

SUPREME COURT OF NIGERIA
FRIDAY 12TH DECEMBER, 2003. SC. 142/2003
CORAM:- S. M. A. BELGORE, A. I. KATSINA-ALU,
U. A. KALGO, S. O. UWAIFO, A. O. EJIWUNMI,
N. TOBI, D. O. EDOZIE, JJSC

ATTORNEY-GENERAL OF

THE FEDERATION

..... APPELLANT

AND

1. ALL NIGERIA PEOPLES PARTY

2. PRINCE ABUBAKAR AUDU

..... RESPONDENTS

3. BABA ALIYU ADAMU

OBJECTIONS - Preliminary objection - Basis - It deals strictly with law - And hence no need for supporting affidavit - But where based on facts - Applicant must justify the objection - By adducing facts in affidavit (H1)

CONSTITUTIONAL LAW - Action - Commencement - Office of A-G Federation - Constitution 1999 s. 147(1) creates the office - And any suit by or against the A-G will be absorbed by the office - Which never dies unless Constitution abrogates it (H2)

ACTIONS - Commencement - Legal personality - Natural persons or institutions having juristic personality can sue and be sued - And A-G office being a creation of the Constitution - Is a legal person known to law (H3)

CONSTITUTIONAL LAW - Office of A-G - Distinctive nature - The office is different from the person occupying it - As while the office is stable being a creation of the Constitution - The incumbent could be varied (H4)

COURTS - Academic issue - Interpretation of s. 182(1)(b) of the Constitution is embarking on academic exercise - As such will not affect the position of the Governor - Who is not a party to the action (H5)

JUDGMENTS - Binding nature - Judgment in this matter will not bind other State Governors - Whose rights to contest the election for 3rd time have been questioned - Since they are not parties to the litigation (H6)

FACTS

Plaintiff/3rd respondent (i.e. Baba Aliyu Adamu) instituted this action at the Federal High Court, Kogi State against 1st and 2nd defendants/respondents and 3rd defendant/appellant, claiming two declaratory reliefs and three injunctive reliefs to bar 2nd respondent from contesting the 2003 gubernatorial election in Kogi State. 2nd respondent, who was the Governor of the State at the material time, in his counter-claim, sought for a declaration that he was constitutionally qualified for re-election into the office of the Governor of the State. At the end of hearing in the matter, the learned trial Judge dismissed the claim of 3rd respondent and granted the counter-claim of 2nd respondent.

Aggrieved by the decision, the Attorney-General of the Federation (appellant) appealed to the Court of Appeal, Abuja Division. The court after hearing in the appeal dismissed same. Appellant, who was not still satisfied, filed an appeal to Supreme Court. Meanwhile, Alhaji Adamu Maina Waziri (a gubernatorial candidate of the Peoples Democratic Party in Yobe State in the concluded 2003 election) had applied to the Court of Appeal, seeking leave to be joined in the matter as an interested party. The court dismissed the prayer. Hence, applicant has come to the Supreme Court seeking the same prayer.

ISSUES FOR DETERMINATION

“(i) Whether or not the appellant had the locus standi to institute this appeal in the court below?”

“(ii) Whether having regard to the provisions of S. 182(1)(b) of the 1999 Constitution a person who had been elected at any two previous elections before the commencement of the Constitution can again be elected into the office of a State Governor.”

HELD (Unanimously dismissing the appeal and striking out the application per **TOBI JSC**)

Preliminary objection - Basis

1. Let me take the preliminary objection first. Chief Babalola submitted that since the preliminary objection is not supported by an affidavit, it is not competent. With respect, he cannot carry me along in that submission. Preliminary objection, by its very nature, deals strictly with law and there is no need for a supporting affidavit. In a preliminary objection, the applicant deals with law and the ground is that the court process has not complied with the enabling law or rules of court and therefore should be struck out. It could be on abuse of court process. The preliminary objection if successful, the court will not hear the merits of the matter as it will be struck out. However, if a preliminary objection leaves the exclusive domain of law and flirts with the facts of the case, then the burden rests on the applicant to justify the objection by adducing facts in an affidavit. The applicant, in that circumstance, stands the risk of his objection being thrown out or rejected, if he fails to satisfy the court of the facts he has relied upon. (p. 2838 G)

Action - Commencement - Office of A-G Federation

2. Section 150(1) of the Constitution of the Federal Republic of Nigeria, 1999 creates the office of Attorney-General of the Federation. Let me read it quickly:

“There shall be an Attorney-General of the Federation who shall be the Chief Law Officer of the Federation and a Minister of the Government of the Federation.”

It would appear that the Attorney-General is the only Minister specifically created in the Constitution. Section 147(1) of the Constitution ominously creates the office of Minister of the Government of the Federation. In view of the fact that the office is created in the Constitution, and unless or until the office is abrogated, it will continue in perpetuity. And any suit by or against the Attorney-General will in law be absorbed by the office, which never dies unless the Constitution abrogates it. At the time the appellant, the Attorney-General, filed the appeal, the office was and is in existence. It is very much alive and not dead as contended by Chief Olanipekun. (p. 2839 D)

ACTIONS - Commencement - Legal personality

3. The law recognises two categories of persons who can sue and be sued. They are natural persons with life, mind and brain, and other bodies or institutions having juristic personality. In
B Alhaji Mailafia Trading and Transport Company Limited v. Veritas Insurance Company Limited (1986) 4 NWLR (Pt. 38) 802, the court held that a party who should commence action in court must be a person known to law, that is, a legal person. The office of the Attorney-General, being a creation of
C the Constitution, is a legal person known to law. (p. 2839 H)

CONSTITUTIONAL LAW - Office of A-G - Distinctive nature

4. In Royal Petroleum Company Limited v. First Bank of Nigeria Limited (1997) 6 NWLR (Pt. 510) 584, the court held that a limited liability company is an entirely different and distinct entity from its Managing Director and other human agents who act for it. The relevance of this judgment to this appeal is that the office of the Attorney-General of the Federation is different and distinct from the person occupying it. And so while the office continues in perpetuity, unless abrogated by the Constitution, the holder of the office could leave the office at the expiration of his tenure or removed as the case may be. Physical death can also result in the person not occupying
F the office any longer. This is merely saying the obvious.

In Carlen (Nig.) Limited v. University of Jos (1994) 1 NWLR (Pt. 323) 631, the Supreme Court defined a corporation as a body of persons (in the case of a corporation aggregate) or an office (in the case of a corporation sole) which is recognised by law as having a personality which is distinct from the separate personality of the members of the body or the personality of the individual holder for the time being of the office in question. The court also held that any person natural or artificial may sue and be sued in court. This decision, by analogy, also makes it clear the distinction between the office of the Attorney-General and the incumbent of the office. While the office of the Attorney-General is stable and constant, being a creation of the Constitution, the incumbent could be tran-

sient and varied, in the sense that it is not permanent.
(p. 2840 H)

COURTS - Academic issue

5. That takes me to the appeal of the Attorney-General. It is clear from the brief of the appellant that the main issue centres on the interpretation of section 182(1)(b) of the Constitution, particularly whether the provision can be interpreted retrospectively. B

Can this court involve itself in the interpretation of the subsection when the office of Governor of Yobe State has been occupied in the April 19, 2003 gubernatorial election? That is the relevant question. What purpose or objective will this court achieve by the interpretation of the provision? C

I can hardly see any purpose or objective in the interpretation of the provision other than embarking on a mere academic exercise. And courts of law do not embark on academic exercise because they are not academic institutions. I say this because the interpretation of the provision will not affect the position of the present occupant of the office, who is understandably not a party to the action. And what is more, the 2nd and 3rd respondents who were directly involved in the action have thrown in the towel and are no more interested in pursuing the matter. This was indicated at the hearing of the appeal. D E F
(p. 2842 B)

JUDGMENTS - Binding nature

6. Learned Senior Advocate also submitted in paragraph 2.05 of the brief that since there were other State Governors whose right to contest the governorship election for a third time was at stake, the issue in the appeal is therefore an issue whose relevance transcends the personal rights of the parties to the action. With the greatest respect, I cannot go along with this submission. The general principle of law is that the outcome of litigation by way of judgment binds only the parties. A judgment in this matter will certainly not bind all other State Governors whose right to contest the governorship election for a third time has been questioned. This is because they are not G H

parties to the litigation. Courts of law can only make enforceable orders, and like nature, they do not act in vain.

