

SUPREME COURT OF NIGERIA

13TH JULY, 2007. SC. 120/2007

**CORAM:- A. I. KATSINA-ALU, G. A. OGUNTADE, M. MOHAM-
MED, F. F. TABAI, I. T. MUHAMMAD,
P. O. ADEREMI, C. M. CHUKWUMA-ENEH, JJSC**

SENATOR RASHIDI ADEWOLU LADOJA APPELLANT
AND

INDEPENDENT NATIONAL RESPONDENT/
ELECTORAL COMMISSION CROSS-APPELLANT

ATTORNEY-GENERAL OF
THE FEDERATION RESPONDENT

PROFESSOR TOAHEED ADEDOJA RESPONDENT/
CROSS-APPELLANT

PEOPLES DEMOCRATIC PARTY RESPONDENT

COURTS - Jurisdiction - Appeals - Fair hearing - Issue of jurisdiction -
Raised towards tail end of appeal proceedings - Was properly taken -
Save that Court of Appeal ought to have heard all the parties (H1)

ACTIONS - Jurisdiction - Federal High Court - Ss. 180 & 285 of 1999
Constitution - Looking at the claim which is predicated on s. 180 (2) (a)
- Reliefs Sought are within Federal High Court's jurisdiction - Court of
Appeal was wrong in holding otherwise (H2)

CONSTITUTIONAL LAW - Jurisdiction - Court of Appeal erred - In
linking present case - To class of matters that should be tried - By Elec-
tion Tribunals under s. 285 (1) (b) 1999 Constitution - Unto denial of its
and trial court's jurisdiction (H3)

CONSTITUTIONAL LAW - Governor's tenure of office - Actions -
Expeditious hearing - Extension of appellant's fixed four year tenure un-
der s. 180 (2) (a) 1999 Constitution - Cannot be done by any court (H4)

FACTS

Before the Federal High Court Abuja, the plaintiff/appellant took out an originating summons against the 1st and 2nd defendants/respondents to determine the question: "*Whether having regard to the provision of section 180 of the Constitution of the Federal Republic of Nigeria, 1999 (which relates to the tenure of office of a Governor of a State) and the judgment of the Supreme Court in suit No SC/272/2006 nullifying the purported removal of the Plaintiff from office as Governor of Oyo State of Nigeria, the period of eleven months for which the Governor was illegally removed from office, forms part of the Plaintiff's four years terms of office as Governor of Oyo State.*" Appellant as then Governor of Oyo State was wrongfully impeached by a faction of the State House of Assembly. Supreme Court found in his favour for which he was restored to his office as Governor but had been forcefully made to vacate his office for 11 months before his reinstatement.

Appellant therefore, claimed inter alia, a declaration that he is entitled to a term of four uninterrupted years in office commencing from 29-5-2003, by virtue of s. 180 (2) (a) of the 1999 Constitution of Nigeria. In the judgment delivered on 4-4-2007, the trial Chief Judge dismissed the action holding that appellant was not entitled to any of the reliefs claimed by him. On appeal to the Court of Appeal, it held that the trial court has no jurisdiction to entertain the claim. It regarded the matter to be within the exclusive jurisdiction of the National Assembly Election Tribunal Oyo State, to which the action was transferred under s. 285 (1) (b) of the 1999 Constitution, whereas the claim is predicated on s. 180 (2) (a). Still aggrieved, appellant has further appealed to the Supreme Court.

ISSUE FOR DETERMINATION

"Whether the learned Justices of the Court of Appeal are right to hold that the Federal High Court has no jurisdiction to determine the tenure of office of a Governor, except National Assembly Election Tribunal, under S.285(1)(b) of the Constitution of the Federal Republic of Nigeria, 1999 and if not, whether the Appellant is not entitled to his

claims and reliefs as contained in the declaration sought in the lower Court which this Honourable Court can entertain under Section 22 of the Supreme Court Act."

HELD (Unanimously allowing the appeal in part per **MOHAMMED JSC**)
Jurisdiction - Appeals - Fair hearing

1. It was solely on the basis of this last submission and without affording the 2nd, 3rd and 4th Respondents a hearing through their respective learned counsel on the issue of jurisdiction raised by Chief Gadzama, that the Court below proceeded to rule on the issue after dwelling extensively on the provisions of Section 285(1) (a), (b), (c) and (d) of the 1999 Constitution which was not specifically raised at the trial Court or at the hearing of the Appellant's appeal. Even though it was raised towards the tail end of the proceedings in the hearing of the appeal, it was indeed properly raised and the Court below was right in having it determined even though in clear breach of the 2nd, 3rd and 4th Respondents right of fair hearing. In other words, the Court below ought to have heard all the parties before proceeding to rule on the issue of jurisdiction. (p. 3476 A)

Jurisdiction - Federal High Court

2. Where the Court below went wrong was when it proceeded straight to say that the Federal High Court has no jurisdiction to entertain the claim of the Appellant in the appeal before it, without even looking at the Appellant's claim that went before the Federal High Court in the Appellant's Originating Summons for hearing and determination. These declaratory and injunctive reliefs sought by the Appellant as Plaintiff before the Federal High Court, were predicated on the interpretation and application of Section 180(2)(a) of the Constitution. Certainly, the Appellant's case that was heard and determined by the Federal High Court had nothing to do with the provisions of Section 285(1) (b) of the Constitution which the Court below applied to it.

