

SUPREME COURT OF NIGERIA

29th JUNE, 2007. SC. 69/2007

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

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|--|--------------------------------|
| 1. ACTION CONGRESS (AC) | PLAINTIFFS/ |
| 2. ALHAJI ATIKU ABUBAKAR | APPELLANTS |
| AND | |
| INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC) | DEFENDANT/ RESPONDENT |

STATUTES - Interpretation - Isolation - Provisions of the Constitution or a statute - Should not be interpreted in isolation but in context - While plain words should be given their natural meaning (H1)

CONSTITUTIONAL LAW - Elections - Disqualification of candidates - Under s. 137(1) 1999 Constitution - Is not conferred upon respondent - By this or any other section or schedule of the Constitution (H2)

CONSTITUTIONAL LAW - Elections - Disqualification of candidates - Ground for under s. 137(1)(i) 1999 Constitution - Is not self executing - But appertains exclusively to properly exercised judicial power (H3)

ELECTIONS - Candidates - Disqualification of - Electoral Act 2002 that conferred power to disqualify candidates upon respondent - Was repealed by the 2006 Act - Which removed the power - And now vested it with the courts (H4)

FACTS

Second plaintiff/appellant (Vice President of the Federal Republic of Nigeria), became the presidential candidate of the Action Congress political party for the 2007 general elections. The respondent relying on s. 37(1)(i) of the 1999 Constitution stated that it has disqualified 2nd

appellant from contesting the presidential election. This was because 2nd appellant was alleged to have conducted himself as the Vice President in a manner not befitting his office. He was investigated and found culpable by the EFCC (Economic and Financial Crimes Commission). Thereafter, the Federal Government established an Administrative Tribunal that further looked into the allegations and indicted him. The Federal Government vide a gazette white Paper accepted the indictment.

Appellants therefore, took out an Originating Summons before the Federal High Court Abuja, to determine inter alia, whether the respondent has the power to disqualify candidates for the 2007 general elections without recourse to a court of law under the provisions of the Constitution or the Electoral Act. The trial court found partly in favour of the appellants. Both parties appealed to the Court of Appeal which held that the respondent is empowered to screen and disqualify election candidates. Still dissatisfied, appellants have further appealed to the Supreme Court.

ISSUE FOR DETERMINATION

Whether the defendant has the power to disqualify any candidate sponsored by a political party including the 2nd plaintiff from contesting an election in the 2007 general elections having regard to the constitutional provisions and the Electoral Act, 2006.

HELD (Unanimously allowing the appeal per **KATSINA-ALU JSC**)
STATUTES - Interpretation - Isolation

1. It is a settled principle of interpretation that a provision of the Constitution or a statute should not be interpreted in isolation but rather in the context of the Constitution or statute as a whole. Therefore, in construing the provisions of a section of a statute, the whole of the statute must be read in order to determine the meaning and effect of the words being interpreted. But where the words of a statute are plain and unambiguous, no interpretation is required, the words must be given their natural and ordinary meaning. (p. 2970 E)

Elections - Disqualification of candidates

2. It has been argued for the Defendant that its power to disqualify any candidate in the 2007 general elections is derived from section 137(1) of the Constitution which I have already reproduced. The plaintiffs contend otherwise. I have read that provision over and over again and I must say that there is no mention of the defendant in the provision except (j) where the candidate has presented a forged certificate to the Independent National Electoral Commission. The defendant, I hold, in the circumstances, cannot claim that the power to disqualify any candidate, the 2nd plaintiff inclusive, is conferred on it by section 137(1). I am also unable to find anything in the provision from which the power can be implied. In any event, there is no provision in the constitution that confers the power to disqualify candidates on the defendant either expressly or by necessary implication.

Under paragraph 15(a) of the Third Schedule the defendant has power to organize, undertake and supervise all elections. I think this provision is plain. It should be given its ordinary meaning. I find myself, unable to read the power to disqualify in it. Indeed there is nothing in the provisions of paragraph 15 to suggest, even remotely, that the power to disqualify can be read into it. (pp. 2971 H/2974 D)

Ground for disqualification of candidates under s. 137(1)(i)

3. It was also contended for the defendant that the ground of disqualification in section 137(1) (i) is self-executing. I am not impressed by this contention. I think a dispassionate reading of the provision, will reveal that it is not self-executing. To invoke against any candidate the disqualification therein provided would require an inquiry as to whether the tribunal or administrative panel that made the indictment is of the nature or kind contemplated by section 137(i) read together with other relevant provisions of the constitution in particular section 36(i), which provides that “*in the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such*

manner as to secure its independence and impartiality” as well as the provision in sub-section (5) of section 36 that “every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty.” The disqualification in section 137(1) (i) clearly involves a deprivation of right and a presumption of guilt for embezzlement or fraud in derogation of the safeguards in section 36(1) and (5) of the Constitution. The trial and conviction by a court is the only constitutionally permitted way to prove guilt and therefore the only ground for the imposition of criminal punishment or penalty for the criminal offences of embezzlement or fraud. Clearly the imposition of the penalty of disqualification for embezzlement or fraud solely on the basis of an indictment for these offences by an administrative panel of inquiry implies a presumption of guilt, contrary to section 36(5) of the Constitution of the Federal Republic of Nigeria, 1999. I say again that convictions for offences and imposition of penalties and punishments are matters appertaining exclusively to judicial power: see *Sokefun v. Akinyemi* (1981)1 NCLR 135. (p. 2972 C)

Electoral Act 2002 that conferred power to disqualify candidates
4. In my considered view section 21(8) and (9) is very plain. It is clear and unambiguous. It confers on the defendant the power to disqualify candidates. This power is not in doubt. But then this provision vesting the defendant with the power to disqualify candidates was by the lawmakers in the Electoral Act, 2002.

The legal position has since changed with the enactment of the Electoral Act, 2006. I do not want to speculate on what informed the action of the lawmakers but suffice it to say that the lawmakers in their wisdom took away this power from the defendant. And as it can be seen clearly, this power is now vested in the courts by section 32(4) (5) and (6) of the Electoral Act, 2006. For case of reference I will, read these provisions again:

“32(4) Any person who has reasonable grounds to believe that any information given by a candidate in the affidavit is false may file a suit at the High Court of a State or Federal High Court against such person

seeking a declaration that the information contained in the affidavit is false.

“32(5) If the court determines that any or the information contained in the affidavit is false, the court shall issue an order disqualifying the candidate from contesting the election.”

B

“32(6) A political party which presents to the Commission the name of a Candidate who does not meet the qualifications stipulated in this section, commits an offence and is liable on conviction to a maximum fine of N500,000.00.”

C

In the light of these provisions, I think it is beyond argument that the lawmakers clearly intended that the courts would have the power to deal with matters of disqualification of candidates in an election in the 2007 general elections. I think with a little imagination on the part of the defendant, it would have been so clearly obvious to it that it does not now possess the powers to disqualify any candidate including the 2nd plaintiff from contesting election. I am clearly of the view that this approach is consistent with the constitution and the Electoral Act 2006 and with common sense. (p. 2974 H)

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NOTABLE POINTS OF INTEREST

MUSDAPHERJSC

1. Principle of not interpreting a provision in isolation

F

In my view, it is now trite that a principle of interpretation of the Constitution or statute is that a provision should not be interpreted in isolation but rather in the context of the Constitution or the statute as a whole. The subsection must be read in the context of constitutional democracy established for the country by the Constitution. It is very clear that the power to disqualify a candidate is not conferred on the respondent by section 137 of the Constitution and i have searched the Constitution i cannot find in any other provision where such a power has been conferred either expressly or by necessary implication on the respondent to H disqualify any candidate. (p. 2978 D)

G

ONNOGHEN.JSC

2. Respondent's power to disqualify candidates was taken away by the 2006 Act

I have no hesitation whatsoever in holding that having regard to the state
B of the applicable law the respondent has no power either under the 1999
Constitution or 2006 Electoral Act, or any other law to screen or dis-
qualify any candidate for any election in Nigeria. The fact that under
C section 21(8) of the Electoral Act, 2002 the respondent had powers to
disqualify candidates for any election is not in doubt at all as the power is
specifically conferred therein. Fortunately or unfortunately the said Elec-
toral Act 2002 was repealed by section 165 (1) of the Electoral Act, 2006
D which in effect killed the power of the respondent to disqualify candi-
dates, in enacting the Electoral Act, 2006, the National Assembly did not
deem it necessary that the respondent should continue to exercise such
E power for reasons best known to them and which no one can inquire
into or question. To that end the legislature did not re-enact subsection
(8) of section 21 of the Electoral Act, 2002 or any similar provision in the
F current Electoral Act, 2006. I hold the considered view that by the Na-
tional Assembly not reenacting a similar provision to sub-section (8) of
section 21 of the Electoral Act, 2002 in the Electoral Act, 2006, the inten-
tion of the law makers is clearly that the respondent has been stripped of
that power and can therefore no longer exercise same.

I hold the further view that from the provisions of the current
Electoral Act 2006 and section 137(1) of the 1999 Constitution only a
court of law or tribunal has the power to disqualify a candidate to any
G election in Nigeria. (p. 2987 H)

TABAI.JSC

3. Disqualification from election - Implications

As I stated above the disqualification of a person from any elective office
H under the Constitution involves the determination of that person's civil
rights and obligations and which determination is, by virtue of section 6
and 36 of the Constitution specifically assigned to courts or other tribu-
nals established by law and constituted in a manner as to ensure their

independence and impartially. The Respondent (INEC) is not a court or other tribunal established by law under the Constitution. And it is not even Constituted for the proper determination of matters pertaining to a persons civil rights and obligations. From the foregoing it is my firm view that the Respondent's powers to organise undertake and supervise B elections in paragraph 15(a) of the Third Schedule cannot be construed to include or extend to disqualification of a person from an elective office since such a disqualification necessarily involves the determination of the person's civil rights and obligations. (p. 3005 D) C

4. Disqualification - When certificate of conviction may be denied

Going by the provisions of section 137(2) aforesaid, it is my further view that even where an allegation of a person's disqualification is accom- D panied by a certificate of his conviction for an offence under subsection (1) (d) and (e) and the person denies that he is the same person as that contained in the certificate the identity of the person actually convicted becomes an issue by virtue of the provisions of section 225(2) of Evi- E dence Act and which issue can only be tried and determined by a court or other tribunal established by law and properly constituted to ensure its independence and impartiality. Mere production of some documents like the judgment of the court wherein the person was allegedly tried and convicted would not suffice. There must be proof to the satisfaction of F the court that the person alleged to have been convicted is one and the same person as that named in the certificate or other documents of the Court. This was one the principles in the decision in ENGINEER G GOODNEWS AGABI & ANOR v CHIEFAUDU OGBEH & 3 OTHERS (2002) 11 NWLR (Part 990) 65. (p. 3008 E)

MUHAMMAD JSC

5. Verification of election candidates - Is duty of political Parties not INEC H

From the said statutory provisions, it is very clear to me that the power to nominate and sponsor a candidate for an election is specially preserved by the statutes to a political party. In the process of their nomination and

ultimate sponsorship, the political party, there is no doubt about that, must have examined, tested, screened and verified each of the candidates they propose to nominate and sponsor. It is in anticipation of that the 2006 Electoral Act in section 32(2) makes a mandatory requirement that
 B the list to be sent to INEC of candidates the party proposes to sponsor at the elections, SHALL be accompanied by an affidavit sworn to by each candidate at the High Court of a state, indicating that he has fulfilled all the Constitutional requirements for the election into that office. I think
 C this is eloquent and adequate enough to show that the legislature has given free - hand to a political party to “screen” and “verify” its candidates for nomination; and sponsorship to any election. I do not think it is the intention of the Legislature to put any candidate for an election to any political post into double jeopardy by being “screened” and “verified”, twice, i.e. by his political party and by INEC. That will be ridiculous. If INEC will be empowered with such a power it will tantamount to usurpation of the right of political parties conferred on them by section
 D 32 (2) and (6) of the 2006 Electoral Act. (p. 3020 B)

E

REPRESENTATION

Ricky Tarfa SAN, for Appellants with him are Chief Adeniyi Akintola, SAN, Emeka Ngige, SAN, Adetunji Oyeyipo, SAN, Mike Aondoakaa, SAN, Omar Shitien Esq., J. O. Odubela Esq., Dr. Ego Ezuma (Mrs.), O.
 F Jolaawa Esq., H. Iyanya Esq., D. Tarfa (Miss), H. Kwabi (Miss), E. Okodaso (Miss), J. E. Aloba Esq., F. O. Bisong, R. Oguneso Esq., O. C. Ogwuagbina Esq., M. S. Yusuf Esq., R. O. Obiora, B. Bakre Esq., J. A. Ugbeda, J. O. Haruna.

G

J. K. Gadzama, SAN, (For Respondent in AC v. INEC) with him are Bolaji Ayorinde, SAN, Paul Erokor Esq., Chief Tony Anyanwu Esq., C. I. Nwako, E. I. Okoli, E. J. Gamaliel.

H

CASES REFERRED TO

SOKEFUN V. AKINYEMI (1981)1 NCLR 135

GARBA V. UNIVERSITY OF MAIDUGURI (1986)1 NWLR (PT. 18)550

AWOLOWO VS. SHAGARI [1979] 6-9 SC 51

BRONIK MOTORS VS. WEMA BANK [1983] 1 SC NLR 296

BUHARI AND ANOR. VS. OBASANJO AND OTHERS [2005] 13 NWLR (PT 941) 1 @ 219

ENGINEER GOODNEWS AGABI & ANOR V CHIEFAUDU OGBEH & B 3 OTHERS (2002) 11 NWLR (PART 990) 65

CHIEF AWOLOWO V. ALHAJI SHAGARI & 2 ORS. (1979) 6-9 S.C. 57

GARBA V. F.C.S.C. (1988) 1 NWLR (PT.71) 44

CHIEF GREAT OGBURU V. CHIEF IBORI & 27 ORS. (2005) 13 NWLR C (PT.942) 319 @ 438 C.A.

CHIEF OJUKWU V. CHIEF OBASANJO & 3 ORS. (2004) 12 NWLR (PT.886) 169

UDOH & 2 ORS. V. OHMB (MEANING ORTHOPAEDIC HOSPITALS MANAGEMENT BOARD & ANOR. (1993) 7 NWLR (PT.304) 139 @ D 148

WATERSIDE WORKERS' FEDERATION OF AUSTRALIA V J. W. ALEXANDER LTD (1918) 25 CLR 434 AT 444

A.G. ANAMBRA STATE v A.G. FEDERATION (1993) 6 NWLR (Part E 302) 692 at 720

STATUTES REFERRED TO

Electoral Act 2002 s.21

Electoral Act 2006 ss.32 & 165 (1)

Constitution of the Federal Republic of Nigeria 1999 ss. 6, 36, 131 & 137

Interpretation Act s. 18 (1)

LEAD JUDGMENT BY KATSINA-ALU JSC

My Lords, this appeal concerns the disqualification of Alhaji Atiku Abubakar Vice President of the Federal Republic of Nigeria as a candidate or any other candidate for the 2007 General Elections. By an originating summons issued in the Federal High Court Abuja on 10 January 2007, in which the Action Congress and Alhaji Atiku Abubakar were named as plaintiffs and Independent National Electoral Commission (INEC) as defendant, the plaintiffs applied for the determination; of the following H

questions: (1) Whether the defendant has powers under the provisions of the Constitution of the Federal Republic of Nigeria, 1999 and the Electoral Act, 2006 to conduct any verification of the credentials/papers and/or screening out and/or disqualifying candidates including the 2nd plaintiff for the 2007 General Elections (2) whether by the provisions of the third schedule to the Constitution of the Federal Republic of Nigeria, item 15 paragraph (a) to (i) and section 32 of the Electoral Act, 2006 or any other provisions of the Electoral Act, 2006 or any other law, any other person other than the 1st plaintiff has the exclusive right to verify and or screen its candidates before sponsoring them by forwarding their names to the defendant (3) Whether the defendant has powers under any law or enactment to disqualify or screen out the 2nd plaintiff as a candidate or any other candidate for the 2007 General Elections (4) whether by the provisions of section 32(5) of the Electoral Act, 2006, any other person or bodies other than a court of law can disqualify ally candidate from contesting election:

WHEREOF THE PLAINTIFFS SEEK THE FOLLOWING RELIEFS

I. A DECLARATION that the Defendant has no power under the provisions of the Constitution of the Federal Republic of Nigeria, 1999, the Electoral Act, 2006, and the Independent National Electoral Commission (Establishment, Etc.) Act Cap 15, Laws of the Federation, 2004 to conduct any verification of the credentials/papers and/or screening out and/or disqualifying candidates including the 2nd Plaintiff for the 2007 General Elections.

