 30 days from the date the election result was declared. In the ruling it gave on 5th June, it nevertheless held that it could grant some aspects of the amendments which it considered were insubstantial in nature. But it ruled that those it regarded substantial or material could not be granted because at the time it sat to hear the motion, it was outside the 30 days prescribed in Section 132 of the Act. It held that it would be in breach of the

provisions of both Section 132 of the Act and paragraph 14(2) of the First Schedule thereto to allow any substantial amendment to that petition at that stage. As Abdullahi, PCA., put it:

“Section 132 of the Act provides that an election petition can be brought within 30 days of the declaration of the result. It follows from the provisions of paragraph 14(2) of the First Schedule read jointly with Section 132 of the Act no amendment would be effected on the petition outside 30 days of the declaration of the result introducing substantial or material alteration or prayer.”

This view was essentially unanimously held by the other learned Justices sitting in the Tribunal.

I have already stated that the necessary papers containing the amendments made to the petition were before the Tribunal within the 30 days’ time limited by Section 132 of the Act for presenting an election petition. What then does paragraph 14(2)(a) of the First Schedule to the Act connote? The provision must be given a literal interpretation from the words as used because, to my mind, that will be in the interest of justice in the context of this case. To do otherwise will put a petitioner who has acted timeously at risk in case the court or Tribunal “sleeps” on his application - and there is nothing in the Act that permits extension of time. I here again reproduce the relevant opening part of para. 14(2)(a) thus:

“(2) After expiry of the time limited by -  
(a) Section 154 (sic; 132) of this Act for presenting the election petition, no amendment shall be made.” (Underlining mine)

As at 21st May, 2003, when the petitioners filed their motion, they would have been within time to present their petition even for the first time. Why then should they be at a disadvantage by making amendments to the petition already filed which amendments they filed in court within time?

It seems to me necessary that in the construction of para. 14(2)(a) above, the question should be asked: who is it that is expected to make an amendment to an election petition? I think it is a person who presented the election petition, i.e., a petitioner. He makes the amendment by introducing all facts or alterations he considers proper or necessary. He does so by indicating this in the court process which he files in court for the purpose of the amendment he had made. All that the said paragraph 14(2)(a) requires of him is to do

so, that is to say, make the amendment within the time limited by Section 132 of the Act for presenting an election petition. It is not the court or Tribunal that makes the amendment. Its function is to consider the amendment made within time to the petition. In the course of doing so, it is up to the Tribunal to grant or refuse the amendment so made by the petitioner. That is, when it brings to bear on the motion its judicial power to consider the merits of the amendment. B

No provision of the Electoral Act, 2002, including paragraph 14(2) of the first Schedule thereto sets a time limit within which the Tribunal is to consider the amendment so made or else cease to have jurisdiction to do so although it will normally be expected to act expeditiously. If there had been such a provision, it would have been unconstitutional on a proper understanding of the authority of Unongo v. Aku (1983) 2 SCNLR 332. C

The observation of Uwais, JSC., (now CJN.), who read the D leading judgment in that ease, with which all the other learned Justices concurred, is very apposite. The learned Justice said inter alia at pages 340-341:

*“There can be no doubt that it is within the province of the National Assembly to prescribe the practice and procedure to be followed by a court which hears an election petition ..... but such power cannot in view of the constitutional doctrine of separation of powers amongst the three arms of government, that is the Executive, Legislative and Judiciary, extend to the limitation of the time within which a case properly instituted in a court can be heard and determined. If the power were so to apply, as indeed applies under the Electoral Act, then it would, in my opinion, be ultra vires because it amounts to unconstitutional interference with Judicial functions.”* (Underlining mine) E F G

I can see no justification for the Tribunal to place that time restriction upon itself to the utter detriment of a petitioner. It is the petitioner upon whom such time limit is placed to make necessary amendment. But in the present case, the petitioners met that time limited to make their amendments. I think, with due respect, the court below misconstrued the paragraph 14(2) of the First Schedule to the Act and came to an erroneous conclusion. I hold that the petitioners/appellants deserved to be heard on the merits of their motion. The appeal succeeds on this point. H

