

**SUPREME COURT OF NIGERIA**  
10TH DECEMBER, 2004. S.C. 197/2003  
**CORAM:- I. L. KUTIGI, A. I. KATSINA-ALU, U. A. KALGO, D.**  
**O. EDOZIE, I. C. PATS-ACHOLONU, JJSC**

CHIEF JOSEPH ADOLO

OKOTIE-BOH

..... PLAINTIFF/APPELLANT  
/CROSS-RESPONDENT

AND

1. CHIEF JAMES EBIOWO

MANAGER

..... DEFENDANT/RESPONDENT  
/CROSS-APPELLANT

2. PEOPLES DEMOCRATIC PARTY (PDP) ..... DEFENDANTS/  
3. INDEPENDENT NATIONAL ..... RESPONDENTS  
ELECTORAL COMMISSION

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ACTIONS - Preliminary objection - Parties and the court - Must refrain from the merit of the matter (H1)

APPEALS - Grounds of appeal - Ground alleging misdirection - Should be distinct from the one alleging error in law - Overriding consideration - Is whether the ground is clear or vague (H2)

APPEALS - Grounds of appeal - Elections - The ground in issue being clear - Preliminary objection against it - Is overruled (H3)

APPEALS - Issues - That where struck out by the court below - Were subsumed in the first issue - Considered by that court (H4)

APPEALS - Issues - Although a court is bound - To consider all the issues properly before it - Failure to do so - Is not fatal in all cases (H5)

APPEALS - Misdirection - Where the judgment is right - But the reasons

are wrong - Appellate court will not interfere (H6)

STATUTES - Constitutional law - Elections - Statute that seeks to disqualify election candidate - Ought to be interpreted strictly - As properly done by the Court of Appeal (H7)

APPEALS - Issue - That is not predicated on any ground of appeal - Cannot be considered - Unto disturbing a finding that is not appealed against (H8)

APPEALS - Elections - Interpretation of s. 66(1)(H) 1999 Constitution - Being a concurrent finding - Will not be disturbed (H9)

COURTS - Issues - Hypothetical issues - Are not to be considered by the court (H10)

### **FACTS**

The appellant/plaintiff, the first respondent/defendant and one other who is not a party in this suit are members of the Peoples Democratic Party (PDP) In the Delta State south senatorial district. The three candidates contested the PDP primary election to the senate. The first respondent scored the highest vote followed by the appellant who emerged second. Appellant addressed a petition to the PDP (2nd respondent) alleging inter alia, that the first respondent was not qualified to contest the primary election. On the ground that on a previous occasion he was indicted by a Local Government Council Election Tribunal for electoral malpractice. The petition was upheld by the Delta State electoral panel of the party which disqualified the first respondent and recommended the appellant as the party's candidate for the general election. Nevertheless, 2nd respondent (PDP) submitted the name of the first respondent to the Independent National Electoral Commission (I.N.E.C), the 3rd respondent, as its candidate for the Delta State South Senatorial district, who after the general election emerged victorious.

Meanwhile, appellant before the general election had filed this suit

in the high court of Federal Capital Territory sitting in Abuja by an originating summons against the respondents. Appellant claimed inter alia, a declaration that by virtue of s. (66) (1) (h) of the 1999 Constitution and guideline 23 (b) of the Electoral Guidelines for primary elections 2003 of the PDP, the first respondent is not qualified to contest elections to the senate because he was indicted for fraud by the then Bendel State Local Government Council Election Tribunal in a judgment delivered on 20th March, 1991. And as such the first respondent's election as PDP candidate is unconstitutional, null and void. The originating summons was supported by an affidavit of nineteen paragraphs sworn to by the appellant which exhibited the judgment in question.

The first respondent raised a preliminary objection to the jurisdiction of the court on the ground inter alia, that no reasonable cause of action is disclosed and that the subject matter borders on the internal affairs of a political party. The trial court upheld the preliminary objection and dismissed the appellant's suit. Appellant's appeal to the Court of Appeal was not successful. Being aggrieved, appellant has further appealed to the Supreme Court.

#### **ISSUES FOR DETERMINATION**

*“Whether the Court of Appeal was correct in considering the applicability of the provisions of Sections 59-64 of the Local Government (Basic Constitutional and Transitional Provisions) Act, Cap. 213; Laws of Federation of Nigeria, 1990 in relation to the eligibility of the respondent to contest the 2003 general election into the National Assembly and in concluding that Section 66 (1) (h) of the 1999 Constitution is not operative to disqualify him.”*

*“Whether the Court of Appeal was right in striking out issues Nos. 2 and 3 which were submitted for determination by the appellant on the ground that leave of court was not sought and obtained to raise them, the issues having been subsumed in issue No. 1 therein.”*

**HELD** (Unanimously dismissing the appeal per **EDOZIE JSC**)

#### ***Preliminary objection - Parties and the court***

1. The preliminary objection was taken on 27th February, 2003, and in the

course of arguments of learned counsel, a wide range of issues were canvassed which misled the learned trial Judge in having unknowingly to make remarks which appear to have prejudged the merit of the main suit. This is contrary to the principle that in a ruling on an Interlocutory application, the court should avoid making any observation that might appear to prejudice the main issue in contention between the parties. In an interlocutory matter, parties must not only shy away from the merit of the matter but must completely refrain therefrom. (p. 2480 G)

C ***Ground alleging misdirection - Should be distinct***

2. Admittedly a ground of appeal alleging a misdirection is distinct from the one described as error-in-law. According to Black's Law Dictionary, 6th Edition, p. 999, a misdirection is an error made by a judge in instructing the jury upon the trial of a cause.

In a legal system such as ours in which the Judge also performs the function of the jury, a misdirection occurs when the Judge misconceives the issues, whether of facts or of law, or summarizes the evidence inadequately or incorrectly. The misdirection may take the form of a positive act or mere non-direction. But a ground of appeal alleging error in law relates to a finding of the court. For quite sometime, doubts had been expressed about the validity of a ground of appeal alleging a misdirection of law and error in law, but the decision of this court in *Nwadike v. Ibekwe* supra did not appear to have gone far enough to invalidate such grounds of appeal. It needs to be stressed that the essence of a ground of appeal is to apprise the opposite party of the nature of the complaint being raised therein and the overriding consideration is whether the ground is clearly stated or vague. This appears to be the outcome of the recent judgment of this court in the case of *Aderounmu v. Olowu* (2000) 4 NWLR (Pt. 652) 253 at pp 265 to 266. (p. 2483 A)

H ***Grounds of appeal - Elections***

3. In my candid opinion, I think the ground of appeal under consideration was drafted with sufficient clarity. It seems clear to me that the ground posits in the main that the court below considered the applicability of

Sections 59 to 64 of the Local Government (Basic Constitutional and Transitional Provisions) Decree No. 15 of 1989 (Cap. 213, Laws of the Federation of Nigeria, 1990) which deals with the consequences of the conviction of a person as a disqualification for contesting an election into a political office whereas the appellant was relying on the indictment of a person by a Tribunal for embezzlement or fraud as a ground for the disqualification of the respondent pursuant to Section 66 (1) (h) of the 1999 Constitution which he alleged was wrongly construed. The issue formulated did not however quite accurately reflect and encompass fully the complaint in that ground. It may be modified and redrafted more appropriately.

In the light of the foregoing, I hold that ground 2 of the appellant's ground of appeal is competent. Consequently, I overrule the preliminary objection raised thereunder. (p. 2486 E)

***Issues - That where struck out by the court below***

4. The court below categorically stated, and this has not been refuted or challenged, that appellant's issues two and three were subsumed in his first issue which the court elaborately considered. The implication, in my view, is that the questions raised under those two issues were dealt with while considering issue one of the appellant's brief in the court below. The striking out of the two issues in question was of no consequence. It is a sweeping statement by the appellant to say that the striking out of those two issues was a breach of his right to fair hearing. With profound respect, the learned senior counsel for the appellant has not been able to pinpoint at or identify any important point he canvassed under the two issues under consideration which the court below did not adequately address in its consideration of the first issue. As I had earlier observed, the central question running through all the appellant's three issues in the court below is the disqualification or eligibility of the respondent to contest the 2003 general election having regard to the provisions of Section 66 (1) (h) of the 1999 Constitution. The court below appreciated this. (p. 2489 E)