II. A DECLARATION that by the provisions of Section 32 of the Electoral Act, 2006, only the 1st Plaintiff a Political party has the power to verify and or screen out its candidates before sponsoring them for election by forwarding their names to the Defendant.

III. A DECLARATION that the Defendant has no power under the Constitution of the Federal Republic of Nigeria, 1999, Electoral Act, 2006 and the Independent National Electoral Commission (Establishment, ETC) Cap 15, Laws of the Federation, 2004 to disqualify or screen out the 2nd Plaintiff as a candidate or any other candidate for the 2007 General Elec-

tions.

IV. DECLARATION that the power to disqualify any candidates sponsored by any political party including the 1st Plaintiff from contesting any election is exclusively vested in the Court as provided for in Section 32(5) of the Electoral Act, 2006. B

V. AN ORDER setting aside the directive of the Defendant to all the political parties including the 1st Plaintiff to present their candidates for physical verification and or screening.

VI. AN ORDER of perpetual injunction restraining the Defendant whether by themselves, their agents, privies, officers, or by whosoever from conducting physical verification and or screening of candidates put forward by political parties to contest in the 2007 general elections including the 2nd Plaintiff. C

The matter was heard by B. O. Kuewumi J. On 7 March 2007 the Judge gave judgment whereby he held that the defendant has no power to disqualify candidates under the provisions of the Constitution of the Federal Republic of Nigeria 1999 and the Electoral Act 2006. The Judge also held that the power to disqualify any candidate sponsored by any political party including the 1st plaintiff from contesting an election is vested in the courts as provided for in section 32(5) of the Electoral Act 2006. D E

The defendant, Independent National Electoral Commission (INEC) F appealed to the Court of Appeal. The plaintiffs also cross-appealed. On 3 April 2007 the Court of Appeal allowed the defendant's appeal and dismissed the plaintiffs' cross-appeal.

The present appeal by the plaintiffs is from the said decision of the Court of Appeal. G

At the hearing of this appeal the plaintiffs as appellants raised three issues for determination. These are:

1. Whether the defendant/respondent, as an executive, non-judicial agency of government, has the power, under the provisions of the Constitution 1999 to apply, invoke or enforce against the 2nd plaintiff/Appellant, a presidential candidate nominated/ sponsored by the 1st plaintiff/appellant for the, 2007 general elections, the disqualification provided H

in section 137(1)(i) of the Constitution read in the context of other relevant provisions of the Constitution in particular section 6(i) and (6), 36(i) (4), (5) and (6) - (12) as well as in the content of the system of constitutional democracy established for the country by the Constitution.

B 2. Whether the defendant/respondent, as an executive non-judicial agency of government, has the power, under the provisions of the Electoral Act 2006, to disqualify or screen out candidates for election including the 2nd plaintiff as a presidential candidate for the 2007 general election.

C 3. Whether the court below was right in failing to take into account the manifest differences between the provisions of section, 21 of the Electoral Act, 2002 and section 32 of the Electoral Act, 2006 as regards the vesting of power of disqualification of candidates in the courts.

D For its part, the defendant submitted two issues which read as follows:

1. Whether the respondent (INEC) has powers under the relevant laws to screen and verify particulars of candidates.

E 2. Whether the learned Justices of the Court of Appeal rightly held that the respondent (INEC) has powers to disallow/exclude or disqualify a candidate that is not qualified by virtue of sections 182 and 137(1)(i) of the 1999 Constitution.

F The central issue in this appeal is whether the defendant has the power to disqualify any candidate sponsored by a political party including the 2nd plaintiff from contesting an election in the 2007 general elections having regard to the constitutional provisions and the Electoral Act, 2006. I shall therefore consider and determine this appeal from two stand
G points. First, from the stand point of the 1999 Constitution. Secondly, from the stand point of the Electoral Act, 2006.

1999 Constitution of the Federal Republic of Nigeria

H The material provisions of the Constitution relied upon by the parties are sections 137(1) and paragraph 15 of the Third Schedule. I shall therefore recite them.

Section 137(1) provides as follows:

"137-(1) A person shall not be qualified for election to the office

of President if -

(a) subject to the provisions of section 28 of this Constitution, he has voluntarily acquired the citizenship of a country other than Nigeria or, except in such cases as may be prescribed by the National Assembly, he has made a declaration of allegiance to such other country: or B

(b) he has been elected to such office at any two previous elections: or

(c) under the law in any part of Nigeria he is adjudged to be a lunatic or otherwise declared to be of unsound mind; or C

(d) he is under a sentence of death imposed by any competent court of law or tribunal in Nigeria or a sentence of imprisonment or fine for any offences involving dishonesty or fraud (by whatever name called) or for any other offence, imposed on him by any court or tribunal or substituted by a competent authority for any other sentence imposed on him by such a court or tribunal: or D

(e) within a period of less than ten years before the date of the election to the office of President he has been convicted and sentenced for an offence involving dishonesty or he has been found guilty of the contravention of the Code of Conduct; or E

(f) he is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law in force in Nigeria or any other country; or F

(g) being a person employed in the civil or public service of the Federation or of any State, he has not resigned, withdrawn or retired from the employment at least thirty days before the date of the election: or

(h) he is a member of any secret society; or G

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

(i) he has presented a forged certificate to the Independent National Electoral Commission.

Paragraph 15 of the Third Schedule. It provides thus:

“15. The Commission shall have power to -

- (a) organize, undertake and supervise all elections to the offices of the President and Vice-President, the Governor and Deputy Governor of a State, and to the membership of the Senate, the House of Representatives and the House of Assembly of each State of the Federation;*
- (b) register political parties in accordance with the provisions of this Constitution and an Act of the National Assembly;*
- (c) monitor the organization and operation of the political parties, including their finances;*
- (d) arrange for the annual examination and auditing of the funds and accounts of political parties, and publish a report on such examination and audit for public information;*
- (e) arrange and conduct the registration of persons qualified to vote and prepare, maintain and revise the register of voters for the purpose of any election under this Constitution;*
- (f) monitor political campaigns and provide rules and regulations which shall govern the political parties;*
- (g) ensure that all Electoral Commissioners, Electoral and Returning Officers take and subscribe the oath of office Prescribed by law;*
- (h) delegate any of its powers to any Resident Electoral Commissioner, and*
- (h) carry out such other functions as may be conferred upon it by an Act of the National Assembly.”*

ELECTORALACT, 2006

With regard to the Electoral Act, 2006 the relevant section is section 32. It provides thus:

- “32-(1) Every political party shall not later than 120 days before the date appointed for a general election under the provisions of this Act, submit to the Commission in the prescribed forms the list; of the candidates the Party proposes to sponsor at the Elections.*
- (2) The list shall be accompanied by an Affidavit sworn to by each candidate at the High Court of a State, indicating that he has fulfilled all the constitutional requirements for election into that office.*

(3) *The Commission shall, within 7 days of the receipt of the personal particulars of the candidate, publish same in the constituency where the candidate intends to contest the election.*

(4) *Any person who has reasonable grounds to believe that any information given by a candidate in the Affidavit is false may file a suit at the High Court of State or Federal High Court against such Person seeking a declaration that the information contained in the Affidavit is false.*

(5) *If the Court determines that any of the information contained in the Affidavit is false the Court shall issue an Order disqualifying the candidate from contesting the election.*

(6) *A political party which presents to the Commission the name of a candidate who does not meet the qualifications stipulated in this Section, commits an offence and is liable on conviction to a maximum fine of N500.000.00."*

It is necessary to bear in mind that the Electoral Act, 2006 is a subsidiary legislation which operates side by side with the 1999 Constitution. Both the Constitution and the Electoral Act shall be read together in order to give effect and meaning to the rights and obligation of individuals.

It is a settled principle of interpretation that a provision of the Constitution or a statute should not be interpreted in isolation but rather in the context of the Constitution or statute as a whole. Therefore, in construing the provisions of a section of a statute, the whole of the statute must be read in order to determine the meaning and effect of the words being interpreted: See Buhari & Anor. v. Obasanjo & ors (2005) 13 NWLR (Pt.941) 1(219). But where the words of a statute are plain and unambiguous, no interpretation is required, the words must be given their natural and ordinary meaning.

It has been argued for the Defendant that its power to disqualify any candidate in the 2007 general elections is derived from section 137(1) of the Constitution which I have already reproduced. The plaintiffs contend otherwise. I have read that provision over

and over again and I must say that there is no mention of the defendant in the provision except (j) where the candidate has presented a forged certificate to the Independent National Electoral Commission. The defendant, I hold, in the circumstances, cannot
 B claim that the power to disqualify any candidate, the 2nd plaintiff inclusive, is conferred on it by section 137(1). I am also unable to find anything in the provision from which the power can be implied. In any event, there is no provision in the constitution that confers
 C the power to disqualify candidates on the defendant either expressly or by necessary implication.

It was also contended for the defendant that the ground of disqualification in section 137(1) (i) is self-executing. I am not impressed by this contention. I think a dispassionate reading of the
 D provision, will reveal that it is not self-executing. To invoke against any candidate the disqualification therein provided would require an inquiry as to whether the tribunal or administrative panel that made the indictment is of the nature or kind contemplated by section 137(i) read together with other relevant provisions of the constitution in particular section 36(i), which provides that “*in the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person*
 E *shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality*” as well as the provision in sub-section (5) of section 36 that “*every person who is charged with a*
 F *criminal offence shall be presumed to be innocent until he is proved guilty.*” The disqualification in section 137(1) (i) clearly involves a deprivation of right and a presumption of guilt for embezzlement or fraud in derogation of the safeguards in section 36(1) and (5) of the Constitution. The trial and conviction by a court is the only
 G constitutionally permitted way to prove guilt and therefore the only
 H ground for the imposition of criminal punishment or penalty for the criminal offences of embezzlement or fraud. Clearly the imposition of the penalty of disqualification for embezzlement or fraud

solely on the basis of an indictment for these offences by an administrative panel of inquiry implies a presumption of guilt, contrary to section 36(5) of the Constitution of the Federal Republic of Nigeria, 1999. I say again that convictions for offences and imposition of penalties and punishments are matters appertaining exclusively B to judicial power: see *Sokefun v. Akinyemi* (1981)1 NCLR 135; *Garba v. University of Maiduguri* (1986)1 NWLR (Pt. 18)550.

An indictment is no more than an accusation. In *Sokefun v. Akinyemi* (supra) this court per Fatayi Williams CJN said at page 146 as C follows:

“It seems to me that once a person is accused of a criminal offence, he must be tried in a court of law where the complaints of his accusers can be ventilated in public and where he would be sure, of getting a fair hearing No other Tribunal, investing Panel or Committee will do..... If regulations such as those under attack in this appeal were valid, the judicial power could be wholly absorbed by the Commission (one of the organs of the Executive branch of the State Government) and taken out of the hands of the magistrates and judges..... If E judicial power will certainly be eroded..... The jurisdiction and authority of the courts of this country cannot be usurped by either the Executive or the Legislative branch of the Federal or State Government under any guise or pretext whatsoever”. F

I move now to paragraph 15 of the Third Schedule to the Constitution. I have earlier on set it out but for ease of reference I will read it again. It provides as follows:

“15. The Commission shall have power to -

- (a) organize, undertake and supervise all elections to the offices G of the President and Vice President, the Governor and Deputy Governor of a State, and to the membership of the Senate, the House of Representatives and the House of Assembly of each State of the Federation;*
- (b) register political parties in accordance with the provisions of H this Constitution and an Act of the National Assembly;*
- (c) monitor the organization and operation of the political parties, including their finances;*

(d) *arrange for the annual examination and auditing of the funds and accounts of political parties, and publish a report on such examination and audit for public information;*

B (e) *arrange and conduct the registration of persons qualified to vote and prepare, maintain and revise the register of voters for the purpose of any election under this Constitution;*

(f) *monitor political campaigns and provide rules and regulations which shall govern the political parties;*

C (g) *ensure that all Electoral Commissioners, Electoral and Returning Officers take and subscribe the oath of office prescribed by law;*

(h) *delegate any of its powers to any resident Electoral Commissioner; and*

D (i) *carry out such other functions as may be conferred upon it by an Act of the National Assembly.”*

Under paragraph 15(a) of the Third Schedule the defendant has power to organize, undertake and supervise all elections. I think this provision is plain. It should be given its ordinary meaning. I find myself, unable to read the power to disqualify in it.

Indeed there is nothing in the provisions of paragraph 15 to suggest, even remotely, that the power to disqualify can be read into it.

F I turn now to section 32 which I have earlier on reproduced.

I would like to contrast section 32 with section 21 of the Electoral Act 2002. Sub-sections (8) and (9) thereof provide thus:

G “21(8) *The decision of the Commission as to the qualification or disqualification of a candidate for an election may be challenged by a candidate.”*

“21(9) *Any legal action challenging the decision of the Commission shall commence within five working days and be disposed of not later than one week before the election.”*

H **In my considered view section 21(8) and (9) is very plain. It is clear and unambiguous. It confers on the defendant the power to disqualify candidates. This power is not in doubt. But then this provision vesting the defendant with the power to disqualify candi-**

dates was by the lawmakers in the Electoral Act, 2002.

The legal position has since changed with the enactment of the Electoral Act, 2006.

I do not want to speculate on what informed the action of the lawmakers but suffice it to say that the lawmakers in their wisdom B took away this power from the defendant. And as it can be seen clearly, this power is now vested in the courts by section 32(4) (5) and (6) of the Electoral Act, 2006. For case of reference I will, read these provisions again:

“32(4) Any person who has reasonable grounds to believe that C any information given by a candidate in the affidavit is false may file a suit at the High Court of a State or Federal High Court against such person seeking a declaration that the information contained in the affidavit is false.” D

“32(5) If the court determines that any or the information contained in the affidavit is false, the court shall issue an order disqualifying the candidate from contesting the election.”

“32(6) A political party which presents to the Commission the E name of a Candidate who does not meet the qualifications stipulated in this section, commits an offence and is liable on conviction to a maximum fine of N500,000.00.”

In the light of these provisions, I think it is beyond argu- F ment that the lawmakers clearly intended that the courts would have the power to deal with matters of disqualification of candidates in an election in the 2007 general elections. I think with a little imagination on the part of the defendant, it would have been G so clearly obvious to it that it does not now possess the powers to disqualify any candidate including the 2nd plaintiff from contesting election. I am clearly of the view that this approach is consistent with the constitution and the Electoral Act 2006 and with common H sense. It is for the above reasons that I allowed the appeal and set aside the decision of the Court of Appeal delivered on 3 April 2007. The reliefs sought by the appellants in the Court of trial be and are hereby granted. I make no order as to costs.

MUSDAPHER JSC

On the 16th day of April, 2007, I announced my judgment in this matter allowing the appeal of the appellants in that the respondent has no power or authority to disqualify the 2nd appellant from contesting as a candidate in 2007 general elections for the post of the President of the Federal Republic of Nigeria. I indicated that I will give my reasons for the judgment today. I have seen the reasons for the judgment of my Lord Katsina-Alu, JSC just delivered and I am in complete agreement with the opinion expressed therein. My Lords this appeal, as indicated above, is concerned with whether the respondent INEC has the constitutional or statutory power to disqualify Alhaji Atiku Abubakar from contesting the general elections to vie for the position of the President of the federal Republic of Nigeria.

