

**SUPREME COURT OF NIGERIA**

27<sup>TH</sup> APRIL, 2007 SC. 39/2007

**CORAM:- A. I. KATSINA-ALU, D. MUSDAPHER, M. MOHAM-  
MED, W. S. N. ONNOGHEN, I. F. OGBUAGU, F. F. TABAI,  
P. O. ADEREMI, JJSC**

1. HON. MICHAEL DAPIANLONG

2. HON. NAZIFI MOHAMMED ..... APPELLANTS

3. HON. RAHILA BALERI

4. HON. NANCHANG NAPCHWAT

5. HON. EMMANUEL DANBOYI JUGUL

6. HON. DINALAR

AND

1. CHIEF (DR.) JOSHUA CHIBI DARIYE

2. MR. JOHN MARK SAMCHI ..... RESPONDENTS

(The Chairman of the Seven (7) Man Panel of

Investigation into Allegations of Gross Misconduct

Against the Executive Governor of Plateau State)

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APPEALS - Grounds of appeal - Nature - Whether a ground is one of law or mixed facts and law - Is subject to the question it raises - Present grounds in issue are of law (H1)

JURISDICTION - Courts - Competence - Jurisdiction is a crucial question - The nerve centre of adjudication - For without it - Whole proceedings remain a nullity (H2)

COURTS - Jurisdiction - Court of Appeal Act s. 16 - Confers wide powers - That can enable Court of Appeal - Exercise all the powers of a trial court - Towards speedy administration of justice (H3)

COURTS - Impeachment proceedings - Time essence - S. 16. Court of Appeal Act - Conditions for its application - Which include availability of necessary adjudication materials - Exist in this case (H4)

ACTIONS - Commencement - Originating summons - Is used in matters where facts are not in dispute - Issue of jurisdiction is better handled - Together with the merits of the case (H5)

CONSTITUTIONAL LAW - Constitution - Definition - Interpretation - Courts cannot amend or change the wordings - Nor interpret the provisions in isolation (H6)

CONSTITUTIONAL LAW - Impeachment of Governor - Words & phrases - Provision of s. 188(9) requiring two-thirds majority - Of members of the House of Assembly - Is in respect of all the members - Not just those present (H7)

CONSTITUTIONAL LAW - House of Assembly - Impeachment of Governor - Where there is 14 vacant seats in a 24 membership House - 8 members cannot effect the Governor's impeachment - That requires two-thirds majority vide s. 188(9) 1999 Constitution - As rightly held by the Court of Appeal (H8)

COURTS - Justice - Impeachment proceedings - Delay tactics - Being employed by some legal practitioners and politicians - Must be curbed by the judiciary - Seeing that justice delayed is justice denied (H9)

### **FACTS**

This appeal is against the judgment of the Court of Appeal, Jos Division, delivered on 8-3-2007. In its decision, the lower court nullified removal of 1st respondent as the Governor of Plateau State by the State House of Assembly on 13-11-2006 and ordered his reinstatement. Plateau State under s. 20 of the Constitution of the Federal Republic of Nigeria, 1999, has a House of Assembly made up of twenty four members. In July, 2006, 14 of the members including the Speaker and Deputy Speaker left their original political party and joined a new one. As a result, the said 14 members vacated their seats by operation of law with only 10 members of the House now operating. 8 out of those 10 members initi-

ated impeachment proceedings against 1st Respondent and on 13-11-2006, they allegedly removed him from his office as the Governor of Plateau State. At the time of this impeachment, no by-election had been conducted to replace the 14 vacant seats of the State House of Assembly members.

Consequently, on the 27-11-2006, 1st Respondent commenced an action before the High Court of Plateau State by way of Originating Summons supported by 37 paragraphs affidavit. 1st Respondent sought inter alia, a nullification of his impeachment, as the Plateau State House of Assembly did not comply with the provisions of the Constitution of Nigeria, 1999. Appellants raised a preliminary objection to the suit based on lack of court's jurisdiction. The trial court sought to determine both the preliminary objections and the substantive suit together. Appellants appealed against this move to the Court of Appeal. Before the Court of Appeal, first Respondent successfully prayed the court to invoke the provisions of s. 16 of the Court of Appeal Act to hear both the preliminary objection and the Originating summons together. The court dismissed the Appellant's appeal and granted first Respondent's reliefs against his impeachment. Being dissatisfied, the Appellants have further appealed to the Supreme Court.

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

***Grounds of appeal - Nature***

1. It is settled law that the "*important consideration in the determination of the nature of a ground of appeal is not the form of the ground but the question it raises*" per AYOOLA, JSC in *M.D.P.D.T vs Okonkwo* supra at 232.

A close look at grounds 1,2, and 3 of the grounds of appeal supra clearly show that the grounds complain against the wrong interpretation of constitutional provisions relevant to the determination of the case and misapplication of the relevant law.

It is clear that since grounds 1, 2, and 3 of the grounds of appeal questioned the interpretation and conclusions reached by the lower court in relation to the relevant provisions of the 1999 Constitution particularly

sections 188, 102 thereof, the said grounds are of law and nothing more having regard to the statements of the relevant applicable law supra. That being the case I hold the considered view that section 233(2) of the 1999 Constitution is not relevant to the said grounds of appeal. I also do not  
 B find the grounds argumentative or narrative as contended by learned senior counsel for the 1<sup>st</sup> respondent and therefore come to the conclusion that the preliminary objection is without merit and is consequently overruled. (p. 1699 C/1700 E)

C  
***Jurisdiction is a crucial question***

2. It is settled law that jurisdiction is a radical and crucial question of competence because if a court has no jurisdiction to hear and determine a case, the proceedings are and remain a nullity ab initio, however well  
 D conducted and brilliantly decided they might be since a defect in competence is not intrinsic, but extrinsic, to the entire process of adjudication. Jurisdiction is therefore considered to be the nerve centre of adjudication; the blood that gives life to the survival of an action in a court of law  
 E in the very same way that blood gives life to the human being in particular and the animal race in general. (p. 1702 F)

***Court of Appeal Act s. 16 - Confers wide powers***

F 3. It is clear from the above provisions that the powers conferred on the Court of Appeal by section 16 of the Act are very wide indeed as they enable the appellate court to exercise all the powers of a court of first instance.

G It is also settled law that section 16 of the Court of Appeal Act can be invoked in order to facilitate the speedy administration of justice as it is designed to avoid multiplicity of proceedings and hearings. Instead of sending the case back to the trial judge for a trial, section 16, in an appropriate case empowers the Court of Appeal to assume the jurisdiction of  
 H the trial court and determine the real question in controversy between the parties so as to save much needed time in the administration of justice in this country; see *Inakoju vs Adeleke* supra at 616.

However, section 16 is not an all purpose or limitless power for

the Court of Appeal to divest the High Court of the original jurisdiction conferred on it by law. It is settled law that the Court of Appeal cannot hide under section 16 to expand its jurisdiction. (p. 1703 F)

***Impeachment proceedings - Time essence***

4. It is now settled that impeachment proceedings are sui generis as they belong to a class of their own and time is of the essence. It was therefore held by this Court in the most recent case of Inakoju vs Adeleke supra at 626 - 627 that although the judicial process is slow most of the time, almost taking a snails pace, where the res in the case before the court is in danger of being wiped out, the judiciary must take the fast track or lane and do all that is possible to give it a speedy hearing. C

However, the powers conferred on the Court of Appeal by section 16 of the Court of Appeal Act are exercisable by that court where certain fundamental conditionalities are met, such as:- D

- (a) availability of the necessary materials to consider and adjudicate in the matter;
- (b) the length of time between the disposal of the action at the trial court and the hearing of the appeal; and E
- (c) the interest of justice by eliminating further delay that would arise in the event of remitting the case back to the trial court for rehearing and the hardship such an order would cause on either or both parties to the case - see Inakoju vs Adeleke supra at 691 – 692. F

It is my considered view that from the facts and surrounding circumstances of this case, the above preconditions existed in the instant case and that the lower court was right in asceeding to the plea of the counsel for the parties to invoke its powers to take the decisions it took in the interest of justice, equity and good conscience. I hold the further view that the decisions taken had expeditiously disposed of the matters in controversy thereby saving the judiciary from embarrassment that would have arisen had the alternative option of sending the case for retrial de novo been adopted by that court as presently urged upon this Court by learned Senior Counsel for the appellants. (p. 1704 G) G H

**ACTIONS - Commencement - Originating summons**

5. The originating summons procedure is a means commencement of action adopted in cases where the facts are not in dispute or there is no likelihood of their being in dispute and when the sole or principal question in issue is or is likely to be one directed at the construction of a written law, Constitution or any instrument or of any deed, will, contract or other document or other question of law or in a circumstance where there is not likely to be any dispute as to the facts. In general terms, it is used for non-contentious actions or matters i.e. those actions where facts are not likely to be in dispute. In actions commenced by originating summons, pleadings are not required rather affidavit evidence are employed.

It follows that proceedings commenced by originating summons are very expeditiously dealt with particularly as witnesses are rarely called and examined. It is therefore a most appropriate mode of commencing the instant action since impeachment proceedings are sui generis (in a class of their own) and time is of the essence. In this case the tenure of the 1<sup>st</sup> respondent is to expire by 29<sup>th</sup> May, 2007 and it is very important that a decision, one way or the other, has to be made.

That apart, it is settled law that where an objection is raised to the jurisdiction of the court in a matter commenced by originating summons where the evidence required is in the form of affidavit as in the instant case, it may be prudent to hear together the arguments as to jurisdiction and the merits of the case. (p. 1705 G)

**Constitution - Definition - Interpretation**

6. It is settled law that the Constitution of any country is what is usually called the organic law or grundnorm of the people. It contains all the laws from which the institutions of state drive their creation, legitimacy and very being. The Constitution is also the unifying force in the nation apportioning rights and imposing obligations on the people who are subject to its operation. It is a very important composite document, the interpretation or construction of which is subject to reorganized cannons of interpretation designed or crafted to enhance and sustains the esteem

in which Constitutions are held the world over.

It is settled law that the courts cannot amend the Constitution neither can they change the words. It is also a principle of interpretation that the language of the Constitution were clear and unambiguous, must be given its plain evident meaning and that a Constitutional provision B should not be construed so as to defeat its evident purpose. It is also settled law that provisions of the Constitution are not to be interpreted in isolation but that other provisions must be taken into consideration in the exercise. (p. 1711 H/1712 E)

C

### ***Impeachment of Governor - Words & phrases***

7. Can it be said that the term “*one third of the members*” and “*two-thirds majority of all its members*” mean the same thing? If so why not simply use the same expression in the two subsections? I am of the view D that the words used are very clear and very unambiguous and should be given their literal meanings. I am of the view that when subsection (2) of section 188 is compared with subsection (9) of section 188 it becomes clear that the expression “*of the members*” and all the members do not E mean the same thing. I hold the further view that the expression “all the members” refers to the members present and voting at the House of Assembly on any particular day after forming the required quorum for the transaction of legislative business which is 1/3 of all the members as F provided for in section 96(1) of the 1999 Constitution. The same expression is used in section 9(2) & (3) in relation to creation of state; section 143(4) and (9) in relation to the removal of the President or Vice President of the Federal Republic of Nigeria; section 188 (9) in relation to G motion to investigate the allegation; and section 305 dealing with the procedure for declaration of state of emergency, all under the 1999 Constitution. In all the above situations it appears that the intention of the framers of the constitution is that the number of the members required to transact the particular business of the legislature is a percentage or proportion of the total number or the totality of the assigned membership of H the House under the Constitution. In the instant case it is two-thirds of ALL the members of the Plateau State House of Assembly, which is made

up of 24 members; that is 16 members. It is not in doubt that the word “ALL” means; entire, complete, the whole number of; every one of.  
(p. 1713 G)

**B *House of Assembly - Impeachment of Governor***

8. In the instant case, it is not disputed that 8 out of 10 members in a house of 24 memberships initiated and carried out the impeachment of the 1<sup>st</sup> respondent. There is no doubt that there existed in the Plateau State House of Assembly 14 vacant seats as a result of the cross carpet-  
C ing. It is the view of the Learned Leading Counsel for the appellants that the vacancy did not affect the capacity of the 8 members to carry out the impeachment process as 8 is more than 2/3 of 10 members.

It is my view that until the vacancies created by the carpet cross-  
D ing members are filled by the process of by-election, the Plateau State House of Assembly can only transact such legislative duties that require the participation of less than 2/3 majority of ALL the members of that House, which duties definitely excludes impeachment proceedings.

E I have limited my consideration of the appeal to the question as to whether section 188 of the 1999 Constitution, particularly subsection (9) thereof, had been complied with’ in the removal or impeachment of the 1<sup>st</sup> respondent primarily because there is no dispute as to the fact that  
F only 8 out of 24 making up “*all the members*” of the Plateau State House of Assembly initiated and carried out the impeachment process of the 1<sup>st</sup> respondent. So on that point alone, which is a Constitutional requirement, it is clear that the Court of Appeal was right in coming to the conclusion that the said impeachment was not in conformity with the  
G Constitutional provisions and consequently invalid. That holding is unassailable and is sufficient to sustain the decision of the lower court without more. (p. 1714 F/1715 C)

**H *Justice - Impeachment proceedings - Delay tactics***

9. I have to put it on record that the desire of the judiciary to curb the now notorious attitude of some legal practitioners and politicians faced with very bad cases to employ delay tactics to either defeat the ends of



justice or postponed the evil day, needs the encouragement of all well meaning legal practitioners, particularly the very senior members of the profession. It is apparent that in impeachment cases, like election matters, time is of the very essence. In the instant case which was commenced by originating summons designed to expedite the matter, the objection to the jurisdiction of the trial court, if well intentioned and not directed or aimed at causing inordinate delay in the determination of the issues, could have been taken together with the substantive matter so as to speed up the process of adjudication. Rather than adopt that prudent procedure, the appellants chose to appeal against the well intentioned decision of the trial court to hear arguments on both the preliminary objection on jurisdiction and the originating summons expecting that in the event of being overruled they would have to return to the trial court for the hearing of the substantive matter; meanwhile time, like tide, as they say, waits for no man; it keeps on running out and at the end may likely leave justice prostrate and the aggrieved party frustrated and bitter with the judicial system. This Court just has to do something about the situation for the restoration of hope and credibility in the system for the benefit of all. Is it not said that justice delayed is justice denied? The reign of technical justice is over. On the throne now sits substantial justice. Long may you reign, substantial justice! (p. 1716 A)

## NOTABLE POINTS OF INTEREST

### OGBUAGU JSC

*1. When Speaker Protempore cannot act as the Speaker of the House*  
Secondly, Section 188 (5) of the 1999 Constitution, requires that the request to the Chief Judge of the State to constitute a Panel to investigate the allegations against the Governor, should be made by the Speaker of the House of Assembly and nobody else. Exhibit C, was not signed by the Speaker of the House of Assembly, but was signed by the Speaker Pro Tempore. I am aware that Section 8 of the 1999 Constitution, provides as follows:

*“In the absence of the Speaker and Deputy Speaker, such member of the House as the House may elect for that purpose shall preside. Such*

*member shall be known as “Speaker Protempore “.*

I agree with the court below that the above provision, did not refer to a Speaker Protempore, but to the duly elected Speaker of the House of Assembly. If it were to be otherwise, the Constitution should have so provided but it did not and has not so provided. In the interpretation of the Constitution/Statute, it has been stated and re-stated that where its provisions are clear and unambiguous, they should be given their simple, natural and ordinary meaning without introducing extraneous matters. (p. 1726 A)

### **ADEREMI JSC**

#### *2. Interpreting the Constitution - Duty of the Judge*

The primary function of a judge is to declare the law, not to decide what it should be. The business of law making is, in my humble view, exclusively a matter for the National Assembly, in Nigerian context. Though, the populace look forward to the judiciary for dispensation of justice, a judge must always be conscious of his limitation in the discharge of his judicial duties; he must carefully but firmly set out to administer justice according to law, the law which is established for us by the National Assembly of this country or by the binding authority of precedent which itself is substantially founded on the laws passed by the National Assembly. It therefore follows that, where the words of the statute or the Constitution are unambiguous but clear in their ordinary and grammatical meanings, a judge has a binding duty to interpret the words of statutory or constitutional provisions accordingly. I here recall, with admiration and submission to the monumental and guiding words of Idigbe JSC in this connection in the case of Nafiu Rabiu v. Kano State (1980) 8-11 S.C. 130 where at page 195 the learned jurist reasoned thus: -

*“It is the duty of this court which has the ultimate responsibility of declaring and interpreting provisions of the Constitution always to bear in mind that the Constitution itself is a mechanism under which all laws are to be made by the Legislature and not merely an Act which declares what the law is. Accordingly, where the question is whether the Constitution has used an expression in the wider or in the narrower sense the court*

*should always lean, where the justice of the case so demands, to the broader interpretation unless there is something in the context or in the rest of the Constitution to indicate that the narrower interpretation will best carry out its object and purpose.*” (p. 1748 A)

B

### 3. Despicable allegations - Justice should take its course

I shall end this discourse by saying that the allegations levelled against the 1<sup>st</sup> respondent as contained in the records, are despicable to the highest degree. If proved in accordance with the laws of our land by the cardinal principle of morality, justice and democratic government that an offender guilty of crime should be sentenced by the court to such penalty as his crime merits, the 1<sup>st</sup> respondent must not be allowed to run away from justice. But before this can be done, due process of law must be followed from the beginning to the end. An act may be morally reprehensible unless there is a law properly enacted which makes that act punishable and goes ahead to prescribe the punishment for it, a judge, indeed, any court of law is hamstrung to sentence and punish the perpetrator. (p. 1752 D)

E

### REPRESENTATION

E. G. Pwajok; A-G Plateau State for the 1<sup>st</sup> Set of Appellants with him L. I. Walle Esq, D.D.C.L.; O. D. Millaham Esq, D.D.C.L.; O. D. Millaham Esq, A.D. PP; S. D. Gang Esq; A.D. CL; V. Z. Dadoma A.D; G. P. Baba Esq; I. Kwakfu T. Esq, P.S.C.; G. Dashe Esq. P.S.T. which appeal was withdrawn and consequently struck out on 16/4/07.

G

Chief Gani Fawehinmi, SAN for the 2<sup>nd</sup> set of appellants/respondents with him Bakole Fala De Esq, Solomon Umoh Esq; L. Adindu Ugwuzor Esq., Clement Onwuenwunor; Kolawole Abiri Esq., and Gerald Ogokeh Esq.,

H

Emmanuel Toro Esq, SAN for the 7<sup>th</sup> respondent in the 1<sup>st</sup> set of appeals and 1<sup>st</sup> respondent in the 2<sup>nd</sup> set; with him are P. A. Akubo, SAN; S.S. Obende Esq; O, Akobundu; H. N. Ugwuala Esq., Sam Atung; J. M. Okafor Esq, G. N. Dam (Mrs) N. Q. Ezenneche (Mrs) C. Umaru Esq; H. Umaru

(Mrs) and U. Sani Esq.