(p. 2842 H)

REPRESENTATION

- B Chief Afe Babalola, SAN with O. Okunloye, SAN; Dr. O. Ayeni, Esq.; G. Okonkwo, Esq.; A. Adenipekun, Esq.; T. J. Abubakar, Esq.; O. Amao, Esq; A. A. Baban, Esq. and Remi Awe [Miss.] - for the Appellant/Applicant
- C Chief Wole Olanipekun, SAN with Emeka Okoro, Esq.; Mohammed Shuaib, Esq.; P. H. Ogbole, Esq.; Waheed Gbadamosi, Esq.; D. S. Malik, Esq; S. A. Yelwa, Esq., Charity Ehinze, Esq. and K. I. Anderson, Esq. - for the Respondents

CASES REFERRED TO

- IMB Securities v. Tinubu (2001) 16 NWLR (pt. 740) 670
Alamieyeseigha v. Yeiwa (2002) 7 NWLR (pt. 767) 701
Oditia v. Okwudima (1969) NSCC (Vol. 6) 198
Obimounure v. Erinosho (1966) 1 All NLR 250
- E Okukuje v. Akwido (2001) 3 NWLR (pt. 700) 261
Rabiu v. State (1981) 2 NCLR 293
A-G Ondo State v. A-G Ekiti State (2001) 7 NWLR (pt. 743) 706
PDP v. INEC (1999) 11 NWLR (pt. 626) 200
- F Adesanya v. President of the Federal Republic (1981) 2 NCLR 358
Cole v. Akinyele (1960) SCNLR 192
Preston-Jones v. Preston Jones (1951) AC 391
Ezenwosu v. Ngonadi (1988) 3 NWLR (pt. 81) 163
Atanda v. Olanrewaju (1988) 4 NWLR (pt. 89) 394
- G Whyte v. Jack (1996) 2 NWLR (pt. 431) 407
Adizua v. Isubua (1993) 5 NWLR (pt. 295) 604

STATUTES REFERRED TO

- Constitution of the Federal Republic of Nigeria 1999, ss. 147(1),
H 150(1), 182(1)(b), 233(5)
Evidence Act 1990, s. 74(1)(2)

LEAD JUDGMENT BY TOBI JSC

This appeal deals with two distinct and separate matters ap-

parently or seemingly roped together by a single twine. One is the main appeal. The other is parasitic on the main appeal. It is not an appeal. The main appeal is filed by the Attorney-General of the Federation. The second matter is in respect of an applicant seeking to join in the appeal as an interested party.

Let me take the facts of the cases briefly. In the main appeal, Baba Aliyu Adamu, the 3rd respondent as plaintiff, commenced an action at the Federal High Court against the 2nd and 1st respondents, claiming two declaratory reliefs and three injunctive reliefs to bar the 2nd respondent from contesting the 2003 election into the office of Governor of Kogi State. The 2nd respondent, who was the Governor of Kogi State at the material time, in his counter-claim, asked for three declaratory reliefs.

At the end of the case, the learned trial Judge dismissed the claim of the plaintiff. He granted the counter-claim of the 2nd respondent. Aggrieved by the decision, the Attorney-General of the Federation appealed. The Court of Appeal dismissed the appeal. The Attorney-General has appealed to this court.

In the second matter, the applicant, Alhaji Adamu Maina Waziri, was a gubernatorial candidate of the Peoples Democratic Party (PDP) in Yobe State in the last election along with Alhaji Bukar Abba Ibrahim, who was declared winner of the election. He feels that he is prejudicially affected by the judgment of the Court of Appeal, and has come to us. His earlier motion to the Court of Appeal for leave to appeal against the judgment of that court delivered on 25th March, 2003 as an interested party, was refused by the court.

Briefs were filed and exchanged. The appellant formulated two issues for determination:

“(i) Whether or not the appellant had the locus standi to institute this appeal in the court below?”

“(ii) Whether having regard to the provisions of S. 182(1)(b) of the 1999 Constitution a person who had been elected at any two previous elections before the commencement of the Constitution can again be elected into the office of a State Governor.”

The 1st respondent adopted the above issues.

On issue No.1, Chief Babalola, SAN, submitted that the Court of Appeal erred in coming to the conclusion that the appellant lacked locus standi to appeal against the judgment of the trial court. He cited

IMB Securities v. Tinubu (2001) 16 NWLR (Pt. 740) 670; CMI Trading Services Ltd. v. Yuriy (1998) 11 NWLR (Pt. 573) 284, 298 and section 233(5) of the 1999 Constitution. Counsel submitted that a person who ought to be made a party and who is being affected by the order made automatically entitled him to appeal or apply against the judgment as a party to the case. He cited *Alamieyeseigha v. Yeiwa* (2002) 7 NWLR (Pt. 767) 701; *Odita v. Okwudima* (1969) NSCC (Vol. 6) 198, (1969) NMLR 121; *Obimonure v. Erinosho* (1966) 1 All NLR 250 and *Okukuje v. Akwido* (2001) 3 NWLR (Pt. 700) 261, 326.

Learned Senior Advocate argued in the alternative that the issue of locus standi of the appellant ought to be given a liberal interpretation to enable him appeal against the judgment. He cited *Rabiu v. State* (1981) 2 NCLR 293; *Attorney-General, Ondo State v. Attorney-General, Ekiti State* (2001) 7 NWLR (Pt. 743) 706, 767- 768; *PDP v. INEC* (1999) 11 NWLR (Pt. 626) 200, 240-241 and *Adesanya v. President of the Federal Republic* (1981) 2 NCLR 358, 373, 376.

Learned Senior Advocate submitted on issue No.2 that the Court of Appeal erred in interpreting section 182(1)(b) of the Constitution. Relying on the golden rule of interpretation, counsel cited *Attorney-General, Osun State v. International Breweries Plc.* (2001) 7 NWLR (pt. 713) 647, 662; *Attorney-General, Ondo State v. Attorney-General, Ekiti State* (supra).

Chief Wole Olanipekun, SAN, for the 1st respondent, in his preliminary objection, called the attention of the court to Order 2 rule 2 of the Supreme Court Rules, and Black's Law Dictionary definition of appellant and submitted that an appellant is a living or existing person, capable of giving instructions to counsel to file an appeal on his behalf, and cannot therefore be a fictitious personality and neither can his existence be assumed nor presumed when it is clear that he had ceased to be in existence at a particular point in time or that his existence had been temporarily terminated.