The facts are that, Alhaji Atiku Abubakar was said to have conducted himself as the Vice President in a manner unbefitting his office, he was investigated and found culpable by the Economic And Financial Crimes Commission EFCC. Thereafter the Federal Government established an Administrative tribunal that further looked into the allegations against Alhaji Atiku Abubakar. The Administrative Panel indicted Atiku Abubakar and the Federal Government in a White Paper accepted the indictment which was said to be gazetted. In the meanwhile the 1st appellant, a political party known as the Action Congress submitted the name of Alhaji Atiku Abubakar as the candidate, it sponsors for the presidential election under the provisions of section 32(1) of the Electoral Act, 2006. The respondent relying on the provisions of section 137 (1) (i) of the Constitution 1999 stated that it had disqualified Alhaji Atiku Abubakar from contesting the presidential election because he was disqualified by virtue of section 137 (1) (i) of the Constitution aforesaid. Hence, the appellants as the plaintiffs look out an Originating Summons in the federal High Court Abuja against the respondent INEC for the determination of the question whether, under the provisions of the Constitution or the Electoral Act, the respondent has the power to conduct any verification of the credentials and/or screening or screening out or disqualifying candidates for the 2007

general elections without recourse to a court of law. A number of reliefs were sought mainly declaratory to the effect that the respondent has no power whatsoever to screen out or to disqualify any candidate properly sponsored by a political party, the power to disqualify a candidate having been vested in the courts. B

In his judgment delivered on the 7/3/2007, the learned trial judge found partially for the appellants. He held that the respondent has no power under the provisions of the Constitution or the Electoral Act to disqualify candidates for the 2007 general elections. The powers to disqualify candidates is vested in the courts as provided for under section 32(5) of the Electoral, Act, 2006. Both the appellants and the respondent herein were not happy with the decision of the trial judge and both appealed to the Court of Appeal. In its consideration appeal and the cross-appeal, the Court of Appeal per Abdullahi, PC.A who read the lead judgment which was concurred to by Muhammad, Adekeye, Omoleye and Aboki JJCA now reported as INEC VS. ACTION CONGRESS [2007] 6 NWLR (Pt.1029) page 142 stated at 162 thus:- C D

“For the avoidance of any doubt having regard to the clear provisions of the Constitution and the Electoral Act discussed above, it is my considered view that the appellant [INEC] has the power and authority not only to screen candidates sent to it by political parties but to also remove the name of any candidate that failed to meet the criteria out by the Constitution without having to go to Court. F

In the circumstances, the appeal is meritorious and is allowed. Consequently, the cross-appeal fails and is dismissed. The respondents’ claim fails and is hereby dismissed.”

It is the dismissal of the plaintiffs’ claims that led them to further appeal to this court. The crucial matter for consideration in this appeal is whether the respondent, a statutory body charged with the responsibility of organizing and conducting elections has also the power and the authority to disqualify a candidate properly sponsored by a political party H under the provisions of section 32(1) of the Electoral Act, 2006. To answer this question will entail, the examination and the interpretation of the constitutional provisions and the Electoral Act relevant to the discus-

sion under reference.

Now, there is no doubt that section 137(1) (i) of the 1999 Constitution is a provision disqualifying any candidate to contest for the seat of the President of the Federal Republic of Nigeria. As a matter of fact, the entire section 137 deals with the situations in which a person is disqualified to contest for the post of the President. While section 131 deals with the situation when a person may be deemed to be qualified to contest for the post of the president in an election, the fundamental question is whether the respondent has the authority and the competence to determine whether a candidate is caught by the provisions of section 137(1) specifically in this case subsection (1) (i) whether on the facts, the respondent can pronounce on the qualification of the 2nd appellant on its own steam. To put it another way, whether the provisions of sections 137(1) (i) are self executing and can be determined by the respondent.

In my view, it is now trite that a principle of interpretation of the Constitution or statute is that a provision should not be interpreted in isolation but rather in the context of the Constitution or the statute as a whole. See *AWOLOWO VS. SHAGARI* [1979] 6-9 SC 51, *BRONIK MOTORS VS. WEMA BANK* [1983] 1 SC NLR 296, and the recent case of *BUHARI AND ANOR. VS. OBASANJO AND OTHERS* [2005] 13 NWLR (pt 941) 1 @ 219. The subsection must be read in the context of constitutional democracy established for the country by the Constitution. It is very clear that the power to disqualify a candidate is not conferred on the respondent by section 137 of the Constitution and I have searched the Constitution I cannot find in any other provision where such a power has been conferred either expressly or by necessary implication on the respondent to disqualify any candidate.

The only provision that such a power may be implied is in paragraph 15 (a) of part I of the Third Schedule dealing with Federal Executive Bodies. That paragraph also merely empowered the Commission to “Organize, undertake and supervise” elections. In my view the power to “Organize, undertake and supervise elections” does not by any stretch of imagination confer power to disqualify a candidate nominated or sponsored by a political party. The Court of Appeal is clearly in error to have

held that the provisions of the Constitution have conferred on the respondent express powers to disqualify the 2nd appellant. I cannot find any provision in the Constitution conferring such a power on the respondent. The indictment of embezzlement against a person to deprive him of the right granted by section 131 of the Constitution to contest or vie for the post of the President of the Republic is a very serious matter and the issue can only be pronounced by the Judicial branch. Such serious issues are riddled with complex questions of law and facts which are by the provisions of the Constitution in the exclusive preserve of the judiciary, no executive body should have the power or the competence to unravel such serious and far reaching complex issues without a proper recourse to the proper judicial process. See the case of GARBA VS. UNIVERSITY OF MAIDUGURI [1986] 1 NWLR (Pt 18) 550. See SOFEKUN VS. AKINYEMI [1981] 1 NCLR 135.

I shall now deal with the relevant provisions of the Electoral Act. The Court of Appeal per the judgment of Abdullahi P. C.A said in this case See INEC VS. ACTION CONGRESS [supra] at page 161.

“Apart from this constitutional powers it is inherent in section 32 particularly subsections (1) and (2) of the Electoral Act that the appellant has a primary duty to ensure compliance with the provisions of the Constitution. The section has already been quoted in this judgment, but to reinforce my view, it is relevant to recite subsection (2) of section 32 of Electoral Act which states:-

(2) The list shall be accompanied by an affidavit sworn to by each candidate at the High Court of a State, indicating that he has fulfilled all the constitutional requirement for election into that office.”

The whole case of the respondent (appellant herein) was equally hinged on section 32(4) and (5) of the Electoral Act, 2006. In my considered view, these two subsections deal with an entirely different situations. The two subsections when read together, provide an opportunity for any individual, after preview of the personal particulars of a candidate published by the appellant [INEC] in the constituency where the candidate intends to contest the election can, on reasonable grounds believe that there is false information given by such a candidate to go to

the High Court to challenge his candidature. It will be a mere circus show for the Commission to be expected to go to court first to seek declaration before treating the information supplied to it.”

In my view, this cannot be right. If at all the respondent has the power to decide the qualification or otherwise of a candidate, then there would obvious be no need for it to “publish the list” since it can immediately disqualify a candidate, thus making it superfluous and absurd to publish the list of candidates under subsection (3) and (4) of section 32 of the Electoral Act.

An examination of subsection (6) of section 32 of the Electoral Act will further explain and reinforce my argument. The subsection provides:-

“6. A political party which presents to the Commission the name a candidate who does not meet the qualification stipulated in this section, commits an offence and is liable on conviction to a maximum fine of is N500,000.00.”

This clearly shows that there must be both a determination by a competent and regular judicial process that the qualification of the candidate sponsored did not meet the requirement of the section and a further conviction by the judicial process, before the fine is paid. The respondent has no power to punish by fining except after due conviction by proper judicial process.

It is for the above, and the fuller reasons for judgment in the judgment of my Lord Katsina-Alu, JSC that I allowed the appeal and set aside the decision of the Court of Appeal and order that the appeal of the respondent before the Court of Appeal be and is hereby dismissed and the cross-appeal of the appellants in that court be and is hereby allowed. Consequently the reliefs sought by appellants in the court of trial be and are hereby granted. I make no Order as to costs.

H

ONNOGHEN JSC

This is an appeal against the judgment of the court of Appeal holden at Abuja in appeal No.CA/A/71/2007 delivered on the 3rd day of April,

2007 in which it allowed the appeal of the defendant/respondent in this court, dismissed the cross appeal of the plaintiffs who are appellants in this court and consequently declared that the defendant/ respondent, Independent National Electoral Commission (INEC) has the power and authority not only to screen candidates sent to it by political parties, but B to also remove the name of any candidate that failed to meet the criteria set out by the Constitution without having to go to court.

On the 10th day of January, 2007 the appellants as plaintiffs instituted suit No.FHC/ABJ/CS/3/07 at the Federal High Court, holden at Abuja, C by way of originating summons against the respondent as defendant calling for the determination of the following questions:-

“1. Whether the Defendant has powers under the provisions of the constitution of the Federal Republic of Nigeria, 1999 and the Electoral Act, 2006 to conduct any verification of the credentials/papers and/or D screening out and/or disqualifying candidates including the 2nd Plaintiff for the 2007 General Elections.

2. Whether by the provisions of the third schedule to the Constitution of the Federal Republic of Nigeria, item 15 paragraph (a) to (i) and E section 32 of the Electoral Act, 2006 or any other provisions of the Electoral Act, 2006 or any other law, any other person other than the Plaintiff has the exclusive right to verify and or screen its candidates before sponsoring them by forwarding their names to the Defendant.

3. Whether the Defendant has powers under or any law or enactment F to disqualify or screen out the 2nd Plaintiff as a candidate or any other candidate for the 2007 General Elections.

4. Whether the provisions of Section 32(5) of the Electoral Act, G 2006, any other person or bodies other than a court of law can disqualify any candidate from contesting election.”

The plaintiffs then sought the following reliefs from the court:-

“I. A declaration that the Defendant has no power under the provisions of the Constitution of the Federal Republic of Nigeria, 1999, the H Electoral Act, 2006, and the independent National Electoral Commission (Establishment Etc) Act Cap. 15, Laws of the Federation 2004 to conduct any verification of the credentials/papers and/or screening out

and/or disqualifying candidates including the 2nd Plaintiff for the 2007 General Elections.

B II. A DECORATION that by the provisions of Section 32 of the Electoral Act, 2006, only the 1st Plaintiff, a political party has the power to verify and or screen out its candidates before sponsoring them for election by forwarding their names to the Defendant.

C III. A DECLARATION that the Defendant has no power under the Constitution of the Federal Republic of Nigeria, 1999, Electoral Act, 2006 and the Independent National Electoral Commission (Establishment Etc) Act Cap 15, Laws of the Federation of Nigeria, 2004 to disqualify or screen out the 2nd Plaintiff as a Candidate or any other candidate for the 2007 General Elections.

D IV. A DECLARATION that the power to disqualify any candidate sponsored by any political party including the 1st plaintiff from contesting any election is exclusively vested in the court as provided for in section 32 (5) of the Electoral Act, 2006.

E V. AN ORDER setting aside the directive of the Defendant to all the political parties including the 1st Plaintiff to present their candidates for physical verification and or screening.

F VI. AN ORDER of perpetual injunction restraining the Defendant whether by themselves, their agents, privies, officers, or by whosoever from conducting physical verification and or screening of candidates put forward by political parties to contest in the 2007 general elections including the 2nd Plaintiff.”

G The originating summons had a 22 paragraphed affidavit in support with exhibits A and B attached while the defendant filed a counter affidavit of 10 paragraphs in opposing the summons. The substance of the trial court’s judgment is that the defendant has no power to disqualify candidates including the 2nd plaintiff in any election without recourse to the court of law.

H Dissatisfied with that judgment the defendant appealed while the plaintiffs cross appealed against the said judgment to the court of Appeal, the decision of which court resulted in the instant appeal before this court.

The issues for determination as identified by learned Senior counsel for the appellants; RICKEY Tarfa Esq. SAN, are as follows-

1. Whether the defendant/respondent, as an executive, non-judicial agency of government, has the power, under the provisions of the constitution 1999, to apply, invoke or enforce against the 2nd plaintiff/ B appellant, a presidential candidate nominated/sponsored by the 1st plaintiff/appellant for the 2007 general elections, the disqualification provided in section 137(i) of the Constitution read in the context of other relevant provisions of the Constitution, in particular section 6(1) and (6), 36(1), C (4), (5) and (6) - (12) as well as in the context of the system of Constitutional democracy established for the country by the Constitution.

2. Whether the defendant/respondent, as an executive non-judicial agency of government, has the power, under the provisions of the Electoral Act 2006, to disqualify or screen out candidates for election including the 2nd plaintiff as a presidential candidate for the 2007 general elections. D

3. Whether the court below was right in failing to take into account the manifest differences between the provisions of section 21 of E the Electoral Act, 2006 as regards the vesting of power of disqualification of candidates in the courts.

It is the submission of learned Senior Leading Counsel for the appellants that section 137(1) of the 1990 Constitution is not self executing F and that there is no provision in the 1999 Constitution vesting any power on the respondent to execute or enforce the grounds of disqualification in sections 66,107, 137 and 182 of the 1999 Constitution; that by the provisions of section 32(4) of the Electoral Act, only a court of law G has the power to issue an order disqualifying a candidate from contesting election on grounds of non fulfilment of constitutional requirements; that there is no inherent power under the Electoral Act, 2006 vesting on the respondent, a non-judicial agency of the government, the power to disqualify or screen out candidates for election and that the legislature by H removing the powers vested on the respondent in the Electoral Act, 2002 to disqualify candidates by omitting the power in Electoral Act, 2006 clearly intended that the courts should have a final say on the issue of

disqualification and urged the court to allow the appeal.

On the other hand, learned Leading Senior Counsel for the respondent, CHIEF J. GADZAMA, SAN submitted that screening and verification of candidates for election is an administrative procedure adopted by the respondent to ascertain the veracity of the claims of the candidates presented by political parties and that the exercise is not aimed at disqualifying any candidate by “screening them out” as alleged by the appellants; that disqualification is a matter of law and is guided by the provisions of the Constitution and the Electoral Act, 2006; that the decision of the Court of Appeal in the case of Ajadi vs Agbola (2004) 13 NWLR (pt. 898) 91 at 196 on the powers of the respondent to screen and verify particulars of candidates, still remain good law; that the only situation when the court will be called upon to disqualify a candidate is when a candidate deposes falsely to an affidavit and that it will amount to a “mere circus show” if the respondent must go to court at all times before it could treat every piece of information presented before it, by candidates and urged the court to dismiss the appeal.

The simple and straight forward question that calls for determination in this appeal is whether or not the respondent has any power either under the 1999 Constitution or the Electoral Act, 2006 or any other law to screen and disqualify candidates presented by political parties for any election in Nigeria.

The respondent is a creation of Constitution with powers, duties and/or functions constitutionally assigned to it in relation to the organization, supervision etc etc of elections in Nigeria. See section 153 of the 1999 Constitution.

By the provisions of item 15 paragraphs (a) to (i) thereof of the third schedule to the said 1999 Constitution the functions and/or duties of the respondent are clearly stated as follows-

“15. The Commission shall have power to -

(a) organize, undertake and supervise all elections to the offices of the President and Vice-president, the Governor and Deputy Governor of a state, and to the membership of the Senate, the House of Representatives and the House of Assembly of each State of the federation;

(b) register political parties in accordance with the provisions of this constitution and an Act of the National Assembly;

(c) monitor the organization and operation of the political parties, including their finances;

(d) arrange for the annual examination and auditing of the funds and accounts of political parties, and publish a report on such examination and audit for public information;

(e) arrange and conduct the registration of persons qualified to vote and prepare, maintain and revise the register of voters for the purpose of any election under this Constitution;

(f) monitor political campaigns and provide rules and regulations which shall govern the political parties;

(g) ensure that all Electoral Commissioners, Electoral and Returning Officers take and subscribe the oath of office prescribed by law;

(h) delegate any of its powers to any Resident Electoral Commissioner; and

(i) carry out such other functions as may be conferred upon It by an Act of the National Assembly.”

It has to be pointed out that paragraph (i) supra means that in addition to the powers conferred on the respondent in paragraphs 15 (a) to (h) of the Third Schedule to the 1999 Constitution, the National Assembly may by legislation confer more powers or functions on the respondent, it is in that respect that the Electoral Act, 2002 was passed by the National Assembly which provided in section 21(8) and (9) as follows:-

“(8) The decision of the Commission as to the qualification or disqualification of a candidate for an election may be challenged by a candidate.”

While subsection 9 of the said section 21 provided thus:

“(9) Any legal action challenging the decision of the Commission shall commence within five working days and be disposed of not later than one week before the election.”