The law is indeed trite that in the situation that arose at the Court below regarding the determination of whether or not the trial Federal High Court has jurisdiction to entertain the claim of the Appellant as con-

tained in the Originating Summons, it is that claim that needed to have been examined. Looking at the Appellant's Originating Summons relevant parts of which have been earlier quoted in this judgment, I am of the view that the declaratory and injunctive reliefs sought therein are squarely within the jurisdiction of the Federal High Court as prescribed under Section 251(1)(q) and (r) of the 1999 Constitution. (pp. 3477 D/ 3478 B)

Jurisdiction - Court of Appeal erred

- C 3. When the Appellant went to the trial Federal High Court with his case against the 1st Respondent, an agency of the Federal Government and the 2nd Respondent being the Chief Law Officer of the Federation before the 3rd and 4th Respondents applied to join, the action was clearly within the jurisdiction of the trial Court where it was initiated by the Appellant.
- D In this respect, the declaratory and injunctive reliefs having regard to the undisputed facts averred in the affidavit in support of the Originating Summons and the counter affidavits filed by the Respondents/Defendants tracing the grounds of the Appellant's claim to the judgment of this
- E Court in his favour in the case of Inakoju v. Adeleke (supra), the lower Court was clearly in error in linking the Appellant's case to the class of matters that ought to be initiated at the National Assembly Election Tribunals under section 285(1)(b) of the Constitution.
- F The Court below has jurisdiction to hear and determine the Appellant's appeal which was properly before it under Section 240 of the Constitution and ought to have been heard on the merit as the matter in dispute between the parties, cannot be brought within the ambit of the Section
- G 285(1)(b) of the Constitution to exclude the Federal High Court and indeed any other Court apart from the National Election Tribunal from exercising Original Jurisdiction to hear and determine it. (p. 3479 A/ G)

Governor's tenure of office

- H 4. The facts of the case which are not at all in dispute between the parties are quite clear. The Appellant whose tenure of office commenced on 29th May, 2003 when he took his oath of allegiance and oath of office to serve his first term of four years in the office as Governor of Oyo State,

has not shown anything on record by which the fixed period of four years under Section 180(2) (a) of the 1999 Constitution can be extended beyond 29th May, 2007. As neither this Court nor any other Court for that matter has power to extend this period of four years for the Appellant beyond the terminal date of 29th May, 2007, and taking into consideration the need to give this matter expeditious hearing and determination as it had all along enjoyed right from the trial Court through to the Court of Appeal and in this Court, there is no justification whatsoever in allowing proceedings in this matter to be pursued any further only for the pronouncement of the position of the law which is quite clear and unambiguous. These are my reasons for allowing the Appellant's appeal on the issue of jurisdiction and refusing to attend to the Appellant's declaratory and injunctive reliefs already refused by the trial Court. (p. 3480 D)

NOTABLE POINTS OF INTEREST

KATSINA-ALU JSC

1. Tenure of wrongfully impeached Governor cannot be extended

In the interest of justice and the fact that all the material facts were before this court, I invoked the powers vested in this court under Section 22 of the Supreme Court Act. I have earlier on stated why the plaintiff went to court. It was contended that the period of eleven months during which the Governor was removed from office does not form part of the plaintiff's term of four years as Governor of Oyo State. This claim was unmeritorious. The Constitution of the Federal Republic of Nigeria, 1999 did not grant this court the power to grant an extension of tenure to a Governor who has been improperly impeached. To hold otherwise would amount to reading into the Constitution provisions that are not there. (p. 3483 F)

OGUNTADE JSC

2. When s. 285 (1) (b) 1999 Constitution may be applicable

The period of office of a Governor 'ceases' when two-thirds majority of all the members of the Executive of a State pass a resolution that the Governor is incapable of discharging the functions of his office; and

such resolution is followed by the procedure prescribed under Section 189 above.

It is the dispute arising from such resolution that is committed to the jurisdiction of the National Assembly Election Tribunal under Section 285(1) (b) of the Constitution. As the plaintiff had merely asked the court to interpret the provisions of Section 180(2) of the Constitution, plaintiff's suit in my view falls within the jurisdiction of the Federal High Court under Section 251(1) (q) and (r) of the 1999 Constitution. It is apparent that the two courts below fell into error because they had not given the word 'cease' the restricted meaning given to it under Sections 144 and 189 of the Constitution. (p. 3489 E)

3. *Implication of declaring an act null and void*

It is settled law, that when an act is declared null and void, the position is that from the angle of the law, the act never took place. It is completely wiped off and considered as extinct and deemed never to have existed. In *Adefulu v. Okulaja* (1996) 9 NWLR (Pt.475) 668 at 693 cited by 4th respondent's counsel, this Court per Ogundare, J.S.C restated the position in these words:

"Much consideration was given by the trial judge to the fact that the 1st Defendant/Appellant 'occupied the throne of Olofin of Ilishan-Remo de facto from March 1981 up to 7 December, 1989'. With profound respect to the learned trial judge I think, he was, without realizing it swimming in a deep sea. When an appointment is declared null and void, all it means is that the appointment was never made and all acts of the purported appointee when he de facto held the appointment are unlawful, null and void and of no effect. The result of a decree of nullity of marriage is that not only are the parties not now married but they never were. (p. 3491 D)

H 4. *S. 180 (2) does not avail an improperly impeached Governor*

Much as one may be in sympathy with the plaintiff/appellant's cause, it seems to me that to accede to his request will occasion much violence to the Constitution. This court can interpret the Constitution but it cannot

re-write it. In awareness of the possibility that an occurrence may prevent a Governor from being sworn in on the same date as his counterparts in the country, Section 180(2) states that tenure be computed from the date the oath of allegiance and oath of office is taken. There is no similar provision to protect a Governor improperly impeached. I am therefore, unable to perform a duty which the Constitution has not vested in the court. (p. 3492 A)

ADEREMIJC

5. What the issue of jurisdiction encompasses

Broadly speaking, jurisdiction does not encompass "legal capacity", "power" or "authority" of a court to enter into adjudication or to do certain things. It pronounces on the competency of the court. A court is said to be competent when it is properly constituted as regards the number and qualifications of members of the bench; and no member is disqualified for one reason or the other; the subject matter of the case is within its jurisdiction; the case is not afflicted with any feature which prevents the court from exercising its power over it; of course, the case must be initiated by due process of law and upon fulfillment of any condition precedent to the exercise of jurisdiction. So fundamental is the issue of jurisdiction that it can be raised at any stage of the proceedings. But it is not a free-for-all procedure. It can be raised by either party to the proceedings at any stage: even at the apex court. Let me add that the court can, suo motu, raise the issue of jurisdiction, but in so doing, the court must grant the two sides the opportunity of addressing on it; this is in conformity with the concept of fair hearing. (p. 3504 E)

6. Judiciary will not assume legislative function

It is a firm canon of interpretation of the provisions of a statute or the Constitution that words not used by the legislators must not be imported into the wordings of the provision by a 'judex'. "Law making" in the strict sense of that term, is not the function of the judiciary but that of the legislature. To accede to the prayer of the plaintiff/appellant and read the word "Uninterrupted" into the provision of the Constitution, now under

consideration will be for the judicial arm of the government to engage in an unwelcome trespass into the territory of the legislative arm of the government. I am quite conscious of the fact that occasionally laws passed by the legislators do not accord with the wishes of the people or may not
 B meet with the requirements of the time. Let that defective law or law that does not meet with the aspirations of the citizens be put right by the legislators. Even if there was no impeachment and a Governor had run his term smoothly, for the period he may be on leave during the tenure of
 C his office, the Deputy Governor must have to stand in for him. That is a form of interruption which the Constitution does not take cognisance of.
 (p. 3512 E)

REPRESENTATION

D Chief Robert Clarke, Esq., S.A.N *with him* Chief Ademola Odunsi, Esq., Theophilus Ochonogor, Esq., Adebayo Shittu, Esq., Esther F. Adesanya, (Ms.), for the appellant.

J. K. Gadzama, S.A.N, *with him* Anthony Idigbe, S.A.N, Amaechi
 E Nwaiwu, S.A.N, Bolaji Ayorinde, S.A.N, Chris Uche, S.A.N, Dr. Bello Fadile, Esq., Wale Adebayo, Esq., Tony Anyanwu, Esq., Bola Olotu, Esq., G. U. Nwaneri Esq., C. P. Oli, Esq., E. J. Gamaliel, Esq., H. Odengle, Esq., for 1st respondent.

F Mrs. A. O. Mbamali, Esq., *with him* Mrs. K. M. Kida, C. E. Nwachukwu, Esq., for 2nd respondent.

Ayodeji Esan, Esq., for 3rd respondent.

L. O. Fagbemi SAN *with him* S. R. Dappa-Addo, H. O. Afolabi, Esq., A.
 G O. Popoola, Esq., O. O. Ogunmola, (Miss) R. A. Bakare, (Miss), for 4th respondent.