**CASES REFERRED TO**

- Nafiu Rabiu v. Kano State (1980) 8-11 S.C. 130
- B Nwadike vs Ibekwe (1987) 4 NWLR (pt. 67) 718 at 744
- O’Kelly vs Trusthouse Forte P.I.C. (1983) 3 All ER at P. 468
- Benmax vs Austin Motor Co. Ltd (1945) All E.R 326 at p. 327
- Onyenucheya vs Milad, Imo State (1997) 1 NWLR (pt. 482) 429
- Madukolu vs Nkemdilim (1962) 2 SCNLR 341
- C Barsoum vs Clemessy International (1999) 12 NWLR (pt. 632) 516
- Utih & ors vs Onoyivwe (1991) 1 NWLR (pt. 166) 166
- Jade Simi vs. Katie Ebon (1986) 1 NWLR (pt. 16) 264
- U.B.N. Ltd vs. Feeble Foods & Poultry Farms (1994) 5 NWLR (pt. 344)
- D 325
- Gideon vs. Moorage (1993) 2 NWLR (pt. 276) 398
- Ejowhomu vs Edok - Eter Mandilas Ltd (1986) 5 NWLR (pt. 39) 1
- A-G Anambra State vs Okeke (2002) 12 NWLR (pt. 782) 575
- E Cappa & D’Alberto Ltd vs Akintilo (2003) 9 NWLR (pt. 824) 49

**STATUTES & RULES REFERRED TO**

- The Constitution of the Federal Republic of Nigeria 1999 ss. 9, 36(1) 91, 95, 96, 102, 109, 143, 188, 233, 240, 272 and 305
- F The Constitution of the Federal Republic of Nigeria 1979 s. 103(1)
- Court of Appeal Act s. 16
- Supreme Court Rules O. 8 r. 2(3)

**G LEAD JUDGMENT BY ONNOGHEN JSC**

- This is an appeal against the judgment of the Court of Appeal holden at Jos in Appeal No. CA/J/302/2006 delivered on the 8<sup>th</sup> day of March, 2007 nullifying the removal of the 1<sup>st</sup> respondent, Chief Joshua Chibi
- H Dariye by the Plateau State House of Assembly on Monday the 13<sup>th</sup> day of November 2006 and ordering the reinstatement of the 1<sup>st</sup> respondent to the office of Governor of Plateau State.

Plateau State, like any other State in the Federal Republic of Nige-

ria, has a House of Assembly established under section 20 of the Constitution of the Federal Republic of Nigeria 1999 (hereinafter referred to/called the 1999 Constitution). The said House of Assembly constitutes of 24 members. It is an undisputed fact that between 25<sup>th</sup> and 26<sup>th</sup> July, 2006, fourteen (14) out of the twenty-four (24) members of the Plateau B State House of Assembly including the Speaker and Deputy Speaker thereof) cross carpeted from the Peoples Democratic Party (PDP), the platform on which they were elected to the House in 2003 to Advanced Congress of Democrats (ACD), a registered political party, as a result of C which the said 14 members vacated their seats by operation of law leaving only 10 members of that House.

On the 5<sup>th</sup> day of October 2006 the 1<sup>st</sup> respondent was allegedly served with notice of allegations of gross misconduct thereby initiating a process of impeachment by the remaining 10 members of that House. D The notice of allegations of gross misconduct was signed by eight (8) out of the ten existing members. Throughout the processes and proceedings leading to and including the impeachment of the 1<sup>st</sup> respondent, the Plateau State House of Assembly had only ten members, eight (8) of who E supported and voted in favour of the removal of the 1<sup>st</sup> respondent under section 188 of the 1999 Constitution.

The following are the summary of allegations of gross misconduct against the 1<sup>st</sup> respondent: -

*“(a) Money laundering and economic crimes leading to the arrest F and detention of the 1<sup>st</sup> respondent in the United Kingdom having been found with the sum of N90,000.00 in cash and lodgments in the banks.*

*(b) Operation of at least 8 U.K. bank accounts contrary to the G provision of the 5<sup>th</sup> schedule, part I item 3 of the 1999 Constitution.*

*(c) Purchase of flat 28 Regeants Plaza Apartment, 8 Greville Road, London NW6, through State funds contrary to the provision of section 15 (5) of the 1999 Constitution.*

*(d) False declaration of assets contrary to the code of conduct for H public officers in the 5<sup>th</sup> schedule, part I item II of the 1999 Constitution.*

*(e) Jumping bail in the United Kingdom for which an international warrant of arrest was issued against the 1<sup>st</sup> respondent and was*

consequently declared wanted.

(f) *Payment of Plateau State Government Ecological funds by the 1<sup>st</sup> respondent in the sum of N1,161,162,900.00 (One billion, one hundred and sixty-one million, one hundred and sixty-two thousand, nine hundred naira only) and N82,600,000.00 (Eighty-two million, six hundred thousand Naira only) respectively into his private account.*

(g) *Disbursement of the State Ecological Fund of N1,161,162.900.00 (One billion, one hundred and sixty-one million, one hundred and sixty-two thousand, nine hundred naira only) as though it was his personal money in the following manner-*

	(i) Pinnacle Communications	N250,000,000.00
	(ii) Plateau State Government	N550,000,000.00
	(iii) Union Homes	N80,000,000.00
D	(iv) PDP South West	N100,000,000.00
	(v) Chief Joshua Dariye	N176,000,000.00
	(vi) C.O.P	N 4,300,000.00

(h) *Conversion of Plateau State funds in the sum of N82,600,000.00 (Eighty-two million, six hundred thousand naira only) to his private and personal use."*

Following the cross carpeting of the said 14 members of the House including the Speaker and the Deputy Speaker, the 1<sup>st</sup> appellant became the new Speaker of the House and by a letter dated 5<sup>th</sup> October, 2006 invited the Chairman of Independent National Electoral Commission (INEC) to organize a by-election for the purpose of filling the vacant seats. The 1<sup>st</sup> appellant subsequently requested the Acting Chief Judge of Plateau State to set up a 7 man Panel to investigate the allegations of gross misconduct against the 1<sup>st</sup> respondent which was done. The said Panel was headed by the 2<sup>nd</sup> respondent. The Panel carried out their assignment and submitted a report to the Plateau State House of Assembly which report was adopted by the House on the 13<sup>th</sup> day of November, 2006 resulting in the removal of the 1<sup>st</sup> respondent as the Governor of Plateau State. At the stage of removal of 1<sup>st</sup> respondent the by-election had not been conducted.

Consequent upon the above, the 1<sup>st</sup> respondent, on the 27<sup>th</sup> day of

November, 2006 commenced an action at the High Court of Plateau State by way of originating summons supported by an affidavit of 37 paragraphs seeking the determination of the following sixteen questions: -

“1. Whether the one-third (1/3) of the members Plateau State House of Assembly envisaged under section 188(2) of the Constitution of the Federal Republic of Nigeria, 1999 (hereinafter called “the Constitution”) for the purpose of signing a Notice of allegation against a Governor or Deputy Governor (in this case the Plaintiff) includes the person presiding over the House whether as Speaker or other presiding officer. B

2. In view of the clear and mandatory provisions of section 91 of the Constitution whether the House of Assembly of Plateau State established under section 90 of the said Constitution can be properly constituted by a faction of only 6 (or 8?) elected members thereof for purposes of commencing and concluding impeachment process under section 188 of the Constitution. C D

3. Whether there is any provision for the position of “Speaker Protempore” presiding over the House of Assembly of Plateau State for the purpose of impeaching the Plaintiff, having regard to Section 188(2) E and (a) of the Constitution (supra)

4. Whether the relevant provisions of the Constitution of the Federal Republic of Nigeria, 19199, with particular reference to the powers conferred on the Plateau State House of Assembly to initiate and carry out impeachment proceedings against the Governor or the Deputy Governor of that State particularly section 188 subsections (1), (2), (3), (4) and (5) thereof are to be read in isolation and complete exclusion of other sections of the same Constitution, including, inter alia, sections 91 -105 of the said Constitution? F G

5. Whether if all the subsections of section 188 of the Constitution of the Federal Republic of Nigeria, 1999, are interpreted as a whole there can be a constitutionally valid impeachment of the Governor of Plateau State by the Plateau State House of Assembly without the House satisfying or complying with the mandatory preconditions entrenched in sub-sections 1-9 of the said section 188 of the constitution. H

6. Whether or not the undated purported Notice of Allegations of

*Gross Misconduct against Chief (Dr.) Joshua Chibi Dariye, the Governor of Plateau State purportedly issued against him by the 2<sup>nd</sup> - 7<sup>th</sup> Defendants herein is constitutional or valid within the meaning of Section 188(1) of the Constitution of the Federal Republic of Nigeria, 1999.*

B 7. *Whether or not the 2<sup>nd</sup> - 7<sup>th</sup> Defendants' purported service of Notice of the said allegations of gross misconduct for the purpose of impeaching the Plaintiff herein from office as the Governor of Plateau State, vide the media or Newspaper publication is valid or constitutional within the meaning of section 188(2) of the 1999 Constitution (supra).*

C 8. *Whether or not the said purported Notice of Allegation of Gross misconduct for the purpose of impeaching the Plaintiff herein as the Governor of Plateau State had been duly served on each member of the 24 (twenty four) members of the Plateau State House of Assembly as envisaged by section 188(2) of the Constitution of the Federal Republic of Nigeria, 1999, let alone fulfilling the conditions for impeachment proceedings.*

D 9. *Whether or not the 2<sup>nd</sup> - 7<sup>th</sup> Defendant? complied with the provisions of section 188(3)& (4) of the Constitution of the Federal Republic of Nigeria, 1999 vis-a-vis moving the motion that the purported allegation of gross misconduct against the Plaintiff herein, the Governor of Plateau State be investigated and whether same as passed by the said 2<sup>nd</sup> - 7<sup>th</sup> Defendants on the 13<sup>th</sup> of October, 2006 was supported by the votes of not less than two-thirds majority of ALL the 24 (twenty four) members of the Plateau State House of Assembly.*

E 10. *Whether or not the purported passing of a motion by the 2<sup>nd</sup> - 7<sup>th</sup> Defendants on the 12<sup>th</sup> of October, 2006 for the investigation of the allegations of gross misconduct against the Plaintiff herein as the Governor of Plateau State and the purported request by a non-existent Speaker of the Plateau State House of Assembly to wit, the 2<sup>nd</sup> Defendant, requesting the Acting Chief Judge of Plateau State to appoint a Panel of 7 (Seven) person to investigate the Plaintiff is valid having regard to the provision of Section 188(4) of the Constitution (supra).*

11. *Whether the appointment, constitution and swearing in of the seven (7) man Panel of Investigation headed by the 1<sup>st</sup> Defendant herein*



*and its entire proceedings leading to the purported impeachment of the Plaintiff as the Governor of Plateau State in the unholy hours of Monday, the 13<sup>th</sup> of November, 2006 are in breach of section 188(2), (3), (4), (5) & (7) of the Constitution of the Federal Republic of Nigeria, 1999, and therefore all together null and void and of no effect whatsoever.* B

*12. Whether the right of fair hearing guaranteed to the Plaintiff by virtue of Sections 36(1) and 188(6) of the Constitution was not violated in the entire impeachment proceedings when-*

*(a) the Plaintiff was not personally served with the copy of Notice of allegation of gross misconduct;* C

*(b) the Plaintiff was not allowed to exhaust his cross-examination of Constable Peter Clark before the Seven (7) Man Panel;*

*(c) the Plaintiff was not given opportunity or allowed to cross-examine Inspector Sunday Musa before the Seven (7) Man Panel submitted Interim Report; and* D

*(d) the Plaintiff was not given opportunity to enter his defence much less state his own side of the story before the Seven (7) Man Panel surreptitiously submitted Interim Report to six (6) members (or 8?) of the Plateau State House of Assembly resulting in the impeachment of the Plaintiff on Monday, 13<sup>th</sup> November, 2006.* E

*13. Whether the 2<sup>nd</sup> - 7<sup>th</sup> Defendants being a faction of members of the Plateau State House of Assembly as well as the Clerk of the House who had been earlier arrested and detained by EFCC in Abuja and who were brought under force of arms by heavily armed mobile Policemen and forced *vie et armis* to purportedly sit as the Plateau State House of Assembly on the 5/10/2006, 13/10/2006 as well as the purported impeachment of the Plaintiff vide a purported proceeding of 13<sup>th</sup> November, 2006 are all together invalid, unconstitutional, null and void as they were not acting of their own free will and volition by reason of duress and coercion by the EFCC or its agents and operatives.* G

*14. Whether the purported impeachment of the Plaintiff on Monday, the 13<sup>th</sup> day of November, 2006 by the 2<sup>nd</sup> - 7<sup>th</sup> Defendants in pursuance of a purported Interim Report submitted by the 1<sup>st</sup> Defendant is valid in law particularly given the dissolution of the Seven (7) Man* H

*Panel on Friday, the 10<sup>th</sup> day of November, 2006 by the Acting Chief Judge of Plateau State.*

B *15. Whether the 2<sup>nd</sup> - 7<sup>th</sup> Defendants having in accord with others inaugurated a Special Committee for the Investigation of the Plaintiff for allegation of gross misconduct inter alia pursuant to a letter of complaint from the 2<sup>nd</sup> Defendant dated November 30, 2005 and having on June 9, 2006 unanimously received and adopted the said Special Committee Report exonerating the Plaintiff can revisit the issue during their own tenure in office or before the expiration of six months.*

C *16. Whether the Seven (7) Man Investigating Panel headed by the 1<sup>st</sup> Defendant, being an inferior body or tribunal, is not obliged to obey the orders of a competent Court established under the Constitution.”*

D *The 1<sup>st</sup> respondent also claimed twenty four reliefs as follows: -*  
D *“1. A DECLARATION that the one-third (1/3<sup>rd</sup>) of the members of the House of Assembly envisaged under Section 188 of the Constitution of the Federal Republic of Nigeria, 1999 for the purpose of signing a Notice of allegation does not include the substantive Speaker, or Any*  
E *member appointed to preside at any sitting of the House, for that purpose.*

*2. A DECLARATION that the Plateau State House of Assembly can not be properly and validly Constituted by only 6 (or 8?) members of*  
F *that House for the purpose of commencing and concluding impeachment proceedings under section 188 of the Constitution of the Federal Republic of Nigeria, 1999.*

*3. A DECLARATION that there is no provision for “Speaker Protempore” in the Constitution of the Federal Republic of Nigeria, 1999,*  
G *hence no such person can preside over impeachment proceedings in the House of Assembly pursuant to Section 188 of the Constitution (supra).*

*4. A DECLARATION that section 188 (1), (2), (3) and (4) of the Constitution (supra) must be read in conjunction with and not to the*  
H *exclusion of other provisions of the Constitution particularly sections 91 to 105 in impeachment proceedings against a governor of a state such as the Plaintiff.*

*5. A DECLARATION that there can not be a Constitutionally valid*

*impeachment of the Plaintiff as the Governor of Plateau State without strict compliance with the provisions of Section 188(1) to (9) of the Constitution of the Federal Republic of Nigeria, 1999.*

6. A DECLARATION that on a proper interpretation of Section 188 (4) of the Constitution (*supra*), the 2<sup>nd</sup> - 7<sup>th</sup> Defendants are incapable of forming or constituting the required two-thirds (2/3<sup>rd</sup>) of the members of the Plateau State House of Assembly, hence they were incapable of passing a valid motion pursuant to Section 188(4) of the Constitution (*supra*) to the effect that a purported allegation of gross misconduct be investigated against the Plaintiff.

7. A DECLARATION that the purported resolution passed by the 2<sup>nd</sup> - 7<sup>th</sup> Defendants on the 13/10/2006, pursuant to section 188 (4) of the Constitution is unconstitutional, null and void, having been purportedly passed by less than two thirds (2/3<sup>rd</sup>) majority of all the members of the Plateau State House of Assembly.

8. A DECLARATION that the purported appointment of the Seven (7) Man Panel of Investigation headed by the 1<sup>st</sup> Defendant by the Acting Chief Judge of Plateau State at the instance of the 2<sup>nd</sup> - 7<sup>th</sup> Defendants to investigate the purported Notice of allegation of gross misconduct against the Plaintiff herein is unconstitutional, null and void for manifestly being a contravention of Section 188 (4) of the Constitution which requires the support of two-thirds majority of all the members of the House for which the 2<sup>nd</sup> - 7<sup>th</sup> Defendants are not.

9. A DECLARATION that the purported Notice of allegations of gross misconduct made against Chief (Dr.) Chibi Dariye, the Governor of Plateau State as a preparatory step to his impeachment by the 2<sup>nd</sup> - 7<sup>th</sup> Defendants is unconstitutional, null and void, and of no effect whatsoever for want of strict compliance with the provisions of Section 188(1) and (2) of the Constitution of the Federal Republic of Nigeria, 1999.

10. A DECLARATION that the purported Notice of allegation of misconduct made by the 2<sup>nd</sup> - 7<sup>th</sup> Defendants against Chief (Dr.) Joshua Chibi Dariye, Governor of Plateau State not having being received and/or served on each of the 24 (twenty four) members of the Plateau State House of Assembly as envisaged by Section 188 (2) of the Constitution

*of the Federal Republic of Nigeria, 1999 is unconstitutional, null and void and of no effect whatsoever.*

11. A DECLARATION that the motion passed by the 2<sup>nd</sup> - 7<sup>th</sup> Defendants on 13<sup>th</sup> of October, 2006 calling for the investigation of the B allegation of misconduct against Chief (Dr.) Joshua Chibi Dariye, the Governor of Plateau State, is in contravention of Section 188 (3) and (4) of the Constitution of the Federal Republic of Nigeria, 1999 and to that extent, and for all intents and purposes the said motion is unconstitutional, null, void and of no effect whatsoever.

12. A DECLARATION that no valid Notice of allegation of misconduct has been issued by the 2<sup>nd</sup> 7<sup>th</sup> Defendants, same not having been passed through the Clerk of the Plateau State House of Assembly for service on the Plaintiff nor received formally by the Honourable Speaker D of the Plateau House of Assembly, Rt. Hon. Simon Lalong in accordance with the provisions of Section 188(2) (a) and (b) and Section 188 (3) of the Constitution of the Federal Republic of Nigeria, 1999.

13. A DECLARATION that the 2<sup>nd</sup> - 7<sup>th</sup> Defendants who had at all E material times been arrested, captured and detained and/or held hostage by the EFCC and/or its servants, operatives or agents and forcefully brought to Jos from Abuja on each occasion and forced them to purportedly sit *vie et armis* on 5/10/06, 13/10/06 and 13/11/06 as the Plateau F State House of Assembly never sat or acted willingly, independently or voluntarily but did so under grievous threats, intimidation, duress and coercion all of which have rendered their purported sittings and any decisions or resolutions thereof absolutely null and void and of no legal effect whatsoever.

