

SUPREME COURT OF NIGERIA

20th APRIL, 2007, SC. 31/2007

**CORAM:- S. U. ONU, D. MUSDAPHER. S.A. AKINTAN,
W. S. N. ONNOGHEN, F. F. TABAI, I. T. MUHAMMAD, P. O.
ADEREMI, JJSC**

ATTORNEY-GENERAL OF THE FEDERATION 1ST APPELLANT
INSPECTOR-GENERAL OF POLICE 2ND APPELLANT
INDEPENDENT NATIONAL ELECTORAL
COMMISSION (INEC) 3RD APPELLANT
AND

1. ALHAJI ATIKU ABUBAKAR
(VICE PRESIDENT, FEDERAL
REPUBLIC OF NIGERIA)
2. THE NATIONAL ASSEMBLY RESPONDENTS
3. THE PRESIDENT OF THE SENATE
OF THE FEDERAL REPUBLIC OF
NIGERIA
4. SPEAKER, HOUSE OF REPRESENTATIVE
OF THE FEDERAL REPUBLIC OF NIGERIA

ACTIONS - Lis or cause of action - Meaning of - Includes controversy
- Plaintiff must show the injury he sustained - And an interest that is
above that of the general public (H1)

ACTIONS - Lis - Existence of - Where 1st respondent's claim - And
evidence on record show good cause of action - Existence of a lis is
established (H2)

JUDGMENTS - Form - Good judgment - Has no particular form - As
long as it contains some well known constituent parts - Such as resolu-
tion of the parties' issues (H3)

STATUTES - Interpretation of - Literal or positive approach - Phrases of

technical legislation - Words are construed - In their ordinary and natural meaning (H4)

CONSTITUTIONAL LAW - Interpreting the Constitution - Courts' approach - Is to follow established principles - Which include taking circumstances of our people into consideration (H5)

CONSTITUTIONAL LAW - Impeachment - Powers - Vice President - Performs roles assigned by the President - Unlike the Ministers President cannot remove him from office - It is through impeachment by the National Assembly - Under s. 143 1999 Constitution (H6)

CONSTITUTIONAL LAW - Federal Government - Single executive - Implications - Vice President's relationship with the President - Should be one of unity throughout their joint term in office (H7)

CONSTITUTIONAL LAW - Appeals - Vice President - While still in office - Cannot openly criticize the President - Or join another political party - As wrongfully held by the lower court (H8)

CONSTITUTIONAL LAW - Impeachment - Jurisdiction - Removal of Vice President from office - Is the National Assembly's duty - Under s. 143, 1999 Constitution - The court has no jurisdiction to declare the office vacant (H9)

ACTIONS - Constitutional law - Counter claims - Declarations thereunder that have merit - Will be granted by the Supreme Court - While dismissing the rest of the claims (H10)

FACTS

Before the Court of Appeal, under its original jurisdiction, 1st plaintiff/respondent commenced this action by an originating summons filed on 4 - 7 - 2007. The facts deposed to in the supporting affidavits show that there had been an unhealthy relationship between the President and

the 1st respondent. At a stage, 1st appellant (A-G Federation) filed an action against 1st respondent and others at the Court below in which he was described as “former Vice President.” There were newspaper publications in which the President had been reported as having removed 1st respondent from his post as Vice President. All these plus more were the reasons this action was filed. 1st respondent claimed inter alia, a declaration that his term of office as Vice President of Nigeria still subsists and does not terminate until 29 - 5 - 2007, and a declaration that the President has no constitutional or legal authority to declare his office as the Vice President vacant.

The 1st appellant opposed the claim and filed a counter claim. The 1st 3 legs of the counter claim which were upheld by the Supreme Court on appeal were:- 1. Declaration that a Vice President must belong to same political party with the President 2. Relationship between the two is one of one mindedness, loyalty, trust, mutual confidence and good faith which does not permit double loyalty and 3. Office of the Vice President can become vacant upon his resignation. 1st respondent was shown on 20 - 12 - 2006 to have openly declared for another political party, the Action Congress, to have openly condemned the PDP (Peoples Democratic Party) led Government and the President of the Country. 1st respondent sought to justify some of the steps taken by him by alleging some continuous harassment he had suffered such as suspension from the PDP, criminal action filed against him at the Code of Conduct Tribunal, etc.

The matters came up for hearing on 7 - 2 - 2007 before the Court of Appeal with the President of the Court, Abdullahi, PCA, presiding. In the reserved judgment delivered on 20 - 2 - 2007, the Court granted plaintiff's/1st respondent's claim in part and dismissed the 1st defendant's/appellant's counter claim. Being dissatisfied, appellants have appealed to the Supreme Court.

ISSUE FOR DETERMINATION

Whether the Court of Appeal is correct in its decision that the seat of the Vice President will not become vacant if he abandons the political party on whose platform he and the President were elected and joins another political party.

HELD (Unanimously dismissing the appeal, but granting the 1st 3 legs of the counter claim per **AKINTAN JSC**)

Lis or cause of action - Meaning of

- B 1. It is settled law that a lis or cause of action is constituted by a bundle of facts which the law will recognize as giving the plaintiff a right of action. It is a situation or state of facts which would entitle a party to sustain action and give him right to seek judicial remedy or redress. Such facts or combination of facts which give rise to a right to sue may consist of two elements - viz: the wrongful act of the defendant which gives the plaintiff his cause of action; and the consequential damage. Lis therefore means suit, action, controversy or dispute. It follows, therefore, that to entitle a person to invoke judicial power, he must show that either his personal interest will immediately be affected by the action or that he had sustained injury to himself and which interest is over and above the interest of the general public. (p. 1463 B)

Lis - Existence of

2. In the instant case, the facts deposed to in the supporting affidavits filed along with the 1st respondent's originating summons show that there had been an unhealthy relationship between the President and the 1st respondent. The 1st appellant had at a stage filed an action against the 1st respondent and others at the court below in which the 1st respondent was described as "former Vice President." There were also newspaper publications in which the President had been reported as having removed the 1st respondent from his post as Vice President; and a television interview given by one Mallam Uba Sanni, an official in the Presidency, in which he was quoted as saying that the post of the Vice President had been declared vacant. Although that statement was later denied or claimed to have been quoted out of context, I believe that the sum total of the evidence available on record clearly support the contention that the 1st respondent had supplied sufficient evidence to show that he had a good cause of action to warrant instituting this action which he filed in the court below. The contention of the 1st appellant in the 1st appellant's issue

1 that the 1st respondent failed to establish the existence of a *lis* to warrant the grant of the first three legs of the 1st respondent's claim can therefore not stand. The appeal as relates to that issue therefore fails. (p. 1463 G)

B

Good judgment - Has no particular form

3. There is no particular form a judgment should take. But all that is required of a good judgment is that it must contain some well known constituent parts. Some of such constituent parts which a good judgment must contain, in case of a trial court, include: (1) the issues or questions to be decided in the case; (2) the essential facts of the case of each party and the evidence led in support; (3) The resolution of the issues of fact and law raised in the case; (4) the conclusion or general inference drawn from facts and the law as resolved; and (5) the verdict and orders made by the court: See *Ogba v Onwuzu* (2005) 6 SC (Pt. 1) 41 at 49. The above requirements however, need not be stated expressly in every judgment and they need not all be present in every case. It follows therefore that a judgment will not *per se* be set aside on proof that one or more of the above ingredients of a good judgment are missing unless it is shown that such omissions resulted in total miscarriage of justice.

In the instant case, all the issues raised by the parties were duly resolved in the judgment. It is also clear from the judgment that the inferences drawn by the learned President are supported by the evidence placed before the court in the affidavit evidence tendered before the court in the case. The fact that the learned President did not repeat the evidence led in support of any particular conclusion he drew or to say that he came to a particular decision because he believed or disbelieved a particular piece of evidence will not be enough to set aside such conclusion. In the result, I hold that since it has not been shown that the conclusions reached by the court below in the instances raised under the said issue 2 resulted in the court's decision being perverse, the appeal, as it relates to issue 2, therefore lacks merit. (p. 1465 A)

STATUTES - Interpretation of

4. The generally accepted rule of construction is that it is to be assumed that the words and phrases of technical legislation are used in their technical meaning if they have acquired one, and otherwise in their ordinary meaning. Phrases and sentences are to be construed according to the rules of grammar. If there is nothing to modify, alter or qualify the language which the statute contains, it must be construed in the ordinary and natural meaning of the words and sentences. This approach is regarded as “literal interpretation” or characterized as the “positivist approach.” (p. 1468 E)

Interpreting the Constitution - Courts’ approach

5. The approach of our courts in interpreting statutes and the constitution is the same as declared above. This court had stated the position in numerous cases. The principle as enunciated may be summarized as follows: (1) that in interpreting the Constitution, a liberal approach should be adopted: See *Nafiu Rabiu v. Kano State* (1980) 8 - 11 SC 130 at 148; (2) that the court must employ care and always bear in mind that the circumstances of our people must be taken into consideration: See *Ukaegbu v. Attorney-General of Imo State* (1983) 1 SC NLR 212; (3) that the historical facts which are necessary for comprehension of the subject-matter may be called as aid: See *Uwaifo v. Attorney-General of Bendel State* (1982) 7 SC 124; and *Bronik Motors v. Wema Bank* (1983) 1 S.C.N.L.R. 296; and (4) that regard should be taken to ensure that the mischief which is intended to deter is arrested: See *Mobil v. F.B.I R* (1977) 3 SC 53.

The correct approach to be followed in interpreting the provisions of the Constitution should therefore follow the lines enunciated above. (p. 1469 A)

H Impeachment - Powers - Vice President

6. While the Constitution specifically created the office of both the President and that of the Vice President it went ahead to vest the executive powers of the Federation in only the President. But the President is re-

quired to exercise the executive powers conferred on him either directly or through the Vice President and Ministers of the Government of the Federation or officers in ‘the public service of the Federation. Unlike in the United States of America and India where the respective Constitution assign specific roles to the Vice President, the Nigeria Constitution does not assign any specific role to the Vice President. The role which the Nigerian Vice President is to perform is limited to what the President assigns to him just like those of the Ministers who are appointed by the President subject to confirmation by Senate and may be removed by the President at will.

Unlike the Ministers, the Vice President cannot be removed by the President. The process of removal of the President or the Vice President is provided for in section 143 of the Constitution. It is through the process of impeachment which is to be conducted by the National Assembly as set out in that section. Section 143(10) of the Constitution specifically ousts interference of the court from the proceedings leading to the impeachment of the holders of the two offices. (p. 1470 E)

Federal Government - Single executive

7. One of the implications of the principles of a single executive, as relates to the Vice President, is that although the office of Vice President is, unlike that of a minister under the system, an elective one, he is not voted in a separate election, but by the very same votes by which the President is elected. This is because, as already shown above, a Presidential candidate is required to nominate another candidate to run with him on the same ticket as a mate or associate” for the office of Vice President.

I believe that the unity, contemplated by the arrangement transcends the election. I also believe and hold that their relationship should be throughout their joint term. The position is as aptly described by Prof. Nwabueze at pages 78 to 79 of his book, cited supra, where he stated as follows:

“It is not intended to suggest that the union (between the President and Vice President) demands of the Vice that he should be a slave to the President, with no will or opinion of his own. It does not submerge his

personality or individuality in that of the President or make them two-in-one.... As the President's chief adviser, it is his prerogative and duty to discuss freely with him the policies and actions of the government, to point out any defects or errors in them, and the dangers to which they may expose the government. Nevertheless, having done this, the principle of collective responsibility binds him to all government decisions or actions, whether they emanated from the President alone or from the Executive Council. So long as he remains in office as Vice President, he is not free to oppose in public decisions or actions of the President or of the Executive Council, no matter that he personally disagrees with them. (p. 1474 A)

Vice President - While still in office

8. The court below was therefore wrong in holding that the 1st respondent could, while the Vice President still retained his office as Vice President, openly criticize the same government; or join another political party and start to campaign for election to the office of President. The action cannot be justified by the fact that he (1st respondent) had been suspended or expelled from the ruling political party under which he was jointly elected with the President or that he was exercising his fundamental right of association guaranteed by the Constitution. What is required of him is to first resign and even after resigning from that office, he would still be precluded from dissociating himself from the collective responsibility for decisions taken by the cabinet while he was in office.

In spite of the above, it is not the duty of the court to pronounce on his behaviour or actions or declare his office vacant. But that decision is that of the National Assembly. (p. 1475 G)

Jurisdiction - Removal of Vice President from office

9. Chief Afe Babalola has submitted that as the 1st respondent failed to resign as expected of him, he should be deemed as having resigned under section 146(3)(c) of the Constitution. I have no doubt in rejecting that submission. This is because under the presidential constitution which we operate, there is clear division of roles assigned to each of the three arms

of government by the Constitution and each arm guards its own role jealously. The power to remove the President and Vice President is provided for in section 143 of the Constitution. The provision clearly gives the role of removing the two public officers to the National Assembly.

The marginal note to the section reads thus: “Removal of President from office” and the section reads, *inter alia*, thus:

“143 - (3) *The President or Vice President may be removed from office in accordance with the provisions of the section.....*”

The Constitution has not conferred on the court the power to declare the office of the holder of the two offices vacant for whatever reason. Section 146 of the Constitution relied on does not confer such power on the court. The marginal note of the section speaks of “Discharge of functions of President.” What the section 146 (3) (c) provides for is that where the office of the Vice President becomes vacant “for any reason”, the President shall nominate a new person, with the approval of each House of the National Assembly, to fill the vacancy. The subsection does not confer any role on the court in the process. The fact that the National Assembly has not acted under section 143 is *per se* no justification for the court to assume jurisdiction in the matter. It has not been alleged that the National Assembly has, for example, been approached to act under section 143 of the Constitution and that it failed to act.

(p. 1476 C)

Counter claims - Declarations thereunder

10. As regards the counter-claim, I hold that there is merit in the declarations sought in the 1st, 2nd and 3rd legs of the counter-claim and I accordingly grant them. The remaining legs of the counter claim are refused and they are accordingly dismissed. (p. 1477 D)

NOTABLE POINTS OF INTEREST

ONNOGHEN JSC

1. Constitution - Definition & Interpretation of

A Constitution of any country is what is usually called the organic law or grund norm of the people. It is the formulation of all the laws from which

the institutions of state derive their creation, legitimacy and very being. It is the unifying force in the nation apportioning rights and imposing obligations on the people who are subject to its operation. It cannot be over-emphasized that it is a very important composite document, the interpretation or construction of which is subject to recognized cannons of interpretation known to law and designed or crafted to enhance and sustain the reverence in which Constitutions are held the world over. In the case of *Shosimbo vs State* (1974) N.S.C.C. 387 at 393, COKER, JSC opined that “*Great care should have been exercised in arriving at momentous decisions, which turn on the interpretation of the Constitution.*”

It is in line with the above caution that the main guideline to the interpretation or construction of the Constitution is as laid down in the case of *Rabiu vs The State* (1980) 8-11 S.C 130 at 148 where SIR UDO UDOMA, JSC stated the position inter alia,

“.....” *Mere technical rules of interpretation of statutes are to some extent inadmissible in a way so as to defeat the principle of government enshrined in the Constitution. And where the question is whether the Constitution has used an expression in the wider or narrower sense, in my view this 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 that narrower interpretation would best carry out the objects and purposes of the Constitution.*”

It is generally agreed and as stated, again by Sir UDO UDOMA in *Rabiu vs The State* supra at 148 - 149 that “..... the function of the Constitution is to establish a framework and principles of government, broad and general in terms, intended to apply to the varying conditions which the development of our several communities must involve, ours being a plural, dynamic society and therefore, 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.”

H (p. 1507 D)

2. Constitution - Clear provisions - Removal of Vice President

I had earlier reproduced section 142(1) of the 1999 Constitution the in-

terpretation of which forms one of the bones of contention between the parties. To me the words used in the section are very clear and unambiguous and very simple and straight forward and cannot call for any interpretation other than the application of the literal and plain interpretation or construction. It is settled law that the plain and literal construction B of the Constitution or statute will only be rejected if such interpretation or construction will lead to some absurdity or defeat the obvious intention of the makers of the Constitution or make nonsense of other provisions of the Constitution. It should always be borne in mind that in construct- C ing the provisions of the Constitution the court is not allowed to read into any provision or section thereof anything not expressly contained therein or to fashion out another Constitution or provision for the people other than to bring out the true intention of the makers of the Constitution.

There is no where in the 1999 Constitution where it is stated that D the President or Vice President of the Federal Republic of Nigeria shall be removed or is removable from that office if he defects from the political party on whose platform he was elected to that office and joins another political party. It is the Constitutional responsibility of the Legislature to E make or amend the laws including the Constitution, where the need arises, while that of the judiciary remains to interpret and apply the laws so made or amended. The courts can therefore not add to nor subtract from the law as enacted by the legislature under the guise of judicial interpreta- F tion of the Constitution or Statute which the appellant desires this Court to do in the instant case on appeal. (pp. 1512 A/1513 B)

3. Political disagreements should be tackled politically under the Consti- G tution

In a civilized society such as ours one expects disagreements within the cabinets, etc but where the disagreements are as a result of irreconcilable differences the solution to such impasse is either resignation or as in the instant case removal by way of impeachment, not to come to court to H seek the removal of a sitting Vice President. We must learn and have the courage to apply political solutions to political questions or problems and stop seeking to apply non-existent judicial solutions to purely political

problems. It is with the above in mind that section 143(10) of the 1999 Constitution oust the jurisdiction of the courts in relation to the proceedings or determination of the Panel or of the National Assembly relating to impeachment under section 143 of the 1999 Constitution.

B As stated earlier in this judgment, I hold the view that the conduct of the Vice President in this case can be said to come under section 143 of the 1999 Constitution if the National Assembly so considers. We must be reminded that there is nothing known to our Constitution as judicial
C impeachment or impeachment by the judiciary of either the President or Vice President or the Governor or Deputy Governor. The fact that section 239 of the 1999 Constitution confers original and exclusive jurisdiction on the Court of Appeal to determine any question as to whether the term of office of the President or Vice President has ceased or the office
D of the President or Vice President has become vacant does not thereby empower the judiciary to get involved in ‘judicial impeachment’ of the President or Vice President, under the guise of declaring their offices vacant or removing them from office in any other way than as Constitu-
E tionally provided under the rule of law. (p. 1515 A)

TABAIJSC

4. Interpretation of statutes - When court will consider some external circumstances

F What appears as to be a settled principle of interpretation from all the authorities cited before us and others I have had the opportunity to read is that where the language used in the provision of a statute and or the Constitution is plain and unambiguous effect must, of necessity, be given
G to its plain and ordinary meaning. It is that clear and unambiguous language that best conveys the intention of the law maker. The law maker must be taken to have intended the meaning expressed in such clear and unambiguous language and the court will not be at liberty to go outside
H the very provision in an ostensible bid to ascertain the intendment and purpose of the provision. The obvious duty of the court in such a situation therefore is not the determination of what the lawmaker meant, but the meaning of the plain language used which, without more, best ex-

presses his intention. But where, as often happens, the language is imprecise and ambiguous as to lead to more than one meaning, the court will consider some external circumstances to discover the real intention of the lawmaker. (p. 1534 C)

B

ADEREMIJSC

5. Need for the Police and INEC to be impartial

The appeal filed by the 2nd respondent (The Inspector General of Police) does the Nigeria Police Force no credit; it paints a picture of partiality by the Force. Also the Independent National Electoral Commission (INEC) by its statutory existence is an independent body with constitutional powers to conduct elections in Nigeria. It must not only be an umpire, it must be seen, in the eyes of reasonable men, to be an impartial umpire in the conduct of an election. INEC must never by act of omission or commission place itself in a position where imputations of partiality in favour of one party against another one will be leveled against it. Neutrality must be the watch word of the body - it must always remain fair and focused. Having regard to the nature of the function which the Nigeria Police Force also performs, that body must also insulate itself such that impartiality and fairness may at all times be ascribed to it. A situation where both of them (the Inspector General of Police and the Independent National Electoral Commission, INEC) appeal in the instant case is very much in bad taste. They have both thrown the quality of impartiality and fairness which they must possess to the winds. Their acts are capable of eroding the public confidence in them. Unknown to them, they may be said, by the public, to be biased and therefore not worthy to be regarded as impartial umpires. This trend must not repeat itself for the good of the nation. It is a sour taste. (p. 1574 B)

REPRESENTATION

Chief Afa Babalola, SAN (with him Chief Adegboyega Awomolo, SAN, Adebayo Adenipekun, SAN; Sir Alfred Eghobamien, SAN; Roland Otaru; SAN; Duro Adeyele, SAN; Ubong Akpan, SAN; Olu Daramola; Bankole Akomolafe; Remi Awo Osho (Mrs.); Sesan Dada; Akinyemi Aremu;

Kekinde Ogunwumiju; Obinna Durunguma; Mary Epere (Miss); Abubakar Aliyu; Isaiah Opaaje, M. K. Olawale; O. OAdawmo (Mrs.); Paul Erokoro, Toyin Aladegbami and Joke Akinfenwa (Mrs.); for 1st Appellant.

B P. I. N. Ikwueto, SAN (with him Bolaju Ayorinde, SAN, (with him Idigo J. I. (Miss); and Edward Osammor, Esq.,) for 2nd Appellant.

Mr. J. K. Gadzama, SAN (with him Chief Bolaji Oyorinde, SAN; B. Owasonye, R. O. Yusuf, Lawan Abana, C. Nwako, S.I. Kalio, O. P. Famakinwa-Johnson and E. J. Gamaliel) for 3rd Appellant.

Chief Wole Olanipekun, SAN (with him Rickey Tarfa; SAN; Kola Awodein, SAN; Adeniyi Akintola; SAN, Titus Ashaolu, SAN, E. Ngige, SAN; Alex D Izinyon, SAN; Mike Aoandokan, SAN; F. Bisong; Sola Egbeyinka; and Peter Eze) for 1st Respondent.

Mr. Peter Eze (with him Olugbenga Adeyemi, Fidelis Bisong, Sola Egbeyinka E for the 2nd and 3rd Respondents.

Mr. Ikechukwu Ezechukwu (with him Ogechi Igbuena) for 4th Respondent.

F

CASES REFERRED TO

Akibu v Oduntan (2000) 13 NWLR (Pt. 685) 446

Fadare v. Attorney-General of Oyo State (1982) 4 S.C. 1

Kusada v. Sokoto N.A. (1968) 1 All NLR 377

G Bello v. Attorney General of Oyo State (1986) 5 NWLR (Pt. 45) 828

Government of Lagos State v. Ojukwu (1986) 1 NWLR (Pt. 18) 621

NV. Scheep v. MV. S. Araz (2000) 15 NWLR (Pt. 691) 622

Thomas v. Olufosoye (1986) 1 NWLR (Pt. 18) 669

H Ayoola v. Baruwa (1999) 11 NWLR (Pt. 628) 595

Ogba v Onwuzu (2005) 6 SC (Pt. 1) 41 at 49

Victoria City Corp. v. Bishop of Vancouver Island (1921) 2 A. C 384

Bradlaugh v. Clarke (1883) 8 A.C. 354

Nafiu Rabiu v. Kano State (1980) 8 - 11 SC 130 at 148

Ukaegbu v. Attorney General of Imo State (1983) 1 SC NLR 212

Uwaifo v. Attorney General of Bendel State (1982) 7 SC 124

Bronik Motors v. Wema Bank (1983) 1 S.C.N.L.R. 296

Mobil v. F.B.I.R (1977) 3 SC 53

B

STATUTE REFERRED TO

Constitution of the Federal Republic of Nigeria 1999 ss. 5(1), 14, 65, 68, 109, 130, 131, 135, 136, 137, 141, 142, 143, 144, 146, 239, 306 and 308

C

LEAD JUDGMENT BY AKINTAN JSC

The 1st respondent, Alhaji Atiku Abubakar, commenced this action by an originating summons filed on 4th January, 2007 at the Court of Appeal (hereinafter referred to as the court below). The action was instituted under the original jurisdiction of that court provided for in section 239(1) of the 1999 Constitution. His claim before the court is as follows:

D

“1. Whether having regard to the combined provisions of Section 135 and 142 (2) of the Constitution of the Federal Republic of Nigeria 1999, the Plaintiffs term of office as Vice President, Federal Republic of Nigeria which commenced on 29th of May, 2003 still subsists.

2. Whether having regard to the provisions of Section 142, 143, 144 and 146 of the Constitution of the Federal Republic of Nigeria 1999, or any other provisions of the Constitution of the Federal Republic of Nigeria 1999 or any law, the President of the Federal Republic of Nigeria can declare vacant the office of the Plaintiff as Vice President of the Federal Republic of Nigeria.

F

3. Whether having regard to the clear provisions of Section 308 of the Constitution of the Federal Republic of Nigeria 1999, the President of the Federal Republic of Nigeria can withdraw, tamper or interfere with or violate the immunity conferred on the Plaintiff as the Vice President of the Federal Republic of Nigeria by that Section AND OR direct his arrest or prosecution.

G

WHEREOF THE PLAINTIFF SEEKS THE FOLLOWING RELIEFS

H

- i. A DECLARATION that the term of office of the Plaintiff as the Vice President of the Federal Republic of Nigeria which commenced from 29th of May, 2003 still subsists and does not terminate until 29th of May, 2007.
- B ii. A DECLARATION that the President has no power under the Constitution of the Federal Republic of Nigeria, 1999 or any other law to declare the office or seat of the Plaintiff as the Vice President of the Federal Republic of Nigeria vacant.
- C iii. A DECLARATION that the purported declaration by the President of the Federal Republic of Nigeria of the office of the Plaintiff as Vice President of the Federal of Nigeria vacant is unconstitutional, illegal, null and void, and of no effect whatsoever.
- D iv. AN ORDER setting aside the withdrawal of all the rights, privileges, entitlements inclusive all security details, staff of the Plaintiff as directed by the President of the Federal Republic of Nigeria.
- E v. AN ORDER restoring all the rights, privileges, entitlements and or benefits howsoever of the Plaintiff as the Vice President of the Federal Republic of Nigeria,
- F vi. AN ORDER of perpetual injunction restraining the Defendants whether by themselves, agents, privies, servants, or otherwise howsoever from impugning or violating constitutional immunity conferred on the Plaintiff as the Vice President of the Federal Republic of Nigeria.
- G vii. AN ORDER of perpetual injunction restraining the 3rd, 4th, 5th and 6th Defendants whether by themselves, their agents, privies, servants or otherwise howsoever from considering any nominee from the President to the office of the Vice President.
- H viii. AN ORDER of perpetual injunction restraining the 6th Defendant whether by itself, its agents, privies, servants or otherwise howsoever from considering and or giving effect to the President's letter informing them of the declaration of the seat and or office of the Plaintiff as the Vice- President of the Federal Republic of Nigeria vacant."

The originating summons was supported with affidavit evidence in which the facts relied on by the plaintiff (now 1st respondent) in support of his claim were set out. A number of cuttings from newspa-

per publications were attached to the affidavits. Paragraphs 11, 12, 13, 14, 15, 17, 18, 20 and 21 of the affidavit deposed to on 4th January, 2007 by Umar Pariya, personal assistant to the 1st respondent, adequately set out the facts relied on by the 1st respondent in support of his claim before the court. The said paragraphs 11, to 15, 17, 18, 20 and 21 of the affidavit read as follows:

“11. That I know as a fact that on or about Thursday the 21st of December, 2006, the Plaintiff traveled to United States of America (USA) on his Annual Leave.

12. That the Plaintiff told me in his office at the Villa on Monday 18th of December, 2006 at about 11.00am and I verily believe him that he sought and obtained the President’s approval for the said Annual leave.

13. That on Saturday, 23rd of December, 2006 the President of the Federal Republic of Nigeria through one Mallam Uba Sanni, his Special Assistant on Public Affairs, announced the office of the Plaintiff as Vice President of the Federal Republic of Nigeria vacant.

14. That I know as a fact on Sunday, 24th December, 2006 several National Dailies published the announcement as mentioned in paragraph 13 above.

15. That I know as a fact in the same announcement that the said Mallam Uba Sanni stated the immunity conferred on the Plaintiff as the Vice President of the Federal Republic of Nigeria by the Constitution of the Federal Republic of Nigeria, 1999 has also been withdrawn.

Now shown to me and attached as Exhibits “1”, “2”, and “3” respectively are copies of Leaderships, Thisday and Guardian Newspapers which conspicuously published the said announcement.

16. That the said Mallam Uba Sanni in justifying their position quoted Sections 142, 143 and 146 of the Constitution of the Federal Republic of Nigeria, 1999 as enabling the decision.

17. That in the same announcement and as published by several newspapers as referred to in paragraph 15 above including Exhibits “1”, “2”, and “3”, it was stated that;

i. the President has notified the 3rd – 6th Defendants of his decision declaring the office of the Plaintiff vacant and to send a nominee to

them to replace the Plaintiff as Vice President of the Federal Republic of Nigeria.

ii. the President has withdrawn all privileges, entitlements, rights and benefits of the Plaintiff as the Vice President of the Federal Republic of Nigeria.

18. That I know as a fact that the consequent upon paragraphs 13, 14, 15, 16 and 17 above;

i. all security details attached to the Plaintiff were withdrawn.

ii. the official residence of the Plaintiff was sealed off by combined team of armed military and policemen and other security agents.

iii. all official vehicles attached to the Plaintiff's were withdrawn.

iv. all staff attached to the Plaintiff's office were redeployed.

(20) That I know as a fact that the 1st and 2nd Defendants have threatened to arrest the Plaintiff anytime he arrives the country.

(21) That I know as a fact the term of office of the Plaintiff as the Vice President of the Federal Republic of Nigeria terminates on the 29th of May, 2007 and that time is of the essence of this action."

A further affidavit to the plaintiff's affidavit in support of the originating summons also deposed to by Umar Pariya was also filed. It was averred in paragraphs 5, 6, 7, 8 and 9 therein as follows:

"5. That I know as a fact that the 1st defendant herein on 27th December, 2006 caused to be filed an originating summons No. CA/A/236/M/06 wherein it referred to the plaintiff herein as the 'former Vice President of Nigeria.'