***Although a court is bound - To consider all the issues properly before it***

5. Although a court is bound to consider all the issues properly before it,

the failure to do so is not necessarily fatal to the judgment appealed against. In the case of Balogun v. Labiran (1998) 3 NWLR (Pt. 80) pp 66 at 80, this court agreed with the submission of counsel that the Court of Appeal was obliged to consider and pronounce on all grounds of appeal filed and argued before it but that failure to do so however is not necessarily fatal to the judgment if the failure to do so had not occasioned a miscarriage of justice. The case of Obi Nwanze Okonji & 4 Ors. v. George Njokanma & 2 Ors (1991) 7 NWLR (Pt. 202) 131 and 146 is authority for the view that when a party submits an issue for determination, the court must make a pronouncement on that issue except where the issue is subsumed in another issue. Again, in the case of Alhaji Oladoja Sanusi v. Oreitan Ishola Ameyogun (1992) 4 NWLR (Pt. 237) 527 at 550-551, this court opined that an appellate court may not consider all the issues raised before it by parties if the only issue considered by the appellate court is not raised in the alternative but cumulatively with other issues and the consideration of that issue makes it unnecessary for other issues raised to be considered. In the instant appeal, being of the view that notwithstanding that the court below struck out appellant's issues 2 and 3, this court, nevertheless, considered along with issue 1 the questions germane to issues 2 and 3 and consequently the appellant's right of fair hearing had not been compromised. I resolve issue 1 in the present appeal against the appellant. (p. 2490 C)

***APPEALS - Misdirection - Where the judgment is right***

6. I accept it as a correct statement of the law that it is not in all cases that a misdirection leads to allowing of an appeal. A misdirection which does not lead to a miscarriage of justice is of no consequence. Where the judgment of the court is right but the reasons therefor are wrong the appellate court does not interfere. It is only where the misdirection had led the court to a wrong conclusion that the appellate court will interfere. (p. 2494 A)

***STATUTES - Constitutional law - Elections***

7. Bearing the above principles of interpretation in mind and being of the view that a law which seeks to disqualify a person from contesting an

election, on ground of indictment for embezzlement or fraud imposes a disability and ought to be interpreted strictly, it is therefore my view that the expression “*or any other (Tribunal) by the Federal or State Government*” appearing in the section must be interpreted to be restricted to the Tribunals of Inquiry or bodies mentioned in the section which were set up to investigate a person on allegations of embezzlement or fraud and whose report of indictment of such person in that regard has been accepted by the Government. It seems to me that by this interpretation, the aforesaid Bendel State Local Government Election Tribunal is not contemplated, firstly, because though set up under a Decree or Act of the Federal Government, it was set up to hear election petitions and not allegations of embezzlement or fraud, and more relevantly, its decision is not subject to Government’s acceptance by virtue of its enabling law as rightly conceded by the learned senior counsel for the appellant.

I hold that the court below was correct in its interpretation of Section 66 (1) (h) of the 1999 Constitution and that the alleged misdirection complained about by the appellant did not occasion any injustice. (p. 2495 G)

***Issue - That is not predicated on any ground of appeal***

8. There is no ground of appeal alleging error in law by misapplication of the principles in Onuoha’s case in the instant case nor was the applicant’s claims based on Section 21 (1)-(5) of the Electoral Act 2002. When an issue for determination has been formulated, it is, with respect, improper for counsel to canvass matters which do not fall within the scope or ambit of the issue so formulated. Even with the wider scope of issue No.2 as redrafted by me and from the appellant’s amended grounds of appeal there is no room for canvassing that Onuoha’s case was misapplied in the instant case or that the appellant’s claims are cognisable under Section 21 (1)-(5) of the Electoral Act, 2002. The two lower courts found, rightly in my view, that on the authority of Onuoha’s case *supra*, the appellant’s claim being of a political nature was not justiciable. There is no appeal against that finding. It is trite law that a finding against which there is no appeal remains binding and conclusive. (p. 2497 B)

***APPEALS - Elections - Interpretation of s. 66(1)(h)***

9. On the crucial question about the proper interpretation of Section 66 (1) (h) of the 1999 Constitution, there was a concurrent finding of the two  
B courts below that the Bendel State Local Government Council Election Tribunal does not come within the contemplation of the said section and that its decision in Suit No. W/ET/1/90 did not operate to disqualify the respondent to contest the 2003 general election into the National Assembly. I see no  
C reason to disturb these findings. I will also resolve the second issue for determination against the appellant. (p. 2497 G)

***COURTS - Issues - Hypothetical issues***

10. With profound respect to the learned Senior Counsel to the respondent,  
D the 2nd Preliminary Objection, the subject matter of the cross-appeal is puerile and academic, for its determination one way or the other cannot add to, nor detract from, the decision on the appellant's appeal. Courts of  
E Law are not established to deal with hypothetical and academic question rather, they are established to deal with matters in difference between the parties. The 1st preliminary objection having been resolved in favour of the respondent, the need for the 2nd preliminary objection does not arise.  
(p. 2498 D)

**NOTABLE POINTS OF INTEREST**

**EDOZIE JSC**

*1. Three principles of interpretation of statutes*

According to the canons of interpretation of statutes, it is a cardinal principle that where the ordinary plain meaning of the words used in a statute  
G are very clear and unambiguous, effect must be given to those words without resorting to any intrinsic or external aid. It is also a recognized principle of interpretation of statutes that statutes which encroach on the rights of the  
H subject whether as regards person or property are construed as penal laws fortissime contra proferentes, that is, strictly in favour of the subject.

Another recognized canon of interpretation is the ejusdem generis rule which provides that where particular words are followed by general



words the general words are limited to the same kind as the particular words, unless, of course, there be something to show that a wider sense was intended. (p. 2495 B)

### **PATS-ACHOLONU JSC**

#### *2. There is no evidence of prosecution of 1st respondent*

There is much concentration of the appellant in the judgment of the Supreme Court in the case of Onuoha v. Okafor (1993) 2 NWLR. That case was where the Supreme Court made a pronouncement that no court is invested with powers to dictate to a political party which person it should sponsor for an election. That power is purely within the province of the political party. The case here is whether the respondent is caught by Section 66 (1) (h) supra, id est, was he indicted. There is no evidence that a charge was ever preferred against the respondent in the sense that the State rolled out its apparatus of prosecution to lay a charge on the respondent so as to bring it within the orbit of an indictment. It is, I believe, erroneous on the part of the appellant to railroad the elements present in this case by attempting to extend the interpretation of Section 66 (1) (h) and squeeze the observation or even a finding of the Election Tribunal to make it come within the provision of that section. Although it is desirous and I dare say essential to give expansive construction to the words of the Constitution so as to ensure that it is in accord with the living law, we should endeavour to eschew constructions that would militate against the intentions of the law, and produce oddity thereby metaphorically chocking the Constitution. (p. 2502 B)

### **REPRESENTATION**

Omotayo Oyetibo (SAN), (with him, O. Olawoyin) for the Appellant  
Dr. A. A. Iziyon (SAN), (with him, M. Edet, B. K. Abu, O. A. Owodurumi)  
for the 1st Respondent/Cross Appellant.  
Kabir Bola for the 3rd Respondent.

### **CASES REFERRED TO**

Ojukwu v. Government of Lagos State (1986) 3 NWLR (Pt. 26) 39

Sylvanus Mortune v Alhaji Mohammed Gambo (1983) 4 NCLR 237 at 242.

Aderounmu v. Olowu (2000) 4 NWLR (Pt. 652) 253 at pp 265 to 266

Balogun v. Labiran (1998) 3 NWLR (Pt. 80) pp 66 at 80

Obi Nwanze Okonji & 4 Ors. v. George Njokanma & 2 Ors (1991) 7 NWLR

(Pt. 202) 131 and 146

B Alhaji Oladoja Sanusi v. Oreitan Ishola Ameyogun (1992) 4 NWLR (Pt. 237) 527 at 550-551

A.G. Bendel State v. A.G. of the Federation (1981) 10 S.C. (Reprint) 1;

(1982) 3 NCLR 1.