The court below was duly addressed by counsel on Section 132 of the Act and paragraph 14(2)(a) of the First Schedule thereto in connection with the amendments made. It was also addressed on the prayer to join the 57th respondent. The court allowed what it regarded as minor or “innocuous” amendments. It is now clear it failed to consider the merits of the other amendments made. It had ample opportunity to so do but exercised its discretion not to so act because of its wrong view of the law concerned. By virtue of Section 22 of the Supreme Court Act, 1960, the Supreme Court is vested with jurisdiction to make orders or take decisions in appropriate cases in which the Court of Appeal (in the present case sitting as a Tribunal) has failed to make such orders or take such decisions which lay within its power to do so. See *A. G. Oyo State v. Fair lakes Hotel Ltd* (1988) 12 S.C. (Pt. I) 1; (1988) 5 NWLR (Pt.92) 1 at 20-21; 23; *Okoya v. Santilli* (1990) 2 NWLR (Pt. 131) 172 at 209. This is particularly so where the issue to be decided is one of law requiring no evidence or further evidence so as to bring that particular issue to rest: See *Katto v. Central Bank of Nigeria* (1999) 5 S.C. (Pt. II) 21(1999) 6 NWLR (Pt. 607) 390 at 407.

It was in this light that this court decided to resolve the issue whether the 57th respondent sought to be joined as a respondent to the petition is a necessary party; and also to consider what aspect of the amendments sought ought to be allowed in view of the decision reached on the meaning of paragraph 14(2)(a) of the First Schedule to the Act. As regards whether Corporate Nigeria (Limited by Guarantee) could properly be joined as the 57th respondent to the petition, reference must be made to the decision of this court in *Buhari v. Yusuf* (2003) 6 S.C. (Pt. II) 156 where at page 168 of the leading judgment, I said:

*“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 person whose election (or return) is complained of, referred to as the respondent and any of 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.”*

Corporate Nigeria (Limited by Guarantee) does not fall within the contemplation of Section 133(2) of the Act either as an official of the Independent National Electoral Commission (INEC) or any other person whose conduct of the election is complained of from all the averments concerning the said Corporate Nigeria in the amendments made to the petition to support its being joined as a party. That body is not a necessary party and will not be allowed to be joined. The amendments made to join it as the 57th respondent to the petition are accordingly refused. The appeal fails in that regard. On the whole the appeal succeeds in part.

Having studied the orders made by learned brother, Tobi, JSC., I feel obliged to abide by them together with the order as to costs.

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### **EDOZIE JSC**

This is an interlocutory appeal arising from the ruling delivered on 5th June, 2003, by the Presidential Election Tribunal, that is, the full panel of the Court of Appeal sitting in Abuja in respect of an application on notice by the petitioners for the amendment of their presidential election petition.

On 19th April, 2003, a presidential election was conducted nationwide the results of which were announced on 22nd April, 2003, declaring as the winner the 1st respondent Chief Olusegun Obasanjo. Thereupon the 1st appellant, a candidate at the election and the 2nd appellant, the political party that sponsored him as petitioners, on 2nd May 2003 filed before the Election Tribunal, that is, the Court of Appeal, Abuja, a petition against the 1st respondent and 56 others challenging the conduct and result of the election. On 21st day of May, 2003, the petitioners/appellants filed a motion on notice before the Court of Appeal, Abuja seeking, inter alia, to amend their petition of 2nd May, 2003, so as to join Corporate Nigeria (limited by Guarantee) as the 57th respondent in the petition and also effect some amendments to some of the paragraphs of the petition. In all, nineteen amendments were proposed as itemized on the motion

paper. The motion which was said to have been brought pursuant to the Electoral Act, 2002, Order 12 Rules 3 and 16 and Order 27 Rules 2 and 5 of the Federal High Court Civil Procedure (Rules), 2002, and the inherent jurisdiction of the court was supported by an affidavit of 18 paragraphs. It was moved and argued on 28th May, 2003 and ruling reserved to 5th June, 2003, when it was delivered. In the said ruling, the lower court granted some of the amendments, that is, prayers 3, 6, 7, 9, 16 and 19 while refusing prayers 1, 2, 4, 5, 8, 10, 11, 12, 13, 14, 15, 17 and 18. It is in respect of some of the paragraphs refused that the petitioners as appellants have lodged the instant appeal.

Brief of arguments were duly filed and exchanged. The 1st and 2nd respondents separately filed a preliminary objection on the competency or otherwise of the appeal contending that an appeal does not lie at all against an interlocutory decision of the Court of Appeal on a presidential election petition and that even if it lies, it is not as of right. The objections were however rightly withdrawn and struck out.