Learned Senior Advocate claimed that as at 27th May, 2003 when this appeal was purportedly filed against the decision of the lower court, Mr. Godwin Kanu Agabi (SAN) the immediate past Attorney-General of the Federation, was no longer in office and there was no substantive holder of the office appointed in his stead. Citing section 74(1) and (2) of the Evidence Act, 1990; *Cole v. Akinyele*

(1960) SCNLR 192, (1960) 5 FSC 84 and *Preston-Jones v. Preston Jones* (1951) AC 391, learned Senior Advocate urged the court to take judicial notice of the above fact which counsel said is notorious.

Citing the case of *Attorney-General, Kaduna State v. Hassan* (1985) 2 NWLR (Pt. 8) 483, learned Senior Advocate submitted that the functions of an Attorney-General can only be performed by the holder of the office or delegated personally by him to any delegate. The immediate past Attorney-General of the Federation who ceased to hold office upon the dissolution of the Federal Executive Council before 27th May, 2003 'died' within the context of section 150 of the 1999 Constitution, learned Senior Advocate reasoned. He cited *PDP v. INEC* (1999) 11 NWLR (Pt. 626) 200 at 246; *Ezenwosu v. Ngonadi* (1988) 3 NWLR (Pt. 81) 163, (1988) 19 NSCC (Pt. 1) 1071; *Atanda v. Olanrewaju* (1988) 4 NWLR (Pt. 89) 394 at 409; *Whyte v. Jack* (1996) 2 NWLR (Pt. 431) 407 at 422; *Adizua v. Isubua* D (1993) 5 NWLR (Pt. 295) 604 and *Oyeyemi v. Commissioner for Local Government, Kwara State* (1992) 2 NWLR (Pt. 226) 661.

Learned Senior Advocate pointed out that since the 3rd respondent who was seeking the declarative reliefs has emphatically stated that he is disinterested in the appeal, the person who rightly championed the appeal is no more in it. As the appeal is brought on behalf of an uninterested party, it cannot stand. He cited *Mustafa v. Monguno* (1987) 3 NWLR (Pt. 62) 663 at 670; *Mobil Production (Nigeria) Unlimited v. LASEPA* (2002) 18 NWLR (Pt. 798) 1; *Jamarkani Transport Ltd. v. Kalla* (1965) 4 NSCC 56, (1963) NMLR F 194.

Learned Senior Advocate argued that since there are no life issues to adjudicate upon in this appeal, this court cannot embark on an academic exercise. He cited *Badejo v. Federal Ministry of Education* (1996) 8 NWLR (Pt. 464) 15; *Olemiyi v. Aroyelulu* (1991) 5 NWLR (Pt. 194) 652; *Anaekwe v. Mashasha* (2001) 12 NWLR (Pt. 726) 70 at 89-90; *Eperokun v. University of Lagos* (1986) 4 NWLR (Pt. 34) 162; *Abubakri v. Smith* (1973) 6 SC 31; *Adelaja v. Alade* (1999) 6 NWLR (Pt. 608) 544 at 563; *Global Transport Oceanic S. A. v. Free Enterprise (Nig.) Ltd.* (2001) 5 NWLR (Pt. 706) 426; *Union Bank v. Edionseri* (1988) 2 NWLR (Pt. 74) 93; *Salihu v. State* (1984) 10 SC 111; and *Adeyemi v. Opeyori* (1976) 9-10 SC 31.

In the event of the preliminary objection not upheld, Chief

Olanipekun submitted on issue No.1 that the doctrine of locus standi is applicable in appeals. He cited *Adesanya v. President of Nigeria* (1981) 2 NCLR 358; *Owodunni v. Registered Trustees of CCC* (2000) 10 NWLR (Pt. 675) 315; *Shofolahan v. Fowler* (2002) 14 NWLR (Pt. 788) 664 at 683 and Order 8 rule 2(1) of the Supreme Court Rules.

B Counsel submitted that both at the lower court and in this court the appellant has no locus standi to prosecute any appeal. He cited *Oredoyin v. Arowolo* (1989) 4 NWLR (Pt. 114) 172; *Saraki v. Kotoye* (1992) 9 NWLR (Pt. 264) 156; *Ogunkunle v. Eternal Sacred Order of C and S* (2001) 12 NWLR (Pt. 727) 359 at 370-371 and *Coleman v. Clarence Miller* 122 American Law Reports 695 at 711, (1939) SC Reporter 307 U.S. 973.

On issue No.2. learned Senior Advocate, in essence, submitted that section 182 of the Constitution cannot be interpreted retro-
D spectively, and that the Court of Appeal was wrong in so interpreting the section. He cited numerous authorities on the interpretation of the Constitution and to substantiate his argument, he urged the court either to strike out the appeal or dismiss it.

In his reply brief. Chief Babalola (SAN) for the appellants, sub-
E mitted that as the 1st respondent neither filed an affidavit in support nor filed a separate notice of objection, the preliminary objection is misconceived and incompetent.

On the submission of learned Senior Advocate for the 1st re-
F spondent that there was no Attorney-General at the time the appeal was filed, Chief Babalola submitted that the office of the Attorney-General created under the Constitution is a corporation sole and not a natural person and it is vested with powers to sue and be sued, and has perpetual succession. He cited *Fawehinmi v. NBA (No.2)* (1989) 2 NWLR (Pt. 105) 558; *Alapiki v. Governor of Rivers State* (1991) 8
G NWLR (Pt. 211) 575, 588, 599; *Royal Pet. Co. Ltd. v. FBN Ltd.* (1997) 6 NWLR (Pt. 510) 584, 599; *Carlen Nig. Ltd. v. Unijos* (1994) 1 NWLR (Pt. 323) 631 and submitted that the “death” of the holder of the office does not mean the “death” of the office. The cases of
H Attorney-General, Kaduna State v. Hassan (supra) and PDP v. INEC (supra) cited by counsel for the 1st respondent are inapplicable, learned Senior Advocate argued.

On the position taken by the 2nd and 3rd respondents, learned Senior Advocate urged the court to hold that it is no longer open to

them in the circumstances to say that they are no longer interested in the case. Learned Senior Advocate made specific replies in respect of the locus standi of the appellant and the construction of section 182(1)(b) of the 1999 Constitution.

On the application of Alhaji Adamu Maina Waziri, Chief Babalola filed a brief of argument. He formulated three issues as follows: B

“(1) Whether in the circumstances of this case, the applicant is not entitled to leave to appeal as an interested party against the judgment of the Court of Appeal.

(2) Whether or not the applicant is entitled to be granted leave to appeal on grounds other than grounds of law. C

(3) Whether the applicant is not entitled to a stay of further proceedings in the Governorship and Legislative Houses Election Tribunal, Damaturu.”

The 1st respondent, in its brief, adopted the above three issues D but expressed concern that the third issue is now merely academic.