14. A DECLARATION that the right of fair hearing of the Plaintiff G enshrined in Sections 36(1) and 188(6) of the Constitution of the Federal Republic of Nigeria, 1999 was rampantly violated by the Defendants in that there was no proper or valid service of Notice of allegation H of gross misconduct on the Plaintiff, the Plaintiff was not given opportunity to fully and properly cross-examine witnesses called by the 2<sup>nd</sup> - 7<sup>th</sup> Defendants before the Seven (7) Man Panel and that the Plaintiff was deprived of the opportunity of entering his defence hence the entire im-

*peachment proceedings initiated and concluded by the 2<sup>nd</sup> - 7<sup>th</sup> Defendants including the proceedings of the Seven (7) Man Panel headed by the 1<sup>st</sup> Defendant are incurably and irredeemably flawed, unconstitutional, null and void and of no effect whatsoever.*

15. AN ORDER setting aside all the steps taken by the 2<sup>nd</sup> - 7<sup>th</sup> Defendants in relation to the issuance of Notice of allegation of misconduct, passage of motion to investigate same and the purported directive to the Acting Chief Judge of Plateau State, the said steps having breached the provisions of Sections 36(1) and 188 of the Constitution of the Federal Republic of Nigeria, 1999. B  
C

16. AN ORDER nullifying the purported interim or any other report of findings submitted by the Seven (7) Man Panel of Investigation against the Plaintiff herein to the 2<sup>nd</sup> - 7<sup>th</sup> Defendants herein on the basis of which the 2<sup>nd</sup> - 7<sup>th</sup> Defendants purported impeached the Plaintiff as the Governor of Plateau State on the 13<sup>th</sup> November, 2006. D

17. A DECLARATION that the purported impeachment of the Plaintiff at the early hours of Monday, the 13<sup>th</sup> day of November, 2006 by the 2<sup>nd</sup> - 7<sup>th</sup> Defendants in pursuance of a purported Interim Report by the Seven (7) Man Panel of Investigation of allegation of gross misconduct submitted by the 1<sup>st</sup> Defendant is patently illegal, null and void and of no effect as the said Panel had already ceased to exist having been dissolved on Friday, the 10<sup>th</sup> day of November, 2006. E

18. A DECLARATION that the 2<sup>nd</sup> - 7<sup>th</sup> Defendants, having participated in the inauguration of the Special Committee for the Investigation of the Plaintiff for corruption, money laundering, abuse of office etc., consequent upon a letter/complaint from the EFCC dated November 30, 2005 and having in concert with other Honourable members of the Plateau State House of Assembly participated in receiving and unanimously adopting the said Committee's Report exonerating the Plaintiff without objection or dissent cannot resile from same or are estopped from resiling from same during their tenure and/or less than a period of six (6) months thereafter. F  
G  
H

19. AN ORDER nullifying the purported impeachment of the Plaintiff at the early hours of Monday, the 13<sup>th</sup> day of November, 2006 by the

*2<sup>nd</sup> - 7<sup>th</sup> Defendants in pursuance of a purported Interim Report submitted by the 1<sup>st</sup> Defendant as same is a gross transgression of sections 36(1), 91-105 and 188 of the Constitution (supra) having regard to the doctrine of fair hearing, due composition of the Plateau State House of Assembly as well as the procedure for impeachment.*

*20. AN ORDER restoring or re-instating the Plaintiff to his office as the Governor of Plateau State together with the rights, privileges, paraphernalia and perquisites of his said office.*

*21. A DECLARATION that the conduct of the Seven (7) Man investigating Panel headed by the 1<sup>st</sup> Defendant, an inferior Tribunal scoffing at the orders of a Court is a sad sabotage of the rule of law as inferior Tribunals are obliged to obey the orders of a Court.*

*22. A PERPETUAL INJUNCTION restraining the 1<sup>st</sup> Defendant from submitting any further report of the Seven (7) Man Panel of Investigation to the 2<sup>nd</sup> - 7<sup>th</sup> Defendants against the Plaintiff.*

*23. AN ORDER restraining the 2<sup>nd</sup> - 7<sup>th</sup> Defendants from receiving any report, from the 1<sup>st</sup> Defendant and/or acting on any report from the 1<sup>st</sup> Defendant in respect of the allegation of gross misconduct leveled against the Plaintiff.*

*24. AND such further or other orders or reliefs as the Honourable Court may deem fit and just to make or grant in the circumstances.”*

The appellants responded by filing a Notice of Preliminary objection on the 12<sup>th</sup> day of December, 2006 with a 12 paragraphed affidavit in support; a Further and Better Affidavit in support of the preliminary objection of 5 paragraphs on the 13<sup>th</sup> day of December, 2006 and a 38 paragraphed Counter Affidavit deposed to by the 1<sup>st</sup> appellant against the affidavit in support of the Originating Summons. The Preliminary Objection prayed the court for -

*“1. An order striking- out this suit for lack of jurisdiction.*

*Alternatively*

*2. An order dismissing this suit for being an abuse of court process.”*

The grounds of the objection are stated on the motion papers as follows: -

*“1. The Originating Summons is incompetent since the same is supported by an incompetent affidavit.*

*PARTICULARS*

*(a) the deponent, Nde Alexander Molwus does not have the consent of the plaintiff, who had since been declared wanted by the Economic and Financial Crime Commission (E.F.C.C), and no one including the deponent has an idea of his where about.*

*2. The suit is incompetent, having regard to section 188(10) of the 1999 Constitution.*

*3. This suit constitutes an abuse of process, as the issues raised herein are in substance similar to the issues raised in suit No. PLD/J463/06; PLD/J451/06; FHC/J/CS/49/06; FHC/ABJ/CS/374/06 and PLD/J475/06.*

*4. The plaintiff, being a fugitive from justice, lacks the capacity to maintain an action.*

*5. The action was filed principally for referral, accordingly it is incompetent.*

*PARTICULARS*

*(a) There is no difficult question or issue to be resolved by the Court of Appeal.*

*(b) All the issues sought to be resolved have already been raised in the suits herein before mentioned, in the other courts.”*

It is on record that the matter came before DAMULAK J. on the 13<sup>th</sup> day of December, 2006 but the court discovered that the 2<sup>nd</sup> respondent had not been served with the Notice of Preliminary Objection and the matter was adjourned to 15/12/06 for hearing of the preliminary objection and for service on the 2<sup>nd</sup> respondent. On the 15/12/06 the trial court made the following orders: -

*“Having considered the exigencies of the time and the fact that this is an originating summons. I order that both parties submit their written briefs on the suit along with that of the P/Objection. If the preliminary objection succeeds, it will be the end of the matter. If it does not succeed, the substantive suit may be heard (sic) and considered. I rely on the procedure adopted in the case of: - ADELEKE V. OYO STATE GOV-*

ERNMENT.”

The appellants were not satisfied with the above order and therefore appealed against same to the Court of Appeal. The grounds of appeal are as follows: -

B “(a) *GROUND ONE*

*The ruling and directive of the learned trial judge suo-motu on the 15<sup>th</sup> day of December, 2006 to wit:*

C “*Having considered the exigencies of the time and the fact that this is an Originating Summons. I order that both parties submit their briefs on the suit along with that of the P/Objection. If the P/Objection succeeds, it will be the end of the matter. If it does not succeed, the substantive suit may be heard and considered*”

D *Constituted a gross violation of the appellants’ right to fair hearing by the court.*

*PARTICULARS OF ERROR*

E *i) The trial judge did not seek for or take any address/contribution from counsel to the appellants before proceeding to issue fresh directives that clearly resulted in his sitting on appeal over his previous decision dated 13<sup>th</sup> December, 2006.*

F *ii) The ruling/directive was not prompted by any of the parties, as the parties were clearly satisfied with the ruling dated 13<sup>th</sup> December, 2006.*

*iii) The trial judge had descended into the arena when he without reference to the appellants reviewed and overruled his earlier decision dated 13<sup>th</sup> December, 2006 and proceeded to issue fresh directives.*

G *iv) The trial judge never invited counsel to address the court on the issue before somersaulting on his earlier decision dated 13<sup>th</sup> December, 2006 barely 48 hours later.*

b) *GROUND TWO*

H *The learned trial judge acted without jurisdiction when he suo motu ruled and directed thus:*

*“Having considered the exigencies of the time and the fact that this is an Originating Summons. I order that both parties submit their briefs on the suit along with that of the P/Objection. If the P/Objection*



*succeeds, it will be the end of the matter. If it does not succeed, the substantive suit may be heard and considered”*

*On the 15<sup>th</sup> day of December, 2006 having become functus officio on the issue given his earlier decision on same issue on 13<sup>th</sup> December, 2006.*

B

### **PARTICULARS OF ERROR**

*i) The trial judge had in a considered ruling on the 13<sup>th</sup> day of December, 2006 directed that the Preliminary Objection be taken first after taking arguments from counsel to the parties thereby resting the issue before his court.*

C

*ii) It is trite law that after reaching the considered ruling on the issue on the 13<sup>th</sup> December, 2006 the trial judge became functus officio on the issue particularly after he had taken arguments from the contending parties.*

D

*iii) It is trite law that a judge cannot over rule or review his earlier decision unless it was made without jurisdiction.*

### **3. RELIEFS SOUGHT**

*1. An order setting aside the ruling and the directive of the trial judge dated 15<sup>th</sup> day of December, 2006 for lack of jurisdiction.*

E

*2. A further order entertaining the appellants’ argument on the Preliminary - Objection in line with the earlier order of the trial judge dated 13<sup>th</sup> day of December, 2006 pursuant to section 16 of the Court of Appeal Act.*

F

*3. An order striking out the plaintiff/respondent’s suit at the court below for lack of jurisdiction.*

*Alternatively*

*4. An order remitting the suit for the hearing of the Originating Summons (if the Preliminary Objection fails) by the lower court differently constituted.”*

G

The 1<sup>st</sup> respondent filed a respondent’s notice on the 21<sup>st</sup> day of December, 2006 and urged the court to invoke the provisions of section 16 of the Court of Appeal Act to hear both the preliminary objection and the originating summons together. It should also be noted that the appellants did request the Court of Appeal to also invoke its powers under

H

section 16 of the Court of Appeal Act to hear and determine the Preliminary Objection in the “*Reliefs Sought*” in their Notice of Appeal to the Court of Appeal. At the end the Court of Appeal determined the appeal, the Preliminary Objection and the originating summons in the judgment  
 B subject of the instant appeal. The Court of Appeal dismissed the appellants’ appeal as well as the preliminary objection and granted the reliefs of the 1<sup>st</sup> respondent in F the originating summons after a detailed consideration of the facts and issues involved and arguments of both counsel thereon in their respective briefs of argument filed in the matter. In  
 C acting as stated supra the Court of Appeal was exercising its powers under section 16 of the Court of Appeal Act.

The issues for determination, as identified by learned leading senior counsel for the appellants, CHIEF GANI FAWEHINMI, SAN, in the  
 D appellants’ brief of argument filed on 3/4/07 and adopted in argument on 16/4/07 are as follows: -

“1. *Whether the Court of Appeal was right in invoking section 16 of the Court of Appeal Act (now section 15 of the Court of Appeal Act, E Cap. C.36 LFN 2004) when neither the appellants’ Notice of Preliminary objection nor the 1<sup>st</sup> respondent’s originating summons had been heard and determined by the trial court (Ground 4).*

2. *Whether the removal or impeachment of the 1<sup>st</sup> respondent, Chief F Joshua Chibi Dariye, by 8 out of 10 members of the Plateau State House of Assembly, at the relevant time; satisfy (sic) the requirements of section 188 of the Constitution of the Federal Republic of Nigeria, 1999, 14 members of the said House having vacated their seats by operation of law (Grounds 1 and 2)*

G 3. *Whether the Court of Appeal was right in the circumstances of this case in holding that the. Plateau State House of Assembly should have waited till the 14 seats vacated by the operation of law were filled before they could embark on the removal or impeachment of the 1<sup>st</sup> re-  
 H spondent, Chief Joshua Chibi Dariye. (Ground 3).”*

On the other hand, learned senior counsel .for the 1<sup>st</sup> respondent EMMANUEL J. J. TORO ESQ, SAN, in the 1<sup>st</sup> respondent’s brief of argument filed on 5/4/07 and adopted in argument on 16/4/07 has identi-

fied the following two issues for the determination of the appeal: -

*“(1) Whether having regard to this peculiar facts and circumstances in this case the Court of Appeal was right in invoking the powers vested on it by section 16 of the Court of Appeal Act, Cap. 75 LFN, 1990, to hear and determine both the preliminary objections and the originating B summons in this case (Ground 4).*

*(2) Whether there was compliance with section 188 (2), (4), (5) and (9) of the Constitution of the Federal Republic of Nigeria, 1999, in the removal of the 1<sup>st</sup> Respondent as the Governor of Plateau State having regard to the entire circumstances of this case. (Ground 1,2 and 3).” C*

Before proceeding any further, it is important to note that the learned senior counsel for the 1<sup>st</sup> respondent has filed a notice of preliminary objection against grounds 1, 2 and 3 of the grounds of appeal on the following grounds: D

*“(i) The said grounds 1, 2, and 3 are grounds of facts as at the very best, grounds of mixed law and facts.*

*(ii) By virtue of the provisions of section 233(2) of the Constitution of the Federal Republic of Nigeria, 1999, it is a fundamental condition precedent to obtain the prior leave of either the Court of Appeal or of the Supreme Court before the Appellants can validly raise grounds of facts or mixed law and facts at the Supreme Court. E*

*(iii) The appellants herein never obtained the leave of either the Court of Appeal or the Supreme Court before filing the aforementioned grounds of facts or of mixed law and facts. F*

*(iv) Grounds 1, 2, and 3 are argumentative and narrative in nature.*

*(v) Arising from all the foregoing, the said grounds numbers. 1, 2, and 3 are incompetent and should be struck out accordingly.” G*

In arguing the preliminary objection learned senior counsel for the 1<sup>st</sup> respondent submitted that ground 1 of the grounds of appeal when read with the particulars relating thereto raise issues of fact or at best mixed law and facts as the particulars raise the issue as to whether the 14 members of the Plateau State House of Assembly have in fact decamped to another political party which is an issue or subject matter of several H

cases pending in court as evidenced in exhibits A,B and C attached to appellant's notice of preliminary objection at the trial court; that the said ground 1 is also incompetent for being narrative and argumentative contrary to the provisions of order 8 Rule 2(3) of the Supreme Court Rules.

B On ground 2 learned senior counsel submitted that it raises the issues as to whether or not the 1<sup>st</sup> respondent was served with the notice of allegation of gross misconduct whereas the lower court had found to the contrary; that the ground also raises the issue as to whether the 1<sup>st</sup>  
C respondent was allowed to cross examine the witnesses who testified against him at the Panel of Investigation which was a fact also determined to the contrary by the lower court; that there is no appeal against the specific findings of fact by the lower court supra though the appellants are seeking to argue to the contrary in this Court by virtue of ground  
D 2; that ground 2 with the 10 lengthy particulars is most argumentative and narrative, and therefore incompetent.

Turning to ground 3 learned senior counsel submitted that it raises issues of fact as to the vacancies at the House of Assembly whether or  
E not the 14 members have indeed vacated their seats. Learned counsel then submitted that by the provisions of section 233(3) of the 1999 Constitution an appellant who raises a ground of fact or mixed law and fact must first obtain the leave of the Court of Appeal or this Court, otherwise  
F the ground would be incompetent and liable to be struck out, relying on: Long - John vs Blakk (2005) 17 NWLR (pt 953) 1 at 8-9; Briggs vs C.L.JKO.R.S.N (2005) 17 NWLR (pt. 938) 59 at 86; Oforkiri vs Maduike (2003) 5 NWLR (pt. 812) 166 at 176 and Orakosim vs Menkiti (2001) 5SCNJ 1.  
G

On incompetent narrative or argumentative grounds of appeal, learned counsel cited and relied on the Military Administrator, Benue State & ors vs Ulegede & anor (2001) 10 SCNJ 43 and A.G. Federation vs ANPP (2003) 15 NWLR (pt. 844) 600.

H Finally, citing and relying on Akubu vs Oduntan (2007) 7 SCNJ 198; Mark Ekele vs Nwerekere (1998) 3 SCNJ 84; Thor Ltd vs FCMB Ltd (2002) 4 NWLR (pt. 757) 427 at 446, learned senior counsel urged the court to strike out grounds 1, 2, and 3 of the grounds of appeal as the

same are incompetent together with the issue formulated therefrom.

On his part, learned senior counsel for the appellants in the appellants' reply brief filed on the 11/4/07 submitted that grounds 1,2 and 3 of the grounds of appeal are neither narrative, argumentative nor are they of facts or mixed law and facts. Counsel then proceeded to reproduce the affected grounds of appeal and submitted that the grounds are of law and not of facts or mixed law and facts; that the said grounds call for the interpretation and application of the constitutional provisions to the stated facts as found by the Court of Appeal; that the nature of a ground of appeal is not determined by the form of the ground but by the question it raises, relying on *M.D.P.D.T vs Okonkwo* (2001) 1 NWLR (pt. 711) 206 at 232; that ground 2 questions the decision of the lower court that the removal of the 1<sup>st</sup> respondent violated the provisions of section 188 of the 1999 Constitution while ground 3 questioned the interpretation of the said section 188 by the lower court which found that 14 members of the House have vacated their seats by operation of law pursuant to section 109(1) (g) and taking into account the effect of section 102 both of the 1999 Constitution. For the above submission learned senior counsel cited and relied on *Ogbechie vs Onochie* (1986) 2 NWLR (pt. 23) 484 at 491 - 492; *Nwadike vs Ibekwe* (1987) 4 NWLR (pt. 67) 718 at 744.

Turning to the ground of objection to the effect that the said grounds of appeal are narrative or argumentative, learned senior counsel submitted that they are not and that once a ground of appeal is concise and clear and is not argumentative or narrative the fact that the particulars appear to be argumentative is not sufficient to deny a right of appeal provided on the face of the ground, an issue of law arises for determination; that serious issues of law are raised in grounds 1, 2, and 3 of the grounds of appeal and urged the court to overrule the preliminary objection for being misconceived.

The grounds of appeal complained of, without their particulars, complain as follows: -

*Ground One.*

*The learned justices of the Court of Appeal erred in law in holding that the required 2/3 (two third) majority of the Plateau State House of*

*Assembly for the purpose of impeaching the 1<sup>st</sup> respondent as the Governor of Plateau State at the time they did means at least (sixteen) members of the Plateau State House of Assembly out of 24 (twenty-four) members.*

B *Ground Two*

*The Court of Appeal erred in law in holding that the impeachment or all the processes of the impeachment of the 1<sup>st</sup> respondent, Chief Joshua Chidi Dariye by the Plateau State House of Assembly violated the provision of section 188 of the Constitution of the Federal Republic of Nigeria, 1999.*

*Ground Three*

*The learned Justices of the Court of Appeal erred in law when they held as follows: -*

D *“The Plateau State House of Assembly had 24 members, 14 seats were vacated leaving only 10 members, out of which 8 initiated and carried out the impeachment proceedings, 8 is 1/3 out of 24 and represents 1/3 the constituency of the population of Plateau State. They do not*  
E *represent 2/3 population of Plateau State and do not therefore have the mandate of the people to remove a Governor elected by 2/3 majority of the electorate in Plateau State. I agree 8 is more than 2/3 of 10 but 8 less than 2/3 of 24. The 8 members are not the 2/3 contemplated by section*  
F *188, section 102 notwithstanding.*

*Nobody prevents the 8 members from impeaching a Governor whom they believe has committed acts of gross misconduct. They should however go about it the right way, legally, constitutionally. The 14 vacancies should be filled and only then, when there is a full representation of the*  
G *people of Plateau State, in the House can they embark on an impeachment of a serving Governor who is in office by the votes of the people of Plateau State. Their action can therefore not be the action of the Plateau State House of Assembly.”*

H *Section 233(3) of the 1999 Constitution -provides that: -*

*“(3) Subject to the provisions of subsection (2) of this section, an appeal shall lie from the decisions of the Court of Appeal to the Supreme Court with the leave of the Court of Appeal or the Supreme Court.”*

Now subsection (2) to which subsection 3 is subject provides for situations or circumstances in which a party can appeal against a decision of the Court of Appeal to the Supreme Court as of right.