CASES REFERRED TO

Obaba v. Military Governor of Kwara State (1994) 4 N.W.L.R. (PT. 336)
 H 26 at 40

Oredoyin v. Arowolo (1989) 4 N.W.L.R. (PT. 114) 172

Oloba v. Akereja (1988) 3 N.W.L.R. (PT. 84) 508

Adeyemi v. Opeyori (1976) 9-10 S.C. 31

Izenkwe v. Nnadozie (1953) 14 WACA 361

Tukur v. Government of Gongola State (1989) 4 N.W.L.R. (FT. 117) 517

Inakoji v. Adeleke (2007) 4 N.W.L.R. (PT. 1025) 423

Inspector General of Police v. Aigbiremolen (1999) 13 N.W.L.R. (PT. B 635) 443

Ayeni v. University of Ilorin (2000) 2 N.W.L.R. (PT. 644) 290

University of Agriculture Makurdi v. Jack (2000) 11 N.W.L.R. (PT. 639) 658

Okogue v. A. G. Lagos State (1981) 2 NCLR 337

Garuba v. FCSC (1988) 1 NWLR (71) 449

P.D.P. v. INEC (1999) 11 NWLR (Pt. 626) 200

Egolum v. Obasanjo (1999) 7 NWLR (Pt. 611) 355

Araka v. Egbue (2003) 17 NWLR (Pt. 848) 1

Awuse v. Odili (2003) 18 NWLR (Pt.851) 116

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STATUTES REFERRED TO

Constitution of Nigeria 1999 ss. 180 (2) (a), 178 (1) & (2), 285 (1) (b) - E (d), 251 (1) (q) (r), 240, 144, 189, 1 (2), 19 (1), 305, 191,
Supreme Court Act s. 22

LEAD JUDGMENT BY MOHAMMED JSC

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On 14th June, 2007, this appeal was heard by this Court which in a unanimous decision allowed the appeal, and refused to give further attention to the Appellant's claim. I stated on that day that I shall give my reasons for the judgment today which I now proceed to do.

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The Appellant herein was the Governor of Oyo State, who was elected in the general election conducted on 19th April, 2003. He was sworn in as the Governor by taking his oath of allegiance and oath of office on 29th May, 2003. He was to serve in that office for a term of four years. However following a dispute between him and the House of Assembly of Oyo State, a faction of the members of the House purported to have impeached him in 2005, removing him from office and replacing him with his Deputy. The Appellant then challenged this impeachment in

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the High Court, the Court of Appeal and the Supreme Court where he was successful when the purported impeachment was declared unconstitutional, null and void, resulting in his reinstatement in the office which he was forced to vacate for 11 months. It was as the result of this judgment in his favour that the Appellant went before the Federal High Court Abuja and by his amended Originating Summons dated 29th March, 2007, urging the Court to determine -

"Whether having regard to the provision of section 180 of the Constitution of the Federal Republic of Nigeria, 1999 (which relates to the tenure of office of a Governor of a State) and the judgment of the Supreme Court in suit No SC/272/2006 nullifying the purported removal of the Plaintiff from office as Governor of Oyo State of Nigeria, the period of eleven months for which the Governor was illegally removed from office, forms part of the Plaintiff's four years terms of office as Governor of Oyo State."

On the determination of this question, the Appellant as Plaintiff asked for the following reliefs:

"1. A Declaration that the Plaintiff is entitled to a term of four uninterrupted years in office as Governor of Oyo State of Nigeria commencing from 29th May, 2003 by virtue of Section 180(2)(a) of the Constitution of the Federal Republic of Nigeria, 1999.

2. A Declaration that the Plaintiff as the person duly elected and sworn in as Governor of Oyo State can only be required to vacate office in the manner prescribed under Section 188 and 189 of the Constitution, that is until the expiration of four years from date on which he swore to the oath of allegiance and oath of office.

3. A Declaration that the purported removal of the Plaintiff, a sitting Governor in breach of this provision of the Constitution shall not affect or interfere with the certainty of tenure of office of the Plaintiff as Governor, as provided for in Section 180(2) of the Constitution.

4. A Declaration that by virtue of Section 180 of the Constitution of the Federal Republic of Nigeria, 1999 and the decision of the Supreme Court of Nigeria nullifying the purported removal of the Plaintiff from office as Governor of Oyo State, the period of eleven months dur-

ing which the Governor was removed from office does not form part of the Plaintiff's term of four years as Governor of Oyo State.

5. *A Declaration that by virtue of the provisions of Section 180 (2) (a) of the Constitution of the Federal Republic of Nigeria, 1999 the Plaintiff is entitled to remain in office until 29th April, 2008 when his four years certain term of office as Governor of Oyo State shall have expired.*

6. *A Declaration that the Plaintiff is not required to vacate office as Governor until 29th April, 2008, which said date conforms to the Constitutional period of tenure of four years certain as provided in the Constitution.*

7. *An Order of Perpetual Injunction restraining the 1st Defendant, its agents or privies from conducting an election to the office of Governor of Oyo State on the 14th April, 2007 as Scheduled by the 1st Defendant, or at any other time without first taking into consideration the period of eleven months, when the Plaintiff's tenure of four years certain would have been accommodated."*

The grounds upon which these reliefs were sought are -

"(i) *By virtue of S. 180(2) (a) of the Constitution, the Governor of a State of the Federal Republic of Nigeria shall hold office for four years certain commencing from the date when he took the oath of office allegiance and oath of office and can only be removed pursuant to the provisions of the Constitution of the Federal Republic of Nigeria, 1999.*

(ii) The said period of eleven months when the Plaintiff was removed from office does not form part of the Plaintiffs four year certain term of office."

