

SUPREME COURT OF NIGERIA
15TH DECEMBER, 2006. SC. 165/2005
CORAM:- I. L. KUTIGI, S. U. ONU, U. A. KALGO,
S. A. AKINTAN, W. S. N. ONNOGHEN, I. F. OGBUAGU,
F. F. TABAI, JJSC

CHIEF (MRS.) OLUFUNKE PETITIONER/APPELLANT
VICTORIAEHUWA

AND

1. ONDO STATE INDEPENDENT
ELECTORAL COMMISSION

2. MR. ANDREW ADEBAMBO ODORO

3. THE ELECTORAL OFFICER,

ILAJE LOCAL GOVERNMENT

IGBOKODA

..... RESPONDENTS

4. THE RETURNING OFFICER, ILAJE

LOCAL GOVERNMENT IGBOKODA

ELECTION PETITIONS - Appeals - Local Government Elections - Appeal lies from the Tribunal to the State High Court - Vide s. 94 (2) of the Law - And the High Court's decision is final (H1)

APPEALS - Jurisdiction - Right to appeal - Basis of - Appellate jurisdiction - Is created by statute - So no right to appeal - Inures to any person - Except as created by statute (H2)

COURTS - Appellate courts - Jurisdiction - Once it is decided - That lower court - Lacked jurisdiction - Appellate Court - Is without jurisdiction - To look into merits of the appeal (H3)

STATUTES - Interpretation - Principles - Express mention of one thing - Automatically excludes any others - Which would have applied - Otherwise by implication - With regard to the same issue (H4)

APPEALS - Competence - Issues - Formulation of - Issues for determination - Must be distilled from competent grounds of appeal - Else they are incompetent (H5)

FACTS

The Petitioner/Appellant had sued the Respondents/Respondents before the Local Governments Election Tribunal of Ondo State Challenging the nomination, sponsorship and eventual election of the of the 2nd Respondent as the Chairman of the Ilaje Local Government of Ondo State. Appellant's case before the tribunal was that it was her name that was approved and submitted to INEC by the National Executive of the party as the party's flag bearer for that Local Government and not that of the 2nd Respondent. However it was given in evidence, by the state party chairman, for the 2nd Respondent, that it was the 2nd Respondent's name that was approved by State party Executives and submitted to National as the flag bearer. After the trial, the Tribunal declined jurisdiction to determine the petition on the merits on the ground that it was an internal affair of the party. Accordingly, it dismissed the petition. Appellant appealed to the High Court of Ondo State which also dismissed the appeal, upholding the decision of the Tribunal.

Appellant further appealed to the Court of Appeal whereupon the 2nd Respondent raised a preliminary objection urging the court to strike out the appeal in limine for being incompetent. It was his case that s. 94 (2) of the Local Government Administration, Conduct of Local Government Election and Allied Matters Law, 2003, made the High Court the final court in respect of Local Government Election Petitions. Court of Appeal upheld the preliminary objection and declined jurisdiction. Hence Appellant brought this instant appeal to the Supreme Court. It is argued for Appellant that since the said s. 94 (2) does not expressly state that the High Court is the final court, it should be read together with ss. 240 and 241 of the 1999 Constitution and that such a combined reading gives a right of appeal from the decision of the High Court.

ISSUE FOR DETERMINATION

Whether the Court of Appeal lacks jurisdiction to determine this

appeal in view of the fact that the appeal relates to Local Government election.

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

Appeal lies from the Tribunal to the State High Court

1. Having regard to the clear and unambiguous provision of Section 94(2) of the Law, which states;

“An appeal arising in respect of an election petition under this Law shall lie to the High Court of the State”,

can it be honestly and seriously contended or submitted as has been done in the Appellant’s Brief, that because the Law did not expressly state/provide that the decision of the High Court shall be final, the Ondo State High Court is not the final court for the determination of Local Government Election appeals? I think not.

The next question is, did the Law provide that an appeal from the Local Government Election petition, shall lie to the Court of Appeal? Of course not. Commonsensically, could the Ondo State Legislature have made such a Provision? And if it made it, can it ever be valid? The answers are NEVER - not at all of course, and understandably, there is no provision in the Law that an appeal shall lie to the Court of Appeal from the High Court of Ondo State sitting as an Appellate Court on the decision of an Election Petition Tribunal. (p. 3582 E)

Jurisdiction - Right to appeal - Basis of

2. Surely and certainly, and this is settled, an appellate jurisdiction, is obviously and clearly created by statute. Therefore, or thus, no court, has the jurisdiction to confer jurisdiction on itself unless it is derived from statutory provision.

It is well established that the right to appeal, does not exist for any person, unless it is created by statute or the Constitution. It does not derive from any other source – neither inherent jurisdiction nor common law. No court has jurisdiction to hear any appeal unless it is derived from or directly traceable to a statutory provision. (p. 3583 A)

Appellate courts - Jurisdiction

3. It is settled law that an Appellate Court, cannot exercise jurisdiction in a matter once the lower court or the court below, is without jurisdiction. An Appellate Court, can only exercise its appellate jurisdiction to correct the errors of the lower court or the court below. Thus or consequently, once an Appellate court has decided that the lower court or the court below, had no jurisdiction, it has no appellate jurisdiction of its own to exercise. On this ground alone, this appeal fails. This is because, since the court below held that the High Court had no jurisdiction to determine the appeal, it could not have on appeal, given any judgment deciding the merits of the appeal as would have been done by the High Court.
(p. 3584 D)

STATUTES - Interpretation - Principles

4. It is now firmly established that in the construction of a statutory provision, where a statute mentions specific things or persons, the intention, is that those not mentioned, are not intended to be included. The Latin maxim is “*Expressio unius est exclusion alterius*” - i.e. the expression of one thing, is the exclusion of another. It is also termed “inclusion unius est exclusion alterius” or “enumeratio unius exclusio alterius”. In other words, the express mention of one thing in a statutory provision, automatically, excludes any other which otherwise would have applied by implication with regard to the same issue. (p. 3585 A)

APPEALS - Competence - Issues

5. Apart from this argument and submission being with respect, otiose, it is noted by me that it was not raised either in the alternative or otherwise in the ground of appeal of the Appellant or in any issue formulated in the Brief for determination.

It is now firmly established that every issue for determination (even if it is in the alternative), must be formulated from, based upon and related to or distilled from a competent ground of appeal. In other words, for an issue for determination to be competent, it must be based on a ground of appeal.

Therefore, since the said issue was not formulated by the Appellant in the Brief for determination and it was not raised or distilled from any ground of appeal, I hereby discountenance it as it is with respect, hopelessly incompetent. (p. 3589 A)

B

NOTABLE POINTS OF INTEREST

AKINTAN JSC

1. Courts have no jurisdiction over nomination of party candidates

The main issue in the appeal, simply put, is whether the lower court or the courts in general, were right in declining jurisdiction in matters relating to nomination of candidates for elections by political parties. This matter has long been settled by a full panel of this court in Onuoha v. R. B. Okafor & Ors (1983) 2 NCLR 244. Obaseki, JSC stated the position of the law in the matter in that case on pages 259-260 of the report as follows:

“The law is therefore certain as to who is to resolve the dispute where two candidates claim sponsorship. It is the Federal Electoral Commission by consulting the leader of the political party concerned. In other words, the Federal Electoral Commission is required to act on the advice of the leader of the political party concerned. The real power to make a choice is, in my view, in the political party through its leader.

There are no judicial criteria or yardstick to determine which candidate a political party ought to choose and the judiciary is therefore unable to exercise any judicial power in the matter. It is a matter over which it has no jurisdiction. The question of the candidate a political party will sponsor is more in the nature of a political question which the courts are not qualified to deliberate upon and answer. The judiciary has been relieved of the task of answering the question by the Electoral Act when it gave the power to the leader of the political party to answer the question.

It is therefore my view that the matter in dispute brought before the Courts is not justiciable.” (pp. 3597 E/ 3598 B)

ONNOGHEN.JSC

2. Courts should broadly interpret constitutional provisions

It is settled law that the court should, when interpreting the provisions of the Constitution, bear in mind that the function of the Constitution is to establish a framework and principles of government, broad and in general terms, intended to apply to the varying conditions which the development of a plural and dynamic society must involve. Therefore, more technical rules of interpretation are to some extent inadmissible in a way as to defeat the principles of government enshrined in the Constitution. Therefore, where the question is whether the Constitution has used an expression in the wider or in the narrower sense, the Court should, whenever possible, and in response to the demands of justice, lean to the broader interpretation, unless there is something in the text or in the rest of the constitution to indicate that the narrow interpretation will best carry out the object and purpose of the Constitution. (p. 3604 E)

REPRESENTATION

Orji Nwafor-Orizu, Esqr, for the Appellant with him, Linus Okwute, Esqr, and Nnajiofor Emeka, Esqr.,
Mrs. Uche Anasor-Anabui (DCL, Ministry of Justice, Ondo State) for the 1st, 3rd & 4th Respondents).
Aderemi Olatubora, Esqr, for the 2nd Respondent with him, Tunde Atere, Esqr, and Azubike Moneke, Esqr.