From the provisions of the 2002 Electoral Act reproduced supra, it is without doubt that the National Assembly did confer on the respondent

ent the power to disqualify candidates for an election in addition to the functions Constitutionally assigned to the respondent in paragraph 15(a) to (h) of the Third schedule to the 1999 Constitution earlier reproduced in this judgment.

B However by section 165 (a) of the Electoral Act, 2006 the electoral Act, 2002 was repealed. The current law on any additional functions of the respondent is the Electoral Act, 2006, which provides in section 32(4) (5) and (6) thereof as follows:-

C *“(4) Any person who has reasonable grounds to believe that any information given by a candidate in the Affidavit is false may file a suit at the High Court of a State or Federal High Court against such person seeking a declaration that the information contained in the Affidavit is false.*

D *(5) If the court determines that any of the information contained in the Affidavit is false, the court shall issue an order disqualifying the candidate from contesting the election.*

E *(6) A political party which presents to the Commission the name of a candidate who does not meet the disqualifications stipulated in this section, commits an offence and is liable on conviction to a maximum fine of N500,000.00.”*

F That apart, section 137(1) of the 1999 Constitution contains the circumstances or situations where a candidate for election may be disqualified from contesting election into the office of President or Vice-president of the Federal Republic of Nigeria. The circumstances in which a candidate to that office may be disqualified are as follows-

G *“137- (1) A person shall not be qualified for election to the office or president if-*

H *(a) subject to the provisions of section 28 of this Constitution, he has voluntarily acquired the citizenship of a country other than Nigeria or, except in such cases as may be prescribed by the National Assembly, he has made a declaration of allegiance to such other country; or*

(b) he has been elected to such office at any two previous elections; or

(c) under the law in any part of Nigeria, he is adjudged to be a

lunatic or otherwise declared to be of unsound mind; or

(d) he is under a sentence of death imposed by any competent court of law or tribunal in Nigeria or a sentence of imprisonment or fine for any offence involving dishonesty or fraud (by whatever name called) or for any other offence, imposed on him by any court or tribunal or B substituted by a competent authority for any other sentence imposed on him by such a court or tribunal; or

(e) within a period of less than ten years before the date of the election to the office of President he has been convicted and sentenced C for an offence involving dishonesty or he has been found guilty of the contravention of the Code of Conduct; or

(f) he is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law in force in Nigeria or any other D country; or

(g) being a person employed in the civil or public service of the Federation or of any state, he has not resigned, withdrawn or retired from the employment at least thirty days before the date of the election; or

(h) he is a member of any secret society; or E

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

(j) he has presented a forged certificate to the Independent National Electoral Commission.”

The issue remains whether the respondent has the power to disqualify any candidate who falls within any of the categories listed under G section 137(1) of the 1999 Constitution or any other law in force. I have limited myself to conditions for disqualification of candidates under section 137(1) of the 1999 Constitution due to the peculiar facts of the instant case having regard to the disqualification of the 2nd appellant, a H presidential candidate of the 1st appellant for the 2007 presidential election in Nigeria.

I have no hesitation whatsoever in holding that having regard to

the state of the applicable law the respondent has no power either under the 1999 Constitution or 2006 Electoral Act, or any other law to screen or disqualify any candidate for any election in Nigeria. The fact that under section 21(8) of the Electoral Act, 2002 the respondent had powers
B to disqualify candidates for any election is not in doubt at all as the power is specifically conferred therein. Fortunately or unfortunately the said Electoral Act 2002 was repealed by section 165 (1) of the Electoral Act, 2006 which in effect killed the power of the respondent to disqualify
C candidates, in enacting the Electoral Act, 2006, the National Assembly did not deem it necessary that the respondent should continue to exercise such power for reasons best known to them and which no one can inquire into or question. To that end the legislature did not reenact sub-
D section (8) of section 21 of the Electoral Act, 2002 or any similar provision in the current Electoral Act, 2006. I hold the considered view that by the National Assembly not reenacting a similar provision to sub-section (8) of section 21 of the Electoral Act, 2002 in the Electoral Act, 2006, the intention of the law makers is clearly that the respondent has been stripped
E of that power and can therefore no longer exercise same.

I hold the further view that from the provisions of the current Electoral Act 2006 and section 137(1) of the 1999 Constitution only a court of law or tribunal has the power to disqualify a candidate to any
F election in Nigeria.

Much has been said about a decision such as this leading to all sorts of imaginary difficulties. My answer is simply that the judiciary does not make laws; that function or duty is by constitutional arrangement and provision assigned to the legislature which, in the instant case,
G has enacted the Electoral Act, 2006 to guide all stakeholders in the conduct of the 2007 General Elections in Nigeria and post election proceedings. The duty of the judiciary is to interpret the provisions of the relevant laws and Constitution, not to amend, add to or subtract from the
H provisions enacted by the legislature, in the instant case, the legislature thought it right and proper, and, for good reason, to take away the powers of the respondent to disqualify candidates earlier granted it by the very legislature. I hold the considered view that it would be improper;

may be illegal; for this Court to read into either the Act or Constitution what is clearly not stated therein just to allow the respondent to continue to exercise a power that no longer belongs to it by express enactment. If the legislature feels that it made a mistake by omitting the provision in subsection 8 of section 21 in the Electoral Act, 2006, it is its duty to B amend the law. Until then the law is as declared by this Court in this case.

It is with these views in mind that i hold that the decision of the Court of Appeal in Ajadi vs Ajibola (supra) which was decided under the provisions of the Electoral Act, 2002 is not relevant in determining the C issue of power of the respondent to disqualify a candidate for any election in Nigeria under the provisions of the present Electoral Act, 2006.

In conclusion, I agree with the reasoning and conclusion of my learned, brother katsina-alu, JSC in the lead judgment, a draft of which I had earlier read, that the appeal is meritorious and should be allowed and D was allowed on 16th April, 2007. I ordered accordingly and abide by all the consequential orders made in the said lead judgment including the order as to costs.

Appeal allowed.

E

OGBUAGU JSC

This is an appeal against the decision of the Court of Appeal, Abuja F Division (hereinafter called “the court below”) delivered on 3rd April, 2007 allowing the appeal of the Respondent, dismissing the Cross-Appeal of the Appellants and finally declared that the Respondent inter alia, has the power to disqualify candidates sponsored by a Political Party G including the 2nd Appellant who failed to meet the criteria set out in the Constitution without having to go to Court. It also set aside the decision of the trial Federal High Court delivered on 7th March, 2007 which had held otherwise. The Judgment the court below is now reported in (2007) H 6 NWLR (Pt.1029) 142 @ 162.

Dissatisfied with the said decision, the Appellants, have appealed to this Court on six (6) Grounds of Appeal. Without their particulars, they read as follows:

(1) GROUND ONE

Error in Law

The learned justices of the Court of Appeal erred in law when they held inter alia;

B “There is merit in the submission of the learned senior counsel for the appellant.....” “not only are the words of Section 137 of the Constitution clear and unambiguous, it is common ground that it provides for disqualification of a candidate aspiring to the office of President or
C Vice-President.....since the maker of the Constitution would not make these provisions for the fun of it. I am of the view that if the appellant
D decided to close its eyes to the infraction of the provisions of the Constitution, it would tantamount to abandoning the heavy responsibility placed on it by the provisions of the Constitution to wit to organize, undertake
E and supervise the conduct of a credible election.... Having regard to the clear provisions of the Constitution..... It is my considered view that the Appellant has the power and authority not only to screen candidates sent to it by political parties, but to remove the name of any candidate that failed to meet the criteria set out by the Constitution without having to go to Court”.

(Emphasis supplied).

(2) GROUND TWO

Error in Law

F “The learned Justices of the Court of Appeal erred in law when they held that “Apart from this constitutional power, it is inherent in Section 32 particularly subsection (1) and (2) of the Electoral Act that the Appellant has a primary duty to ensure compliance with the provisions of the Constitution”.

(3) GROUND THREE

Error in Law

H The learned justices of the court below erred in law when they held that:

“The whole case of the respondent/cross appellant was squarely hinged on Section 32 (4) and (5) of the Electoral Act, 2006. In my considered view, these two subsections deals with an entirely different situa-

tion. The two subsections when read together provide an opportunity for any individual, after preview of the personal particulars of a candidate published by the appellant in the constituency where the candidate intends to contest the election can on reasonable grounds believe that there is false information given by such a candidate go to the High Court to challenge his candidature. It will be a mere circus show for the commission to be expected to go to court first to seek a declaration before treating the information supplied to it". B

(4) GROUND FOUR

Error in Law C

"The learned justices of the Court of Appeal erred in law when they failed to appreciate the difference between the Electoral Act, 2002 (now repealed) under which Ajadi vs. Ajibola (2004) 16 NWLR (part 898) 91 was decided and the 2006 Electoral Act, which divested the Respondent (INEC) of power to disqualify or screen out candidates". D

(5) GROUND FIVE

Error in Law

"The learned justices of the Court below erred in law in failing to consider and uphold the submission of Counsel to the Plaintiffs/Appellants that had the lawmakers intended to vest INEC with powers to disqualify candidates, it would have retained the provisions of Section 21 of the Electoral Act, 2002 in Section 32 of the Electoral Act, 2006 now in force". F

(6) GROUND SIX

Error in Law

"The learned Justices of the Court of Appeal erred in law when they failed to consider the proper Construction of Sections 6 (6) and 36 (1) of the Constitution of the Federal Republic of Nigeria, 1999 in relation to the purported power of the Respondent (INEC) to disqualify candidates and thereby occasioned a miscarriage of justice". G

The facts of the case have been substantially stated in the lead Judgment of my learned brother, Katsina-Alu, JSC, which I adopt herein as my own.

The Appellants formulated three (3) issues for determination,

namely,

“1. Whether the Defendant/Respondent, as an executive, non-judicial agency of government, has the power under the provisions of the Constitution 1999, to apply, invoke or enforce against the 2nd Plaintiff/
B Appellant, a presidential candidate nominated/ sponsored by the 1st Plaintiff/Appellant for the 2007 general elections, the disqualification provided in section 137(1)(i) of the Constitution read in the context of other relevant provisions of the Constitution, in particular Section 6(1) & (6),
C 36(1), (4), (5) and (6) -(12) as well as in the context of the system of constitutional democracy established for the country by the Constitution. (Grounds 1 and 6).

2. Whether the Defendant/Respondent, as an executive non-judicial agency of government, has the power, under the provisions of the
D Electoral Act 2006, to disqualify or screen out candidates for election including the 2nd Plaintiff as a presidential candidate for the 2007 general election (Grounds 2 and 3).

3. Whether the Court below was right in failing to take into account the manifest differences between the provisions of Section 21 of the Electoral Act, 2002 and Section 32 of the Electoral Act, 2006 as regards the vesting of power of disqualification of candidates in the Courts. (Grounds 4 and 5)”.
E

On its part, the Respondent formulated two (2) issues for determination, namely,
F

“i) Whether the Respondent (INEC) has powers under the relevant laws to screen and verify particulars of candidates.

ii) Whether the learned Justices of the Court of Appeal rightly
G held that the Respondent (INEC) has powers to disallow/exclude or disqualify a candidate that is not qualified by virtue of S.182 and 137 (1) (i) of the 1999 Constitution” ,

When this appeal came up for hearing on 16th April, 2007, the
H Court accepted the written Briefs of the parties in the open Court and proceeded to hear submissions/arguments from their respective learned Counsel. Tarfa Esq. (SAN) leading learned Counsel for the Appellants, applied to withdraw the Notice of Appeal filed on 3rd April, 2007 and rely

on the one dated 10th April, 2007. He then referred to their said issues for determination and also to Section 137(1) of the Constitution of the Federal Republic of Nigeria, 1991. He also referred to the principles of interpretation and to pages 10 and 11 of their said Brief and to cases Nos. 3, 4, 6 and 7 of their List of Authorities - i.e. Chief Awolowo v. Alhaji Shagari & 2 ors. (1979) 6-9 S.C. 57; Garba v. F.C.S.C. (meaning Federal Civil Service Commission & anor.) (1988) 1 NWLR (Pt.71) 449. (It is also reported in (1988) 2 SCNJ. 270); Buhari & anor. v. Chief Obasanjo & 264 ors. (2005) 13 NWLR (Pt.941) 1 @ 219 - per Ejiwunmi JSC; and Garba v. University of Maiduguri (1986) 1 NWLR (Pt.18) 550. C

Learned Senior Advocate also referred to Section 6(1) and (6) and 36 (1) & (5) of the 1999 Constitution (hereinafter called “the Constitution”), page 9 of their Brief and paragraph 15(1) of the 3rd Schedule of the Constitution in order to see if any of them is the source of the Respondent’s power to disqualify. He then submitted that the court below, was wrong in its conclusion. He also referred to item 22 of the Exclusive Legislative List in the 2nd Schedule of the Constitution which according to him, empowers the National Assembly to make laws. He referred to Section 32 (4) & (5) of the Electoral Act, 2006. He stated that the decision of the court below, is that the provision of Section 137 (1) is self-executing (i.e. sufficient on its own). He referred to cases Nos. 6, 13 and 14 of their List of Authorities - i.e. Buhari & anor v. Chief Obasanjo & ors. (supra); (Chief Great Ogburu v. Chief Ibori & 27 ors. (2005) 13 NWLR (Pt.942) 319 @ 438 C.A. and Chief Ojukwu v. Chief Obasanjo & 3 ors. (2004) 12 NWLR (Pt.886) 169. (It is also reported in (2004) 7 SCNJ. 33 and (2004) 7 S.C. (Pt.1) 117). D E F

He submitted that the Constitution, makes a distinction between qualification and disqualification. He referred to Sections 6(1) & (6) and 36 (1), (4), (6) - (12) of the Constitution as to Judicial powers. That Sections (6)(1), 137(1), 107(1) and 182(1) of the Constitution, are the provisions dealing with disqualification. It is his submission that these provisions, can only apply, having regard to Sections 6(1) & (6) and 36(1) of the Constitution. G H

Learned Senior Advocate then referred to Section 131(1) of the

Constitution and the African Charter Article 13(1) Cap 10 of the Revised Version of Laws of the Federation, 1990 and submitted that Section 36(1) of the Constitution, is clear. That under Section 137(1) of the Constitution, the Respondent has no such power that the court below, gave to it.

B That the power to disqualify, is vested in the courts and so also Section 32(4) & (5) of the Electoral Law. He finally submitted that the decision in the case of Chief Ajadi v. Chief Ajibola & 10 ors. (2004) 16 NWLR (Pt.898) 91 C.A. dealt with post-election and therefore, it is inapplicable. He urged the Court to allow the appeal and the prayers sought at page 8 of their said Notice of Appeal.

C Chief Gadzama, (SAN) - learned leading counsel for the Respondent, submitted that there is one sole issue for determination - i.e. whether the Respondent has the power to screen, verify or disqualify candidates for election. He submitted that the court below, was right and that the decision is unassailable. That it made it clearer and abundantly clearer that the Respondent, can disqualify and throw out a candidate.

It is his submission that there is no conflict between Section 32 of the Electoral Act and the Constitution. That the wordings or the provisions in the Section, are very clear. He maintained that the Respondent, can disqualify. He cited and relied on the case of (not properly cited), it is Udoh & 2 ors. v. OHMB (meaning Orthopaedic Hospitals Management Board & anor. (1993) 7 NWLR (Pt.304) 139 @ 148. (it is also reported in (1993) 7 SCNJ. 436) - per Karibi-Whyte, JSC, as to the principles of interpretation of a statute where a section names specific things among many other possible alternatives, and that the intention, is that those not named, are not intended to be included. This principle, is said to be encapsulated in the Latin maxim - Expressio unius est exclusio alterius. In other words or meaning - (the express mention of one thing in a statutory provision, automatically, excludes any other which otherwise would have applied by implication with regard to the same issues).

G H Learned Senior Advocate also referred to Section 32 (4) & (5) of the Electoral Act and urged the Court to dismiss the appeal and affirm the Judgment of the court below and also the Cross- Appeal.