The question is whether it can be said that grounds 1, 2, and 3 of the grounds of appeal are of facts or mixed law and facts so as to bring into operation the provisions of section 233(3) of the 1999 Constitution which demands that the leave of either the Court of Appeal, whose decision is being appealed against or the Supreme Court, must first be sought and obtained to make such grounds of facts or mixed law and facts competent. **It is settled law that the “important consideration in the determination of the nature of a ground of appeal is not the form of the ground but the question it raises” per AYOOLA, JSC in M.D.P.D.T vs Okonkwo supra at 232.**

A close look at grounds 1,2, and 3 of the grounds of appeal supra clearly show that the grounds complain against the wrong interpretation of constitutional provisions relevant to the determination of the case and misapplication of the relevant law. In Nwadike vs Ibekwe (1987) 4 NWLR (pt. 67) 718 at 744 NNAEMEKA AGU, JSC E stated the law as follows: -

“(i) *It is an error in law if the adjudicating tribunal took into account some wrong criteria in reaching its conclusion or applied some wrong standard of proof or, if ‘although applying the correct criteria, it gave wrong weight to one or more of the relevant factors: See O’Kelly vs Trusthouse Forte P.I.C. (1983) 3 All ER at P. 468.*

(ii) *Several issues that can be raised on legal interpretation of deeds, documents, terms of art, words or phrases, and inferences drawn therefrom are grounds of law: Ogbechie vs Onochie (supra) at pp. 491 - 492.*

(iii) *Where a ground deals merely with a matter of inference, even if it be an inference of fact, a ground framed on it is a ground of law; provided it is limited to admitted or proved and accepted facts. Edwards vs Bairstow (supra) at p. 55; H.L. For, many years it has been recognized that inferences to be drawn from a set of proved or undisputed facts, as distinct from primary facts, are matters upon which an appellate court is*

*as competent as the court of trial: See Benmax vs Austin Motor Co. Ltd (1945) All E.R 326 at p. 327.*

*(iv) Where a tribunal states the law on a point wrongly, it commits an error in law.”*

B In the case of Ogbechie vs Onochie supra referred to in Nwadike vs Ibekwe supra, Eso J.S.C. stated the relevant principles of law at pages 491 - 492 as follows: -

C “(ii) *If the tribunal approached the construction of a legal term of art in statute on the erroneous basis that the statutory wording bears its ordinary meaning - it is a question of law.*

*(iii) If the tribunal approached the construction of a statutory word or phrase bearing an ordinary meaning on the erroneous basis that it is a legal term of art - it is a question of law.*

D *(iv) If the tribunal correctly treating a statutory word or phrase as a legal term of art errs in elucidation of the word or phrase - it is a question of law.*

E *(v) If the tribunal errs in its-conclusion (that is, in applying the law to the facts) in a case where this process requires the skill of a trained lawyer, it is error in law.”*

**It is clear that since grounds 1, 2, and 3 of the grounds of appeal questioned the interpretation and conclusions reached by the lower court in relation to the relevant provisions of the 1999 Constitution particularly sections 188, 102 thereof, the said grounds are of law and nothing more having regard to the statements of the relevant applicable law supra. That being the case I hold the considered view that section 233(2) of the 1999 Constitution is not relevant to the said grounds of appeal. I also do not find the grounds argumentative or narrative as contended by learned senior counsel for the 1<sup>st</sup> respondent and therefore come to the conclusion that the preliminary objection is without merit and is consequently overruled.**

On issue 1 learned Senior Counsel for the appellants submitted, by way of conclusion as follows: -

The lower court was in error in invoking section 16 of the Court



of Appeal Act when neither the appellants' Notice of Preliminary Objection nor the 1<sup>st</sup> respondent's originating summons had been heard and determined by the trial court; that the exercise of the appellate jurisdiction of the Court of Appeal as conferred by section 240 of the 1999 Constitution must be tied to the questions arising from the decision of the trial court which must be contained in a valid ground of appeal; that the lower court having dismissed the appellant's appeal and by the nature of the appellant's Notice of Appeal and the stage of the proceedings at the court of trial, the lower court had no further appellate jurisdiction to exercise in the matter in the circumstances; that the power of the Court of Appeal under section 16 of the Court of Appeal Act cannot override the original jurisdiction of the State High Court as conferred by section 272 of the 1999 Constitution; that before the said section 16 of the Court of Appeal can be invoked for the determination of the real question in controversy in an appeal that question must be a ground of appeal; that contrary to the holding of the lower court, the appellants did not consent or concede to the invocation of section 16 of the Court of Appeal Act but opposed its application; that section 16 of the Court of Appeal Act was not intended to expand or enlarge the appellate jurisdiction of the Court of Appeal and in any event consent or agreement of parties cannot confer jurisdiction on a court when it has none; that filing of a Respondents Notice to an existing appeal does not allow or permit a respondent to introduce fresh issues unrelated to the appellant's appeal, and urged the court to resolve the issue in favour of the appellants.

On his part, learned senior counsel for the 1<sup>st</sup> respondent stated that the scope and amplitude of the wide powers and jurisdiction vested on the Court of Appeal, particularly in impeachment proceedings, where time is of the essence in view of the threat to the extinction of the RES, were considered and applied by this Court in the case of Inakoju vs Adeleke (2007) 4 NWLR (pt. 1025) 423 at 611 - 618; that the instant case meets all the conditions needed for the Court of Appeal to exercise its powers under section 16 of the Court of Appeal Act to hear and determine both the preliminary objection and the originating summons in the case, particularly as both counsel applied that the court below should

invoke its powers under the said section 16 of the Court of Appeal Act to deal with the matter before it; that both counsel made elaborate submissions in respect of the preliminary objection and the substantive matter in their respective briefs of argument before the lower court; that parties  
B are not allowed to approbate and reprobate relying on *Ajide vs Kalani* (1985) 11 S.C 124; *Tinubu vs IMB* (2001) 6 NWLR (pt. 740) 670 at 707; *Abdul-Raheem vs Oluruntoba - Oju* (2006) 15 NWLR (pt 1003) 581; that without consent of the parties the lower court has the power to  
C invoke section 16 of the Act suo motu where the circumstances warrant or justifies it; that impeachment proceedings are sui generis as such the numerous decided case cited by his learned friend in the appellants' brief concerning normal civil proceedings do not apply to the peculiar and extreme urgency necessitated by impeachment related proceedings; that  
D the distinctions sought to be made between the instant case and that of *Inakoju vs Adeleke* (supra) by learned senior counsel for the appellants is a distinction without a difference as the facts are very similar. Turning to the sub-issue of the respondent's notice, learned senior counsel submitted, that there was no ground of appeal in support of the attack levelled  
E against the said respondent's notice and that the fate of the respondent's notice is not dependent on the appellants' appeal, relying on *Ogunbadejo vs Woyemi* (1993) 1 NWLR (pt. 271) 517 or 531. Learned Counsel then  
F urged the court to resolve the issue against the appellants.

**It is settled law that jurisdiction is a radical and crucial question of competence because if a court has no jurisdiction to hear and determine a case, the proceedings are and remain a nullity ab initio, however well conducted and brilliantly decided they might be**  
G **since a defect in competence is not intrinsic, but extrinsic, to the entire process of adjudication. Jurisdiction is therefore considered to be the nerve centre of adjudication; the blood that gives life to the survival of an action in a court of law in the very same way that**  
H **blood gives life to the human being in particular and the animal race in general** - see *Onyenucheyia vs Milad*, Imo State (1997) 1 NWLR (pt. 482) 429; *Madukolu vs Nkemdilim* (1962) 2 SCNLR 341; *Barsoum vs Clemessy International* (1999) 12 NWLR (pt. 632) 516; *Utih & ors vs*

Onoyivwe (1991) 1 NWLR (pt. 166) 166.

It is the argument of learned senior counsel for the appellants that the lower court had no jurisdiction in the circumstances of the case to have proceeded, under section 16 of the Court of Appeal Act, to determine the substantive matter before the trial court having regard to the grounds of appeal and the issues before the lower court. The question then is: What does section 16 of the Court of Appeal Act provide? The section enacts the following: -

*“16. The Court of Appeal may, from time to time make any order necessary for determining the real question in controversy in the appeal, and may amend any defect or error in the record of appeal, and may direct the court below to inquire into and certify its findings on any question which the Court of Appeal thinks fit to determine before final judgment in the appeal and may make an interim order or grant any injunction which the court below is authorized to make or grant and may direct any necessary inquiries or accounts to be made or taken and generally shall have full jurisdiction over the whole proceedings as if the proceedings had been instituted in the Court of Appeal as court of first instance and may re-hear the case in whole or in part or may remit it to the court below for the purpose of such rehearing or may give such other direction as to the manner in which the court below shall deal with the case in accordance with the powers of that court, or in the case of an appeal from the court below in that court’s appellate jurisdiction, order the case to be re-heard by a court of competent jurisdiction.”* Emphasis supplied.

**It is clear from the above provisions that the powers conferred on the Court of Appeal by section 16 of the Act are very wide indeed as they enable the appellate court to exercise all the powers of a court of first instance** - see *Jade Simi vs. Katie Ebon* (1986) 1 NWLR (pt. 16) 264; *U.B.N. Ltd vs. Feeble Foods & Poultry Farms* (1994) 5 NWLR (pt. 344) 325; *Gideon vs. Moorage* (1993) 2 NWLR (pt. 276) 398; *Ejowhomu vs Edok - Eter Mandilas Ltd* (1986) 5 NWLR (pt. 39) 1; *H A-G Anambra State vs Okeke* (2002) 12 NWLR (pt. 782) 575; *Cappa & D’Alberto Ltd vs Akintilo* (2003) 9 NWLR (pt. 824) 49.

**It is also settled law that section 16 of the Court of Appeal**

**Act can be invoked in order to facilitate the speedy administration of justice as it is designed to avoid multiplicity of proceedings and hearings. Instead of sending the case back to the trial judge for a trial, section 16, in an appropriate case empowers the Court of Appeal to assume the jurisdiction of the trial court and determine the real question in controversy between the parties so as to save much needed time in the administration of justice in this country; see *Inakoju vs Adeleke supra* at 616.**

**However, section 16 is not an all purpose or limitless power for the Court of Appeal to divest the High Court of the original jurisdiction conferred on it by law. It is settled law that the Court of Appeal cannot hide under section 16 to expand its jurisdiction.**

The question then is whether the instant case is an appropriate one for the Court of Appeal to exercise its powers under section 16 of the Court of Appeal Act. To answer the question, it is necessary to bear the following undisputed facts in mind, viz;

(i) that the action before the trial court was instituted by an originating summons supported by an affidavit.

(ii) that the appellants filed a preliminary objection to the jurisdiction of that court to hear and determine the matter as constituted.

(iii) in addition to the preliminary objection, appellants filed a 38 paragraphed counter affidavit to the affidavit in support of the originating summons thereby joining issues with the 1<sup>st</sup> respondent in the substantive action.

(iv) the res in the matter is the office of the 1<sup>st</sup> respondent as Governor of Plateau State which expires on the 29<sup>th</sup> day of May, 2007 which on 8<sup>th</sup> March, 2007 when the lower court gave its judgment had barely or a little over two months to go. The said res is therefore perishable by effluxion of time.

**It is now settled that impeachment proceedings are sui generis as they belong to a class of their own and time is of the essence. It was therefore held by this Court in the most recent case of *Inakoju vs Adeleke supra* at 626 - 627 that although the judicial process is slow most of the time, almost taking a snails pace, where**

the res in the case before the court is in danger of being wiped out, the judiciary must take the fast track or lane and do all that is possible to give it a speedy hearing.

However, the powers conferred on the Court of Appeal by section 16 of the Court of Appeal Act are exercisable by that court B where certain fundamental conditionalities are met, such as:-

(a) availability of the necessary materials to consider and adjudicate in the matter;

(b) the length of time between the disposal of the action at C the trial court and the hearing of the appeal; and

(c) the interest of justice by eliminating further delay that would arise in the event of remitting the case back to the trial court for rehearing and the hardship such an order would cause on either or both parties to the case - see *Inakoju vs Adeleke supra* at D 691 – 692.

It is my considered view that from the facts and surrounding circumstances of this case, the above preconditions existed in the instant case and that the lower court was right in asceeding to the E plea of the counsel for the parties to invoke its powers to take the decisions it took in the interest of justice, equity and good conscience. I hold the further view that the decisions taken had expeditiously disposed of the matters in controversy thereby saving the F judiciary from embarrassment that would have arisen had the alternative option of sending the case for retrial de novo been adopted by that court as presently urged upon this Court by learned Senior Counsel for the appellants - see *Adeyemi vs Ike-Oluwa & Sons Ltd* G (1993) 8 NWLR (pt. 309) 27; *In re; Adewunmi* (1988) 3 NWLR (pt. 83) 483; *University of Lagos vs Olaniyan* (1985) 1 NWLR (pt. 16) 264; *Yusufu vs. Obasanjo & ors* (2003) 16 NWLR (pt. 847) 554.

The originating summons procedure is a means commence- H ment of action adopted in cases where the facts are not in dispute or there is no likelihood of their being in dispute and when the sole or principal question in issue is or is likely to be one directed at the construction of a written law, Constitution or any instrument or of

any deed, will, contract or other document or other question of law or in a circumstance where there is not likely to be any dispute as to the facts. In general terms, it is used for non-contentious actions or matters i.e. those actions where facts are not likely to be in dispute. In actions commenced by originating summons, pleadings are not required rather affidavit evidence are employed: see Director, State Security Service vs Agbakoba (1999) 3 NWLR (pt. 595) 314; Din vs A-G of the Federation (1986) 1 NWLR (pt. 17) 471; Keyamo vs House of Assembly Lagos State & ors (2002) 18 NWLR (pt. 799) 605.

It follows that proceedings commenced by originating summons are very expeditiously dealt with particularly as witnesses are rarely called and examined. It is therefore a most appropriate mode of commencing the instant action since impeachment proceedings are sui generis (in a class of their own) and time is of the essence. In this case the tenure of the 1<sup>st</sup> respondent is to expire by 29<sup>th</sup> May, 2007 and it is very important that a decision, one way or the other, has to be made.

That apart, it is settled law that where an objection is raised to the jurisdiction of the court in a matter commenced by originating summons where the evidence required is in the form of affidavit as in the instant case, it may be prudent to hear together the arguments as to jurisdiction and the merits of the case -see Senate President vs Nzeribe (2004) 9 NWLR (pt. 878) 251; Inakoju vs Adeleke supra. In the instant case, the central issue of fact and which is not disputed, is whether the actions of 8 out of 10, out of a 24 membership Plateau State House of Assembly constitute the Constitutionally required “2/3 majority of all the members” of that Assembly for the purpose of impeaching the 1<sup>st</sup> respondent under section 188 of the 1999 Constitution.

On the respondent’s notice I agree with the learned senior counsel for the 1<sup>st</sup> respondent that the attack on the respondent’s notice is not grounded on any ground of appeal whatsoever and it is therefore not sustainable. I therefore resolve issue 1 against the appellants.

On issues 2 & 3 learned senior counsel for the appellants referred

the court to the 12 commandments for interpreting the provisions of the Constitution as laid down by this Court in the case of A-G Bendel State vs. A-G of the Federation (1982) 3 NCLR 1 at 77 -78 and urged the court to apply same to the facts of this case. Learned senior counsel agreed that the Plateau State House of Assembly has twenty-four members out of which 14 members, including the Speaker and Deputy Speaker, decamped from PDP the party on whose platform, they contested' and won election into the House, to join Advanced Congress of Democrats (ACD) and that by operation of section 109(1) (g) of the 1999 Constitution, they automatically forfeited their seats and ceased to be members of the House of Assembly; that the Plateau State House of Assembly thereby had 10 members at all relevant times out of which 8 members initiated and carried out the impeachment proceeding of the 1<sup>st</sup> respondent; that the removal or impeachment of the 1<sup>st</sup> respondent as a result of the above process is constitutionally the exclusive preserve of the constituted members of the House of Assembly at any given time; that for the purpose of computing the ratio of number of members of the Plateau State House of Assembly competent to perform legislative duties, at the relevant time, vacant seats cannot be reckoned with not being within the contemplation of section 188 of the 1999 Constitution as "*vacant seats*" are not members; that the existence of vacancies in the membership of Plateau State House of Assembly cannot operate as a bar to the performance of legislative duties of the Plateau State House of Assembly by the 10 remaining members of the House pursuant to section 102 of the 1999 Constitution; that all the requirements of section 188 of the 1999 Constitution for the removal of the 1st respondent were duly complied with; that it is a cardinal rule of construction that Constitutional provision should not be interpreted to defeat its evident purpose, that the proceedings of the Plateau State House of Assembly presided over by the 1<sup>st</sup> appellant were constitutionally justifiable because by Rule 8 of the Plateau State House of Assembly made pursuant to section 95(2) of the 1999 Constitution, the House may elect any of its members as Speaker Protempore to preside over legislative proceedings in the absence of the Speaker and Deputy Speaker who were among the members who vacated their seats

by operation of law pursuant to section 109(1)(g) of the 1999 Constitution and urged the court to resolve the issues in favour of the appellants, allow the appeal, set aside the judgment of the Court of Appeal delivered on 8/3/07 and remit the appellant's notice of preliminary objection and the 1<sup>st</sup> respondent's originating summons to the trial court for adjudication or in the alternative, an order dismissing the 1<sup>st</sup> respondent's originating summons. It should be noted that the submission in the alternative to the effect that the 1<sup>st</sup> respondent's originating summons be dismissed presupposes that, it be heard by this Court and dismissed or the decision of the Court of Appeal that heard and granted same be reversed and an order of dismissal of same substituted by this Court.

On his part, learned Senior Counsel for the 1<sup>st</sup> respondent submitted that the issue before the court is the proper interpretation and determination of what constitutes the quorum of the Plateau State House of Assembly for purposes of removal proceedings under section 188 of the 1999 Constitution in view of the minimum and maximum numbers of any State House of Assembly in Nigeria as contained in section 91 of the 1999 Constitution; that also to be considered in the process is the interpretation of section 102 of the same Constitution dealing with vacancy in the House; that by the provisions of section 91 of the 1999 Constitution particularly the proviso thereto, it is mandatory that State Houses of Assembly in Nigeria must have a total membership of at least 24 and not more than 40 members; that it is not disputed that the Plateau State House of Assembly has 24 members and that 2/3 of 24 is 16 members; that section 96(1) of the 1999 Constitution provides for ordinary quorum required for the normal business or sitting of the House as 1/3 of all members of the House which means 1/3 of 24; that the 2/3 of members envisaged under section 188 of the 1999 Constitution is not 2/3 of 10 members but 2/3 of all members of the House of 24 which is 16 members; that the court should use the holistic approach to the interpretation of section 188 of the 1999 Constitution so as to determine the actual meaning of the words "*two-thirds of all the members of the House*" particularly as the term or phrase is used in other sections such as 9(2) & (3); 143(4) and (9) and also section 305; that the seats of the 14 mem-



bers of the House had not become automatically vacant by operation of law and that the case of Oloyo vs. Alegbe (1985) 6 NCLR 61 is not applicable to the facts of this case particularly as section 109(1) of the 1999 Constitution is different from section 103(1) of the 1979 Constitution on which the case of Oloyo vs Alegbe was decided; that subsection B 2 of section 109 introduced an innovation by making the Speaker of the House to have a significant role to play in the matter.