CASES REFERRED TO

Chief Esuku & anor. v. Leko & 3 ors. (1994) 4 NWLR (Pt.340) 625 @ 632 C.A
Buhari vs Dikko Yusuf 14 NSCQR 1114
Esewe vs Gbe (1988) 5 NWLR (pt. 93) 135
Onuoha v. R. B. Okafor & Ors (1983) 2 NCLR 244
Chief Denis Osadebay v. Attorney-General of Bendel State (1991) 1 NWLR (Pt.169) 525 @ 571- 572; (1991) 1 SCNJ. 162
A-G Abia State vs A-G Federation (2002) 6 NWLR (pt. 763) 264
Captain Amadi v. NNPC (2000) 10 NWLR (Pt. 674) 76; (2000) 6 SCNJ.

1; (2000) 6 S.C. (Pt.1) 66; (2000) FWLR (Pt.9) 1527; (2000) WRN. 47
Alhaji Arowolo v. Akapo & 2 ors. (2003) 8 NWLR (Pt.823) 451 @ 508-
511 C.A

Archbishop Jatau v. Alhaji Ahmed & 4 ors. (2003) 1 SCNJ. 382 @ 388

Falola v. Union Bank of Nigeria PLC. (2005) 2 SCNJ. 209 @ 221; (2005) B
2 S.C. (Pt.II) 62

Orubo vs NEC & ors. (1988) 3 NSCC 333

Awuse vs Odili (2003) 18 NWLR (pt. 851) 116

Military Governor of Ondo State v. Adewunmi (1988) 3 NWLR (Pt.82) C
280

STATUTES REFERRED TO

Constitution of the Federal Republic of Nigeria, 1999, ss. 7, 240, 241,
and 246 D

Local Government Administration, Conduct of Local Government Elec-
tion and Allied Matters Law 2003 of Ondo State s.94(2)

LEAD JUDGMENT BY OGBUAGU JSC

This is an appeal against the RULING of the Court of Appeal,
Benin Division (hereinafter called (“the court below”) delivered on 8th
July, 2005 declining jurisdiction to entertain the appeal filed by the Appel-
lant against the judgment of the High Court of Ondo State on the ground F
that, that court was the final court.

The facts of the case briefly stated, are that the Appellant was the
Petitioner at the Local Government challenged the nomination, sponsor-
ship and eventual election of the 2nd Respondent as the Chairman of the
Ilaje Local Government of Ondo State. After the trial, the Tribunal de-
clined to determine the Petition on the merits on the ground that it was/is
an internal affair of the party and therefore, dismissed the Petition. The
Appellant appealed to the High Court of Ondo State which court, after
hearing the appeal, dismissed the appeal and upheld/affirmed the decision H
of the Tribunal.

Dissatisfied with the said decision, the Appellant appealed to the
court below. In that court, the 2nd Respondent, raised a Preliminary

Objection, and urged the court to strike out the appeal in limine for being incompetent. He relied on Section 94(2) (1) of the Local Government Administration, Conduct of Local Government Election and Allied Matters Law, 2003 of Ondo State (hereinafter called “the Law”) which makes
 B the said High Court, the final court for Local Government Election petitions. On 8th July, 2005, the court below, in a considered Ruling, upheld the Preliminary Objection. It also declined jurisdiction. It is against the Ruling, that the Appellant has appealed to this Court on one ground of
 C appeal. The Appellant has formulated one issue for determination that reads as follows:

*“Whether having regard to the combined effect of Sections 240 and 241(1)(a)(b) and f (v) of the Constitution of the Federal Republic of Nigeria 1999 and the peculiar provisions of section 94 (2) (1) of the
 D Local Government Administration Conduct of Local Government Election and Allied Matters Law 2003 of Ondo State (hereinafter called Ondo State Electoral Law 2003) appeal cannot lie as of right (in appropriate case as the instant case) from a decision of the High Court of Ondo State
 E to the Court of Appeal merely because it was an appeal emanating from an election petition”*

The respective lone issue formulated by the 1st, 3rd and 4th Respondents and the 2nd Respondent in their respective brief, is in substance, similar to that of the Appellant although differently worded/
 F couched. It is my humble but respectful view and as rightly submitted by the learned counsel for the Appellant in paragraph 4.01 of their Brief, that:

*“The tiny but all important issue to be determined in this appeal is whether, the Court of Appeal lacks jurisdiction to determine this appeal
 G in view of the fact that the appeal relates to Local Government election”.*

I need to emphasize that through out the brief of the Appellant, it is stated and indeed conceded that this instant appeal, relates to the said
 H Local Government election. In paragraph 3.01 of the Statement of facts, the following appear, inter alia;

“The facts relevant to this appeal is that the plaintiff filed an election petition at the Local Government Election Petition Tribunal of

Ondo State over the undue return for the office of Chairman of Ilaje Local Government by the Ondo State Electoral Commission. The Election Tribunal declined jurisdiction to determine the petition”.

At the hearing of this appeal on 19th September, 2006, the learned counsel for the Appellant - Nwafor-Orizu, Esq., submitted inter alia, thus: B

“This is not an Election Petition appeal, but for interpretation”.

Wonders, it is said, can never end:

Just as in No. 4 of their Argument, he referred to and relied on Section 246(3) of the 1999 Constitution of the Federal Republic of Nigeria, and submitted that an Election Petition, according to him, does not C have a specific law. He referred to Section 240 of the said Constitution and submitted that Section 240(b) thereof, is clear. He then referred to their ALTERNATIVE submission at page 8, paragraph 4.14 of their Brief and cited and relied on the case of FRN (Federal Republic of Nigeria) v. D Lord Chief Ifegwu (2003) 15 NWLR (Pt.842) 113 @ 149, 205 - 207 (it is also reported in (2003) 5 SCNJ. 217). In his reply on points of law, apart from submitting that the two cases of Sorunke v. Odebunmi (1960) SCNLR 414 and Obi v. Mbakwe (1984) & ors. Vol. 1 SCNLR 192 (it is E also reported in (1984) NSCC Vol. 15 p. 127) cited and relied on by the learned counsel for the 2nd Respondent Olatubora, Esqr, in his oral submission, about election matters not being simple civil cases and that they F are different and distinguishable from ordinary civil proceedings and therefore, do not have the incidence of ordinary civil matters and thus cannot come on appeal by virtue of sections 240 and 241 of the 1999 Constitution, Nwafor-Orizu, Esq, submitted that the State High Court Laws for which according to, one him, one comes to this Court, are sometimes G Byelaws, etc. That reliance on Section 7 of 1999 constitution, is ridiculous.

I will pause here to observe that Mr. Olatubora in paragraph 4.02 of their Brief in support of his submission that proceedings in election petitions, are regarded as sui generis cited and relied on the case of Orubu H v. NEC which he stated that it is reported in (1988) 3 NSCC 333 and in his List of Authorities No. 3 as in (1988) 3 NSCC 33, with respect, there is no such case either at p.33 or 333 or any other page in Part 3 of the

3582 Ehuwa v. Ondo State Inde. Elect. Comm. (2006) 12 KLR Ogbuagu JSC
NSCC Report. The case is reported in (1988) 5 NWLR (Pt.94) 323 and
(1989) 12 SCNJ. 254. Learned Counsel appearing in this Court, are please
advised to ensure that they refer to the correct citations/references in
their Briefs or oral addresses.

B With respect, the forceful but tenuous argument or contention of
the learned counsel for the Appellant for which a Full Court has been
empanelled, is that the Law, enacts that appeals from the Local Govern-
ment Election Petition Tribunal (hereinafter called “the Tribunal” lie to
the High Court of Ondo State. That the law did not state that the Ondo
C State High Court, is to sit as an Appeal Tribunal simpliciter. That the High
Court was therefore to sit as a High Court with one Judge having powers
of the High Court. That unlike some States Electoral Laws or the Consti-
tution of the Federal Republic 1999, the Ondo State Law, did not state
D that the High Court decision of Ondo State shall be final. That the Consti-
tution by Section 240, allows appeals from the High Court to lie to the
Court of Appeal. That that “*was the reason for this appeal which errone-
ously declined jurisdiction*” (sic). That any other consideration by the
E court below, is not relevant to the preliminary objection and will not be
part of this appeal as, according to him, the Court must first of all, have
jurisdiction before making pronouncements on merits.

The question that I or one may at once ask is, **having regard to**
the clear and unambiguous provision of Section 94(2) of the Law,
F **which states;**

***“An appeal arising in respect of an election petition under this
Law shall lie to the High Court of the State”,***

can it be honestly and seriously contended or submitted as
G has been done in the Appellant’s Brief, that because the Law did
not expressly state/provide that the decision of the High Court shall
be final, the Ondo State High Court is not the final court for the
determination of Local Government Election appeals? I think not.