6. That I know as a fact that the official residence of the plaintiff was sealed off and remained so, after the filing of the said suit on 27th December, 2006.

7. That I know further that the plaintiff's vehicles remain withdrawn.

8. That I am also aware that the aids of the plaintiff remain redeployed.

9. That the above actions were taken and remained in force while the above mentioned suit filed by the 1st defendant subsisted.

A copy of the originating summons filed by the 1st defendant is

attached hereto as Exhibit Z:

In the Originating Summons attached to the said counter-affidavit, the reliefs sought from the court below in the suit by the present 1st appellant, as plaintiff, include a number of declaratory reliefs, an injunction restraining the 1st respondent, who was the 2nd defendant in the suit, B
“from parading or further parading himself as Vice President of Nigeria.”

Also, an order of injunction restraining the Action Congress (sued as 1st defendant), the President of the Senate (sued as 3rd defendant) among others, from recognizing, treating or addressing the 1st respondent as the Vice President of the Federal Republic of Nigeria. A 34 paragraph affidavit filed in support of the said originating summons was also exhibited. The present 1st appellant, as the plaintiff in that suit, set out the facts relied on in support of his case in the suit. C

The 1st appellant opposed the 1st respondent’s claim as set out in D the originating summons. A counter-claim was also filed by the said 1st respondent. The following reliefs were sought in the counter-claim:

“RELIEFS SOUGHT BY THE COUNTER CLAIMANT

1. *Declaration that for actualization of the policies of the sponsoring party and effective running of the office of the President of the Federal Republic of Nigeria, and pursuant to Section 142 (1) of the Constitution, a Vice President of the Federal Republic of Nigeria must belong to the same political party with the President.* E

2. *Declaration that the special relationship between the Vice President, the President and the sponsoring party by the combined effect of Sections 14, 130, 131 (c), 136 (1) and 146 (c) of the Constitution of the Federal Republic of Nigeria is one of one mindedness, loyalty, trust and mutual confidence and good faith which does not permit double loyalty.* F G

3. *Declaration that the office of the Vice President under Section 146*

(3) (a) can become vacant on the resignation of the Vice President.

4. *Declaration that the dumping of a sponsoring party for another H party by a sitting Vice President coupled with condemnation of the President and the Government by a sitting Vice President is a breach of one mindedness, loyalty, trust and confidence expected of the Vice President*

and therefore constitutes constructive resignation, withdrawal and/or abandonment of the office of the Vice President.

5. Declaration that by reason of the facts stated in (4) above, a sitting Vice President is estopped from denying that he has by his conduct
B *resigned, withdrawn and/or abandoned the office of the Vice President.*

6. An order of injunction restraining the plaintiff by himself, his servant, privies or otherwise from parading or further parading himself as Vice President of Nigeria.

C 7. An order of injunction restraining the 2nd to 6th Defendants jointly and or severally by themselves, their agents, servants, privies, or subordinates, whosoever described from recognizing, treating or addressing the plaintiff as the Vice President of the Federal Republic of Nigeria.
AND TAKE NOTICE that the questions arising from this counter-claim
D are as follows, to wit:

1. Whether under and or by the combined effect of Sections 14, 130, 131 (c), 136(1), 142 (1) and 146 (c) of the Constitution of the Federal Republic of Nigeria, the President of the Federal Republic of
E Nigeria can lawfully select or continue to maintain a decamped Vice President who has publicly condemned, the policy of the sponsoring party and embraced a new political party whose policies are hostile to the sponsoring party.

F 2. Whether or not the office of the Vice President elected by virtue of Section 142 (1) of 1999 Constitution can become vacant upon the resignation of the Vice President.

3. Whether having regard to Section 146(a) of the Constitution of the Federal Republic of Nigeria 1999 which entitles a Vice President to
G resign from the office of the Vice President, the dumping by the plaintiff of the sponsoring party for another political party coupled with public denunciation and condemnation of the sponsoring political party, the President and their Government do or do not constitute constructive res-
H igration, withdrawal or abandonment of the office of the Vice President.

4. Whether or not a sitting Vice President elected pursuant to Section 142 (1) of the 1999 Constitution who declares for another political party, denounced and condemned the sponsoring political party, the gov-

ernment and the President has by his conduct, breached his obligation of one mindedness, loyalty, mutual trust, confidence and good faith and has therefore resigned, abandoned and withdrawn from the office of the Vice President.

5. *Whether a sitting Vice President elected under Section 142 (1) of the 1999 Constitution who dumps the sponsoring party for another political party and publicly condemned the sponsoring political party, the President and the Government is not by reason of his conduct estopped from denying that he has not constructively resigned from the sponsoring party.”*

A 14 paragraph counter affidavit deposited to by Bodunde Adeyanju, a Senior Special Assistant to the President, was also filed. The facts relied on in opposing the claim and in support of the counter-claim were set out in the counter-affidavit. Also filed and relied on is a further counter affidavit deposited to on 15th January, 2007, to which some exhibits were attached, was also filed and relied on by the 1st appellant.

The 1st respondent also filed a plaintiff's reply to 1st defendant's counter affidavit to the plaintiffs originating summons.

The facts relied on by the 1st appellant in his defence to the originating summons and his counter-claim are set out in the 41 paragraph counter-affidavit of 1st defendant in opposition to the originating summons deposited to by Bodunde Adeyanju. In it, the averments in paragraphs 13 to 22 of the plaintiff's affidavit in support of the originating summons were specifically denied in paragraph 7. The deponent thereafter accused the 1st respondent of failure to disclose vital relevant facts to the court. Among the facts said to have been withheld are that the 1st respondent on 20th December, 2006 openly declared for another political party, the Action Congress; (2) that he (1st respondent) openly denounced and condemned the PDP, the PDP led Government, PDP policies and the President of the Country. (3) That he also failed to disclose that he said he was no longer a member of the PDP; (4) That he is now a member of H Action Congress as well as its Presidential candidate and had been campaigning openly against the PDP Government and the President; and (5) That he failed to disclose that he had ceased to attend the Federal Execu-

tive Council meetings for over two months.

In paragraphs 10 to 25 of the same affidavit, it was averred, *inter alia*, that the 1st respondent had abandoned the PDP under which he was elected as Vice President and the President who nominated him as his associate for the Presidential elections of 1999 and 2003. That the 1st respondent abandoned the ideology of the PDP under which they were both elected into office and openly pursued a totally different ideology and openly criticized decisions of the Government of which he was a part. Paragraphs 34 to 41 of the same counter-affidavit read thus:

“34. *That the provision of Section 146 (3) (c) of the Constitution of the Federal Republic of Nigeria 1999 envisages other grounds in which the position of the Vice President of Nigeria can be declared vacant other than Section 143 and 144 of the Constitution.*

35. *That the continued stay in office of a Vice President who has decamped from his sponsoring party to another party may lead to the making of a President from an unsuccessful political party whose policy is hostile to those of the ruling party.*

36. *That by virtue of section 144, (3) (a) of the constitution the office of the Vice President can also become vacant by reason of resignation.*

37. *That it is universally accepted that resignation could be formal and that resignation could also take the form of constructive withdrawal, abandonment, and relinquishment which the plaintiff has done.*

38. *That the plaintiff is estopped from denying that by his conduct which is inconsistent with his obligation to the president he has withdrawn, abandoned, resigned or relinquished his position as Vice President.*

39. *That section 142(1) of the constitution does not permit of a Vice President belonging to a different party from the party that elects him nor does it permit of double loyalty.*

40. *That the obligation that arises from the special relationship of Vice President to the President and the party that elects it is that of one mindedness loyalty.*

41. *That on the facts of the circumstances of this case the appli-*

cant has voluntarily abandoned the PDP government, dumped the PDP and the President to which is an associate or has constructively resigned or withdrawn from the government of the President Obasanjo and PDP.”

The 1st respondent filed a reply to the 1st appellant’s counter-affidavit. It is a 27 paragraph titled ‘plaintiff’s reply to 1st defendant’s counter-affidavit to plaintiff’s originating summons.’ He denied most of the defence put up in the counter-affidavit. He then went ahead to give reasons justifying some of the acts he took which were subjects of some of the claims leveled against him by the 1st appellant. He also alleged that the 1st appellant had continuously harassed him by causing the PDP to suspend him; by instituting action against him at the court below and by causing a criminal action to be filed against him at the Code of Conduct Tribunal. A number of documents were exhibited along with the said affidavit. Among such documents are a copy of the Originating Summons filed against the 1st respondent by the 1st appellant at the court below; copy of the charge preferred against the 1st respondent at the Code of Conduct Tribunal; letter from the PDP suspending the 1st respondent from the political party and cuttings from newspaper publications.

The matters thereafter came up for hearing before the court below presided over by the President of the Court. At the hearing on 7th February, 2007, learned Counsel for the respective parties addressed the court before the court reserved its judgment.

In its reserved judgment delivered on 20th February, 2007, the court granted the plaintiffs claim in part and dismissed the 1st defendant’s counter-claim. In the lead judgment delivered by Abdullahi, PCA, the learned President concluded, *inter alia*, as follows:

“All the questions formulated by the plaintiff having been resolved in his favour, his claim succeeds and the reliefs sought by him are granted as follows:-

(1) It is hereby declared that the term of office of the plaintiff as the Vice President of the Federal Republic of Nigeria which commenced from 29th of May, 2003 still subsists and does not terminate until 29th of May, 2007.

(2) Secondly, it is further declared that the President has no power

under the Constitution of the Federal Republic of Nigeria 1999 or any other law to declare the office or seat of the plaintiff as Vice President of the Federal Republic of Nigeria vacant.

(3) Thirdly, it is declared that the purported declaration by the President of the Federal Republic of Nigeria of the office of the plaintiff as the Vice President of the Federal Republic of Nigeria vacant is unconstitutional, illegal, null and void and of no effect whatsoever.

The remaining reliefs sought by the plaintiff will not be acceded to in view of the step or steps being taken by the first defendant to restore the plaintiff's rights and privileges accorded to his office to him. The orders of injunction restraining the President of the Federal Republic of Nigeria, the second, third, fourth, fifth and sixth defendants when the rights and liberty of the plaintiff are no longer threatened and assailed by any of the defendants, including the President of the Federal Republic of Nigeria cannot be granted. Injunction is granted to protect the right or threatened right of the plaintiff it will be refused since there is no evidence that the plaintiff's right is under any threat from the defendants in the light of the three declarations made in his favour in this judgment. The counter-claim of the first defendant is not made out. Having resolved all the questions framed in the counter-claim against the first defendant it fails and is hereby dismissed in its entirety."

The appellant, as 1st defendant in the court below, was dissatisfied with the judgment and has filed an appeal against it to this court. The 2nd defendant (Inspector-General of Police) was also not satisfied with the judgment and he has also filed a notice of appeal against the judgment. A third notice of appeal was also filed by the 6th defendant (INEC) as the 3rd appellant in this Court. The parties filed and exchanged their briefs in this court.

The 1st appellant formulated the following seven issues as arising for determination in the respect:

"(I) Whether or not the Court of Appeal was right in granting the plaintiffs reliefs Nos.1,11 and 111 when on the available evidence, which was not considered, there was no lis.

(II) Whether or not the Court of Appeal acting under S. 239 of the

Constitution of the Federal Republic of Nigeria is a trial court which is obliged to evaluate the evidence, identify issues in dispute and apply the findings on the law before arriving at any decision.

(III) Whether or not in construing the intention of the drafters of the Constitution in relation to Section 142 (1) of the 1999 Constitution in relation to Section 142 (1) of the 1999 Constitution, the Court of Appeal was not duty bound to consider the following:

(a) History of the Constitutional provisions;
(b) Social need, political realities and peculiarities, and (c) The need to avoid absurdity.

(III)(b) If the answer to the above is in the affirmative, whether or not the Court of Appeal was right in its narrow approach to the section 142(1) of the 1999 Constitution to the effect that there is nothing in the provisions which precludes the President and the Vice President from continuing in office after dumping the political party that sponsored him to the office for another political party.

(IV) Whether or not the relationship between the Vice President and the President under section 142 of the Federal Republic of Nigeria automatically expires immediately after the election that brought both Vice President and President to Office.

(IV b) AND if not, whether, the Constitutional union demands from the Vice President, undivided loyalty, trust and confidence as Vice President as long as he remain the Vice President.

(V) Whether or not the Vice President having openly jettisoned the sponsoring party and defected to another party and condemned the President and the sponsoring party, has not by his conduct abandoned the President under section 142 of the Federal Republic of Nigeria automatically expires immediately after the election that brought both Vice President and President to Office.

(IV b) AND if not, whether, the Constitutional union demands from the Vice President, undivided loyalty, trust and confidence as Vice President as long as he remain the Vice President.

(V) Whether or not the Vice President having openly jettisoned and sponsoring party and defected to another party and condemned the

President and the sponsoring party, has not by his conduct abandoned the sponsoring party, the government and the President.

(VI) *Whether or not the Court of Appeal has jurisdiction under section 146 (3) (c) to declare the sit of the Vice President vacant having regard to uncontradicted evidence that the Vice President has jettisoned the sponsoring party and declared for a political party (Action Congress) which was not even in existence at the time of election; ‘castigated the President and condemned the policy and philosophy of the sponsoring party.*

(VII) *Whether the Court of Appeal’s application of the Respondent’s right of freedom of association to the facts of this case was not wrong particularly as the issue of the said right was raised by Court suo motu and without calling upon Counsel to address it.”*

The 2nd appellant, on the other hand, formulated the following two issues as arising for determination in his own appeal:

“(a) Whether on a proper interpretation of the provisions of section 142 (1) and 146 (3) (c) of the 1999 Constitution of the Federal Republic of Nigeria, the office of the Vice President will be vacated if the Vice President publicly disassociates himself from the President of the Federal Republic of Nigeria and decamps to a rival political party other than one whose platform he was elected into office as the Vice President.

(b) Whether the court below was entitled to add its own words in the exercise of its judicial function to interpret the provisions of the Constitution.”

The 3rd appellant also formulated three issues. They are as follows:

“(a) Whether the learned justices of the lower court were right in holding that the provision of section 146 (3) (c) of the 1999 Constitution is duplicitous or repetitious.

(b) Whether on the state of pleadings and addresses of counsel for the parties the issue of the right to membership of association arose before the lower court to warrant the pronouncement of the lower court on same suo moto.

(c) Whether or not the learned justices of the court below were right in holding that the seat of the plaintiff/respondent had not become vacant by reason of his abandonment of the political party under whose platform he was elected into office by joining a rival political party.”

It is quite a surprise that both the 2nd and 3rd appellants still considered it necessary to appeal against the judgment. This is because the portion of the claim that concerned them,-viz: prayer for injunction to restrain them and the President from taking certain actions was refused and dismissed by the court. However, I believe that both the grounds of appeal filed by them and the issues formulated in their briefs are fully covered and subsumed respectively by the grounds of appeal filed by the 1st appellant and in the issues formulated in the 1st appellant's brief. I therefore believe that the treatment given to the 1st appellant's appeal will dispose of all the three appeals.

The 1st respondent, on the other hand, formulated the Allowing one issue as arising for determination in the appeal.

“Having regard to the combined provisions of section 135, 142, 143, 144, 146, 308 and other relevant provisions of the Constitution of the Federal Republic of Nigeria 1999 and admissible materials placed before the lower court, whether or not the lower court rightly granted the 1st respondent's relief and dismissed the appellants' counter-claim.”

The 2nd and 3rd respondents formulated three issues in their joint brief and the appellant's issues are adopted in the 4th respondent brief. I need not reproduce the three issues formulated by the 2nd and 3rd respondents because I believe that the three issues are adequately covered by those formulated by the 1st appellant and the one issue formulated in the 1st respondent's brief.

Chief Afe Babalola, SAN, learned Senior Leading Counsel for the 1st appellant has argued both in his brief and in his oral presentation before us on the 1st appellant's issue 1, that before a court could properly assume jurisdiction in a matter, the plaintiff must establish that there was a dispute between the parties which a court is required to settle. He referred to the affidavit evidence presented by the parties in this case and submitted that the plaintiff failed to show that there was a dispute be-

tween him and the President that could justify or support the first three reliefs claimed by the plaintiff. Reference is made in particular to the fact that what was relied on was newspaper publications; an interview credited to one Mallam Uba Sanni on the television on 24th December, 2006 B and an alleged notification to the 3rd to 6th defendants that the President had declared the office of the plaintiff vacant and would send a nominee to them to replace the plaintiff as Vice President of the Federal Republic of Nigeria.

C Reference is made to the reply by Mallam Uba Sanni to the effect that the statement credited to him in the television interview was quoted out of context. It is then submitted that the learned President of the Court of Appeal did not evaluate the evidence before him in the case and make findings on whether or not the President at anytime instructed Mallam D Uba Sanni to make the alleged statement credited to him. Reference is also made to the statement made by Mrs. Remi Oyo, the Head of Media of the Presidency, that Mallam Uba Sanni was not authorized to make the statement credited to him and her denial that the President had no intention of replacing the plaintiff as Vice President. It is then submitted that E had the court below done its duty of evaluating the evidence as stated above, the court below would have found as a fact that there was no factual basis for the relief being sought.

F The plaintiff's relief 2, in which he asked for declaration that the President has no power to declare the office vacant, is said to have raised no live issue in view of paragraph 31 of the appellant's affidavit to which there was no positive denial. The same is said of the plaintiff's reliefs 3. G The court below is therefore said to have wrongly granted the three reliefs since the plaintiff failed to show that there existed between the parties that there was actual controversy which the court could be called upon to decide as a living issue.

H Chief Wole Olanipekun, SAN, leading Senior Counsel for the 1st respondent, contended in reply that it is not correct that there is no *lis* or cause of action. He referred specifically to the originating summons filed by the 1st appellant as Suit No. Ca/A/236/M/06 against the Action Congress, the 1st respondent and others as defendants which was one of the

documents attached to the plaintiffs affidavit filed in reply to 1st defendant's counter affidavit where the 1st respondent was described as "former Vice President of Nigeria." He submitted that although that suit was later withdrawn, the description given to the 1st respondent goes to show that there was a lis. He also referred to the various newspaper publications exhibited wherein the President was reported as having declared the office of the Vice President vacant. He submitted that all the said available evidence clearly show that there was cause of action. B

It is settled law that a lis or cause of action is constituted by a bundle of facts which the law will recognize as giving the plaintiff a right of action. It is a situation or state of facts which would entitle a party to sustain action and give him right to seek judicial remedy or redress. Such facts or combination of facts which give rise to a right to sue may consist of two elements - viz: the wrongful act of the defendant which gives the plaintiff his cause of action; and the consequential damage. Lis therefore means suit, action, controversy or dispute: See *Akibu v Oduntan* (2000) 13 NWLR (Pt. 685) 446; *Fadare v. Attorney-General of Oyo State* (1982) 4 S.C.I; *Kusada v. Sokoto N.A.* (1968) 1 All NLR 377; *Bello v. Attorney General of Oyo State* (1986) 5 NWLR (Pt. 45) 828; *Government of Lagos State v. Ojukwu* (1986) 1 NWLR (Pt. 18) 621; and *NV. Scheep v. MV. S. Araz* (2000) 15 NWLR (Pt. 691) 622; It follows, therefore, that to entitle a person to invoke judicial power, he must show that either his personal interest will immediately be affected by the action or that he had sustained injury to himself and which interest is over and above the interest of the general public. See *Thomas v. Olufosoye* (1986) 1 NWLR (Pt. 18) 669; and *Ayoola v. Baruwa* (1999) 11 NWLR (Pt. 628) 595. C D E F G

In the instant case, the facts deposed to in the supporting affidavits filed along with the 1st respondent's originating summons show that there had been an unhealthy relationship between the President and the 1st respondent. The 1st appellant had at a stage filed an action against the 1st respondent and others at the court below in which the 1st respondent was described as "former Vice H

President.” There were also newspaper publications in which the President had been reported as having removed the 1st respondent from his post as Vice President; and a television interview given by one Mallam Uba Sanni, an official in the Presidency, in which he was quoted as saying that the post of the Vice President had been declared vacant. Although that statement was later denied or claimed to have been quoted out of context, I believe that the sum total of the evidence available on record clearly support the contention that the 1st respondent had supplied sufficient evidence to show that he had a good cause of action to warrant instituting this action which he filed in the court below. The contention of the 1st appellant in the 1st appellant’s issue 1 that the 1st respondent failed to establish the existence of a *lis* to warrant the grant of the first three legs of the 1st respondent’s claim can therefore not stand. The appeal as relates to that issue therefore fails.

The point raised in the 1st appellant’s issue 2 is that the court below, while acting as a trial court under its original jurisdiction in section 239 of 1999 Constitution, is obliged to evaluate the evidence placed before it, identify issues in dispute and apply its findings on the law before arriving at any decision. It is argued that no where in the entire judgment was any reference made to the affidavit evidence adduced by the parties in the resolution of the questions submitted to the court for determination. It is then submitted that where a court ignores the facts or evidence placed before it in its judgment, any decision reached thereby will be perverse. Since the court below failed to properly consider the evidence presented in the affidavits of the parties, this court is urged to exercise its powers under section 22 of the Supreme Court. Act and make any order necessary for determining the real question in controversy in the appeal. Reference is made to a list of evidence contained in the affidavits filed in the case which the court below is said to have failed to take into consideration. It is then submitted that had the court below considered the evidence, its decision would have been different and the originating summons would have been dismissed.

There is no doubt that the question raised in this issue boils down

to the style adopted by the learned President of the Court of Appeal who wrote the lead judgment. As I said in a recent case, judgment writing is an art by itself in which every individual has his own peculiar style and method. **There is no particular form a judgment should take. But all that is required of a good judgment is that it must contain some well known constituent parts. Some of such constituent parts which a good judgment must contain, in case of a trial court, include: (1) the issues or questions to be decided in the case; (2) the essential facts of the case of each party and the evidence led in support; (3) The resolution of the issues of fact and law raised in the case; (4) the conclusion or general inference drawn from facts and the law as resolved; and (5) the verdict and orders made by the court: See *Ogba v Onwuzu* (2005) 6 SC (Pt. 1) 41 at 49. The above requirements however, need not be stated expressly in every judgment and they need not all be present in every case. It follows therefore that a judgment will not *per se* be set aside on proof that one or more of the above ingredients of a good judgment are missing unless it is shown that such omissions resulted in total miscarriage of justice.**

In the instant case, all the issues raised by the parties were duly resolved in the judgment. It is also clear from the judgment that the inferences drawn by the learned President are supported by the evidence placed before the court in the affidavit evidence tendered before the court in the case. The fact that the learned President did not repeat the evidence led in support of any particular conclusion he drew or to say that he came to a particular decision because he believed or disbelieved a particular piece of evidence will not be enough to set aside such conclusion. In the result, I hold that since it has not been shown that the conclusions reached by the court below in the instances raised under the said issue 2 resulted in the court's decision being perverse, the appeal, as it relates to issue 2, therefore lacks merit.

The approach or method adopted by the court below in its interpretation of the provisions of section 142 (1) of the 1999 Constitution is

the one taken up in the 1st appellant's issue 3. The following questions were posed: viz, whether, in construing the intention of the drafters of the Constitution in relation to section 142 (1) of the 1999 Constitution, the Court below was not duty bound to consider - (a) the history of the constitutional provisions; (b) the societal need for which the law was made; and (c) the need to avoid absurdity. If the answers to the above questions are in the affirmative, a further question was posed. It is that whether or not the court below was right in its narrow approach to the interpretation of the said section 142 (1) of the 1999 Constitution to the effect that there is nothing in the provision which precludes the President and the Vice President from continuing in office after dumping the political party that sponsored him to the office for another political party.

The reasons given by the learned President in his lead judgment for adopting narrow interpretation of that section are given as (1) because there is no express provision of the vacation of office of the Vice President upon defection from his sponsoring political party to a rival party; (2) that because in the case of members of the National Assembly where there is express provision for vacation of their seat upon defection, no such provision in respect of the Vice President; (3) that the use of "associate" in section 142 (1) of the Constitution is a matter of details which is meaningless in the context of that section; and (4) that the report of the 1999 Constitution Drafting Committee was a mere Hansard of the National Assembly and therefore irrelevant.

It is submitted that the very narrow interpretation of the section adopted by the court below has defeated the intention of the makers of the Constitution and that the report of the 1999 Constitution Drafting Committee Report is not only admissible but decisive on the constitutional union of the Vice President and the President. It is further submitted that the role of our courts should be to interpret the provisions of any statute, including the constitution in a way as not to defeat the intension of the makers. A number of decisions of this court are relied on in support of this view.

It is further argued that in interpreting any provision, there is need for the court to always resort to the historical antecedent of such legisla-

tion; the need to consider the peculiar circumstances of the people; the need to ensure that the objects or ends which the provision seeks to achieve are not defeated; the changing circumstances of a progressive society for which a statute was designed; the need to bear in mind the preamble to the constitution when interpreting any section of the Constitution; and the need to avoid absurdity or make nonsense of the legislation. Reference is made to the report of the sub-committee on the Executive and Legislature of the Constitution Drafting Committee which produced and defined the relationship of the Vice President and President at pages 67 and 68. C

It is then submitted that it was the intention of the drafters of the 1999 Constitution that the Vice President is expected to be a copilot to the President and not on the same footing with him. That once the Vice President ceases to be a co-pilot properly so called, he has negated the intention of the lawmakers who provided that he must be an associate to the President from the same political party. It is further submitted that once the Vice President stops acting as an associate but as an antagonist of the President, he ought to resign from office as to do otherwise will defeat the intention of the drafters of the Constitution. The learned President of the court below is said to have failed to bear the need to avoid absurdity in mind when he ascribed narrow interpretation in deciding the matter before him. The court below is said to have got it wrong when it held that it was not the intention of the makers of the Constitution that if the Vice President resigns from the political party which sponsored him into office and embraces a rival political party, his office will become vacant because if that was the intention of the makers of the Constitution, it would have been so stated. It is submitted that the absence of express provisions on a matter does not mean that the intention/intendment of the Constitution cannot be construed from the totality of the Constitution. G

The failure of the court below to ascribe a definite meaning to the word “associate” in section 142 (1) of the Constitution is said to be erroneous. H

It is submitted in reply in the 1st respondent’s brief that the Vice

President can only resign from office as per the provisions of section 306 of the Constitution. The other clear provision relating to cessation of office and removal from office is said to be impeachment in sections 143 and 144 of the Constitution.

B On the relationship between the President and Vice President, it is submitted that the relationship is not that of master and servant as each of them is a creation of the Constitution and neither employs the other. The main question raised in the issue, and in fact in the entire appeal, is whether the court below properly interpreted and applied the provisions of the Constitution having regard to the facts deposed to in all the affidavits tendered by the parties in the case before the court. The main Constitutional issues that arose in the case are what should be the relationship between the President and the Vice President and what should happen in D a situation where it is shown that the two holders of those offices are incapable of operating harmoniously as expected of them and as envisaged under the Constitution.

It is necessary to say something about the general principles of E interpretation of statutes, including constitutions. **The generally accepted rule of construction is that it is to be assumed that the words and phrases of technical legislation are used in their technical meaning if they have acquired one, and otherwise in their ordinary meaning. Phrases and sentences are to be construed according to the rules of grammar. If there is nothing to modify, alter or qualify the language which the statute contains, it must be construed in the ordinary and natural meaning of the words and sentences. This approach is regarded as “literal interpretation” or characterized as F the “positivist approach.”** See *Victoria City Corp. v. Bishop of Vancouver Island* (1921) 2 A. C 384; *Bradlaugh v. Clarke* (1883) 8 A.C. 354; and *Maxwell on the Interpretation of Statutes* 12th edition, page 28. G

The approach of the Indian Judiciary while interpreting the Indian H Construction is stated as follows in M.P Jain, *Indian Constitutional Law*, 3rd edition, page 675:

“Generally, the approach of the Indian Judiciary has been to interpret the Constitution literally and to apply to it more or less the same

canons of interpretation as are usually applied to the interpretation of ordinary legislative enactments. This has been characterized as the positivist approach.”

See also *Chiranjit Lal v. Union of India*, A.R 1951, 41 at 5 8.

The approach of our courts in interpreting statutes and the constitution is the same as declared above. This court had stated the position in numerous cases. The principle as enunciated may be summarized as follows: (1) that in interpreting the Constitution, a liberal -approach should be adopted: See *Nafiu Rabi v. Kano State* (1980) 8 - 11 SC 130 at 148; (2) that the court must employ care and always bear in mind that the circumstances of our people must be taken into consideration: See *Ukaegbu v. Attorney General of Imo State* (1983) 1 SC NLR 212; (3) that the historical facts which are necessary for comprehension of the subject-matter may be called as aid: See *Uwaifo v. Attorney General of Bendel State* (1982) 7 SC 124; and *Bronik Motors v. Wema Bank* (1983) 1 S.C.N.L.R. 296; and (4) that regard should be taken to ensure that the mischief which is intended to deter is arrested: See *Mobil v. F.B.I R* (1977) 3 SC 53.

The correct approach to be followed in interpreting the provisions of the Constitution should therefore follow the lines enunciated above.

The office of the President and that of the Vice President are creations of the Constitution. The office of the President is created in section 130 of the Constitution. The section provides thus:

“130-(1) *There shall be for the Federation a President.*

(2) *The President shall be the Head of State, the Chief Executive of the Federation and Commander-in-Chief of the Armed Forces of the Federation.”*

The office of the Vice President, on the other hand, is created in section 141 of the Constitution. The section provides as follows:

“141, *There shall be for the Federation a Vice -President.”*

The method by which the Vice President is elected is provided in section. 142 (1) of the Constitution which provides as follows:

“142 - (1) *In any election to which the foregoing provisions of this*

Part of this Chapter relate, a candidate” for an election to the office of President shall not be deemed to be validly nominated unless he nominates another candidate as his associate from the same political party for his running for the office of President who is to occupy the office of Vice President and that candidate shall be deemed to have been duly elected to the office of Vice President if the candidate for an election to the office of President who nominated him as such associate is duly elected as President in accordance with the provisions aforesaid.”