Referring to the provisions of section 102 of the 1999 Constitution learned Senior Counsel submitted that the operative word in the section is “May” which learned counsel maintains means that the House C may or may not act, depending on the circumstances of the case; that the provision is directory not mandatory; that the said provision cannot derogate from the specific provisions of section 188(3), (4) and (9) of the 1999 Constitution, relying on the case of Inakoju vs Adeleke supra at 629 D per TOBI, JSC. Finally learned senior counsel urged this Court to resolve the issue against the appellants and dismiss the appeal.

The relevant sections of the 1999 Constitution that calls for construction or interpretation are sections 102, 109 & 188 of the 1999 Constitution which provide as follows: - E

*“102 A House of Assembly may act notwithstanding any vacancy in its membership, the presence or participation of nay person not entitled to be present at or to participate in the proceedings of the House shall not invalidate such proceedings.” F*

*“109(1) A member of a House of Assembly shall vacate his seat in the House If –*

*(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 he was elected. G*

*Provided that his membership of the latter political party is not as a result of a division in the political party of which he was previously a member or of a merger of two or more political parties or factions by one H of which he was previously sponsored; or —”*

*“188*

*(1) The Governor or Deputy Governor of a State 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 House of Assembly -*

*(a) is presented to the Speaker of the House of Assembly of the State;*

*(b) stating that the holder of such office is guilty of gross misconduct in the performance of the functions of his office, detailed particulars of which shall be specified the Speaker of the House of Assembly shall, within seven days of the receipt of the notice, cause a copy of the notice to be served on the holder of the office and on each member of the House of 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 House of Assembly.*

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

*(4) A motion of the House of 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 the House of Assembly.*

*(5) Within seven days of the passing of a motion under the foregoing provisions of this section, the Chief Judge of the State shall at the request of the Speaker of the House of Assembly, 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 or be represented before the Panel by a legal practitioner 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 House of Assembly; and*

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

*(8) Where the Panel reports to the House of 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 the report, the House of Assembly shall consider the report, and if by a resolution of the House of 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.*

C

*(10) No proceedings or determination of the Panel or of the House of Assembly or any matter relating to such proceedings or determination 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 in the House of Assembly to gross misconduct.”*

E

Both parties and the lower court are agreed that -

(a) the Plateau State House of Assembly is made up of 24 members and that at all time material to this action 14 of those members who were initially sponsored by and elected under the platform of the Peoples Democratic Party (PDP) cross-carpeted to another political party - the Advanced Congress of Democrats thereby rendering their seats vacant by virtue of the provisions of section 109(1) (g) of the 1999 Constitution.

G

(b) that out of the remaining 10 members of the Plateau House of Assembly 8 of them initiated and carried out the impeachment proceedings of the 1<sup>st</sup> respondent.

(c) that though 8 members is more than 2/3 of 10 members, they constitute 1/3 of the total 24 members of the House.

H

**It is settled law that the Constitution of any country is what is usually called the organic law or grundnorm of the people. It**

**contains all the laws from which the institutions of state drive their creation, legitimacy and very being. The Constitution is also the unifying force in the nation apportioning rights and imposing obligations on the people who are subject to its operation. It is a very important composite document, the interpretation or construction of which is subject to reorganized cannons of interpretation designed or crafted to enhance and sustains the esteem in which Constitutions are held the world over.**

**The main guideline to the construction of the Constitution is as laid down by this Court in the case of Rabiu vs. The State (1980) 8-11SC 130 at 148 - 149 per Sir UDO UDOMA, JSC as follows: -**

*“.... 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 settled law that the courts cannot amend the Constitution neither can they change the words. It is also a principle of interpretation that the language of the Constitution were clear and unambiguous, must be given its plain evident meaning and that a Constitutional provision should not be construed so as to defeat its evident purpose. It is also settled law that provisions of the Constitution are not to be interpreted in isolation but that other provisions must be taken into consideration in the exercise.**

**It is my considered view that the words used in the sections of the 1999 Constitution, reproduced earlier in this judgment, are very clear and unambiguous. In the case of Fawehinmi vs I.G.P. (2002) 7 NWLR (pt. H 767) 606 at 678 this Court stated the law thus:**

*“The proper approach to the interpretation of clear words of statute is to follow them, in their simple, grammatical and, ordinary meaning rather than look further because that is what prima facie gives them*

*their most reliable meaning: See African Newspapers vs. Federal Republic of Nigeria (1985) 2NWLR (pt. 6) 137; Salami vs Chairman L.E.D (1989) 5 NWLR (pt. 23) 539; Ogbanna vs Attorney General, Imo State (1992) 1 NWLR (pt. 220) 647. This is generally also true of the construction of Constitutional provisions if they are clear and unambiguous even when it is necessary to give them a liberal or broad interpretation.”* B

It should be noted that section 188 which deals with the removal or impeachment of a Governor or Deputy Governor from office talks of “members” and “all members” in different subsections and while describing the function or duties of the members of the House in relation to the removal- of the Governor or Deputy Governor thereunder. In subsection 2 of section 188 it is provided thus: C

“(2) Whenever a notice of any allegation in writing signed by not less than one third of the members of the House of Assembly...” D

While subsection 9 of section 188 provides thus: -

(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, the House of Assembly shall consider the report, and if by a resolution of the House of 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

It is clear that whereas the initiation of the impeachment process requires the signatures of not less than one-third of the members of the House of Assembly on the notice of written allegation of gross misconduct against the Governor or Deputy Governor intended to be impeached, the actual removal of the said Governor or Deputy Governor requires the support of “not less than two-thirds majority of all its members....”, F

**Can it** be said that the term “one third of the members” and “two-thirds majority of all its members” mean the same thing? If so why not simply use the same expression in the two subsections? I am of the view that the words used are very clear and very unambiguous and should be given their literal meanings. I am of the view that when subsection (2) of section 188 is compared with sub- G H

section (9) of section 188 it becomes clear that the expression “*of the members*” and all the members do not mean the same thing. I hold the further view that the expression “all the members” refers to the members present and voting at the House of Assembly on any particular day after forming the required quorum for the trans-  
 B action of legislative business which is 1/3 of all the members as provided for in section 96(1) of the 1999 Constitution. The same expression is used in section 9(2) & (3) in relation to creation of  
 C state; section 143(4) and (9) in relation to the removal of the President or Vice President of the Federal Republic of Nigeria; section 188 (9) in relation to motion to investigate the allegation; and section 305 dealing with the procedure for declaration of state of emergency, all under the 1999 Constitution. In all the above situations it  
 D appears that the intention of the framers of the constitution is that the number of the members required to transact the particular business of the legislature is a percentage or proportion of the total number or the totality of the assigned membership of the House  
 E under the Constitution. In the instant case it is two-thirds of ALL the members of the Plateau State House of Assembly, which is made up of 24 members; that is 16 members. It is not in doubt that the word “ALL” means; entire, complete, the whole number of; every  
 F one of. See page 47 of WEBSTER’S NEW TWENTIETH CENTURY DICTIONARY, Unabridged Second Edition, 1975.

In the instant case, it is not disputed that 8 out of 10 members in a house of 24 memberships initiated and carried out the impeachment of the 1<sup>st</sup> respondent. There is no doubt that there  
 G existed in the Plateau State House of Assembly 14 vacant seats as a result of the cross carpeting. It is the view of the Learned Leading Counsel for the appellants that the vacancy did not affect the capacity of the 8 members to carry out the impeachment process as 8  
 H is more than 2/3 of 10 members. The simple and complete answer to the learned senior counsel is the decision of this Court in the case of Inakoju vs Adeleke supra at 629 where TOBI, JSC puts it thus: -

“.... By section 102, the proceedings of the House cannot be in-

*validated by the fact that there is a vacancy in its membership. This seems to be an answer in the appellants' way to the 18 persons who purportedly removed the 3<sup>rd</sup> respondent. The law is elementary that where the Constitution or a Statute contains a general provision, the specific will prevail over the general provision. In this wise, it is my view that the specific provision of section 188(9) will prevail over the general provision of section 102. Accordingly the removal of the 3<sup>rd</sup> respondent is governed by section 188(9) and not section 102 of the Constitution."*

It should be noted that in the Inakoju vs Adeleke's case, 18 out of 32 members of the Oyo State House of Assembly embarked upon the adventure of impeaching the State Governor. **It is my view that until the vacancies created by the carpet crossing members are filled by the process of by-election, the Plateau State House of Assembly can only transact such legislative duties that require the participation of less than 2/3 majority of ALL the members of that House, which duties definitely excludes impeachment proceedings.**

**I have limited my consideration of the appeal to the question as to whether section 188 of the 1999 Constitution, particularly subsection (9) thereof, had been complied with' in the removal or impeachment of the 1<sup>st</sup> respondent primarily because there is no dispute as to the fact that only 8 out of 24 making up "all the members" of the Plateau State House of Assembly initiated and carried out the impeachment process of the 1<sup>st</sup> respondent. So on that point alone, which is a Constitutional requirement, it is clear that the Court of Appeal was right in coming to the conclusion that the said impeachment was not in conformity with the Constitutional provisions and consequently invalid. That holding is unassailable and is sufficient to sustain the decision of the lower court without more.**

It is true that section 188(10) of the 1999 Constitution ousts the jurisdiction of the courts in respect of the impeachment of a Governor or Deputy Governor but that must be subject to the rule that the legislature or the House of Assembly complied with all the Constitutional requirements in section 188 needed for the impeachment as the courts have jurisdiction to determine whether the said Constitutional requirements

have been strictly complied with or not.

**I have to put it on record that the desire of the judiciary to curb the now notorious attitude of some legal practitioners and politicians faced with very bad cases to employ delay tactics to either**  
 B **defeat the ends of justice or postponed the evil day, needs the encouragement of all well meaning legal practitioners, particularly the very senior members of the profession. It is apparent that in**  
 C **impeachment cases, like election matters, time is of the very essence. In the instant case which was commenced by originating**  
 D **summons designed to expedite the matter, the objection to the jurisdiction of the trial court, if well intentioned and not directed or**  
 E **aimed at causing inordinate delay in the determination of the issues, could have been taken together with the substantive matter**  
 F **so as to speed up the process of adjudication. Rather than adopt that prudent procedure, the appellants chose to appeal against the well intentioned decision of the trial court to hear arguments on**  
 G **both the preliminary objection on jurisdiction and the originating**  
 H **summons expecting that in the event of being overruled they would have to return to the trial court for the hearing of the substantive matter; meanwhile time, like tide, as they say, waits for no man; it keeps on running out and at the end may likely leave justice prostrate and the aggrieved party frustrated and bitter with the judicial system. This Court just has to do something about the situation for the restoration of hope and credibility in the system for the benefit of all. Is it not said that justice delayed is justice denied? The reign of technical justice is over. On the throne now sits substantial justice. Long may you reign, substantial justice!**

In conclusion, it is clear that the appeal lacks merit and is accordingly dismissed by me with N10,000.00 costs against the appellants: I wish I could award more, but, my hands are tied.

H The judgment of the Court of Appeal restoring and reinstating the 1<sup>st</sup> Respondent *Joshua Chibi Dariye* to his office as the Governor of Plateau State of Nigeria with all rights, privileges and perquisites of the said office is hereby affirmed.



**KATSINA-ALU JSC**

This is an appeal from a judgment of the Court of Appeal, Jos Division, delivered on 8 March 2007 nullifying the removal of the 1<sup>st</sup> Respondent, Chief Joshua Chibi Dariye by the Plateau State House of Assembly. B

I have had the advantage of reading in draft the judgment of my learned brother Onnoghen JSC in this appeal. I entirely agree with it.

The facts of the case have been fully set out in the judgment of Onnoghen JSC. The Plateau State House of Assembly constitutes 24 members. It is not in dispute that some time in July, 2006, fourteen (14) out of the twenty-four (24) members of the Plateau State House of Assembly including the Speaker and Deputy-Speaker cross-carpeted from the Peoples Democratic Party (PDP) to Advanced Congress of Democrats (ACD) as a result of which the said 14 members vacated their seats by operation of law. Only 10 members were left. C D

On 5 October 2006 eight (8) members out of the 10 remaining members began a process of impeachment by allegedly serving Chief Dariye with notice of allegations of gross misconduct. The 1<sup>st</sup> Appellant became the new-Speaker. The 1<sup>st</sup> appellant requested the Acting Chief Judge of Plateau State to set up a 7 man Panel to investigate the allegations. The said Panel was headed by the 2<sup>nd</sup> respondent. At the end of their assignment, the Panel submitted a report to the Plateau State House of Assembly. The report was adopted on 13 November 2006 and 1<sup>st</sup> respondent was removed as the Governor, of Plateau State. The central issue in this appeal is whether the actions of the 8 members of the Plateau State House of Assembly was *in* conformity with section 188 of the 1999 Constitution. Section 188 provides that: E F G

188-(1) The Governor or Deputy Governor of a 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 House of Assembly -

(a) is presented to the Speaker of the House of Assembly of the State;

(b) stating that the holder of such office is guilty of gross misconduct in the performance of the functions of his office, detailed particulars of which shall be specified, the Speaker of the House of Assembly shall, within seven days of the receipt of the notice, cause a copy of the notice to be served on the holder of the office and on each member of the House of 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 House of Assembly.

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

(4) A motion of the House of 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 the House of Assembly.

(5) Within seven days of the passing of a motion under the foregoing provisions of this section, the Chief Judge of the State shall at the request of the Speaker of the House of Assembly, 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 or be represented before the Panel by a legal practitioner 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 House of Assembly; and

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

(8) Where the report of the Panel is that the House of 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, the House of Assembly shall consider the report, and if by a resolution of the House of 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 House of Assembly or any matter relating to such proceedings or determination shall be entertained or questioned in any court.

(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 in the House of Assembly to gross misconduct.

It is particularly plain that while the initiation of the impeachment process requires the notice of any allegation to be signed by not less than *one third of the members of the Assembly*, the actual removal of the said Governor requires the support of *not less than two-thirds majority of all its members*. See subsections (2) and (9) above. This means that 8 members of the 24 members of House of Assembly fell far below the 2/3 requirement. Clearly therefore section 188(9) has not been complied with. This alone is sufficient to nullify the entire impeachment proceedings. See *Inakoju v. Adeleke (2007) 4 NWLR (Pt. 1025) 423*.

This appeal therefore has no merit whatsoever and accordingly I dismiss it with ₦10,000.00 costs against the appellants in favour of the 1<sup>st</sup> respondent.

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### MUSDAPHER JSC

I have read before now the judgment of my Lord Onnoghen, JSC just delivered with which I entirely agree. In the aforesaid judgment his Lordship has exhaustively and admirably dealt with all the issues submitted to this court for the determination of the appeal. For the same rea-

sons, which I respectfully adopt as mine, I too, dismiss the appeal as lacking in merit. I abide by the order for costs proposed in the aforesaid leading judgment.

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B

**MOHAMMED JSC**

I have had the advantage before today of reading in draft, the judgment just delivered by my learned brother Onnoghen, JSC. I agree entirely with all the reasons given in the judgment for dismissing this appeal, which has no merit whatsoever. I only wish to add a few words of my own in support of my learned brother.

This appeal stems from the decision of the Court of Appeal Jos Division delivered on 8<sup>th</sup> March, 2007, granting the reliefs sought by the 1<sup>st</sup> Respondent in his action initiated by Originating Summons against the Appellants. Pursuant to the appeal in this Court, the Appellants in their brief of argument filed by their learned senior counsel, raised three issues for the determination of the appeal. The issues are -

*"1. Whether the Court of Appeal was right in invoking Section 16 of the Court of Appeal Act (now Section 15 of the Court Appeal Act, CAP C36 LFN 2004) when neither the Appellants' Notice of Preliminary Objection nor the 1<sup>st</sup> Respondent's Originating Summons had been heard and determined by the trial Court (Grand 4).*

*2. Whether the removal or impeachment of the 1<sup>st</sup> Respondent, Chief Joshua Chibi Dariye, by 8 out of 10 members of the Plateau State House of Assembly, at the relevant time, satisfy the requirements of Section 188 of the Constitution of the Federal Republic of Nigeria, 1999, 14 members of the said House having vacated their seats by 'operation of law (Grounds 1 & 2).*

*3. Whether the Court of Appeal was right in the circumstances of this case in holding that the Plateau State House of Assembly should have waited till the 14 seats vacated by the operation of the law were filled before they could embark on the removal or impeachment of the 1<sup>st</sup> Respondent, Chief Joshua Chibi Dariye (Ground 3). "*

In the 1<sup>st</sup> Respondent's brief of argument however, the following

two issues were formulated. They are -

*“ 1. Whether having regard to the peculiar facts and circumstances in the case, the Court of Appeal was right in invoking the powers vested on it by Section 16 of the Court of Appeal Act CAP 75, LFN, 1990, to hear and Determine both the Preliminary Objection and the Originating B Summons in this case (Ground 4).*

*1. Whether there was compliance with Section 188(2), (4), (5) and (9) of the Constitution of the Federal Republic of Nigeria, 1999, in the removal of the 1<sup>st</sup> Respondents as the Governor of Plateau State having C regard to the entire circumstances of this case (Grounds 1, 2 and 3).”*

As far as I am concerned, the main and crucial issue for determination in this appeal is whether the removal or impeachment of the 1<sup>st</sup> Respondent in an impeachment proceedings commenced and concluded by 8 out of the 10 members of the Plateau State House of Assembly was D done in strict compliance with the provisions of the 1999 Constitution of the Federal Republic of Nigeria. The facts or circumstances surrounding the procedure adopted in the removal or impeachment of the 1<sup>st</sup> Respondent are not at all in dispute between the parties. The Plateau State House E of Assembly as a creation of Section 90 of the 1999 Constitution, has 24 members as prescribed under Section 91 of the same Constitution. It is not in dispute that 14 of the 24 members of the House had vacated their seats by virtue of Section 109(1)(g) of the same Constitution. Also not in F dispute is the fact that of the 10 remaining members of the House, only 8 of them initiated and took part in the proceedings of the House, which culminated in the alleged removal, or impeachment of the 1<sup>st</sup> Respondent.

The law governing impeachment proceedings in any State House G of Assembly is contained in Section 188 of the 1999 Constitution which states in sub-section (1) as follows: -

*“188(1) The Governor or Deputy Governor of a State may be removed from office in accordance with the provisions of this Section.”*

The first requirement under this section is the signing of the notice H of allegations in writing by not less than one third of the members of the House. This requirement appears to have been met by the Appellants in respect of the number of members signing the notice in the present case

where 8 out of the 24 members of the House, signed the notice of allegation of gross misconduct against the 1<sup>st</sup> Respondent.

The second requirement is that a motion of the House of 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 the House of Assembly. Here, the two-thirds of all the 24 members of the House of Assembly in the present case is 16 members. Obviously, the Appellants who were only 8 out of the 24 members of the House, could not be said to have satisfied the mandatory requirement of the Section in validly passing the motion that the allegations against the 1<sup>st</sup> Respondent be investigated. In this respect, the removal or impeachment proceedings of the House against the 1<sup>st</sup> Respondent, ought to have been terminated in the absence of the required majority of members to support and pass the motion of impeachment. By proceeding with the impeachment proceedings therefore, the Appellants were clearly in breach of the provisions of Section 188(4) of the 1999 Constitution.