The Appellant/Plaintiff's Originating Summons was supported by an affidavit to which all the four Respondents in this appeal who were the Defendants at the trial Court filed counter affidavits before the hearing and determination of the matter. In the judgment delivered on 4th April, 2007, the learned trial Chief Judge dismissed the action holding that the Appellant/Plaintiff was not entitled to any of the reliefs claimed by him in the Originating Summons because as the learned Chief Judge put it at page 151 - 154 of the record -

"The Plaintiff's term of office is four years, calculated from the date the Plaintiff took his oath of allegiance and oath of office, which is 29th May, 2003 - 29th May, 2007. The 11th months during which the Plaintiff was out of office, albeit forcibly, having been declared null and void, cannot now confer any right or impose any obligation on the Plaintiff. To take cognizance of the period in calculating the period of 4 years of the Plaintiffs tenure so as to award to the Plaintiff an additional period of 11 months in office, would have the effect of elongating or extending the Plaintiff's tenure of office beyond 29th May, 2007, and push same to 29th April, 2008. That is a thing that will clearly offend the provisions, particularly Section 180(2)(a) and (b) of the Constitution, 1999. It will also offend the provisions of Section 178(1) and (2) of the Constitution."

The Appellant/Plaintiff's appeal to the Court of Appeal Abuja urging that Court to set aside the decision of the trial Court and substitute it with a judgment granting him all his reliefs in the Amended Originating Summons was partially successful. The Court of Appeal in its judgment delivered on 16th April, 2007, allowing the appeal, held that the trial Court has no jurisdiction to entertain the Appellant/Plaintiff's claim which that Court regarded as a matter within the exclusive jurisdiction of the National Assembly Election Tribunal Oyo State, to which the action was transferred for hearing and determination under Section 285(l)(b) of the 1999 Constitution.

Aggrieved by this decision of the Court of Appeal, the Appellant/Plaintiff has now appealed to this Court and the sole issue distilled from his two grounds of appeal reads -

"Whether the learned Justices of the Court of Appeal are right to hold that the Federal High Court has no jurisdiction to determine the tenure of office of a Governor, except National Assembly Election Tribunal, under S.285(l)(b) of the Constitution of the Federal Republic of Nigeria, 1999 and if not, whether the Appellant is not entitled to his claims and reliefs as contained in the declaration sought in the lower Court which this Honourable Court can entertain under Section 22 of the Supreme Court Act."

The 1st and 3rd Respondents before this Court who are apparently not comfortable with the decision of the Court of Appeal have also separately filed their cross-appeals against it.

The 1st Respondent/Cross-Appellant in its Respondent/Cross-Appellant's brief of argument has no quarrel with the issue for the determination of this appeal on the question of jurisdiction as distilled in the Appellant's brief of argument. In the 2nd Respondent's brief of argument however, the following two issues were raised -

"(a) Whether the learned Justices of the Court of Appeal were right to have declined jurisdiction on the Appellant's case without inviting parties to address it on the issue of jurisdiction.

(b) Whether in the circumstances of the case the Appellant is entitled to his claim."

The 3rd Respondent/Cross-Appellant in his brief of argument on the other hand, four issues for determination were identified. They are:-

"(1) Whether the learned Justices of the Court of Appeal are right to hold that the Federal High Court has no jurisdiction to determine the tenure of office of a Governor and that only the National Assembly Election Tribunal has jurisdiction to entertain the matter.

(2) Whether if the Federal High Court lacked jurisdiction to entertain the matter, the proper order for the Court of Appeal to make is not a striking out of the case or whether it is the transfer of the case to the National Assembly Election Tribunal.

(3) Whether if the Supreme Court holds that the Court of Appeal had jurisdiction to entertain the appeal, whether the Court can go ahead to consider the matter on its merit or whether the Court of Appeal not having considered the matter on its merits, the proper order would not be one remitting it back to the lower Court to be determined on its merits.

(4) Whether if the Supreme Court decides to consider the appeal to the lower Court on the merits, the Plaintiff/Applicant deserves to be given judgment elongating his tenure by eleven months till April, 2008 as claimed in his Originating Summons."

As for the 4th Respondent, its learned senior counsel who filed the Respondent's brief on its behalf, saw only the following two issues for

determination -

"1. Whether their lordships of the Court of Appeal were wrong to have declined jurisdiction on the case of the Appellant.

2. Whether in all the circumstances of this case, Appellant is entitled to the reliefs contained in his amended Originating Summons."