The executive powers of the Federation is vested in the President in section 5(1) of the Constitution. The section provides as follows:

“5-(1) Subject ‘to the provisions of this Constitution, the executive powers of the Federation -

(a) shall be vested in the President and subject as aforesaid and to the provisions of any law made by the National Assembly, be exercised by him either directly or through the Vice President and Ministers of the Government of the Federation or officers in the public service of the Federation.”

While the Constitution specifically created the office of both the President and that of the Vice President it went ahead to vest the executive powers of the Federation in only the President. But the President is required to exercise the executive powers conferred on him either directly or through the Vice President and Ministers of the Government of the Federation or officers in ‘the public service of the Federation. Unlike in the United States of America and India where the respective Constitution assign specific roles to the Vice President, the Nigeria Constitution does not assign any specific role to the Vice President. The role which the Nigerian Vice President is to perform is limited to what the President assigns to him just like those of the Ministers who are appointed by the President subject to confirmation by Senate and may be removed by the President at will.

Unlike the Ministers, the Vice President cannot be removed by the President. The process of removal of the President or the Vice President is provided for in section 143 of the Constitution. It

is through the process of impeachment which is to be conducted by the National Assembly as set out in that section. Section 143(10) of the Constitution specifically ousts interference of the court from the proceedings leading to the impeachment of the holders of the two offices.

B

Section 143 (11) defines what would amount to “gross misconduct.” The section 143 of the Constitution provides as follows:

“143-(1) The President or Vice President may be removed from office in accordance with the provisions of this section.

C

(2)Whenever a notice of any -allegation in writing signed by not less than one-third of the members of the National Assembly -

(a)is presented to the President of the Senate;

(b) stating that the holder of the office of President or Vice President is guilty of gross misconduct in the performance of the functions of his office, detailed particulars of which shall be specified, the president of the Senate shall within seven days of the receipt of the notice cause a copy thereof to be served on the holder of the office and on each member of the National Assembly, and shall also cause any statement made in reply to the allegation by the holder of the office to be served on each member of the National Assembly.

D

(3)Within fourteen days of the presentation of the notice to the President of the Senate (whether or not any statements was made by the holder of the office in reply to the allegation contained in the notice) each House of the National Assembly shall resolve by motion without any debate whether or not the allegation shall be investigated.

F

(4) A motion of the National Assembly that the allegation be investigated shall not be declared as having been passed, unless it is supported by the votes of not less than two-thirds majority of all the members of each House of the National Assembly.

G

(5)Within seven days of the passing of a motion under the foregoing provisions, the Chief Justice of Nigeria shall at the request of the President of the Senate appoint a Panel of seven persons who in his opinion are of unquestionable integrity, not being members of any public service, legislative house or political party, to investigate the allegation

H

as provided in this section.

(6) The holder of an office whose conduct is being investigated under the section shall have the right to defend himself in person and be represented before the Panel by legal practitioners of his own choice.

B *(7) A Panel appointed under this section shall -*

(a) have such powers and exercise its functions in accordance with such procedure as may be prescribed by the National Assembly; and

(b) Within three months of its appointment report its findings to each House of the National Assembly; and

C *(8) Where the Panel reports to each House of the National Assembly that the allegation has not been proved, no further proceedings shall be taken in respect of the matter.*

D *(9) Where the report of the Panel is that the allegation against the holder of the office has been proved, then within fourteen days of the receipt of the report, each House of the National Assembly shall consider the report, and if by a resolution of each House the National Assembly supported by not less than two-thirds majority of all its members, the report of the Panel is adopted, then the holder of the office shall stand*
E *removed from office as from the date of the adoption of the report.*

(10) No proceedings or determination of the Panel or of the National Assembly or any matter relating thereto shall be entertained or
F *questioned in any court.*

(11) In this section-

“gross misconduct” means grave violation or breach of the provisions of this Constitution or a misconduct of such nature as amount in the opinion of the National Assembly to gross misconduct.”

G It is clear from the above provisions of section 143 of the Constitution that the process leading to the removal of the President or Vice President is entirely that of the National Assembly. While section 143 (10) ousts the court from entertaining or questioning the proceedings
H taken under the section, section 143 (11) defines what would constitute “gross misconduct” for which either the President or Vice President could be removed under the section. On the other hand, Section 144 provides for instances in which the President or Vice President would cease to

hold office; while section 145 sets out instances when the Vice President could act as President. Section 146 (1) on the other hand, provides that the Vice President shall hold the office of President if the office of President becomes vacant by reason of death or resignation, impeachment, permanent incapacity or the removal of the President from office for any other reason. B

On other hand, section 146 (3) provides for what should happen in respect of the Vice President's office becoming vacant. The sub-section provides as follows:

"146-(3) where the office of the Vice President becomes vacant - C

(a) by reason of death or resignation, impeachment, permanent incapacity or removal in accordance with section 143 or 144 of this Constitution;

(b) by his assumption of the office of President in accordance with subsection (1) of this section; or D

(c) for any other reason, the President shall nominate and, with the approval of each house of the National Assembly, appoint a new Vice President." E

As I have already stated above, the office of the Vice President is created by the Constitution. His appointment and removal from office are also provided for in the Constitution. Although the President had to nominate him as at the time he wanted to contest for the office of the President, and the Constitution also requires that the person nominated should be from the same political party as the President, I believe that the Constitution assumes that the President and the Vice President should maintain the same relationship throughout their term in office. F

The Nigeria Constitution, like the American presidential system, envisages single executive for which the President is the head and in whom the executive powers are vested. Article 11 of the Constitution of the United States, just like section 5(1) of our Constitution, provides, that "the executive power shall be vested in a President of the United State." H The principle implies the preclusion of a current vesting of the executive powers in two or more persons of equal authority. The Principle also has the effect that the legislative organ cannot take away from the President

or confer on others, functions of a strictly executive nature: See *Myers v. United States* 272 US 52; Nowak & Rotunde, *Constitutional Law*, 6 edition paragraph 7.14, page 298; and Nwabueze, *Constitutional Democracy in Africa*, (Vol. 4) *Forms of Government*, page 76.

B One of the implications of the principles of a single executive, as relates to the Vice President, is that although the office of Vice President is, unlike that of a minister under the system, an elective one, he is not voted in a separate election, but by the very same votes by which the President is elected. This is because, as
C already shown above, a Presidential candidate is required to nominate another candidate to run with him on the same ticket as a mate or associate” for the office of Vice President.

D I believe that the unity, contemplated by the arrangement transcends the election. I also believe and hold that their relationship should be throughout their joint term. The position is as aptly described by Prof. Nwabueze at pages 78 to 79 of his book, cited supra, where he stated as follows:

E “It is not intended to suggest that the union (between the President and Vice President) demands of the Vice that he should be a slave to the President, with no will or opinion of his own. It does not submerge his personality or individuality in that of the President or make them two-in-one.... As the President’s- chief adviser, it is his prerogative and duty to discuss freely with him the policies and actions of the
F government, to point out any defects or errors in them, and the dangers to which they may expose the government. Nevertheless, having done this, the principle of collective responsibility binds him to all government decisions or actions, whether they emanated from the President alone or from the Executive Council. So long as he remains in
G office as Vice President, he is not free to oppose in public decisions or actions of the President or of the Executive Council, no matter that he
H personally disagrees with them. His freedom to disagree and to criticize can only be exercised privately in a meeting with the President alone or in the Executive Council. Freedom on the part of a Vice President to criticize his President publicly for mismanagement or corruption is cer-

tainly not consistent with the loyalty required of him as a member of the President's team. It is worse still that a Vice President should make mismanagement or corruption by the President a reason for seeking openly to contest the office against him. Continued faith in the President should be the only reason for continuing to serve under him. More importantly, B it is the only explanation for an interpretation of a Vice President's continued stay, that the electorate can grasp and identify with.

Nor may the right to disagree and criticize be carried to the point of confrontation even when such confrontation is not carried on in public. A Vice President is not at liberty to refuse to carry out government C decisions of which he personally disagrees, or to defy government orders or the authority of the President over him or other wise to act as if he is an independent executive within the government. The arrangement implies, in the words of one commentator, that a Vice President can continue D to be in office only, when he can, in conscience, be loyal to the President. The moment a Vice President sees himself not any more as a member of the President's team but as a team leader in his own right, the honourable thing for him to do is to resign. In the present Constitution, E only one man is in charge. There is no room for two captains. So it is a question of one being willing to continue to accept order or not. The Constitutional arrangement completely subordinates the Vice President to the President. He is only a lieutenant." See Nwabueze, *Constitutional F Democracy in Africa Vol. 4, Forms of Government*, pages 78-79. (See also on collective responsibility of members of the Cabinet under Indian system of government -M.P. Jain, *Indian Constitutional Law*, 3rd edition., pages 97-100; Lawrence H. Tribe, *American Constitutional Law*, 1978, pages 157 and 184 in respect of the same position under the American G Constitution; and J. M. Kelly, *The Irish Constitution*, 1980, page 128 in respect of the position under the Irish Constitution.)

The court below was therefore wrong in holding that the 1st respondent could, while the Vice President still retained his office H as Vice President, openly criticize the same government; or join another political party and start to campaign for election to the office of President. The action cannot be justified by the fact that

he (1st respondent) had been suspended or expelled from the ruling political party under which he was jointly elected with the President or that he was exercising his fundamental right of association guaranteed by the Constitution. What is required of him is to first resign and even after resigning from that office, he would still be precluded from dissociating himself from the collective responsibility for decisions taken by the cabinet while he was in office.

In spite of the above, it is not the duty of the court to pronounce on his behaviour or actions or declare his office vacant. But that decision is that of the National Assembly.

Chief Afe Babalola has submitted that as the 1st respondent failed to resign as expected of him, he should be deemed as having resigned under section 146(3)(c) of the Constitution. I have no doubt in rejecting that submission. This is because under the presidential constitution which we operate, there is clear division of roles assigned to each of the three arms of government by the Constitution and each arm guards its own role jealously. The power to remove the President and Vice President is provided for in section 143 of the Constitution. The provision clearly gives the role of removing the two public officers to the National Assembly.

The marginal note to the section reads thus: “Removal of President from office” and the section reads, *inter alia*, thus:

“143 - (3) The President or Vice President may be removed from office in accordance with the provisions of the section.....”

The Constitution has not conferred on the court the power to declare the office of the holder of the two offices vacant for whatever reason. Section 146 of the Constitution relied on does not confer such power on the court. The marginal note of the section speaks of “Discharge of functions of President.” What the section 146 (3) (c) provides for is that where the office of the Vice President becomes vacant “for any reason”, the President shall nominate a new person, with the approval of each House of the National Assembly, to fill the vacancy. The subsection does not confer any role on the court in the process. The fact that the National Assembly has not

acted under section 143 is *per se* no justification for the court to assume jurisdiction in the matter. It has not been alleged that the National Assembly has, for example, been approached to act under section 143 of the Constitution and that it failed to act.

I believe that the conclusions I have reached above have disposed B of all the other issues raised in both the three appeals filed in this case as well as the cross-appeal filed by the 1st respondent. In conclusion therefore and for the reasons I have given above, I hereby dismiss the appeals and affirm the judgment of the court below relating to the three declaratory claims of the 1st respondent granted by that court. This is because C the term of the 1st respondent as Vice President has not expired and he cannot be removed by the President except through impeachment by the National Assembly.

As regards the counter-claim, I hold that there is merit in D the declarations sought in the 1st, 2nd and 3rd legs of the counter-claim and I accordingly grant them. The remaining legs of the counter claim are refused and they are accordingly dismissed. I E make no order on costs.

ONU JSC

This is an appeal against the decision of the Court of Appeal, Abuja F given by a full court presided over by the Honourable President of the Court of Appeal delivered on the 20th February, 2007.

In a unanimous judgment delivered by the President of the Court-Umaru Abdullahi (P.C.A) and concurred by T.A. Salami, O.O. Adekeye, A. Aboki and C.N. Uwa, J.J.CA, that court granted all the reliefs sought G by the plaintiff. The Plaintiff as Vice President of the Federal Republic of Nigeria had through an Originating Summons sought the following three fundamental questions for determination; to wit:

(i) Whether having regard to the combined provisions of Sections H 135 and 142(2) of the Constitution of the Federal Republic of Nigeria 1999, the Plaintiff's term of office as Vice President, Federal Republic of Nigeria which commenced on 29th of May, 2003 still subsists.

(ii) Whether having regard to the provisions of Sections 142, 143, 144 and 146 of the Constitution of the Federal Republic of Nigeria, 1999 or any other provisions of the Constitution or any law, the President of the Federal Republic 1999 or any law, the President of the Federal Republic public can declare vacant the office of the Plaintiff as Vice President of the Federal Republic of Nigeria.

(iii) Whether having regard to the clear provisions of Section 308 of the Constitution of the Federal Republic of Nigeria 1999, the President of the Federal Republic can withdraw, tamper or interfere with or violate the immunity conferred on the Plaintiff as the Vice President of the Federal Republic of Nigeria by that Section AND OR direct his arrest or prosecution.

The Plaintiff then sought the following reliefs:

(i) A declaration that the term of office of the Plaintiff as the Vice President of the Federal Republic of Nigeria commenced from 29th of May, 2007.

(ii) A declaration that the President has no power under the Constitution of the Federal Republic of Nigeria, 1999 or any other law to declare the office or seat of the Plaintiff as the Vice President of the Federal Republic of Nigeria vacant.

(iii) A declaration that the purported declaration by the President of the Federal Republic of Nigeria of the office of the Plaintiff as Vice President of the Federal Republic of Nigeria vacant is unconstitutional, illegal, null and void and of no effect whatsoever.

(iv) An order setting aside the withdrawal of all the rights, privileges, entitlements including all security details, staff of the Plaintiff as directed by the President of the Federal Republic of Nigeria.

(v) An order restoring all the rights, privileges, entitlements including all security details, staff of the Plaintiff as the Vice President of the Federal Republic of Nigeria.

(vi) An order of perpetual injunction restraining 3rd, 4th, 5th and 6th Defendants whether by themselves, agents, privies, servants or otherwise howsoever from impugning or violating the Constitutional immunity conferred on the Plaintiff as the Vice President of the Federal Republic

lic of Nigeria.

(vii) An order of perpetual injunction restraining the 3rd, 4th and 6th Defendants whether by themselves, their agents, privies, servants or otherwise howsoever from considering and or giving effect to the President's letter informing them of the declaration of the seat and or office of the Plaintiff as the Vice President of the Federal Republic of Nigeria vacant. Dissatisfied with the judgment the Appellants (as they then were constituted) appealed to this court.

It is at this point in my view, and in this suit, that it becomes needful and relevant to separate the Plaintiff as a Respondent from the Defendants/Appellants as they have nothing in common. See the case of *Chief Abusi David Green v. D.E.T Dublin Green* (1987) 3 NWLR (Part 61) 480. In other words, I see no reason for the 6th Appellant to be joined with the 2nd, 3rd, 4th and 5th Appellants either jointly in action or severally where as between them, there is no lis. Thus, I strike out the 2nd, 3rd, 4th and 5th Defendants/Appellants from this suit. See *Ehimare v. Emhonyon* (1985) 2 SC 49; (1985) 1 NWLR (Part 2) 177. Contrast *Dr. I.O. Adeosun v. Popoola Adisa* (1986) 5 NWLR 225 where issues are said not to be joined. As in this suit issues are joined. I propose to consider them hereinafter as follows:

ISSUE 1

Whether the learned Justices of the Court of Appeal gave a correct interpretation to the provision of Section 146(3)(c) of the 1999 Constitution. The fulcrum upon which Plaintiff/Respondent's case revolved was the interpretation to the provision of Sections 131, 142, 143, 144 and 146 of the Constitution of the Federal Republic of Nigeria, 1999. Section 146(1) (2), (3) provides as follows:

Section 146 "(1) *The Vice President shall hold the office of President if the office of President becomes vacant by reason of death or resignation, impeachment, permanent incapacity or the removal of the President from office for any other reason in accordance with section 143 or 144 of this Constitution.*"

"(2) *Where any vacancy occurs in the circumstances mentioned in subsection (1) of this Section during a period when the office of Vice*

President is also vacant, the President of the Senate shall hold the office of President for a period of not more than three months, during which there shall be an election of a new President, who shall hold office for the unexpired term of office of the last holder of the office.”

B (3) Where the office of the Vice President becomes vacant –
“(a) by reason of death or resignation, impeachment, permanent incapacity or removal in accordance with Section 143 or 144 of this Constitution.

C *(b) by his assumption of the office of President in accordance with subsection (1) of this section, or*

(c) for any other reason, the President shall nominate and, with the approval of each House of the National Assembly, appoint a new Vice President.”

D The learned Justices of the court below on the above provision held as follows:

“I am respectfully of the opinion that paragraph (c) of section 146(3) is duplicitous or repetitious. Its purpose or intendment is already conveyed in paragraph (a) thereof. I therefore agree with Chief Olanikpegun, learned Senior Counsel for the Plaintiff that any other reason is referable to the Constitution and not to matters extraneous or outside of the Constitution. Otherwise, the court will be saddled with
 F *ridiculous or arduous task of drawing up a list of materials which might touch upon political or moral issues upon which courts have no jurisdiction.”*

In case I wrongly found that lacuna does not exist, it is necessary to examine if there is any remedial measure. For the court to enact or
 G write into the Constitution what its makers failed to insert would amount to the court enacting laws and as Lord Simmons described such an act
 H *“a naked usurpation of legislative functions under the thin disguise of interpretation, and it is the less justifiable when it is guess work with what material the legislature would if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act.”* See *Magor & St Melions Rural District Council v. Newport Corp* (1951) 2 All E.R 839 at 841.

It is not the function of the court to make law but to interpret the words used by the legislature whose primary function is to make the law while that of the court is to declare it. Assuming the court has the power of making a legislation, without so deciding, it is doubtful if the law given as a result of the interpretation of Section 146(3) (c) would affect the Plaintiff's right or interest which had vested. The enactment purportedly made in the course of this judgment would clearly not be applicable to the circumstances of this case. See *SAMUEL EKEOCHA V. THE CIVIL SERVICE COMMISSION OF IMO STATE & ANOTHER* (1981) 1 NCLR 154, 165 PER Oputa C.J (as he then was). See also *Re Cuno* (1889) 43 Ch.D 12, 19 where Bower, L.J remarked thus:

"In the construction of statutes you must not construe the words so as to take away right which already existed before the statute was passed unless you have plain words which indicates that such was the intention of the legislature. Another factor militating against the contention of the counter claimant is that where there are two enactments one making specific provisions and the other general provisions, the specific provisions are impliedly excluded from the general. provisions. See Government of Kaduna State v. Kagoma (1982) 6 SC 87 at 107 -108 per Fatayi-Williams, CJN.

"It is now trite that where there are two enactments one making specific provisions, the specific provisions are by implication excluded from the general provisions."

Similarly, in *Osadebey v. A.G Bendel State* (1991) SCNJ 102 at 218, Nnaemeka-Agu, JSC stated inter alia thus:

"One of the basic principles of interpretation of our constitution and statutes is of course that the law maker will not be presumed to have given by the right in one section and taken it in another."

The sum total of these authorities is that the general provision contained in Section 146(3)(c) will by implication be excluded from the previous specific provisions enacted in Section 146(3)(a) and (b) because it cannot be presumed that the intention of the makers of the Constitution is to give a right with one hand and take same away by the other. See pages 277 - 279 of the records. It is submitted that the above find-

ings and pronouncements are correct and unassailable in law.

The marginal notes of Section 146 of the Constitution shows that it deals with discharge of the functions of the President. See the case of *ALEGBE V. OLOYO* (1983) 14 NSCC 315 AT 327 - 328; on the use of
B marginal notes in a statute where the Supreme Court held:

*“It must be realized that Section 103 of the Constitution deals with the tenure of office of members. For one thing and for whatever this is worth, the marginal notes to the section indicate this. Though in modern
C times marginal notes do not generally afford legitimate aid to the construction of a statute, at least it is permissible to consider the general purpose of a section and the mischief at which it is aimed with the marginal notes in mind. See STEPHENS V. CUCKFIELD R.D.C (1960) 2 Q.B 373 at 383. But more than the marginal notes is the fact that to
D construe the words of the Section as I have stated above, and as also been suggested by Chief Williams, especially having regard to the context on which they have been used, as automatically bringing the tenure of the seat of a member at an end, would to my mind, and with great respect,
E accord with normal English usage. The word “shall” meaning “must” indicates that none is contemplated. An imperative language is used when a clear duty is to be executed while a permissive language is used when there is common understanding that the matter is to be optional.”*

F Section 146(3) deals with when the Vice President can hold the office of the President, the circumstances are:

- (a) By reason of death
- (b) Resignation
- (c) Impeachment
- G (d) Permanent Incapacity
- (e) Removal of the President from office for any other reason in accordance with section 143 and 144 of the Constitution.

The grouse of the Appellant in this regard is that “any other reason” as stated in Section 46(1)(c) must be construed in line with the provisions of Section 143 and 144 of the Constitution. Now Section 143 of the Constitution provides as follows: —

“(1) The President or Vice President may be removed from office

in accordance with the provisions of this section.

(2) *Whenever a notice of any allegation in writing signed by not less than one third of the members of the National Assembly -*

(a) is presented to the President of the Senate;

(b) stating that the holder of the office of President or Vice President is guilty of gross misconduct in the performance of the functions of his office, detailed particulars of which shall be specified; the President of the Senate shall within seven days of the receipt of the notice cause a copy thereof to be served on the holder of the office and on each member of the National Assembly, and shall also cause any statement made in reply to the allegation by the holder of the office to be served on each member of the National Assembly.

(3) Within fourteen days of the presentation of the notice to the President of the Senate (whether or not any statement was made by the holder of the office in reply to the allegation contained in the notice) each house of the National Assembly shall resolve by motion without any debate whether or not the allegation shall be investigated.

(4) A motion of the National Assembly that the allegation be investigated shall not be declared as having been passed, unless it is supported by the votes of not less than two-thirds majority of all the members of each House of the National Assembly.

(5) Within seven days of the passing of a motion under the foregoing provisions, the Chief Justice of Nigeria shall at the request of the President of the Senate appoint a Panel of seven persons who in his opinion are of unquestionable integrity, not being members of any public service, legislative house or any political party, to investigate the allegation as provided in this section.

(6) The holder of an office whose conduct is being investigated under this section shall have the right to defend himself in person and be represented before the Panel by legal practitioners of his own choice.

(7) A Panel appointed under this Section shall —

(a) have such powers and exercise its functions in accordance with such procedure as may be prescribed by the National Assembly; and

(b) within three months of its appointment report its findings to

each House of the National Assembly.

(8) Where the Panel reports to each House of the National Assembly that the allegation has not been proved, no further proceedings shall be taken in respect of the matter.

B *(9) Where the report of the Panel is that the allegation against the holder of the office has been proved, then within fourteen days of the receipt of report, each House of the National Assembly supported by not less than two-thirds majority of all its members, the report of the Panel is adopted, then the holder of the office shall stand removed from office as*
C *from the date of the adoption of the report.*

(10) No proceedings or determination of the Panel or of the National Assembly or any matter relating thereto shall be entertained or questioned in any court.

D *(11) In this Section -*

“gross misconduct means a grave violation or breach of the provisions of this Constitution or a misconduct of such nature as amounts in the opinion of the National Assembly to gross misconduct.”

E *Section 144 of the Constitution on the other hand also provides thus:*

“(1) The President or Vice President shall cease to hold office if

(a) by a resolution passed by two-thirds majority of all the members of the executive council of the Federation it is declared that that the President or Vice-President is incapable of discharging the functions of
F *his office; and*

(b) the declaration is verified, after such medical examination as may be necessary, by a medical panel established under subsection (4) of this section in its report to the President of the Senate and the Speaker, of
G *the House of Representatives.*

(2) Where the medical panel certifies in the report that in its opinion the President is suffering from such infirmity of body or mind as renders him permanently incapable of discharging the functions of his
H *office, a notice thereof signed by the President of the Senate and the Speaker of the House of Representatives shall be published in the official Gazette of the Government of the Federation.*

(3) The President or Vice-President shall cease to hold office as

from the date of publication of the notice of the medical report pursuant to subsection (2) of this section.

(4) The medical panel to which this section relates shall be appointed by the President of the Senate and shall comprise five medical practitioners in Nigeria -

(a) one of whom shall be the personal physician of the holder of the office concerned; and

(b) four other medical practitioners who have, in the opinion of the President of the Senate, attained a high degree of eminence in the field of medicine relative to the nature of the examination to be conducted in accordance with the foregoing provisions.

(5) In this section, the reference to “executive council of the Federation” is a reference to the body of Ministers of the Government of the Federation, howsoever called, established by the President and charged with such responsibilities for the functions of government as the President may direct.”

Indeed the words of Section 146 (3)(a) of the Constitution are very clear and unambiguous. It deals with when the office of the Vice-President becomes vacant by reason of death, resignation, impeachment, permanent incapacity or removal in accordance with the provision of Section 143 or 144 of the Constitution.

The bone of contention is squarely in Section 143 (c) of this provision “for any other reason”, as rightly pointed out by the court below at page 276 of the record.

I agree with the view expressed by the court below that section 146(3)(c) of the Constitution is duplicitous and repetitious and when it so pronounced them, did so aptly while on a very strong wicket. This is the more so, if it is realized that the function of the court is to interpret the law and not to make law. See A.G. ONDO V. A.G. FEDERATION (2002) 9 NWLR (Pt.772) 222 at 418 PARAS D - F.

This Court has also held that where provisions of any law are inconsistent with the Constitution the said provisions are null and void and this Court has not hesitated to so pronounce. See *OSHO V. PHILLIPS* (1972) 7 NSCC 172 at 178. See also *A.G. ABIA STATE V. A.G. FEDERA-*

TION (2002) 6 NWLR (Pt.763) 264 at 269 and 291.

The court below was therefore right, in my view when it held that the provisions of Section 143(3)(c) were duplicitous and repetitious having been enumerated before in Section 146(1)(a) of the Constitution.

B Furthermore, I agree with the Respondent that any interpretation of section 146(3)(c) of the Constitution to bring in areas not mentioned in the Constitution is dangerous invitation to the court to make law rather than interpret it.

C The court below was right, in my view, to hold that it was duplicative and repetitive as to hold otherwise, in my view, is to open “a Pandora box” of shades of reasons which are unfathomable with unending magnitude which the court should not do, for at best an interpretation of law must be construed *eujus dem generis*.

D In the result, I will resolve this issue against the Appellant but in favour of the Respondent.

ISSUE 2

E This issue asks whether the learned Justices of the Court of Appeal were right when they used the right of association under section 40 of the Constitution in the interpretation of section 142(1) of the Constitution.

F The court below did not embark on a voyage of discovery *suo motu* as erroneously submitted by the Learned Senior Counsel on the issue of Section 40 of the Constitution. It was in the cause of the argument that once the Respondent had abandoned the Political Party (PDP) that brought him to power, and joined Action Congress, he is deemed constructively to have vacated his seat. It was for this reason the court below held that to hold otherwise that the Respondent cannot join any other Political Party simply because he is tied to the party that brought him to power, would be denying the fact that he still has a right of Freedom of Association guaranteed under Section 40 of the Constitution. The Court below said:

“Clearly the Plaintiffs right to peaceful assembly and association is Untrammelled. The only infraction or derogation of this freedom is when it concerns a political party which is not recognized by the Indepen-

dent National Electoral Commission. It is not the case of any of the Defendants that the Action Congress is a political party which is not recognized by the Independent National electoral Commission. His right to associate is consequently guaranteed by the Constitution and he should not suffer any detriment for exercising this right.”

The foregoing was a peripheral issue in the course of interpretation of section 146(3)(c) of the Constitution and not an issue raised *suo motu perse*.

The argument and examples canvassed in paragraph 5.25 by Learned Senior Counsel go thus: “*Conversely, the Vice President being a male cannot be seen to be exercising his right to freedom of association if he wants to belong to an association of women considering that he is a male*”, further demonstrates the puerile and infantile argument of counsel. The provision of Section 40 cannot grant such a “feeble and mundane” example.

In the context of this case, it is the freedom of association and right of the Respondent to choose and belong to any political party of his choice. This Honourable court is urged to hold that the court below did not go outside the issues submitted to it for adjudication. Assuming, which is not conceded, that the reference to Section 40 was raised *suo motu*, it is submitted that it is not every slip in a judgment that will result in the judgment being reversed. See the case of *ANYANWU V. MBARA* (1992) 5 NWLR (PT.242) 386 at 400 - 401, PARAS E - B. Indeed, it should be borne in mind that the Nigerian Constitution should be interpreted in such a manner as to Respondent and that the Appeal be dismissed. I so hold.

ISSUE 3

This issue asks whether or not the learned Justices of the Court of Appeal were right in holding that the seat of 1st Respondent had not been vacated by reason of his joining another political party different from the party under which platform he was elected.

The Respondent adopts its earlier submission as it relates to the issue now in Issue 1 of this brief earlier canvassed and would in addition add as follows:

The provision of Section 142(1) as set out on behalf of the Plain-

tiff is, in my opinion, clearly and correctly set out in this judgment at page 260 of the record, to wit:

“The words of Section 142(1) of the Constitution which is already set out in this judgment deals with qualification for election as was rightly submitted on behalf of the Plaintiff. At that stage, respectfully, the presidential candidate who nominates his associate or colleague or companion, was entitled to drop his running mate at any stage before the election subject, of course, to the relevant provisions of the Electoral Act for any reason. After the election and they were jointly declared elected upon one becoming President and the other Vice President, the former loses his discretion to remove the latter at will. His removal is now subject to other provisions of the Constitution, such as Section 143 or 144.”