The third numerical requirement of the members of the House of Assembly in the impeachment proceedings is that the report of the Investigation Panel must be adopted by a resolution supported by not less than two-thirds of all the members of the House, before the 1<sup>st</sup> Respondent shall have been considered as having been validly removed. Here again, the exercise having been carried out by the Appellants who were less than two-thirds of all the 24 prescribed members of the House of Assembly, is far from meeting the requirement of Section 188(4) of the 1999 constitution.

It must be stressed that although the remaining 10 members, of the Plateau State House of Assembly might have convened and conducted valid proceedings of the House by virtue of having formed a quorum under 96(1) of the 1999 constitution which required only one-third of all the members of the House, this is only for the purpose of conducting ordinary proceedings of the House. Where the consideration of special or extra ordinary matters requiring two-thirds majority of all members of the House is in hand, the Appellants as members of the House who do not

constitute at least two-thirds of all the members of the House, remained incompetent and not qualified to initiate and conduct valid proceedings in such special or extra ordinary matters in the House. The argument of the learned senior counsel for the Appellants that the number of the remaining 10 members of the House of Assembly must be used in the determination of the required two-thirds majority of members by virtue of Section 102 of the 1999 constitution, may lead to absurdity if accepted. This is because by this rather curious submission of the learned senior counsel that the House of Assembly may act notwithstanding any vacancy in its membership, the proceedings of the House consisting of only one member could be regarded as valid under Section 102 of the 1999 constitution. Certainly, this was not the intention of the framers of the Constitution. The correct position of course in this respect is that the provisions of Section 102 must be read along with Section 96 of the 1999 constitution, which prescribes a minimum number of members - namely, one third of all the members of the House that can validly sit and conduct the business of the House of Assembly.

With these few remarks, I am in complete agreement with the Court below in its judgment now on appeal that the removal or impeachment of the 1<sup>st</sup> Respondent by the Appellants was done in flagrant breach of the provisions of the 1999 constitution and therefore a nullity. I also agree with the order of that Court restoring the 1<sup>st</sup> Respondent to his office as the Governor of Plateau State of Nigeria.

In the result this appeal fails and the same is hereby dismissed by me with N10,000.00 costs against the Appellants.

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### **OGBUAGU JSC**

I have had the privilege of reading before now, the lead Judgment of my learned brother, Onnoghen, JSC. I agree with his reasoning and conclusion that the appeal lacks merit. However, for purposes of emphasis, I will make my brief contribution.

The facts that are not in dispute, can be summarized by me as follows:

1. The Plateau State House of Assembly (hereinafter called “the House of Assembly”) at the inception, had or consisted of twenty-four (24) “Hon.” Members.

2. Fourteen (14) of the members, cross-carpeted or decamped to another political party - the Advance Congress of Democrats (ACD) following which, their seats were declared vacant by INEC (Independent National Electoral Commission). I note however, that at the time of the purported impeachment of the 1<sup>st</sup> Respondent, no By-Election had been conducted or held, to fill the said vacant seats by INEC.

3. Eight (8) of the remaining members out of Ten (10), sat and appointed the 1<sup>st</sup> Appellant, as “Speaker Pro Tempore” - and who wrote to the Acting Chief Judge of the State High Court, to set up a Seven (7) man Panel to investigate the allegation of gross misconduct against the 1<sup>st</sup> Respondent. This was in spite of an order of injunction from a competent court of jurisdiction. The said Panel, blatantly and in gross contempt, refused, to obey the said court order notwithstanding that as a Panel or Tribunal, it was an inferior court bound to obey such order from a Superior Court recognized by the 1999 Constitution of the Federal Republic of Nigeria.

4. The eight (8) members out of ten (10) members that sat to vote for the impeachment of the 1<sup>st</sup> Respondent, relied on an “Interim Report” of the said Panel, a copy of which, was not served on the 1<sup>st</sup> Respondent.

The question I or one may ask is, having regard to the clear and unambiguous provisions of Section 188 of the Constitution of the Federal Republic of Nigeria, 1999 regarding the removal of a Governor or his Deputy, can an impeachment be effected or carried out, just like any other business of the House of Assembly having regard to the provisions of Section 102 of the said Constitution? I think not. This is because, Section 188 of the same Constitution, deals with the removal of the Governor or the Deputy from office. If the seats of the fourteen (14) members who defected to another political party, were declared vacant by INEC, in my respectful but firm view, a By-election, should have been held, to fill the said seats before any impeachment proceedings, could validly be commenced and concluded. I say so because, the two thirds



(2/3) of the members of the House of Assembly that can validly carry out the impeachment, must obviously, be sixteen (16) members having regard to the fact that the House of Assembly, is made up of or consists of twenty-four (24) members. It is not disputed that only ten (10) members made up the members of the House of Assembly, out of which, eight (8) members, initiated and carried out the impeachment proceedings. As noted in the case of *Inakoju & 17 ors. v. Hon. Adeleke & 3 ors. (2007) NWLR (Pt. 1025) 427; (2007) 1 S.C. (Pt.1) 1; (2007) Vol. 2 MJSC. 1; (2007) All FWLR (Pt.353) 3 and (2007) Vol. 143 LRCN 1* the impeachment or removal of a Governor, is a serious business or matter and therefore, the provisions of Section 188 of the 1999 Constitution, must be strictly complied with. Surely and certainly and as rightly found as a fact by the court below, eight (8) members, is one third (1/3) of twenty-four (24) members. In effect, while eight (8) members is more than two thirds (2/3) of ten (10) members, eight (8) members, is less than two thirds (2/3) members of twenty-four (24) members. Thus, the eight (8) members of the House of Assembly, are not, were not and could not by any stretch of imagination, be two third (2/3) stipulated by Section 188 of the 1999 Constitution notwithstanding the provision of Section 102 of the same Constitution. I so hold. I repeat and maintain that it is only when the fourteen (14) vacant seats, have been filled or should have been filled through a By-Election by INEC, will/would or can/could the full members of the House of Assembly or two thirds (2/3) of its membership, validly impeach the 1<sup>st</sup> Respondent. The purported impeachment of the 1<sup>st</sup> Respondent by the said eight (8) members, was not an action or an impeachment of the said House of Assembly.

Significantly and remarkably, as rightly stated by the court below, Section 188 (2) of the 1999, was not complied with. The Notice of the allegation of grave misconduct, signed by the eight (8) members of the House of Assembly and as found as a fact and held by the court below, was not dated and was never served on the 1<sup>st</sup> Respondent. I even note firstly, that the 1<sup>st</sup> Appellant who was made the Speaker Pro Tempore, was one of the signatories to the impeachment Notice. Pursuant to Section 188 (2) of the 1999 Constitution, the one third (1/3) of the members

required to sign the said Notice, does not include the Speaker.

Secondly, Section 188 (5) of the 1999 Constitution, requires that the request to the Chief Judge of the State to constitute a Panel to investigate the allegations against the Governor, should be made by the Speaker of the House of Assembly and nobody else. Exhibit C, was not signed by the Speaker of the House of Assembly, but was signed by the Speaker Pro Tempore. I am aware that Section 8 of the 1999 Constitution, provides as follows:

“In the absence of the Speaker and Deputy Speaker, such member of the House as the House may elect for that purpose shall preside. Such member shall be known as “Speaker Pro Tempore “.

I agree with the court below that the above provision, did not refer to a Speaker Protempore, but to the duly elected Speaker of the House of Assembly. If it were to be otherwise, the Constitution should have so provided but it did not and has not so provided. In the interpretation of the Constitution/Statute, it has been stated and re-stated that where its provisions are clear and unambiguous, they should be given their simple, natural and ordinary meaning without introducing extraneous matters. See the case of *Chief Fawehinmi v. Inspector-General of Police & ors.* (2002) 7 NWLR (Pt.767)606(a) 678; (2002) 5 SCNJ. 103.

Thirdly, Section 188(9) provides that upon the receipt of the Panel’s Report that the allegation has been proved, the House of Assembly, shall consider the Report and if by a resolution of the House of 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, as rightly found as a fact and held by the court below. There is no evidence from the Records, of any such resolution of the House of Assembly. In other words, there is no evidence of any resolution supported by two third majority of all its members adopting the said report of the said Panel.

Fourthly, the said Panel, had not in fact, completed its assignment as what was submitted by it as I noted hereinabove, was an Interim Report. The impeachment, was therefore, based or predicated on an In-

terim Report. I believe that an Interim Report, is intended to last for only a short period of time, until a final report is submitted. From all intents and purposes, the 1<sup>st</sup> Respondent, was not therefore, given an opportunity to be heard by the Panel before the said Interim Report, was submitted. The effect or consequence, was a breach of the constitutional right of fair hearing clearly enshrined in Section 36(1) of the 1999 Constitution.

From all these above stated breaches of Section 188 of the 1999 Constitution, it is crystal clear, that the purported impeachment of the 1<sup>st</sup> Respondent, was null and void and of no effect, being illegal and unconstitutional. I so hold.

With the greatest respect and humility to the leading Senior learned counsel (an SAN) for the Appellants, this appeal which Akaahs, JCA, described in his concurring Judgment, as a “storm *in* a tea pot”, amounts to me, as a “Gamble” - i.e. “Let me try if it can work” so to speak. I say this because, in the face of the decision of this Court in *Inakaju & ors. v. Hon. Adeleke* (supra) sometimes called “Ladoja’s case”, the very lengthy Briefs, are no longer Briefs as the word strictly implies, but are however, evidence of industry that is regrettably and with respect, bereft of facing squarely, the real simple issue in controversy - i.e. the full/complete compliance with Section 188 of the 1999 Constitution by the Appellants.

It is from the foregoing and the fuller lead Judgment of my learned brother, Onnoghen, JSC, that I too, dismiss the appeal as being devoid of any substance and merit. I too, affirm the decision of the court below and award the paltry sum of N10,000.00 (ten thousand naira) fixed by the Rules of this Court, in favour of the 1<sup>st</sup> Respondent payable to him by the Appellants.

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### TABAI JSC

I was privileged to read, in advance, draft of the leading judgment prepared by Onnoghen, J.S.C. I agree entirely with the reasoning and conclusion therein. The facts are clearly set out in the judgment. The originating summons raised sixteen questions and sought twenty-three reliefs which are also set out in the leading judgment.

I shall however make some comments by way of emphasis in the course of which I may restate only such facts or other materials as would make my contribution comprehensible. The events sequel to which the appeal was lodged at the court below started in the proceedings of the trial court on the 13/12/2006 when learned senior counsel, Mr. Toro made an oral application. He said:

*“We have an humble application to make. It is a constitutional matter in the sense that the Res concerns the constitutional tenure of the Plaintiff. It is a notorious fact that all elected Governors sworn into the office on the 29/5/2003 have to vacate or their tenure will lapse constitutionally after four years from that date which is 29/5/2007. The Plaintiff has instituted the suit before this court and this court has complete dominion over it. Consequently the life of Res in this suit has only five months after which it will die. We therefore submit with all sense of responsibility that the exigencies of the matter require speedy and expeditious hearing and determination of the case, otherwise the plaintiff may end up being driven away from the seat of judgment by effluxion of time. Justice delayed amounts to justice denied. We humbly submit that it is now settled law that where proceedings are commenced by originating summons and the defendant files an objection challenging the jurisdiction of the court, it is neater, more expedient, tidier and better that arguments in the substantive originating summons and the preliminary objection be taken together in one proceedings. That however does not preclude the court when delivering its decision on the matter find that you have no jurisdiction, that will be the end of the matter. In view of the urgency of the matter we urge court to exercise its discretion judicially and judiciously. I apply that the court takes both the originating summons and preliminary objection together in one hearing. I urge court to consolidate them and here them together ....”*

Learned senior Counsel then cited Senate President v. Nzeribe H [2004] 9 N.W.L.R. (pt. 878) 251 at pages 267, 227 and 274. He then went further and requested as follows:-

*“In furtherance of the modern trend in the Judiciary, we are also making an ancillary request that the court should go further to order*

*exchange of written address by counsel on both sides. I am ready to submit my written address within seven days. We urge court to exercise its discretion to grant this our request. In the meantime if any party wishes to file further processes, he can do so within five days if he so desires."*

In reaction, learned counsel for the 2<sup>nd</sup> - 7<sup>th</sup> Defendants Mr. Solomon Umoh pointed out that the Notice of Preliminary Objection was only filed on the previous day the 12/12/06 and conjectured that it had not been served on the 1<sup>st</sup> Defendant. He pointed out also the Notice of Preliminary objection was supported by an affidavit to which the 1<sup>st</sup> Defendant and others might wish to react and urged that the application be riot heard.

In his ruling, the trial court noted that the 1<sup>st</sup> Defendant had not been served with the Notice of Preliminary objection and also that he had not even entered appearance despite having been served with the processes in the substantive suit. The court then went further to state:-

*"Perhaps it will be fairer still to serve him with further process to wit a hearing notice to carry him along as regards the hearing of the substantive matter along with the preliminary objection. I am of the humble view that once jurisdiction is challenged and it being most fundamental, the preliminary objection should be taken first and then the originating summons. It is further observed that the court has only two days to sit after which it proceeds on vacation. Unless a fiat is given, all proceedings resume after the vacation in January 2007. It is therefore an administrative matter for the court to sit during vacation. In the circumstances this court has two options. (I) To adjourn the matter for hearing of the preliminary objection or adjourn the matter for hearing of same but order that the parties submit written addresses and same adopted later."*

After some remarks by both Mr. Toro (SAN) and Mr. Umoh the trial court adjourned the matter and remarked as follows:-

*"Adjourned to 15/12/2006 for hearing of the Preliminary objection. Order 1<sup>st</sup> Respondent to be served with the Preliminary Objection today."*

On the 15/12/2006 the court as well as both counsel made some remarks and reviewed of the proceedings of the 13/12/2006. Although

Mr. Umoh said that he was not ready for anything during the Christmas vacation both himself and Mr. Toro SAN and even the court clearly indicated their desire for expeditious hearing and determination of the case. With the consent of counsel for both parties briefs of argument were  
B ordered to be filed and exchanged and the matter was adjourned to the 19/1/2007. While concluding the proceeding of that day the learned trial judge ruled as follows:-

*“Having considered the exigencies of the time and the fact that  
C this is an originating summons, I order that both parties submit their written briefs on the suit along with that of the P/Objection. If the preliminary objection succeeds, it will be the end of the matter. If it does not succeed, the substantive suit may be heard (sic) and considered. I rely on the procedure adopted in the case of Adeleke v. Oyo State Government.  
D Adjourned to 19<sup>th</sup> January 2007 for adoption of written briefs or addresses.”*

It is the above proceedings and ruling of the High Court on the 15/12/06 that led to the appeal to the court below. The Notice of Appeal filed  
E on the 19/12/06 contained two grounds of appeal. The Appellants at the court below were the 2<sup>nd</sup> - 7<sup>th</sup> Defendants who were therefore listed therein as the 1<sup>st</sup> - 6<sup>th</sup> Appellant. The 1<sup>st</sup> Defendant who, though served with all the necessary processes at the High Court, never entered appearance and never filed any process indicating his challenge of the originat-  
F ing summons, was listed as the 2<sup>nd</sup> respondent at the court below. He was, in practical terms, a nominal party. He held out himself as such a nominal party having indicated no opposition or accession to the originating summons. In reaction to the Notice of Appeal, the Plaintiff 1<sup>st</sup> Re-  
G spondent, on the 21/12/06, filed a Respondent’s Notice indicating that at the hearing he would contend that the decision of the lower court made on the 15/12/06 be affirmed on ground other than those relied upon by the trial court in its ruling.

H At the Court of Appeal the 1<sup>st</sup> - 6<sup>th</sup> Appellants and the Plaintiff/1<sup>st</sup> Respondent through their counsel filed and exchanged their briefs of argument. Surprisingly the 1<sup>st</sup> Defendant also filed a Brief of Argument on the 21/2/07. It was prepared by L. I. Walle, Deputy Director of Civil

Litigation, Ministry of Justice Jos. Earlier, on the 30/1/07 the Plaintiff/1<sup>st</sup> Respondent had filed a Notice of Preliminary objection, the ground being that the Appeal was incompetent.

I think it is, at this juncture, appropriate to refer to some contents of the Plaintiff/1<sup>st</sup> Respondent's Notice filed on the 21/12/06. The grounds upon which the Notice was predicated were stated therein as follows:

1. The court has inherent powers where still seized of the matter to determine the precedence of hearing being the Dominis litis (master of situation).

2. The court on the basis of the principle of Stare Decisis is obliged to adopt the procedure or decision of a superior court.

3. The decision of the Court of Appeal in Adeleke v. Oyo State House of Assembly [2006] 16 N.W.L.R. (pt. 1006) 608 as to the manner of taking an originating summons in a constitutional matter (when the impeachment of a sitting Governor is involved) and a preliminary objection is filed justifying the decision of Hon. P. D. Damulak.

4. Similarly the earlier decision of this Honourable Court in Senate President v. Nzeribe (2004] 9 N.W.L.R. (pt. 898) 251 cited before the lower court as well as the Supreme Court case of A.P.C. Ltd v. N.D.I.C. (NUB) Ltd [2006] 15 N.W.L.R. (pt. 1002) 404 at 443 provide adequate justification for the decision of Hon. P.D. Damalak.

5. The decision of the court to take the Preliminary Objection on the 13/12/2006 was per incuria and therefore a nullity and as such the lower court was not bound by it.

6. It is prudent on the part of the lower court to take arguments on both the preliminary objection and the originating summons having regard to the expediency involved in this case.

And he sought the following reliefs:

(a) An order affirming the decision of the lower court on the six grounds stated herein other than those relied upon by the lower court.

(b) An order hearing the Notice of Preliminary objection together with the originating summons pursuant to section 16 Court of Appeal Act 1976.

Arguments were proffered for and against the Respondent's No-

tice in the Briefs.

In its judgment delivered on the 8/3/07, the Court of Appeal dismissed the appeal and affirmed the decision of the trial court of 15/12/06. The judgment made pronouncement on a number of key issues. The Court dismissed the Preliminary objection on the competence of the appeal for lack of merit. The 1<sup>st</sup> Defendant/2<sup>nd</sup> Respondent's Brief dated and filed on the 21/2/07 was discountenanced and expunged from the record. As I stated above, the Court of Appeal Act 1976 considered the Preliminary Objection raised by the Appellants filed on the 12/12/06 and same was dismissed for lack of merit. Finally the judgment found merit in the originating summons and granted eight reliefs.

On the 16/4/07 when this appeal was heard the learned Honourable Attorney-General of Plateau State, E. G. Pwatok sought leave to withdraw the 1<sup>st</sup> Defendant/Appellant's Brief of Argument filed on the 30/3/07 and same was struck out.

In the Appellant's Brief of Argument Chief Gani Fawehinmi SAN raised three issues for determination; namely:

1. Whether the Court of Appeal was right in invoking section 16 of the Court of Appeal Act (now section 15 of the Court of Appeal Act, Cap. C. 36 LFN 2004) when neither the appellants' Notice of Preliminary Objection nor the 1<sup>st</sup> respondent's originating summons had been heard and determined by the trial court.

2. Whether the removal or impeachment of the 1<sup>st</sup> respondent, Chief Joshua Chibi Dariye, by 8 out of 10 members of the Plateau State House of Assembly, at the relevant time, satisfy (sic) the requirements of section 188 of the Constitution of the Federal Republic of Nigeria, 1999, 14 members of the said House having vacated their seats by operation of law.