In the appellants' brief and the briefs filed by each set of the four respondents, a lone issue was identified for determination. As couched in the appellants' brief which I consider adequate for the determination of the appeal, the issue is:-

*"Whether the Court of Appeal misdirected itself on the applicable law and should have granted the prayer for joinder of 57th Respondent and/or any of the amendments Nos (1), (2), (4), (5), (11), (13), (15) & 17 sought in the motion dated 21st May, 2003 and determined in their Lordships ruling of 5th June, 2003."*

It seems to me that the main grouse of the appellants is the refusal of the lower court to grant the amendment for the joinder of Corporate Nigeria (Limited by Guarantee) as the 57th respondent. Giving the reasons for its refusal to do so, the lower court, as per the lead ruling of Abdullahi, PCA., with which the other Justices concurred, held at p.75 of the record:-

*"However, Section 132 of the Act provides that an election petition can be brought within 30 days of the declaration of the result. It follows from the provisions of paragraph 14(2) of the First Schedule read jointly with Section 132 of the Act, no amendment would be effected on the petition outside 30 days of the declarations*

of the result introducing substantial or material alteration or prayer.

*It follows that outside this period life could not be breathed into otherwise anaemic petition. The court will in the circumstance be guided by this principle in its consideration of the reliefs sought."*

Dealing specifically with the joinder of Corporate Nigeria (Limited by Guarantee) the lower court at p.78 continued thus:-

*"Prayer 1 is seeking to join Corporate Nigeria (Limited by Guarantee) to the petition. In effect the petitioner is asking for, without so applying for it, an extension of time to petition against that company outside the time petition could competently be brought. Similarly, material or substantial facts would have to be urged against it. Furthermore, petitioner has to seek reliefs against it out of time and contrary to express provisions of paragraph 14(2) (a) of First Schedule of the Electoral Act No. 4 of 2002. This prayer does not avail the petitioner and it is refused: See Ige v. Olunloyo (1984) 1 S.C. 258."*

It would appear from the foregoing that the court below did not consider the joinder of the 57th Respondent on its merit because the amendment in that regard is substantial and was not made timely within the stipulated 30 days period from the declaration of the result of the election in violation of paragraph 14(2) of the First Schedule of the Electoral Act No.4 of 2002. The paragraph provides:-

*"14(2) After the expiry of the time limited by:-*

*(a) Section 154 of this Act for presenting the election petition, no amendment shall be made:*

*(i) introducing any of the requirement of sub-paragraph (i) of paragraph 4 of this schedule not contained in the original election petition filed, or*

*(ii) effecting a substantial alteration of the ground for, or the prayer in the election petition; or*

*(iii) except anything which may be done under the provisions of sub-paragraph (8) of this paragraph, effecting a substantial alteration of or addition to, the statement of facts relied on to support the ground for, or sustain the prayer in the election petition."*

Section 154 referred to in paragraph 14(2)(a) above does not exist and it seems it is an error for Section 132 of the Electoral Act which enacts:-

*“132. An election petition under this Act shall be presented within thirty (30) days from the date the result of the election is declared.”*

As stated earlier, the election result was declared on 22nd April, 2002; the Appellants filed their petition on 2nd May and the motion for amendment under consideration was filed on 21st May. Reckoning from 22nd April, 2003, when the result of the election was declared, the 30 day period stipulated by Section 132 of the Electoral Act will expire on 22nd April, 2003. It follows that the motion for amendment filed on 21st April, 2003, was within the stipulated period. Had the motion been taken and considered on the date it was filed, that is, on the said 21st April, 2003, the reason given by the court below for refusal to consider the amendment for joinder could not have arisen. Since the appellants filed their application for amendment within time, they ought not to be penalized for the hearing of the application outside the 30 days period, a matter which is entirely at the discretion of the lower court. I am therefore, of the view that the court below was in error to have refused to consider on its merit the appellants’ amendment for joinder of the 57th respondent on the ground that it was substantial and was caught by the limitation period.

By the provision of Section 22 of the Supreme Court Act, Cap 424 of the Laws of the Federation of Nigeria, 1990, this court is vested with the jurisdiction to consider the application on its merit there being on record sufficient materials for the exercise: *Adeyemi v. Y.R.S. Ike-Oluwa & Sons Ltd.* (1993) 8 NWLR (Pt.309) 23 at 40.

In determining whether the amendment to join the 57th respondent as proposed is meritorious, I bear in mind the provision of Section 132(2) of the Electoral Act, 2002, which reads:-

*“132(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.”*

In the recent case of *Buhari and Ors. v. Yusufu and Ors.* (2003)6 S.C. (Pt.II) 156, this court critically examined this provision and came

to the conclusion that the only persons cognisable as respondents under the subsection are the persons whose election is complained of and those electoral officers or persons who took part in the conduct of the election. By this, Corporate Nigeria (Limited by Guarantee) does not qualify as a respondent. It cannot therefore be joined as a party to the petition. B