Now, Section 142(1) of the Constitution provides thus:

“In any election to which the foregoing provisions of this part of this Chapter relate, a candidate for an election to the office of President shall not be deemed to be validly nominated unless he nominates another candidate as his associate from the same political party for his running for the office of President, who is to occupy the office of Vice President .and that candidate shall be deemed to have been duly elected to the office, of Vice President if the candidate for an election to the office of the President who nominated him as such associate is duly elected as President in accordance with the provisions aforesaid.”

It is submitted that the court below correctly construed the word “for any other reason” in the construction of Section 146(1) of the Constitution, *eujus dem generis* and therefore Section 146(3)(c) was *otiose*. I so hold. The references to Lyttleton Constitution, Mcpherson Constitution, Richardson Constitution, Independence Constitution, 1979 and the aborted 1989 Constitution by the learned senior counsel at paragraph 5.30 of the brief to underscore the use of “Associates” in the 1999 Constitution, it is submitted, is totally irrelevant and remote. Legislative history and the mischief rule, it is submitted, cannot be invoked as a matter of course; they become relevant where there had been a lacuna in previous legislation that promotes injustice and the new legislation is sought to remedy vide *IBWA LTD V. IMANO LTD* (1988) 7 SCNJ 326 at 335 and

336. The words “hypothetically speaking” contained in paragraph 5.33 of the Appellant’s brief is, with respect, a gross misconception of the provision of the Constitution. The manifesto of a Political Party as well as the Constitution of the party must have a root in the Constitution of the Federal Republic of Nigeria. See Section 224 of the Constitution which states:

“The programme as well as the aims and objects of a political party shall conform with the provisions of Chapter II of this Constitution.”

In *OLAFISOYE V. FRN* (2004) 4 NWLR (PT.864) 540 AT 654 - 655, PARAS, H - A this court said:

*“The adjective ‘hypothetical’ really means that which has not been proved or shown to be real. It also connotes imaginary. Can this court rely on imaginaries to give judgment? Hypothesis by their very nature generally have no limitation and courts of law by their judgments have limitations. And the limitations are the pleadings and the briefs in trial and appellate courts or any other Nigerian Court for that matter? In *Adewunmi v. The Attorney-General of Ekiti State* (2002) 2 NWLR (Pt.751) E 474 the Supreme Court held that it is not given to making moot decisions or to decide hypothetical cases which have no bearing with the case the court is called upon to decide. See *Bamgboye v. University of Ilorin* (1999) 10 NWLR (Part 622) 290; *Anyankpele v. Nigerian Army* (2000) F 13 NWLR (Pt.684) 2009; *Mariki v. Adamu* (2001) 15 NWLR (PT.737)666.”*

Therefore, it is only a matter of choice or priority and not a neglect of the Constitution, if the Vice President decides to take the manifesto of the new party which this court was urged to discountenance as being sentimental. For the reasons I have stated above and those more clearly specified in the leading judgment of my learned brother Akintan, JSC I too dismiss this appeal and affirm the decision of the court below. I make no order as to costs.

MUSDAPHERJSC

I was privileged to have read before now, the judgment of my Lord, Akintan, J.S.C. just delivered with which I entirely agree. In the said judgment his lordship has meticulously and exhaustively recounted all the relevant facts and the circumstances of the case and has admirably and completely dealt with all the issues arising for determination of the appeal. I respectfully adopt all his reasonings as mine and I accordingly dismiss the appeal as lacking in merit. I abide by all the consequential orders contained in the aforesaid judgment.

Appeal dismissed.

ONNOGHEN JSC

This is an appeal against the judgment of the Court of Appeal holden at Abuja in suit No. CA/A/23/M/2007 delivered on the 20th day of February, 2007 in which it granted some of the reliefs of the plaintiff/1st respondent. The appellants are dissatisfied with that judgment and have consequently appealed to this Court.

In an originating summons filed in the Court of Appeal pursuant to the provisions of section 239 of the Constitution of the Federal Republic of Nigeria 1999 (hereinafter called/referred to as the 1999 Constitution), the 1st respondent as plaintiff, sought the determination of the following questions by the Court of Appeal in the exercise of its original jurisdiction conferred on it by the said section 239 of the 1999 Constitution:-

“(1) Whether having regard to the combined provisions of sections 135 and 142(2) of the Constitution of the Federal Republic of Nigeria 1999, the plaintiff’s term of office as Vice President, Federal Republic of Nigeria which commenced on 29th of May, 2003 still subsists

(2) Whether having regard to the provisions of sections 142, 143, 144 and 146 of the Constitution of the Federal Republic of Nigeria 1999 or any law, the President of the Federal Republic of Nigeria can declare vacant the office of the plaintiff as Vice President of the Federal Republic of Nigeria.

(3) Whether having regard to the clear provisions of section 308

of the Constitution of the Federal Republic of Nigeria 1999, the President of the Federal Republic of Nigeria can withdraw, temper or interfere with or violate the immunity conferred on the plaintiff as the Vice President of the Federal Republic of Nigeria by that section AND OR direct his arrest or prosecution.”

B

The plaintiff proceeded in the said summons to seek the following reliefs from the court to wit:-

“I. A DECLARATION that the term of office of the plaintiff as the Vice President of the Federal Republic of Nigeria which commenced from 29th of May, 2003 still subsists and does not terminate until 29th of May, 2007.

C

II. A DECLARATION that the President has no power under the Constitution of the Federal Republic of Nigeria, 1999 or any other law to declare the office or seat of the plaintiff as the Vice President of the Federal Republic of Nigeria vacant.

D

III. A DECLARATION that the purported declaration by the President of the Federal Republic of Nigeria of the office of the plaintiff as Vice President of the Federal Republic of Nigeria vacant is unconstitutional, illegal, null and void, and of no effect whatsoever.

E

IV. AN ORDER setting aside the withdrawal of all the rights, privileges, entitlements inclusive all security details, staff of the plaintiff as directed by the President of the Federal Republic of Nigeria.

F

V. AN ORDER restoring all the rights, privileges, entitlements and or benefits howsoever of the plaintiff as the Vice President of the Federal Republic of Nigeria.

VI. AN ORDER of perpetual injunction restraining the defendants whether by themselves, agents, privies, servants, or otherwise howsoever from impugning or violating the Constitutional Immunity conferred on the plaintiff as the Vice President of the Federal Republic of Nigeria.

G

VII. AN ORDER of perpetual injunction restraining the 3rd, 4th, 5th and 6th Defendants whether by themselves, their agents, privies, servants or otherwise howsoever from considering any nominee from the President to the office of the Vice President.

H

VIII. AN ORDER of perpetual injunction restraining the 6th De-

fendant whether by itself, its agents, privies, servants or otherwise howsoever from considering and or giving effect to the President's letter informing them of the declaration of the seat and or office of the plaintiff as the Vice President of the Federal Republic of Nigeria vacant:"

B The originating summons was supported by an affidavit of 22 paragraphs to which certain documents were exhibited and on which the plaintiff/ 1st respondent relied in moving the court. The plaintiff/1st respondent subsequently filed further affidavit also in support of the summons.

C It should be mentioned that the 1st defendant/appellant filed a counter claim against the plaintiff in which it sought the determination of the following questions:-

D *"1. Whether under and or by the combined effect of sections 14, 130, 131(c), 136(1), 142(1) and 146(c), the Constitution of the Federal Republic of Nigeria, the President of the Federal Republic of Nigeria can lawfully select or continue to maintain a decamped Vice President who has publicly condemned the policy of the sponsoring party and embraced a new political party whose policies are hostile to the sponsoring party.*

F *2. Whether or not the office of the Vice President elected by virtue of section 142(1) of 1999 Constitution can become vacant upon the resignation of the Vice President.*

G *3. Whether having regard to section 146(3)(a) of the Constitution of the Federal Republic of Nigeria 1999 which entitles a Vice President to resign from the office of the Vice President, the dumping by the plaintiff of the sponsoring party for another political party coupled with public denunciation and condemnation of the sponsoring political party, the President and their Government do or do not constitute constructive resignation, withdrawal or abandonment of the office of the Vice President.*

H *4. Whether or not a sitting Vice President elected pursuant to section 142(1) of the 1999 Constitution who declares for another political party, denounced and condemned the sponsoring political party, the government and the President has by his conduct, breached his obligation of one mindedness, loyalty, mutual trust, confidence and good faith and*

has, therefore resigned, abandoned and withdrawn from the office of the Vice President.

5. Whether a sitting Vice President elected under section 142(1) of the 1999 Constitution who dumps the sponsoring party for another political party and publicly condemned the sponsoring political party, the President and the Government is not by reason of his conduct estopped from denying that he has not constructively resigned from the sponsoring party.”

The 1st defendant/appellant then sought the following reliefs, to wit:-

“1. A declaration that for actualization of the policies of the sponsoring party and effective running of the office of the President of the Federal Republic of Nigeria, and pursuant to section 142(1) of the Constitution, a Vice President of the Federal Republic of Nigeria must belong to the same political party with the President.

2. Declaration that the special relationship between the Vice President, the President and the sponsoring party by the combined effect of sections 14, 130, 131(c), 136(1), 142(1) and 146(c) of the Constitution of the Federal Republic of Nigeria is one mindedness, loyalty, trust and mutual confidence and good faith which does not permit double loyalty.

3. Declaration that the office of the Vice President under section 146(3) (a) can become vacant on the resignation of the Vice President.

4. Declaration that the dumping of a sponsoring party for another party by a sitting Vice President coupled with condemnation of the President and the Government by a sitting Vice President is a breach of one mindedness, loyalty, trust and confidence expected of the Vice President and therefore constitutes constructive resignation, withdrawal and/or abandonment of the office of the Vice President.

5. Declaration that by reason of the facts stated in (4) above, a sitting Vice President is estopped from denying that he has by his conduct resigned, withdrawn and/or abandoned the office of the Vice President.

6. An order of injunction restraining the plaintiff by himself, his - servant, privies or otherwise from parading or further parading himself as Vice President of Nigeria.

7. *An order of injunction restraining the 2nd, to 6th Defendants jointly and or severally by themselves, their agents, servants, privies, or subordinates, whosoever described from recognizing, treating or addressing the plaintiff as the Vice President of the Federal Republic of Nigeria.*"

It is very clear from the counter claim that the reliefs sought, particularly the declarations, which are five in all, are directed at the allegation that the plaintiff/1st respondent had lost his seat because he had dumped or decamped from the party on whose platform he was elected, and pitched his tent with another political party other than the sponsoring party.

At the conclusion of the trial, the lower court entered judgment for the plaintiff and granted the three substantive declaratory reliefs claimed in the originating summons and dismissed the 1st defendant/appellant's counter claim in its entirety. The instant appeal by the 1st appellant is against that judgment.

It is very important to note that apart from the main appeal which I will call the 1st appeal, the Inspector General who is the 2nd respondent in the main or 1st appeal has also appealed against the said judgment as well as the 3rd respondent - Independent National Electoral Commission (INEC). When one looks at both the main suit and the counter claim particularly the reliefs contained therein, it is very clear that apart from the 1st defendant/appellant, all the other defendants are nominal parties to the action there being no relief claimed against them neither have they been alleged to have committed any acts of commission or omission calling for redress. For these two nominal defendants, who by their constitutional roles are expected not to be partisan so as to effectively discharge their constitutional responsibilities to all and sundry, to appeal against a judgment that does not directly or indirectly affect their status or functions under the law, leaves much to be desired and is, to say the least, not only absurd but condemnable. Their appeals are professionally ill advised, and do not deserve any further mention or comment in this judgment.

In the appellant's brief of argument filed on the 9th day of March

2007 by learned leading Senior Counsel for the appellant CHIEF AFE BABALOLA, CON, SAN and adopted in argument of the appeal on the 29th day of March 2007, the following issues have been identified for determination.

“(I) Whether or not the Court of Appeal was right in granting the plaintiff’s reliefs NOS. I, 11 and III when on the available evidence, which was not considered, there was no lis. Grounds 22, 23 and 24.

(II) Whether or not the Court of Appeal acting under S. 239 of the Constitution of the Federal Republic of Nigeria is a trial court which is obliged to evaluate the evidence, identify issues in dispute and apply the findings on the law before arriving at any decision. Grounds 1, 13, 25, and 35.

(III) Whether or not in construing the intention of the drafters of the Constitution in relation to section 142(1) of the 1999 Constitution, the Court of Appeal was not duty bound to consider the following:

(a) History of the constitutional provisions;

(b) Social need, political realities and peculiarities, and,

(c) The need to avoid absurdity.

(III)(b) If the answer to the above is in the affirmative, whether or not the Court of Appeal was right in its narrow approach to the interpretation of section 142(1) of the 1999 Constitution to the effect that there is nothing in the provision which precludes the President and the Vice President from continuing in office after dumping the political party that sponsored him to the office for another political party (Grounds 15, 16, 26 and 34).

(IV) Whether or not the Constitutional Union between the Vice President and the President under S. 142 of the (sic) Federal Republic of Nigeria automatically expired immediately after the election that brought both the Vice President and President to office. Grounds 4, 7, 8 and 14.

(IV)(b) AND if not, whether the constitutional union demands from the Vice President, undivided loyalty, trust and confidence as Vice President as long as he remain the Vice President. Grounds 2, 3, 5, 12 and 18.

(V) Whether or not the Vice President having openly jettisoned the

sponsoring party and defected to another party and condemned the President and the sponsoring party, has not by his conduct abandoned the sponsoring party, the government and the President. Grounds 6, 11, 17, 20, 27 28, 29 and 32.

B (VI) *Whether or not the Court of Appeal has jurisdiction under S. 146(3) (c) to declare the seat of the Vice President vacant having regard to uncontradicted evidence that the Vice President has jettisoned the sponsoring party and declared for a political party (Action Congress) which was not even in existence at the time of election; castigated the President and condemned the policy and philosophy of the sponsoring party. Ground*
C *19, 21, 30, 31 and 33.*

(VII) *Whether the Court of Appeal's application of the Respondent's right of freedom of association to the facts of this case was not wrong*
D *particularly as the issue of the said right was raised by the Court Suo Motu and without calling upon counsel to address it. (Grounds 9 and 10)."*

On the other hand, learned leading senior counsel for the 1st respondent, CHIEF WOLE OLANIPEKUN SAN in the 1st respondent's brief of argument filed on 22/3/07 identified the following issue as calling for determination of the appeal:-

"Having regard to the combined provisions of sections 135, 142, 143, 144, 146, 308 and other relevant provisions of the Constitution of the Federal Republic of Nigeria, 1999 and admissible materials placed before the lower court, whether or not the lower court rightly granted the 1st Respondent's reliefs and 'dismissed Appellant's Counter-Claim.'"
F

From the record, the relevant facts for the determination of the claim and counter claim of the parties are largely undisputed and they include the following:
G

The 1st respondent was, in accordance with the provisions of section 142(1) of the 1999 Constitution, nominated by Chief Olusegun H Obasanjo as his associate from the Peoples Democratic Party (PDP) for the post of Vice President for the purpose of contesting the 2003 Nigerian Presidential election. Both of them were successful at the election and were consequently sworn into office on the 29th day of May 2003 as

the President and Vice President of the Federal Republic of Nigeria respectively. There is evidence on record that after the assumption of office the relationship between the 1st respondent as Vice President on the one hand and the President, Chief Olusegun Obasanjo and the Peoples Democratic Party on the other hand, broke down resulting in the 1st respondent being at first suspended from the party in September, 2006 for a period of three months and later expelled from the party. At a certain point in time the President allegedly ordered the 1st respondent out of the Federal Executive Council meeting. Certain newspaper cuttings are attached to the affidavits of the 1st respondent as exhibits to show that one Mallam Uba Sani, the Special Assistant to the President on Media Matters, had announced on radio, television and in newspaper reports on 23rd and 24th December 2006, that the President of the Federal Republic of Nigeria had declared the seat of the 1st respondent as Vice President of Nigeria, vacant. Mallam Uba Sani also claimed that the President had since withdrawn all the privileges, entitlements, rights and benefits of the Vice President of Nigeria including the security details and official vehicles, while the official residence had been sealed off and all staff attached to that office redeployed.

The 1st respondent also attached a certified true copy of the originating summons in suit No. CA/A/236/M/06 filed in the Court of Appeal, Abuja on 27/12/06, as exhibit, in which the appellant sued the 1st respondent as 2nd defendant for, inter alia, declarations that the 1st respondent had constructively resigned and had ceased to be Vice President of the Federal Republic of Nigeria. The 1st respondent was described in the said summons a "*former Vice President of Nigeria.*"

The appellant's reaction to the suits of the 1st respondent is by filing a counter affidavit in opposing the originating summons in which he denied that the President had declared the seat of the Vice President vacant; that the said Mallam Uba Sani had no authority to speak on behalf of the President and referred to newspaper cuttings of a release by Mrs. Oluremi Oyo, the Head of Media and Publicity in the Presidency. The above statement was made on 7/1/07 about 14 days after Mallam Uba Sani made is own.

B Appellant stated that the Government of the Federation had taken possession of the 1st; respondent's official cars only to prevent them from being vandalized at the 1st respondent's official residence which the 1st respondent is claimed to have abandoned. There is no explanation as to why the cars would be vandalized despite the presence of security men allegedly guarding the official residence of the 1st respondent. The appellant denied withdrawing the security details attached to the 1st respondent, explaining that the 1st respondent had rather made himself unavailable to be so guarded. Appellant also denied withdrawing the staff attached to the 1st respondent and stated that the President had not declared the seat of the 1st respondent vacant and that the President had no intention of replacing the 1st respondent as the Vice President of Nigeria until the Court of Appeal declared the seat vacant.

D Appellant alleged that on the 20th day of December 2006 the 1st .respondent had openly declared for another political party; the Action Congress, at which rally the 1st respondent openly condemned and denounced the Peoples Democratic Party (PDP), the PDP led Government of the Federation and its policies and the President of Nigeria and that the 1st respondent has thereby ceased to be an associate of the President and had abandoned and ceased to carry out his "duties as Vice President of Nigeria.

F To me the main issue that calls for determination is whether the Court of Appeal is correct in its decision that the seat of the Vice President will not become vacant if he abandons the political party on whose platform he and the President were elected and joins another political party.

G In arguing the appeal, learned Senior Counsel for the appellant submitted that the lower court erred in granting the three substantive reliefs of the 1st respondent particularly as it refused the injunctive reliefs without reference to the depositions in paragraphs 27 - 32 of the Counter Affidavit of the appellant at pages 107 - 119 of the record; that if the court had referred to those paragraphs, it would have seen that the President had no intention of replacing the 1st respondent as Vice President of Nigeria until the determination of the case by the court; that the finding

by the lower court that there was no threat to the office of the 1st respondent to make it necessary to order injunction is an admission of the contention of the appellant that there was no LIS between the parties and as such the three declaratory reliefs earlier granted by the lower court were granted in error.

Referring to page 262 of the record where the lower court construed the provisions of section 142(1) of the 1999 Constitution, learned Senior Advocate of Nigeria submitted that the lower court was in error when it held that it could not adopt the broad interpretation principle to the interpretation of section 142(1) of the 1999 Constitution; that by so holding the lower court adopted a position contrary to the decision of this Court in *Rabiu vs Kano State* (1980) 8-11 S.C 130 which laid down three important principles in interpreting the Constitution to wit:-

(a) the court should lean to broader interpretation in response to the demand of justice.

(b) Technical rules of interpretation should not be used to defeat the principles of government in the Constitution.

(c) Where narrower interpretation would least carry out the objects or purposes of the Constitution the court must lean to a broader interpretation.

Learned Senior Counsel further submitted that in interpreting the provisions of the Constitution, the court should have recourse to the history of the Constitution relying on *Uwaifo vs A-G Bendel* (1982) 4NCLR 1; (1982) 7 S.C 124; *Bronik Motors vs WEMA Bank* (1983) 1 S.C NLR 296 and *Olufosoye vs Olurunfemi* (1989) 1NWLR (pt. 95) 26 at 37; that the lower court completely ignored the historical facts in the making of the Constitution relied upon by the appellant in coming to its decision now on appeal.

Referring to section 142(1) of the 1999 Constitution learned Senior Counsel submitted that the provision is a new provision or introduction to the Constitution. Learned Counsel referred to pages 67 - 68 of the 1976 Report of Constitution Drafting Committee Vol. II and stated that historically a Vice President is a co-pilot; that this Court had used the Report of the Constitution Drafting Committee in interpreting the 1999

Constitution as evidenced in the case of Olafisoye vs F.R.N. (2004) 4 N.W.L.R. (pt.864) 580 at 660.

The learned leading Senior Counsel for the appellant is of the view that it is not correct, as held by the lower court that after election both
B the President and the Vice President go their separate ways but that where there is the need but the Vice President fails to resign there can be a suit calling on the court to declare his position vacant by abandonment and that
C on the facts of this case, this Court should hold that the 1st respondent is deemed to have abandoned his office and the court should apply the provisions of section 239 of the 1999 Constitution, to section 146(3)(c) to declare the office vacant.

On his part, learned Senior Leading Counsel for the 1st respondent, referred the court to grounds 23 and 24 of the grounds of appeal and
D submitted that the lower court was right in granting the reliefs of the 1st respondent since the appellant did not join issues with 1st respondent; that there was a LIS before the court as the 1st respondent's seat was declared vacant and he was treated as a former Vice President; that the
E paragraphs of the counter affidavit referred to by learned senior counsel for the appellant were countered by the 1st respondent at pages 128 - 129 of the record particularly paragraphs 18 – 22 at -page 135 of the record, with exhibits attached thereto; that except as otherwise provided by the
F Constitution, the office of Vice President which is a creation of the Constitution cannot be declared vacant.

Learned Senior Counsel referred to the provisions of sections 65 & 66 of the 1999 Constitution on qualification for office of elected National Assembly members; that if the Constitution had wanted members
G of the executive to also lose their seats by virtue of their declaration for other political parties other than the one by which they were elected it would have expressly provided for same; that where the President and his Vice cannot work together after election, section 143 of the 1999
H Constitution comes to play and that section 146(3)(c) of the said 1999 Constitution does not call for determination or does not arise in the instant case because the Counter Claim is based on constructive resignation of the Vice President and that constructive resignation can only be

accommodated under section 146(3)(a) which talks about resignation, death etc; that section 306 of the 1999 Constitution regulates how a Vice President resigns; that resignation from the party is different from resignation from the office of Vice President.

On his part, learned counsel for the 2nd and 3rd respondents, PETER EZE Esq. submitted that the crux of the matter in the appeal is where a sitting Vice President ceases to be a member of a political party on whose platform he was elected into office, does the seat thereby become vacant? He answered the question in the negative and urged the court to dismiss the appeal.

From the briefs of counsel and their arguments in court, it is very clear that this appeal revolves around the proper interpretation of the provisions of sections 142(1) and (2), 143, 144, and 146 of the 1999 Constitution.

There is no disputing the fact that the lower court has original and exclusive jurisdiction under section 239(1) of the 1999 Constitution to hear and determine any question as to whether, inter alia, the office of President or Vice President has become vacant. The above provision forms the foundation of the claim and counter claim in the lower court. It is the exclusivity of the original jurisdiction conferred on the lower court by the above section of the 1999 Constitution that partly accounted for the decision of this Court that it has no concurrent jurisdiction with the Court of Appeal to hear and determine the question as to whether or not the office of the Vice President has become vacant following the earlier wholesale transfer of the case to this Court for determination under the guise of constitutional reference.

Going to the substantive issue before the court, section 141 of the 1999 Constitution established the office of the Vice President of Nigeria by providing that “There shall be for the Federation a Vice President.” Now sections 142, 143, 144 and 146 of the 1999 Constitution provide as follows:-

“142-

(1) in any election to which the foregoing provisions of this Part of this Chapter relate, a candidate for an election to the office of Presi-

dent shall not be deemed to be validly nominated unless he nominates another candidate as his associate from the same political party for his running for the office of President, who is to occupy the office of Vice-President if the candidate for an election to the office of President who
 B *nominated him as such associate is duly elected as President in accordance with provisions aforesaid.*

(2) The provisions of this Part of this Chapter relating to qualification for election, tenure of office, disqualification, declaration of assets and liabilities and oaths of President shall apply in relation to the
 C *office of Vice-President as if references to President were references to Vice-President.*

143-

(1)The President or Vice-President may be removed from office in
 D *accordance with the provisions of this section.*

(2)Whenever a notice of any allegation in writing signed by not less than one-third of the members of the National Assembly –

(a). is presented to the President of the Senate.

(b) Stating that the holder of the office of President or Vice-President is guilty of gross misconduct in the performance of the functions of his office, detailed particulars of which shall be specified. the President of the Senate shall within seven days of the receipt of the notice cause a
 E *copy thereof to be served on the holder of the office and on each member of the National Assembly, and shall also cause any statement made in*
 F *reply to the allegation by the holder of the office to be served on each member of the National Assembly.*

(3)Within fourteen days of the presentation of the notice to the
 G *President of the Senate (whether or not any statement was made by the holder of the office in reply to the allegation contained in the notice) each House of the National Assembly shall resolve by motion without any debate whether or not the allegation shall be investigated.*

(4) A motion of the National Assembly that the allegation be investigated shall not be declared as having been passed, unless it is supported by the votes of not less than two-thirds majority of all the members of each House of the National Assembly.
 H

(5) *Within seven days of the passing of a motion under the foregoing provisions, the Chief Justice of Nigeria shall at the request of the President of the Senate appoint a Panel of seven persons who in his opinion are of unquestionable integrity, not being members of any public service, legislative house or political party, to investigate the allegation as provided in this section.* B

(6) *The holder of an office whose conduct is being investigated under this section shall have the right to defend himself in person and be represented before the Panel by legal practitioners of his own choice.* C

(7) *A Panel appointed under this sections shall-*

(a) *have such powers and exercise its functions in accordance with such procedure as may be prescribed by the National Assembly; and*

(b) *within three months of its appointment report its findings to each House of the National Assembly.* D

(8) *Where the Panel reports to each House of the National Assembly that the allegation has not been proved, no further proceedings shall be taken in respect of the matter.*

(9) *Where the report of the Panel is that the allegation against the holder of the office has been proved, then within fourteen days of the receipt of the report, each House of the National Assembly shall consider the report, and if by a resolution of each House of the National Assembly supported by not less than two-thirds majority of all its members, the report of the Panel is adopted, then the holder of the office shall stand removed from office as from the date of the adoption of the report.* E F

(10) *No proceedings or determination of the Panel or of the National Assembly or any matter relating thereto shall be entertained or questioned in any court.* G

(11) *In this section-*

“gross misconduct” means a grave violation or breach of the provisions of this Constitution or a misconduct of such nature as amounts in the opinion of the National Assembly to gross misconduct. H

144-

(1) *The President or Vice-President shall cease to hold office, if-*

(a) *by a resolution passed by two-thirds majority of all the mem-*

bers of the executive council of the Federation it is declared that the President or Vice-President is incapable of discharging the Junctions of his office; and

B *(b) the declaration is verified, after such medical examination as may be necessary, by a medical panel established under subsection (4) of this section in its report to the President of the Senate and the Speaker of the House of Representatives.*

C *(2) Where the medical panel certifies in the report that in its opinion the President or Vice-President is suffering from such infirmity of body or mind as renders him permanently incapable of discharging the functions of his office, a notice thereof signed by the President of the Senate and the Speaker of the House of Representatives shall be published in the Official Gazette of the Government of the Federation.*

D *(3)The President or Vice-President shall cease to hold office as from the date of publication of the notice of the medical report pursuant to subsection (2) of this section.*

E *(4)The medical panel to which this section relates shall be appointed by the President of the Senate, and shall comprise five medical practitioners in Nigeria -*

(a) one of whom shall be the personal physician of the holder of the office concerned; and

F *(b) four other medical practitioners who have, in the opinion of the President of the Senate, attained a high degree of eminence in the field of medicine relative to the nature of the examination to be conducted in accordance with the foregoing provisions.*

G *(5)In this section, the reference to “executive council of the Federation” is a reference to the body of Ministers of the Government of the Federation, howsoever called, established by the President and charged with such responsibilities for the functions of government as the President may direct.*

H 146-

(1) The Vice-President shall hold the office of President if the office of President becomes vacant by reason of death or resignation, impeachment, permanent incapacity or the removal of the President from

office for any

other reason in accordance with section 143 or 144 of this Constitution.

(2)Where any vacancy occurs in the circumstances mentioned in subsection (1) of this section during a period when the office of Vice-President is also vacant, the President of the Senate shall hold the office of President for a period of not more than three months, during which there shall be an election of a new President, who shall hold office for the unexpired term of office of the last holder of the office.

(3)Where the office of Vice-President becomes vacant -

(a) by reason of death or resignation, impeachment, permanent incapacity or removal in accordance with section 143 or 144 of this Constitution;

(b) by his assumption of the office of President in accordance with subsection (1) of this section; or

(c) for any other reason, the President shall nominate and, with the approval of each House of the National Assembly, appoint a new Vice-President.”

From the above provisions, it is very clear that sections 143 and 144 provide for circumstances in which the President and Vice President can be lawfully removed from office after election and administration of the oath of office while section 142 deals with qualification and nomination of the Vice President for election to that office and the office of the President. There is no doubt that section 142 of the 1999 Constitution deals with pre election matters of nomination and election to the office of Vice President established by section 141 of the said Constitution.

Whereas section 143 deals with removal of the President or Vice President by impeachment process, the procedure leading to which have been stated therein in detail, section 144 on the other hand deals with removal of the President or Vice President due to permanent incapacity in the circumstances stated therein.

It should be pointed out that subsection 2 of section 142 expressly provides that the provisions of the Constitution relating to the qualification for election, tenure of office, disqualification, declaration of assets and liabilities and oaths of the President shall apply in relation to the office

of Vice President as if reference to the President were reference to the Vice President. The above provision therefore makes sections 131 of the 1999 Constitution which deals with qualification for election as President of the Federal Republic of Nigeria; 135 of the 1999 Constitution which
B deals with tenure of office of the President; section 137. of the said 1999 Constitution .dealing with disqualification for election to the office of the President of the Federal Republic of Nigeria etc, etc equally applicable to the office of Vice President of the Federal Republic of Nigeria.