C Ukejeanya v. Uchendu (1950) 13 WACA 45

Awolowo v. Shagari (1979) 6-9 S.C. (Reprint) 37; (1979) 6-9 S.C. 51

Adejumo v. Military Governor Lagos State. (1972) 3 S.C. 45

**D STATUTES REFERRED TO**

Constitution of Nigeria 1999 ss. 36(1) and 66(1)(h)

Electoral Act 2002 s. 21(1 - 5)

Local Government (Basic Constitutional and Transitional Provisions Decree

E No. 15 of 1989 (Now Cap. 213) of the Laws of the Federation of Nigeria

1990 ss. 59 - 64, 70 and 76

**LEAD JUDGMENT BY EDOZIE JSC**

F The appellant and the 1st respondent herein together with one other who is not a party in this proceeding are members of the Peoples Democratic Party (P.D.P for short) in the Delta State South Senatorial District. As prospective candidates for the 2003 general election to the Senate, all the

G three contested the P.D.P primary election for the Delta State South District. At the end of the primary election, the 1st respondent scored the highest number of votes followed by the appellant who emerged second. Aggrieved thereby, the appellant addressed a petition to the P.D.P. (2nd respondent)

H alleging, inter alia, that the 1st respondent was not qualified to have contested the primary election on the ground that on a previous occasion he was indicted by a Local Government Council Election Tribunal for electoral malpractice. The petition was considered by the Delta State Electoral Panel

of the Party which upheld the petition, disqualified the 1st respondent and recommended that the appellant should be nominated as the Party's candidate for the general election. Against this recommendation, the P.D.P. (2nd respondent) nevertheless submitted the name of the 1st respondent to the Independent National Electoral Commission (INEC), the 3rd respondent, herein, as its candidate for the Delta State South Senatorial District who after the general elections emerged victorious. B

Meanwhile, the appellant as plaintiff before the general election was conducted, had in the High Court of the Federal Capital Territory sitting in Abuja in Suit No. FCT/1 I/CV/208/2003 filed on 30th (sic) February, 2003, commenced an action by an Originating Summons against the respondents as defendants seeking against them the following five reliefs, to wit:- C

*"1. A declaration that by virtue of the provisions of Section 66 (1) (h) of the 1999 Constitution and guideline 23 (b) of the Electoral Guidelines for Primary Elections 2003 of the Peoples Democratic Party, the 1st defendant is not qualified to contest the primary election of the Peoples Democratic Party in the Delta State South Senatorial District and the 2003 general election to the Senate because he is a person who has been indicted for fraud by the then Bendel State Local Government Council Election Tribunal set up under the Local Government (Basic Constitutional and Transitional Provisions) Decree No. 15 of 1989 in a judgment delivered on 20th March, 1991, in Suit No. W/ET/1/90 between Mr. F. Wenetu Edonkumoh v J. E. Manager & 5 others.* D E F

*2. A declaration that the purported election of the 1st defendant James Ebiowo Manager as the Peoples Democratic Party's candidate for the Delta State South Senatorial District in the general election to the Senate of the Federal Republic of Nigeria is unconstitutional, null and void.* G

*3. A declaration that the plaintiff being the candidate with the second highest number of votes at the Peoples Democratic Party primary election in the Delta South Senatorial District is the person entitled to have his name submitted by the 2nd defendant to the 3rd defendant as the Party's candidate for the general election to the Senate of the Federal Republic of Nigeria.* H

*4. An injunction restraining the 3rd defendant whether by itself, its*

*servants, agents and or representatives from treating the 1st defendant as the 2nd defendant's candidate for Delta State South Senatorial District in the 2003 general election to the Senate of the Federal Republic of Nigeria.*

5. *An order directing the 2nd defendant to substitute the plaintiff's name for the 1st defendant as the 2nd defendant's candidate for Delta State South Senatorial District in the 2003 general election to the Senate of the Federal Republic of Nigeria."*

The Originating Summons was supported by an affidavit of nineteen paragraphs sworn to by the appellant and had annexed to it five exhibits including Exhibit "JA 0-4", being the judgment of the Bendel State Local Government Council Election Tribunal in Suit No. E/ET/1/90 between F. Wenetu Edonkumoh v J. E. Manager (1st respondent herein) delivered on 20th March, 1991, wherein that Tribunal nullified the election of the 1st respondent as the Chairman of Bomadi Local Government Council on the ground of double registration and voting twice at the said election. There was also a further affidavit by the same deponent to which was annexed as Exhibit A, the Constitution of the P.D.P.

In his reaction to the Originating Summons, the learned senior counsel for the 1st respondent by a Notice of Preliminary Objection filed in court on 26th of February, 2003, raised objection to the jurisdiction of the court on the following grounds:-

" 1. *The plaintiff's suit does not disclose any cause of action or cognisance reasonable cause of action.*

2.. *The suit as presently constituted is incompetent.*

3. *The subject matter borders on internal affairs of a political party which this court cannot entertain."*

**The preliminary objection was taken on 27th February, 2003, and in the course of arguments of learned counsel, a wide range of issues were canvassed which misled the learned trial Judge in having unknowingly to make remarks which appear to have prejudged the merit of the main suit. This is contrary to the principle that in a ruling on an Interlocutory application, the court should avoid making any observation that might appear to prejudge the main issue in contention between the parties: see Sylvanus Mortune v Alhaji Mohammed Gambo**

(1983) 4 NCLR 237 at 242. **In an interlocutory matter, parties must not only shy away from the merit of the matter but must completely refrain therefrom;** Ojukwu v. Government of Lagos State (1986) 3 NWLR (Pt. 26) 39.

In his ruling delivered on 5th March, 2003, the learned trial Judge B held, inter alia, that Section 66 (1) (h) of the 1999 Constitution relied upon by the appellant in canvassing the disqualification of the 1st respondent from the primary election was unavailing as there was no evidence of Government's acceptance of the report of the Tribunal that indicted the 1st C respondent and furthermore that the Election Tribunal that tried him was not the type contemplated by Section 66 (1) (h) of the 1999 Constitution. The court further decided, relying on the authority of Onuoha v. Okafor (1983) SCNLR 244 at 267 that the appellant's action which raises the question of the candidate a political party will sponsor in an election was a political D question over which it has no jurisdiction to decide. Accordingly, the appellant's claims were struck out and the suit dismissed.

Expectedly, the appellant by a notice of appeal filed on 6th March, 2002, and subsequently amended lodged an appeal to the Court of Appeal E Abuja Division subjoining to the amended notice five grounds of appeal. In a motion for departure from the Rules of Court to compile the record of appeal and for accelerated hearing of the appeal, the appellant indicated that he intended to submit only one issue for determination which he spelt out in F the motion paper. As the 2nd and 3rd respondents did not participate in the proceedings, both in the two lower courts and in this court, the 1st respondent will be referred to simply as the respondent.

Briefs were filed and exchanged between the appellant and the re- G spondent in the court below but before the appeal could be heard, learned senior counsel for the respondent brought a second notice of preliminary objection filed on 23rd April, 2003, contending that since the general elec- H tions into the National Assembly had been conducted on 12th April, 2003, and the respondent returned as duly elected as the candidate of Delta State Senatorial District, the court could no longer entertain the subject matter of the appeal by virtue of the combined effect of Sections 131(1) and 134 of the Electoral Act 2000 (as amended) and Section 285 (1) of the Constitution

of the Federal Republic of Nigeria 1999. On 30th of April, 2003, both the appeal and the second preliminary objection were argued simultaneously, and in the leading judgment delivered on 2nd July, 2003 by Oduyemi, JCA., concurred in by Oguntade, JCA., as he then was, and Bulkachuwa, JCA., the Court of Appeal dismissed the appeal and glossed over the second preliminary objection as it appears it did not express any opinion thereon. Both parties being dissatisfied with the judgment, the appellant further appealed against the dismissal of his appeal while the respondent cross-appealed on the failure of the Court of Appeal to pronounce on the second preliminary objection.

Before us, therefore, there are the appellant's/cross-respondent's appeal and the respondent's/cross-appellant's cross-appeal. Both parties filed and exchanged written briefs of arguments which they adopted with oral address in expatiation of the written briefs. For the appellant, there is the appellant's brief filed on 7th November, 2003, and a reply brief filed on 28th July, 2004. The respondent relied on his brief filed on 30th April, 2004, and a cross-respondent's brief filed the same date. It is proposed to consider the appellant's appeal first and later the cross-appeal.

With respect to the appellant's appeal predicated on two grounds of appeal from which two issues for determination were distilled, the respondent has raised a preliminary objection on the competency of ground 2 thereof and issue 2 formulated therefrom. The reason for the objection according to the learned senior counsel for the respondent is that the said ground 2 which is labelled "*misdirection of law*" implies on 'a careful analysis of that ground and its particulars a combination of both misdirection of law and errors in law lumped together as one ground of appeal. This, learned counsel submits, is bad in law, stressing that a ground of appeal alleging misdirection of law and error in law cannot co-exist as they are mutually exclusive, disjunctive and ought to be struck out, supporting his proposition with a litany of cases, to wit, *Amadi v. Okoli* (1977) NSCC (Vol. II) 177 at 119-120, *Okorie v. Udom* (1960) NSCC (Vol. 1) 108, *Nnabuike v. Nwivu* (2001) 9 NWLR (Pt. 719) 710 at 722, *Obi v. Owolabi* (1990) 5 NWLR (Pt. 153) 702 at 716-717 and *A.B.U v. Ogli* (1995) 8 NWLR (Pt. 413) 353 at 366-367 among others.