It is for the foregoing and the detailed reasons set out in the lead judgment of my learned brother, Niki Tobi, JSC., that I also allow the appeal in part and adopt the consequential orders made in the judgment. C

### ***PATS-ACHOLONU JSC***

I have read in draft the judgment of my learned brother and noble Lord, Niki Tobi, on this interlocutory appeal emanating from the considered ruling of the Court of Appeal and I agree with him as he dutifully marshaled out all the points agitated in the matter. I will however add a few comments of mine after setting down the synopsis of the case. D

The petitioner/appellant had filed an application to effect some amendments to his petition before the expiration of 30 days but within the prescribed time as stipulated in the Electoral Act of 2002. The 1st respondent in particular and the other respondents of the same ilk in the sense of them sharing the same views with the 1st respondent considered the contents of the proposed amendments as extensively substantial, and that the determination or the hearing of the application to amend the substance, to wit, the contents of the application was not taken up by the court within 30 days. Among the proposed amendments is the leave seeking to have the 57th respondent described to be Corporate Nigeria be joined as one of the parties. E F G

The Court of Appeal sitting as the court of first instance in a considered ruling on the objection of the respondents dismissed the application to amend at that stage of the proceedings but surprisingly left untouched the issue as to the merit and relevance of the party sought to be joined the same having been fully canvassed in that courts. H

In the consideration of that matter, *id est*, on its ruling, the Court of Appeal rejected the argument of the petitioner appellant

and Abdullahi, PCA., in the leading ruling held thus, *“I have earlier indicated that the principle that no material or substantial amendment or prayers could be effected at this stage, would be borne in mind in the determination of this application, prayer 1 is seeking to join Corporate Nigeria (Limited by Guarantee) to the petition. In effect, the petitioner is asking for without so applying for an extension of time to petition against that company outside the time petition could competently be brought. Similarly, material or substantial facts would have to be urged against it. Furthermore, petitioner has to seek relief against it out of time and contrary to express provisions of paragraph 14(2)(a) of the First Schedule of the Electoral Act No.4 of 2002. This prayer does not avail the petitioner and it is refused.”*

It should be pointed out right away that the court below was more concerned with the time frame in considering the application which it held was outside the orbit of time provided by the Act and whether the amendments could be allowed even at that stage, and too, whether Corporate Nigeria was a relevant party to be joined.

In the Appeal before this court only one issue was framed by the appellant and the same too was adopted by all the respondents but differs only in the phraseology used.

The issue formulated runs thus: Whether the Court of Appeal misdirected itself on the applicable law and should have granted the prayer for joinder of 57th respondent and/or any of the Amendments Nos. (1) (2) (4) (5) (11) (12) (15) and (17) sought the in the motion dated 21st May, 2003, and determined in their Lordships’ ruling of 5th June, 2003.

The cornerstone of the argument of the appellants is that a distinction must be made between the time a process is filed and when it is finally determined. I believe that the rationale behind this line of argument is that while a party strives to make an application within the time-frame stated by the law, it is not in control of when the court that ordinarily should be seised of the proceedings would determine the matter. See the illuminating case of Chief Emesim v. Hon. Nwachukwu (1999)6 NWLR (Pt. 605) 154, where Niki Tobi, (JCA), (as he then was), seems to me to have cleared the web in this area. The learned counsel for the appellants, Owonikoko, strove to convince this court that the narrow interpretation given by the court below would do violence to the spirit of the Act. He cited many au-

thorities to buttress his case. I must confess straight away that the appellants' counsel in his spirited bid to convince the court made his brief unnecessarily verbose and this tends to rob it of the elegance and flawless prose that would characterize it. This is just by the way. I say no more. The counsel for the respondents replicando in unison of expression, faulted the argument of the appellants and held tena- B  
ciously that the only reliable construction to be placed on paragraph 14(2) of the 1st schedule to the Electoral Act of 2002 is that at the expiration of the time allowed by the statute for doing a particular thing where even the issue is not completed within that time, the C  
prayer has become self-destruct, and obviously lapses. It has been canvassed and sometimes theorized that election petition although seemingly falling within the ambit of the civil law, has its own peculiarities. Therefore, a court seised with the proceedings should not lose sight of the fact that essentially parties go to court in order to D  
obtain justice. It is certainly not the intention of any progressive law to asphyxiate justice and render it obtuse by an interpretation that leaves a party seeking justice empty handed by way of rendition of a judgment on a matter in a very narrow sense.