In dealing with the issue of jurisdiction first, learned Appellant's senior counsel pointed out that the provision of Section 285(1)(b) of the 1999 Constitution did not arise at all for consideration in the Court of Appeal to justify that Court relying on it to decline jurisdiction to determine the Appellant's appeal before it; that what was before the Court relates to a term of office of a Governor of a State as provided for in Section 180 of the same Constitution which does not call for the interpretation of Section 285 of the Constitution which deals with the establishment of Election Tribunals conferring them with exclusive jurisdiction to determine election petitions. Learned senior counsel referred to the claims of the Appellant contained in the Originating Summons and the decisions of this Court in *Tukur v. Government of Gongola State* (1989) 4 N.W.L.R. (PT. 117) 517 and *Inakoju v. Adeleke* (2007) 4 N.W.L.R. (PT. 1025) 423 at 587 - 889 and maintained that the Appellant's claims are within the jurisdiction of the Federal High Court and not any Election Tribunal as found by the Court below. In conclusion, learned senior counsel for the Appellant submitted that since the Court below has jurisdiction to have heard and determined the Appellant's appeal on its merits but erroneously declined to do so, this Court is urged to exercise its powers under Section 22 of the Supreme Court Act and determine the appeal and finally refuse or grant the Appellant's relief.

Learned senior counsel for the 1st Respondent however has argued that the Court below was quite right in its judgment now on appeal that by virtue of the clear provisions of Section 285(1) (b) of the 1999 Constitution, only the National Assembly Election Tribunals that have exclusive jurisdiction to determine whether or not the term of office of the Appellant under the Constitution, had ceased. However, learned senior counsel articulated in the 1st Respondent's cross-appeal that the Court below on declining jurisdiction, ought to have struck-out or dis-

missed the matter entirely and not to have remitted it to the National Assembly Election Tribunal for hearing.

The 2nd Respondent also strongly supports the decision of the Court below that only the National Assembly Election Tribunal that has jurisdiction to determine the Appellant's claim. This is because, according to the learned counsel for the 2nd Respondent, that the provisions of Section 285(1)(b) of the 1999 Constitution which are clear and plain, have ousted the jurisdiction of the Federal High Court and by extension, the jurisdiction of the Court of Appeal from hearing the Appellant's claim or matter.

In support of his 1st issue on jurisdiction, the 3rd Respondent/Cross-Appellant is of the strong view that the Court below was not right in its decision on the question of jurisdiction as it was the lower Court that has jurisdiction to entertain the matter and not the National Assembly Election Tribunal.

Although the learned senior counsel for the 4th Respondent in his oral submission appeared to have taken a different position from what was urged in the 4th Respondent's brief of argument, the argument in the brief is in full support of the decision of the Court below. It was argued in this respect that on the issue relating to question as to term of office, it is the National Assembly Election Tribunal that is vested with jurisdiction, irrespective of whether or not the office in question relates to the National Assembly or a Governor of a State, such as the Appellant.

It is quite clear from the judgment of the Court below now on appeal, that the hearing of the parties in the Appellant's appeal that was being heard by that Court had virtually been concluded before the observation on jurisdiction was thrown in by Chief Gadzama, learned senior counsel for the 1st Respondent when the Court in its judgment at pages 252 - 253 of the record of appeal said

"At this juncture, before the learned senior counsel for the Appellant could reply on points of law, Chief Gadzama senior counsel for the 1st Respondent rose and submitted that it is only an election tribunal that could entertain the matter and that the Appellant should have gone to an election tribunal and not the Federal High Court. Chief Clarke replied

that the Appellant was right to have gone to the Federal High Court and that this is not a matter for an election tribunal."

It was solely on the basis of this last submission and without affording the 2nd, 3rd and 4th Respondents a hearing through their respective learned counsel on the issue of jurisdiction raised by Chief Gadzama, that the Court below proceeded to rule on the issue after dwelling extensively on the provisions of Section 285(1) (a), (b), (c) and (d) of the 1999 Constitution which was not specifically raised at the trial Court or at the hearing of the Appellant's appeal. Even though it was raised towards the tail end of the proceedings in the hearing of the appeal, it was indeed properly raised and the Court below was right in having it determined even though in clear breach of the 2nd, 3rd and 4th Respondents right of fair hearing. See *Obaba v. Military Governor of Kwara State* (1994) 4 N.W.L.R. (PT. 336) 26 at 40, *Oredoyin v. Arowolo* (1989) 4 N.W.L.R. (PT. 114) 172 and *Oloba v. Akereja* (1988) 3 N.W.L.R. (PT. 84) 508. **In other words, the Court below ought to have heard all the parties before proceeding to rule on the issue of jurisdiction.**

The provisions of Section 285(1) of the 1999 Constitution which was applied by the Court below to oust not only the jurisdiction of the trial Court but also that of the lower Court itself in entertaining the case of the Appellant is indeed quite plain. It reads

"285(1) There shall be established for the Federation one or more election tribunals to be known as the National Assembly Election Tribunals which shall, to the exclusion of any Court or tribunal, have original jurisdiction to hear and determine petitions as to whether -

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

(b) the term of office of any person under this Constitution has ceased;

(c) the seat of a member of the senate or a member of the House of Representatives Has become vacant; and

(d) a question or petition brought before the election tribunal has been properly or improperly brought."