C From the provisions of section 135 of the 1999 Constitution, it is clear that a sitting President or Vice President will cease to hold that office when:

- (a) his successor in office takes-the oath of that office; or
- (b) he dies whilst holding such office; or
- D (c) the date when his resignation from the office takes effect; or
- (d) he otherwise ceases to hold office in accordance with the provisions of the 1999 Constitution.

The circumstances in which the President or Vice President would
E “*otherwise cease to hold office*” other than as provided for under section 135 of the 1999 Constitution are contained in sections 143 and 144 of the 1999 Constitution reproduced earlier in this judgment.

It has earlier in this judgment been stated that one of the ways the
F President or Vice President may cease to occupy that office is by resignation. The provisions relating to the resignation of the President and Vice President (in fact of any person appointed, elected or otherwise selected to any office established by the 1999 Constitution) are as enacted in section 306 of the 1999 Constitution and they include, inter alia,
G the following: -

“306

(1) *Save as otherwise provided in this section, any person who is appointed, elected or otherwise selected to any office established by this
H Constitution may resign from that office by writing under his hand addressed to the authority or person by whom he was appointed, elected or selected.*

(2)*The resignation of any person from any office established by*

this Constitution shall take effect when the writing signifying the resignation is received by the authority or person to whom it is addressed or by any person authorized by that authority or person to receive it.

(3) *The notice of resignation of the President and of the Vice President shall respectively be addressed to the President of the Senate and to the President.*” Emphasis supplied. B

From the Constitutional provisions in section 306 of the 1999 Constitution, can it be said that constructive resignation is in anyway contemplated particularly as the provisions envisage a voluntary act of putting pen on paper to give effect to the intention to resign from an office? C

From the totality of the argument of all counsel, it is very clear that the provisions of sections 143 and 144 are not being called to question in the proceedings. The contention appears, in the main, to centre on the provisions of sections 142(1) and 146(3) (c), at least for the case of the appellant. D

A Constitution of any country is what is usually called the organic law or grund norm of the people. It is the formulation of all the laws from which the institutions of state derive their creation, legitimacy and very being. It is the unifying force in the nation apportioning rights and imposing obligations on the people who are subject to its operation. It cannot be overemphasized that it is a very important composite document, the interpretation or construction of which is subject to recognized canons of interpretation known to law and designed or crafted to enhance and sustain the reverence in which Constitutions are held the world over. In the case of *Shosimbo vs State* (1974) N.S.C.C. 387 at 393, COKER, JSC opined that “*Great care should have been exercised in arriving at momentous decisions, which turn on the interpretation of the Constitution.*” F G

It is in line with the above caution that the main guideline to the interpretation or construction of the Constitution is as laid down in the case of *Rabiu vs The State* (1980) 8-11 S.C 130 at 148 where SIR UDO UDOMA, JSC stated the position inter alia, H

“.....” *Mere technical rules of interpretation of statutes are to some extent inadmissible in a way so as to defeat the principle of government*

enshrined in the Constitution. And where the question is whether the Constitution has used an expression in the wider or narrower sense, in my view this 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 that narrower interpretation would best carry out the objects and purposes of the Constitution."

It is generally agreed and as stated, again by Sir UDO UDOMA in *Rabiu vs The State* supra at 148 - 149 that "..... the function of the Constitution is to establish a framework and principles of government, broad and general in terms, intended to apply to the varying conditions which the development of our several communities must involve, ours being a plural, dynamic society and therefore, 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."

In the case of *I.M.B. vs TINUBU* (2001) 45 WRN1 at 19, IGUH, JSC on interpretation of the provisions of the Constitution stated the position thus:-

"In this regard, it will be necessary to recall the general principle of law governing the interpretation of our Constitution. This is that such interpretation as would serve the interest of the Constitution and best carry out its object and purpose should be preferred. Its relevant provisions must be read together and not disjointly and where the words of any section are clear and unambiguous, they must be given their ordinary meaning unless this would lead to absurdity or be in conflict with other provisions of the Constitution see *Chief D.O. Ifezne vs Livinus Mbadugha & anor* (1984) 5 S.C 79 AT 101."

Finally, I refer to the 12 principles of interpretation of our Constitution as stated by OBASEKI, JSC in the case of *A-G of Bendel State vs A-G of the Federation and ors* (1981) 10S.C 1 at 77 -79, as follows:-

"In the interpretation and construction of our 1979 Constitution, I must bear the following principles of interpretation in mind.

(1) Effect should be given to every word.

(2) A construction nullifying a specific clause will not be given to the Constitution unless absolutely required by the context.

(3) *A constitutional power cannot be used by way of condition to attain unconstitutional result.*

(4) *The language of the Constitution where clear and unambiguous must be given its plain evident meaning.*

(5) *The Constitution of the Federal Republic of Nigeria is an organic scheme of government to be dealt with as an entirety; a particular provision cannot be dis severed from the rest of the Constitution.*

(6) *While the language of the Constitution does not change, the changing circumstances of a progressive society for which it was designed yield new and fuller - import to its meaning.*

(7) *A Constitutional provision should not be construed so as to defeat its evident purpose.*

(8) *Under the Constitution conferring specific powers, a particular power must be granted or it cannot be exercised.*

(9) *Delegation by the National Assembly of its essential legislative Junction is precluded by the Constitution (section 58(4) and section 4(1).*

(10) *Words are the common signs that mankind make use of to decide their intention one to another and when the words of a man express his meaning plainly and distinctly and perfectly, there is no occasion to have recourse to any other means of interpretation.*

(11) *The principle upon which the Constitution was established rather than the direct operation or literal meaning of the words used, measure the purpose and scope of its provisions.*

(12) *Words of the Constitution are therefore not to be read with stultifying narrowness.*

See: Martin vs Hunter 1 Wheat 304, 4 L.Ed 97; Cooper vs Telfair 4Dal14, IL.Ed. 721; United States vs Lelkowitz 285 US 452, 52 SC 420, 761 L. Ed. 877; United States vs Classic 313 us 299, 61 S.Ct.1031, 85L.Ed. 1368; Lake County us Rollings 130 us 662 9 S.Ct 651; Fairbank us United States 181 us 283, 21 S.Ct 648, 45L. Ed. 862; United States Sharpnack 355 us 286, 78 S.Ct. 291; Western Bank Ltd us Schandler (1977) 1 Ch. 1 at 13; Luke us Inland Revenue Commissioners (163) A. C 577 at 577 (sic); In re Maryon William's Will Trusts (1968) Ch. 268, 262.

Courts, it must be emphasized, cannot amend the Constitution. They cannot change the words. They must accept the words, and so far as the introduce change, it can come only through their interpretation of the meaning of the words which change with the passage of time and age.”

B In the interpretation or construction of the relevant provisions of the 1999 Constitution needed for the determination of this appeal I will be guided by the principles of law as enunciated by this Court in the case cited supra as well as others.

C Learned Senior Counsel for the appellant has submitted that there is no LIS between the parties thereby rendering the court incompetent or without jurisdiction to entertain the suit. It is settled law that there must exist a matter in actual controversy between parties to a suit in which the court of law is called upon to determine and that once there is no such
D live issue between the parties, a court will lack the jurisdiction to entertain the matter. In other words, there must exist a cause of action between the parties which term may be described -as a civil right or obligation for the determination by a court of law or dispute in respect of
E which a court of law is entitled to invoke its judicial powers to determine - see Chief Afolayan vs Oba Ogunrinde (1990) 1 NWLR (pt. 127) 369 at 371.

It is the case of the appellant that the 1st respondent had no cause
F of action as the President had not actually declared or has denied declaring the seat of the Vice President vacant to entitle the 1st respondent to the declarations sought and granted by the lower court and that if the lower court had properly evaluated the affidavit evidence before it, which was its duty to do being of the first instance in the matter, it would have seen
G that there was no evidence in support of a grant of the reliefs so claimed. The above submission though very powerful, with respect, misses some very important undisputed facts on the basis of which the reliefs were sought.

H These include the fact that the most important fact calling for determination in the suit is whether or not the plaintiff/ 1st respondent had defected to another political party which fact is not in dispute judging from the affidavit evidence produced by the parties. The fact of the de-

fection of the plaintiff/1st respondent from the PDP to another political party (A.C) forms the basis of the counter claim by the appellant to the effect that it is for that reason that the 1st respondent is in effect deemed to have abandoned or to have constructively resigned his seat as Vice President of Nigeria having abandoned the PDP on whose platform he B was nominated and elected the Vice President of Nigeria by operation of section 142 (1) of the 1999 Constitution. When one looks at 1st respondent's relief No. 1 which seeks a declaration that the tenure of office of the 1st respondent "*subsists and does not terminate till 29th May, C 2007*" and compare same with the reliefs in the counter claim, it is very clear and I hold that the question as to whether or not the office of the 1st respondent as Vice President still subsisted despite his defection from the PDP to AC, remains the central point or issue in contention between the parties which issue remains hotly contested by them. The argument of D learned senior counsel for the appellant to the effect that there was no dispute disclosed by the evidence on record between the parties, is with the greatest respect not supported by the facts and the applicable law; the simple issue arising for determination in the action and counter claim E being whether or not the seat of the Vice President of the Federal Republic of Nigeria, presently occupied by the 1st respondent, became vacant following the defection of the 1st respondent from the PDP to join the A.C. The existence of a LIS is therefore, in my considered view, not in F dispute in this case and I so hold.

From the claim and counter claim before the lower court the main issue lies more on the interpretation of various sections of the 1999 Constitution some of which had earlier been reproduced in this judgment with little or no disputed facts to be resolved by the lower court. G

This brings me to the determination of the proper approach to adopt in interpreting the Constitutional provisions in issue having regards to the array of principles of law relevant to the construction of our Constitution and earlier reproduced in this judgment. Learned Senior Counsel H for the appellant has contended that the broader principle of interpretation ought to be employed in interpreting sections 142(1), 143 and 146(3)(c) of the 1999 Constitution, and that the lower court erred in

adopting the narrower principle of interpretation in its determination of the dispute between the parties.

I had earlier reproduced section 142(1) of the 1999 Constitution the interpretation of which forms one of the bones of contention between the parties. To me the words used in the section are very clear and unambiguous and very simple and straight forward and cannot call for any interpretation other than the application of the literal and plain interpretation or construction. It is settled law that the plain and literal construction of the Constitution or statute will only be rejected if such interpretation or construction will lead to some absurdity or defeat the obvious intention of the makers of the Constitution or make nonsense of other provisions of the Constitution. It should always be borne in mind that in constructing the provisions of the Constitution the court is not allowed to read into any provision or section thereof anything not expressly contained therein or to fashion out another Constitution or provision for the people other than to bring out the true intention of the makers of the Constitution. The question then is whether it is the intention of the framers of the 1999 Constitution that once a Vice President defects from the political party on whose ticket he was elected Vice President and joins another political party his seat can be said to have become vacant by virtue of the provisions of section 142(1) of the 1999 Constitution. There is no doubt that the provisions of the 1999 Constitution relating to the Presidency envisages a united presidency between the President and the Vice President hence the description of the Vice President as an associate of the President for the electoral contest to the Presidency. From the tone and tenor of the 1999 Constitution it is also clear that it is envisaged that the united presidency is to last throughout the tenure ascribed in the Constitution subject of course to the provisions relevant to their removal from that office as provided for principally in sections 143 and 144 of the said 1999 Constitution and as earlier reproduced in this judgment.

From the community reading of section 143, 144 and 146 of the 1999 Constitution, the Vice President can be removed from that office by

(a) Impeachment by the National Assembly on ground of “gross

misconduct” as defined in section 143(11) of the 1999 Constitution;

(b) a resolution passed by two-thirds majority of all the members of the executive Council of the Federation in which it is declared that the Vice President is incapable of discharging the functions of his office which declaration must be verified, after medical examination, by a medical panel established under subsection (4) of section 144, etc, etc.

(c) reason of death and/or

(d) resignation.

There is no where in the 1999 Constitution where it is stated that the President or Vice President of the Federal Republic of Nigeria shall be removed or is removable from that office if he defects from the political party on whose platform he was elected to that office and joins another political party. It is the Constitutional responsibility of the Legislature to make or amend the laws including the Constitution, where the need arises, while that of the judiciary remains to interpret and apply the laws so made or amended. The courts can therefore not add to nor subtract from the law as enacted by the legislature under the guise of judicial interpretation of the Constitution or Statute which the appellant desires this Court to do in the instant case on appeal.

I will now consider the provision of section 146(3)(c) which the appellant contends is the platform on which the ‘*reason*’ of defection of the Vice President from the PDP to AC constitutes “*any other reason*” for the removal of the Vice President. To begin with it is very clear that paragraph (c) of subsection 3 of section 146 is a general provision with very wide scope. To understand the true meaning of that provision, it is necessary to look at section 146(1) which makes similar provisions but in relation to the office of Mr. President. There, it is provided, inter alia, that if the office of the President becomes vacant by “*the removal of the President from office for any other reason in accordance with section 143 and 144 of this Constitution.*” It is very clear that “*any other, reason*” envisaged by section 146(1) must be in accordance with the provisions of section 143 and 144 of the 1999 Constitution. In other words, the any other reason must be reason that fall within the purview of sections 143 and 144 of the 1999 Constitution, not outside those sections.

Applying the above to section 146(3) it is very clear that paragraph (c) of that subsection clearly limits the application of the said paragraph to the circumstances mentioned in paragraphs (a) and (b) of subsection 3 of section 146; that is, the reason of the office of the Vice President becoming vacant must be related to the reason of death or resignation, impeachment, permanent incapacity as envisaged by section 143 and removal as per section 144 or by assumption of office of President in accordance with the provision of subsection (1) of section 146.

Of all the situations or circumstances in which the Vice President may be removed or cease to be the Vice President apart from serving his tenure as provided in the Constitution, the most ubiquitous weapon of removal is that of impeachment or removal by the National Assembly. Impeachment is a strong political weapon in the hands of the National Assembly. It is a political solution to political problems that may arise in the Presidency either in the discharge of the Constitutional functions or conduct of the personality involved. Even though a situation of defection of the Vice President from the party which sponsored his election into that office to another political party does not form part of the grounds for removal of the said Vice President particularly by court process, it could amount to gross misconduct as defined by section 143(11) of the 1999 Constitution as “*a grave violation or breach of the provisions of this Constitution or a misconduct of such nature as amounts in the opinion of the National Assembly to gross misconduct.*” Emphasis supplied.

By making the determination of what amounts to a gross misconduct to include what the National Assembly in its opinion, considers to amount to gross misconduct, the framers of the 1999 Constitution intended to give absolute power or discretion to the National Assembly to determine, by subjective test, the issue as to what may amount to gross misconduct for the purpose of impeaching the President or Vice President and it is my considered view that the term is wide enough to include the situation we find ourselves in this case where the sitting Vice President defects from the political party in whose platform he was elected to that office and joins another political party and proceeds to openly castigate the very government whose policies and administration he is a part,

and played or continues to play very active part in, but sees no need to resign his office of Vice President. In a civilized society such as ours one expects disagreements within the cabinets, etc but where the disagreements are as a result of irreconcilable differences the solution to such impasse is either resignation or as in the instant case removal by way of B impeachment, not to come to court to seek the removal of a sitting Vice President. We must learn and have the courage to apply political solutions to political questions or problems and stop seeking to apply non-existent judicial solutions to purely political problems. It is with the above in mind C that section 143(10) of the 1999 Constitution oust the jurisdiction of the courts in relation to the proceedings or determination of the Panel or of the National Assembly relating to impeachment under section 143 of the 1999 Constitution.

As stated earlier in this judgment, I hold the view that the conduct D of the Vice President in this case can be said to come under section 143 of the 1999 Constitution if the National Assembly so considers. We must be reminded that there is nothing known to our Constitution as judicial E impeachment or impeachment by the judiciary of either the President or Vice President or the Governor or Deputy Governor. The fact that section 239 of the 1999 Constitution confers original and exclusive jurisdiction on the Court of Appeal to determine any question as to whether the term of office of the President or Vice President has ceased or the office F of the President or Vice President has become vacant does not thereby empower the judiciary to get involved in '*judicial impeachment*' of the President or Vice President, under the guise of declaring their offices vacant or removing them from office in any other way than as Constitutionally G provided under the rule of law.

Finally, I need to comment on the submission that the court in interpreting a Constitutional provision, should be guided by the historical antecedent such as the report of the Constitution Drafting Committee.

H That submission is sound law. However, I hold the view that the historical antecedent sought to be relied upon in aid of the interpretation or construction must be relevant to the issue or section the subject matter of the interpretation. In the instant case, the Reports of the Constitu-

tion Drafting Committee, 1976 vols. I & II relied upon by learned Senior Counsel for the appellant as aid to the understanding of the intention of the framers of section 142 (1) is not relevant at all as the said reports relate to the making of the 1979 Constitution, not the 1999 Constitution whose provisions is the subject of the interpretation. That apart, the provisions of section 142(1) of the 1999 Constitution is different from the provisions of section 131(1) of the 1979 Constitution. The relevant report is that of the Constitution Drafting Committee 1998 which mid-wifed the 1999 Constitution, definitely not the 1976 report. It is in section 142(1) of the 1999 Constitution that the requirement that the Presidential candidate must nominate an associate who must come “from the same political party” was first inserted as there was no such express requirement in the 1979 Constitution.

In conclusion I agree with my learned brother AKINTAN, JSC, the draft of whose lead judgment I had read, that the appeal has no merit whatsoever and should be dismissed. I order accordingly and abide by all other consequential orders contained in the said lead judgment including the order as to costs.

Appeal dismissed.

TABAI JSC

In the originating summons dated and issued in the Registry of the Court of Appeal on the 4/1/07 the Plaintiff who is Respondent herein presented the following three questions for determination:-

1. Whether having regard to the combined provisions of sections 135 and 142(2) of the Constitution of the Federal Republic of Nigeria 1999, the Plaintiffs term of office as Vice President, Federal Republic of Nigeria which commenced on 29th of May 2003 still subsists.

2. Whether having regard to the provisions of section 142, 143, 144 and 146 of the Constitution of the Federal Republic of Nigeria 1999 or any law, the President of the Federal Republic of Nigeria can declare vacant the office of the Plaintiff as Vice President of the Federal Republic of Nigeria.

3. Whether having regard to the clear provisions of section 308 of the Constitution of the Federal Republic of Nigeria 1999 the President of the Federal Republic of Nigeria can withdraw, tamper or interfere with or violate the immunity conferred on the Plaintiff as the Vice President of the Federal Republic of Nigeria by that section AND OR direct his arrest B or prosecution.

In the originating summons he sought the following reliefs:-

1. A DECLARATION that the term of office of the Plaintiff as the Vice President of the Federal Republic of Nigeria which commenced C from 29th of May 2003 still subsists and does not terminate until 29th of May 2007.

2. A DECLARATION that the President has no power under the Constitution of the Federal Republic of Nigeria 1999 or any other law to declare the office or seat of the Plaintiff as the Vice President of the D Federal Republic of Nigeria vacant.

3. A DECLARATION that the purported declaration by the President of the Federal Republic of Nigeria of the office of the Vice President of the Federal Republic of Nigeria vacant is unconstitutional, illegal null E and void and of no effect whatsoever.

4. AN ORDER setting aside the withdrawal of all the rights, privileges, entitlements inclusive all security details, staff of the Plaintiff as directed by the President of the Federal Republic of Nigeria. F

5. AN ORDER restoring all the rights, privileges, entitlements and or benefits however of the Plaintiff as the Vice President of the Federal Republic of Nigeria.

6. AN ORDER of perpetual injunction restraining the Defendants G whether by themselves, agents, privies servant, or otherwise however from impugning or violating the constitutional immunity conferred on the Plaintiff as the Vice President of the Federal Republic of Nigeria.

7. AN ORDER of perpetual injunction restraining the 3rd, 4th, 5th and 6th Defendants whether by themselves, their agents, privies servants H or otherwise howsoever from considering any nominee from the President to the office of the Vice President.

8. AN ORDER of perpetual injunction restraining the 6th Defen-

dant whether by itself, its agents, privies servants or otherwise howsoever from considering and or giving effect to the President's letter informing them of the declaration of the seat and or office of the Plaintiff or the Vice President of the Federal Republic of Nigeria vacant.

B In support of the originating summons was filed a 22 paragraph affidavit to which were attached Exhibit 1 coy of the Leadership Newspaper of 24/12/06; Exhibit 2 copy of the This Day Newspaper of 24/12/06; Exhibit 3 copy of the Guardian Newspaper of 24/12/06 and Exhibit 4
C copy of the Guardian Newspaper of 2/1/2007. I reproduce hereunder paragraphs 11, 12, 13, 14, 15, 16, 17 and 18 of the affidavit which I consider germane in the resolution of the question for determination:-

11. *"That I know as a fact that on or about Thursday the 21st of December 2006, the Plaintiff travelled to United States of America (USA) on his Annual Leave.*
D

12. *That the Plaintiff told me in his office at the Villa on Monday 18th of December 2006 at about 11 a.m. and I verily believe him that he sought and obtained the President's approval for the said Annual Leave.*

E 13. *That on Saturday, 23rd of December 2006, the President of the Federal Republic of Nigeria through one Mallam Uba Sanni, his Special Assistant on Public Affairs announced the office of the Plaintiff as Vice President of the Federal Republic of Nigeria vacant.*

F 14. *That I know as a fact that on Sunday 24th of December 2006 several National Dailies published the announcement as mentioned in paragraph 13 above.*

15. *That I know as a fact that in the same announcement that the said Mallam Uba Sanni stated that the immunity conferred on the Plaintiff as the Vice President of the Federal Republic of Nigeria by the Constitution of the Federal Republic of Nigeria 1999 has also been withdrawn. Now shown to me and attached as Exhibits "1", "2" and "3" respectively are copies of Leadership, Thisday and Guardian Newspaper which conspicuously published the said announcement.*
G
H

16. *That the said Mallam Uba Sanni in justifying their position quoted sections 142 and 146 of the Constitution of the Federal Republic of Nigeria 1999 as enabling the decision.*

17. *That in the same announcement and as published by several newspapers as referred to in paragraph 15 above including Exhibits “1”, “2” and “3” it was stated that:*

(i) *the President has notified the 3rd - 6th Defendants of his decision declaring the office of the Plaintiff vacant and to send a nominee to them to replace the Plaintiff Vice President of the Federal Republic of Nigeria.*

(ii) *the President has withdrawn all privileges entitlements, rights and benefits of the Plaintiff as the Vice President of the Federal Republic of Nigeria.*

18. *I know as a fact that consequent upon paragraphs 13,14,15,16 and 17 above.*

(i) *all security details attached to the Plaintiff were withdrawn.*

(ii) *the official residence of the Plaintiff was sealed off by the combined team of armed military and policemen and other security agents.*

(iii) *all official vehicles attached to the Plaintiff were withdrawn.*

(iv) *all staff attached to the Plaintiffs office were redeployed.*

Now shown to me and attached as Exhibit “4” hereto is a copy of the Guardian of 2nd January 2007 reporting these facts.”

Also filed was an application for a mandatory injunction dated the 5/1/2007. In support thereof was a 25 paragraph affidavit deposed to by one Umar Pariya a Special Assistant to the Vice President.

On the 9/1/07 a 46 paragraph counter-affidavit deposed to by one Bodunde Adeyanju, Special Assistant to the President of the Federal Republic of Nigeria was filed. Attached thereto were Exhibits “A G1” “A G2” “A G3” “A G4”. In paragraph 7 thereof, paragraphs 17, 18, 19, 20, 21, 22(b) and (c), 23(a) 24 and 25 of the Respondent’s affidavit in supports of the Mandatory Injunction were denied and that there was therefore no basis for the application. Paragraph 9 thereof contains 12 sub-paragraphs (a) (L). The substance of the said paragraph is that the Office of the Plaintiff/Respondent as the Vice President of the Federal Republic of Nigeria remains intact and not threatened and that the immunity from arrest and prosecution and other rights and privileges attached to the said office also remain intact. Paragraphs 10-17 are to the effect that fears as to the

threats to the office of the Respondent were merely speculative and that the statements credited to Mallam Uba Sanni were either unauthorized or quoted out of context. Paragraphs 25(a)-(h) 26, 27, 28, 29, 30, 31, 32 and 33 alleged a number of misconducts against the Respondent. Amongst
B the said misconducts were his declaration for and Presidential candidate of the Action Congress for the 2007 on the 20/12/06, his denouncement and condemnation of the P.D.P., the P.D.P. Government, his abandonment of his official functions including attendance at Executive Council
C Meetings and thus his constructive resignation from the office of Vice President of the Federal Republic of Nigeria.

Earlier in the originating summons dated and issued on the 27/12/06 in Suit No. CA/A.236/M/06 the Plaintiff therein who is the 1st Appellant herein presented four questions for determination and sought five
D reliefs against seven Defendants. The Plaintiff/Respondent herein who was second Defendant therein was described as Former Vice President of Nigeria.

On or about the 12/1/2007 the 1st Defendant/Appellant filed a
E counterclaim with the following questions for determination:

1. Whether under and by the combined effect of sections 14, 130, 131(c) 136(1), 142(1) and 146(c) of the Constitution of the Federal Republic of Nigeria, the President of the Federal Republic of Nigeria can
F lawfully select or continue to maintain a decamped Vice President who has publicly condemned the policy of the sponsoring party and embraced a new political party whose policies are hostile to the sponsoring party.

2. Whether or not the office of the Vice President elected by virtue of section 142(1) of the 1999 Constitution can become vacant upon the
G resignation of the Vice President.

3. Whether having regard to section 146(3)(a) of the Constitution of the Federal Republic of Nigeria 1999 which entitles a Vice President to resign from the office of the Vice President, the dumping by the Plaintiff of the sponsoring party for another political party coupled with public
H denunciation and condemnation of the sponsoring political party, the President and their Government do or do not constituted constructive resignation, withdrawal or abandonment of the office of the Vice Presi-

dent.

4. Whether or not a sitting Vice President elected pursuant to section 142(1) of the 1999 Constitution who declares for another political party, denounced and condemned the sponsoring party, the Government and the President, has by his conduct, breached his obligation of one mindedness, loyalty mutual trust, confidence and good faith and has therefore resigned, abandoned and withdrawn from the office of the Vice President.

5. Whether a sitting Vice President elected under section 142(1) of the 1999 Constitution who dumps the sponsoring party for another political party and publicly condemned the sponsoring political party the President, the Government, is not by reason of his conduct estopped from denying that he has not constructively resigned from the sponsoring party.

And in the counter-claim the 1st Defendant/Appellant sought the following reliefs :-

1. Declaration that for the actualization of the policies of the sponsoring party and effective running of the office of the President of the Federal Republic of Nigeria and pursuant to section 142(1) of the Constitution, a Vice President of the Federal Republic of Nigeria must belong to the same political party with the President.

2. Declaration that the special relationship between the Vice President, the President and the sponsoring party by the combined effect of sections 14, 130, 131(c), 136(1), 142(1) and 146(c) of the Constitution of the Federal Republic of Nigeria is one of one mindedness, loyalty, trust and mutual confidence and good faith which does not permit double loyalty.

3. Declaration that the office of the Vice President under section 146(3)(a) can become vacant on the resignation of the Vice President.

4. Declaration that the dumping of a sponsoring party for another party by a sitting Vice President coupled with condemnation of the President and the Government by a sitting Vice President is a breach of one mindedness, loyalty, trust and confidence expected of the Vice President

and therefore constitutes constructive resignation, withdrawal and/or abandonment of the office of the Vice President.

5. Declaration that by reason of the facts stated in (4) above a sitting Vice President is estopped from denying that he has by his conduct resigned, withdrawn and/or abandoned the office of the Vice President.

6. An Order that a breach of one mindedness loyalty trust and confidence and good faith by a Vice President constitutes an abandonment, withdrawal and resignation from the office of the Vice President.

7. An Order of injunction restraining the Plaintiff by himself, his servants privies or otherwise from parading or further parading himself as Vice President of Nigeria.

8. An Order of injunction restraining the said 2nd to 6th Defendants jointly and/or severally by themselves, their agents, servants privies or subordinates whosoever described from recognizing treating or addressing the Plaintiff as the Vice President of the Federal Republic of Nigeria.

On the 7/2/07 following the directive of the court below, counsel for the parties presented their oral arguments.

And on the 20/2/07 the court below delivered its judgment. It was a unanimous judgment. All the three declaratory reliefs (1) (2) and (3) of the claim were granted. The remaining five reliefs (which I may, in loose terms, describe as ancillary or consequential reliefs) were refused. The counterclaim of the 1st Defendant/Appellant was dismissed in its entirety. Specifically, the Court concluded:-

“All the question formulated by the Plaintiff having been resolved in his favour; his claim succeeds and the reliefs sought by him are granted as follows:-

(1) It is hereby declared that the term of office of the Plaintiff as the Vice President of the Federal Republic of Nigeria which commenced from 29th of May 2003 still subsists and does not terminate until 29th of May 2007.

(2) Secondly it is further declared that the President has no power under the Constitution of the Federal Republic of Nigeria 1999 or any other law to declare the office or seat of the Plaintiff as Vice President of

the Federal Republic of Nigeria vacant.

(3) Thirdly it is declared that the purported declaration by the President of the Federal Republic of Nigeria of the office of the Plaintiff as the Vice President of the Federal Republic of Nigeria vacant is unconstitutional illegal, null and void and of no effect whatsoever. B

The remaining reliefs sought by the Plaintiff will not be acceded to in view of the step or steps being taken by the 1st Defendants to restore the Plaintiff's rights and privileges accorded to his office to him. The orders of injunction restraining the President of the Federal Republic of Nigeria, the second, third, fourth, fifth and sixth Defendants when the rights and liberty of the Plaintiff are no longer threatened and assailed by any of the Defendants including the President of the Federal Republic of Nigeria cannot be granted. Injunction is granted to protect the right or threatened right of the Plaintiff; it will be refused once there is no evidence that the Plaintiff's right is under any threat from the Defendants in the light of the three declarations made in his favour in this judgment. D

The counter-claim of the 1st Defendant is not made out. Having resolved all the questions framed in the counter-claim against the first Defendant it fails and is hereby dismissed in its entirety." E

Dissatisfied with the said judgment, three of the Defendants filed three separate appeals. The first appeal was filed by the 1st Defendant, the second by the 2nd Defendant and the third by the 6th Defendant. Briefs F were filed for each of these appellants.