H The next question is, did the Law provide that an appeal from
the Local Government Election petition, shall lie to the Court of
Appeal? Of course not. Commonsensically, could the Ondo State
Legislature have made such a Provision? And if it made it, can it

ever be valid? The answers are NEVER - not at all of course, and understandably, there is no provision in the Law that an appeal shall lie to the Court of Appeal from the High Court of Ondo State sitting as an Appellate Court on the decision of an Election Petition Tribunal. Surely and certainly, and this is settled, an appellate jurisdiction, is obviously and clearly created by statute. Therefore, or thus, no court, has the jurisdiction to confer jurisdiction on itself unless it is derived from statutory provision. B

It is well established that the right to appeal, does not exist for any person, unless it is created by statute or the Constitution. C It does not derive from any other source – neither inherent jurisdiction nor common law. No court has jurisdiction to hear any appeal unless it is derived from or directly traceable to a statutory provision. So said Uwaifo, JCA, (as he then was) in the case of Chief D Esuku & anor. V. Leko & 3 ors. (1994) 4 NWLR (Pt.340) 625 @ 632 C.A. also cited and relied on in the Brief of the 1st, 3rd and 4th Respondents and also referred to at page 324 of the Records by the court below.

In the case of Ugwu v. Attorney-General East Central State (1975) E 6 S.C. 13. It is stated inter alia, as follows:

“Undoubtedly, all rights of appeal are statutory and in order to exercise a right of appeal it must be demonstrated by the prospective appellant that such a right has been or is conferred on him by some statutes.....”. [the underlining mine] F

See also the case of Prince Adigun & 2 ors. V. The Attorney-General of Oyo State & 18 ors. (1987) 2 NWLR (pt. 56) 197; (1987) 3 SCNJ. 118

In the case of Ajomale v. Yaduat & anor. (No.1) (1991) 5 NWLR G (Pt.191) 257 @ 263; (1991) 5 SCNJ 172 @ 175? it was held that in this country, the exercise of all original appellate jurisdiction is derived either from the 1979 Constitution or from a particular statute. That these are the only sources from which jurisdiction is derived. It referred to the H case of Adili v. The State (1989) 2 NWLR (pt.103) 305.

In the case of Odofoin & anor. V. Chief Agu & anor. (1992) 3 NWLR (Pt.229) 350 @ 369; (1992) 3 SCNJ. 161 which dealt with the

basis of the inherent jurisdiction of an appellate court, it was held that the exercise of appellate jurisdiction is entirely statutory. That there can therefore, not be an inherent jurisdiction outside the statute.

All these pronouncements, have been made by this Court and put
 B the issue of jurisdiction of an appellate court, beyond any controversy or
 doubt. In other words, since the right of appeal is created by the Consti-
 tution or Statute, no court has the right to hear an appeal unless the
 jurisdiction is derived from the Constitution or Statute. See also the cases
 C of Chief Denis Osadebay v. Attorney-General of Bendel State (1991) 1
 NWLR (Pt.169) 525 @ 571- 572; (1991) 1 SCNJ. 162; National Bank of
 Nigeria Ltd. V. Weide & Co. (Nig.) Ltd. & 3 ors. (1996) 8 NWLR (Pt.465)
 150 @ 165; (1996) 9 - 10 SCNJ. 147; Enugwu v. Okefi 3 ors. (2000) 3
 NWLR (Pt.650) 620 @ 643, and Captain Akande v. Nigerian Army (2001)
 D 8 NWLR (Pt.714) 1 @ 19 C.A. just to mention but a few. This is why **it**
is settled law that an Appellate Court, cannot exercise jurisdiction
in a matter once the lower court or the court below, is without juris-
isdiction. An Appellate Court, can only exercise its appellate jurisdic-
 E **tion to correct the errors of the lower court or the court below.**
Thus or consequently, once an Appellate court has decided that the
lower court or the court below, had no jurisdiction, it has no appel-
late jurisdiction of its own to exercise. See perhaps, Akinbobola v.
 F Plisson Fisko Nig. Ltd. & 2 ors. (1991) 1 NWLR (Pt.167) 270 @ 285;
 (1991) 1 SCNJ. 129. **On this ground alone, this appeal fails. This is**
because, since the court below held that the High Court had no
jurisdiction to determine the appeal, it could not have on appeal,
 G **given any judgment deciding the merits of the appeal as would have**
been done by the High Court.

For purposes of emphasis, the Ondo State Law, is a statute which
 has not created any appellate jurisdiction for the Court of Appeal in re-
 spect of Local Government elections. This is why I have stated that the
 H Law, did not specifically, mention that the Ondo State High Court sitting
 in its appellate jurisdiction, as a final court, did not mean, and does not
 mean, that the Appellant, has a right of appeal to the court below. In other
 words, since the Law specifically mentioned that an appeal shall lie to the

State High Court, I agree with the submission in the Brief of the 1st, 3rd and 4th Respondents in the oral submission of their Counsel at the hearing of this appeal, that it therefore, excludes any other appellate court including the Court of Appeal.

It is now firmly established that in the construction of a statutory provision, where a statute mentions specific things or persons, the intention, is that those not mentioned, are not intended to be included. The latin maxim is “Expressio unius est exclusion alterius” - i.e. the expression of one thing, is the exclusion of another. It is also termed “inclusion unius est exclusion alterius” or “enumeratio unius exclusio alterius” See Legal Maxims in Black’s Law Dictionary Seventh (7th) Edition page 1635. See also the cases of Ogbuanyinya & 5 ors. V. Okudo & 2 ors. (1979) 6-9 S.C. 32; (1979) ANLR 105; (1979) 6-9 S.C. 24 @ 35 (Reprint); Military Governor of Ondo State v. Adewunmi (1988) 3 NWLR (Pt.82) 280; The Attorney-General of Bendel State & 2 ors. v. Aideyan (1989) 4 NWLR (Pt. 118) 646; (1989) 9 SCNJ. 80; Udoh & 2 ors. V. Orthopaedic Hospitals Management Board & anor. (1993) 7 SCNJ. (Pt.II) 436; (1993) 7 NWLR (pt. 304) 139 @ 148 and many others. **In other words, the express mention of one thing in a statutory provision, automatically, excludes any other which otherwise would have applied by implication with regard to the same issue.**

The court below - per Augie, JCA, stated at page 323 of the Records inter alia, as follows:

“This Application raises an interesting albeit knotty angle to the issue of whether this Court has jurisdiction to hear appeals emanating from Local Government Election Petitions or not. I have considered the arguments of counsel and critically examined the state of law on appellate jurisdiction and I am of the firm view that this Court has no jurisdiction and cannot by any interpretation of the existing law hear such appeals. I say without equivocation that the decision of the High Court of the State sitting as an Appellate Court in respect of Local Government Election Petition is final, and this Court has no jurisdiction to entertain any further appeal from the said Court”.

I cannot fault the above pronouncements. Even if it means repeat-

ing myself, this Court - per Bello, JSC, (as he then was) in the case of Adeyemi (Alafin of Oyo) v. Attorney-General of Oyo State (1984) NSCC 397 @ 419 - 420 also referred to by the court below, had this to say, inter alia:

B *"It must be appreciated that the jurisdiction of Appellate Courts in our judicial system is either constitutional or statutory. The appellate powers are conferred upon the Courts by the Constitution and the Federal and States legislations: No court has any inherent appellate jurisdiction. It follows therefore that unless jurisdiction is specifically conferred by the Constitution or legislation, an appeal court will not entertain a particular appeal".* [the underlining mine]

In spite of this pronouncement and the other decided decisions by this Court already referred to above by me. Mr. Nwafor Orizu, insists, D albeit most erroneously, that even though the Ondo State Law, did not specifically say that an appeal in an Election petition lies from the High Court to the Court of Appeal, the court below has jurisdiction or perhaps, "inherent jurisdiction", to entertain an appeal from the High Court. Sig- E nificantly, the learned counsel, has not asked us, to review the said decision in Adeyemi's case or in that of Odofin & anor. V. Chief Agu & anor. (supra). Rather, and most ridiculously, with respect, he is asking the Court, to do an "interpretation" of what neither the 1999 Constitution nor F the Ondo State legislation did not either contemplate or specifically provide. Of course, this Court, will not oblige him. Such an indulgence in my respectful view, will not only be extremely absurd, but will amount to an academic exercise in relation to a hypothetical issue!

It is important and in fact pertinent to stress that there is no Act of G the National Assembly which confers jurisdiction on the Court of Appeal to sit as an Appellate Court in respect of decisions of the High Court sitting as an Appeal Court in respect of Local Government Election petition matters. I say so because, Section 240 of the 1999 Constitution H which provides for the appellate jurisdiction of the Court of Appeal, provides as follows:

"Subject to the provisions of this Constitution, the Court of Appeal shall have jurisdiction to the exclusion of any other court in Nige-

ria, to hear and determine appeals from the Federal High Court, the High Court of the Federal Capital Territory, Abuja, High Court of a State, Sharia Court of Appeal of the Federal Capital Territory, Abuja, Sharia Court of Appeal of a State, Customary Court of Appeal of the Federal Capital Territory, Abuja, Customary Court of Appeal of a State and from decisions of a court martial or other tribunals as may be prescribed by an Act of the National Assembly”.