In interpreting the above provisions of the Constitution which deal with the establishment and jurisdiction of election tribunals, the Court below had this to say in its ruling or judgment:

"The provision of S.285 (1) (b) of the 1999 Constitution is clear and unambiguous and as such the words must be given then ordinary meaning. Simply put, S.285(1)(b) gives exclusive original jurisdiction to the National Assembly Election Tribunals to entertain and determine petitions as to whether the term of office of any person under the said Constitution has ceased. No other Court or tribunal has original jurisdiction to entertain the matters."

That is indeed the position of the law on the exclusive original jurisdiction of the National Assembly Election Tribunals to hear and determine petitions as to whether the term of office of any person under this Constitution has ceased. **Where the Court below went wrong was when it proceeded straight to say that the Federal High Court has no jurisdiction to entertain the claim of the Appellant in the appeal before it, without even looking at the Appellant's claim that went before the Federal High Court in the Appellant's Originating Summons for hearing and determination.** Although the Appellant, then occupying the office of the Governor of Oyo State, one of the offices created under the Constitution clearly falls into the definition of "any person" under the Constitution as contained in Section 285(1) (b) considered and applied by the Court below to the Appellant's claim at the Federal High Court, that claim was not complaining to the Federal High Court that the term of office of the Appellant under the Constitution had ceased. Far from it. If any thing can be rightly said of the claim of the Appellant in the Originating Summons which was fully quoted in the judgment of the Court below but which was not looked into or examined by that Court before ruling on the issue of jurisdiction, is in fact quite the opposite of the matter contemplated under Section 285(1) (b) of the Constitution. This is because simply put, what the Appellant was asking in the Federal High Court was a declaration that his term of office would not terminate or cease on 29th May, 2007 but on 29th April, 2008 when he would have had his full four uninterrupted years in office as Governor

of Oyo State of Nigeria, having been unconstitutionally and unlawfully kept out of that office by a faction of the members of the Oyo State House of Assembly. Not only that, the Appellant in that claim also asked for an injunctive relief to stop the 1st Respondent from taking any step to conduct any election to the office of Governor of Oyo State on 14th April, 2007 to allow him to enjoy his full uninterrupted period of four years certain in office. **These declaratory and injunctive reliefs sought by the Appellant as Plaintiff before the Federal High Court, were predicated on the interpretation and application of Section 180(2)(a) of the Constitution. Certainly, the Appellant's case that was heard and determined by the Federal High Court had nothing to do with the provisions of Section 285(1) (b) of the Constitution which the Court below applied to it.**

The law is indeed trite that in the situation that arose at the Court below regarding the determination of whether or not the trial Federal High Court has jurisdiction to entertain the claim of the Appellant as contained in the Originating Summons, it is that claim that needed to have been examined. See Adeyemi v. Opeyori (1976) 9-10 S.C. 31; Izenkwe v. Nnadozie (1953) 14 WACA 361; Tukur v. Government of Gongola State (1989) 4 N.W.L.R. (FT. 117) 517 and Inakoju v. Adeleke (2007) 4 N.W.L.R. (PT. 1025) 423. Looking at the Appellant's Originating Summons relevant parts of which have been earlier quoted in this judgment, I am of the view that the declaratory and injunctive reliefs sought therein are squarely within the jurisdiction of the Federal High Court as prescribed under Section 251(1)(q) and (r) of the 1999 Constitution which reads -

"251(1) Notwithstanding anything to the contrary contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly. The Federal High Court shall have and exercise jurisdiction to the exclusion of any other Court in civil causes and matters -

(q) subject to the provisions of this Constitution, the operation and interpretation of this Constitution in so far as it affects the Federal Government or any of its agencies;

(r) any action or proceeding for a declaration or injunction affecting the validity of any executive or administrative action or decision by the Federal Government or any of its agencies."

This is because **when the Appellant went to the trial Federal High Court with his case against the 1st Respondent, an agency of the Federal Government and the 2nd Respondent being the Chief Law Officer of the Federation before the 3rd and 4th Respondents applied to join, the action was clearly within the jurisdiction of the trial Court where it was initiated by the Appellant.** See *Inspector General of Police v. Aigbiremolen* (1999) 13 N.W.L.R. (PT. 635) 443; *Ayeni v. University of Ilorin* (2000) 2 N.W.L.R. (PT. 644) 290; *University of Agriculture Makurdi v. Jack* (2000) 11 N.W.L.R. (PT. 639) 658 and *Olutola v. University of Ilorin* (2004) 18 N.L.W.R. (PT. 905) 416 at 463. **In this respect, the declaratory and injunctive reliefs having regard to the undisputed facts averred in the affidavit in support of the Originating Summons and the counter affidavits filed by the Respondents/Defendants tracing the grounds of the Appellant's claim to the judgment of this Court in his favour in the case of Inakoju v. Adeleke (supra), the lower Court was clearly in error in linking the Appellant's case to the class of matters that ought to be initiated at the National Assembly Election Tribunals under section 285(1)(b) of the Constitution.**