**Admittedly a ground of appeal alleging a misdirection is distinct from the one described as error-in-law. According to Black's Law Dictionary, 6th Edition, p. 999, a misdirection is an error made by a judge in instructing the jury upon the trial of a cause.**

**In a legal system such as ours in which the Judge also performs the function of the jury, a misdirection occurs when the Judge misconceives the issues, whether of facts or of law, or summarizes the evidence inadequately or incorrectly. The misdirection may take the form of a positive act or mere non-direction: See Chidiak v. Laguda (1964) NMLR 123 at p. 125; Nwadike v. Ibekwe (1987) 4 NWLR (Pt. 66) 718 at 744. But a ground of appeal alleging error in law relates to a finding of the court; Chidiak v. Laguda supra. For quite sometime, doubts had been expressed about the validity of a ground of appeal alleging a misdirection of law and error in law, but the decision of this court in Nwadike v. Ibekwe supra did not appear to have gone far enough to invalidate such grounds of appeal. It needs to be stressed that the essence of a ground of appeal is to apprise the opposite party of the nature of the complaint being raised therein and the overriding consideration is whether the ground is clearly stated or vague. This appears to be the outcome of the recent judgment of this court in the case of Aderounmu v. Olowu (2000) 4 NWLR (Pt. 652) 253 at pp 265 to 266, where Ayoola, JSC., delivering the leading judgment to which the rest of the Justices concurred, had this to say:-**

*"The rules of our appellate procedure relating to formulation of grounds of appeal are primarily designed to ensure fairness to the other side. The application of such rules should not be reduced to a matter of mere technicality, whereby the court will look at the form rather than the substance. The prime purpose of the rules of appellate procedure, both in this court and in the Court of Appeal, that the appellant shall file a notice of appeal which shall set forth concisely the grounds which he intends to rely upon on the appeal, and, that such grounds should not be vague or general in terms must disclose a reasonable ground of appeal, is to give sufficient notice and information, to the other side, of the precise nature of the complaint of the appellant and, consequently, of the issues that are likely to arise on the*

*appeal. Any ground of appeal that satisfies that purpose should not be struck out, notwithstanding that it did not conform to a particular form.*

*In my opinion, what is important in a ground of appeal, and the test the court should apply, is whether or not the impugned ground shows clearly what is complained of as error in law and what is complained of as misdirection, or, as the case may be, error of fact. The view, with which I am inclined to agree, is expressed in the Court of Appeal case of Nteogwuija & Ors. v. Ikuru & Ors. (1998) 10 NWLR (Pt. 569) 267, 310 that the mere fact that a ground of appeal is framed as an error and misdirection does not make it incompetent. In my view, only general propositions can be made in a matter in which the question is not as to form. It must be realized, and emphasized, that, ultimately, an unobjectionable ground of incompetence of a ground of appeal, in the context of the question raised in this appeal, is to be sought in its lack of preciseness or specificity in, or the ambiguity of, what it complains about. In this wise, it is not a question of formal defect but of the ground not satisfying the requirement of preciseness and specificity, set by the rules of appellate procedure. Ultimately, it is for the court before which the question is raised to decide whether, viewed objectively, the ground satisfies the requirements of preciseness and clarity. A proposition widely stated that a ground alleging an error and misdirection is not incompetent is as objectionable as a proposition that every such ground is incompetent. What makes a ground incompetent is not whether it is framed as an error or a misdirection but whether by so stating it, the other side is left in doubt and without adequate information as to what the complaint of the appellant actually is.*

*In this case, notwithstanding the formulation of the grounds of appeal that were struck out, the detailed statement of the particulars of error and the clear statements of what the appellants conceived to be errors in law and misdirection in fact in the judgment of the trial Judge, satisfied the requirement of the rule as to formulation of grounds of appeal. To hold otherwise will be tantamount to insistence on form rather than substance.”*

Bearing the above principles in mind, it is now appropriate to consider the question of the validity or otherwise of ground 2 of the ground of appeal complained of. For a better appreciation and nature of the ground of



appeal in question, I find it convenient to reproduce it in extenso together with the issues distilled from it. Ground 2 reads -

*“Ground Two*

*The Court of Appeal misdirected itself in law when it held per Oduyemi, JCA., as follows:*

*“The following provision of the Local Government (Basic Constitutional and Transitional Provisions) Decree No.15 of 1989 ( Now Cap.213 L. F. N. 1990 ) are relevant:*

*S.59.....*

*S.60.....*

*S.61.....*

*S.62.....*

*S.63.....*

*Finally, Section 64 provides thus:*

*“64. Every person who is convicted of an offence against Sections 59, 60, 61, 62, and 63 of this Act shall (in addition to any other punishment) not be eligible, during the period of three years after the date of his conviction -*

*(a) of voting at any Local Government election in any State; or*

*(b) of being elected as a member of a Local Government Council or it elected before his conviction of retaining his seat.”*

*There is no doubt in my mind that the period of the bar imposed by the 1989 Decree under which he was convicted in 1991 had long expired in March 1994.*

*Furthermore, if the 1st defendant is to be found liable to a second Jeopardy under the 1999 Constitution, such liability has not been found in express words in Section 66 (1) (h) and not by any inference or implication. There is no such clear or express provision in Section 66 (1) (h)*

*In the event, I hold that the lower court was correct in the construction it gave to Section 66 (1) (h) of the 1999 Constitution with regard to the action of the plaintiff/appellant. Section 66 (1) (h) is not a bar to the electoral ambition of 1st defendant in 2003.”*

*Particulars of Misdirection*

*(a) Section 66 (1) (h) of the 1999 Constitution relied upon by the*

appellant, *inter alia*, disqualifies any person who has been indicted of fraud by a Judicial Commission of Inquiry or Administrative Panel of Inquiry or a Tribunal set up under the Tribunals of Inquiry Act, a Tribunal of Inquiry Law or any other Law by the Federal or State Government from contesting election into the Senate or House of Representatives.

(b) The judgment in Suit Mo. W/ET/1/90 between F. Wenetu Edonkumoh v. J. E Manager 7 Ors. which was relied upon by the appellant did not convict the 1st respondent but only indicted him for electoral fraud and the judgment was delivered by a Tribunal set up under a law made by the Federal Government.

(c) Section 64 of the Local Government (Basic Constitutional and Transitional Provisions) Act does not apply to this case.

(d) In the premises the Court of Appeal ought not to have upheld tin construction which the trial court gave to Section 66 (1) (h) of the 1999 Constitution.”

The second issue for determination in the appellant’s brief supposedly based on that ground of appeal reads thus:-

“Whether the Court of Appeal was right in its conclusion that Section 66 (1) (h) of the 1999 Constitution was not a bar to the electoral ambition of the 1st respondent in 2003.”

**In my candid opinion, I think the ground of appeal under consideration was drafted with sufficient clarity. It seems clear to me that the ground posits in the main that the court below considered the applicability of Sections 59 to 64 of the Local Government (Basic Constitutional and Transitional Provisions) Decree No. 15 of 1989 (Cap. 213, Laws of the Federation of Nigeria, 1990) which deals with the consequences of the conviction of a person as a disqualification for contesting an election into a political office whereas the appellant was relying on the indictment of a person by a Tribunal for embezzlement or fraud as a ground for the disqualification of the respondent pursuant to Section 66 (1) (h) of the 1999 Constitution which he alleged was wrongly construed. The issue formulated did not however quite accurately reflect and encompass fully the complaint in that ground. It may be modified and redrafted more appropriately thus:-**

*“Whether the Court of Appeal was correct in considering the applicability of the provisions of Sections 59-64 of the Local Government (Basic Constitutional and Transitional Provisions) Act, Cap. 213; Laws of Federation of Nigeria, 1990 in relation to the eligibility of the respondent to contest the 2003 general election into the National Assembly and in concluding that Section 66 (1) (h) of the 1999 Constitution is not operative to disqualify him.”* B

**In the light of the foregoing, I hold that ground 2 of the appellant’s ground of appeal is competent. Consequently, I overrule the preliminary objection raised thereunder.** C

The appellant’s main appeal will now be considered. The first issue for determination as formulated in the respondent’s brief which I adopt as adequately reflecting Ground 1 of the appeal is in the following terms:-

*“Whether the Court of Appeal was right in striking out issues Nos. 2 and 3 which were submitted for determination by the appellant on the ground that leave of court was not sought and obtained to raise them, the issues having been subsumed in issue No. 1 therein.”* D

As I had mentioned tangentially in the introductory part of this judgment, the background facts relating to this issue are that after the appellant had filed his notice of appeal as amended before the Court of Appeal, he subsequently brought before that court an interlocutory application for departure from the rules of court and accelerated hearing of the appeal, indicating that only one issue would be submitted for determination, that issue being, F

*“.....whether the question as to the eligibility of the 1st respondent to contest election as a senatorial candidate under the 2nd respondent’s Electoral Guidelines and Section 66 (1) (h) of the 1999 Constitution is a political question which is within the domestic affairs of the 2nd respondent or a constitutional question which only the court can entertain.”* G

In his brief of argument in the court below, the appellant submitted three issues for determination, the fourth having been abandoned. The three issues are reproduced hereunder:-

*“1 Whether having regard to the provisions of Guideline 23 (b) of the Electoral Guidelines for Primary Elections 2003 of the P.D.P and Section*

66 (1) (h) of the Constitution of the Federal Republic of Nigeria, 1999, the question as to the eligibility of the 1st respondent under those provisions to contest the primary election of the 2nd respondent in the Delta State South Senatorial District was a political question which is within the domestic  
B affairs of the 2nd respondent or a constitutional question which the court can entertain.