On issue No.1, learned Senior Advocate for the applicant. Chief Babalola, submitted that by virtue of section 243(a) of the 1999 Constitution, any other person having an interest in a matter can exercise the right of appeal in a civil proceeding though he was not a party to the original proceeding. He submitted that a person having an interest in the matter is synonymous with a person aggrieved, that is, a person who has suffered a legal grievance, a person against whom a decision has been pronounced which has wrongfully deprived him of something; or wrongfully affected his title to something. It is not only a person already affected but a person who is likely to be affected by such a decision may appeal as an interested party. He cited *Akande v. General Electric Co. and Others* (1979) 3-4 SC 115. F

In considering whether an applicant comes within the expression of interested party, an applicant who has shown that he is so connected with the subject matter of the suit that any order made in the suit will be prejudicial or beneficial to him is entitled to appeal against the decision, learned Senior Advocate contended. He cited *In Re: Williams* (No. 1) (2001) 9 NWLR (Pt. 718) 329 at 340. Relying on *In Re: Mbamalu* (2001) 18 NWLR (Pt.744) 143, 158, 159 and 168, learned Senior Advocate submitted that a person who has shown that the decision of the court has caused him grief, loss, advantage and has affected his title or position will be a person inter- H

ested in the judgment who is entitled to appeal against it. Learned Senior Advocate gave reasons in paragraph 4.03 why the applicant is an interested person in the appeal.

Learned Senior Advocate submitted that section 233(5) of the Constitution is made in order to obviate such unnecessary litigation as a person instead of going through the whole gamut of appeal in order to get a decision *“which has adversely affected him set aside can appeal as an interested party to get same set aside.”* Citing *In Re: Eke* (1993) 4 NWLR (Pt.286) 176, 185, 187; *Otapo v. Sunmonu* (1987) 2 NWLR (Pt. 58) 587; *In Re: Mbamalu* (2001) 18 NWLR Pt. 744) 143, 163, learned Senior Advocate contended that an unnamed representative has a right to appeal against any judgment as an interested party.

On a possible accusation of standing by when his interest was at stake, learned Senior Advocate argued that he cannot be seriously so accused having regard to the fact that the applicant’s cognizable rather than contingent interest never arose until he went to the elections in April 19, 2003.

On issue No.2, learned Senior Advocate submitted that an applicant for extension of time to appeal must satisfy the court that there are good and substantial reasons for failure to appeal within time and that the proposed grounds of appeal show prima facie why the appeal should be heard. He cited Order 2 rule 31(2) of the Supreme Court Rules; *Kotoye v. Saraki* (1995) 5 NWLR (Pt. 395) 256 and *CBN v. Ahmed* (2001) 11 NWLR (Pt. 724) 369, 392.

Referring to the applicant’s affidavit on the issue of delay, learned Senior Advocate submitted that what the law requires is not a justification for the period of delay, but that where an application is not wholly untenable or amounts to no explanation, the court will not shut out an appellant from appealing against a judgment he is dissatisfied with. He cited *Iyalabani Coy. Ltd. v. Bank of Baroda* (1995) 4 NWLR (Pt. 387) 20, 25; *Ude Ubada and Sons Ltd. v. C. C. Ezekwem and Co.* (2000) 10 NWLR (Pt. 676) 600; *CBN v. Ahmed* (supra); *H Shanu v. Afribank (Nig.) Plc.* (2000) 13 NWLR (Pt. 684) 392 and urged the court to hold that the delay in the prosecution and delivery of the ruling at the Court of Appeal constitute good reason to extend time to appeal in this case.

On the grounds of appeal, learned Senior Advocate submitted

that the grounds have inter alia raised issues of the interpretation of section 182(1)(b) of the Constitution and the constitutionality of the reading of the judgment of a High Court by a Judge who did not write the judgment. Calling in aid *CBN v. Ahmed* (supra), learned Senior Advocate submitted that the issues raised by the grounds of appeal are substantial, recondite, arguable, and worthy of being considered in this appeal. He cited further *Ukwu v. Bunge* (1997) 8 NWLR (Pt. 518) 527, 541-542; *Yesufu v. Co-operative Bank* (1989) 3 NWLR (Pt. 110) 483, 504; *In Re: Madaki* (1996) 7 NWLR (Pt. 459) 153 at 164-165. B

On issue No.3, learned Senior Advocate submitted that an applicant for a stay of proceedings only need to establish special and exceptional circumstances entitling him to a stay of proceedings. He submitted that where a substantial issue of constitutionality has been raised, the Court would grant a stay of proceedings. He cited *Owena Bank (Nig.) v. Olatunji* (1999) 13 NWLR (Pt. 634) 218 at 229; *Almaroof v. Awoyemi* (1999) 10 NWLR (Pt. 623) 444 at 450; *NDLEA v. Okorodudu* (1997) 3 NWLR (Pt. 492) 221 at 241. Relying further on *Eze v. Okolonji* (1997) 7 NWLR (Pt. 513) 515 at 528, learned Senior Advocate submitted that at this stage, the applicant has no duty to prove that the appeal will succeed, and that once he shows that the appeal is arguable and there are chances of success, an application for stay should be granted. C

Learned Senior Advocate also called the attention of the court that the applicant's right to fair hearing is also in imminent danger of being breached by the election tribunal. He pointed out that the proceeding before the tribunal "has been conducted and would be decided upon the judgment that is being appealed against". When this happens and the applicant succeeds in this appeal, he will not have any opportunity to have the judgment reversed as the tribunal would have become *functus officio* in respect of the petition, learned Senior Advocate explained. He urged the court to grant the application. D

In his reply brief, learned Senior Advocate for the 1st respondent submitted that no constitutional provision entitles the applicant to approach this court by way of application to overturn a decision of the court of Appeal. He cited section 233(1) of the Constitution and the following cases: *Dike v. Aduba* (2000) 3 NWLR (Pt. 647) 1; E

Oredoyin v. Arowolo (1989) 4 NWLR (Pt. 114) 172 and Oyeti v. Soremekun (1963) 3 NSCC 282, (1963) 1 SCNLR 320.

Pointing out that the applicant's complaint is in respect of the gubernatorial election held in Yobe State on the 19th day of April, 2003, learned Senior Advocate submitted that this court has no jurisdiction to hear an election petition except by way of appeal from the Court of Appeal in respect of a presidential election petition.

It was the submission of learned Senior Advocate that the applicant in seeking to appeal as a person having an interest in this matter, is meddling in a matter that does not, in any conceivable manner in law, concern him in such a way that would confer a recognizable interest that he can protect by way of an appeal. He questioned the appearance of Chief Babalola both for the applicant and the appellant.

Calling the attention of the court to Ikonne v. Commissioner of Police, Imo State (1986) 4 NWLR (Pt. 36) 473, (1986) 17 NSCC (Pt. 11) 1130 at 1153; Nigerian Bottling Plc. v. Osofisan (2000) 10 NWLR (Pt. 675) 370, 381 and Adelaja v. Alade (1999) 6 NWLR (Pt. 608) 544, learned Senior Advocate submitted that only a person who has suffered a legal grievance or against whom a decision has been pronounced which has wrongly deprived him of something or wrongly affected his title to something can apply for leave to be joined as an interested party. The acid test in an application of this nature, is whether the person seeking leave to appeal could have been joined in the case in the first place, learned Senior Advocate contended. To counsel, no lis or contestable case exists or remains for the applicant to energize by way of an appeal by him (a total stranger) to this court. The proposed appeal is purely academic, vis-à-vis the facts of the case, learned Senior Advocate submitted.