Also, Section 246(1) of the 1999 Constitution, deals with appeals to the Court of Appeal as of right from

“(a) decisions of the Code of Conduct Tribunal established in the Fifth Schedule to this Constitution.

(b) decisions of the National Assembly Election Tribunals and Governorship and Legislative Houses Election Tribunals on any question as to whether -

As rightly stated by the court below, this subsection (1), did not confer jurisdiction on the Court of Appeal to hear appeals in respect of decisions of the High Court sitting as Election Appeal Court under the Local Government Law. It stated further at page 326 of the Records, inter alia, as follows:

“An election petition is not the same as ordinary civil proceedings - see *Orubu v. NEC* (1988) 12 SCNJ. 254; *Awuse v. Odili* (*supra*), besides, the Ondo State Law is a State Law, which cannot validly confer jurisdiction on this Court to entertain such appeals. This is in accord with Section 246(2) of the 1999 Constitution, which provides as follows - “The National Assembly may confer jurisdiction upon the Court of Appeal to hear and determine appeals from any decision of any other court of law or tribunal established by the National Assembly”.

I or one may ask, has the National Assembly or the Ondo State Assembly, made any law or provision, conferring appellate jurisdiction on the Court of Appeal in respect of Local Government Election Petitions or appeals? Of course, the answer is in the negative and Nwafor-Orizu, Esqr, knows this as a fact. The right of appeal, I repeat, is a Constitutional or Legislative matter. If it is not conferred, then, it is not there. The court below, in its conclusion, stated rightly in my humble but respectful

view as follows:

“There is no Act of the National Assembly in existence extending the appellate jurisdiction of this Court to cover appeals in respect of Local Government Election matters. It is only appeals in respect of the decisions of the National Assembly Election Tribunals and Governorship and Legislative Houses Election Tribunals that lies to this Court. What this means is that unless and until an Act of the National Assembly says otherwise, the decision of the Ondo State High Court sitting as an appellate Court in respect of Local Government Election Petitions is final; no appeal lies therefrom to this Court and I so hold”. [the underlining mine]

Finally, there is the concurrent findings of fact by two lower courts and on the decided authorities, this Court will not interfere. The result or what the instant appeal boils down to, is that this appeal and as also held by the court below, is grossly incompetent. It fails with ignominy and it is accordingly, dismissed.

Let me say a few words on the Alternative argument/submission in paragraph 4.14 of the Appellant’s Brief. The Appellant states that if this Court holds that the court below was right in holding that it lacked jurisdiction and that the High Court Ondo was the final court, that the argument is that,

“Whether the statutes or implication or interpretation of the statutes is that the decision of the Ondo High Court is final, it does not foreclose Jurisdictional issue. This is more so as the appeal from the High Court Ondo State to the Court of Appeal is a Jurisdictional issue. The Ondo High Court declined Jurisdiction when it had jurisdiction. This appeal from the Court of Appeal to this Honorable is a Jurisdictional issue as the Court also declined jurisdiction both on different grounds”. [the underlining mine]

The cases of FRN (Federal Republic of Nigeria) v. Lord Chief Ifegwu (supra); NEC v. Nzeribe (1991) 5 NWLR (Pt. 192) 458 C.A. and Udosen v. NEC (1997) 5 NWLR (Pt.506) 507 C.A. are cited and relied upon and the court is urged that on the basis of the decisions in the above three (3) cases, to hold that it has jurisdiction to determine this appeal and that the Court of Appeal has jurisdiction to determine the appeal before it

- all being jurisdictional issues.

Apart from this argument and submission being with respect, otiose, it is noted by me that it was not raised either in the alternative or otherwise in the ground of appeal of the Appellant or in any issue formulated in the Brief for determination. This perhaps, is why, none of the two (2) sets of Respondents, responded or replied to it. B

It is now firmly established that every issue for determination (even if it is in the alternative), must be formulated from, based upon and related to or distilled from a competent ground of appeal. In other words, for an issue for determination to be competent, it must be based on a ground of appeal. See Captain Amadi v. NNPC (2000) 10 NWLR (Pt. 674) 76; (2000) 6 SCNJ. 1; (2000) 6 S.C. (Pt.1) 66; (2000) FWLR (Pt.9) 1527; (2000) WRN. 47; Alhaji Arowolo v. Akapo & 2 ors. (2003) 8 NWLR (Pt.823) 451 @ 508-511 C.A; Archbishop Jatau v. Alhaji Ahmed & 4 ors. (2003) 1 SCNJ. 382 @ 388 and recently, Falola v. Union Bank of Nigeria PLC. (2005) 2 SCNJ. 209 @ 221; (2005) 2 S.C. (Pt.II) 62 - per Edozie, JSC, just to mention but a few. D E

Therefore, since the said issue was not formulated by the Appellant in the Brief for determination and it was not raised or distilled from any ground of appeal, I hereby discountenance it as it is with respect, hopelessly incompetent. F

In any case, a decision is said to be either final or interlocutory. The learned counsel for the Appellant from his said argument or submission says that the decision of the Ondo State High Court is not final and cannot be final in that according to him, it does not foreclose jurisdictional issue. So also is the decision of the court below. He has however, not said that the decisions, are interlocutory. G

As noted in this Judgment, the Tribunal, dismissed the Petition. The High Court of Ondo State also, dismissed the appeal. In other words, the Petition and the appeal, became “dead” so to say and for all purposes. H The court below, struck out the appeal for incompetence. This is because, where a court holds that it has no jurisdiction to entertain and determine a matter, it strikes out the matter. The striking out of the mat-

ter, finally disposed or disposes of the matter or appeal as the case may be.

In the final analysis or result, the said Alternative argument/submission is hereby and accordingly struck out as being of no moment or consequence same being incompetent and completely with respect, grossly misconceived in the extreme.

Costs follow events. Costs of N10,000.0 (ten thousand naira), are awarded in favour of each of the two (2) sets of Respondents.

C

KUTIGI JSC

I have had the privilege of reading in advance the judgment just delivered by my learned brother Ogbuagu, JSC. I agree with his reasoning and conclusions. The Court of Appeal was right when it held that it had no jurisdiction to hear Appellant's appeal against the judgment of appellate High Court which was final in respect of Local Government Election Petition in this case. This Court also has no jurisdiction in the matter. This appeal therefore fails and it is dismissed with N10,000.00 costs to each set of Respondents.

F

ONU JSC

The Appellant on 8th day of April, 2004 presented an election petition before the Local Government Election Tribunal holden at Akure, Ondo State wherein she claimed the following reliefs: -

G that: "WHEREOF, the petitioners pray that it may be determined

(i) *The 1st petitioner was the only Chairmanship candidate for Ilaje Local Government duly and validly nominated and sponsored by the National Headquarters of the P.D.P to contest the Chairmanship election on the platform of the PDP.*

(ii) *The 1st Respondent is not empowered by law to alter the list of candidates submitted to it by the National officers of the P.D.P.*

(iii) *The 2nd Respondent was not sponsored by the National Head-*

quarters of the PDP and that his name does not appear as a candidate in the list submitted to the 1st Respondent in January, 2004.

(iv) The 2nd Respondent was not candidate at the election and that his declaration as a winner by the 1st, 3rd and 4th Respondents is wrongful, illegal, null and void and of no effect whatsoever. B

(v) Having not been validly nominated by the 2nd petitioner to contest the election into the Chairmanship post in Ilaje Local Government the purported return of the 2nd Respondent as winner of the Chairmanship election of Ilaje Local Government is invalid, improper and null and void. C

(vi) The 1st petitioner having been duly and validly nominated by the 2nd Petitioner to contest the election into the Chairmanship post of Ilaje Local Government of Ondo State by the letter dated 20/1/04 written to the 1st Respondent and upon which the 1st Respondent received particulars and biodata of the 1st Petitioner as demanded the 1st Petitioner ought to be returned and declared as the winner of the election of 27/3/04 into the Chairmanship post of the Ilaje Local Government of Ondo State. D

(vii) An order that the purported declaration made in favour of the 2nd Respondent by the 1st, 3rd and 4th Respondents as winner of the said election be nullified. E

(viii) Perpetual injunction restraining the 2nd Respondent from holding out himself or parading himself as the Chairman of Ilaje Local Government and or from embarking on further administration and management of the finances of Ilaje Local Government Council. F

(ix) An order directing 1st Respondent to issue all statutory documents/certificates under the law which will enable the petitioner assume duty as the elected Chairman of Ilaje Local Government.” G

At the commencement of the suit, PDP was joined in the petition but was by an order of court made on 27th May, 2004 struck out of the proceedings.

The Election Tribunal declined jurisdiction in the petition on the ground that it concerns the internal affairs of the party. The petitioner was not satisfied with that decision and so appealed to the High Court of Ondo State which also declined jurisdiction. H

The single issue identified and contained in the Appellant's brief for our determination and filed on 9/3/06 complains:

“.....whether having regard to the combined effect of sections 240 and 241 (1)(a)(b) and f(v) of the Constitution of the Federal Republic of Nigeria 1999 and the peculiar provisions of section 94(2)(1) of the Local Government Administration Conduct of Local Government Election and Allied Matters Law 2003 of Ondo State (hereinafter called Ondo State Electoral Law 2003) appeal cannot lie as of right (in appropriate cases as in the instant case) from a decision of the High Court of Appeal merely because it was an appeal emanating from an election petition.”