2. Whether the learned trial Judge was right in holding that the Bendel State Local Government Council Election Tribunal which indicted the 1st respondent in 1991 was not within the contemplation of Section 66  
C (1) (h) of the 1999 Constitution.

3. Whether the learned trial Judge was right in holding that the only proof of government's acceptance of the indictment of the 1st respondent by the Tribunal under Section 66 (1) (h) of the 1999 Constitution is by a  
D white paper issued by the Government or publication in a gazette."

As is evident from the above three issues, the common or central question raised by each of them is the question of the disqualification of the respondent to contest the general election pursuant to Section 66 (1) (h)  
E of the 1999 Constitution. It is not surprising therefore that in its reaction to the above three issues, the Court of Appeal, per the leading judgment of Oduyemi, JCA., commented on p. 261 as follows:-

"However, it would be recalled that the application for leave of this  
F court in connection with the order for departure from the Rules of this court was obtained on the ground that the only issue to be submitted by appellant for determination by the court is the issue now contained in issue 1. No leave has been sought to include the issues now raised as issue No. 2 and issue No. 3. Accordingly issues Nos. 2 and 3 which in any case, are  
G already subsumed in issue No. 1 are struck out." (Underlining for emphasis)

The learned senior counsel for the appellant has vigorously criticized the above quoted statement of the Court of Appeal and its order striking out Issues 2 and 3. In this regard, he submitted that in so far as the court below  
H did not in its order granting the appellant's interlocutory application limit the issues to be submitted for determination to only one issue, the appellant was not in anyway estopped or debarred from raising additional issues for determination if they properly arose from the grounds of appeal. He canvassed

that by striking out issues 2 and 3, the court below failed to hear the appellant on those issues and as such it was in breach of his right to fair hearing as guaranteed by Section 36 (1) of the 1999 Constitution citing in aid of the submission the following authorities:- *Obodo v. Olomu* (1987) 3 NWLR (Pt. 59) 111 at 123-124. *Osafire v. Odi* (No.1) (1990) 3 NWLR (Pt. 137) 130 at 156. In his reply, the learned senior counsel for the respondent submitted that the court below was justified in striking out issues 2 and 3 in the appellant's brief since having indicated in his motion for departure from the Rules that he was relying on only one issue, he cannot approbate and reprobate stressing that there was no breach of fair hearing and for these contentions the case of *Odiase & Anor. v. Aghor & Ors.* (1972) 3 S.C. (Reprint) 69 (1972) All NLR 175 and *Ibori v. Audu Ogbeh & Ors.* (2004) 6 NWLR (Pt. 868) 78 at 122-123 were referred to.

It was further canvassed that as the two issues in question were subsumed under issue one, they were considered by the court below and therefore no miscarriage of justice had occurred and for this contention, the case of *Bamaiyi v. State* (2001) S.C. (Pt. 1) 18; (2000) 8 NWLR (Pt. 715) 270 at 285 was alluded to.

I am entirely in agreement with the submissions of learned senior counsel for the respondent. **The court below categorically stated, and this has not been refuted or challenged, that appellant's issues two and three were subsumed in his first issue which the court elaborately considered. The implication, in my view, is that the questions raised under those two issues were dealt with while considering issue one of the appellant's brief in the court below. The striking out of the two issues in question was of no consequence. It is a sweeping statement by the appellant to say that the striking out of those two issues was a breach of his right to fair hearing. With profound respect, the learned senior counsel for the appellant has not been able to pinpoint at or identify any important point he canvassed under the two issues under consideration which the court below did not adequately address in its consideration of the first issue. As I had earlier observed, the central question running through all the appellant's three issues in the court below is the disqualification or eligibility of the respon-**

dent to contest the 2003 general election having regard to the provisions of Section 66 (1) (h) of the 1999 Constitution. The court below appreciated this when at p. 264 of the record it observed thus:-

“With respect, in the circumstances of this case, the issue for determination in this appeal can be put succinctly thus:-

*From the facts disclosed in the Originating Summons before the lower court, is the 1st defendant disqualified for election into the National Assembly under Section 66 (1) (h) of the Constitution of the Federal Republic of Nigeria 1999.”*

In consideration of that issue, the court below dealt comprehensively with all the relevant issues canvassed by the appellant. Furthermore, although a court is bound to consider all the issues properly before it, the failure to do so is not necessarily fatal to the judgment appealed against. In the case of *Balogun v. Labiran* (1998) 3 NWLR (Pt. 80) pp 66 at 80, this court agreed with the submission of counsel that the Court of Appeal was obliged to consider and pronounce on all grounds of appeal filed and argued before it but that failure to do so however is not necessarily fatal to the judgment if the failure to do so had not occasioned a miscarriage of justice. The case of *Obi Nwanze Okonji & 4 Ors. v. George Njokanma & 2 Ors* (1991) 7 NWLR (Pt. 202) 131 and 146 is authority for the view that when a party submits an issue for determination, the court must make a pronouncement on that issue except where the issue is subsumed in another issue. Again, in the case of *Alhaji Oladoja Sanusi v. Oreitan Ishola Ameyogun* (1992) 4 NWLR (Pt. 237) 527 at 550-551, this court opined that an appellate court may not consider all the issues raised before it by parties if the only issue considered by the appellate court is not raised in the alternative but cumulatively with other issues and the consideration of that issue makes it unnecessary for other issues raised to be considered. In the instant appeal, being of the view that notwithstanding that the court below struck out appellant’s issues 2 and 3, this court, nevertheless, considered along with issue 1 the questions germane to issues 2 and 3 and consequently the appellant’s right of fair hearing had not been compromised. I resolve issue 1 in

### the present appeal against the appellant.

The 2nd issue for determination which I reframed has already been set out. At the risk of repetition, it is reproduced hereunder:-

*“Whether the Court of Appeal was correct in considering the applicability of the provisions of Sections 59-64 of the Local Government (Basic Constitutional and Traditional Provisions) Act, Cap. 213, Laws of Federation of Nigeria 1990 in relation to the eligibility of the respondent to contest, the 2003 general election into the National Assembly and in concluding that Section 66 (1) (h) of the 1999 Constitution is not operative to disqualify him?”*

On this issue, the learned senior counsel for the appellant referred to a passage of the judgment of the court below on pages 246-266 of the record where it considered the punishment imposed on a person convicted of offences under Sections 59 to 63 of Cap. 213 L.F.N, 1990 as disqualifying such a person during the period of three years after the date of the conviction of the offence from voting in any Local Government election in any State or of being elected as a member of a Local Government Council and observed that the period of the bar imposed by the said law under which the respondent was convicted in 1991 had long expired in March, 1994. It was submitted that that was a misdirection because what the appellant relied upon in seeking to nullify the primary election of the respondent was his indictment by a Tribunal for embezzlement or fraud as provided by Section 66 (1) (h) of the 1999 Constitution. He canvassed that the misdirection had occasioned a miscarriage of justice by misleading the court below into affirming the wrong interpretation of the said Section 66 (1) (h) of the 1999 Constitution by the trial court. On the proper interpretation of that section, counsel referred to the canons of interpretation of statutes as enunciated in the cases of *Rabiu v. The State* (1980) 8-11 S.C. (Reprint) 85; (1980) 8-11 S.C. 130 at 148-149 and *Ifezue v. Mbadugha* (1984) 1 SCNLR 427 at 447 and submitted that the provisions of Section 66 (1) (h) of the 1999 Constitution is unambiguous, stressing that by the words “*a Tribunal set up under any other law by the Federal or State Government*” appearing in the provision, the categories of Tribunals contemplated are not limited. Therefore, he submitted that the Election Tribunal set up under Section 70 (1) of Cap. 213

LFN 1990 which in 1991 indicted the respondent for double registration and voting twice at an election comes within the purview or contemplation of the section, adding that it was not necessary to prove acceptance by the government of the decision of the Election Tribunal by White Paper or  
B Gazette publication because the decision of the Election Tribunal has a binding force by virtue of Section 76 (1) of Cap. 213 LFN 1990 and that, in any case, appellant's averment of Government's acceptance in the affidavit in support of the Originating Summons was uncontradicted. Learned senior  
C counsel further referred to the case of Onuoha v. Okafor (1993) 2 SCNLR 244 which he concedes is the leading authority for the proposition that a court has no jurisdiction to entertain a claim over which candidate a political party should sponsor for an election into a political office as that involves a political question. He submitted that the principle in Onuoha's case supra  
D was wrongly applied to the instant case, as the facts in the two cases are not on all fours. The case of Fawehinmi v. N.B.A. (No.2) (1989) 4 S.C. (Pt. 1) 63; (1989) 2 NWLR (Pt. 105) 558 at 650 was alluded to. He drew attention to the fact that reliefs 3, 4 and 5 had been withdrawn submitting that the  
E remaining reliefs are justiciable adding that by virtue of Section 21(1)-(5) of the Electoral Act, 2002, the court has jurisdiction to entertain the appellant's claim.