Let me take the preliminary objection first. Chief Babalola submitted that since the preliminary objection is not supported by an affidavit, it is not competent. With respect, he cannot carry me along in that submission. Preliminary objection, by its very nature, deals strictly with law and there is no need for a supporting affidavit. In a preliminary objection, the applicant deals with law and the ground is that the court process has not complied with the enabling law or rules of court and therefore should be struck out. It could be on abuse of court

process. The preliminary objection if successful, the court will not hear the merits of the matter as it will be struck out. However, if a preliminary objection leaves the exclusive domain of law and flirts with the facts of the case, then the burden rests on the applicant to justify the objection by adducing facts in an affidavit. The applicant, in that circumstance, stands the risk of his objection being thrown out or rejected, if he fails to satisfy the court of the facts he has relied upon. B

That takes me to the merits of the objection. Chief Olanipekun, SAN, seriously attacked the appellant on the ground that at the time he appealed, the office of the Attorney-General was vacant, and that meant that the Attorney-General was “dead” legally. He took so much time to cite authorities particularly on the expression “dead” to buttress the point that it does not mean in the context physical cessation of breath in medical parlance. C

Section 150(1) of the Constitution of the Federal Republic of Nigeria, 1999 creates the office of Attorney-General of the Federation. Let me read it quickly: D

“There shall be an Attorney-General of the Federation who shall be the Chief Law Officer of the Federation and a Minister of the Government of the Federation.” E

It would appear that the Attorney-General is the only Minister specifically created in the Constitution. Section 147(1) of the Constitution ominously creates the office of Minister of the Government of the Federation. In view of the fact that the office is created in the Constitution, and unless or until the office is abrogated, it will continue in perpetuity. And any suit by or against the Attorney-General will in law be absorbed by the office, which never dies unless the Constitution abrogates it. At the time the appellant, the Attorney-General, filed the appeal, the office was and is in existence. It is very much alive and not dead as contended by Chief Olanipekun. F

The law recognises two categories of persons who can sue and be sued. They are natural persons with life, mind and brain, and other bodies or institutions having juristic personality. In Alhaji Mailafia Trading and Transport Company Limited v. Veritas Insurance Company Limited (1986) 4 NWLR G H

(Pt. 38) 802, the court held that a party who should commence action in court must be a person known to law, that is, a legal person. The office of the Attorney-General, being a creation of the Constitution, is a legal person known to law.

In the English case of *Knight and Searle v. Dove* (1964) 2 All ER 307, Mocatta, J. said at page 309:

“The proposition was that no action can be brought by or against any party other than a natural person or persons unless such party has been given by statute, expressly or impliedly, or by common law, either (a) legal person under the name by which it sues or is sued or (b) a right to sue or be sued by that name.”

In *Chief Fawehinmi v. Nigerian Bar Association* (No. 2)(1989) 2 NWLR (Pt. 105) 558, a case cited by Chief Babalola, Agbaje, JSC, fell back on Halsbury’s *Laws of England*, 3rd edition, vol. 9. page 7, article 8 which provides:

“A corporation sole is a body politic having perpetual succession, constituted in a single person, who, in right of some office or function, has a capacity to take, purchase, hold and demise (and in some particular instances, under qualifications and restrictions introduced by statute, power to alienate) lands, tenements and hereditaments, and now, it would seem, also to take and hold personal property...”

The position was made clearer in *Alapiki v. Governor of Rivers State* (1991) 8 NWLR (Pt. 211) 575. Delivering the leading judgment of the court, Ogundare, JCA (as he then was), said:

“Does the word ‘person’ as used in section 2 mean natural person only or what is the scope of the law in the light of the section 2 thereof? Does it include artificial persons as well? The 1st respondent (the Governor of Rivers State) is not a natural person but an office created by the Constitution, although the office is occupied at any given time by a natural person. As a constitutional office it is a corporation sole and having regard to the functions conferred on it by the Constitution, it can be safely said to be a public authority. As a public authority and a corporation sole, it is a legal person that can sue and be sued.”

In *Royal Petroleum Company Limited v. First Bank of Nigeria Limited* (1997) 6 NWLR (Pt. 510) 584, the court held that a limited liability company is an entirely different and dis-

tinct entity from its Managing Director and other human agents who act for it. The relevance of this judgment to this appeal is that the office of the Attorney-General of the Federation is different and distinct from the person occupying it. And so while the office continues in perpetuity, unless abrogated by the Constitution, the holder of the office could leave the office at the expiration of his tenure or removed as the case may be. Physical death can also result in the person not occupying the office any longer. This is merely saying the obvious. B

In Carlen (Nig.) Limited v. University of Jos (1994) 1 NWLR (Pt. 323) 631, the Supreme Court defined a corporation as a body of persons (in the case of a corporation aggregate) or an office (in the case of a corporation sole) which is recognised by law as having a personality which is distinct from the separate personality of the members of the body or the personality of the individual holder for the time being of the office in question. The court also held that any person natural or artificial may sue and be sued in court. This decision, by analogy, also makes it clear the distinction between the office of the Attorney-General and the incumbent of the office. While the office of the Attorney-General is stable and constant, being a creation of the Constitution, the incumbent could be transient and varied, in the sense that it is not permanent. C D E

Chief Olanipekun cited Attorney-General, Kaduna State v. Hassan (supra). That case dealt with a different situation. The issue before this court in that case was whether the constitutional duties of the Attorney-General under section 191 of the 1979 Constitution can, in his absence, be exercised by the Solicitor General. In that case, there was no incumbent Attorney-General in office when the Solicitor-General purportedly exercised the powers of the Constitution, the exercise of the powers of the Attorney General is personal to him and cannot be exercised by any other functionary unless those powers have been delegated to him by the Attorney-General. Before such delegation can take place, there must be an incumbent Attorney-General in office who can be the donor of the powers. F G H

Hassan's case is quite different from the case here. The facts are clearly different. There is no issue here in which the Solicitor-General tried to perform the constitutional functions of the Attorney-

General. What happened here is that the office of the Attorney-General, which is created in the Constitution, filed an appeal in this matter. Accordingly, Hassan is not helpful to the 1st respondent.

In the light of the foregoing, the preliminary objection is basically unmeritorious and it is hereby struck out.

B That takes me to the appeal of the Attorney-General. It is clear from the brief of the appellant that the main issue centres on the interpretation of section 182(1)(b) of the Constitution, particularly whether the provision can be interpreted retrospectively.

C Can this court involve itself in the interpretation of the subsection when the office of Governor of Yobe State has been occupied in the April 19, 2003 gubernatorial election? That is the relevant question. What purpose or objective will this court achieve by the interpretation of the provision?

D I can hardly see any purpose or objective in the interpretation of the provision other than embarking on a mere academic exercise. And courts of law do not embark on academic exercise because they are not academic institutions.

E See Adelaja v. Alade (1999) 6 NWLR (Pt. 608) 544; Okulate v. Awosanya (2000) 2 NWLR (Pt. 646) 530; UBN Plc. v. Sepok (Nig.) Ltd. (1998) 12 NWLR (Pt. 578) 439; Nnubia v. A.-G., Rivers State (1999) 3 NWLR (Pt. 593) 82; A.-G. Kwara State v. Alao (2000) 9 NWLR (Pt. 671) 84. I say this because the interpretation of the

F provision will not affect the position of the present occupant of the office, who is understandably not a party to the action. And what is more, the 2nd and 3rd respondents who were directly involved in the action have thrown in the towel and

G are no more interested in pursuing the matter. This was indicated at the hearing of the appeal.