In reply to a point of law, Toro, Esq. (SAN) referred to Section

165 of the Electoral Act, 2006 which he stated repealed The INEC ACT No. 17. He referred to page 29 of the Records and maintained/insisted that the court below, gave to the Respondent, what it did not ask for. He submitted that Section 137(2), gave a lee way to a, candidate and therefore, nobody can take it away. He still urged the Court, to allow the appeal. B

After the end of the oral submissions by the learned Senior leading counsel for the parties, the Court rose and held a brief Conference. On resumption, my learned brother, Katsina-Alu, JSC, read out and delivered in the open court on the Bench Judgment of the Court and stated that today - 29th June, 2007, he will give his reasons for allowing the appeal of the Appellants. I too, in my concurring Judgment, stated/indicated that I will give my reasons for allowing the appeal also today. I now proceed to do so. C D

In my respectful but firm view, the crucial, central or main issue for determination in this appeal, is whether the Respondent, has the power either under the 1999 Constitution of the Federal Republic of Nigeria and/or under the Electoral Act, 2006 (hereinafter called “the Act”) or any other relevant law or statute for that matter, to disqualify any Candidate (including the 2nd Appellant) sponsored by a political party, from contesting an election in the 2007 General Elections. In order to determine this issue, a consideration of Section 137(1) (i) & (j) and paragraph 15 of the Third Schedule of the Constitution and Section 32 of the Act, will be pertinent. E F

Section 137(1) (i) provides as follows:

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

“or (I) he has presented a forged certificate to the Independent National Electoral Commission”.

Paragraph 15 of the Third Schedule of the Constitution provides

as follows:

“15. The Commission shall have power to -

(a) organise, undertake and supervise all elections to the offices of the President and Vice-President, the Governor and Deputy Governor of a State, and to the membership of the Senate, the House of Representatives and the House of Assembly of each State of the Federation;

(b) register political parties in accordance with the provisions of this Constitution and an Act of the National Assembly;

(c) monitor the organisation and operation of the political parties, including their finances;

(d) arrange for annual examination and auditing of the funds and accounts of political parties, and publish a report on such examination and audit for public information;

(e) arrange and conduct the registration of persons qualified to vote and prepare, maintain and revise the register of voters for the purpose of any election under this Constitution;

(f) monitor political campaigns and provide rules and regulations which shall govern the political parties;

(g) ensure that all Electoral Commissioners, Electoral and Returning Officers take and subscribe the oath of office prescribed by law;

(h) delegate any of its powers to any Resident Electoral Commissioner, and

(i) carry out such other functions as may be conferred upon it by an Act of the National Assembly”.

Section 32 (4), (5) and (6) of the Electoral Act, 2006, provide as follows

“(4) Any person who has reasonable grounds to believe, that any information given by a candidate in the Affidavit is false may file a suit at the High Court of a State or Federal High Court against such a person seeking a declaration that the information contained in the Affidavit is false”.

“(5) If the Court determines that any of the information contained in the Affidavit is false the Court shall issue an Order disqualifying the candidate from contesting the election”

“(6) A political party which presents to the Commission the name of a candidate who does not meet the qualification stipulated in this Section, commits an offence and is liable on conviction to a maximum fine of N500,000.00.”

It is noted by me, that the above Section, is a subsidiary legislation B by virtue of Section 18(1) of the Interpretation Act and therefore, has the force of law. Indeed, it operates side by side or alongside the Constitution. Indeed, Section 6(i) (6) (b) of the Constitution provides as follows: *“6(i) The Judicial powers of the Federation shall be vested in the courts C to which this Section relates, being courts established for the Federation”*.

“(6) The judicial powers vested in accordance with the foregoing provisions of this section -

“(b) shall extend to all matters between persons or between gov- D ernment or authority and to any person in Nigeria and to all actions and proceedings relating thereto for the determination of any question as to the civil rights and obligations of that person”.

It cannot be disputed that the Respondent, is an executive and E non-judicial agency of the Government. The Respondent claims or asserts that it has the power to disqualify and that Section 137(1) (i) is self executing and therefore, disqualification can be determined by it. With respect, this claim or assertion, is very strange to me and is a gross F misconception. The Respondent, is claiming a power or right which neither the Constitution nor the Act by no stretch of imagination, conferred on it.

Now, paragraph 15 of Part 1 of the said Third Schedule provides, G as follows:

“The Commission shall have power to (a) organize, undertake and supervise all elections to the offices of the President and Vice President, the Governor and Deputy Governor of a State and to the membership of the Senate, the House of Representatives and the House of Assembly of H each State of the Federation”.

The provision, is very clear and unambiguous. It does not confer the power to disqualify a candidate nominated or sponsored by a political

party. Were there to be such a provision as held by the court below, I am afraid and with the greatest respect, “a frankisten” so to say, should have been created by the law-makers and the horrible consequences as were said to have manifested in the last or just concluded elections where
B some candidates, were said or alleged, to have been disqualified on the very day of some of the elections or when some of the elections, were in progress. This country, in my respectful view, should have witnessed a very dangerous phenomenon when INEC, - the Respondent, could have
C on its own whims and caprices and where its officials, may not like the face of a particular candidate for any reason whatsoever or and perhaps, personal to any of them and in other to humiliate and/or embarrass such a candidate, disqualify him.

I am aware that Section 21(8) and (9) of the Electoral Act, 2002,
D conferred the power to INEC to disqualify. I believe that the framers or law-makers of the Electoral Act, 2006 and the Constitution, saw or fore-saw the inherent danger of such power being misused or abused and/or
E used arbitrarily or in bad faith and therefore, in very clear and plain language, did not include such power in both the Constitution and the Act. This is why it is settled that in the interpretation of the Constitution or Statute, where the words or language are/is clear and unambiguous, the duty of the court, is to give the words or language, their/its clear ordinary
F and natural grammatical construction unless such interpretation, would lead to absurdity or some repugnancy or inconsistency with the rest of the legislation. There are too many decided authorities in respect thereof. See recently, *Uwazurike & 6 ors. v. Attorney-General of the Federation* (2006) 2 SCNJ. 369 @ 378; and (2007) 8 NWLR (Pt.1035) 1 @ 15-16.
G

Therefore, the said lawmakers, intended that only the courts; should exclusively, have the power and the jurisdiction in the 2007 Elections, to disqualify a candidate sponsored by his political party. I so hold.

What I am saying or stressing in effect, is that if such power to
H disqualify a candidate, is vested in the Respondent without having to go to court, with humility and respect, it will be irreconcilable with the power and jurisdiction vested in the courts and/or Election Tribunals by Sections 6(1) 6(5), 239 and 285 of the Constitution and Section 32 (4), (5)

and (6) of the Electoral Act, 2006. In fact, pursuant to sub-section 6 of the Act, the Respondent, does not even have the power to fine the political party. It is after the finding of a fact by a court of competent jurisdiction, of the guilt of the political party that the said court will convict and sentence it accordingly. Again, under sub-section (j) where the candidate B has presented a forged certificate to the Respondent, the Respondent has no constitutional power even by implication, to disqualify a candidate. In effect, trials, convictions and sentencing for offences under the Constitution and the Act, in my respectful view, are matters exclusively vested C in the courts. See the cases of Sofekun v. Chief Akinyemi & 3 ors. (1981) 1 NCLR 135 and Garba v. University of Maiduguri (supra).

Finally, the said provisions in the Constitution and the Act, in the circumstances of this case, must not be read in isolation, but must be read as a whole. See Buhari & anor. v. Chief Obasanjo & 264 ors, (supra). D

In conclusion, I agree with the learned trial Judge - Kuewumi, J. when he declared in his Judgment delivered on 7th March, 2007, inter alia, as follows: E

“(i) Relief I is granted only to the extent that the defendant (meaning the Respondent) has no power to, disqualify candidates under the provisions of the Constitution of the Federal Republic of Nigeria 1999 and the Electoral Act 2006. F

(iv) Relief IV is granted with the following modifications: The power to disqualify any candidate sponsored by any political party including the 1st plaintiff (sic) (meaning the 2nd plaintiff/ Appellant) from contesting an election is vested in the Courts as provided for in Section 32(5) of the Electoral Act 2006 and in any other legislation that is validly enacted in that behalf.” G

It is from the foregoing and the fuller reasons and conclusions in the lead Judgment of my learned brother, Katsina-Alu, JSC, in which I am in agreement with having had the privilege of reading the same before H now, that I too, allowed the appeal of the Appellants on the 16th April, 2007. I too, hereby set aside the decision of the court below. I hereby affirm the said Judgment of the trial court. No order as to costs.

TABAI JSC

This action was initiated at the Abuja Division of the Federal High Court by an originating summons issued on the 10/1/2007. Five questions for determination were therein submitted. The five questions in their totality sought in substance whether under the provisions of the 1999 Constitution, the Electoral Act 2006 or any other law, the INDEPENDENT NATIONAL ELECTORAL COMMISSION (the Defendant/Respondent) has the power to disqualify a candidate including the 2nd Plaintiff/Appellant presented by a political party for the 2007 elections from contesting any of the said elections. They claimed six reliefs including four declaratory and injunctive relief. In support of the originating summons was filed a 22 paragraph affidavit. The Defendant/Respondent also filed a counter affidavit of 10 paragraphs. By consent both parties submitted written addresses.

In its judgment on the 7/3/2007 the trial court held in substance that the INDEPENDENT NATIONAL ELECTORAL COMMISSION has no power to disqualify a candidate presented to it by a political party for the 2007 elections from contesting the said elections. The INEC was not satisfied with that decision and thus went on appeal to the Court of Appeal. By its judgment of the 3/4/2007 the appeal was allowed by the Court of Appeal.

The present appeal is against that judgment. From the six grounds of appeal contained in the Notice of Appeal dated and filed on the 10/4/2007 the Plaintiffs/Appellants formulated three issues which they couched in the Appellants' Brief of Argument as follows:

"1. Whether the Defendant/Respondent, as an executive non-judicial agency of government, has the power under the provisions of the Constitution 1999, to apply, invoke or enforce against the 2nd Plaintiff/Appellant, a presidential candidate nominated/ sponsored by the 1st Plaintiff/Appellant for the 2007 general elections, the disqualification provided in section 137(1) (i) of the Constitution read in the context of other relevant provisions of the Constitution, in particular section 6(1) and (6), 36(1), (4), (5) and (6)-(12) as well as in context of the system of

Constitutional democracy established for the country by the Constitution

(2) *Whether the Defendant/Respondent, an executive non-judicial agency of government, has the power under the provisions of the Electoral Act 2006, to disqualify or screen out candidates for election including the 2nd Plaintiff as a presidential candidate for the 2007 general election; and*

(3) *Whether the Court below was right in failing to take into account the manifest differences between the provisions of section 21 of the Electoral Act 2002 and section 32 of the Electoral Act 2006 as regards the vesting of power of disqualification of candidates in the courts.”*

In the Respondent’s Brief of Argument, two issues for determination we proposed and they are framed as follows:

“1. *Whether the Respondent (INEC) has powers under the relevant laws to screen and verify particulars of candidates; and*

2. *Whether the learned Justices of the Court of Appeal rightly held that the Respondent (INEC) has powers to disallow/exclude or disqualify a candidate that is not qualified by virtue of section 182 and 137(1)(i) of the 1999 Constitution.”*

On the 16/4/2007, this Court announced its decision allowing the appeal and indicated that it would give its reasons or reasoned judgment on the 29/6/2007. I have read, before now, draft of the leading judgment of my learned brother Katsina-Alu, JSC and I agree entirely with the reasoning and conclusion therein contained. By way of emphasis however I wish to make the following comments of my own.

In my considered view, the central issue for determination in this appeal is whether, having regard to the provisions of the 1999 Constitution, the Electoral Act 2006 and/or any other law, the Defendant/Respondent (INEC) has the power to disqualify a candidate (including the 2nd Plaintiff/Appellant) presented or sponsored by a political party for any of the 2007 general elections from, contesting the said election. This issue encompasses all the issues formulated by the parties.

On the 16/4/2007 when this appeal was heard, leading counsel for the Appellants Rickey Tarfa, SAN adopted the Appellants’ Brief of Argument and proffered some oral submissions. It was the submission for the

Appellant that section 137(1) of the 1999 Constitution does not either expressly or by necessary implication confer any power on the Defendant/Respondent to disqualify. It was argued that the powers of the Respondent in paragraph 15(a) of the Third Schedule of the Constitution shall be limited to organising, undertaking and supervising all elections to the offices therein specified and does not extend to disqualifying or screening out and a candidate sponsored by a political party for any of the elections. The process of disqualification, it was argued, is only as provided in section 32(4) and (5) of the Electoral Act 2006. It was the further submission for the Appellants that disqualification for embezzlement and fraud is tantamount to inflicting a penalty for the crimes of embezzlement and fraud and that the framers of the Constitution could not have intended a mere administrative panel to be entrusted with such an adjudicatory responsibility, contending that indictment for such criminal offences and deprivation arising therefrom require the regular process of trial in a court or tribunal. They relied on sections 36(1)-(12) 6(1) 2(6) of the Constitution and *SOREFUN v AKINYEMI* (1981) 1 NCLC 135 and the Australian case of *WATERSIDE WORKERS' FEDERATION OF AUSTRALIA v J. W. ALEXANDER LTD* (1918) 25 CLR 434 at 444. The power of INEC to disqualify a candidate without having to go to court is irreconcilable with the power and jurisdiction vested in the courts and Election Tribunals by section 239(1) and 285 of the Constitution, Appellants argued.

Chief Joe-Kyari Gadzama, SAN leading counsel for the Respondent also adopted the Respondent's Brief of Argument and made some oral submissions. On behalf of the Respondent it was submitted that in view of the uncontroverted fact of the 2nd Appellant's indictment by an Administrative Panel for corruption related offences, the Respondent has power to invoke the provisions of section 137(1) (i) of the Constitution to disqualify him, contending that the Respondent cannot close its eyes to any violation of the Constitution. Some hypothetical questions were stated to further amplify the submission in support of the Respondent's powers of disqualification under the Constitution,

Under its first issue, learned Senior Counsel made reference to

Schedule 3 paragraph 15 of the 1999 Constitution, the dictionary meaning of “screening and verification, the opinion of Chief Afe Babalola, SAN in book ELECTION LAW AND PRACTICE 1st Edition page 82, KURFI v MOHAMMED (1993) 2 NWLR (Part 277) 602 at 620 and DAMWESH v SER (1998) 7 NWLR (Part 556), 170 at 172 and submitted that while it was the duty of a political party to nominate a candidate for any particular election, it was the duty of the Respondent to screen and verify the claims of the candidate to ensure his qualification or disqualification for the election. For this submission he relied further on ONUOHA V OKAFOR (1983) 14 NSCC 494, DALHATU v TURAKI (2003) 15 NWLR (Part 843) 310. B C

I have considered the claim, the questions submitted for determination on the reliefs sought and the opinion of counsel in their addresses. D

The provisions of the Constitution on which the resolution of the central issue turns are section 137 and Schedule 3 paragraph 15. Learned senior counsel for both sides also agree that for the purpose of determining the real intention of the framers of the Constitution some other provision of the Constitution may also be called in aid. This accords with the settled principle not to construe any section of a statute in isolation of the whole. E

See CHIME v UDE (1996) 7 NWLR (Part 465) 379. The Respondent claims to have derived its powers of disqualification of candidates nominated by political parties for an election partly from the provisions of Schedule 3 paragraph 15(a) of the Constitution. The third schedule paragraph 15(a) provides:- F

“The commission shall have power to organise, undertake and supervise all elections to the offices of the President and Vice-President, the Governor and Deputy Governor of a State, and to the membership of the Senate, the House of Representatives and House of Assembly of each state of the Federation.” G

The operative part of the above provision is the Respondent’s power to organise, undertake and supervise all elections to the offices specified therein. The power to organise, undertake and supervise elections is, admittedly, very wide and learned Senior Counsel for the Respondent H

opined that the Respondent's power of disqualification is implicit in the provision. I am not persuaded by that submission. I do not see anything from the clear provisions of Schedule 3 paragraph 15 from which the court can reasonably draw the inference of the Respondent's power to
B disqualify a candidate sponsored by a political party for an election. The disqualification of a person from election to the office of the President or Vice-President or to any other elective office for that matter pertains to the civil rights and obligations of that person and for which safeguard, there are adequate provisions in the Constitution.