Be it noted that the decision of the Court of Appeal which led to the instant appeal, emanated from the ruling of that court on a preliminary objection to the jurisdiction of that court to entertain the appeal raised by the 2nd Respondent on the grounds that the Ondo State High Court is the final court of appeal in respect of a Local Government election appeal.

Having been privileged to read the judgment of my learned brother Ogbuagu, JSC in draft, I agree with his reasoning and conclusion that this appeal lacks merit and should be dismissed. Accordingly, I dismiss the appeal and abide by all the consequential orders inclusive of costs as therein awarded.

KALGO JSC

The sole issue for determination in this appeal is whether by the provisions of S.94(2)(i) of the Local Government Administration Conduct of Local Government Election and Allied Matters Law 2003 of Ondo State, the High Court of Ondo State is the final Court of Appeal from decisions of Local Government Election Tribunals. Section 94(2) provides:-

“An appeal arising in respect of an election petition under this law shall lie to the High Court of the State”

By this provision, any decision of the Local Government Election

Tribunal on any election petition from the Ondo State Local Government Election can be appealed against to the High Court of Ondo State. The law makes no provision for further appeal from the High Court to the Court of Appeal or any other court or tribunal. It did not also specifically provide that the decision of the High Court is final. B

It is well established that jurisdiction to hear or entertain an appeal on a matter must be derived or conferred by statute or constitution. See *Adigun V. A-G Oyo State (No.2) (1987) 2 NWLR (Pt.56) 197*; *Ohuka V State (1988) 1 NWLR (Pt.68) 39*. It cannot be presumed and no court has the inherent power to hear appeal from the decision of any court. See *Adeyemi (Alafin of Oyo) V. A-G of Oyo State (1984) NSCC 397 at 419-420*. Nowhere in the Electoral Act 2000 was any provision made for appeals from the decisions of the State High Courts on election petitions to be heard by the Court of Appeal. There was no such provisions in the 1999 Constitution either, as only the National Assembly can confer such powers under S.246 (2) of the said Constitution. And the provision of S.241 of the said Constitution would not apply because an election petition is not strictly a civil proceeding; it is sui generis and moreover the High Court in this case heard the matter by way of appeal not at first instance. Having regard to the above, I am of the opinion that the Court of Appeal had no jurisdiction to entertain the appeal from the decision of the Ondo State High Court in this matter. D E

For the above and the more detailed reasons given by my learned brother Ogbuagu JSC in the leading judgment I find no merit in this appeal. I dismiss it accordingly with costs as assessed in the leading judgment. F

G

AKINTAN JSC

The appellant, Mrs. Olufunke Victoria Ehuwa, sought for nomination from her political party, the Peoples Democratic Party (PDP) into the office of the chairman of Ilaje Local Government in Ondo State. Her case was that she won the contest for the nomination at the congress held by her said political party and that she submitted all the required

documents to the party officials which were sent to the party headquarters. But instead of submitting her name to Ondo State Independent Electoral Commission (1st respondent) as the nominee of the party, PDP, it was the name of the second respondent, Andrew Adebambo Odoro, that B was sent as the party's candidate for the election. The election was held and the 1st respondent declared the 2nd respondent as the winner of the election.

The appellant was aggrieved and she instituted this action as a C petition against the respondents at the Ondo State Local Government Election Tribunal, holden at Akure. The reliefs she sought from the Tribunal, as set out in her said petition, are as follows

"WHEREOF, the Petitioners pray that it may be determined that:

i. *The 1st Petitioner was the only Chairmanship Candidate for D Ilaje Local Government duly and validly nominated and sponsored by the National Headquarters of the PDP to contest the Chairmanship election on the platform of the PDP.*

ii. *The 1st Respondent is not empowered by law to alter the list of E Candidates submitted to it by the National Officers of the PDP.*

iii. *The 2nd Respondent was not sponsored by the National Headquarters of the PDP and that his name does not appear as a candidate in the list submitted to the 1st Respondent in January, 2004.*

iv. *The 2nd Respondent was not a candidate at the election and F that his declaration as a winner by the 1st, 3rd, and 4th Respondents is wrongful, illegal, null and void and of no effect whatsoever.*

v. *Having not been validly nominated by the 2nd Petitioner to G contest the election into the chairmanship post in Ilaje Local Government of Ondo State the purported return of the 2nd Respondent as winner of the Chairmanship election of Ilaje Local Government is, invalid, improper and null and void.*

vi. *The 1st Petitioner having been duly and validly nominated by H the 2nd Petitioner to Contest the election into the chairmanship post of Ilaje Local Government of Ondo State by the letter dated 20/1/04 written to the 1st Respondent and upon which the 1st Respondent received particulars and Biodata of the 1st petitioner as demanded the 1st Petitioner*

ought to be returned and declared as the winner of the election of 27/3/04 into the Chairmanship post of the Ilaje Local Government of Ondo State.
vii. An order that the purported declaration made in favour of the 2nd Respondent by the 1st, 3rd and 4th Respondents as winner of the said election be nullified. B

viii. Perpetual injunction restraining the 2nd Respondent from holding out himself or parading himself as the chairman of Ilaje Local Government and or from embarking on further administration and management of the finances of Ilaje Local Government Council. C

ix. An order directing the 1st Respondent to issue all statutory documents/certificates under the law which will enable the petitioner assume duty as the elected Chairman of Ilaje Local Government.”

The facts relied on by the petitioner are set out in the petitioner’s affidavit and further affidavit. Paragraphs 5 to 11 and 15 of the petitioner’s affidavit read as follows: D

“5. The Petitioners state that only the list submitted to the 1st Respondent by the National Secretariat of PDP is valid and cannot be altered in any manner whatsoever except in the manner stipulated in the letter which accompanied the list of the 1st Respondent. The said letter dated 20th January, 2004 is hereby pleaded. E

6. The 2nd Respondent was not sponsored by the National Secretariat of the PDP in the list of Candidate submitted to the 1st respondent and it is contended that he was not a candidate at the Local Government Election conducted on the 27th of March, 2004. F

7. The 2nd Respondent claimed to have been nominated by the state chairman and the state Secretary of the PDP, Ondo State Chapter contrary to the Constitution of the PDP. G

8. YOUR PETITIONERS state that the state Chairman and the state Secretary of PDP, Ondo State Chapter are not empowered under the PDP constitution to submit list of candidates to the 1st Respondent and it is contended that the said submission is null and void. H

9. The Petitioners state that the 3rd and 4th Respondents are officials of the 1st Respondent who without any justification in favour of PDP did declare the 2nd Respondent as PDP Chairmanship Candidate

for the Local Government election and winner with a number of purported votes of 123,976 while Chief Debo Adeleye of Alliance for Democracy (AD) scored 11,275.

B 10. *The Petitioners state that the declaration of the 2nd Respondent by the 1st, 3rd and 4th Respondents of a candidate whose name does not appear in the list submitted to the 1st Respondent is wrongful, null and void.*

C 11. *The Petitioners state that at the close of nomination of Candidates for the Chairmanship election she was the only candidate validly nominated and sponsored by the 2nd Petitioner under Article 21 of the PDP Constitution.*

D 15. *The Petitioners aver that the 1st Respondent however jettisoned unlawfully the list submitted by the 2nd Petitioner and made use of the unauthorized list submitted by the Ondo State Chapter of the PDP contrary to the Constitution of the party."*

A copy of a letter from the National Secretary of the PDP addressed to the Ondo State Chairman of the party was exhibited along
E with the petitioner's further affidavit. Also attached to the letter is a list of the names said to have been submitted by the PDP to the Ondo State Independent Electoral Commission (1st respondent) in all the Local Governments in the State. The appellant's name, according to the list, was
F the one submitted as the party's candidate for the Chairmanship contest in Ilaje Local Government. The petitioner led evidence in support of the averments in her petition.

G The 2nd respondent filed a reply to the petition. He denied therein that the appellant was the candidate sponsored by PDP for the chairmanship contest in the election. He claimed that he was the person whose name was submitted for the election.

Evidence was also led in support of the 2nd respondent's case. One of the witnesses that testified for the respondent is Alhaji Alli Olanusi
H (DW2), the Ondo State Chairman of PDP. He told the tribunal that the 2nd respondent's name was the one submitted by his party to the Electoral Commission for the office of Chairman of Ilaje Local Government. He denied that the name of the petitioner on the list tendered by the peti-

tioner emanated from the party. He said thus in his evidence:

“.....The name of Ehuwa (petitioner) in Exhibits A-E did not emanate from the party. By virtue of my position as the state chairman of PDP, I also belong to the National Exco of the PDP. I wrote to the National Chairman of the PDP to the effect that I never knew how Mrs. Ehuwa’s name was smuggled into the list of the candidate at the National Secretariat. The National Chairman then replied my letter and regretted the action that it was a mix up.”