H I entirely agree with the constitutional role of the Attorney-General spelt out by the learned Senior Advocate. He, as the Chief Law Officer, should be interested in “any question relating to the validity and or the correct interpretation of the laws of the Federation including the Constitution”. But in a situation such as this, the interpretation of the constitutional provision, apart from being interpretation qua construction will, as I have said, serve no useful purpose.

Learned Senior Advocate also submitted in paragraph

2.05 of the brief that since there were other State Governors whose right to contest the governorship election for a third time was at stake, the issue in the appeal is therefore an issue whose relevance transcends the personal rights of the parties to the action. With the greatest respect, I cannot go along with this submission. The general principle of law is that the outcome of litigation by way of judgment binds only the parties. A judgment in this matter will certainly not bind all other State Governors whose right to contest the governorship election for a third time has been questioned. This is because they are not parties to the litigation. See generally *Ige v. Olunloyo* (1984) 1 SCNLR 158. **Courts of law can only make enforceable orders, and like nature, they do not act in vain.** See *Nigerian National Supply Company Ltd. v. Alhaji Hamajoda Sabana and Company Limited* (1988) 2 NWLR (pt. 74) 23.

In the light of the foregoing, I am of the opinion that the appeal should be dismissed and it is hereby dismissed.

Let me take the application by Alhaji Waziri to join the appeal as an interested party. I do not think I should go into the merits of the application. In view of the fact that the appeal is struck out, there is no appeal, in law, for the applicant to join. Accordingly, the application by Alhaji Waziri is also struck out.

In sum, the appeal of the Attorney-General of the Federation is hereby dismissed and the application of Alhaji Waziri is hereby struck out. I make no order as to costs.

BELGORE JSC

I read in advance the judgment of my learned brother, Tobi, JSC and entirely agree with reasons and conclusion flowing therefrom. For the same reasons I strike out the appeal and the application for joinder.

KATSINA-ALU JSC

I have had the advantage of reading in draft the judgment of my learned brother, Niki Tobi JSC. I agree with it.

The central issue in this appeal is the interpretation of section

182(1)(b) of the 1999 Constitution which provides as follows:

“182 - (1) No person shall be qualified for election to the office of Governor of a State if -

(b) he has been elected to such office at any two previous elections.”

B It is an undisputed fact that the 2nd respondent Prince Abubakar Audu was elected as the Governor of Kogi State in a general election held in 1991. He was sworn-in and served as Governor until that Government was overthrown in a military coup in 1993. The 2nd
C respondent also contested the 1999 general election into the same office as Governor of Kogi State and won. He served as Governor of Kogi State for four years.

In the 2003 general election, the 2nd respondent was again nominated by the 1st respondent to contest election into the same
D office of the Governor of Kogi State. The plaintiff who was a member of the 1st respondent as the 2nd respondent felt that fielding the 2nd respondent once again would run foul of section 182(1)(b) of the Constitution of the Federal Republic of Nigeria, 1999. So he went to court.

E The 2nd respondent however lost the Governorship election held in April, 2003. This explains why the 3rd respondent has indicated unwillingness to go on with the case.

In the light of the facts and circumstances of this case, this appeal is a mere academic exercise. This is because the interpretation of
F section 182(1)(b) will not alter the position of the present Governor of Kogi State. For this reason I would strike out the appeal.

The application by Alhaji Waziri seeks the leave of this court to be joined as an interested party. I have earlier held that the appeal is
G nothing more than an academic exercise and in consequence I struck it out. The result is that there is no appeal for the applicant to join. In the result this application is struck out. I make no order as to costs.

H **KALGO JSC**

I have read in advance the judgment of my learned brother, Niki Tobi, JSC just delivered in this appeal. I agree with his reasoning and conclusions reached therein which I adopt as mine. It is also my respectful view that the appellant's appeal is incompetent for the rea-

sons stated in the said judgment and the application of Alhaji Adamu Maina Waziri was no longer relevant at the time it was filed. I therefore strike out both the appeal and the application.

I make no order as to costs.

B

UWAIFO JSC

I read in advance the judgment of my learned brother, Tobi, JSC. I agree with him that the appeal lacks merit. The 3rd respondent as plaintiff brought action in the Federal High Court, Abuja against the 1st and 2nd respondents as the 1st and 2nd defendants and also the appellant as the 3rd defendant claiming as follows: C

“(1) A declaration that the 2nd defendant is serving his second term of office as the Governor of Kogi State in the contemplation of the 1999 Constitution of the Federal Republic of Nigeria and is therefore not entitled to seek the nomination of the 1st defendant as its candidate for election into the office of the Governor of Kogi State in the 2003 general elections or otherwise contest for election into the office of the Governor of Kogi State. D

(2) A declaration that the 1st defendant cannot field the 2nd defendant as its Governorship candidate for another term as the Governor of Kogi State in the 2003 general elections. E

(3) An order of perpetual injunction restraining the 2nd defendant from contesting for election for another term of office as the Governor of Kogi State whether on the platform of the 1st defendant or any other political party. F

(4) An order of perpetual injunction restraining the 1st defendant whether by itself or by its servants, agents, privies, successors in title or otherwise howsoever from permitting the 2nd defendant to collect and/or submit the nomination form(s) and from taking any steps towards nominating or presenting the 2nd defendant as its governorship candidate for election into the office of the Governor of Kogi State for the 2003 general elections. G

(5) An order of perpetual injunction restraining the 3rd defendant or any arm of agency of the Federal Government from allowing, clearing, permitting, relating with or having any interaction with the 2nd defendant howsoever to contest the 2003 governorship elections in Kogi State.” H

The 2nd respondent who was the 2nd defendant in the suit counterclaimed thus:

“(1) *A declaration that the 2nd defendant/counter-claimant’s election into the office of the Governor of Kogi State in 1991 is not an election into the office of the Governor of that State within the meaning of section 182(1)(b) of the 1999 Constitution of the Federal Republic of Nigeria.*

“(2) *A declaration that the 2nd defendant/counter-claimant’s current term of office as the Governor of Kogi State is his first term within the contemplation of section 182(1)(b) of the 1999 Constitution of the Federal Republic of Nigeria.*

“(3) *A declaration that the 2nd defendant/counter-claimant is constitutionally qualified and entitled to seek nomination for and to contest another election into the office of the Governor of Kogi State.”*

The claim was dismissed by the trial court while the counter-claim was granted on 28 January, 2003. The Attorney-General of the Federation appealed against that judgment to the Court of Appeal, Abuja Division. The appeal was dismissed on 25 March, 2003.

Before the further appeal by the Attorney-General to this court was lodged, the governorship election directly in issue had taken place on 19 April, 2003.