C Besides there being no clear provision in Schedule 3 paragraph 15 of the Constitution. It has been settled principle of Statutory interpretation that although schedules of a Statutes can be useful handmaid in
D construed the provisions of the Statute, they cannot however be interpreted to over-rule the plain words in the body of the statute. See FEDERAL CIVIL SERVICE COMMISSION & ORS v J. O. LAOYE (1989) 2 NWLR (Part 106) 652 at 711; A.G. ANAMBRA STATE v A.G. FEDERATION (1993) 6 NWLR (Part 302) 692 at 720.

E The judicial powers of this country are by virtue of section 6 of the Constitution of the Federal Republic of Nigeria vested in the courts established thereunder. And section 6 (6) (a) and (b) provides:-

"The judicial powers vested in accordance with the foregoing provisions of this section;

F *(a) shall extend, notwithstanding anything to the contrary in this Constitution, to all inherent powers and sanctions of a court of laws;*

*(b) shall extend to all matters between persons or between government or authority and to any person in Nigeria, and to all actions and
G proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person."*

(emphasis mine)

H The emphasis in the above provision is that the judicial powers extend to all persons and to all actions and proceedings relating to the civil rights and obligations of the person.

Further judicial safeguards for the individuals civil rights and obligations are provided in Section 36 of the Constitution.

Section 36(1) of the 1999 Constitution provides:

“In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.” B

(underlining mine)

The substance of the foregoing provisions is that in any action or proceeding relating to the determination of the civil rights and obligations of a person initiated by or against any government or authority, the said action or proceedings should be heard within a reasonable time by a court or other tribunal established by law and constituted in such manner as to ensure its independence and impartiality. C

As I stated above the disqualification of a person from any elective office under the Constitution involves the determination of that person’s civil rights and obligations and which determination is, by virtue of section 6 and 36 of the Constitution specifically assigned to courts or other tribunals established by law and constituted in a manner as to ensure their independence and impartiality. The Respondent (INEC) is not a court or other tribunal established by law under the Constitution. And it is not even constituted for the proper determination of matters pertaining to a person’s civil rights and obligations. From the foregoing it is my firm view that the Respondent’s powers to organise, undertake and supervise elections in paragraph 15(a) of the Third Schedule cannot be construed to include or extend to disqualification of a person from an elective office since such a disqualification necessarily involves the determination of the person’s civil rights and obligations. So much for the powers of the Respondent under the 3rd schedule paragraph 15 of the Constitution. D E F G

Let me now comment on section 137(1) of the 1999 Constitution of the Federal Republic of Nigeria. It says:

“137(1) A person shall not be qualified for election to the office of President if

(a).....

(b).....

(c) *under the law in any part of Nigeria, he is adjudged to be a lunatic or otherwise declared to be of unsound mind; or*

(d) *he is under a sentence of death imposed by any competent court of law or tribunal in Nigeria or a sentence of imprisonment or fine for any offence involving dishonesty or fraud (by whatever name called) or for any other offence imposed on him by such court or tribunal; or*

(e) *within a period of less than ten years before the date of the election to the office of President he has been convicted and sentenced for an offence involving dishonesty or he has been found guilty of the contravention of the code of conduct; or*

(f) *he is an adjudged bankrupt, having been adjudged or otherwise declare bankrupt under any law in force in Nigeria or any other country; or*

(g) *being a person employed in the civil or public service of the Federation or of any State, he has not resigned, withdrawn or retired from employment at least thirty days before the date of the election; or*

(h) *he is a member of any secret society; or*

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

(j) *he has presented a forged certificate to the Independence National Electoral Commission.*

(2) *Where in respect of any person who has been*

(a) *adjudged to be lunatic;*

(b) *declared to be of unsound mind;*

(c) *Sentenced to death or imprisonment; or*

(d) *adjudged or declared bankrupt;*

any appeal against the decision is pending in any court of law in accordance with any law in force in Nigeria, sub section (1) of this section shall not apply during a period beginning from the date when such appeal is lodged and ending on the date when the appeal is finally deter-

mined or, as the case may be, the appeal lapses or is abandoned, which ever is earlier.”

The above provisions of section 137(1) (a)-(j) are grounds for the disqualification of a person from contesting election to the offices of President and Vice-President. The central question for determination in, B who, or which body or organ of government under the Constitution, has the authority to decide whether any of the grounds in section 137(1) (a)-(j) has been established against a person to warrant his disqualification from election into the offices of President or Vice-President.

The Appellants’ contention is that it is only a court or other tribu- C nal established by law and properly constituted to ensure its independence impartiality that can so determine and not the Respondent (INEC). The Respondent thought otherwise, contending that it can establish any D of the aforestated grounds against any person seeking election into an elective office and proceed then to disqualify him. As I stated above each of the grounds for disqualification pertains to a person’s civil rights and obligations. Where the alleged facts constituting the ground for disquali- E fication are admitted by the person against whom they are made, than he stands disqualified on his own admission. But where they are denied or contested by the person, then there is a dispute as to whether or not there exists, as against that person, the particular ground for his disqualifica- F tion.

The denial of the allegations constituting the ground for the per- son’s disqualification raises a fundamental dispute or issue affecting his civil rights and obligations. Who or which organ of government has the constitutional authority to settle and determine this issue? It is the court G or the Independent National Electoral Commission (Respondent)? Section 6 (6) (a) and (b) of the Constitution which I have reproduced above provides to the effect that the judicial powers vested in the courts of law shall extend to the inherent jurisdiction of the court, to all matters be- H tween persons or government or authority and to all actions and proceedings relating to any person for the determination of any question as to his civil rights and obligations. In my view, allegations constituting a ground for the disqualification of a person under section 137(1) of the

Constitution, once denied or contested raises a dispute or issue which determination is reserved for the courts or other tribunals established by law and properly constituted.

Section 137(2) of the Constitution which I have reproduced above appears to throw more light on the requirement for rigorous proof of the disabilities in subsection 1 of section 137 of the Constitution. The provision shows that that even where, for instance, there is proof that a person wishing to contest election to the office of President or Vice-President had been tried, convicted and sentenced for an offence such as those in section 137(1) (d) and (e), the fact of that conviction and sentence cannot be used to disqualify him IF there is a pending appeal against the decision. The manifest spirit of the provision is that to constitute a person's disqualification the allegations constituting the ground for disqualification must be proved finally and conclusively. In other words, so long as the person genuinely and faithfully contests his conviction and sentence through the appeal process which has not been exhausted the fact of that conviction cannot be used to disqualify him.

Going by the provisions of section 137(2) aforesaid, it is my further view that even where an allegation of a person's disqualification is accompanied by a certificate of his conviction for an offence under subsection (1) (d) and (e) and the person denies that he is the same person as that contained in the certificate the identity of the person actually convicted becomes an issue by virtue of the provisions of section 225(2) of Evidence Act and which issue can only be tried and determined by a court or other tribunal established by law and properly constituted to ensure its independence and impartiality. Mere production of some documents like the judgment of the court wherein the person was allegedly tried and convicted would not suffice. There must be proof to the satisfaction of the court that the person alleged to have been convicted is one and the same person as that named in the certificate or other documents of the Court. This was one the principles in the decision in ENGINEER GOODNEWS AGABI & ANOR v CHIEFAUDU OGBEH & 3 OTHERS (2002) 11 NWLR (Part 990) 65.

It is my further view that although section 137(2) makes refer-

ence specifically to the grounds for disabilities in section 137(1) (c) (d) (e) and (f), the principle embodied therein applies with equal force to the other provisions in section 137(1) including subsection (i) for disqualification on the ground of indictment for embezzlement and fraud. Chief Joe-Kyari conclusively Gadzama, SAN argued that in view of the uncontroverted facts about the 2nd Appellant's indictment for corruption related offences by an Administrative Panel of Inquiry, he stood disqualified and that the Respondent has the constitutional authority to invoke the provisions of section 137(1) (i) of the Constitution to disqualify him. The clear evidence is that the 2nd Appellant has consistently denied and contested the allegations of embezzlement and fraud. The allegations constituting the ground for his disqualifications are those of crime and it is not enough for the Respondent to assert that he had been indicted for no corruption related offences by an Administrative Panel of Inquiry and to disqualify him on that ground despite his denial. There is corresponding provision in the Constitution as those in sections 6 (6) (a) and (b) and 36(1) giving authority to the Respondent to determine issues arising from disputed grounds for, disqualification. In my view, there is no provision in the Constitution giving any power to the Respondent to invoke the provisions of section 137(1) thereof to disqualify a candidate sponsored or nominated by a political party for an election.

Still on this issue of the Respondent's competence to disqualify a candidate sponsored by a political party for an election, learned Senior Counsel for the Appellants raised at the court below the distinction between section 21 of the Electoral Act 2002 and section 32 of the Electoral Act 2006 and submitted that the distinction is significant in the determination of the sole issue. It is also their complaint that the court below failed to make any pronouncement on the issue. It was their submission that the omission of section 21(8) and (9) of the repealed Electoral Act 2002 in the current Electoral Act 2006 shows the intention of the law makers to strip the Respondent of whatever powers it had to decide on the qualification and disqualification of a candidate presented for an election. Learned Senior Counsel for the Respondent did not really address the issue.

By section 165 of the Electoral Act 2006, the Electoral Act of 2002 was repealed. The provisions of section 21 of the repealed Electoral Act of 2002 are repealed in section 32 of the Electoral Act 2006 with some modifications. While some of the provisions of the repealed 2002 Act are merely amended in the 2006 Act other are completely omitted. For example, Section 21(1) (6) of the 2002 Act which gave authority to the Attorney-General of the Federation to initiate criminal proceedings is completely omitted in the 2006 Act. Also omitted in the current Electoral Act 2006 is Section 21(1) (8) of the 2002 Act which provided:-

“21(1) (8) The decision of the Commission as to the qualification or disqualification of a candidate for an election may be challenged by a candidate.”

Implicit in this provision is some authority to the Respondent for the disqualification of a candidate for an election. What is the significance this of omission in the Electoral Act 2006. The legal effect of this is that the provision ceases to be part of the current Electoral Act 2006. The clear intention of the law makers is to strip the Respondent of whatever powers of disqualification it enjoyed under section 21(8) of the Repealed Electoral Act 2002 and effect must be given to that clear intension.

On the whole, having regard to the provisions of Section 6(6) (a) and (b) and 36(1) of the Constitution wherein the power for the determination of any question relating to a person’s civil rights and obligations is reserved for the courts or other tribunals established by law; the fact that the decision as to the disqualification of a person under section 137(1) of the Constitution necessarily involves the determination of the person’s civil rights and obligations and the repeal of Section 21(8) of the Electoral Act 2002, which gave some powers of disqualification to the Respondent, in the Electoral Act 2006, I am persuaded and I hold that the Respondent (INDEPENDENT NATIONAL ELECTORAL COMMISSION) has no powers either under the Constitution or any other law to disqualify a candidate presented by a political party for election to the office of President or Vice-President of the Federal Republic of Nigeria.

In view of the foregoing considerations and the fuller reasons contained in the leading judgment of my learned brother Katsina-Alu JSC, I

also allow the appeal. The judgment of the Court of Appeal of the 3/4/2307 is set aside. And the judgment of the trial Court of the 7/3/2007 to the effect that the Respondent has no power to disqualify a candidate, including the 2nd Appellant, presented to it by a political party for an election is restored affirmed. I also make no orders as to costs. B

MUHAMMAD JSC

On the 16th of April, 2007, I allowed this appeal and set aside the judgment of the Court of Appeal, Abuja Division and deferred my reasoning to today. Below is my reasoning for allowing the appeal: C

By an originating summons, the plaintiffs at the Federal High Court, Abuja, now appellants in this court, applied to the trial court for the determination of the following questions: D

“1. Whether the Defendant has powers under the provisions of the Constitution of the Federal Republic of Nigeria, 1999 and the Electoral Act, 2006 to conduct any verification of the credentials/papers and/or screening out and/or disqualifying candidates including the 2nd plaintiff for the 2007 General Elections. E

2. Whether by the provisions of the third schedule to the Constitution of the Federal Republic of Nigeria, item 15 paragraph (a) to (i) and Section 32 of the Electoral Act, 2006 or any other provisions of the Electoral Act, 2006 or any other law, any other person other than the Plaintiff has the exclusive right to verify and or screen its candidates before sponsoring them by forwarding their names to the Defendant. F

3. Whether the Defendant has powers under any law or enactment to disqualify or screen out the 2nd Plaintiff as a candidate or any other candidate for the 2007 General Elections. G

4. Whether by the provisions of Section 32(5) of the Electoral Act, 2006, any other person or bodies other than a court of law can disqualify any candidate from contesting Election.” H

The plaintiffs then asked for the following seven reliefs from the trial court:

“i. A DECLARATION that the Defendant has no power under the

provisions of the Constitution of the Federal Republic of Nigeria, 1999, the Electoral Act, 2006, and the Independent National Electoral Commission (Establishment, etc) Act Cap 15, Laws of the Federation, 2004 to conduct any verification of the credentials/papers and/or screening out and/or disqualifying candidates including the 2nd Plaintiff for the 2007 General Elections.

ii. A DECLARATION that by the provisions of Section 32 of the Electoral Act, 2006, only the 1st Plaintiff a political party has the power to verify and or screen out its candidates before sponsoring them for election by forwarding their names to the Defendant.

iii. A DECLARATION that the Defendant has no power under the Constitution of the Federal Republic of Nigeria, 1999, Electoral Act, 2006 and the Independent National Electoral Commission (Establishment, Etc) Cap 15, Laws of the Federation, 2004 to disqualify or screen out the 2nd Plaintiff as a candidate or any other candidate for the 2007 General Elections.

iv. A DECLARATION that the power to disqualify any candidates sponsored by any political party including the 1st Plaintiff from contesting any election is exclusively vested in the Court as provided for in Section 32 (5) of the Electoral Act, 2006.

v. AN ORDER setting aside the directive of the Defendant to all the political parties including the 1st Plaintiff to present their candidates for physical verification and or screening.

vi. AN ORDER of perpetual injunction restraining the Defendant whether by themselves, their agents, privies, officers, or by whosoever from conducting physical verification and or screening of candidates put forward by political parties to contest in the 2007 general elections including the 2nd Plaintiff.

vii. AND for such further or other orders as the court may deem fit to make in the circumstances.”

H The originating summons was accompanied by a 22 paragraph affidavit sworn to by one Oumar Shittien, a registered member and Director of Legal Services of the 1st and 2nd Plaintiffs respectively. It was also accompanied by some exhibits. The plaintiffs filed an application tar

an interlocutory injunction against the defendant. This motion was not moved in preference to proceeding with the substantive suit with dispatch.

The defendant filed a 10 paragraph counter affidavit to the affidavit in support of the originating summons. B

By consent, learned counsel for the respective parties agreed to deliver written submissions in support of the processes filed. The plaintiffs filed their written submissions on 14th February, 2007. The defendant filed its own on 28th February, 2007. Learned Counsel for the respective parties adopted their various written submissions with learned C
counsel for the plaintiffs making his replies on points of law.

After considering the affidavit evidence and the written submissions, the learned trial judge delivered his judgment in which the claims of the plaintiffs were granted to the extent that the defendant had powers D
to screen candidates and verify documents presented by them, but, the defendant had no power to disqualify candidates presented to it for election.

Dissatisfied with the trial court's judgment, the defendant appealed E
to the Court of Appeal, Abuja.

The plaintiffs, too, were dissatisfied with some aspects of the judgment and they cross-appealed.

On the 27th day of March, the court below delivered its judgment F
wherein it allowed the appeal of the defendant and dismissed the plaintiffs' cross-appeal.

The plaintiffs/respondents/cross-appellants were aggrieved by the lower court's judgment and appealed further to this court seeking the G
reliefs set out earlier in this judgment.

The facts giving rise to this appeal as contained in the printed record of appeal placed before this court reveal that the 1st plaintiff is a political party bearing same name. The 2nd plaintiff is the Presidential Candidate of the 1st plaintiff. The defendant, as its name suggests, is the H
Independent

National Electoral Commission which has been saddled with the responsibility of organizing, supervising and monitoring the conduct of

elections throughout the Federation.

On the 20th of December, 2006, the 1st plaintiff conducted its National Congress at the end of which various candidates, the 2nd plaintiff inclusive, emerged with the Party's mandate to contest for various electoral offices in the general elections scheduled for April, 2007. The names of the 2nd plaintiff and other candidates and positions were subsequently submitted to the defendant as required by law. The defendant, the plaintiffs claimed, insisted that candidates must be physically present at its offices for verification and screening exercise scheduled to hold from the 10th to 17th of January, 2007. Plaintiffs further claimed that the defendant, by the planned verification and screening exercise, has indicated that it will set guidelines to disqualify the 2nd plaintiff among other candidates submitted by the 1st plaintiff to it.