3. Whether the Court of Appeal was right in the circumstances of this case in holding that the Plateau State House of Assembly should have waited till the 14 seats vacated by the operation of law were filled before they could embark on the removal or impeachment of the 1<sup>st</sup> respondent, Chief Joshua Chibi Dariye.

In the Plaintiff/1<sup>st</sup> Respondent's Brief of Argument, Emmanuel J.



J. Toro SAN formulated two issues for determination. They are:

(1) Whether having regard to the peculiar facts and circumstances in this case the Court of Appeal was right in invoking the power vested on it by section 16 of the Court of Appeal Act, Cap. 75 L.F.N. 1990, to hear and determine both the preliminary objections and the originating B summons in this case.

(2) Whether there was compliance with section 188(2), (4), (5) and (9) of the Constitution of the Federal Republic of Nigeria, 1999, in the removal of the 1<sup>st</sup> Respondent as the Governor of Plateau State hav- C ing regard to the entire circumstances of this case.

In my view, the Respondent's two issues are to the same effect as the Appellants' issue one and two. The Appellants' issue three is, in substance the same as their issue two. I shall therefore take only the two D issues.

Extensive arguments have been advanced in the Appellant's Brief, their Reply Brief and the Respondent's Brief. I shall, in the course of my deliberation, make reference to such arguments as and whenever necessary. On the first issue, it was the submission of the Appellants that E section 16 of the Court of Appeal Act did not vest powers in the Court of Appeal to hear and determine the originating summons and the Defendants/Appellants' Notice of Preliminary Objection since such issues had not been first tried and determined at the High Court which alone has F original jurisdiction to try them by virtue of section 272 of the Constitution. A number of authorities were cited, amongst them *Olutola v. Unilorin* [2004] 18 N.W.L.R. (pt. 905) 416 at 469; *Nicon v. Power Industrial Engineering Ltd* [1990] 1 N.W.L.R. (pt. 129) 697, *Faleye v. Otapo* [1995] G 3 N.W.L.R. (pt. 381) 1; *Inakoju v. Adeleke* [2007] 4 N.W.L.R. (pt. 1025) 427, *Gombe v. P.W. (Nig.) Ltd* [1995] 6 N.W.L.R. (pt. 402) 402, *Enekwe v. I.M.B. (Nig.) Ltd* [2006] 19 N.W.L.R. (pt. 1013) 146.

The 1<sup>st</sup> Respondent on his part submitted that in view of the peculiar circumstances requiring extreme urgency and threats to the extinction of the Respondent's office, it was appropriate for the Court of Appeal to invoke its wide powers under section 16 of the Court of Appeal Act to hear and determine the Preliminary Objection and the originating

summons. He relied particularly on *Adeleke v. O.S.H.A.* [2006] 10 N.W.L.R. (pt. 1006) 608 and *Inakoju v. Adeleke* (supra). It was pointed out that both the counsel for the Appellants and counsel for the Respondent invited the Court below to invoke its powers under section 16 to  
B hear the matters before the High Court.

Section 16 of the Court of Appeal Act provides as follows:

*“The Court of Appeal may, from time to time make any order necessary for determining the real question in controversy in the appeal, and may amend any defect or error in the record of appeal, and may  
C direct the court below to inquire into and certify its findings on any question which the Court of Appeal thinks fit to determine before final judgment in the appeal and may make an interim order or grant any injunction which the court below is authorized to make or grant and may direct  
D any necessary inquiries or accounts to be made or taken and generally shall have full jurisdiction over the whole proceedings as if the proceedings had been instituted in the Court of Appeal as court of first instance and may re-hear the case in whole or in part or may remit it to the court  
E below for the purpose of such rehearing or may give such other direction as to the manner in which the court below shall deal with the case in accordance with the powers of that court, or in the case of an appeal from the court below in that court’s appellate jurisdiction, order the case  
F to be re-heard by a court of competent jurisdiction.”*

I have had a careful look at the above provisions of section 16 of the Court of Appeal Act. In the first place it gives the Court of Appeal wide discretionary powers to perform such judicial functions which the court below is authorized to perform but which it has not performed. It  
G is a discretionary power which invocation depends on the peculiar facts and circumstances of each case. And that being so, on one exercise of the courts discretion under the provision is a binding precedent for any subsequent exercise of discretion. It is the peculiar facts and circum-  
H stances of the case that determines the propriety or otherwise of its invocation. The underlined portion of the provision and generally shall have full jurisdiction over the whole proceedings as if the proceedings had been instituted in the Court of Appeal as court of first instance is further

emphasis of the wide powers of the Court of Appeal.

The question is whether there were such facts and circumstances, which justified the invocation of the provision. On this issue the proceedings of the 13/12/06 and 15/12/06 part of which I have produced above in this judgment are relevant. The undisputed facts are that the 1<sup>st</sup> respondent Chief Joshua Chibi Dariye was impeached by 6 or 8 members of the Plateau State House of Assembly on Monday 13/11/06. He therefore instituted this action on the 27/11/06 challenging the impeachment. On the 13/12/06 when the matter first came up for mention he had only about five months to the end of his four years tenure and there was therefore need for expeditious hearing and determination of the case including the preliminary objection filed by the Appellants. Although the trial court directed on the 13/12/06 that the preliminary objection be heard first, it decided to hear both the preliminary objection and the originating summons together and directed to that effect and the matter was adjourned to the 19/1/07 for hearing. On the 8/3/07 when the Court of Appeal gave its judgment the 1<sup>st</sup> Respondent's term as Governor of Plateau State had only about two months left.

In its decision to invoke its powers under section 16 of the Court of Appeal Act, the court per Z. A. Bulkachuwa, J.C.A. at pages 472-473 reason thus:

*“Where time is of essence as in the instant case this court had a number of times resorted to this procedure. See Adeleke v. O.S.H.A. (supra) which procedure was approved by the Supreme Court when the matter went on appeal before it. See also Senate President v. Nzeribe [2004] 9 N.W.L.R. (pt. 898) 251. Furthermore the Appellant had conceded to this prayer by filing a brief in respect of the originating summons. I will therefore take it that both the Preliminary Objection and the Originating Summons be taken and determined together under section 16 of the Court of Appeal Act. I accordingly invoke our powers under the said provision and will proceed to the determination of the Preliminary Objection and subsequently the originating summons if the Preliminary Objection is overruled.”*

The above clearly shows that there existed before the court below

such circumstances that impelled its decision to invoke the provision of the Court of Appeal Act.

Furthermore, in addition to the Appellants filing their Brief wherein the Originating Summons was argued as pointed out by the court below, B the Appellants in the Notice of Appeal filed at the High Court on the 19/12/06 prayed amongst others for: -

*“A further order entertaining the appellants’ argument on the Preliminary Objection in line with the earlier order of the trial judge dated C 13<sup>th</sup> day of December, 2006 pursuant to section 16 the Court of Appeal Act.”* (See page 186 of the record)

And in his oral submission on the 22/2/07 at the court below learned counsel for the Appellants had this to urge:-

*“Having regard to the order of the court of the 13/12/06 we urge D this court to entertain the Preliminary objection under section 16 of the Court of Appeal (Act).”*

I have, in the light of the foregoing no doubt in my mind that in the 18 prevailing facts and circumstances, the resort to section 16 of the E Court of Appeal was most appropriate. The result is that I resolve this issue in favour of the respondent.

On the 2<sup>nd</sup> issue the undisputed facts are that the full complement of the Plateau State House of Assembly is 24 members. On the 25/7/ F 2006 15 14 members of the House left the P.D.P. and joined the Advanced Congress of Democrats (A.C.D.). The speaker of the House of Assembly followed on the 26/7/06. By the operation of section 109(1)(g) of the Constitution they were deemed to have and actually vacated their seats in the House of Assembly leaving its membership to 10. It was 8 out of the G 10 that impeached the 1<sup>st</sup> Respondent.

At page 506 of the record the Court of Appeal reasoned that while 8 legislators of the Plateau State House of Assembly is more than 1/3 of 10 it is less than 2/3 of the full complement of 24 members. In its view H the 2/3 should be 2/3 of members representing the twenty four constituencies in the state and held that the impeachment did not comply with the requirements of section 188 of the Constitution and therefore unconstitutional null and void. Chief Gani Fawehinmi SAN faulted this reasoning

of the court below and submitted, in substance that since the 8 members are competent to perform the State House of Assembly legislative functions, they were competent to impeach the Governor. It was further submitted that 8 members is more than 2/3 of 10 who then constituted the Plateau State House of Assembly and therefore that there was compliance with the provisions of section 188 of the Constitution. He cited A-G Bendel State v. A-G of the Federation [1982] 3 N.C.L.R. 1 at 77 - 78 for the 12 commandments on interpretation of Statute and urged this court so to construe section 188 of the Constitution. B

Mr. Emmanuel J. J. Toro SAN thought otherwise. He referred to section 96(1) and 188 of the Constitution and submitted that the plain grammatical meanings be accorded the provisions. C

I must say without hesitation that I am persuaded to adopt the reasoning and conclusion of the Court of Appeal. Section 188 of the Constitution of the Federal Republic of Nigeria provides for the removal of a Governor or Deputy Governor of a State. It is a strict unique and rigorous provision and understandably so. The Governor of a state and in this case Plateau State, has the entire state as his single constituency. While the 24 members of the Plateau State House of Assembly collectively have the entire State as their constituency. If there are only 23 members of the Plateau State House of Assembly the entire State cannot be said to be represented; one constituency is not represented. The only rational construction in my view is that a Governor of a State can only be removed from office by not less than 2/3 of the entire state as represented by not less than 2/3 of the full complement of House of that state. And 2/3 of the total membership of the House of Assembly is 16. In my view the 1<sup>st</sup> respondent can only be removed from office as the Governor of Plateau State by not less than 16 members under section 188 of the Constitution. I think the impeachment was in violation of the provisions of section 188 of the Constitution and therefore null and void. I therefore also resolve the second issue in favour of the 1<sup>st</sup> Respondent. D E F G H

In view of the foregoing considerations and the better reasons very ably articulated in the leading judgment of my learned brother Onnoghen, J.S.C. I also dismiss the appeal. The judgment of the court

below be and is hereby affirmed by me also. I award N10,000.00 costs against the Appellants.

### ADEREMI JSC

B The appeal here is against the judgment of the court below delivered on Thursday, 8<sup>th</sup>. March 2007 in Appeal No.CA/F/302/2006: Michael Dapianlong & 5 Others V. Chief (Dr.) Joshua Chibi Dariye & Anor. nullifying the removal of the 1<sup>st</sup> respondent (Chief Joshua Chibi Dariye) as Governor of Plateau State by the State House of Assembly on Monday  
C 13<sup>th</sup> November, 2006.

I shall preface the consideration of this appeal with the salient facts leading to this appeal. The Plateau State House of Assembly has 24 members. Further facts emerging indicate that between 25<sup>th</sup> and 26<sup>th</sup> July,  
D 2006, 14 members out of the 24 members of the said House (including the Speaker and Deputy Speaker) cross-carpeted from the Peoples Democratic Party (P.D.P.) under whose platform they were elected to the House in 2003 to Advance Congress of Democrats (A.C.D.). Thereafter, impeachment process of the 1<sup>st</sup> respondent (Chief Dariye) commenced on the 5<sup>th</sup> of October, 2006 with a Notice of allegations of gross misconduct served on him whilst the House had only 10 members: 14 members having cross-carpeted as I have said. Suffice it to say that the Notice of  
E allegations of gross misconduct was signed by 8 out of the 10 remaining  
F members of the House. Whilst the impeachment process lasted, 8 out of the 10 members supported and voted in favour of all the processes of the impeachment of the 1<sup>st</sup> respondent (Dariye) as Governor of Plateau State on the 13<sup>th</sup> of November, 2006. Dissatisfied with the outcome, the 1<sup>st</sup>  
G respondent initiated an action at the High Court of Plateau State by originating summons filed on 27<sup>th</sup> November 2006 supported by a 37-paragraph affidavit in which he sought for the determination of sixteen questions but claimed 24 reliefs against the appellants and the 2<sup>n</sup> respondent  
H — all of who were defendants at the trial court. In their reaction to the 1<sup>st</sup> respondent's originating summons, the appellants filed the following processes: -

“1. A Notice of Preliminary Objection dated 12<sup>th</sup> December 2006.

2. A 12-paragraph affidavit in support of the Notice of Preliminary Objection.

3. A 5-paragraph further and better affidavit in support of the said Notice of Preliminary Objection and

4. A 38-paragraph counter-affidavit deposed to by the 1<sup>st</sup> appellant against the 1<sup>st</sup> respondent's affidavit in support of his originating summons."

Thereafter, a lot of preliminary arguments as to whether to take the originating summons along with the preliminary objection or not ensued before the trial judge, the proceedings of which came to an end on 15<sup>th</sup> December 2006 when the trial judge having listened to all counsel and in adjourning the matter to 19<sup>th</sup> January 2007 for adoption of written briefs or addresses ruled as follows: -

"Having considered the exigencies of the time and the fact that this is an originating summons, I order that both parties submit their written briefs on the suit along with that of the P/Objection. If the preliminary objection succeeds, it will be the end of the matter. If it does not succeed, the substantive suit may be heard (sic) and considered. I rely on the procedure adopted in the case of ADELEKE V. OYO STATE GOVERNMENT."

Being dissatisfied with the above ruling of 19<sup>th</sup> December 2006, the appellants filed a notice of appeal against it. The 1<sup>st</sup> respondent, who was the plaintiff at the trial, filed a Respondent's Notice on 21<sup>st</sup> December 2006 praying that the decision of the learned trial judge made on 15<sup>th</sup> December, 2006 be further affirmed on grounds other than those relied upon by the trial court and that the court invoke the provisions of Section 16 of the Court of Appeal Act to hear both the preliminary objection and the originating summons together. Both parties thereafter filed and exchanged their respective briefs of argument in accordance with the practice and Rules of the Court of Appeal. Arguments of counsel of both parties were taken by the court below on the 22<sup>nd</sup> February 2007. In its considered judgment delivered on the 8<sup>th</sup> of March 2007, the court below dismissed the appellants' appeal and also the Notice of Preliminary Objection filed on 12<sup>th</sup> December 2006 and proceeded to determine the 1<sup>st</sup>

respondent's originating summons and granted eight reliefs claimed thereon.

Dissatisfied with the judgment of the court below delivered on the 8<sup>th</sup> December 2006, the appellants herein invoked the appellate jurisdiction of this court by a Notice of Appeal dated 15<sup>th</sup> March, 2007, which contains five grounds of appeal. Three issues were distilled from the said five grounds and as set out in the appellants' brief of argument, they are as follows: -

C *"(1) Whether the Court of Appeal was right in invoking Section 16 of the Court of Appeal Act (now Section 15 of the Court of Appeal Act, CAP 36 LFN 2004) when, neither the Appellants' Notice of Preliminary Objection nor the 1<sup>st</sup> respondent's originating summons had been heard and determined by the trial court.*

D *(2) Whether the removal or impeachment of the 1<sup>st</sup> respondent, Chief Joshua Chibi Dariye by 8 out of 10 members of the Plateau State House of Assembly, at the relevant time, satisfy the requirement of Section 188 of the Constitution of the Federal Republic of Nigeria, 1999, 14*  
E *members of said House having vacated their seats by operation of law.*

F *(3) Whether the Court of Appeal was right in the circumstances of this case in holding that the Plateau State House of Assembly should have waited till the 14 seats vacated by operation of law were filled before they could embark on the removal or impeachment of the 1<sup>st</sup> respondent, Chief Joshua Chibi Dariye."*

The 2<sup>nd</sup> respondent (John Mark Samchi) who claimed to be dissatisfied with the judgment of the court below also appealed against it to this court; filed his Notice of Preliminary Objection to the grounds of appeal urging that grounds 1 to 8 be struck out. Suffice it to say that on 16<sup>th</sup> April 2007 when this appeal came before us for argument, he (2<sup>nd</sup> respondent/appellant) sought and obtained the leave of this court to withdraw his said appeal consequent upon which same was dismissed. As a follow up, the 1<sup>st</sup> respondent's (Chief (Dr.) Joshua Chibi Dariye) brief of argument in response to John Mark Samchi's appeal could no longer stand. However, Chief Joshua Chibi Dariye who is the 1<sup>st</sup> respondent to the appeal of the six appellants combined in his brief of argument filed on



5<sup>th</sup> April 2007 Notice of Preliminary Objection to the grounds of appeal contained in the Notice of Appeal filed by the six appellants and arguments against the substantive appeal. Two issues were identified by the 1<sup>st</sup> respondent for determination by this court and as set out in his brief of argument, they are in the following terms: -

*“(1) whether having regard to the peculiar facts and circumstances in this case, the Court of Appeal was right in invoking the powers vested on it by Section 16 of the Court of Appeal Act, Cap 75, LRN, 1990, to hear and determine both the Preliminary Objection and the Originating Summons in this case.*

*(2) whether there was compliance with Section 188 (2), (4), (5) and (9) of the Constitution of the Federal Republic of Nigeria, 1999, in the removal of the 1<sup>st</sup> respondent as the Governor of Plateau state having regard to the entire circumstances of this case.”*

When this appeal came to us for argument on Monday 16<sup>th</sup> April 2007, Mr. Pwazok, learned Attorney-General for Plateau State representing the 2<sup>nd</sup> respondent (John Mark Samchi - the Chairman of the 7-man Panel of Investigation into Allegations of Gross Misconduct Against the Executive Governor of Plateau State) who also appealed against the said judgment, sought and obtained the leave of court to withdraw his client's Notice of Appeal. This court accordingly dismissed the appeal on the spot following its withdrawal. For the purpose of clarity in this appeal, I refer to John Mark Samchi as the 2<sup>nd</sup> set of appellant. Chief Gani Fawehinmi, learned Senior Counsel representing the appellants referred to, and adopted his clients' brief of argument filed on the 3<sup>rd</sup> of April 2007 and the reply brief filed on 11<sup>th</sup> April 2007; he submitted that on the face of the record of proceedings there is no dispute as to the findings of facts by the court below adding that none of the parties requested for the invocation of the provisions of Section 16 of the Court of Appeal Act; the learned Senior Counsel therefore reasoned that the invocation of the provision of that section was totally unjustifiable, as according to him, the decision of the learned trial judge that gave rise to the appellants' appeal to the court below was simply an order of the learned trial judge of 15<sup>th</sup> December 2006, adjourning the appellants' Notice of Preliminary Objec-

tion and the 1<sup>st</sup> respondent's originating summons for adoption of written addresses/briefs on the 19<sup>th</sup> January 2007. In effect, he further added, the Notice of Preliminary Objection as well as the plaintiff/1<sup>st</sup> respondent's originating summons had not then been heard and determined by the trial judge. The court below (Court of Appeal) it was further argued, had no further appellate jurisdiction to exercise on the appellants' preliminary objection and the 1<sup>st</sup> respondent's originating summons - both having not been heard nor determined by the trial court; since the question to be tried by the court below (Court of Appeal) which derives its appellate jurisdiction under the provisions of Section 240 of the Constitution must be tied to the questions arising from the decision of the trial court which must be contained in valid grounds of appeal; for this submission, reliance was placed on the decision in *Ikweki v.Ebele* (2005) .11 NWLR (pt.936) 397. Advancing his submission in the brief of his clients, the senior learned counsel submitted that the crucial question to resolve in this appeal is whether the general powers of the Court of Appeal under Section 16 of the Court of Appeal Act could be invoked by the court below (Court of Appeal) to determine the merits or otherwise of the appellants' Notice of Preliminary Objection and the 1<sup>st</sup> respondent's originating summons when none of them had been heard and determined by the trial judge. He then reasoned that the crucial question must be answered in the negative, for as was contended, the powers of the Court of Appeal under Section 16 are not all-purposes powers which disregard the original jurisdiction of the trial judge; the following cases were relied upon for the submission viz *Olutola v. Unilorin* (2004) 18 NWLR (pt.905) 416 at 469; *NICON v. Power and Industrial Engineering Co. Ltd* (1990) 1 NWLR (pt.129) 697; *Faleye v. Otapo* (1995) 3 NWLR (pt.381) 1; *Inakoju v. Adeleke* (2007) 4 NWLR (pt.1025) 427 and *Enekwe v. 1MB (Nig) Ltd.* (2006) 19 NWLR (pt.1013) 146; greater reliance was placed on the decisions in (a) *Gombe v. P.W. (Nig.) Ltd* (1995) 6 NWLR (pt.402) 402 and (b) *Enekwe case* (supra) The decision in *Inakoju case* supra, it was submitted, does not apply to the instant case, as according to him, the circumstances in the aforesaid case are not present here.