It is pertinent to state that in that election, the 2nd respondent who was sponsored by the 1st respondent lost. In spite of the outcome of that election, the Attorney-General pressed on with this appeal. Alhaji Adamu Maina Waziri has applied to be allowed as an interested party to appeal against the judgment of the court below. Alhaji Waziri was a governorship candidate in Yobe State under the Peoples Democratic Party (PDP). He lost the election to Alhaji Burkar Abba Ibrahim of the All Nigeria Peoples Party (ANPP). He filed a petition against the return of Alhaji Ibrahim. One of the grounds stated in the petition was that Alhaji Ibrahim was caught by section 182(1)(b) of the 1999 Constitution which forbids a person who has held the office of Governor twice from contesting election to that office. The petition was dismissed at the Court of Appeal. Alhaji Waziri hopes that if he is allowed in the present case to appeal as an interested party and the appeal is decided in his favour, that will lead to the reopening of the decision reached in his election petition by the Court of Appeal. The 1st respondent has raised preliminary objections against

both the appeal and the application of Waziri. The common objection I intend to consider is that which says that the appeal is academic and raises no live issue against any of the parties to the appeal.

I think the question is whether there exists a live or living issue between the parties to this appeal having regard to the claim and counter-claim brought before the court, and the result of the election contested by the 2nd respondent under the platform of the 1st respondent. It is settled law that there must exist between the parties to a suit or an appeal a matter in actual controversy which the court is called upon to decide as a living issue. This is because on the basis of the extant grundnorm upon which our judicial authority is based, courts in this country have no jurisdiction to give advisory opinions. Any judgment which does not decide a living issue is academic or hypothetical. It stands in its best quality only as an advisory opinion. This court, and indeed any court in Nigeria, will not engage in rendering such a judgment: see *Akeredolu v. Akinremi* (1986) 2 NWLR (pt. 25) 710 at 725; *Atake v. Afejuku* (1994) 9 NWLR (Pt. 368) 379 at 402; *Tanimola v. Surveys and Mapping Geodata LEd.* (1995) 6 NWLR (Pt.403) 617 at 626-627.

There cannot be said to be a live issue in a litigation if what is presented to the court for a decision, when decided, cannot affect the parties thereto in any way either because of the fundamental nature of the reliefs sought or of changed circumstances since after the litigation started. So that in case of an appeal, the appeal may become academic at the time it is due for hearing even though originally there was a living issue between the parties. And I think the fact that the decision may help any of the parties to redirect its affairs in an entirely different or probably anticipated situation is irrelevant. The pronouncement of Viscount Simon LC in *Sun Life Assurance Company of Canada v. Jervis* (1949) AC 110 at 113-114 covers, in my view, this very principle I have stated and it deserves to be quoted *inter alia*:

“The House should decline to hear this appeal on the ground that there is no issue before us to be decided between the parties... I do not think that it would be a proper exercise of the authority which this House possesses to hear appeals if it occupies time in this case in deciding an academic question, the answer to which cannot affect the respondent in any way. If the House undertook to do so, it would

not be deciding an existing lis between the parties who are before it, but would merely be expressing its view on a legal conundrum which the appellants hope to get decided in their favour without in any way affecting the position between the parties ...

No doubt, the appellants are concerned to obtain, if they can, a favourable decision from this House because they fear that other cases may arise under similar documents in which others who have taken out policies of endowment assurance with them will rely on the decision of the Court of Appeal, but if the appellants desire to have the view of the House of Lords on the issue on which the Court of Appeal has pronounced, the proper and more convenient course is to await a further claim and to bring that claim, if necessary, up to the House of Lords with a party on the record whose interest it is to resist the appeal. The research which has been given to the matter does not discover any previous decision in which the House of Lords had undertaken, on the petition of an unsuccessful appellant, to review the decision below when the opposite party has been finally settled with, and I think it is an essential quality of an appeal fit to be disposed of by this House that there should exist between the parties a matter in actual controversy which the House undertakes to decide as a living issue.”

As I have said and as can be seen from the observation quoted above, the reliefs sought in this case having ceased to be of any relevance to support a living issue between the parties, this appeal is of mere academic interest. In the circumstances I will dismiss the appeal. In result I strike out the suit and also strike out the application by Alhaji Waziri. I make no order for costs.

G

EJIWUNMI JSC

I have had the privilege of reading in its draft form, the judgment just delivered by my learned brother, Niki Tobi, JSC where detailed reasons were given for arriving at the orders made in the said judgment. The orders so made were in respect of the issues raised in the appellant’s brief, which read thus:-

“(1) Whether or not the appellant had the locus standi to institute this appeal in the court below?

(2) Whether having regard to the provisions of S. 182(1)(b) of

the 1999 Constitution, a person who had been elected at any two previous elections before the commencement of the Constitution can again be elected into the office of a State Governor."

It is also necessary to add that the 3rd appellant commenced this action against the 1st and 2nd respondents wherein he claimed for the following reliefs:- B

"(1) A DECLARATION that the 2nd defendant is serving his second term of office as the Governor of Kogi State in the contemplation of the 1999 Constitution of the Federal Republic of Nigeria and is therefore not entitled to seek the nomination of the 1st defendant as its candidate for election into the office of the Governor of Kogi State in the 2003 general elections or otherwise contest for election into the office of the Governor of Kogi State." C

(2) A DECLARATION that the 1st defendant cannot field the 2nd defendant as its governorship candidate for another term as the Governor of Kogi State in the 2003 general elections." D

(3) AN ORDER OF PERPETUAL INJUNCTION RESTRAINING the 2nd defendant from contesting for election for another term of office as the Governor of Kogi State whether on the platform of the 1st defendant or any other political party." E

(4) AN ORDER OF PERPETUAL INJUNCTION RESTRAINING the 1st defendant whether by itself or by its servants, agents, privies, successors in title or otherwise howsoever from permitting the 2nd defendant to collect and/or submit the nomination form(s) and from taking any steps towards nominating or presenting the 2nd defendant as its governorship candidate for election into the office of the Governor of Kogi State for the 2003 general elections." F

(5) AN ORDER OF PERPETUAL INJUNCTION RESTRAINING the 3rd defendant or any arm or agency of the Federal Government from allowing, clearing, permitting, relating with or having any interaction with the 2nd defendant HOWSOEVER to contest the 2003 governorship election in Kogi State." G

The effect of the reliefs, which he sought had they been granted, would have meant that the 2nd respondent would have been barred from contesting the elective office of Governor of Kogi State in the 1999 elections. H

The 2nd respondent mindful of the result also defended the claim by filing a counter-claim in which he asked for the following

declaratory reliefs:-

B “(1) A DECLARATION that the 2nd defendant/counter-claimant’s election into the office of the Governor of Kogi State in 1991 is not an election into the office of the Governor of that State within the meaning of section 182(1)(b) of the 1999 Constitution of the Federal Republic of Nigeria.

C (2) A DECLARATION that the 2nd defendant/counter-claimant’s current term of office as the Governor of Kogi State is his first term within the contemplation of section 182(1)(b) of the 1999 Constitution of the Federal Republic of Nigeria.

(3) A DECLARATION that the 2nd defendant/counter-claimant is constitutionally qualified and entitled to seek nomination for and to contest another election into the office of the Governor of Kogi State.

D (4) FURTHER OR OTHER RELIEFS as this Honourable Court may deem fit to make in the circumstances.”

After a careful appraisal of the questions raised before the trial court, that court said thus:-

E “Having considered the provisions of the 1999 Constitution the questions formulated by the 2nd defendant/counter-claimant are answered as follows:

F (1) The 1999 Constitution of the Federal Republic of Nigeria came into force on 29th May, 1999 as provided in section 320. The provisions of section 182(1)(b) cannot be read or applied retrospectively to take cognisance of the 2nd defendant/counter-claimant’s election and swearing into the office of the Governor of Kogi State in 1991.