In reply to the above submission, the learned senior counsel for the  
F respondent adverted to the 1st relief in the Originating Summons which shows that the appellant was contending that a person indicted for fraud by the Bendel State Local Government Council Election Tribunal set up under Cap 213 L.F.N. 1990 is disqualified to contest the election the subject-matter of the suit by virtue of Section 66 (1) (h) of the 1999 Constitution. He  
G therefore, submitted that the court below was eminently justified in considering, as it did, the applicability of the provisions of the two laws in relation to the eligibility of the respondent to contest the election, stressing that it was a misconception by the appellant to canvass that the 'court below  
H was misdirected or misconceived as to the case put forward by him (appellant) and that it was not his case that the respondent was convicted of an offence against any of the provisions of Sections 59 to 63 of Cap. 213 LFN 1990. It was further submitted that assuming but without conceding that



there was a misdirection, it is not in all cases where there is a misdirection that an appeal will be allowed, pointing out that the court below by reference to the provisions of Sections 59 to 64 of Cap. 213 LFN 1990 was at best, giving additional reason in affirming the judgment of the trial court. The case of U.B.A. Ltd v. Achoru (1990) 6 NWLR (Pt. 156) 254 at 274-275 was alluded to. Dealing with the interpretation of Section 66 (1) (h) of the 1999 Constitution, learned counsel submitted that the court below was justified and on a strong wicket when it affirmed the judgment of the trial court to the effect that the Election Tribunal is not one of the bodies or tribunals contemplated under Section 66 (1) (h) of the 1999 Constitution adding that apart from the description of the categories of tribunals and bodies mentioned therein, the indictment of a person by such tribunals or bodies must be accepted by the Federal or State Government as the case may be and that in the instant case there was no evidence of such acceptance. On the use of the word “any” in the expression “A tribunal set up under any other law by the Federal or State Government” appearing in the section, learned counsel submitted that the word must be construed ejusdem generis to mean any panel of inquiry or tribunal specifically set up to investigate or try persons for allegations of embezzlement or fraud and that an Election Tribunal must have its terms related to an election petition, not to embezzlement or fraud. The cases of Texaco Nig. Plc v. Lukoko (1997) 6 NWLR (Pt. 510) 651 at 664 and Shell v. F.B.I.R (1996) 970 SCNJ 231 at 262 and Section 76 (1) of Cap. 213 LFN 1990 were referred to.

Finally, we were urged to follow the principle distilled in Onuoha v. Okafor (1983) 2 SCNLR 244 as reaffirmed in Dalhatu v. Turaki (2003) 7 S.C. 1, (2003) 15 NWLR (Pt.843) 310.

A perusal of the appellant’s first prayer in the Originating Summons shows clearly that in seeking the disqualification of the respondent to contest the elections the subject matter of the suit, reference was made to, inter alia. Section 66 (1) (h) of the 1999 Constitution and Cap. 213 LFN 1990. That being the case, it was not out of place for the court below to consider the provision of Section 66 (1) (h) and the pertinent provisions of Cap. 213 LFN 1990, to wit, Sections 59 to 64 therein. Even if it was unnecessary to consider the latter provisions in the determination of the

disqualification, at best, the reference to them in the judgment of the court below was a mere surplusage or a superfluity. **I accept it as a correct statement of the law that it is not in all cases that a misdirection leads to allowing of an appeal. A misdirection which does not lead to a miscarriage of justice is of no consequence. Where the judgment of the court is right but the reasons therefor are wrong the appellate court does not interfere. It is only where the misdirection had led the court to a wrong conclusion that the appellate court will interfere:**

Abaye v. Ofili (1986) 1 NWLR (Pt. 15) 134 at 179, Emmanuel Ayeni and Ors. v. William Sowemimo (1982) 5 S.C. (Reprint) 29; (1982) 5 S.C. 60 at 73; Ojengbade v. Esan (2001) 12 S.C. (Pt.II) 1 (2001) 18 NWLR (Pt. 746) 771 at 780-79. Agbaje v. Ajibola (2001) 1 S.C. 1; (2002) 2 NWLR (Pt. 750) 127 at 145, Ukejeanya v. Uchendu (1950) 13 WACA 45.' It was contended in the instant case on behalf of the appellant that the alleged misdirection had misled the court below in incorrectly construing Section 66 (1) (h) of the 1999 Constitution being the main provision relied upon by the appellant for the disqualification of the respondent. The contention is debunked by counsel for the respondent who asserted that the interpretation of the provision by the court below is correct. The factual basis upon which the provisions of Section 66 (1) (h) was invoked is not disputed.

In 1991, the Bendel State Local Government Council Election Tribunal nullified the election of the respondent as the Chairman of Bomadi Local Government Council On the ground of double registration and voting twice at the said election. It is this stigma that the appellant wants to visit on the respondent to disqualify him from contesting the 2003 general election into the National Assembly pursuant to Section 66 (1) (h) of the 1999 Constitution. The section ordains:-

*“66( 1) No person shall be qualified for election to the Senate or the House of Representatives if -*

*(h) he has been indicted for embezzlement or fraud by a Judicial Commission of Inquiry or an Administrative Panel of Inquiry or a Tribunal set up under the Tribunals of Inquiry Act, a Tribunal of Inquiry Law or other law by the Federal or State Government which indictment has been accepted by the Federal or State Government respectively.”*

(Underlining for emphasis)

As vigorously agitated by both sides, the bone of contention is whether the Bendel State Local Government Council Election Tribunal which in 1991 nullified the election of the respondent as the Chairman of the Bomadi Local Government Council for electoral malpractice and which was established by Section 70 (1) of Cap. 213 LFN 1990 is within the contemplation of Section 66 (1) (h) of the 1999 Constitution quoted above. According to the canons of interpretation of statutes, it is a cardinal principle that where the ordinary plain meaning of the words used in a statute are very clear and unambiguous, effect must be given to those words without resorting to any intrinsic or external aid: See *Awolowo v. Shagari* (1979) 6-9 S.C. (Reprint) 37; (1979) 6-9 S.C. 51 *Adejumo v. Military Governor Lagos State*. (1972) 3 S.C. 45, *A.G. Bendel State v. A.G. of the Federation* (1981) 10 S.C. (Reprint) 1; (1982) 3 NCLR 1. It is also a recognized principle of interpretation of statutes that statutes which encroach on the rights of the subject whether as regards person or property are construed as penal laws fortissime contra proferentes, that is, strictly in favour of the subject: *Bello v. Diocesan Synod of Lagos* (1973) 3 S.C. (Reprint) 73; (1973) 3 S.C. 103 *A.G. Bendel State v. Aideyan* (1989) 9 S.C. 127; (1989) 4 NWLR (Pt. 118) 646; *Abioye v. Yakubu* (1991) 5 NWLR (Pt. 190) 130; *Din v. A.G. of the Federation* (1988) 9 S.C. 19; (1988) 4 NWLR (Pt. 87) 147, *Peenok Investments Ltd. v. Hotel Presidential Ltd.* (1983) 4 NCLR 122.