The plaintiffs further claimed that the defendants powers and duties are as provided for and contained in the Constitution of the Federal Republic of Nigeria, 1999, the Independent National Electoral Commission (Establishment, etc) Act, Cap 15, Laws of the Federation of Nigeria, 2004 and the Electoral Act, 2006. The defendant does not have the powers under these laws to physically verify or screen candidates whose names have been presented to it by the Political Party. Only political parties including the 1st plaintiff have power and duty to screen and verify their candidates before submitting their names to the defendant for the elections. Furthermore, only a court of law can disqualify a candidate if the requisite proceedings are brought before it for that purpose. The 2nd plaintiff along with other candidates whose names were submitted to the defendant, were, prior to the submission, screened and verified with sworn affidavits by the 1st plaintiff. The proposed physical screening and verification exercise will, cause logistic difficulties for the 1st plaintiffs Candidates as same will upset their schedules and businesses. The balance of convenience, it is claimed further, is in favour of the 1st plaintiff whose candidates will have their valuable campaign time wasted and their chances of success jeopardized.

The defendant filed a counter affidavit to the plaintiffs' originating summons. It was of 10 paragraphs sworn to by one Elekwa Onyemauche

Esq. Assistant Chief Legal Officer in the employment of the defendant. The averred facts to the defendant's own version are that as part of its functions prior to elections, the defendant receives (in a prescribed form) from the Political Parties the personal particulars of their candidates, It was averred that candidates for the post of the president of the Federal Republic of Nigeria must comply with the provisions of section 131 of the 1999 Constitution and must not be disqualified by virtue of the provisions of section 137 of same. By virtue of section 32(6) of the Electoral Act, 2006, a political party which presents to the defendant the name of a candidate who does not meet the Constitutional provisions commits an offence punishable with fine. There is no other means of determining the veracity of the claims of the candidates for elections without verifying their claims. The defendant claimed that the verification of facts and documents presented before the defendant is not aimed at disqualifying the 2nd plaintiff or anyone else. There was no threat as alleged by the plaintiffs and that the verification exercise is an administrative procedure.

In this court, parties filed and exchanged briefs of argument. In the appellants brief, learned SAN who settled the brief, Nwabueze, (Prof.) along with other senior counsel, formulated the following three issues for determination by this court:

"1. whether the Defendant/Respondent, as an executive, non-judicial agency of government, has the power, under the provisions of the Constitution 1999, to apply, invoke or enforce against the 2nd Plaintiff/Appellant, a presidential candidate nominated/sponsored by the 1st Plaintiff/Appellant for the 2007 general elections, the disqualification provided in section 137(1)(i) of the Constitution read in the context of other relevant provisions of the Constitution, in particular section 6(1) & (6), 36(1), (4) and (6) - (12) as well as in the context of the system of constitutional democracy established for the country by the Constitution. (Grounds 1 and 6).

2. Whether the Defendant/Respondent, as an executive non-judicial agency of government, has the power, under the provisions of the Electoral Act 2006, to disqualify or screen out candidates for election including the 2nd Plaintiff as a presidential candidate for the 2007 gen-

eral election. (Grounds 2 and 3).

3. *Whether the Court below was right in failing to take into account the manifest differences between the provisions of section 21 of the Electoral Act, 2002 and Section 32 of the Electoral Act, 2006 as regards the vesting of power of disqualification of candidates in the Courts. (Grounds 4 and 5)."*

Learned Counsel for the respondent, Chief Gadzama, SAN; distilled the following two issues:

"i. *Whether the Respondent (INEC) has powers under the relevant laws to screen and verify particulars of candidates.*

ii. *Whether the learned Justices of the Court of Appeal rightly held that the Respondent (INEC) has powers to disallow/exclude or disqualify a candidate that is not qualified by virtue of Section 182 and 137(1)(i) of the 1999 Constitution."*

From the totality of the issues formulated by learned senior counsel for the respective parties, three fundamental issues in my opinion, will assist me in determining the appeal. These are:

a) The issue of screening and verification of candidates by the respondent

b) The issue of disqualification of a political party's nominated and sponsored candidates by the defendant under the provisions of the Constitution, 1999 and the Electoral Act, 2006.

c) Was the court below right in failing to observe and pronounce upon the difference between section 21 of the Electoral Act, 2002 and section 32 of the Electoral Act, 2006?

The issue relating to screening and verification of candidates wishing to contest for political offices has been treated under issue 2 by the appellants and issue (i) by the respondent. Learned SAN for the appellants submitted that the duty imposed by the provisions of sections 32(1); (2), (6) of the Electoral Act, 2006 is on a political party, not on the respondent, to verify thoroughly the personal particulars of candidates nominated or sponsored by it. It must also screen out those found not to meet the Constitutional requirements. Its duty overrides the right of a citizen not to be screened out and thereby prevented from contesting an elec-

tion. The court below, he further argued, misconceived the purport and effect of section 32 (4) & (5) of the Electoral Act, 2006.

Learned SAN for the respondent submitted that there is nor iota of doubt that the respondent by virtue of the INEC Act and the 3rd schedule to the 1999 Constitution, paragraph 15 thereof gives the Commission i.e. B the respondent a statutory duty to monitor, organize and oversee the conduct of elections into various positions of authority in Nigeria. Learned SAN pointed out that in order for the respondent to realize this herculeah task, the respondent is bound to adopt some procedure which includes C “screening” and “verification” of credentials presented before it to ascertain. It is not, as contended by the appellants, the duty of political parties to screen and verify as their duty is only to “nominate” their candidates and present them to the respondent for screening and verification. Learned SAN made citations of some authorities both from the case D law and some, books, particularly Chief Afe Babalola, SAN’s book on Election Law and Practice (1st Edition) 2003 page 82. Thus, the act of verification and screening by INEC does not amount to a usurpation of the said power of political parties. The cases of Onuoha v. Okafor (1981) E NSC 494 and Dalhatu v. Turaki (2003) 15 NWLR (Pt. 843) 310 were referred to by the learned SAN.

Let me start by setting out herein below, the referred provisions of the Electoral Act of 2006, i.e. sections 32(1), (2), (4), (5) and (6). They F provide as follows:

“32 (1) Every political party shall not later than 120 days before the date appointed for general election under the provisions of this Act, submit to the Commission in the prescribed forms the list of the candi- G dates the Party proposes to sponsor at the elections.

(2) The list shall be accompanied by an Affidavit sworn to by each candidate at the High Court of a state, indicating that he has fulfilled all the constitutional requirements for election into that office.

(3) The Commission shall, within 7 days of the receipt of the personal particulars of the candidate, publish same in the constituency where the candidate intends to contest the election.

(4) Any person who has reasonable grounds to believe that any

information given by a candidate in the Affidavit is false may file a suit at the High Court of a state or Federal High court against such person seeking a declaration that the information contained in the Affidavit is false.

B (5) *If the court determines that any of the information contained in the Affidavit is false the Court shall issue an Order disqualifying the candidate from contesting the election.*

C (6) *A Political Party which presents to the Commission the name of a candidate who does not meet the qualifications stipulated in this section, commits an offence and is liable on conviction to a maximum fine of N500,000.00*

D (7) *Every political party shall not later than 14 days before the date appointed for a bye-election by the Commission submit the list of candidates from the party for the bye-election.”*

In ordinary English, the Lexicon Webster Dictionary of the English Language, vol. II, assigns to the word “screen”, the following meanings, among others:

E “*a wire sieve used for sifting grain, sand or lime; to select by a process of elimination; to shelter or protect from inconvenience, injury or danger; to conceal*” etc.

(underlining supplied for emphasis)

F Perhaps the one nearer to the actual meaning employed by the parties in this appeal, is the one underlined. Our primary concern however, is how it will legally be interpreted to have effect in legislation.

Likewise the word “verify”, which connotes:

G “*To prove to be true, to confirm, to establish the truth of; to examine or test the correctness or authenticity of something.*”

If used in Legal parlance, it means:

H “*To confirm or substantiate by Oath or affidavit. To: prove to be true; to confirm or establish the truth or truthfulness of; to check or test the accuracy or exactness of; to confirm the authenticity of; to authenticate; to maintain; to affirm; to support.*”

See: Black’s Law Dictionary, 5th edition, page 1400.

The Third schedule of the 1999 Constitution is on Federal Execu-

tive Bodies. Item F thereof is on the Independent National Electoral Commission, establishment, membership and powers. Learned senior counsel for the respondent submitted that paragraph 15 of that schedule confers operational powers on the respondent. Below is paragraph 15:

“15. The Commission shall have power to:

(a) Organise, undertake and supervise all elections to the offices of the President and Vice-President, the Governor and Deputy Governor of a State, and to the membership of the Senate, the House of Representatives and the House of Assembly of each state of the Federation;

b) Register political parties in accordance with the provisions of this Constitution and an Act of the National Assembly;

c) Monitor the organization and operation of the political parties, including their finances;

d) Arrange for the annual examination and auditing of the funds and accounts of political parties, and publish a report on such examination and audit for public information;

e) Arrange and conduct the registration of persons qualified to vote and prepare, maintain and revise the register of voters for the purpose of any election under this Constitution;

f) Monitor political campaigns and provide rules and regulations which shall govern the political parties;

g) Ensure that all Electoral Commissioners, Electoral and Returning Officers take and subscribe the oath of office prescribed by law;

h) Delegate any of its powers to any Resident Electoral Commissioner; and

i) Carry out such other functions as may be conferred upon it by an Act of the National Assembly.”

Let me reveal my observation. From the sections quoted above from the Electoral Act 2006 and from the schedule to the Constitution referred to and quoted by me above, I fail to see the power of screening and verification alluded to reside in the respondent. I even went on some excursion throughout the 2006 Electoral Act, I could not see where INEC, the respondent, has specifically been charged with the responsibility of screening of or verification of candidates presented to it for recognition

as aspirants to certain political offices in the forth coming elections. In fact the words “screen” and “verify”, I think, were a special coinage by learned senior counsel for the respondent in order to add more weight to what the statutes have conferred on the respondent as its statutory powers.

From the said statutory provisions, it is very clear to me that the power to nominate and sponsor a candidate for an election is specially preserved by the statutes to a political party. In the process of their nomination and ultimate sponsorship, the political party, there is no doubt about that, must have examined, tested, screened and verified each of the candidates they propose to nominate and sponsor. It is in anticipation of that the 2006 Electoral Act in section 32(2) makes a mandatory requirement that the list to be sent to INEC of candidates the party proposes to sponsor at the elections, SHALL be accompanied by an affidavit sworn to by each candidate at the High Court of a state, indicating that he has fulfilled all the Constitutional requirements for the election into that office. I already pointed out earlier that the term “verification”, in law, connotes the act of confirmation or substantiation by oath or affidavit. When a person subscribes to an oath or swears to an affidavit, which must of course be done before a person having authority to administer such oath or affidavit, he is taken to be telling the whole world the truth and nothing but the truth. If what he said under oath later turned out to be false, he can be subjected to a punishment under the crime of perjury, which, itself, is committed when a lawful oath is administered in some Judicial proceeding (which includes in my view, any act capable of ending up in a court of law), as is the case in this matter. That is why sections 32(4) and (5) were enacted to allow persons with reasonable grounds that the information given by the candidate in the affidavit is false to sue such a candidate before a Federal or State High Court. That High Court, on finding the falsity of the candidate, must issue an order disqualifying such a candidate from contesting the proposed election. I think this is eloquent and adequate enough to show that the legislature has given free - hand to a political party to “screen” and “verify” its candidates for nomination; and sponsorship to any election. I do not

think it is the intention of the Legislature to put any candidate for an election to any political post into double jeopardy by being “screened” and “verified”, twice, i.e. by his political party and by INEC. That will be ridiculous. If INEC will be empowered with such a power it will tantamount to usurpation of the right of political parties conferred on them by section 32 (2) and (6) of the 2006 Electoral Act. B

The issue of Disqualification

It is the submission of learned SAN for the appellants that the Respondents purported power to disqualify any candidate, the 2nd appellant inclusive, does not derive from section 137(1) and the like sections in the Constitutions. C

There is no other provision in the main body of the Constitution conferring the power to the respondent either expressly or by necessary implication. The only provision, it is argued, of the Constitution from which power may be implied is paragraph 15(a) of Third Schedule of the Constitution which provides that the Commission shall have power to organize undertake and supervise all elections to the offices there specified, including the office of the President. It does not authorize the respondent to disqualify or screen out a candidate for an election. The provision cannot be read in isolation but together with the power vested in the National Assembly by section 4 and item 22 of the Exclusive Legislative List in the Second Schedule to the Constitution. The section, i.e. 137(1) is not self executing. It must also be read in conjunction with section 36(1) - (12) of the Constitution and also section 6 of the same Constitution. D E F

On the deprivation of right and indictment for a criminal offence, these require the processes of a court and is outside the competence of the respondent. Learned SAN cited a case decided by the Australian High Court which is the Highest court of that country, i.e. *Waterside Workers' Federation of Australia v. J. O. Alexander Ltd* (1918) 25 C. L. R. 434 at page 444 and also the case of *Sokefun v. Akinyemi* (1981) 1 NCLR 135. G H

Learned SAN argued that the power of INEC to disqualify a candidate without having to go to court is irreconcilable with the power and jurisdiction vested in the courts and election Tribunals by sections 239(1)

and 285 of the Constitution. He cited the cases of Attorney General of Abia State v. Attorney General of the Federation (2002) 6 NWLR (Pt.763) 264 at 369; INEC & Anor v. Musa & Ors (2003) 3 NWLR (Pt.806) 72 at 158.

B After setting out the provisions of section 137 of the Constitution 1999 and section 32 of the Electoral Act, 2006, the learned SAN for the respondent submitted that the two statutes shall be read together in order to give effect and meaning to the rights and obligations of the individuals. He argued that the 2nd appellant was indicted by an Administrative Panel of Inquiry set up by the Federal Government for corruption related offences. 2nd appellant, learned SAN, said, admitted this fact. He stands disqualified under section 137 1 (1) of the Constitution, 1999 as INEC could not close its eyes on infringement on a provision of the constitution.
D

Before delving into this issue properly, permit me My Lords, to quote IN EXTENSO, the provisions of section 137 of the Constitution, 1999. It states as follows:

E “137(1) A person shall not be qualified for election to the office of President if:

(a) Subject to the provisions of section 28 of this Constitution, he has voluntarily acquired the citizenship of a country other than Nigeria or, except in such cases as may be prescribed by the National Assembly, he has made a declaration of allegiance to such other country; or
F

b) He has been elected to such office at any two previous elections; or

G c) Under the law in any part of Nigeria, he is adjudged to be a lunatic or otherwise declared to be of unsound mind; or

d) He is under a sentence of death imposed by any competent court of law or tribunal in Nigeria or a sentence of imprisonment or fine for any offence involving dishonesty or fraud (by whatever name called) H or for any other offence, imposed on him by any court or tribunal or substituted by a competent authority for any other sentence imposed on him by such a court or tribunal; or

e) Within a period of less than ten years before the date of the

election to the office of President he has been convicted and sentenced for an offence involving dishonesty or he has been found guilty of the contravention of the Code of Conduct; or

f) He is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law in force in Nigeria or any other country; or

g) Being a person employed in the civil or public service of the Federation or of any state, he has not resigned, withdrawn or retired from the employment at least thirty days before the date of the election; or

h) he is a member of any secret society; or

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

j) he has presented a forged certificate to the Independent National Electoral Commission.

2) Where in respect of any person who has been -

(a) adjudged to be a lunatic

(b) declared to be of unsound mind;

(c) sentenced to death or imprisonment; or

(d) adjudged or declared bankrupt.

any appeal against the decision is pending in any court of law in accordance with any law in force in Nigeria, subsection (1) of this section shall not apply during a period beginning from the date when such appeal is lodged and ending on the date when the appeal is finally determined or, as the case may be, the appeal lapses or is abandoned, whichever is earlier.”