G (2) That the 2nd defendant/counter-claimant’s election and swearing into the office of Governor of Kogi State in 1991 was not an election into the office of Governor of State within the purview of section 182(1)(b) of the 1999 Constitution.

H (3) That the 2nd defendant/counter-claimant’s current term of office as the Governor of Kogi State is his first term as contemplated by sections 182(1)(b), 318(1) and 320 of the 1999 Constitution of the Federal Republic of Nigeria.”

The court therefore declares as follows:-

“(a) That the 2nd defendant/counter-claimant’s election into the office of the Governor of Kogi State in 1991 was not and is not

an election into the office of the Governor of that State within the meaning of section 182(1)(b) of the 1999 Constitution of the Federal Republic of Nigeria.

(b) That the 2nd defendant/counter-claimant current term of office as the Governor of Kogi State is his first term within the meaning and contemplation of section 182(1)(b) of the 1999 Constitution of the Federal Republic of Nigeria. B

(c) That the 2nd defendant/counter-claimant is constitutionally qualified and entitled to seek nomination for and to contest another election (2003 election) into the office of Governor of Kogi State.” C

Now, as the appellant who was the 3rd respondent at the trial appealed against the judgment of that court to the court below on several grounds. That appeal was filed by Mr. Rotimi Jacobs who before that step was taken had informed that court that he was acting D for the Attorney-General in a letter dated 3rd February, 2003. It reads:-

*“The Registrar
Federal High Court
Abuja.*

Dear Sir,

Application for the C.T.C. of the record of proceedings E.T.C. suit No. FHC/ABJ/2002 between Baba Aliyi Adamu v. A.N.P.P. & 2 Ors.

We act for the Attorney-General of the Federation. We do hereby apply for the certified true copies of judgment, record of proceedings and all processes filed by the parties on the suit under reference (sic).” F

Subsequent to that application, the appeal to the Court of G Appeal was duly filed by Mr. Rotimi Jacobs and he then conducted the appeal before the court below. In that court, after hearing argument of learned counsel appearing before it, the court upheld the conclusion reached by the trial court on the main questions that were canvassed before the trial court. But the right of the appellant to H appeal was questioned, and although upheld, the court however went on to deal with the questions raised in the appeal.

Oguntade, JCA, who read the lead judgment of the court below said, inter alia, thus:-

“The result of what I have said is that section 182(1)(b) of the 1999 Constitution ought to be construed only prospectively and not retrospectively. The lower court was therefore correct in its judgment on the matter.”

As the appellant was not satisfied with the verdict of the court below, an appeal was lodged in this court. I have before now referred to the issues raised in this appeal and it is unnecessary to repeat them here. Before the consideration of the main appeal I will deal with the preliminary objection raised against it by the 1st respondent that there was no Honourable Attorney-General of the Federation when the appeal before the court below was argued. I have earlier in this judgment set out letter of authority, which authorised Mr. Rotimi Jacobs to act for the Attorney-General in the matter. There was nothing in the records to fault that authorisation before and during the hearing of the appeal. In any event, assuming as argued by the learned counsel for the 1st respondent that there was no Attorney-General of the Federation at the time the appeal was heard, it must be borne in mind that the office of the Attorney-General of the Federation is a creation of the Constitution. The effect therefore is that the office of Attorney-General remains functional, whether or not it is occupied by anyone.

The provisions of section 150(1) of the 1999 Constitution, which read thus: *“There shall be an Attorney-General of the Federation who shall be the Chief Law officer of the Federation and a Minister of the Government of the Federation ...”* do not admit the kind of interpretation given to it by the learned senior counsel for the 1st respondent. The preliminary objection therefore in my respectful view lacks merit and is struck out.

On the main appeal, it is manifest that the thrust of the argument of learned counsel for the appellant is to persuade this court to interpret the provisions of S. 182(1)(b) of the 1999 Constitution. It reads:-

“(1) No person shall be qualified for election to the office of Governor of a State if -
(b) he has been elected to such office at any previous elections.”

However, the question that must be considered in the circumstances is, whether it is now pertinent in this appeal to make any

pronouncement on this matter. This is because it is clear that apart from the fact that the governorship election has since been concluded, the 2nd and 3rd respondents had also notified the court that they are no longer interested in this appeal, and have therefore withdrawn from it. The appeal therefore as it stands, is bereft of any defendant. That being the position, I cannot see any useful purpose that would be served in embarking on this exercise. To do so would simply be a mere academic exercise. It has been a principled stand of this court that it would not embark on such an exercise, see *Okulate v. Awosanya* (2000) 2 NWLR (Pt. 646) 530 and there is nothing to suggest that the instant appeal is different from such cases where this principle has been applied. In my humble view, the situation in this case is made worse by the fact that there are no defendants or respondents to the appeal. See also *Ige v. Olunloyo* (1984) 1 SCNLR 158 and *Nigerian National Supply Company Ltd. v. Alhaji Hamajoda Sabana & Co. Ltd.* (1988) 2 NWLR (Pt. 74) 23. It does seem to me therefore that it is settled law that for a court to make any pronouncements, there must be persons to be bound by such pronouncements. In other words, courts cannot make futile or vain orders.

In the result, it is for the above reasons and the fuller reasons given in the leading judgment of my brother, Niki Tobi, JSC that I also dismiss the appeal of the Attorney-General of the Federation and strike out the application of Alhaji Waziri. I also make no order as to costs.

EDOZIE JSC

This appeal arose from a dispute between the 2nd and 3rd respondents who are members of the same political party - the All Nigeria Peoples Party (1st respondent) in regard as to which of them should be nominated as the party's governorship candidate for Kogi State in the April, 2003 general elections. The dispute relates to the interpretation and application of section 182(1)(b) of the 1999 Constitution, which enacts:-

"182(1). No person shall be qualified for election to the office of governor of a State if:-

(b) he has been elected to such office at any two previous elections."

Relying on this provision, the 3rd respondent as plaintiff commenced proceedings in the Federal High Court, Abuja against the 1st and 2nd respondents and the appellants as 1st, 2nd and 3rd defendants seeking a declaration to disqualify the 2nd respondent the then Governor of Kogi State from being re-elected in the April, 2003 elections. In his reaction, the 2nd respondent counter-claimed for a declaration that he was constitutionally qualified for re-election.

The trial court dismissed the 3rd respondent's claims and granted the 2nd respondent's counter-claim.

The appellant's appeal to the Court of Appeal was dismissed hence the further appeal to this court.

As noted earlier, the appeal relates to the interpretation and application of section 182(1)(b) of the 1999 Constitution, with respect to whether or not the 2nd respondent was qualified for re-election. However, the election had already taken place. The 2nd respondent contested and lost and no longer interested in the matter. Similarly, the 3rd respondent who set the ball rolling has also not shown any interest in pursuing the appeal. In the circumstance, no useful purpose will be served in pursuing the matter. It will be a mere academic exercise to determine whether in the light of section 182(1)(b), the 2nd respondent was qualified to contest the election which he had already contested and lost. Nothing useful can emerge from such a determination. The appeal is therefore incompetent and so too is the application for joinder as an interested party in the appeal.

For the foregoing and the detailed exposition in the lead judgment of my learned brother, Tobi, JSC the draft of which I had read, I also strike out the appeal and the application for joinder with no order as to costs. Application and appeal struck out.

H