On the respondent's Notice to the appellants' appeal, it was sub-

mitted, was incompetent for the reason that it seeks to raise issues of law and fact which were not raised at the trial court for determination and on which no notice of appeal has been filed; respondent's Notice it was added, is circumscribed by the decision of the lower court appealed against; a number of court decisions, the like of *Ogunbadejo v. Owoyemi* B (1993) 1 NWLR (pt. 271) 271 at 534 - 535; *Nabiss Inc. v. Allied Biscuits Co. Ltd* (1998) 10 NWLR (pt.568) 16 at 26; *Ibe v. Onuorah* (1999) 14 NWLR (pt.638) 340 at 348 - 350 and *Nigerian Port Pic, v. Oseni* (2000) 8 NWLR (pt.669) 410 at 419 were relied upon in the said brief. No report was presented before the court below yet, that court set it aside even C when it is apparent that the court was not fully seised of the facts of the case. On Issues Nos. 2 and 3, learned counsel submitted that in interpreting the provisions of the Constitution, all the provisions should be read together. In response to the preliminary objection as to the grounds of D appeal, learned counsel took a critical look at all of them and submitted that they are all grounds of law; while urging that the preliminary objection be dismissed he urged that the appeal be allowed. Mr. Toro, learned senior counsel for the 1<sup>st</sup> respondent (Chief Joshua Chibi Dariye) referred to and adopted the 1<sup>st</sup> respondent's brief; he stood by the Notice of Preliminary Objection of his client maintaining that the grounds of appeal formulated by the appellants are at best, of mixed law and facts or facts alone and therefore, are not competent, they should be struck out. On F Issues Nos. 1 and 2, learned senior counsel argued that having regard to the urgency that the case generated, the invocation of the provisions of Section 16 of the Court of Appeal Act was inevitable. On Issue No.3, it was the submission of the learned senior counsel that 2/3 of the membership of the House of Assembly, Plateau State whose full compliments is G 24 is 16. He urged that the appeal be dismissed.

As I pointed, out above, this suit was commenced by originating summons. It has long been well established that originating summons, which is one form of beginning a law suit, is only applicable in such H circumstances as where there is no dispute on question of fact or the likelihood of such dispute. It is not meant to enlarge the jurisdiction of a court for it is merely a method of procedure. It is not available indeed, it

is not a substitute for initiating contentious issues of facts; for in such proceedings, the appropriate method is proceedings by a writ of summons in which what is alleged by the parties will be clearly defined in the pleadings and both sides will be at liberty to lead oral evidence in proof of the averments in their respective pleadings. Since it is a procedure used when the facts are not in controversy, a plaintiff applying its use must always accompany his originating summons with an affidavit in support which authenticates his case in clear terms; and a defendant, upon service of the processes of the plaintiff on him, may wish to file a counter-affidavit in opposition to the case presented. See *National Bank of Nigeria Ltd. & Anor. v. Lady Ayodele Alakija & Anor.* (1978) 9 & 10 S.C. 59. Unlike pleadings which do accompany a writ of summons, once parties to an originating summons have exchanged their processes filed, they are not at liberty to adduce oral testimonies in proof of the depositions in their respective affidavit and counter-affidavit - the contents of the two are printed or documentary evidence which must not be added to or removed therefrom. Since no oral testimony is allowed then demeanour of the parties and/or their witnesses plays no part in the adjudication. All the judex, be he at the trial court or the appellate court need do is to deduce inference therefrom or evaluate them. Seized of such processes, it seems to me that a judex will be ready to proceed to the hearing and determination of the suit.

Before I continue, I am of the view that it is at this stage appropriate to reproduce the provisions of Section 16 of the Court of Appeal Act which is in the following terms: -

*“The Court of Appeal may, from time to time, make any order necessary for determining the real question in controversy in the appeal, and may amend any defect or error in the record of appeal, and may direct the court below to inquire into and certify its findings on any question which the Court of Appeal thinks fit to determine before final judgment in the appeal and may make an interim order or grant any injunction which the court below is authorized to make or grant and may direct any necessary inquiries or accounts to be made or taken and generally shall have full jurisdiction over the whole proceedings as if the proceed-*

*ings had been instituted in the Court of Appeal as court of first instance and may re-hear the case in whole or in part or may remit it to the court below for the purpose of such re-hearing or may give such other directions as to the manner in which the court below shall deal with the case in accordance with the powers of that court; or, in the case of an appeal from the court below in that court's appellate jurisdiction, order the case to be re-heard by a Court of competent jurisdiction."*

I have read the decision to which our attention was drawn and I do agree that the above provisions of Section 16 cannot be interpreted to override or replace the original jurisdiction of the High Court of a State conferred on it under Section 272 of the Constitution of the Federal Republic of Nigeria. But if the purpose of invoking the provision of the aforementioned section is to obviate the incidents of delayed justice, Section 16 must be welcomed particularly when the facts on which the parties are predicated their case and defence respectively are not controversial. A quick look at the cases of Ikweki and Faleye (*supra*) shows that they were initiated by writ of summons, which presupposed that the facts on which the respective cases lay were controversial and going by the case of Lady Alakija referred to *supra*, originating summons is not appropriate for initiating the proceedings. Let me repeat, in suit begun by originating summons, the facts are always not controversial, in fact both parties are always *ad idem* as to the correctness of same. It is true that an appellate court should not make a practice of disturbing the findings of a trial judge particularly where the credibility of witnesses based on demeanour of the witnesses only, but where the conclusion is arrived at without any real controversy such as in documentary evidence or where it does involve a controversy which controversy is limited only to number, complexity or contradiction or interpretation of document or even where there is an unchallenged piece of oral evidence, then the appellate court is in as good a position as the trial court in so far as the evaluation of such evidence, like the affidavit/counter-affidavit or printed evidence in the present case is concerned to embark in, making its own inference. I have said above that the purpose of the provision of Section 16 of the Act is to obviate delayed justice. A liberal interpretation of that provision

vis-a-vis the totality of the facts constituting the basis of the matter, will in my respectful view, confer competency on the court below to adjudicate on the real matter in controversy notwithstanding that the trial court had not made a pronouncement on the preliminary objection and the substantive matter. I say this bearing in mind that subsumed in the substantive matter is the issue of the interpretation of the provision of the Constitution as to what constitutes the 2/3 majority of the Plateau State House of Assembly. See *Chief Ebba v. Chief Ogodo & Anor* (1984) 4 S.C. 84. Even going by the record of proceedings, there is element of consent by both parties that the originating summons and the preliminary objection be taken together. The learned trial judge in the course of the proceedings of 15/12/2006 when all the parties were duly represented in the court, held inter alia: -

*"It's a considered fact that the court is going on vacation from Monday 18<sup>th</sup> December 2006 and resumes on 15<sup>th</sup> January 2007, the court cannot sit during the vacation. Both parties want the matter in general and the preliminary objection had (sic) and determined expeditiously. It is not possible for us to hear both parties on the P/Objection today. In the circumstances, I rule that parties submit file written arguments on the P/Objection and exchange same before the next adjourn (sic) date."*

Further on the same date (15/12/2006) after listening to submissions of all counsel, the learned trial judge made another ruling thus: -

*"Having considered the exigencies of the time and the fact that this is an originating summons, I order that both parties submit their written briefs on the suit along with that of the P/Objection. If the P/Objection succeeds it will be the end of the matter. If it does not succeed, the substantive suit may be hard (sic) and considered. I rely on the procedure adopted in the case of ADELEKE V. OYO STATE GOVERNMENT."*

From the proceedings of 15/12/2006 and this being a civil matter, I hold the view that both parties must be taken to have agreed that the originating summons and the preliminary objection be taken together. And in view of what I have been saying as regards the invocation of Section 16 of the Court of Appeal Act, I hereby answer Issue No.1 on the appellants' brief in the affirmative and I also answer Issue No.1 in the 1<sup>st</sup>

respondent's brief of argument in similar manner.

I shall now proceed to address Issue No.2 in each of the two briefs each of the two similar briefs poses the question as to what is the correct interpretation of the provisions of Section 188 of the Constitution of the Federal Republic of Nigeria 1999 which provides:-

Section 188(1)

*"The Governor, Deputy Governor of a State may be removed from office in accordance with the provisions of this section."*

Section 188 (2)

*"Whenever a notice of any allegation in writing signed by not less than one-third of the members of the House of Assembly —*

*(a) is presented to the Speaker of the House of Assembly of the State.*

*(b) stating that the holder of such office is guilty of gross-misconduct in the performance of the functions of his office, detailed particulars of which shall be specified, the Speaker of the House of Assembly shall within seven days of the receipt of the notice, cause a copy of the notice to be served on the holder of the office and on each member of the House of 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 House of Assembly."*

188(3)

*"Within fourteen days of the presentation of the notice to the Speaker of the House of Assembly (whether or not any statement was made by the holder of the office in reply to the allegation contained in the notice), the House of Assembly shall resolve by motion, without any debate whether or not the allegation shall be investigated."*

184(4)

*"A motion of the House of 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 the House of Assembly."*

(underlying mine for emphasis)

As I have said, the two similar provisions call for the interpretation

of the provisions of the Constitution. I pause here to restate the canons of interpretation of the provisions of statutes and/or the Constitution. The primary function of a judge is to declare the law, not to decide what it should be. The business of law making is, in my humble view, exclusively a matter for the National Assembly, in Nigerian context. Though, the populace look forward to the judiciary for dispensation of justice, a judge must always be conscious of his limitation in the discharge of his judicial duties; he must carefully but firmly set out to administer justice according to law, the law which is established for us by the National Assembly of this country or by the binding authority of precedent which itself is substantially founded on the laws passed by the National Assembly. It therefore follows that, where the words of the statute or the Constitution are unambiguous but clear in their ordinary and grammatical meanings, a judge has a binding duty to interpret the words of statutory or constitutional provisions accordingly. I here recall, with admiration and submission to the monumental and guiding words of Idigbe JSC in this connection in the case of Nafiu Rabiu v. Kano State (1980) 8-11 S.C. E 130 where at page 195 the learned jurist reasoned thus: -

*“It is the duty of this court which has the ultimate responsibility of declaring and interpreting provisions of the Constitution always to bear in mind that the Constitution itself is a mechanism under which all laws are to be made by the Legislature and not merely an Act which declares what the law is. Accordingly, where the question is whether the Constitution has used an expression in the wider or in the narrower sense the court should always lean, where the justice of the case so demands, to the broader interpretation unless there is something in the context or in the rest of the Constitution to indicate that the narrower interpretation will best carry out its object and purpose.”*

(underlining mine for emphasis)

The above dictum coupled with the arguments of the 1<sup>st</sup> respondent in his brief of argument of the 1<sup>st</sup> respondent have persuaded me to examine other relevant provisions of the Constitution such as Sections 90, 91 and 102 which I hereunder reproduced. Before I do that let me quickly remind myself that where words or expressions in the provisions



have been legally or judicially defined or determined, their ordinary meaning will definitely give way to their legally or judicially defined meanings; that was the decision of this court in *Acme Builders Ltd v. K.S.W.B.* (1999) 2 S.C. 1. This is in conformity with the principle of JUDICIAL PRECEDENT or STARE DECISIS as it is called. Though judicial precedent or stare decisis is an indispensable foundation on which to decide what is the law, there may be times when a departure from the precedent is in the interest of justice and the proper development of the law. This court (The Supreme Court) recognizes the existence of that power in it to so do. In *T.A. Yonwuren v. Modern Signs (Nig) Ltd; John Ememon & Anor v. Chief P.O. Onokite & Ors (consolidated)* (1985) 2 S.C.86, Obaseki J.S.C. reasoned thus at page 132:-

*“It is settled law that this court has jurisdiction to depart from its previous decisions. It has been restated in Paul Odi & anor v. Gbeniyi Osafire & Anor S.C. 144/1983 delivered on 11<sup>th</sup> January 1985 ..... at page 195. Turning to the first question, there is unanimity and I hold very strong views on it that the Supreme Court, as a court at the apex of the judicial hierarchy in this country, has the jurisdiction and power sitting as the full court of seven justices, to depart and overrule previous erroneous decisions on points of law given by a full court on constitutional question or otherwise.”*

Again, the above dictum is a confirmation of the authenticity of the statement made by one eminent jurist of this court in which he said *“we are infallible because we are final; but we are not final because we are infallible.”* Let it be said that as we are all mortals, infallibility can never be our virtue. From time to time, as human beings, we must make mistakes. But let those mistakes be genuine and honest; let them be seen to reflect the limit of our human knowledge. Now to the afore-mentioned provisions of the Constitution.

#### Section 90

*“There shall be a House of Assembly for each of the States of the Federation.”*

#### Section 91

*“Subject to the provisions of this Constitution, a House of Assem-*

*bly of a State shall consist of three or four times the number of seats which that State has in the House of Representatives divided in a way to reflect, as far as possible nearly equal population.*

Provided that a House of Assembly of a State shall consist of not less than twenty-four and not more than forty members.”

The wordings of Sections 90 and 91 are very clear in their ordinary and grammatical meanings. Going by the liberal interpretation of them, it is my humble view that a House of Assembly properly so called constitutionally must not be less than twenty-four and not more than forty members. However, Section 102 of the same Constitution provides: -

“A House of Assembly may act notwithstanding any vacancy in its membership, and the presence or participation of any person not entitled to be present at or to participate in the proceedings of the House shall not invalidate such proceedings.”

The above provisions, in my humble view, seem to run counter to the provisions of Section 188 (4) which stipulate that any motion of the House calling for investigation of allegations against the governor or Deputy Governor for the purpose of getting any one of them removed from office shall not be declared as having been passed unless is supported by the votes of not less than two-thirds majority of all the members of the House of Assembly. The office of the Governor or of the Deputy governor is an all-important one. Any of them is in the office by the grace of the majority votes of the totality of that State. In getting him out of office for one reason or the other, the voice of the majority of the totality of the populace of the State must be reflected on the decision even if it is now impossible to physically vote on that issue, their voices should be reflected through the majority of the total members they voted into the House. The impeachment or removal of a Governor or Deputy Governor is a very serious business. Certainly, it cannot be the intendment of the framers of the Constitution that the decision to impeach or remove any one holding that high office should be left in the hands of very negligible few as 8 (eight) members as it has been argued. The provisions of the Constitution must be interpreted in a just and holistic manner. A recourse

to the provisions of Section 96 (1) clearly brings out the intention of the framers of the Constitution; it provides: -

“The Quorum of a House of Assembly shall be one-third of all the members of the House.

(underlining mine for emphasis)

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When the above provisions of the Constitution are read, the only conclusion I can reach and which I reach is that the legislators intend that the lawful quorum of the House of Assembly shall be one-third of all the members of the House. But in Section 188 (4) of the Constitution, which deals with impeachment of a Governor, the quorum that can lawfully pass a motion initiating the process is two-thirds majority of all the members of the House of Assembly. Section 188 specifically contains the provisions dealing with the removal of Governor or Deputy Governor from office. As I have said earlier, the removal of a Governor or Deputy Governor from office is a very grave issue; it has import of criminality and little wonder that sub- section (4) thereof stipulates that the motion calling for investigation of the allegation must be supported by not less than two-thirds majority of all the members of the House of Assembly. It is only in Section 188 (4) that two-thirds majority of all members of the House is made mandatory; unlike Section 96 (1) supra which stipulates one-third as the quorum. The very familiar and popular canon of interpretation of provisions of the Constitution when faced with a situation like in Sections 188 (4) and 96 (1); even 102 is that; “*the express mention of one- thing is the exclusion of another*”. The Latin Maxim is “*EXPRESSIO UNIUS PERSONAE VEL REI, EST EXCLUSIO ALTERIUS*”. Put in an another way: Where there is express mention of certain things, then anything not mentioned is excluded.” Again the Latin Maxim is: *EXPRESSIO FACIT CESSARE TACTITUM*” see the only English case of *Stephens v. Army & Navy Stores* (1914) 2 CH 526. Following the principles enunciated supra, it is my view that two-thirds of a House of Assembly like Plateau whose membership is twenty-four; the minimum number of members that can grant the application to investigate the alleged gross misdeeds of the 1<sup>st</sup> respondent (Dariye) is 16 (sixteen) going by the provision of Section 188 (4). Eight (8) certainly is

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not two-thirds of 24. Consequently, Issue No.2 on each of the briefs is answered in the negative. Following what I have said above, Issue No.3 on the appellant's brief must be answered in the negative and I hereby do.

Back to the interpretative jurisdiction of the judex; it is the duty of  
 B the judex to expound what the law is and we should loyally follow the doctrine of stare decisis. Our problems as judges should and must not be to consider what social and political problems do today require; that is to confuse the task of a judge with the task of a legislator. More often than  
 C not, the law, as passed by the legislators, has produced a result which does not accord with the requirements of today. Let that defective law be put right by legislations but we must not expect the judex, in addition to all his other problems, to act as LORD MANSFIELD did, and decide what the law ought to be. In my humble view, he (the judex) is far better  
 D employed if he puts himself to the much simpler task of deciding what the law IS.

I shall end this discourse by saying that the allegations levelled against the 1<sup>st</sup> respondent as contained in the records, are despicable to  
 E the highest degree. If proved in accordance with the laws of our land by the cardinal principle of morality, justice and democratic government that an offender guilty of crime should be sentenced by the court to such penalty as his crime merits, the 1<sup>st</sup> respondent must not be allowed to run  
 F away from justice. But before this can be done, due process of law must be followed from the beginning to the end. An act may be morally reprehensible unless there is a law properly enacted which makes that act punishable and goes ahead to prescribe the punishment for it, a judge, indeed, any court of law is hamstrung to sentence and punish the perpe-  
 G trator.

In conclusion, for the little I have said above, but most especially for the exhaustive reasoning in the leading judgment of my learned brother, Onnoghen J.S.C. with which I am in agreement, I also say that the judg-  
 H ment of the court below is unassailable; this appeal is devoid of merit. I also, by force of law, dismiss it. I abide by all other consequential orders contained in the leading judgment including the order as to costs.