The 1st Appellant filed three briefs, the main Appellant's Brief filed on the 9/3/07, the Reply Brief to the 1st Respondent's Brief filed on the 27/3/07 and the Reply Brief to the 5th Respondent's Brief filed on the 28/3/07. Each of the Briefs was prepared by Chief Afe Babalola SAN. The 2nd Appellant's Brief was prepared by P.I.N. Ikwueto SAN and same was filed on the 9/3/07. And the 6th Defendant Appellant's Brief prepared by Chief Joe-Kyari Gadzama SAN was filed also on the 9/3/07. The 1st Respondent's Brief of Argument was prepared by Chief Wole Olanipeku SAN and it was filed on the 22/3/07. The 3rd and 4th Defendants/Respondents filed a joint brief and this was on the 23/3/07. It was settled by Peter N. Eze. The 5th Defendant/Respondent's Brief prepared by G H

Ikechukwu Ezechukwu was filed on the 26/3/07.

In the 1st Appellant's Brief Chief Afe Babalola SAN formulated eight issues for determination. The issues are:-

1. Whether or nor the Court of Appeal was right in granting the
B Plaintiffs reliefs 1, 11 and 111 when on the available evidence which was not considered there was no lis.

2. Whether or not the Court of Appeal acting under section 239 of the Constitution of the Federal Republic of Nigeria is a trial court which
C was obliged to evaluate the evidence; identify issues in dispute and apply the findings on the law before arriving at any decision.

3. Whether or not in construing the intention of the drafters of the Constitution the Court of Appeal was not duty bound to consider the
D following:-

(a) History of the Constitutional provisions; (b) Social need, Political realities and peculiarities and (c) The need to avoid absurdity.

3(b). If the answer to the above is in the affirmative, whether or not the Court of Appeal was right in its narrow approach to the
E interpretation of section 142(1) of the 1999 Constitution to the effect that there is nothing in the provision which precludes the President and Vice President from continuing in office after dumping the political party that sponsored him to the office for another political party.

F 4. Whether or not the constitutional union between the Vice President and the President under section 142 of the Constitution of the Federal Republic of Nigeria automatically expires immediately after the election that brought both the Vice President and President to office.

G 5. AND if not, whether, the constitutional union demands from the Vice President, undivided loyalty, trust and confidence as Vice President as long as he remains the vice President.

H 6. Whether or not the Vice President having openly jettisoned the sponsoring party and defected to another party and condemned the President and the sponsoring party, has not by his conduct abandoned the sponsoring party the government and the President.

7. Whether or not the Court of Appeal has jurisdiction under section 146(3)(c) to declare the seat of the Vice President vacant having

regard to the uncontradicted evidence that the Vice President has jettisoned the sponsoring party and declared for a political party (Action Congress) which was not even in existence at the time of the election castigated the President and condemn the policy and philosophy of the sponsoring party.

8. Whether the Court of Appeal's application of the Respondent's right of freedom of association to the facts of this case was wrong particularly as the issue of the said right was raised by the court *suo motu* and without calling upon counsel to address it.

P.I.N. Ikwueto SAN for the 2nd Appellant formulated two issues for determination in the 2nd Appellant's Brief. They are:-

"1. Whether on a proper interpretation of the provisions of sections 142(1) and 146(3) of the 1999 Constitution of the Federal Republic of Nigeria, the office of the Vice president will be vacated if the Vice President publicly disassociates himself from the President of the Federal Republic of Nigeria and decamps to a rival political party other than that on whose platform he was elected into office as the Vice President."

2. Whether the court below was entitled to add its own words in the exercise of its judicial function to interpret the provisions of the Constitution."

Three issues for determination were put forth by learned Senior Counsel Chief Joe-Kyari Gadzama in the 6th Defendant/Appellant's Brief of Argument. The three issues are:-

"(a) Whether having regard to the combined provisions of sections 135 and 142(2) of the Constitution of the Federal Republic of Nigeria 1999, the Plaintiffs terms of office as the Vice President, Federal Republic of Nigeria which commenced on the 29th of May 2003 still subsists."

(b) Whether having regard to the provisions of sections 142, 143, 144 and 146 of the Constitution of the Federal Republic of Nigeria 1999 or any other provisions of the Constitution of the Federal Republic of Nigeria 1999 or any other law, the President of the Federal Republic of Nigeria can declare vacant the office of the Plaintiff as Vice President of the

Federal Republic of Nigeria.

(c) *Whether having regard to the clear provisions of section 308 of the Constitution of the Federal Republic of Nigeria, the President of the Federal Republic of Nigeria withdraw, tamper or interfere with the immunity conferred on the Plaintiff as the Vice President of the Federal Republic of Nigeria by that section and/or direct or prosecution.”*

Chief Wole Olanipekun SAN for the Plaintiff/1st Respondent formulate only a single issue for determination and which issue, he argued, covered all the grounds of appeal in the three appeals. The issue as formulated by him is:-

“Having regard to the combined provisions of sections 135, 142, 144, 146, 308 and other provisions of the Constitution of the Federal Republic of Nigeria 1999 and admissible materials placed before the lower court, whether or not the lower court rightly granted 1st Respondents reliefs and dismissed the Appellant’s counter-claim.”

Peter N. Eze, in the 3rd and 4th Respondent’s Brief posed three questions which resolutions, he thought, most effectively determines the appeals. The questions are:-

“(1) Was the Court of Appeal correct in its decision that the seat of a Vice President will not become vacant if he abandons the party on whose platform, he was elected and joins another party.

(2) If there was a dispute between the parties, did the lower court evaluate the evidence presented by the parties before determining the dispute.

(3) When the Court of Appeal raised and applied section 40 of the Constitution suo motu without giving the parties an opportunity to address it on the section, did this lead to a miscarriage of justice sufficient to warrant a reversal of the judgment of the Court of Appeal.”

For the 5th Respondent learned counsel, Ikechukwu Ezechukwu merely adopted the eight issues formulated by learned Senior Counsel for the 1st Appellant.

The above represents the totality of the issues for determination as proposed by various counsel for the parties. In my humble view they all revolve round one main issue.

And the issue is whether having regard to the provisions of the Constitution of the Federal Republic of Nigeria and the affidavit evidence on record the lower court was right in its judgment granting the three declaratory reliefs in the claim and dismissing the 1st Defendant/Appellant's counter-claim. I will therefore adopt the single issue formulated in the 1st Respondent's Brief. The issue effectively covers all the grounds of appeal in the three appeals filed.

Before deliberating on the arguments of counsel for the parties, let me restate the salient facts as can be gleaned from the affidavit evidence on record. The facts are essentially undisputed.

Before the Presidential election of 2003 both Chief Olusegun Obasanjo and the 1st Respondent Alhaji Atiku Abubakar were of the People Democratic Party. For the 2003 Presidential election Chief Olusegun Obasanjo was nominated by the P.D.P. as its Presidential candidate. Pursuant to the provisions of section 142(1) of the Constitution of the Federal Republic of Nigeria, Chief Olusegun Obasanjo nominate Alhaji Atiku Abubakar as his associate for the Vice Presidential candidate for the election. They were successful at the election and so on the 29/5/03 Chief Olusegun Obasanjo and Alhaji Atiku Abubakar were sworn in respectively as President and Vice President of the Federal Republic of Nigeria.

Sometime thereafter the relationship between them became strained. This sour relationship extended to and affected the 1st Respondent's relationship with the P.D.P. He was suspended and eventually expelled from the party. He was reportedly excluded from participating at Executive Council meetings.

Sometime in December the 1st Respondent declared his membership of the new political party known as the Action Congress and even became the Party's Presidential Candidate for the 2007 Presidential election. There were threats of the 1st Respondent's removal from office as the Vice President of the Federal Republic of Nigeria. There were allegations that the President had declared the office of the 1st Respondent as Vice President of the Federal Republic of Nigeria vacant. The announcement was allegedly made through one Mallam Uba Sanni a Special Assistant on Public Affairs to the President of the Federal Republic of Nigeria. His

rights, privileges entitlements and even his immunity were reportedly withdrawn. All these and others were widely reported in several newspapers in the country. Although the assertions as to the threat to 1st Respondent's office as Vice President Federal Republic of Nigeria were denied there B was abundant evidence even from the 46 paragraph counter affidavit that the threats were real and potent.

Under the 1st Appellant's first issue Chef Afe Babalola SAN argued in substance that there is no proof of the existence of any actual contro- C versy or dispute between the parties to warrant calling upon the court for adjudication. He relied on the case of CHIEF AFOLAYAN v DBA OGUNRINDE & ORS 1990. He submitted that the reliefs ought not be granted since, according to him, there was no positive denial of para- D graph 31 of the Appellant's affidavit. On the submission of there being no actual controversy between the parties, he relied on A.G. FEDERATION v A.N.P.P. (2003) 18 NWLR (Part 851) 182 at 210 and OKULATE v AWOSANYO (2000) 2 NWLR (Part 696) 530 at 550-551. In his reaction Chief Olanipekun SAN invited this court to take judicial notice of the E President's declaration of the seat of the Vice President vacant through the various newspaper publications and N.T.A. news of the 22/12/06. He also drew attention to the originating summons of the 27/12/06. As I earlier held above the denials in the counter-affidavit notwithstanding the F treats to the office of the 1st Respondent as the Vice President of the Federal Public of Nigeria were real and potent. Paragraphs 9(e), (f), (g), (h) and (k) of the 1st Appellant counter-affidavit at pages 38-40 of the record give credence to the fears and reasonable apprehension about the G security of his person and office. The 1st Appellant's description of the 1st Respondent as "the Former Vice President of Nigeria" in the originating summons of 27/12/06 is another strong proof of the existence of a state of affairs warranting the 1st Respondent to initiate the present proceeding.

It is my view therefore that there was lis to warrant the grant of H the three declaratory reliefs. The 1st Appellant's issue one is accordingly resolved in favour of the Respondents.

The Appellant next raised the issue of failure of insufficient evaluation. It was submitted that in the exercise of its original jurisdiction as a

court of trial, the lower court had a duty to evaluate all the evidence presented to it, make its findings of facts and apply the law to these facts to reach its decision. Reliance was placed on *OLUFOSOYE v OLUREMI* (1989) 1 NWLR (Part 96) 26 at 37 *BENMAX v AUSTIN MOTOR CO. LTD* (1955) A.C. 370 at 375; (1955) 1 All E.R. 326 at 327 and 328. It was argued that no reference whatsoever was made to the affidavit evidence before the court. In the judgment contending that had such proper evaluation been embarked upon the lower court would have reached a different conclusion. On the principles guiding proper evaluation the Appellant relied on a number of authorities including *TRADE BANK PLC v CHAMI* (2003) NWLR (Part 836) 158, *SANUSI v AMEYOGUN* (1992) 4 NWLR (Part 237) 527, *MOGAJI v ODOFIN* (1978) 4 SC 91.

I agree that the Court below did not manifestly express in the judgment, a proper evaluation in the sense of comparing the averments of the parties and drawing conclusions therefrom. It is clear from the judgment that its focus was the interpretation of the various sections of the Constitution relevant to the determination of the questions presented therein for trial. Understandably however, that approach would have been adopted because the facts are essentially undisputed. It is a feature of actions initiated by way of originating summons. As I said earlier in this judgment, parts of paragraph 9 of the counter affidavit of the 1st Appellant at pages 39-40 of the record and the Appellant's description of the 1st Respondent as "Former Vice President of Nigeria" in the originating summons of the 27/12/06 at page 69 of the record show that the 1st Respondent was, on the state of affairs, in reasonable apprehension of the President's invasion of his rights under the Constitution. I am therefore of the view that there are no such facts in the affidavit evidence which evaluation would have altered the ultimate conclusion. Moreover a finding of fact is not necessarily perverse because of some failure of evaluation; a finding can only be perverse to earn interference by an appellate court, if it is not supported by the legal and credible evidence before the court. See *ATOLAGBE v SHOKUN* (1985) 1 N.W.L.R. (Part 2) 360; *ONIAH v ONYIA* (1989) 1 N.W.L.R. (Part 99) 514.

The 1st Appellant further submitted in paragraph 6.09 of the

Appellant's Brief that where the evidence before the court is entirely affidavit evidence, there is no question as to the credibility of witnesses and that in such cases an appellate court is in as good a position as the trial court to evaluate the evidence and draw its own inferences and conclusions. He relied on *BISIMILLAH v YAGBA EAST* L.G. (2003) 4 N.W.L.R. (Part 810) 329 at 367. I agree entirely with the submission. Even if there was some failure or improper evaluation (and I think there was) this court is in as vantage a position as the court below to evaluate same and make its own findings. And as respects the value of the affidavit evidence itself, having regard to the fact that it is essentially undisputed there is really no cause for any evaluation beyond the brief one which I have made above. In view of the foregoing, I hold that the 1st Appellant's complaint about failure or insufficient evaluation has no substance. The result is that I also resolve this 1st Appellant's issue two in favour of the Respondents

I now come to the interpretation of the various sections of the 1999 Constitution of the Federal Republic of Nigeria on which revolves the determination of this appeal. In the 1st Appellant's Brief of Argument learned Senior Counsel argued strenuously that the restrictive and narrow interpretation placed on section 142(1) of the Constitution by the court below has defeated the intention of the framers of the Constitution.

It was submitted that the court had a duty to adopt the broad interpretation and historical antecedent, particularly the Report of the 1976 Constitution Drafting Committee to discover the intention of the makers of the Constitution. To drive home the point learned Senior Counsel referred to *UWAIFO v A-G BENDEL STATE* (1982) 4 NCLR 1; (1982) 7 SC 124 at 184; *UKAEGBU v A-G IMO STATE* (1983) 1 SCN LR 212; *RAFIU RABIU v KANO STATE* (1980) 8-11 SC 130 at 148, *BRONIK MOTORS v WEMA BANK* (1983) 1 SC MLR 296, *A-G BENDEL STATE v A-G FEDERATION & ORS* (1981) 10 SC 1 at 132-134, *OSHO v PHILIPS* (1972) 4 SC 259 and *MOBIL v F.B.I.R.* (1977) 3 SC 53.

Still on the duty of the Court to ascertain the intention of the makers of the Constitution by considering the Report of the Constitution

Drafting Committee 1976, reliance was placed on OLAFISOYE v R.F.N. (2004) 4 N.W.L.R. (Part 864) 580 at 659-660 where this Court called in aid the self same Report of the Constitution Drafting Committee 1976.

The Court below, it was submitted, was therefore in error to describe the report as extraneous. The 1st Appellant relied further on ELEBANJO v DAWODU (2006) 15 N.W.L.R. (Part 1001) 28 at 138 and argued that by adopting the narrow and restrictive interpretation, the court below defeated the purpose and intendment of the framers of the Constitution. It was further argued that under section 142(1) of the Constitution the 1st Respondent must necessarily be an associate of the President and since he is no longer such an associate he should be deemed to have tendered constructive resignation and the court below ought to have so declared.

P.I.N. Ikwueto SAN and Chief Bolaji Ayorinde SAN for the 2nd Appellant argued in much the same direction as the 1st Appellant on the purport of section 142(1) of the Constitution. It was pointed out that the requirement that the President's nominee for the Vice Presidential candidate must be of the same political party as his was not in the 1979 Constitution and that this novel provision could not have been inserted without a specific purpose. It was submitted therefore that section 142(1) of the Constitution ought to be give a broader construction in the light of the clear intention of the framers of the Constitution conveyed in the unique and novel provision of the President and Vice President "*being associate of the same political party.*"

Learned Senior Counsel for the 2nd Appellant particularly urged a careful reading of section 142(1) and 146(3) of the Constitution and submitted that the lower court's erred when it described the provision "for any other reason" in section 146(3)(c) as "duplicitous or repetitious", contending that the lower court had, by that conclusion, fallen into the error of unwittingly re-writing the Constitution. Learned Senior Counsel particularly referred to the use of 'and' between section 146(3)(a) and (b) and 'or' before section 146(3)(c) and submitted that while section 146(3) (a) and (b) provides for specific instances subsection (c) provides for "any other reason" the occurrence of which the office of

Vice President becomes vacant.

Chief Gadzama SAN for the 6th Respondent/3rd Appellant proffered arguments substantially in line with those of the 1st and 2nd Appellants. He also submitted that the Lower Courts was in error to describe B section 146(3)(c) of the Constitution as “duplicitous or repetitious.” It was argued that the phrase “for any another reason” in section 146(3)(c) was deliberately inserted for definite fall back position such as the instant case and that the provision should be construed in its plain and unambiguous meaning. Reliance was placed AWUSE v ODILI (2005) 16 NWLR C (Part 925) 12.

On the need to call in aid the history of a provision to ascertain the purpose of the law makers, Chief Gadzama SAN submitted forcefully at paragraph 5.18 of the brief thus:-

D “Where the language of the statute is ambiguous, then other aids are applied depending on the statute/provision concerned. The principal aid in interpreting an ambiguous provision is the history of the provision or legislation....”

E Reliance was placed on Halsbury’s Laws of England 4th Edition vol. 44(1) paragraph 1415 pages 862-863 and ADEMOLOKWU v COUNCIL OF UNIVERSITY OF IBADAN (1967) A.N.L.R. 40.

For the 1st Respondent Chief Olanipekun SAN referred to sections F 68(g) and 109 of the Constitution and submitted that if the framers of the Constitution had intended the situation in these sections to apply to the President, Vice President, Governor and Deputy Governor, it would have been so provided in the Constitution. It was his submission that where there are two provisions one special and the other general covering the G same subject matter, the special provision supercedes the general one. According to him this method of interpretation is covered by the Latin maxim *generalia specialibus non derogant*. The 1st Respondent, he argued, cannot therefore be removed from office or his seat declared vacant except as provided for under the Constitution, i.e. under section 135 H read together with sections 143 and 144. In his view granting the counterclaim is tantamount to the court amending the Constitution. He submitted that the requirement of the Vice Presidential candidate being the Presi-

dential candidate's associate of the same political party under section 142(1) of the Constitution in a pre-election provision which ceases to have relevance after the person has taken his oath of office. Reliance was placed on *P.D.P. v INEC* (1999) 11 N.W.L.R. (Part 626) 200 at 239.

Peter N. Eze for the 3rd and 4th Respondents (the National Assembly and President of the Senate) also advocated the lateral rule of interpretation since section 142(1) of the 1999 Constitution is clear and unambiguous. In support of the submission he cited *ISHOLA v AJIBOYE* (1994) 6 N.W.L.R. (Part 362) 506. With respect to the Report of the Constitution Drafting Committee 1976 it was the contention of counsel that since the requirement that the Presidential candidate's nominee for Vice Presidential candidate must be an associate of the same political party was first inserted in 1999 it is the 1998 Constitution Drafting Committee Report that ought to be looked at and not the 1976 Report to interpret section 142(1) of the Constitution. Concerning the provisions of section 68(1)(g) and 109(1)(g) his argument was substantially the same as that of the 1st Respondents.

In the 5th Respondent's (Speaker of the House of Representatives) Brief of Argument learned counsel Ikechukwu Ezechukwu submitted to substantially the same effect as those of the other Respondents.

I have examined the claims in the originating summons the affidavits and counter affidavits with the documents attached thereto, the counterclaim and the affidavits of counter affidavits in respect thereof. I have also considered the copious submissions of counsel for the parties in line with the issues as proposed by them. This case is quite a novel one with practically no precedents to throw some guidance. I have, earlier in this judgment restated the substance of the facts which, in my assessments, are essentially undisputed. Counsel for the parties made references to a number of provisions of the Constitution of the Federal Republic of Nigeria. They include sections 68, 109, 110, 135, 142, 143, 144, 146 239, 306 and 308.

The controversy however surrounds the correct interpretation of sections 142(1), 143, 144 and 146(3)(c) and 306 of the Constitution of the Federal Republic of Nigeria 1999. The other provisions are to be

examined in a bid to ascertain the real purpose of sections 142(1) and 146(3)(c) of the Constitution.

In my view, the most crucial and fundamental issue is the right approach in the Construction of these provision. The Court below refused the invitation by the 1st, 5th and 6th Defendants/Appellants to adopt a broader interpretation by considering some external circumstances so as to ascertain the intention and purpose in section 142(1) of the Constitution and decided instead to adopt literal interpretation. All the Appellants launched a ferocious attack on that approach of the court below, contending that by its literal approach the court misconstrued the provisions. Counsel for the parties cited quite a number of case law authorities on the canon of interpretation. They all seem to support the position they articulated. What appears as to be a settled principle of interpretation from all the authorities cited before us and others I have had the opportunity to read is that where the language used in the provision of a statute and or the Constitution is plain and unambiguous effect must, of necessity, be given to its plain and ordinary meaning. It is that clear and unambiguous language that best conveys the intention of the law maker. The law maker must be taken to have intended the meaning expressed in such clear and unambiguous language and the court will not be at liberty to go outside the very provision in an ostensible bid to ascertain the intendment and purpose of the provision. The obvious duty of the court in such a situation therefore is not the determination of what the lawmaker meant, but the meaning of the plain language used which, without more, best expresses his intention. But where, as often happens, the language is imprecise and ambiguous as to lead to more than one meaning, the court will consider some external circumstances to discover the real intention of the lawmaker.

As I said earlier in this judgment the provisions which construction I consider most relevant in the resolution of the controversy are sections 142(1), 143, 144, 146(3)(c) and 306.

Section 142(1) says:

“In any election to which the foregoing provisions of this Part of this Chapter relate, a candidate for an election to the office of President

shall not be deemed to be validly nominated unless he nominates another candidate as his associate from the same political party for his running for the office of President, who is to occupy the office of Vice President and that candidate shall be deemed to have been duly elected to the office of Vice President if the candidate for an election to the office of President who nominated him as such associate is duly elected as President in accordance with the provisions aforesaid.

(2) The provisions of this Part of this Chapter relating to qualification for election, tenure of office, disqualification, declaration of assets and liabilities and oaths of President shall apply in relation to the office of Vice President as if references to President were references to Vice President.”

Section 143(1) provides:-

“The President or Vice President may be removed from office in accordance with the provisions of this section.

(2) Whenever a notice of any allegation in writing signed by not less than one-third of the members of the National Assembly -

(a) is presented to the President of the Senate;

(b) stating that the holder of the office of President or Vice President is guilty of gross misconduct in the performance of the functions of his office, detailed particulars of which shall be specified.

the President of the Senate shall within seven day of the receipt of the notice cause a copy thereof to be served on the holder of the office and on each member of the National Assembly, and shall also cause and statement made in reply to the allegation by the holder of the office to be served on each member of the National Assembly.

(3) Within fourteen days of the presentation of the notice to the President of the Senate (whether or not any statement was made by the holder of the office in reply to the allegation contained in the notice to each House of the National Assembly shall resolve by motion without any debate whether or not the allegation shall be investigated.

(4) A motion of the National Assembly that the allegation be investigated shall not be declared as having been passed, unless it is supported by the votes of not less than two-thirds majority of all the mem-

bers of each House of the National Assembly.

(5) Within seven days of the passing of a motion under the foregoing provisions, the Chief Justice of Nigeria shall at the request of the President of the Senate appoint a panel of seven persons who in his opinion are of unquestionable integrity, not being members of any public service, legislative house or political party, to investigate the allegation as provided in this section.

(6) The holder of an office whose conduct is being investigated under this section shall have the right to defend himself in person and be represented before the Panel by legal practitioners of his own choice.

(7) A Panel appointed under this section shall -

(a) have such powers and exercise its functions in accordance with such procedure as may be prescribed by the National Assembly; and

(b) within three months of its appointment report its findings to each House of the National Assembly.

(8) Where the Panel reports to each House of the National Assembly that the allegation has not been proved, no further proceedings shall be taken in respect of the matter.

(9) Where the report of the Panel is that the allegation against the holder of the office has been proved, then within fourteen days of the receipt of the report, each House of the National Assembly shall consider the report, and if by a resolution of each House of the National Assembly supported by not less than two-thirds majority of all its members, the report of the Panel is adopted, then the holder of the office shall stand removed from office as from the date of the adoption of the report.

(10) No proceedings or determination of the Panel or of the National Assembly or any matter relating thereto shall be entertained or questioned in any court.

(11) In this section —

“gross misconduct” means a grave violation or breach, of the provisions of the provisions of this Constitution or a misconduct of such nature as amounts in the opinion of the National Assembly to gross misconduct.”

Section 146(1) says:-

“The Vice President shall hold the office of President if the office of President becomes vacant by reason of death or resignation, impeachment, permanent incapacity or the removal of the President from office for any other reason in accordance with section 143 or 144 of this Constitution.

(2) Where any vacancy occurs in the circumstances mentioned in subsection (1) of this section during a period when the office of Vice President is also vacant, the President of the Senate shall hold the office of President for a period of not more than three months, during which there shall be an election of a new President, who shall hold office for the unexpired term of office of the last holder of the office.

(3) Where the office of Vice President becomes vacant -

(a) by reason of death or resignation, impeachment, permanent incapacity or removal in accordance with the section 143 or 144 of this Constitution;

(b) by his assumption of the office of President in accordance with subsection (1) of this section; or

(c) for any other reason, the President shall nominate and, with the approval of each House of the National Assembly, appoint a new Vice President.”

The provisions of section 142(1) of the Constitution quoted above is no alleged by any of the Appellants to be ambiguous. Nor are the provisions of section 143 alleged to be ambiguous. Similarly no ambiguity is to be in sections 146 and 306 of the Constitution. They are written in ordinary plain language which, according to the canons of construction, best represents the intention of the writers of the Constitution and effect has to be given to such plane language used in the provisions and that is what the Court below did.

The contention of the Appellants is that although there are no manifest ambiguities in section 142(1) and the other provisions of the Constitution quoted above, applying the literal mode of interpretation would lead to manifest absurdity not contemplated or intended by the writers of the Constitution. The question here is the determination of the type and or degree of conduct or misconduct that creates the absurd situation. Is

it the type of misconduct as defined in section 143 of the Constitution? Is it a misconduct that constitutes a violation of the Constitution of the P.D.P. In my view the 1st Respondent leaving the P.D.P. that sponsored him to the office as Vice President for another political party is not a B misconduct within the meaning of the word in section 143 of the Constitution.

Both the Appellants and Respondents argued that the principle expressed in the latin maxim *generalia specialibus non derogant* operates in C their favour. The principle simply is that where a special provision is made to govern a particular subject matter it is excluded from the operation of any general provision. Section 143 of the Constitution provides for the removal of the President or Vice President from office. And section 144, 146 and 306 provides for when the office of the President or D Vice President can become vacant. Each of a special provision written in a plain language and for the purpose of the removal or vacation of the office of the President or Vice President each is excluded from any other general provision of the Constitution.

E Lastly, I wish to comment on the provisions of sections 146(3)(c) of the Constitution about which learned Senior Counsel for the 2nd Appellant proffered some powerful arguments which substantial, I have earlier stated. I am however not persuaded by the argument that the phrase “for F any other reason” in section 146(3)(c) of the Constitution be construed to mean that by leaving the P.D.P. for the Action Congress the 1st Respondent should be deemed to have either constructively vacated or resigned from office as Vice President of the Federal Republic of Nigeria.

G For the foregoing consideration and the fuller reasons very ably set out in the leading judgment of Akintan JSC I also dismiss the appeal.

MUHAMMAD JSC

H My learned brother, Akintan, JSC, has graciously permitted me to have a preview of the judgment just delivered, in its draft form. I agree entirely with my learned brother’s conclusion. Let me by way of a brief comment say that this case is first of its kind in the history of the devel-

opment of the law, constitution and democracy in this country. We never had any attempt in the time past where the President of the Federal Republic of Nigeria attempted to flush out from office his number 2 man, the Vice President.

The appellant, from the (acts deposed to in the affidavit supporting his originating summons contained in the Printed Record of Appeal, was compelled by the prevailing circumstances facing him to go to the court in order to save his name, neck and personality from the multifarious threats leashed on him. For instance, he alleged that there was a threat to remove him from his office as the Vice President of the Federation as there was a declaration that his office was vacant. He alleged further that there were arrangements to tamper with his immunity which was guaranteed by the Constitution as there were plans to arrest him after he returned from his trip abroad etc.

In their counter-affidavit, especially of the 1st defendant, (referred to herein as 1st appellant); the defendants vehemently denied the facts deposed to by the 1st respondent. Bear with me my Lords, to quote the depositions made by one Bodunde Adeyanju, Senior Special Assistant to the President of the Federal Republic of Nigeria. He averred as follows:-

“2. That I am by virtue of my aforesaid with the facts and circumstances conversant with the facts and circumstances of this suit.

3. That I have the consent and authority of the 1st defendant to F depose of this Affidavit.

4. That the facts to which I herein depose, where not within my personal knowledge are from information received from the 1st Defendant at the State House, Aso Rock Villa on the evening of the 8th day of G January, 2007 which information I verily believe to be true.

5. That I have seen and. read a copy of the Motion on Notice of the Plaintiff/Applicant dated the 4th January, 2007 as well as the Affidavit in support of the Motion deposed to by one Umar Pariya.