The tribunal found, inter alia, from the evidence led before it as follows in its judgment:

“From the avalanche of evidence both documentary and oral placed before this tribunal, it is crystally clear the tussle as to who should be the nominated candidate of the party is not the making of the petitioner and the 2nd respondent per se but tussle arising from show of power and authority between the offices of the state chapter of the PDP and the National Office inter se.”

The tribunal then came to the conclusion that the petition lacked merit and it accordingly dismissed it because it *“cannot survive the vice of non-justiciability that has afflicted it.”*

The appellant’s appeal to both the High Court and the Court of Appeal were also dismissed for the same reason. The present appeal is from the decision of the Court of Appeal in the matter. The main issue in the appeal, simply put, is whether the lower court or the courts in general, were right in declining jurisdiction in matters relating to nomination of candidates for elections by political parties. This matter has long been settled by a full panel of this court in *Onuoha v. R. B. Okafor & Ors* (1983) 2 NCLR 244. Obaseki, JSC stated the position of the law in the matter in that case on pages 259-260 of the report as follows:

“The law is therefore certain as to who is to resolve the dispute where two candidates claim sponsorship. It is the Federal Electoral Commission by consulting the leader of the political party concerned. In other words, the Federal Electoral Commission is required to act on the advice of the leader of the political party concerned. The real power to make a choice is, in my view, in the political party through its leader.

That being the state of the law, the real question must be whether the matter in dispute now before this Court on appeal is justiciable. It is clear to me that the expressed intention of the Constitution of the Federal Republic 1979 and the Electoral Act 1982 is to give a political party, in the instant appeal the N.P.P (Nigerian Peoples' Party), the right freely to choose the candidate it will sponsor for election to any elective office or seat in the legislature and in this instant appeal a seat in the House of Senate of the National Assembly. The exercise of this right is the domestic affair of the N.P.P. guided by this constitution. There are no judicial criteria or yardstick to determine which candidate a political party ought to choose and the judiciary is therefore unable to exercise any judicial power in the matter. It is a matter over which it has no jurisdiction. The question of the candidate a political party will sponsor is more in the nature of a political question which the courts are not qualified to deliberate upon and answer. The judiciary has been relieved of the task of answering the question by the Electoral Act when it gave the power to the leader of the political party to answer the question.

It is therefore my view that the matter in dispute brought before the Courts is not justiciable."

It follows therefore that the appellant's claim before the tribunal being a dispute as to which candidate was nominated for the Chairmanship of Ilaje Local Government in Ondo State, is not justiciable having regard to the decision of the political party (PDP) as given in evidence by the state chairman of the party that the 2nd respondent was the candidate nominated by the party for the election.

Similarly, as the jurisdiction of this Court and the Court of Appeal must either be conferred by the Constitution or a law enacted by the National Assembly, the Ondo State law which established the Ondo State Independent Electoral Commission and created the Election Tribunal, is incapable of conferring a right of appeal on both the lower court and this court. Both the lower court and this court therefore have no jurisdiction to entertain the petitioner's appeal. Where therefore a court lacks jurisdiction to entertain a claim, the proper order such a court should make is one striking out the matter. I therefore hold that the proper order

which the lower court and this court should make in the appellant's appeal is an order striking out the appeal.

For the reasons I have given above and the fuller reasons given in the leading judgment prepared by my learned brother, Ogbuagu, JSC, the draft of which I have read, I make an order striking out the appeal and abide by the order on costs made in the leading judgment.

ONNOGHENJSC

The appellant on the 8th day of April, 2004 presented an election petition before the Local Government Election Petition Tribunal holden at Akure, Ondo State in which she claimed the following reliefs:-

“WHEREOF, the petitioners pray that it may be determined that;

(i) The 1st petitioner was the only Chairmanship candidate for Ilaje Local Government duly and validly nominated and sponsored by the National Headquarters of the PDP to contest the Chairmanship election on the platform of the PDP.

(ii) The 1st Respondent is not empowered by law to alter the list of candidates submitted to it by the National officers of the PDP

(iii) The 2nd Respondent was not sponsored by the National Headquarters of the PDP and that his name does not appear as a candidate in the list submitted to the 1st Respondent in January, 2004.

(iv) The 2nd Respondent was not a candidate at the election and that his declaration as a winner by the 1st, 3rd and 4th Respondents is wrongful, illegal, null and void and of no effect whatsoever.

(v) Having not been validly nominated by the 2nd petitioner to contest the election into the Chairmanship post in Ilaje Local Government of Ondo State the purported return of the 2nd respondent as winner of the Chairmanship election of Ilaje Local Government is invalid, improper and null and void.

(vi) The 1st petitioner having been duly and validly nominated by the 2nd Petitioner to contest the election into the Chairmanship post of Ilaje Local Government of Ondo State by the letter dated 20/1/04 written to the 1st Respondent and upon which the 1st Respondent received par-

ticalars and Biodata of the 1st Petitioner as demanded the 1st Petitioner ought to be returned and declared as the winner of the election of 27/3/04 into the Chairmanship post of the Ilaje Local Government of Ondo State.

(vii) *An order that the purported declaration made in favour of the 2nd Respondent by the 1st, 3rd and 4th Respondents as winner of the said election be nullified.*

(viii) *Perpetual injunction restraining the 2nd Respondent from holding out himself or parading himself as the Chairman of Ilaje Local Government and or from embarking on further administration and management of the finances of Ilaje Local Government Council.*

(ix) *An order directing 1st Respondent to issue all statutory documents/certificates under the law which will enable the petitioner assume duty as the elected Chairman of Ilaje Local Government.”*

Originally PDP was joined in the petition as 2nd petitioner but was by an order of court made on 27th May 2004 struck out of the proceedings.

The Election Tribunal declined jurisdiction in the petition on the ground that it concerns the internal affairs of the party. The petitioner was not satisfied with that decision and consequently appealed to the High Court of Ondo State which also declined jurisdiction on the same grounds thereby upholding the decision of the trial Tribunal. Appellant not being still satisfied appealed to the Court of Appeal, Benin Division which again declined jurisdiction resulting in the present further appeal before this Court.

In the appellant’s brief of argument settled by learned counsel for the appellant PRINCE ORJI NWAFOR-ORIZU and filed on 9/3/06, the following single issue is identified for determination of the appeal:-

“.....whether having regard to the combined effect of sections 240 and 241(1) (a) (b) and f(v) of the Constitution of the Federal Republic of Nigeria 1999 and the peculiar provisions of section 94(2)(1) of the Local Government Administration Conduct of Local Government Election and Allied Matters Law 2003 of Ondo State (hereinafter called Ondo State Electoral Law 2003) appeal cannot lie as of right (in appropriate case as the instant case) from a decision of the High Court of

Ondo State to the Court of Appeal merely because it was an appeal emanating from an election petition.”

It should be noted that the decision of the Court of Appeal resulting in the instant appeal emanated from the ruling of that court on a preliminary objection to the jurisdiction of that court to entertain the appeal raised by the 2nd respondent on the ground that the Ondo State High Court is the final court of appeal in respect of Local Government election petition.

In arguing the appeal, learned counsel for the appellant submitted that the Ondo State Electoral Law 2003 enacts that appeals from the Local Government Election Petition Tribunal lie to the High Court of Ondo State and not that the said High Court is to sit as an appeal tribunal simpliciter; that the High Court was therefore to sit as a High Court with a single judge having the powers of the High Court; that the law did not make the decision of the High Court on election petition appeal final; that since section 240 of the 1999 Constitution allows appeals from the High Court to the Court of Appeal, the Court of Appeal has the jurisdiction to entertain appellant’s appeal and that the court was in error in holding that it does not have jurisdiction.

Learned counsel conceded that though it is the law that a right of appeal exists only when it is created by statute or the Constitution and does not derive from the inherent jurisdiction or common law as decided in *Esuk vs Keko* (1994) 4 NWLR (pt. 340) 625, in the instant case the appeal to the Court of Appeal is a creation of sections 240 and 241(1) (a) (b) f(v) of the 1999 Constitution read together and not section 246(1) thereof as cited and relied upon by the Court of Appeal; that since section 94(2) of the Ondo State Electoral Law 2003 did not state that the High Court to which appeals from the Local Government Election Petition Tribunal lies shall sit as an Election Appeal Tribunal, it means that in hearing such appeals, the High Court sits as a regular High Court hearing appeals and as such, learned counsel further continued, appeal lies against its decision in that capacity to the Court of Appeal under sections 240 and 241 of the 1999 Constitution, that if it was the intention of the Ondo State legislature to make the decision of the Ondo State High Court on election

appeals final, they would have stated so clearly in the law as has always been the case in other earlier legislations including section 246(3) of the 1999 Constitution with regards to Governorship and National Assembly election appeals to the Court of Appeal; that since no such express provision was made in the said law, it means the Ondo State Legislature wanted appeals against decisions of the High Court on appeals from Local Government Election Petition Tribunals to go all the way to the Supreme Court of Nigeria and that it is within their legislative competence to so enact particularly under section 7 of the 1999 Constitution.