The main plank upon which learned SAN for the respondent rested his arguments is that the 2nd appellant was indicted by an Administrative Panel of Inquiry set up by the Federal Government for corruption related offences and the fact was admitted by the 2nd appellant. He argued that what INEC did in disqualifying the 2nd appellant from contesting the Presidential election was applying the law, as INEC could not have closed

its eyes on an infringement on a provision of the Constitution.

Earlier on, learned SAN for the appellant argued that to disqualify a person from contesting election for the office of president solely on the basis of an indictment for embezzlement in fraud made against him by an administrative panel of inquiry with the presumption of guilt for those offences thereby implied, runs completely counter to the purpose and significance of the vesting of judicial power in the courts by section 6(1) of the Constitution.

Having quoted the provisions of section 137 of the Constitution, I come to the conclusion that nothing in that section that empowers INEC (the respondent) to disqualify any candidate especially the 2nd appellant from contesting the election as a presidential candidate. By virtue of section 6 (1) and (6) of the Constitution, it is only a court of law that can exercise a function which is exclusively adjudicative in nature. Section 32 (5) of the Electoral Act 2006, provides as follows:

“if the court determines that any of the information contained in the affidavit is false the court shall issue an order disqualifying the candidate from contesting the election.”

If the legislature had wanted the function of disqualifying candidate to lie with INEC, I am sure it will not abdicate its responsibility. It would have made it explicitly clear in the statute. Secondly where there are serious allegations of embezzlement or fraud, the matter is beyond the power of an Administrative Panel. It has to be pronounced upon by courts of law, as the allegations are of serious nature requiring proper judicial processes in all their ramifications. See: Garba v. University of Maiduguri (1986) 1 NWLR (pt. 18) 550; Sofekun v. Akinyemi (1981) 1 NCLR 135.

For these reasons and the more detailed reasoning of my brother Katsina-Alu, JSC, including his reasoning on appellants’ issue 3, which I adopt as mine, I too, allow the appeal. I set aside the judgment of the court below. I abide by all orders made by My Learned brother in his leading judgment, I make no order as to costs.

ADEREMI JSC

On the 16th of April 2007, after taking arguments of counsel, we (justices) retired to consider the whole appeal in the light of the briefs and oral arguments proffered by the respective counsel. After that exercise, B we came into the open court and gave our respective judgment while adjourning the appeal to 29th June, 2007 to give our individual reasons for the judgment. Hereunder are my own reasons.

The appeal here is against the judgment of the Court of Appeal C (Abuja Division) delivered on the 3rd of April 2007. By the aforesaid judgment, the court below allowed the appeal of the present respondent who was the defendant at the trial court; dismissed the cross-appeal of the present Appellants who were the plaintiffs before the trial court; thus consequently pronouncing that the respondent, as I have said, the de- D defendant before the trial court, has legal power and authority not only to screen candidate sent to it by political parties but to also remove the name of any candidate that failed to meet the criteria set out by the Constitution without having to go to court. E

Before I proceed, it is necessary to trace the history of this appeal and I hereby proceed to do so: by Originating Summons dated 4th of January 2007, the plaintiffs who are the present appellants had applied before the Federal High Court sitting at Abuja for the determination of the F four questions set out below: -

“(1) Whether the defendant has powers under the provisions of the Constitution of the Federal Republic of Nigeria 1999 and the Electoral Act 2006 to conduct any verification of the credentials papers and/or screening out and/or disqualifying candidates including the 2nd plaintiff G for the 2007 general elections.

(2) Whether by the provisions of the third Schedule to the Constitution of the Federal Republic of Nigeria, item 15 paragraph (a) to (i) H and Section 32 of the Electoral Act, 2006 or any other law, any other person other than the plaintiff has the exclusive right to verify and/or screen its candidates before sponsoring them by forwarding their names to the defendant.

(3) *Whether the defendant has powers under any law or enactment to disqualify or screen out the 2nd plaintiff as a candidate or any other candidate for the 2007 general elections.*

B (4) *Whether by the provisions of Section 32 (5) of the Electoral Act, 2006 any other person or bodies other than a court of law can disqualify any candidate from contesting election.”*

Sequel to the above questions, the following reliefs were simultaneously sought: -

C “(1) *a declaration that the defendant has no power under the provisions of the Constitution of the Federal Republic of Nigeria 1999, the Electoral Act 2006 and the Independent National Electoral Commission (Establishment Etc) Act Cap 15, Laws of the Federation, 2004 to conduct any verification of the credentials/papers and/or screening out, and/*
D *or disqualify candidates including the 2nd plaintiff for the 2007 general election.*

(2) *a declaration that by the provisions of Section 32 of the Electoral Act, 2006, only the 1st plaintiff a political party has the power to*
E *verify and/or screen out its candidates before sponsoring them for election by forwarding their names to the defendant.*

(3) *a declaration that the defendant has no power under the Constitution of the Federal Republic of Nigeria, 1999, Electoral Act 2006*
F *and the Independent National Electoral Commission (Establishment Etc) Cap 15, Laws of the Federation, 2004 to disqualify or screen out the 2nd plaintiff as a candidate or any other candidate for the 2007 general elections.*

G (4) *a declaration that the power to disqualify any Candidate sponsored by any political party including the 1st plaintiff from contesting any election is exclusively vested in the court as provided for in Section 32 (5) of the Electoral Act, 2006.*

H (5) *an order setting aside a directive of the defendant to all the political parties including the 1st plaintiff to present their candidates for physical verification and/or screening.*

(6) *an order of perpetual injunction restraining the defendant whether by themselves, their agents, privies, officers or by whosoever*

from conducting physical verification and/or screening of candidates put forward by political parties to contest in the 2007; general elections including the 2nd plaintiff.”

Suffice it to say that the originating summons was supported by a 22- paragraph affidavit to which some exhibits were attached. Of course, the defendant in that court filed, a 10-paragraph counter-affidavit in opposition. Following the counter-affidavit in a Notice of Preliminary Objection dated 2nd February 2007 was filed by the defendant whereby it took objection to the jurisdiction of the court of first instance to hearing and determining the originating summons. Having resolved the issue of jurisdiction and sequel to the submission of written submissions in support of and against the originating summons, the learned trial judge, in a considered judgment, held that the defendant (INEC) had powers to screen candidates and verify documents presented by the candidates but that it (INEC) did not have the power to disqualify candidates presented to it for election. Both parties were dissatisfied with the judgment. The defendant (INEC) appealed against it while the plaintiffs cross-appealed against the same judgment to the court below. Briefs, in accordance with the rules of court, were filed and exchanged by and between the parties. And, as I have said supra, the court below allowed the appeal of the present respondent before it; hence the present appeal. C D E

When this matter came before us on the 16th of April 2007, counsel for the parties adopted the respective written briefs of their clients, proffered some arguments for the purpose of highlighting some salient parts of the brief at the end of which learned counsel for the appellants urged us to allow the appeal while learned senior counsel for the respondent and cross-appellant urged us to dismiss the appeal but allow the cross-appeal. We rose for the consideration of the arguments of the different counsel along with their respective briefs of arguments in the Chambers. We thereafter came into the open court and pronounced judgment in favour of the appellants at the end of which we adjourned to 29th June 2007 to give reasons for our judgment. F G H

As said above, the reasons are as follows: In their brief of argument dated 16th April 2007, the appellants raised three issues for deter-

mination and as contained in their brief of arguments, they are thus: -

“(1) *whether the defendant/respondent, as an executive, non-judicial agency of government, has the power, under the provisions of the Constitution 1999, to apply, invoke or enforce against the 2nd plaintiff/appellant, a presidential candidate nominated/sponsored by the 1st plaintiff/appellant for the 2007 general elections, the disqualification provided in Section 137 (1) (i) of the of the Constitution read in the context of other relevant relevant provisions of the Constitution, in particular Section 6 (1) and (6), 36 (1), (4), (5) and (6) and 12 as well as in the context of the system of constitutional democracy established for the country by the Constitution.*

(2) *whether the defendant/respondent, as an executive non-judicial agency of government has the power, under the provisions of the Electoral Act 2006, to disqualify or screen out candidates for election including the 2nd plaintiff as a presidential candidate for the 2007 general election,*

3) *whether the court below was right in failing to take into account the manifest differences between the provisions of Section 21 of the Electoral Act, 2002 and Section 32 of the Electoral Act, 2006 as regards the vesting of power of disqualification of candidates in the court.”*

For its part, the respondent identified two issues for determination an out in its brief of argument, they are in the following terms: -

“(1) *whether the respondent (INEC) has powers under the relevant laws to screen and verify particulars of candidates,*

(2) *whether the learned Justices of the Court of Appeal rightly held that the respondent (INEC) has powers to disallow/ exclude or disqualify a candidate by virtue of Sections 182 and 137 (1) (i) of the 1999 Constitution.”*

Reading all the issues identified by the parties for determination by this court together, it is my respectful view, that the main and crucial point for determination in this appeal is, whether the respondent (INEC) has the power to disqualify any candidate put up by a political party to contest on election in the 2007 general elections. In considering this all-important question, the interpretation of the provision of Section 137 (1)

of the Constitution of the Federal Republic of Nigeria 1999 of course, in the context of the provisions of Sections 6 (1) and (6) of the same Constitution together with the provisions of the 3rd schedule, paragraph 15 of the 1999 Constitution and alongside the provisions of Section 32 of the Electoral Act, 2006 shall have to come into play. B

Before I reproduce the provisions of the aforesaid sections of the Constitution and the Electoral Act, 2006, I feel compelled to examine in full the principles guiding interpretation of the provisions of the Constitution and the Statutes. I start by saying that the main function of a judge is to declare what the law is and not to decide what it ought to be. The business law making, if I may put it that way, is exclusively the responsibility of the National Assembly at the Federal level or State House of Assembly at the State level, all in the Nigerian context. True it is, that the populace look forward to the judiciary as the body to dispense justice but a judge charge with that responsibility must always appreciate that his powers to so do are circumscribed by the dictates of the law, in short, justice to be dispensed by the judex must be in accordance with the law. D It therefore follows that where the words of the provisions of the Constitution or Statutes are unambiguous: rather, they are clear in their ordinary and grammatical means, a judge is duty bound to accord the wordings of the said provisions their literal, natural and grammatical meanings accordingly. It is often said that the judge in other to do justice in the exercise of his interpretative jurisdiction, must find out the intention of the legislature with regards to the relevant provisions of the Constitution or Statute that call for interpretation There is nothing extra-ordinary in this demand, that intention to be sought is as expressed in the words used in couching any of the aforesaid provision. E F G

Here, I recall to mind and with approval the evergreen dictum of Lord Thankerton in *Wicks v. D.P.P.* (1947) A.C. 362 when at page 1367 he reasoned:-

“..... *the intention of Parliament is not to be judged by what is in its mind, but by the expression of that mind in the statute itself.*” H

Having set out the principles of interpretation of statutes and provisions of the Constitution as laid down over the years. I shall hereunder

reproduce the provisions afore-mentioned Section 137 (1) provides: -

“A person shall not be qualified for election to the office of the President if -

(a) subject to the provisions of Section 28 of this Constitution, he has voluntarily acquired the citizenship of a country other than Nigeria or, except in such cases as may be prescribed by the National Assembly, has made a declaration of allegiance to such other country; or

(b) he has been elected to such office at any two previous elections; or

(c) under the law in any part of Nigeria he is adjudged to be a lunatic or otherwise declared to be of unsound mind; or

(d) he is under a sentence of death imposed by any competent court of law or tribunal in Nigeria or a sentence of imprisonment or fine for any offence involving dishonesty or fraud (by whatever name called) or for any other offence imposed on him by any court or tribunal or substituted by a competent authority for any other sentence imposed on him by such a court or tribunal; or

(e) within a period of less than ten years before the date of the election to the office of President he has been convicted and sentenced for an offence involving dishonesty or he has been found guilty of the contravention of the Code of Conduct; or,

(f) he is an undischarged bankrupt under any law in force in Nigeria or any other country; or

(g) being a person employed in the civil or public service of the Federation or of any State, he has not resigned, withdrawn or retired from the employment at least thirty days before the date of the election; or

(h) he is a member of any secret society; or

(i) he has been indicted for embezzlement or fraud by a Judicial Commission of Inquiry or an Administrative Panel of Inquiry or a Tribunal I If set up under the Tribunals of Inquiry Act, a Tribunals of Inquiry Law or any other Law by the Federal or State Government respectively; or

(j) he has presented a forged certificate to the Independent Na-

tional Electoral Commission.”

I need not reproduce the provisions of Section 6 (1) and (6); of the Constitution; suffice it to say that beyond any doubt, they vest the judicial powers of the Federation in the courts. However Paragraph 15 of the Third Schedule of the 1999 Constitution provides: -

“15. *The Commission shall have power to –*

(a) organise, undertake and supervise all elections to the offices of the President and Vice-President, the Governor and Deputy Governor of a State and to the membership of the Senate, the House of Representatives and the House of Assembly of each State of the Federation;

(b) register political parties in accordance with the provisions of this Constitution and an Act of the National Assembly;

(c) monitor the organisation and operation of the political parties including their finances;

(d) arrange for the annual examination and auditing of the funds and accounts of political parties, and publish a report on such examination and audit for public information;

(e) arrange and conduct the registration of persons qualified to vote and prepare, maintain and revise the register of voters for the purpose of any election under this Constitution;

(f) monitor political campaigns and provide rules and regulations which shall govern the political parties;

(g) ensure that all Electoral Commissioners, Electoral and Returning Officers take and subscribe to the oath of office prescribed by law;

(h) delegate any of its powers to any Resident Electoral Commissioner, and carry out such other functions as may be conferred upon it by an Act of the National Assembly.”

The next relevant statute is Section 32 of the Electoral Act, 2006 which provides: -

"32 (1) every political party shall not later than 120 days before the date appointed for a general election under the provisions of this Act, submit to the Commission in the prescribed forms, the list of the candidates the party proposes to sponsor at the elections,

(2) *the list shall be accompanied by an affidavit sworn to by each candidate at the High Court of a State indicating that he has fulfilled all the constitutional requirements for election into that office,*

B (3) *the Commission shall within seven days of the receipt of the personal particulars of the candidate, publish same in the constituency where the candidate intends to contest the election,*

C (4) *any person who has reasonable grounds to believe that any information given by a candidate in the affidavit is false may file a suit at the High Court of a State or Federal High Court against such person seeking a declaration that the information contained in the affidavit is false,*

D (5) *if the court determines that any of the information contained in the affidavit is false, the court issue an order disqualifying the candidate from contesting the election,*

E (6) *a political party which presents to the Commission the name of a candidate who does not meet qualifications stipulated in this Section, commits an offence and is liable on conviction to a maximum fine of N500,000.00"*

F The wordings of the provisions of Sec 131 (1) of the Constitution of the Federal Republic of Nigeria 1999, Paragraph 15 of the Third Schedule of the 1999 Constitution and Section 32 of the Electoral Act 2006 are not only very clear, they are, at the same time, very unambiguous. And by the canons of statutory interpretation which include the Constitution, a judge's duty which is even a command on him, is to interpret the clear and unambiguous words according to their ordinary, natural and grammatical meanings and must not add to or remove any words therefrom; no onerous weight or burden must be foisted on an otherwise clear and unambiguous provision. Let me still repeat here that the well established canon of interpretation requires that, if the intention of the framers of a Statute or Constitution must; be ascertained, it can be from no other source than the words used by them in couching the provisions and it is there their intention is entrenched.

Bearing these principles in mind and after a careful reading of the afore-mentioned provisions, I do not quiver in saying that the respondent

(INEC) has no powers under these provisions or any other provisions to disqualify any candidate (including the 2nd appellant) presented to it by an accredited political party to contest an elective office. By the aforementioned provisions, the only body that possesses the power to deal with matters relating to disqualification of candidates in an election in the 2007 general elections is the court. Consequently, the three issues raised by the appellants in their brief for determination by this court are hereby resolve in their favour; while I resolve the two issues raised by the respondent in its brief against it.

It is for this little contribution but most especially for the detailed reasoning contained in the leading judgment of my learned brother, Katsina-Alu JSC that I hereby say that the appeal succeeds and it is hereby allowed. I set aside the judgment of the court below delivered on the 3rd of April 2007 and I abide by all the other orders including the order as to costs contained in the leading judgment.

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