In this case the appellants are convinced, that the justice of E  
their case can be amply and clearly brought before the court if all the important points that would enable the court to consider the case assiduously are stated with clarity. I believe and I strongly hold the view that it is an erroneous thinking or opinion that if a statute pre- F  
scribes a time frame for a party to do an act such as filing a process and it is done within that time, but the statute is silent as to what may be the consequence of the delay by the court to determine the matter within that period that the court would close its eyes to the probable and manifest injustice that may be occasioned by adopting a G  
seemingly myopic view of the case. As much as possible but more particularly in an election petition case involving a quest for an adjudication in respect as to the competence of the election, it must be stressed that every minute matter should be given due consideration so that in a desire to handle the matter expeditiously, there may not H  
be a tendency to be over technical in our approach. A wide berth has to be given to the parties and as much as possible it shall be encouraged that such election matters be canvassed on their merits except where there is obvious and manifest irregularity or glaring incompe-

tence which no court by any stretch of imagination can cause to be restructured. Time can only be considered of essence in respect as to whether the application was made within the time stated by the statute and not necessarily when the court in its inscrutable majesty decides to adjudicate or hear the matter. I do not with greatest respect  
B share the view espoused by the respondents counsel, and I do not subscribe to the view of the court below as it concerns the time some of the amendments can be competently made.

I therefore agree with the opinion in the leading judgment.  
C While on this, it may be considered desirable for courts to endeavour to explore all reasonable possibilities of not adopting methods that might short-circuit a hearing on mere technicality or narrow constructions in an election petition matter in a developing country like ours and with the nature of our democracy sitting on tender hooks,  
D we cannot be overly careful. To do otherwise may give an ungainly impression erroneously held that the judiciary is part of the political problems when in actual fact, generally speaking it has never been. Let us avoid giving vent to cynicism.

The next question to consider is whether Corporate Nigeria  
E should be a party having regards to the provision of the Electoral Act. The learned counsel for the appellants, Owonikoko Esq., while stating in his brief, the provision of Section 221 of the Constitution which sets out as to who should canvass for votes or contribute to the funds of any political party, submitted that the funding by Corporate  
F Nigeria, i.e., party sought to be joined while not coming with the description ascribed to Section 221 above, its act constitutes a prohibited behaviour. For this, he cited the opinion of the Supreme Court, per Uwaifo, JSC., in Buhari and Ors. v. Yusufu and Ors. (2003) 6  
G S.C. (Pt. II) 156 as to who should be joined as a party which runs thus:

*“It seems to me that if ejusdem generis rule were to be applicable then the expression, other person who took part in the conduct of election, would have to be restricted to INEC officials who  
H 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 for election in a constituency but assisted 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....*" (The underling is mine).

He argued with gusto and unction that the 57th respondent by participating in the fund - raising is guilty of undue influence and of corruption. In that case he canvassed that it becomes a necessary party. This type of argument with greatest respect sounds obtuse. I find it difficult to rationalize that a body or a person by merely contributing money to a political party is perpetrating undue influence which can equally be said to connote a corruptible act. I believe that the term "corrupt practices" denote or can be said to connote and embrace certain perfidious and debauched activities which are really felonious in character being redolent in their depravity and want of ethics. They become the hallmark of a decayed nature lacking in conscience and principles. I find it difficult to ascribe to the Corporate Nigeria's fund subscription act this invidious characteristic. In the case of Bua v. Dauda (2003) 6 S.C. (Pt. II) 120; (2003) 13 NWLR (Pt. 838) P. 65 of 680 Uwaifo, JSC., describes the term undue influence in the following language.

*"Undue influence is no doubt elusive of satisfactory definition but it may be regarded as a state of mind of a person who has been subdued to any improper persuasion or machination in such a way that he is overpowered and consequently induced to do or forbear an act which he would otherwise do or not do of his free will. It is a product of the abuse or misuse of the confidence reposed in some one who is able to put some pressure on or take unfair advantage of another's necessities or distress."*

Although that description has nothing to do with an election petition matter but it would help further to understand the meaning of that term.

In the first place, the 57th respondent does not by any stretch of imagination come within the orbit of people that can be made parties as per the statute. The 57th respondent does not come within the prescription of Section 133 (2) of the Election Act of 2002. Besides, there is no way a mere contribution by a party not mentioned in Section 221 of the Nigerian Constitution could be described as amounting to corruption. The construction being placed on the opinion of Uwaifo, JSC., is wide off the mark. I would not in the least subscribe to the construction being given by the appellants' counsel

in this matter. He offered no other credible reason why the 57th respondent should be made a party. It is my view taking into consideration the argument on the briefs and oral arguments that the 57th respondent is not a necessary party. I reject that argument. The appeal is partly successful. I associate and abide by the consequential  
B orders made in the leading judgment by my learned brother, Niki Tobi.

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