On his part, learned counsel for 1st, 3rd and 4th respondents in their respondents' brief of argument filed by A. O. ADEBUSOYE Esq, Solicitor General, Ministry of Justice, Akure submitted that by virtue of the provisions of section 94(2) of the relevant law, the Ondo State High Court is the final Court of Appeal in an election petition arising from the decision of the Local Government Election Petition Tribunal notwithstanding the fact that the law did not expressly state that the said decision of the High Court shall be final, particularly as there is no provision in the said law that an appeal shall further lie from the decision of the Ondo High Court to the Court of Appeal in such matters; that appellate jurisdiction is a creation of statute and no court has the jurisdiction to confer on itself jurisdiction to entertain a matter except statutorily provided relying on *Esuku vs Keko* supra; *Akande vs Nigerian Army* (2001) 8 NWLR (pt. 714) 1. Learned counsel further submitted that since the Ondo State Electoral Law does not mention that an appeal shall further lie to the Court of Appeal, it does not intend an appeal to further lie to that court relying on the principle that where a statute mentions specific thing of person, the intention is that those not mentioned are not intended to be included and the cases of *Buhari vs Dikko Yusuf* 14 NSCQR 1114; and *Esewe vs Gbe* (1988) 5 NWLR (pt. 93) 135; are cited or referred to. That there is no Act of the National Assembly conferring jurisdiction on the Court of Appeal to hear appeals from decisions of the High Court sitting as an appeal court in respect of local government election petition matters. Learned Counsel then urged the court to resolve the issue against the appellant.

On his part, learned counsel for the 2nd respondent, ADEREMI OLATUBORA Esq submitted that by virtue of the provisions of section 246(1) of the 1999 Constitution, appeal does not lie from the decision of any court or tribunal aside from the decision of the National Assembly Election Tribunals and Governorship and Legislative Houses Election B Tribunals to the Court of Appeal and that election petitions are not the same as ordinary civil proceedings they being sui generis, relying on Orubo vs NEC & ors. (1988) 3 NSCC 333; Awuse vs Odili (2003) 18 NWLR (pt. 851) 116; that the special appellate jurisdiction of the Court C of Appeal on election matters does not extend to appeals arising from election petitions over local government elections and urged the court to resolve the issue against the appellant.

Now, sections 240 and 241(1) (a) (b) f(v) of the 1999 Constitution and section 94 (2) of the Ondo State Electoral Law cited and relied D upon by learned counsel for the appellant provide inter alia as follows:-

“240. Subject to the provisions of this Constitution, the Court of Appeal shall have jurisdiction to the exclusion of any other court of law in Nigeria to hear and determine appeals from the Federal High Court, E the High Court of the Federal Capital Territory, Abuja, High Court of a State, Sharia Court of Appeal of the Federal Capital Territory, Abuja, Sharia Court of Appeal of a State Customary Court of Appeal of a State Customary Court of Appeal of the Federal Capital Territory Abuja, Cus- F tmary Court of Appeal of a state and from decisions of a court martial or other tribunals as may be prescribed by an Act of the National Assembly.

241(1). An appeal shall lie from decisions of the Federal High G Court or a High Court to the Court of Appeal as of right in the following cases-

- (a) final decisions in any civil or criminal proceedings before the Federal High Court or a High Court sitting at first instance;*
- (b) where the ground of appeal involves questions of law alone, H decisions in any civil or criminal proceedings;*
- (f) decisions made or given by the Federal High Court or a High Court -*

(v) *in such other cases as may be prescribed by any law in force in Nigeria.*”

While section 94(2) (1) of the Ondo State Electoral Law 2003 provides thus:

B “(1) *An appeal arising in respect of an election petition under this law shall lie to the High Court of the State.*”

C Learned counsel for the appellant has argued that it is the combined effects of these sections that confer jurisdiction on the Court of Appeal to hear appeals from decisions of the High Court including a decision of that court on appeal from a local government election tribunal. Learned counsel for the appellant has also referred to section 7 of the 1999 Constitutions by virtue of which the Ondo State enacted the law in question and submitted that since section 94(2) (1) thereof does not say D that the appeal from the local government election tribunal to the High Court shall be final and that law being within the legislative competence of the state legislature to make, a further appeal lies to the Court of Appeal under sections 240 and 241 of the said 1999 Constitution.

E It is settled law that the court should, when interpreting the provisions of the Constitution, bear in mind that the function of the Constitution is to establish a framework and principles of government, broad and in general terms, intended to apply to the varying conditions which the development of a plural and dynamic society must involve. Therefore, F more technical rules of interpretation are to some extent inadmissible in a way as to defeat the principles of government enshrined in the Constitution. Therefore, where the question is whether the Constitution has used an expression in the wider or in the narrower sense, the Court should, G whenever possible, and in response to the demands of justice, lean to the broader interpretation, unless there is something in the text or in the rest of the constitution to indicate that the narrow interpretation will best carry out the object and purpose of the Constitution, see *Rabiu vs Kano State* (1980) 2 NCLR 293; *Aqua Ltd vs Ondo State Sports Council* (1985) 4 NWLR (pt. 91) 622; *Tukur vs Government of Gongola State* (NO. 2) (1989) 4 NWLR (pt. 117) 517; *A-G Abia State vs A-G Federation* (2002) 6 NWLR (pt. 763) 264.

The proper approach to the interpretation of clear words of a statute is to follow them in their simple, grammatical and ordinary meaning rather than look further because that is what prima facie gives them their most reliable meaning. This is generally also true of construction of constitutional provisions if they are clear and unambiguous even when it is necessary to give them a liberal or broad interpretation - see *Fawehinmi vs I.G of Police & ors* (2002) 7 NWLR (pt. 767) 606 at 678. B

I will however need, to refer to section 246(1) (b) also of the 1999 Constitution which confers specific jurisdiction on election matters on the Court of Appeal. It provides inter alia as follows:- C

“246(1). An appeal to the Court of Appeal shall lie as of right from.

(b) decisions of the National Election Tribunal and Governorship and Legislative House Election Tribunals on any question as to whether. D
.....”

It is very clear that whereas section 240 of the 1999 Constitution confers general jurisdiction on the Court of Appeal to hear and determine appeals from the courts mentioned therein, section 246, particularly E 246(1)(b) thereof confers specific jurisdiction on that court in respect of decisions of election tribunals mentioned therein. Section 246(3) of the 1999 Constitution went on to provide that:

“The decisions of the Court of Appeal in respect of appeals arising from election petitions shall be final.” F

It is very clear from the above provisions, particularly section 246 (1) (b) thereof that the only election tribunals in respect of whose decisions jurisdiction has been conferred on the Court of Appeal to determine are the National Assembly Election Tribunals and the Governorship and G Legislative Houses Election Tribunals. When one looks also at the provisions of section 246(2) of the said 1999 Constitution it becomes clear that appeals to the Court of Appeal can only lie from decisions of election H tribunals established by the National Assembly and that only the National Assembly can confer jurisdiction on the Court of Appeal to hear such appeals. It is not in doubt at all that the election tribunal the decision of which was appealed to the High Court resulting in a further appeal to the

Court of Appeal was not established by the National Assembly as required by subsection 2 of section 246 but by the Ondo State House of Assembly pursuant to section 7 of the 1999 Constitution. That being the case, it would have been illegal or unconstitutional for the Ondo State House of Assembly to have enacted that an appeal against the decision of the local government election tribunal shall lie to the Court of Appeal. The question now is, whether what the Constitution does not provide for directly can be achieved indirectly or through the back door. In short whether there being no direct further right of appeal against the decision of the said tribunal in local government election petitions the same can be achieved through the general appellate jurisdiction conferred on the Court of Appeal by virtue of section 240 of the 1999 Constitution. That is the crux of the matter in this appeal.

It is settled law that jurisdiction is a creation of statute or that jurisdiction is always donated by the Constitution or statute and is never inferred or implied. Looking closely at the relevant constitutional provisions, I have no hesitation in holding that no section of the 1999 Constitution expressly conferred on the Court of Appeal the jurisdiction to hear appeals from the High Court emanating from decisions of that court on appeal from local government election tribunals. It is not disputed that election petition proceedings are not part and parcel of ordinary civil proceedings of the ordinary courts but sui generis and are usually specifically and specially provided for in legislations for that purpose. Such provisions include appeals against decisions of the election tribunals.