Another recognized canon of interpretation is the *eiusdem generis* rule which provides that where particular words are followed by general words the general words are limited to the same kind as the particular words, unless, of course, there be something to show that a wider sense was intended: *Allen v. Emmerson* (1944) 1 KB 362, *Buhari v. Yusuf* (2003) 11 S. C 74; (2003) 1 NWLR (Pt. 841) 446 at 536, *Shell v. F.B.I.R* (1996) 970 SCNJ 231 at 262. **Bearing the above principles of interpretation in mind and being of the view that a law which seeks to disqualify a person from contesting an election, on ground of indictment for embezzlement or fraud imposes a disability and ought to be interpreted strictly, it is therefore my view that the expression “or any other (Tri-**

*bunal) by the Federal or State Government” appearing in the section must be interpreted to be restricted to the Tribunals of Inquiry or bodies mentioned in the section which were set up to investigate a person of allegations of embezzlement or fraud and whose report of indictment on such person in that regard has been accepted by the Government. It seems to me that by this interpretation, the aforesaid Bendel State Local Government Election Tribunal is not contemplated, firstly, because though set up under a Decree or Act of the Federal Government, it was set up to hear election petitions and not allegations of embezzlement or fraud, and more relevantly, its decision is not subject to Government’s acceptance by virtue of its enabling law as rightly conceded by the learned senior counsel for the appellant. In his contribution to the judgment of the court below, Oguntade, JCA., as he then was, hit the nail at the head when His Lordship rightly observed thus:-*

*“Now, it is settled law that a statute which imposes a penalty on a citizen ought to be interpreted strictly: See Okupe v. Federal Board of Inland Revenue (1974) 4 S.C. 93. There is no doubt that the purpose of Section 66 (1) of 1999 Constitution is to deny to some citizens the right to contest to be member of the National Assembly if they had at one time or the other done certain things. The provision imposes a disability. It is therefore penal in nature.*

*Interpreting Section 66 (1) (h) strictly as I should, I ask myself the question whether the judgment of an election Tribunal given in 1991 is by the force of Section 66 (1) (h) of the 1999 Constitution able to disable a citizen from being elected a member of the National Assembly. I think not. The provision cannot be stretched to include a court judgment. This is because the judgment of a court does not derive its validity from an acceptance by the Federal or State Government as Section 66 (1) (h) conveys. The judgment of the election tribunal given in 1991 in W/ET/1/ 90 does not in my view fall within the category of tribunals under Section 66 (1) (h) of the 1999 Constitution.”*

The above reasoning is sound and cannot be faulted. Consequently, I hold that the court below was correct in its interpretation of Section 66 (1) (h) of the 1999 Constitution and that the alleged misdirection

**complained about by the appellant did not occasion any injustice.**

With respect to the appellant's contention that the principle in Onuoha's case *supra* has been misapplied in the instant case, and that the appellant's claims could be entertained under Section 21 (1) - (5) of the Electoral Act 2002,<sup>1</sup> I find myself unable to express any opinion thereon. B This is so, because there is no ground of appeal and issue on which those complaints can be entertained. **There is no ground of appeal alleging error in law by misapplication of the principles in Onuoha's case in the instant case nor was the applicant's claims based on Section 21 (1)-(5) of the Electoral Act 2002.** When an issue for determination has been formulated, it is, with respect, improper for counsel to canvass matters which do not fall within the scope or ambit of the issue so formulated. Even with the wider scope of issue No.2 as redrafted by me and from the appellant's amended grounds of appeal there is no room for canvassing that Onuoha's case was misapplied in the instant case-or that the appellant's claims are cognisable under Section 21 (1)-(5) of the Electoral Act, 2002. The two lower courts found, rightly in my view, that on the authority of Onuoha's case *supra*, the appellant's claim being of a political nature was not justiciable. There is no appeal against that finding. It is trite law that a finding against which there is no appeal remains binding and conclusive: see *Alakija v. Abdulai* (1998) 5 S.C. 1; (1998) 5 NWLR (Pt.552) 1 at p.24, *Odiase v. Agho* (1972) 3 S.C (Reprint) 69; (1972) All NLR (Pt.1) 170; *Foreign Finance v. L.S.D.P.C.* (1991) 1 NSCC 520, *P. N. Udoh Trading Co. Ltd. v. Abere* (2001) 5 S.C. (Pt. II) 64; (2001) 11 NWLR (Pt. 723) 114 at 146, *Yesufu v. Kuppe International* (1996) 5 NWLR (Pt. 446) 17, *Nwabueze v. Okoye* (1988) 10-11 S.C. 77; (1988) 4 NWLR (Pt. 91) 664. D E F G

In view of the foregoing, all the paragraphs of the appellant's brief dealing with the matters under consideration are hereby struck out. **On the crucial question about the proper interpretation of Section 66 (1) (h) of the 1999 Constitution, there was a concurrent finding of the two courts below that the Bendel State Local Government Council Election Tribunal does not come within the contemplation of the said section arid that its decision in Suit No. W/ET/1/90 did not operate to** H

**disqualify the respondent to contest the 2003 general election into the National Assembly. I see no reason to disturb these findings. I will also resolve the second issue for determination against the appellant.**

It now remains for me to consider the cross-appeal. As noted earlier, B the appellant's appeal is the product of the 1st preliminary objection in the trial court by the respondent challenging the jurisdiction of that court to entertain the appellant's claims on the ground, inter alia, that it raised a political issue. That objection was upheld by the two lower courts. The cross- C appeal arose from a second preliminary objection in the court below by the same respondent who also challenged the jurisdiction of the court below on another angle to hear the appeal before it on the ground that since the respondent had contested the election into the National Assembly and was duly returned as elected, only an Election Tribunal and not the regular court D was vested with jurisdiction to entertain a petition to nullify the election.

**With profound respect to the learned Senior Counsel to the respondent, the 2nd Preliminary Objection, the subject matter of the cross-appeal is puerile and academic, for its determination one way or E the other cannot add to, nor detract from, the decision on the appellant's appeal. Courts of Law are not established to deal with hypothetical and academic question rather, they are established to deal with matters in difference between the parties: See national In- F surance Corporation v. Power & Industrial Engineering Co. Ltd. NWLR (Pt. 25) 70, Bamgboye v. University of Ilorin (1999) 6 S.C. (Pt. II) 72; (1999) 10 NWLR (Pt.622) 290. The 1st preliminary objection having been resolved in favour of the respondent, the need for the 2nd pre- G liminary objection does not arise.**

In conclusion, since the two issues canvassed in the appellant's appeal have been resolved against him, the appeal lacks merit and is accordingly dismissed. The respondent's cross-appeal being of academic nature is incompetent and is hereby struck out. Both parties having failed and H succeeded, it is hereby ordered that costs shall remain permanently where they were incurred.

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**KUTIGI JSC**

I read in advance the judgment just rendered by my learned brother, Edozie, JSC. I agree with his reasoning and conclusions. He has adequately covered all the issues canvassed before us. It is to me mischievous for the plaintiff/appellant to have thought that when an Election Tribunal in March 1991, nullified the election of the 1st defendant/cross-appellant as Chairman of Bomadi Local Government Council on the ground of double registration and double voting at the said election, that ban will stand forever to disqualify the 1st defendant from voting and being voted for in all future elections in this country including of course the 2003 General Election. This is untenable simply because the 1st defendant was never indicted or charged with any offence at the Tribunal. There was thus no conviction. The judgment of the Tribunal (Exhibit J.A.0.4) is very clear when it ordered thus-

*“(1.) The election of the 1st respondent Barrister James Ebiowo Manager (who is the 1st defendant/cross-appellant herein) on 8/12/90 as the chairman of Bomadi Local Government Council is hereby declared null and void and is of no legal effect.*

*(2.) The said 1st respondent was disqualified of standing election as a Chairmanship candidate of 8/12/90 by reason of double registration and voting twice.”*

The 1st defendant was thus disqualified in respect of the election conducted on 8/12/90 only and no other. Section 66 (1) (h) of the Constitution is in my view of no assistance to the plaintiff/appellant.

The appeal which is devoid of any merit is hereby dismissed. The 1st defendant's cross-appeal which is academic in nature is struck-out. The parties are to bear their own costs.

**KATSINA-ALU JSC**

I have had the privilege of reading in draft the judgment delivered by my learned brother, Edozie, JSC. I agree with it and for the reasons he gives I also dismiss the appeal and strike out the cross-appeal. I abide by the order for costs.

**KALGO JSC**

I have had a preview of the judgment just delivered by my learned brother, Edozie JSC., in this appeal. I entirely agree with him that there is no merit in the appeal and it ought to be dismissed. I also agree that the cross-appeal of the respondent is academic in substance and should be struck out. In the circumstances I agree with the reasoning and conclusions reached in the said judgment which I adopt as mine.

Accordingly, I dismiss the appeal and affirm the decision of the Court of Appeal, and strike out the cross-appeal. I abide by the order of costs made in the leading judgment.

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**PATS-ACHOLONU JSC**

I have read in draft the judgment of noble and learned brother, Edozie JSC., in which he has dealt ably with the issue in dispute. In the originating summons filed by the plaintiff/appellant the question that he has asked the court to interpret or determine is:-

*“Whether a person who had been adjudged by a Local Government Council Election Tribunal to have engaged in double registration as a voter and voted twice during a Local Government general election and consequently had his election as a Local Government Council Chairman nullified is not deemed to have been indicted for fraud by the Tribunal and therefore unqualified to contest election to the Senate under Section 66 (1) (h) of the Constitution of the Federal Republic of Nigeria 1999”.*

The argument of the appellant and indeed his ground for seeking a declaration from the High Court was that as the 1st respondent was indicted (as he described it) by a Local Government Election Tribunal in 1991 when he contested for Chairmanship Election he was not qualified to stand for election whatsoever in 2003.