6. That the depositions contained in the Affidavit are not only H false but are also deliberately to mislead.

7. That the 1st Defendant/Respondent denies Paragraphs 13-22 of the Plaintiffs Affidavit.

8. *That the affidavit in support of originating summons is in the main an attack on Chief Olusegun Obasanjo in his private capacity as a citizen of Nigeria and not as President of Nigeria in the discharge of his official duties.*

B 9. *That the applicant has not been candid to this Court by his failure to disclose material facts.*

Non-disclosure:

C (a) *That the applicant failed to disclose to the court that on Wednesday, 20th December, 2006 he openly declared for another political Party, Action Congress.*

(b) *That the applicant did not disclose to this honourable court that he lambasted, denounced and condemned the PDP, the led Government, PDP policies and the President of the country.*

D (c) *That he failed to tell the court that he is not a member of PDP anymore,*

(d.) *That he failed to disclose to the court that he is now a member of Action Congress (AC) as well as its Presidential candidate.*

E (e) *That he failed to disclose that he had filed another action in the High Court on this matter and an earlier suit in this court.*

(f) *That he failed to inform the court that he has been campaigning openly against the PDP Government and the President.*

F (g) *That he failed to attach the constitution of the two political parties, i.e. PDP and AC.*

G (h) *That he failed to inform the court that he had ceased to attend the Federal Executive Council meeting for over two months before filing this action.*

(i) *That he failed to attach the statement of the plaintiff reported in the Punch of January 4, 2007, which is hereby attached as EXHIBIT AA in which he admitted:*

H (a) *That the threat to his life was speculative and a psychological warfare.*

(b) *That PDP is an empty shell.*

(c) *That his people are still in his official resident.*

Constructive Resignation, withdrawal and/or voluntary abandonment.

10. *That the Plaintiff/Applicant has abandoned the Peoples Democratic Party under which he was elected as the Vice President of Nigeria and has cross-carpeted and declared for the Action Congress.*

11. *That the applicant was nominated by Chief Olusegun Obasanjo, GCFR as his associate for the Presidential Election of 1999 and 2003.* B

12. *That the President won the election with the Applicant as his Vice President.*

13. *That the ideology and manifesto of PDP are quite different from the ideology and manifesto of each of all the other political parties in the country.* C

14. *That the executive powers of the federation which extend to the execution and maintenance of the constitution are vested in the President.*

15. *That in the discharge of the functions of his office the President is expected to establish ministries and assign offices to Ministers as well as the Vice President and the President holds-meetings with them.* D

16. *That at such meetings where the applicant used to be present over two months ago, matters which were and are discussed and on which decisions are taken include national security, defence, local and, foreign affairs, currency and policy matters affecting the country at large.* E

17. *That all members of the executive council including the applicant are obliged to maintain confidentiality of information, maintain single minded loyalty and respect, for the President, act in the interest of the PDP which voted them into power, act in good faith, work in interest of the PDP government, avoid doing anything which would put their interest in conflict with the interest of the government, avoid acting for the benefit of another political party, and exhibit undivided loyalty to the President and PDP Government.* F G

18. *That on the 20th December, 2006 the applicant openly and publicly declared for another political party known as Action Congress (AC).*

19. *That in a lengthy speech the applicant castigated, denounced and condemned the PDP which voted him to power, the PDP government and the President who nominated him as an associate. Copy of newspaper attached as "Exhibit AG..."* H

20. *That the statement of the applicant are highly destructive of the President, the PDP and Government.*

21. *That the applicant has not renounced his statement up till now but continues his condemnation of PDP, the President and the Government.*

22. *That the applicant's conduct by declaring for another political party and making scandalous, damaging and destructive statements about the President, the PDP and the Government is inconsistent with his position as an associate of the President of the Federal Government.*

23. *That as an associate of the President the expected mutual trust between the plaintiff and the President does not exist any longer.*

24. *That by his conduct which is inconsistent with the position of the association and vice of the President, the Vice President has constructively withdrawn or resigned from the PDP.*

25. *That Chief Afe Babalola told me and I verily believe that the applicant has withdrawn or resigned from the PDP led Government as Vice President to the President of Nigeria.*

E Newspaper Publications

26. *That in response to the newspaper publications referred to in paragraphs 13 to 20 of the affidavit deposed to by Umar Pariya, The 1st defendant says as follows:*

(a) *That the 1st defendant has not challenged the plaintiff or disturbed him from enjoying the facilities and privileges attached to his office.*

(b) *That the 1st and 2nd Defendants are very much aware that the Plaintiff enjoys immunity from arrest and prosecution and as such nobody from the Presidency or 2nd defendant has threatened to arrest him.*

(c) *That it was the Plaintiff who voluntarily and partially abandoned his office residence in Aso Villa and many of his official cars in the process.*

(d) *That the State House Motor Transport Department, whose duty it is to watch over and maintain vehicles in the State House noticed that some of the vehicles by the Plaintiff may possibly be stolen or vandalized and decided to preserve these vehicles by taking protective, custody of*

them.

(e) That the vehicles are safe and intact for the use of the Plaintiff anytime he decides to move back to his official residence.

(f) That notwithstanding the fact that the Plaintiff in person moved out at of his Aso Villa official residence, many of his people and aides^B are presently occupying the place without anybody coming to disturb them.

(g). That the Plaintiff himself is aware of this fact and he admitted it in the interview he granted from his United States of America base in Thursday Edition of Punch Newspaper of 4th January, 2007 (the said^C Punch Newspaper is hereby attached as Exhibit AG”).

(h) That further to the above paragraph, the wife, relations, people and aides of the Plaintiff are also presently occupying his official residence in Ikoyi Crescent, Lagos and none of them has ever been harassed, molested or asked to vacate by any agent of Federal Government. ^D

(i) That none of the Security Aides of the Plaintiff was withdrawn, rather it was the Plaintiff who made himself unavailable.

27. That the head of Media and Publicity in the Presidency is Mrs. Oluremi Oyo. ^E

28. That the said Oluremi Oyo has made it clear in a press statement that the presidency has not authorized anyone to speak on the status of the Vice President.

29. That the statement of Mallam Uba Sanni relied on in the news-^F paper report attached to the applicant's affidavit were not authorized by the Presidency.

30. That Mallam Uba Sanni, told me and I verily believe that he was Quoted out of context.

31. That the President has no intention of replacing the Plaintiff^G as the Vice President of the Federal Republic of Nigeria until this Honourable Court makes such declaration.

32. That there is no threat of arrest of the Plaintiff by the Presidency. ^H

Power of Court of Appeal

33. The first defendant denies paragraph 31 of the affidavit in support of the originating summons.

34. *That the provision of section 146(3)(c) of the Constitution of the Federal Republic of Nigeria 1999 envisages other grounds, in which the position of the Vice President of Nigeria can be declared vacant other than section 143 and 144 of the Constitution.*

B 35. *That the continued stay in office of a Vice President who has decamped from his sponsoring party to another party may lead to the making of a President from an unsuccessful political party whose policy is hostile to those of the ruling party.*

C 36. *That by virtue of section 144(3)(a) of the Constitution the offices of the Vice President can also become vacant by reason of resignation.*

D 37. *That it is universally accepted that resignation could be formal and that resignation could also take the form of constructive withdrawal, abandonment, and relinquishment which the plaintiff has done.*

E 38. *That the plaintiff is estopped from denying that by his conduct which is inconsistent with his obligation to the President he has withdrawn, abandoned, resigned or relinquished his position as Vice President.*

39. *That section 142(1) of the Constitution does not permit of a Vice President belonging to a different party from the party that elects him nor does it permit of double loyalty.*

F 40. *That the obligation that arises from the special relationship of Vice President to the President and the party that elects it is that of one mindedness loyalty.*

G 41. *That on the facts of the circumstances of this case the applicant has voluntarily abandoned the PDP government, dumped the PDP and the President to which is an associate or has constructively resigned or withdrawn from the government of the President Obasanjo and PDP."*

H Limiting myself to the facts deposed to above by the plaintiff/1st respondent which I summarized earlier, and that of the 1st defendant/appellant set out (supra), it is beyond dispute that the good working relationship between the President, Chief Olusegun Obasanjo who is represented by the Hon. Attorney-General of the Federation in this appeal and Alhaji Atiku Abubakar, Vice President and No.2 man to the President who

is the 1st respondent and the Peoples Democratic Party (PDP) which sponsored, both the President and his Vice to the election of 2003 which brought the duo to power, had certainly deteriorated, It is on record that at a time, the 1st respondent was suspended for a period of three months (i.e. in September 2006) and later expelled from the party. Of equal degree of degeneration is that at another time, the President was said to have ordered the 1st respondent to get out of the Federal Executive Council Meeting.

Now with this sordid relationship between the President, their Political Party (PDP) on one hand and the Vice President on the other, continued harmonious living together and working under same roof was not quite feasible. Thus, the better option for the 1st respondent was to resign from the PDP and withdraw himself from attending the Federal Executive Council Meeting. These were, among other reasons given by the appellant to say that the 1st respondent had dumped the PDP; defected to another party and condemned the President and has by conduct abandoned the sponsoring party, the Government and the President.

I agree generally with the submission of the leading Senior Counsel for the respective appellants in their various submission that the unity contemplated between the President, his Vice is that the Vice President should be inseparable from the President and should stand or fall with him both at the polls and while in office. He is joined to him in a constitutional union based on the absolute loyalty of the one to the other. The Vice President conceived in the role of the President's right-hand man. I must add however, this is in an ideal situation. Where the President and his Vice are poles apart, each facing different direction in speech and action, the political union is naturally bound to collapse.

I think in a democracy which is founded upon a constitution which assigns offices and responsibilities, the Vice President cannot be a slave to the President with no will or opinion of his own and that his personality or individuality should submerge in that of the President. That is perhaps, why Abdullahi, PCA held the view that:

"I too, do not know of any authority which creates a supine, single minded Vice President indeed a robot. It is respectfully to my mind not

the intention of the Constitution to create a Vice President with no mind of his own.”

Although both the President and his Vice contested and won election together under the umbrella of the same party, I share the same view with the Court below that the bond of companionship which compelled them particularly the Vice Presidential candidate to remain together during election loosens, soon thereafter, and they would swim to certain extent separately. On his election, the Vice President ceases to be the Vice Presidential candidate of the sponsoring party but a Vice President of the Federal Republic of Nigeria, so says Section 141 of the Constitution.

1st respondent is alleged to have defected or cross-carpeted to another political party. Although defection or cross-carpeting to another party or dumping the original party that sponsored one for election to a particular office which is created by the Constitution, or in the same vein, condemning or criticizing that party or its members who by virtue of the same election hold some offices created by the Constitution, is painful, unconscionable, and immoral, it is however not illegal. I cannot find any fault with the lower court’s adumbration on section 40 of the Constitution of the Federal Republic of Nigeria, 1999, Chapter IV thereof, which guarantees a citizen of this country freedom of association. This section provides that:-

“40. Every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interest: Provided that the provisions of this section shall not derogate from the powers conferred by this constitution on the Independent National Electoral Commission with respect to political parties to which that commission does not accord recognition”

(underlining supplied for emphasis)

Thus, under the provisions of the Constitution, it will operate illegality. injustice and unconstitutionality to refuse or deny a citizen of this country to opt out, join, belong to any political party, trade union or any other association for the protection of his interest, except where, in case of political parties, the National Electoral Commission (NEC) or (INEC)

or as the name may suggest. In this case it has not been shown by credible evidence that the party said to have been formed by the 1st respondent and to which he is said to have defected, Action Congress (A.C.), has not been recognized by the INEC. Thus as a citizen of Nigeria, the 1st respondent cannot be subjected to any such disabilities. Section 42 of the Constitution provides:-

“42.(i) A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person-

(a) be subject either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin,, sex, religions or political opinions are not made subject.”

Thus, except where a citizen elects to join or form a party which has no recognition from INEC, his constitutional right to belong to any Party or Association is guaranteed by the Constitution.

In concurring with my learned brother, Akintan, JSC, who painstakingly and ably, too, dealt with all the issues raised in this appeal, I too dismiss the appeals and affirm the judgment of the Court below on the counter-claim. I further grant the declarations sought in the 1st - 3rd legs thereof and refuse the remaining. I make no order as to costs.

ADEREMI JSC

I agree with my learned brother, Akintan JSC, whose reasons for judgment I have had a privilege of a preview and I do agree with him that the appeal is devoid of merit. Because the issue raised in this appeal is a fundamental but novel one, I wish to put in my own words if only for the purpose of emphasis.

The three appeals here (i.e. one by the 1st defendant - the Attorney-General of the Federation, the other by the 2nd defendant - the Inspector General of Police and the third by the Independent National Electoral Commission - INEC) are against the decision of the Court of Appeal

delivered on the 20th February 2007 in Abuja.

By invoking the original jurisdiction of the court below (Court of Appeal) pursuant to Section 239 of the Constitution of the Federal Republic of Nigeria, the plaintiff/1st respondent (Alhaji Atiku Abubakar) by B an originating summons dated 4th January 2007, had approached the court below posing three questions for determination; they are: -

C “(1) *whether having regard to the combined provisions of Sections 135 and 142 (2) of the Constitution of the Federal Republic of Nigeria 1999, the plaintiff’s term of office as Vice President, Federal Republic of Nigeria which commenced on 29th of May, 2003, still subsists.*

D (2) *whether having regard to the provisions of Sections 142, 143, 144 and 146 of the Constitution of the Federal Republic of Nigeria, 1999, or any other provisions of the Constitution of the Federal Republic of Nigeria 1999 or any law, the President of the Federal Republic of Nigeria can declare vacant the office of the plaintiff as Vice President of the Federal Republic of Nigeria.*

E (3) *whether having regard to the clear provisions of Section 308 of the Constitution of the Federal Republic of Nigeria 1999, the President of the Federal Republic of Nigeria can withdraw, tamper or interfere with or violate the immunity conferred on the plaintiff as the Vice President of the Federal Republic of Nigeria by that section AND OR F direct his arrest or prosecution.”*

The plaintiff/1st respondent also claimed 8 reliefs which are as follows: -

G “(1) *a declaration that the term of the plaintiff as the Vice President of the Federal Republic of Nigeria which commenced from 29th of May 2003 still subsists and does not terminate until 29th of May 2007.*

H (2) *a declaration that the President has no power under the Constitution of the Federal Republic of Nigeria 1999 or any other law to declare the office or seat of the plaintiff as the Vice President of the Federal Republic of Nigeria vacant.*

(3) *a declaration that the purported declaration by the President of the Federal Republic of Nigeria of the office of the plaintiff as Vice President of the Federal Republic of Nigeria vacant is unconstitutional,*

illegal, null and void and of no effect whatsoever.

(4) an order setting aside the withdrawal of all the rights, privileges, entitlements inclusive all security details staff of the plaintiff as directed by the President of the Federal Republic.

(5) an order restoring all the rights, privileges, entitlements and/ or benefits howsoever of the plaintiff as the Vice President of the Federal Republic of Nigeria.

(6) an order of perpetual injunction restraining the defendants whether by themselves, agents, privies, servants or otherwise howsoever from impugning or violating the constitutional immunity conferred on the plaintiff as the Vice President of the Federal Republic of Nigeria.

(7) an order of perpetual injunction restraining the 3rd, 4th, 5th and 6th defendants whether by themselves, their agents, privies, servants or otherwise howsoever from considering any nominee from the President to the office of the Vice President.

(8) an order of perpetual injunction restraining the 6th defendant whether by itself, its agents, privies, servants or otherwise howsoever from considering and/or giving effect to the president's letter informing them of the declaration of the seat and/or office of the plaintiff as the Vice President of the Federal Republic of Nigeria vacant."

The court below after taking the addresses of the respective counsel of the parties, in a reserved judgment delivered on the 20th February 2007, consequent upon resolving all the questions formulated by the plaintiff now 1st respondent in his favour granted the reliefs sought by him in the following terms: -

"1. It is hereby declared that the term of office of the plaintiff as the Vice President of the Federal Republic of Nigeria which commenced from 29th of May 2003 still subsists and does not terminate until 29th of May, 2007.

2. Secondly, it is further declared that the President has no power under the Constitution of the Federal Republic of Nigeria 1999 or any other law to declare the office or seat of the plaintiff as Vice President of the Federal Republic of Nigeria vacant.

3. Thirdly, it is declared that the purported declaration by the Presi-

dent of the Federal Republic of Nigeria of the office of the plaintiff as the Vice President of the Federal Republic of Nigeria vacant is unconstitutional, illegal, null and void and of no effect whatsoever.”

The 1st appellant who was the 1st defendant in the court below in B his counter-claim dated and filed on the 12th of January 2007 to the originating summons of the plaintiff/1st respondent raised five questions for determination and seven reliefs; they are in the following terms: -

QUESTIONS

C “(1) *whether under and/or by the combined effect of Sections 14, 130, 131 (c), 136 (1), 142 (1) and 146 (c), the Constitution of the Federal Republic of Nigeria, the President of the Federal Republic of Nigeria can lawfully select or continue to maintain a decamped Vice President who has publicly condemned the policy of the sponsoring party and*
D *embraced a new political party whose policies are hostile to the sponsoring party.*

(2) *whether or not the office of the Vice President elected by virtue of Section 142 (1) of the 1999 Constitution can become vacant upon*
E *the resignation of the Vice President.*

(3) *whether having regard to Section 146 (3) (a) of the Constitution of the Federal Republic of Nigeria 1999 which entitled a Vice President to resign from the office of the Vice President, the dumping of the*
F *plaintiff of the sponsoring party for another political party coupled with the public denunciation and condemnation of the sponsoring political party, the President and their government do or do not constitute constructive resignation, withdrawal or abandonment of the office of the*
G *Vice President,*

(4) *whether or not a sitting Vice President elected pursuant to Section 142 (1) of the 1999 Constitution who declares for another political party denounced and condemned the sponsoring political party, the government and the President has by his conduct, breached his obligation of one mindedness, loyalty, mutual trust, confidence and good faith*
H *and has therefore resigned, abandoned and withdrawn from the office of the Vice President.*

(5) *whether a sitting Vice President elected under Section 142 (1)*

of the 1999 Constitution who dumps the sponsoring party for another political party and publicly condemned the sponsoring political party, the President and the Government is not by reason of his conduct estopped from denying that he has not constructively resigned from the sponsoring party.”

B

The 1st appellant claimed seven reliefs per his counter-claim - they are in the following terms: -

“(1) declaration that the actualization of the policies of the sponsoring party and effective running of the office of the President of the Federal Republic of Nigeria and pursuant to Section 142 (1) of the Constitution, a Vice President of Nigeria must belong to the same political party with the President.

C

(2) declaration that the special relationship between the Vice President, the President and the sponsoring party by the combined effect of Sections 14,130,131 (c), 136 (1), 142 (1) and 146 (3) (c) of the Constitution of the Federal Republic of Nigeria is one of one mindedness, loyalty, trust and mutual confidence and good faith which does not permit double loyalty.

E

(3) declaration that the office of the Vice President under Section 146 (3) (c) can become vacant on the resignation of the vice President.

(4) declaration that the dumping of a sponsoring party for another by a sitting Vice President coupled with condemnation of the President and the government by a sitting Vice President is a breach of the one mindedness, loyalty, trust and confidence expected of the Vice President and therefore constitutes constructive resignation, withdrawal and/or for abandonment of the office of the Vice President.

G

(5) declaration that by the reason of the facts stated in (4) above, a sitting Vice President is estopped from denying that he has by his conduct resigned, withdrawn and/or abandoned the office of the Vice President.

(6) an order of injunction restraining the 2nd to 6th defendants, jointly and/or severally by themselves, their agents, servants, privies or subordinate, whatsoever described from recognizing, treating or addressing the plaintiff as the Vice President of the Federal Republic of Nigeria.

H

(7) *an order of injunction restraining the 2nd to 6th defendants jointly and/or severally by themselves, their agents, servants, privies or subordinate, whatsoever described from recognizing, treating or addressing the plaintiff as the Vice President of the Federal Republic of Nigeria.”*

B In the same judgment, the court below adjudged the counter-claim of the 1st appellant as having no merit, and having resolved all the questions framed in the counter-claim against the 1st defendant/1st appellant, consequently dismissed the counter-claim.

C Being dissatisfied with the said judgment, the 1st defendant (Attorney-General of the Federation), the 2nd defendant (Inspector General of Police) and the 6th defendant (Independent National electoral Commission - INEC) appealed there from to the Supreme Court as 1st, 2nd and 3rd appellants respectively. The 1st appellant, through his brief of argument
D filed on 9/3/07, raised seven issues for determination; and they are as follows: -

“(1) *whether or not the Court of Appeal was right in granting the plaintiffs reliefs Nos. 1, II and III when on the available evidence, which*
E *was not considered, there was no LIS.*

(2) *whether or not the Court of Appeal acting under Section 239 of the Constitution of the Federal Republic of Nigeria is a trial court which is obliged to evaluate the evidence, identify issues in dispute and*
F *apply the findings on the law before arriving at any decision.*

(3) *whether or not in construing the intention of the drafters of the Constitution in relation to Section 142 (1) of the 1999 Constitution, the Court of Appeal was not duty bound to consider the following:*

G (a) *History of the Constitutional provision,*
(b) *Social need, political realities and peculiarities and*
(c) *The need to avoid absurdity.*

(3^b) *If the answer to the above is in the affirmative, whether or not the Court of Appeal was right in its narrow approach to the interpretation of Section 142 (1) of the 1999 Constitution to the effect that there is nothing in the provision which precludes the President and the Vice President from continuing in office after dumping the political party that sponsored him to the office for another political party.*
H

(4) *whether or not the Constitutional union between the Vice President and the President under Section 142 of the Federal Republic of Nigeria automatically exposed immediately after the election that brought both the Vice President and the President to Office.*

(4b) *AND if not, whether the Constitutional union demands from B the Vice President undivided loyalty, trust and confidence as Vice President as long as he remain (sic) the Vice President.*

(5) *whether or not the Vice President having openly jettisoned the sponsoring party and defected to another party and condemned the President and the sponsoring party, has not by his conduct abandoned the sponsoring party, the government and the President.* C

(6) *whether or not the Court of Appeal has jurisdiction under section 146 (3) (c) to declare the seat of the Vice President vacant having regard to the uncontradicted evidence that the Vice President has jettisoned the sponsoring party and declared for a political party (Action Congress) which was not even in existence at the time of election; castigated the President and condemned the policy and philosophy of the sponsoring party.* D E

(7) *whether the Court of Appeal's application of the respondent's right of freedom of association to the facts of this case was not wrong particularly as the issue of the said right was raised by the court suo motu and without calling upon counsel to address it."* F

The 2nd appellant (Inspector General of Police) in his brief of argument filed on 9th March 2007, identified two issues for determination, and couched in his brief, they are as follows: -

"(1) *whether on a proper interpretation of the provisions of Section 142 (1) and 146 (3) (c) of the 1999 Constitution of the Federal Republic of Nigeria, the office of the Vice president will be vacated if the Vice President publicly disassociates himself from the President of the Federal Republic of Nigeria and decamps to a rival political party other than that on whose platform he was elected into office as the Vice President.*" G H

(2) *whether the court below was entitled to add its own words in the exercise of its judicial function to interpret the provisions of the Con-*

stitution.”

For its part, the 6th defendant/3rd appellant (Independent National Electoral Commission - INEC) - in its brief of argument filed on the 9th of March 2007 formulated three issues for determination; which as set out B therein are in the following terms: -

“(1) *whether the learned justices of the lower court were right in holding that the provision of Section 146 (3) (c) of the 1999 Constitution is duplicitous or repetitious.*

C (2) *whether on the state of pleadings and addresses of counsel for the parties, the issue of the right to membership of association arose before the lower court to warrant the pronouncement of the lower court on same suo motu.*

D (3) *whether or not the learned justices of the court below were right in holding that the seat of the plaintiff/respondent had not become vacant by reason of his abandonment of the political party under whose platform he was elected into office by joining a rival political party.”*

E The plaintiff/1st respondent (Alhaji Atiku Abubakar) in his brief of argument filed on the 22nd of March 2007 raised only one issue for determination and as set out in his said brief, it is as follows: -

F “*Whether having regard to the combined provisions of Sections 135, 142, 143, 144, 146, 308 and other relevant provisions of the Constitution of the Federal Republic of Nigeria 1999 and admissible materials placed before the lower court, whether or not the lower court rightly granted the 1st respondent’s reliefs and dismissed the appellant’s counter-claim.*”

G The 3rd and 4th respondents (The National Assembly of the Federal Republic of Nigeria and the President of the Senate of the Federal Republic of Nigeria) in their joint brief of argument filed on the 23rd of March 2007 raised three issues for determination and they are as follows: -

H “(1) *was the Court of appeal correct in its decision that the seat of the Vice President will not become vacant if ye abandons the party on whose platform he was elected and joins another party.*

(2) *if there was a dispute between the parties, did the lower court evaluate the evidence presented by the parties before determining*

the dispute.

(3) when the Court of Appeal raised and applied Section 40 of the Constitution *suo motu*, without giving the parties an opportunity to address it on the section, did this lead to a miscarriage of justice sufficient to warrant a reversal of the judgment of the Court of Appeal.” B

The 5th respondent (Speaker of the House of Representatives of the Federal Republic of Nigeria) in his two briefs filed on the 26th of March 2007 and 23rd March 2007 with respect to the appeals filed by the 1st appellant (Attorney General of the Federation) and the 3rd appellant C (Independent National Electoral Commission - INEC) adopted as its own the issues raised by the two appellants in their respective briefs. However, as it relates to the issues raised in the 2nd appellant’s brief (the Inspector-General of Police) the 5th respondent identified only one issue D which, as contained in his brief of argument filed on the 26th of March 2007; it is as follows: -

“Whether by defecting from the Peoples Democratic Party (PDP), a party under whose platform he was elected into office, to Action Congress (AC), the Vice President’s office/seat can be said to have fallen E vacant especially having regard to Section (sic) 142 (1) and 146 (3) of the Constitution of Federal Republic of Nigeria.”

When the appeals came before us on the 29th of March 2007 for argument, Chief Afe Babalola S.A.N., leading a host of other senior law- F yers and lawyers and representing the 1st appellant, referred to and adopted the brief filed on the 9th of March 2007, the appellant’s reply brief to the 1st respondent’s brief of argument filed on the 27th of March 2007 and the G appellant’s reply brief to the 5th respondent’s brief of argument filed on the 28th of March 2007. On Issue No. 1 in his client’s brief of argument learned senior counsel referred to pages 280 - 281 of the records of H proceedings and submitted that the court below did not refer to the affidavit at page 27 of the record and that if the court below did, it would have found that the President never intended to replace the Vice President. Contending further that having refused the prayer for an order of injunction, the main case ought to have been dismissed as well: adding that there was no LIS. He further argued on Issue No. 3 that the court

below fell into a serious error when it held that it could not adopt a broader view of interpreting the provisions of the Constitution despite the decision of this court in *Nafiu Rabiu v. The State* (1981) 2 NCLR 293 and the dictum of C.J. Kagazi on *The Constitution of India* quoted on page 2 of the said brief. A resort to the report of the Drafting Committee as was in the decision in *Olafisoye v. F.R.N.* (2004) 2 NWLR (pt.864) 580 would have enabled the court below to chart a correct path, he further argued. The learned senior counsel also highlighted his argument on pages 67 to 69 on the opinion expressed by Prof. Nwabueze, S.A.N. in his book titled “Constitutional Democracy In Africa Volume 4 wherein the learned constitutional lawyer and author had reasoned that a Vice President was not free to oppose the decisions or actions of the president or of the executive council, that the constitutional arrangement completely subordinates the Vice President to the President; and that the Vice President lacked freedom of political action as he is not free, to be in a political action opposed to the President - had the court below not jettisoned the opinion expressed in the aforesaid book, he again argued, the decision would have been different. It was his final submission that the conduct of the Vice President amounted to an abandonment of his office and urged this court to so hold by virtue of Section 146 (3) (c) of the 1999 Constitution; he urged that the appeal be allowed; the claims of the plaintiff/1st respondent be dismissed while the counter-claim of the 1st defendant/appellant be allowed.

Mr. Ikwueto, learned senior counsel appearing for the 2nd appellant (Inspector General of Police) referred to and adopted the brief of his client dated and filed on the 9th of March 2007. he urged that the appeal of the 2nd appellant be allowed as, according to him, the plaintiff/1st respondent (Alhaji Atiku Abubakar) had by his conduct, abandoned his office, while citing Section 146 (3) (c) of the 1999 Constitution.

Mr. Gadzama, learned senior counsel for the 3rd appellant (INEC) referred to and adopted his client’s brief filed on the 9th of March 2007, he urged that the three issues raised in the afore-said brief be resolved in favour of his client on the ground that the abandonment of the seat of the Vice President, having regard to his conduct, is subsumed in the provi-

sions of Section 146 (3) (c) of the Constitution - the appeal of his client, he finally submitted, should be allowed.

Chief Wole Olanipekun, learned senior counsel, also leading a host of senior lawyers and other lawyers for the plaintiff/1st respondent referred to and adopted his client's brief of argument dated 19th March 2007 but filed on 22nd March 2007; a second brief dated 15th March 2007 but filed on 22nd March 2007 and yet a third brief dated 15th March 2007 but filed on 22nd March 2007 - the last two briefs having been settled by Dr. Alex Izinyon, S.A.N. He highlighted the salient arguments contained in the briefs; contending that except as otherwise provided by the Constitution of the Federal Republic of Nigeria 1999, the office of the Vice President cannot be declared Vacant. He drew our attention to Sections 65 and 66 of the 1999 Constitution which spelt out qualifications for membership of the National, Assembly and in particular, Section 68 (1) (g) - which stipulates that once a member of the Senate or of the House of Representatives becomes a member of another political party before the expiration of the period for which that House was elected, his seat, for reason of defection, becomes vacant; he submitted that no such provision was fashioned for the offices of the President or Vice President.

The learned senior counsel further argued that the provisions of Section 146 (3) (c) of the Constitution does not arise for determination here because, according to him, the counter-claim is based on constructive resignation of the 1st respondent/plaintiff and this can only be accommodated by Section 146 (3) (a) of the Constitution. It was his further argument that it is Section 306 (1) (2) and (3) that regulates the method of removing a Vice President from office. He finally urged that the judgment of the court below be upheld while the three appeals be dismissed.

Mr. Ezechukwu, learned counsel for the 5th respondent, referred to and adopted his client's brief filed on 26/3/07 in respect of appeal by Attorney General and INEC which, according to him, are in response to the three appeals; he urged that the three appeals be dismissed.