It is not disputed that by the provisions of section 7 of the 1999 Constitution Local Government elections and election tribunals sitting on petitions arising therefrom are matters within the legislative competence of the State Houses of Assembly which are by virtue of the provisions of section 246(2) of the said Constitution and as earlier found in this judgment, incapable of conferring jurisdiction on the Court of Appeal to hear and determine appeals therefrom. I hold the view that the case of the appellant does not fall within the general provisions of section 240 of the 1999 Constitution the purported appeal not arising from the normal or ordinary civil proceeding before the High Court but from the appellate

jurisdiction of that court exercised in respect of appeals from local government election tribunals. It is clear and both counsel are agreed, that the Ondo State Local Government Electoral Law 2003 makes no provision for further appeal from the decision of the High Court on appeals to that court from decisions of the local government election tribunals - B even if it did, that provision would be unconstitutional as earlier stated in this judgment. The position of the law being as it is I hold the considered view that even though section 94(2) (1) of the law does not state that the decision of the High Court on appeals from decisions of the local government election tribunals "shall be final", it is clear that that is what the C Ondo State Legislature intended particularly as it has no legislative competence to confer jurisdiction on the Court of Appeal to hear appeals against decisions of the local government election tribunals established by it, its legislative competence under section 7 of the 1999 Constitution D being limited to the state and in matters of jurisdiction to the State High Court. To hold otherwise would mean opening the back door to the Court of Appeal for the appellant against whom the Constitution has closed the front door in respect of decisions of local government election tribunals. E To hold otherwise would also be absurd particularly as appeals from National Assembly and Governorship and Legislative Houses of Assembly election petition tribunals end at the Court of Appeal as constitutionally provided for in section 246(3) of the 1999 Constitution. If those F against local government election tribunals are given access to the Supreme Court considering the further fact that the life span of a local government administration is about three years and appeals up to the Supreme Court take a conservative minimum of five years from the court G of trial, such a decision will certainly lead to more absurdities.

In conclusion I hold that the Court of Appeal has no jurisdiction to hear and determine appeals from decisions of the High Court on appeals from local government election tribunals established by the State House of Assembly by virtue of the provisions of section 7 of the 1999 Constitution and that the decision of the State High Court on such appeals are final and conclusive. Consequently I agree with my learned brother OGBUAGU, JSC that the appeal is without merit and should be dismissed. H

I order accordingly and abide by the all consequential orders contained in the said lead judgment including the order as to costs.

Appeal dismissed.

B

TABAI JSC

C The Appellant herein filed a petition at the Ondo State Local Government Election Petition Tribunal whereby she challenged the nomination sponsorship and eventual election of the 2nd Respondent. In its judgment on the 7th of June 2004 the petition was dismissed on the ground that the petition borders on political issues involving the internal affairs of the Peoples Democratic Party (P.D.P.) and thus a no go area for the tribunal.

D Dissatisfied, she went on appeal to the High Court of Justice, Ondo State. The appeal was on the 30/7/2004 dismissed. The court affirmed the decision of the tribunal that it had no jurisdiction to entertain the petition.

E The Appellant was still dissatisfied and went on appeal to the Court of Appeal. Therein the 2nd Respondent raised a Notice of Preliminary objection to the competence of the appeal. The grounds were stated be as follows:-

F (a) The Appeal is grossly incompetent as it runs contrary to the intent and purpose of section 94(2)(1) of the Local Government Administration, Conduct of Local Government and Allied Matters Law 2003 of Ondo State which provides that “An appeal arising in respect of an election petition under this law shall lie to High Court of the State.

G (b) The Court of Appeal lacks jurisdiction to entertain the Appeal by virtue of section 94(2)(1) of the Local Government Administration, Conduct of Local Government Election and Allied Matters Law 2003 of Ondo state which render the decision of the High Court of the State sitting as an appellate court in respect of Local Election Petition as final.

H (c) The Appeal constitutes an abuse of court process. On the 8/7/2005 the court delivered its ruling. The objection of the 2nd Respondent was upheld and the appeal struck out for incompetence.

This appeal is against the Ruling of the Court of Appeal. The Appellant's Brief was settled by Orji Nwafor-Orizu. He also filed Appellant's Reply Brief. A. O. Adebuseye learned Solicitor-General Ondo State prepared the 1st, 3rd and 4th Respondent's Brief of Argument. Aderemi Olatubora prepared the 2nd Respondent's Brief. Learned counsel for the parties all raised only a single issue for determination. Learned counsel for the Appellant formulated the issue as follows:

Whether having regard to the combined effect of section 240 and 241(1)(a)(b) and f(v) of the Constitution of the Federal Republic of Nigeria 1999 and the peculiar provisions of section 94(2)(1) of the Local Government Administration Conduct of Local Government Election and Allied Matters Law 2003, appeal cannot lie as of right (in appropriate case as the instant case) from the decision of the High Court of Ondo State to the Court of Appeal merely because it was an Appeal emanating from an election petition.

Learned counsel for the Respondent each formulated a single issue which is in substance the same as that of the Appellant.

The substance of the argument of learned counsel for the Appellant is that although the Local Government Administration Conduct of Local Government and Allied Matters Law 2003 does not specifically provide that appeal shall lie for the decision of the High Court to the Court of Appeal, section 240 and 241(1)(a)(b)(f)(v) of the Constitution read together confers that appellate jurisdiction on the Court of Appeal. He urged this Court to adopt the decision of the Court of Appeal in Suit No. CA/IL/31/04 D.P.P. v KWARA STATE INDEPENDENT ELECTORAL COMMISSION & 4 ORS.

The Solicitor-General for the 1st, 3rd and 4th Respondents argued that the Electoral Law of Ondo State 2003 does not provide for appeals from the decision of the High Court to the Court of Appeal and since jurisdiction can only be confer by a statute and the law does not so provide, the Court of Appeal was right to decline appellate jurisdiction. Learned counsel for the 2nd Respondent also argued in the same direction. He referred to the decision in D.P.P. v KWARA STATE INDEPENDENT ELECTORAL COMMISSION (supra) and urged that the opinion

of M. S. Muntaka-Coomassie JCA be preferred. It was his further submission that the specific and explicit provision of section 246(1)(b) of the Constitution assigns jurisdiction to the Tribunals mentioned therein and cannot be extended to decisions emanating from Local Government
B Election Tribunals.

In my view the provisions of the constitution which are relevant to this case are sections 240, 241(b) and Section 246.

Section 240 of the Constitution provides:-

C *“Subject to the provisions of this Constitution, the Court of Appeal shall have jurisdiction to the exclusion of any other court of law in Nigeria to hear and determine appeals from the Federal High Court, High Court of the Federal Capital Territory Abuja, High Court of a State, Sharia Court of Appeal of the Federal Capital Territory Abuja, D Sharia Court of Appeal of a State, Customary Court of Appeal of the Federal Capital Territory Abuja, Customary Court of Appeal of a State and from decisions of a court martial or other Tribunals as may be prescribed by an Act of the National Assembly.”*

E Learned counsel for the Appellant tends to restrict his construction to the phrase or other tribunals to urge that the jurisdiction conferred on the Court is extended to the Local Government Election Tribunal in Ondo State. The underling “and from decisions of a court martial or F other tribunals as may be prescribed by an Act of the National Assembly” clearly shows, in my humble view, that the jurisdiction is restricted to other tribunals as may be prescribed by an Act of the National Assembly clearly excludes those that may be prescribed by the House of Assembly of a state such as the tribunal in question on this appeal.

G Further more section 246(1) of the Constitution says:

An appeal to the Court of Appeal shall lie as of right from -

(a) decisions of the Code of Conduct Tribunal established in the fifth Schedule to this Constitution.

H (b) decisions of the National Assembly Election Tribunals And Governorship and Legislative Houses Election Tribunals on any question as to whether

(i) any person has been validly elected as a member of the National

Assembly or of a House of Assembly of a State under this Constitution.

(ii) any person has been validly elected to the office of Governor or Deputy Governor, or

(iii) the term of office of any person has ceased or the seat of any such person has become vacant.

Learned counsel for the Appellant again relied on section 246(2) of the Constitution to contend that the Court of Appeal has jurisdiction to entertain the appeal. Section 246(2) provides.

“The National Assembly may confer jurisdiction upon the Court of Appeal to hear and determine appeals from any decision of any other court of law or tribunal established by the National Assembly.”

Here again the jurisdiction is confined to decision of any other court of law or tribunal established by the National Assembly. The Ondo State Election Tribunal not being a tribunal established by the National Assembly does not come within the purview of section 246(2) of the Constitution.

Finally learned counsel for the Appellant relied on subsection (3) of section 246 and submitted that the Court of Appeal has the jurisdiction to hear the appeal. Section 246(3) of the Constitution says:-

“The decision of the Court of Appeal in respect of appeals Arising from election petitions shall be final.”

My humble view here is that the subsection should be read in relation to the provisions of the other provisions of section 246. I think this is where the Eiusdem generis rule should apply. The rule simply means that in interpreting the provisions of a statute general words which follow particular and specific words of the same nature as themselves take their meaning from those specific words. In the context of the provisions of section 246 of the Constitution, it is my view therefore that election petitions on section 246(3) of the Constitution should be presumed to be confined to the election petitions specifically mentioned in section 246(1)(b) of the Constitution that is to say, decisions of National Assembly Election Tribunals Governorship and Legislative Houses Election Tribunals.

In conclusion I hold that although the Ondo State Law does not

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specifically state that the decision of the State High Court is final, the Constitutional Provisions do not allow appeals from decisions of the Ondo State Local Government Election Tribunal to the Court of Appeal. For the foregoing and the fuller reasons comprehensibly set out in the judgment
B of my learned brother Ogbuagu JSC, I also dismiss the appeal as lacking in merit. I abide by the order on costs in the leading judgment also.

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