In this connection he relied on Section 66(1) (h) of the Constitution. I hereby set down the provision as follows: -

*“66(1) No person shall be qualified for election to the Senate or the*



*House of Representatives if*

*(h) he has been indicted for embezzlement or fraud by a Judicial Commission of Inquiry or an Administrative Panel of Inquiry or Tribunal of Enquiry Law or any other Law by the Federal or State Government which indictment has been accepted by the Federal or State Government respectively”.* B

In the judgment of the Election Tribunal which the appellant described as constituting an indictment on the person of the 1st respondent, that Tribunal said:

*“We have examined the two voters registers and the respective items under which the 1st respondent’s name (the respondent in this case) appears and we find no evidence of a “cross” rather there is clear and unequivocal evidence of ticking. And this Humble Tribunal is convinced beyond reasonable doubt that the 1st respondent Ebiowu Manager voted twice at the polls of 8th December, 1990”* C D

The Election Tribunal then proceeded to annul his Election in 1991.

The learned counsel for the appellant contends that the decision of the Election Tribunal constitutes an indictment now verily accepted by the Government of the State. The real issue is whether or not the decision of the Election Tribunal that the respondent voted twice in an election is an indictment within the meaning of the term ‘indictment’. Blacks Law Dictionary defines the word “*indictment*” as follows:- E

*“An accusation in writing found and presented by a grand jury legally convoked and sworn to the court in which it is impaneled, charging that a person therein named has done some act or been guilty of some omission which by law is a public offence punishable on indictment. It refers to the case of U.S Zorluck D.C.N.Y. 274 F. (Supra) 385 at 390, where it was construed to be a charge which must be proved beyond all reasonable doubt before an accused person may be convicted. On the other hand Burtons Legal Thesaurus 3rd Edition defines it as “accusation, complaint associated with commission of a felony”. Words and Phrases Legally Defined defines it as “ a written accusation preferred before the crown court, signed by the proper officer of that court and charging one or more persons with the commission of one or a number of offences”.* F G H

From these plethora of definitions, as stated above, it needs hardly said that the term “indictment” in the context it is used in the text to wit Section 66 (1) (h) of the Constitution, impresses me that the word embraces an allegation or committal of something in the nature of a felony, which act  
B having been committed has occasioned the drafting of a charge with a view to prosecuting the person.”

I have followed the arguments of the learned counsel for the appellant and carefully examined the centerpiece of the case he is putting forward. There is much concentration of the appellant in the judgment of the  
C Supreme Court in the case of Onuoha v. Okafor (1993) 2 NWLR. That case was where the Supreme Court made a pronouncement that no court is invested with powers to dictate to a political party which person it should sponsor for an election. That power is purely within the province of the  
D political party. The case here is whether the respondent is caught by Section 66 (1) (h) supra, id est, was he indicted. There is no evidence that a charge was ever preferred against the respondent in the sense that the State rolled out its apparatus of prosecution to lay a charge on the respondent so as to  
E bring it within the orbit of an indictment. It is, I believe, erroneous on the part of the appellant to railroad the elements present in this case by attempting to extend the interpretation of Section 66 (1) (h) and squeeze the observation or even a finding of the Election Tribunal to make it come within the  
F provision of that section. Although it is desirable and I dare say essential to give expansive construction to the words of the Constitution so as to ensure that it is in accord with the living law, we should endeavour to eschew constructions that would militate against the intentions of the law, and produce oddity thereby metaphorically choking the Constitution.

Impressive may be the forceful argument of the appellant’s counsel, I find it difficult to agree with his interpretation of the provision of Section 66 (1) (h) in the context of the case before us. The expressions used are  
G “indicted for embezzlement or fraud, by a judicial Commission of Enquiry  
H or an Administrative Panel of Inquiry or a Tribunal set up under the Tribunals of Inquiry Act, a Tribunal of Inquiry Law, or other law by the Federal or State Government which indictment has been accepted by the Federal or State Government respectively”. In this case, there is no indictment on

embezzlement which is really no more than stealing. Was fraud committed. I find it difficult to interpret the decision of the Election Tribunal which institutional body does not in any way come within the framework of the bodies mentioned in Section 66 (1) (h) as applying to. Fraud must have an element of felony. The respondent was not charged for any offence relating to having voted twice. It is conceivable to say that what may not be ethically accepted in an election matters, may not necessarily constitute a crime. I find it difficult to pigeonhole what happened in 1991 in the Tribunal, to be a fraud within the meaning as ascribed to it in Section 66(1) (h). Furthermore, the Election Tribunal that made that pronouncement, as an institution does not come within the meaning of those bodies (legal entities) mentioned in that section. In construing that section mentioned, care must be taken to understand that the Election tribunal was not a panel of Enquiry or a Tribunal of Enquiry, or Administrative Panel of Enquiry, but rather a special court or tribunal of Justice instituted solely for elections matters with its own peculiar procedures and characteristics and therefore that body cannot be within the eusdem generis of the various Enquiry Commissions provided in that section of the Constitution. Further to this, the law, that is the Local Government (Basic Constitutions and Transitional Provisions) Decree of 1989 has since lost its steam as it was meant to apply to the situational exigency at the time, and therefore is now moribund. It cannot be resurrected for the purpose of blanching or smearing the person of the respondent by saying that even in 2003 the respondent is disqualified to contest for an election, based on a skewed and convoluted interpretation of Section 66 (1) (h) of the Constitution.

It is interesting that the learned counsel for the appellant has cited the case of *Rabiu v. The State* (1980) 8-11 S.C. (Reprint) 85; (1980) 8-11 S.C. 130 at 148 - 149; In that case Udo Udoma, JSC., in his most erudite manner stated as follows:

*“My Lords, in my opinion, it is the duty of this court to bear constantly in mind the fact that the present Constitution has been proclaimed the Supreme Law of the land..... mere technical rules of interpretation of statutes are to some extent inadmissible in a way so as to defeat the principles of government enshrined in*

*the Constitution “And where the question is whether the Constitution has used an expression in the wider or in the narrower sense, in my view this court should whenever possible and in response to the demands of justice lean to the broad interpretation”.*

B With greatest respect to the view espoused by the learned counsel for the appellant who sought to confine us to what I see as a narrower interpretation of the import of Section 66 (1) (h), this court would box itself and the wider society in a corner thereby asphyxiating the aspiration of many budding politicians, if the court accepts such interpretation.

C An interpretation that seeks to emasculate should be avoided as it would do disservice to the citizenry and confine everyone into a legal container or labyrinth from which this court may not easily extricate itself. I have always believed that it is the eternal duty of this court to con-  
D strue some provisions of the Constitution in a wider sense to give meaning and life to the law bearing in mind that the Primary Law is for the living; that as much as possible a holistic approach should be given to any provision with a view to expounding its scope. By so doing, the court would be  
E liberating woolly provisions of the Constitution that appear nebulous, and therefore make the law embrace all that would ennoble the society and would guarantee its fairness and space for growth and development so that in the final analysis it shall be understood by all that the law is made for men  
F and women and not the other way round.

Justice is often depicted as a blindfolded woman with a sword in one hand and a scale on the other. Those who are called to mete out justice are not blindfolded. They see with their two eyes and reason with their head. In the application of the law to meet the end of Justice, it is important to  
G recognize that but men and women now live in a dynamic society and the interpretation of the provision of any statute should mirror the social accentuation of the society and understanding the nature of man or woman. Thus a great American Jurist John Parker in his address to the American Bar  
H Association in July 1950 which was published in 36 ABA Journal 533 said:

*“Society, whether a free society or not, is not a mere aggregation of individuals. It is an organism. The law is the life principle of that organism. It is not something imposed from without but something that arises from*

*within. There is something in the nature of matter that causes it to act in certain ways and these ways of action we call the laws of physics. There is something, too, in the nature of human beings and of the society that they compose that determines how society should act and how the members of society should act towards one another. This is law in its true sense. It must be interpreted in terms of rules and these rules must be enforced by the power of the State; but it must never be forgotten that the source of law is not the power that enforces the rules but the life that gives rise to the power, and that the source of the rules is not power but reason applied to the life from which the power arises.”*

I believe that though justice is blind, it is nevertheless rooted in the nature of the society and therefore the courts should avoid constructions that could cause chaos and disenchantment. Justice must be applied in a way that it embraces and optimizes social engineering that is for the welfare of the society. Enlightened society should expect a highly refined and civilized justice that reflects the tune of the time.

In my view the appeal should fail and is hereby dismissed.

On the issue raised in the cross-appeal, to my mind it is purely academic now and I would restrain from making a pronouncement on a matter that is not of any help to the parties. This court deals with disputes which are present as between persons, and, can declare their rights and equally enforce a judgment given. As stated in the leading judgment, the preliminary objection that gave rise to the cross-appeal is struck out. To my mind that issue raised is now non sequitor. I agree with the leading judgment and abide by the consequential orders made therein.

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