Mr. Eze, learned counsel for 3rd and 4th respondents referred to and adopted his-client's joint brief filed on 23rd March 2007 and he urged that that the three appeals be dismissed.

In his response on points of law, Chief Babalola submitted that the case of P.D.P. v. INEC referred to by Chief Wole Olanipekun is not relevant to this case and it was his final submission on points of law that all arguments by learned counsel for the 1st respondent on the issue of injunction should not be countenanced as, he said, no appeal has been lodged against the refusal of the court below to grant an order of injunction.

I have carefully examined all the issues identified by the parties for determination by this court alongside the claims and the counter-claims by the parties before the court below; the central theme of the whole case is, whether by reason of his defection from Peoples Democratic Party - the party under whose platform he came to office with the President - to the Action Congress, his new party, thus abandoning the sponsoring party, has not voluntarily vacated the Office of the Vice President of the Federal Republic of Nigeria even though, under the Constitution of the Federal Republic of Nigeria, his term would come to an end on the 29th of May 2007. All the issues raised by the parties dovetail into one another as far as this central theme is concerned. But, after a very careful study of all the issues raise, it is my considered view that the following issues i.e. Issues Nos. 3, 3b, 4 and 4b in the 1st appellant's brief; Issue No. 1 in the 2nd appellant's brief; Issue No.3 in the 3^r appellant's brief; Issues No. 1 and 2 in the 1st respondent's brief; Issues Nos. 1 and 2 in the joint brief of the 3rd and 4th respondents; Issue No. 1 in the 5th respondent's brief and Issue No. C in the 6th respondent's brief are all directed to the central theme. I shall therefore take all of them together.

But before I proceed, I wish to quickly dispose of Issue No.1 on the 1st appellant's brief. A cursory reading of the 1st respondent/plaintiffs originating summons shows that there is a dispute. The issue before the court is to determine whether the office of the Vice President has become vacant. By virtue of Section 239 (1) (c) of the 1999 Constitution of Nigeria, it is only the Court of Appeal, to the exclusion of any other court of law in Nigeria, that has original jurisdiction to hear and determine that question. The counter-claim of the 1st appellant/respondent as set out supra also leaves me in no doubt that there is a dispute. That issue is

therefore, non sequitor. Consequently, Issue No.1 aforementioned is answered in the affirmative.

The 1st appellant in his brief of argument in support of the issues raised supra, had submitted that the role of the court is not to interpret the provisions of any statute including the Constitution in a way as not to B defeat the intention of the makers, a number of court decisions the like of Uwaifo v. A-G Bendel State (1982) 4 NCLR 1; Ukaegbu v. A-G Imo State (1983) 1 S.C.N.L.R. 212 and Nafiu Rabiu v. Kano State (1980) 8-11 S.C. 130 were relied upon adding that implicit in these decisions are the prin- C ciples that:

(a) the court to resort to the historical antecedent of a legislation to know the intention of the law makers;

(b) peculiar circumstances of the people must be taken into con- D sideration in interpreting

(c) the court must consider the changing circumstances of a pro- gressive society;

(d) the court must promote the purpose of any particular provi- E sion of the Constitution and arrest the mischief which the provision intends to deter.

The Report of the Constitution Drafting Committee of 1976 was played up. It was further argued that the kind of companionship created by Section 142 of the 1999 Constitution between the Vice President and F the President transcends their election and that Sections 145, 146 and 148 (2) of the Constitution clearly show that the constitutional union created by Section 142 of the same Constitution survives the election of the Vice President and the President; the Constitution should therefore be G read as a whole to determine the intendment of its makers: it was further contended while submitting finally on these four issues that loyalty to the President is the only sine qua non to the expected loyalty to the Federal Republic of Nigeria by the Vice President as envisaged by the Oath of H Office he took. The 2nd appellant in his argument as contained in his brief submitted that it is only in Section 142 (1) of the Constitution that it is stipulated that the candidate to be nominated as the Vice President shall be an “ASSOCIATE” FROM THE SAME POLITICAL PARTY” as the

President adding that the legislature does not use words in a statute in vain without intending that those words are to be read as intended to have meaning within the context of the enactment; he cited some decisions of this court which contain guidelines for interpreting constitutional provisions: they are the like of *Bronik Motors Ltd & Anor v. WEMA Bank Ltd* (1983) 14 NSCC 226; *Nafiu Rabi* (supra). The argument of the 3rd appellant on Issue 3 follows the same pattern. For arguing the sole issue raised by the 1st respondent which issue encompasses all the above issues, the 1st respondent referred to Sections 65 and 66 of the Constitution which spelt out qualifications and disqualifications for elections into the National Assembly and Section 68 thereof which provides instances when a member of the National Assembly will lose his seat - such as when he becomes a member of another legislative house, or a member of another political party - and submitted that all the above provisions are deliberately left out of the Constitution in respect of the Chief Executives at both the Federal and State levels; particularly the President, Vice President, the Governor and the Deputy Governor; adding that the Vice President cannot be removed except for reasons clearly stated in the Constitution and that the position maintained by the 1st respondent/appellant in his counter-claim does not conform with any of the reasons stated in the Constitution for the removal of the Vice President.

On Issues Nos. 1 & 2 in the joint brief of the 3rd and 4th respondents, the summary of their submissions is that the court below was right in his construction of the provisions of Sections 142 (1) and 146 of the 1999 Constitution and that if the Constitution had wanted a Vice President to lose his seat if he defected to another party, it would have been so clearly stated adding that there is nothing like the doctrine of single mindedness in Constitutional law. The arguments canvassed by the 5th respondent in support of his Issue No. 1 are in tandem with those of the 1st, 3rd and 4th respondents as set out above; I need not repeat them. The 6th respondent who is also the 3rd appellant had, in total support of the stand of the 1st and 2nd appellants argued in its brief that the Vice President would not have been elected into office with the President but for the fact that both of them belonged to the same political party and having

defected to another political party from the one that sponsored him, the Vice President must be taken to have vacated his seat.

The entire case rests on interpretation of the relevant provisions of the Constitution. Several definitions have been accorded to the Constitution of a country; it has been described as the grundnorm from which all other laws derive their existence; some call it the supreme law of the land also some call it a living organism. Whatever definition may be given to a Constitution, it is beyond any argument that in an environment which upholds the rule of law, it is the Constitution of that area that gives legal life to all other laws, statutes, rules, bye-laws etc applicable in that area. By the force of the Constitution itself, its fashioning or making is the exclusive preserve of the legislature while the function of interpreting its provisions is that of the judiciary to the exclusion of any other arm of the government i.e. the Executive and the Legislature. The crucial task here is to interpret the relevant provisions of the Constitution that have been referred to by the parties. It has been said in one of the briefs before us that the case at hand is, by every standard, a novel one. I entirely agree; given the facts of this case and the little research I have carried out I have not come across any judicial decision relating to the peculiar facts of this case. But, no legal problem or issue must defy legal solution. Were this not to be so, the society, as usual, will continue to move ahead, law, God forbid, will then remain stagnant and consequently become useless to mankind. With this unfortunate consequence at the back of his mind, a judge, whenever faced with a new situation which has not been considered before, by his ingenuity regulated by law, must say what the law is on that new situation; after all, law has a very wide tentacle and must find solution to all man-made problems. In so doing, let no judge regard himself as making law or even changing law. He (the judex) only declares it (law) — he considers the new situation, on principle and then pronounces upon it. To me, that is the practical form of the saying that the law lies in the breast of the judge. We (judges) should regard it as our sacred duty to expound the law as it is by the clear words of the law-makers. Judges' duty does not extend to expanding the law; that is the exclusive function of the law-makers. With this preamble, I shall now set out to examine the

relevant provisions of the Constitution applicable to this case and those that can provide well-meaning guide to the interpretation of the relevant provisions.

The provisions of the Constitution of the Federal Republic of Nigeria 1999 relevant for the determination of this appeal are Sections 130 (1), 141, 142 (1) & (2), 143, 144 and 146 (1) & (2) (c). Those that will throw light on the proper interpretation of the aforesaid provisions of the Constitution are Sections 65, 66, 68 (1) (g) and 109 (1) (g) and (2). I shall hereunder reproduce them. The Constitution makes specific provision for the creation of the offices of the President and the Vice President.

Section 130 (1) provides: -

D “There shall be for the Federation a President.”

Section 141 provides: -

“There shall be for the Federation a Vice President.”

Also, the Constitution makes it mandatory for a person wishing to run for the position of a President of the country to first nominate another candidate as his associate from the same political party as a condition precedent to his running for the office of the President; that candidate shall occupy the office of Vice President if they win the election. Section 142 (1) provides: -

F “In any election to which the foregoing provisions of this Part of
this Chapter relate, a candidate for an election to the office of President
shall not be deemed to be validly nominated unless he nominates another
candidate as his associate from the same political party for his running
G for the office of President, who is to occupy the office of Vice President
and that candidate shall be deemed to have been duly elected to the
office of Vice President if the candidate for an election to the office of
President who nominated him as such associate is duly elected as President
in accordance with the provisions aforesaid.”

H To accord proper constitutional recognition to the office of Vice President, the same Constitution stipulates that qualification for election, tenure of office, disqualification, declaration of assets and liabilities and oaths of President shall also apply in relation to the office of Vice President.

dent. Section 142 (2) which is the relevant provision here says: -

“The provisions of this Part of this Chapter relating to qualification for election, tenure of office, disqualification, declaration of assets and liabilities and oaths of president shall apply in relation to the office of Vice President as if references to President were references to Vice President.”

It has been argued very strenuously that historical antecedent to the provision of Section 142 (1) of the 1999 Constitution such as the Report of the Constitution Drafting Committee, 1976 in order to appreciate the cause and necessity for the insertion of that Section [(142 (1)] supra into the 1999 Constitution; in other words, in order to know the intention of the lawmakers for that insertion in 1999. True it is that the intention of the lawmakers must, as far as possible, be found out and examined in order to get at what informed the making of a particular law. This does not mean that a surgical operation should be performed to open the hearts of the legislators and see what was behind them when making the law. In demonstrating or putting into play his judicial interpretative skill, a judge can only get to know the intention of the legislators as clearly expressed in the wordings used to couch the particular provision of the Constitution or the Statute and other provisions of the Constitution or Statute in the same document should be examined critically with a view to finding out what actually informed the making of a particular provision or provisions. It has been argued that from the wordings of Section 142 (1), the Vice President who has therein been described as an associate of the President - both coming from the same political party, are inseparable for all purposes, if an effective government is to be seen to be run for the good of the people; the Vice President should be subordinate to the President who hired and could fire him at will. While insubordination by one top political office holder to the other should not be encouraged - it does not make for healthy governance; it leads to dissipation of energy and time by the officials on worthless and avoidable bickering - the ultimate losers are always the electorate who rightly look forward to benefiting from good governance by them (the political office holders); care must be taken not to impute into that provision an intention

of the legislators which was never expressed in it. I repeat, it has now come to stay like the Rock of Gibraltar that judges, in the exercise of their interpretative jurisdiction, must only interpret the words of a statute or even constitutional provision according to their literal meaning and the sentences therein according to their grammatical meaning (*litera legis*). Yes, the courts are supposed to find out the intention of the legislature while interpreting the provisions of the law passed by them (legislators). But, there is no magical wand in the supposed directive; it is that intention as expressed in the words used. Here, I call to mind and with approval the monumental and very refreshing dictum of Lord Thankerton in *Wicks v. D.P.P.* (1947) A.C. 362 when he said and I quote: -

“The intention of Parliament is not to be judged by what is in its mind, but by its expression of that mind in the statute itself.”

To bring the point home that a master/servant relationship or subordination of the Vice President to the President to the point of being an appendage is not what that provision intends after the election has been contested and won by them, this court in the case of *P.D.P. v. INEC* (1999) II NWLR (pt.625) 200, by analogy, per the judgment of Uwais CJN, said at page 241 and I quote: -

“..... the office of Deputy Governor is not simply an appendage to that of the Governor. Once elected even though on the same ticket as the Governor-elect, the Deputy-Governor-elect becomes sui generis.”

Again, in the same judgment, Ayoola JSC, reasoned thus at page 265:

“The fallacy in the position taken by the respondents is in assuming that the Governor and the Deputy-Governor swim or sink together for all purposes. It is clearly from the provisions of the Decree that although they may swim or sink together for the purposes of winning an election, once they have swam to the shore of electoral victory, they map out their independent fortunes which may include one of them deciding not to take the office to which he had been elected. Had the legislature wanted them to swim or sink together for all purposes, express provisions would have been made to that effect.”

Applying the dicta in the above case by analogy, to the case at

hand, the Vice President, by the intention of the legislators expressed in the aforesaid provision of the Constitution, is not subordinate to the President and neither is the relationship between them that of master/servant. That the Constitution intends the Vice President to be an associate of the President does not go beyond the time the election was conducted and they have won. Once the election is over, both of them, as was expressed by Ayoola JSC in the decision *supra*, are at liberty to map out their independent fortunes. It may be said that the act or conduct of the Vice President in defecting to the Action Congress after he has won the ticket on the platform of the P.D.P. for that position is morally reprehensible. But until the law (in this case, the Constitution) declares the defection unlawful and prescribes in clear language, punishment for such an act, there is nothing anybody can do. The remedy, if there is one, lies in the hands of the legislators. It must always be noted that what is morally reprehensible may not be legally punishable. The Constitution is very emphatic that the removal from offices of the President or the Vice President is a function, an exclusive one for that matter, of the Senate; section 143 (1) and (2) which are the relevant sections provides: -

Section 143 (1)

“The President or Vice President may be removed from office in accordance with the provisions of this section.”

Section 143 (2)

“Whenever a notice of any allegation in writing signed by not less than one-third of the members of the National Assembly -

(a) is presented to the President of the Senate.

(b) stating that the holder of the office of the President or Vice President is guilty of gross misconduct in the performance of the functions of his office, detailed particulars of which shall be specified;

the President of the Senate shall within seven days of the receipt of the notice cause a copy thereof to be served on the holder of the office and on each member of the National Assembly, and shall also cause any statement made in reply to the allegation by the holder of the office to be served on each member of the National Assembly.”

The wordings of the afore-mentioned sections are not only very

clear, they are very unambiguous. And by the canon of statutory interpretation, which includes the Constitution, the courts' duty and even command, is to interpret the clear and unambiguous words according to their natural and grammatical meanings and must not foist any onerous weight or burden on the otherwise clear and unambiguous provision. I still repeat that the well established canon of interpretation requires that the meaning and intention of the framers of a statute or constitution can only be ascertained from nothing other than the language in which that enactment was framed. Guided by this time-honoured principle, I make bold to say that the removal of the President or the Vice President from office is the exclusive function of the National Assembly. To place any other interpretation on the above section, whose words are so clear, to enable the court assume jurisdiction would translate to nothing else then naked usurpation of legislative function under the thin guise of judicial interpretation. Given the present state of the wordings of this section, it is not open to any judge to invent fancied notions or ideas which themselves are in all ramifications, ambiguous, as an excuse for failing to give effect to the plain meanings of the words simply because he (the judge), if I may say, considers that the consequence of doing so would be inexpedient or unjust or even immoral. Such an approach, in my respectful view, will endanger the continued public confidence in the political impartiality of the judiciary. In a society which upholds the rule of law as a way of life, if any of the three arms of government; the executive, the legislature and the judiciary should be apolitical, let it be the JUDICIARY which has the exclusive responsibility of dispensing justice according to law. The 1999 Constitution of the Federal Republic of Nigeria leaves one in no doubt that in the event of permanent incapacity of the President or the Vice President or that the President is proceeding on vacation or even unable to discharge his official duties, the body that must be consulted and who will determine the successor is the Senate - that is the purport of Sections 144 and 145 of the Constitution; the judiciary plays no part here.

Copious arguments were canvassed by the two sides for and against the contention that the Vice President, by his conduct, must be

taken to have voluntarily vacated his office; the arguments were founded on the provisions of Section 146 (1) and (3) (c) of the Constitution. In particular, the appellants have forcefully argued that the provisions “FOR ANY OTHER REASON” as contained in Section 146 (3) (c) should be construed as accommodating a situation such as the one offered by the present case – the act of the plaintiff/1st respondent in declaring for another party while still occupying, the position of the Vice President should be brought within the ambit of this provision. Of course, the opponents argued to the contrary. Before proceeding to examine this issue in the light of the arguments and the applicable law, I wish first to reproduce the provisions of the aforementioned section of the Constitution.

Section 146 (1)

“The Vice President shall hold the office of the President if the office of the President becomes vacant by reason of death or resignation, impeachment, permanent incapacity or the removal of the President from office for any other reason in accordance with section 143 or 144 of the Constitution.”

Section 146(3) (c) -

“Where the office of Vice President becomes vacant

(a)..... (b).....

(c) for any other reason”

(underlining mine for emphasis)

It is Section 146 (3) (c) that the appellants predicated their arguments on in support of their prayer for a judicial pronouncement that, by his conduct, the Vice President (the plaintiff/1st respondent) has vacated his office. Can the construction placed on the provision of Section 146 (3) (c) by the appellants accord with the well established canon of statutory interpretation which includes the provisions of the Constitution as set out, in extenso, supra by me? I shall answer that question ANON; but before then I wish to refer to two other sections of the Constitution which relate to some elected members as the President and Vice President with regards to their seats. Section 68 (1) (g) of the Constitution which deals with the tenure of seat of members provides: -

Section 68(1) (g):-

“A member of the Senate or of the House of Representatives shall vacate his seat in the House of which he is a member if-

(a)..... (b)..... (c).....(d).....
(e).....

B (f) being a person whose election to the House was sponsored by a political party, he becomes a member of another political party before the expiration of the period for which that House was elected.”

(underlining mine for emphasis)

C Members of the Senate and the House of Representatives were elected by the people as were the President and the Vice President. Applying the well known principles of interpretation to the above provision of the Constitution, I have no doubt in my mind that the legislators have made it manifest that if any of these elective members after winning an

D election on the platform of a political party, later, on being a member of the Senate or of the House of Representatives, defects to another political party he is deemed, in law, to have automatically vacated his seat in the House of which he is a member. No other interpretation can be given to

E the above provision. A similar provision was fashioned out for members of the State House of Assembly; Section 109 (1) (g) of the. Constitution which is the relevant provisions says: -

Section 109(1) (g)

F “A member of a House of Assembly shall vacate his seat in the House if:

(a)..... (b)..... (c)..... (d)..... (e).....
(f).....

G (g) being a person whose election to the House of Assembly was sponsored by a political party, he becomes a member of another political party before the expiration of the period for which that House was elected.”

(underlining mine for emphasis)

H It is manifest from the above quoted constitutional provisions that the law-makers intended to and indeed have made punishable the defection of an elected member, from the political party that sponsored him, to another political party before the expiration of the period for which the

House was elected by declaring his seat vacant. No similar provision was made for the Vice President even for the President. If the legislators had intended the Vice President or even the President to suffer the same fate, they would have inserted that provision in clear terms. Reading the last two provisions along side the provision of Section 146 (3) (c) of the B Constitution quoted supra, I cannot see how the submission of counsel can be accommodated by the latter. The intention of the legislators as clearly expressed in Sections 68 (1) and 109 (1) (g) cannot be built into the provisions of Section 146 (1) (g). It seems clear to me that the Latin C Maxims: EXPRESSIO UNIUS PERSONAE VEL REI, EST EXCLUSIO ALTERIUS OR INCLUSIO UNIUS EST EXCLUSIO ALTERIUS - when translated into English Language mean: the express mention of one person or thing is the exclusion of another or the inclusion of one is the exclusion of another; respectively - are very much apposite here; see the D cases of Military Governor of Ondo State v. Adewunmi (1988) 3 NWLR (pt.82) 280 and Attorney General Bendel State v. Aideyan (1989) 4 NWLR (pt.118) 646 where the maxims were considered. Had the law-makers been minded that punishment or consequence of political cross-carpet- E ing should be applicable to the President or Vice President as they have done in respect of a member of the Senate or of the House of Representatives or even a member of the House of Assembly in the aforesaid provisions of Sections 68 (1) (g) and 109 (1) (g) respectively which I F have quoted supra; they would have stipulated same in an unmistakable term in Section 146 of the 1999 Constitution quoted above. I have earlier said in this judgment that the removal of the President and/or Vice President from office is an exclusive function of the National Assembly. To G stealthily read words in the terms of Section 68 (1) (g) or Section 109 (1) (g) of the 1999 Constitution into Section 146 (3) (c) of the same Constitution and hold that, by his conduct, the Vice President has voluntarily vacated his office will paint a picture of the judiciary foraging into the H exclusive territory of the legislators. I do not fight shy to say that the fundamental issue we are invited to determine here smacks of political inter-play. And if the political issue now calling for determination is so serious and enormous, as the one at hand, judicial pronouncements

founded on the judex's personal conviction as to where the justice and
 Tightness of the matter He (having regard to the present state of the
 constitutional provisions presently being considered), would make the
 judiciary lose its authority and its legitimacy. That is not healthy for the
 B development of the law and its administration. Let me point out that no
 Constitution is perfect in the sense that it provides a clear-cut and/or
 permanent or everlasting solution to all societal problems that may rear
 their heads from time to time. As the society grows or develops so also
 C must its Constitution - the grundnorm - whether written or unwritten. In
 any geographical area which has a written Constitution whether such
 written Constitution will grow along with that society will depend on
 whether that area is blessed with articulate, forward-looking, industrious
 and diligent legislators. But let judges be properly advised that if divinely
 D endowed to see some short comings in any provision of the Constitution
 which the people have voluntarily fashioned out for themselves through
 their elected representatives, beyond making a subtle point of the lacuna
 in their judgments, no slightest attempt must be made by them to effect
 E any correction or an amendment of the law as it presently stands, by
 either removing or adding some words to the law as it stands now. I hold
 the strong view that "law-making" in the strict sense of that term, is not
 the function of the judiciary. Let there be no incursion by one arm of the
 F government into that of the other. That will be an invidious trespass.
 Having said so much, I now say, with the greatest respect, that the argu-
 ments of the appellants as regards Section 146 (3) (c) are unacceptable;
 they are predicated on wrong premises. From all I have been saying,
 G Issues Nos. 3, 3 (b), 4 and 4 (b) in the 1st appellant's brief are hereby
 resolved against him; Issue No.1 on the 2nd appellant's brief is answered
 in the negative while I answer Issue No.3 on the 3rd appellant's brief in
 the affirmative. I also 'answer Issues Nos. 1 and 2 on the Joint brief of
 the 1st respondent in the affirmative and I do answer Issues Nos.1 and 2
 H on the brief of the 3rd and 4th respondents in a similar manner. Issue No.1
 on the 6th defendant/3rd appellant's brief is equally answered in the affir-
 mative. The only issue raised by the 5th respondent is answered in the
 negative.

From what I have said on Issue No.1 on the 1st appellant's brief as it relates to whether there was a LIS or not, I do answer that in the affirmative.

Equally, flowing from what I have said to above relating to Section 146 (3) (c) of the Constitution, I hereby answer Issues Nos. 5 and 6 on the 1st appellant's brief in the negative and I resolve Issue No.1 on the 3rd appellant's brief against him, Issue No. 1 which is the only issue identified by the 5th respondent is answered in the negative. There is some merit in Issue No.7 on the 1st appellant's brief which relates to the matter of the court below raising matter of fundamental right suo motu; to the extent that parties were not invited by the court below to address it on that issue before pronouncing on it, principle of fair hearing was breached. See Atanda v. Lakanmi (1974) 3 S.C. 109.1 therefore resolve that issue in favour of the 1st appellant. Issue No.2 on the 6th defendant/3rd appellant's brief and Issue No.3 on the joint brief of the 3rd and 4th respondents which are both similar to No.7 on the 1st appellant's brief are equally resolved in favour of the 6th defendant/3rd appellant and the 3rd and 4th respondents respectively.

The appellant had in the course of his argument under Issue No.4^b which poses the question whether the constitutional union between the President and the Vice President demands from the Vice President undivided loyalty, trust and confidence to the President as long as he remains the Vice President, submitted that the President personifies the country and therefore, there is no way disloyalty to the President would not by extension amount to disloyalty to the Federal Republic of Nigeria. He found support for this argument in the opinion expressed by Prof. Ben Nwabueze S.A.N., in his book titled "CONSTITUTIONAL DEMOCRACY IN AFRICA" VOL.4 where the learned author expressed his opinion *inter alia*: -

"So long as he remains in office as vice president, he is not free to oppose in public decisions or actions of the president or of the executive council, no matter that he personally disagrees with them. His freedom to disagree and to criticize can only be exercised privately in a meeting with the President alone or in the Executive Council. Freedom on the part of

a Vice President to criticize his President publicly for mismanagement or corruption is certainly not consistent with the loyalty required of him as a member of the President's team."

The above is the opinion as expressed by Prof. Nwabueze in that B book. That Prof. Nwabueze is an expert in Constitutional Law admits of no argument. In legal parlance, an expert is any person who is specially skilled in the field he is giving evidence. But I hasten to add that whether or not such a witness can be regarded as an expert is a question for the C judge to decide. See *Azu v. the State* (1993) 6 NWLR (pt.299) 303. The word "OPINION" as it relates to an expert has been defined in *The New Webster's Dictionary of the English Language International Edition* as:

"a formal expression by an expert of what he judges to be the case D or the right course of action."

It has been said that the opinion of an expert is always necessary where he (the expert) can furnish the court with scientific or other information of a technical nature that is very much or even likely to be outside the experience and knowledge of the judge. See *Seismograph Services E Nigeria Ltd. V. Ogbeni* (1976) ALL N.L.R. 163. But expert evidence on matters which reasonably fall within the knowledge and experience of the judge or a tribunal may not be called. In fact, expert evidence is not usually admitted on questions of credibility of a witness even where the F witness under consideration is a child. See "Blackstone's Civil Procedure, 2004 Paragraph 52.2. In the two cases I have referred to above and in several other cases in which expert opinions were made use of by the courts, those experts were called as witnesses to testify before the court and he was subjected to cross-examination as to his qualifications, experience and the credibility of his opinion to enable the court determine G whether his testimony is of any evidential value or not. In that popular and very valuable book "Law & Practice of Evidence in Nigeria" by Afe Babalola, it was stated at page 143 thereof that it is trite law that an expert H must be called as a witness before he can give evidence in court. Though an opinion on procedural law of evidence in Nigeria; the only known case on that point in Nigeria was cited in support; it is *Wambai & anor. V. Kano Native Authority* (1965) N.M.L.R. 15 in which the appellants were

charged with forgery and convicted by a magistrate. In so doing, the magistrate relied on the opinion of an expert which was sent to the court at the court's request. Suffice it to say that the expert was never called to testify before the magistrate. The appellant challenged this procedure on appeal contending that the expert ought to have been called and examined B in the open court. His appeal was allowed and his conviction and sentence were quashed. To me, that is a very good law that stands the test of time. Not to call an expert to testify in the open court and for the court to now rely on his documentary opinion is to deny the other side hearing on C that issue. The principle of fair hearing would be seen to have been breached, as in the instant case. The opinion of Prof. Nwabueze came from the "BLUES" and the other side was denied the opportunity of testing the veracity of that opinion through cross-examination. The court below, in my humble view, was right in ignoring that opinion; it is of no D evidential value since the other side was not given the opportunity to be heard on it before it was evaluated. True it is that the decision in the afore-mentioned case was handed down by the High Court of Northern Nigeria but a very good law will always remain a very good law for all E times. The locus classicus on joinder of parties is the famous case of *Amon v. Raphael Tuck & Sons Ltd* (1956) 1 ALL E.R. 273; it was delivered by DEVLIN J. sitting on the Queen's Bench Division. The principles enunciated in that case have always been referred to, with approval, by F all the superior courts of our land. I therefore refer to the principles enunciated in the *Wamba's* case with approval. Again Issue No.4 on the 1st appellant's brief is resolved against him.

Both the 2nd and the 3rd appellants in this matter are the Inspector G General of Police and the Independent National Electoral Commission (INEC). The office of the Inspector General of Police is a creation of the 1999 Constitution. The Nigeria Police Force is also a creation of the 1999 Constitution. See Section 214 of the 1999 Constitution. Also, by the force of the said 1999 Constitution, the Nigeria Police Force shall and is under H the command of the Inspector General of Police. The primary duty; indeed the most fundamental duty of the Nigeria Police Force is the maintenance and securing of public safety and public order within the coun-

try. In the performance of its duty, the Nigeria Police Force must manifestly demonstrate impartiality; it must not lean to one side against the other; it must be apolitical. It must not take part in any disputation which has political coloration. These qualities are sine qua non to the enhancement of public respectability to it. The appeal filed by the 2nd respondent (The Inspector General of Police) does the Nigeria Police Force no credit; it paints a picture of partiality by the Force. Also the Independent National Electoral Commission (INEC) by its statutory existence is an independent body with constitutional powers to conduct elections in Nigeria. It must not only be an umpire, it must be seen, in the eyes of reasonable men, to be an impartial umpire in the conduct of an election. INEC must never by act of omission or commission place itself in a position where imputations of partiality in favour of one party against another one will be leveled against it. Neutrality must be the watch word of the body - it must always remain fair and focused. Having regard to the nature of the function which the Nigeria Police Force also performs, that body must also insulate itself such that impartiality and fairness may at all times be ascribed to it. A situation where both of them (the Inspector General of Police and the Independent National Electoral Commission, INEC) appeal in the instant case is very much in bad taste. They have both thrown the quality of impartiality and fairness which they must possess to the winds. Their acts are capable of eroding the public confidence in them. Unknown to them, they may be said, by the public, to be biased and therefore not worthy to be regarded as impartial umpires. This trend must not repeat itself for the good of the nation. It is a sour taste.

In conclusion, for what I have been saying, but most especially for exhaustive reasoning of my learned brother Akintan JSC, I agree with his reasoning and conclusion that the appeals lack merit and they should be dismissed. I hereby dismiss the three appeals, uphold the judgment of the court below and I abide by all the other consequential orders therein contained in the leading judgment including the order as to costs.