On the whole therefore, the appeal on the issue of jurisdiction succeeds and it is hereby allowed. The decision of the Court below of 16th May, 2007 that the trial Court and consequently the Court below lacked jurisdiction to entertain the case of the Appellant and his subsequent appeal against the decision of the trial Court to the Court of Appeal, is set aside and replaced with a declaration that both the trial Court and the Court below have jurisdiction in the matter. In other words the Court below has jurisdiction to hear and determine the Appellant's appeal which was properly before it under Section 240 of the Constitution and which ought to have been heard on the merit as the matter in dispute between the parties, cannot be brought within the ambit of the Section 285(1)(b) of the Constitution to exclude

the Federal High Court and indeed any other Court apart from the National Election Tribunal from exercising Original Jurisdiction to hear and determine it. With this decision on the Appellant's appeal, the cross-appeals of the 1st and 3rd Respondents are no longer alive for
B determination.

Next for determination after allowing the appeal on the issue of jurisdiction resulting in the declaration that both the trial Court and the Court below have jurisdiction to deal with the substance of the Appellant/
C Plaintiff's claim and the Appellant's appeal, is what to do to the Appellant's appeal now pending at the Court below which that Court declined to determine after hearing on the erroneous ground that it has no jurisdiction. The situation on the ground is quite clear. The action of the Appellant commenced by Originating Summons supported by affidavit and
D opposed by counter affidavits of Defendants to the action, was duly heard and determined by the trial Court. At the conclusion of the hearing, all the reliefs claimed by the Appellant/Plaintiff in the action were refused leading to the dismissal of the action. The facts of the case which are
E **not at all in dispute between the parties are quite clear. The Appellant whose tenure of office commenced on 29th May, 2003 when he took his oath of allegiance and oath of office to serve his first term of four years in the office as Governor of Oyo State, has not shown**
F **anything on record by which the fixed period of four years under Section 180(2) (a) of the 1999 Constitution can be extended beyond 29th May, 2007. As neither this Court nor any other Court for that matter has power to extend this period of four years for the Appellant beyond the terminal date of 29th May, 2007, and taking into**
G **consideration the need to give this matter expeditious hearing and determination as it had all along enjoyed right from the trial Court through to the Court of Appeal and in this Court, there is no justification whatsoever in allowing proceedings in this matter to be**
H **pursued any further only for the pronouncement of the position of the law which is quite clear and unambiguous. These are my reasons for allowing the Appellant's appeal on the issue of jurisdiction and refusing to attend to the Appellant's declaratory and injunctive**

reliefs already refused by the trial Court.

Having regard to the result of this appeal, I am not making any order on costs.

KATSINA-ALU JSC

On 14 June 2007 when I dismissed this appeal, I indicated that I would give my reasons for the judgment today. I shall do so now.

I have had the advantage of reading in draft the reasons given by my learned brother Mahmud Mohammed J.S.C. I agree with them.

Following the judgment of this court in Inakoju v. Adeleke (2007)4 NWLR (Pt. 1025)423 declaring the impeachment of the appellant by the Oyo State House of Assembly as unconstitutional null and void, the appellant by an originating Summons dated and filed on 15th March 2007 at the Federal High Court sought for the determination of the following question:

"Whether having regard to the provision of Section 180 of the Constitution of the Federal Republic of Nigeria, 1999 (which relates to the tenure of office of a Governor of a State) and the judgment of the Supreme Court of Nigeria in Suit No SC/272/2006 nullifying the purported removal of the plaintiff from office as Governor of Oyo State of Nigeria, the period of eleven months for which the Governor was illegally removed from office forms part of the plaintiffs four years term of office as Governor of Oyo State."

Whereupon the plaintiff claimed the following reliefs-

1. A declaration that the Plaintiff is entitled to a term of four uninterrupted years in office as Governor of Oyo State of Nigeria commencing from 29th May, 2003 by virtue of Section 180(2)(a) of the Constitution of the Federal Republic of Nigeria, 1999.

2. A declaration that the Plaintiff as the person duly elected and sworn in as Governor of Oyo State can only be required to vacate office in the manner prescribed under Section 188 of the constitution that is until the expiration of four year from the date on which he swore to the oath of allegiance and oath of office.

3. A declaration that the purported removal of the Plaintiff, a sitting Governor in breach of this provisions of the Constitution shall not affect or interfere with the certainty of tenure of office of the plaintiff as Governor, as provided for in section 180(2) of the Constitution.

B 4. A declaration that by virtue of Section 180 of the Constitution of the Federal Republic of Nigeria nullifying the purported removal of the plaintiff from office as Governor of Oyo State, the period of eleven months during which the Governor was removed from office does not form part of the plaintiffs term of four years as Governor of Oyo State.

C 5. A declaration that by virtue of the provisions of Section 180(2)(a) of the Constitution of the Federal Republic of Nigeria, 1999 the Plaintiff is entitled to remain in office until 29th April, 2008 when his four years certain term of office as Governor of Oyo State shall have expired.

D 6. A declaration that the Plaintiff is not required to vacate office as Governor until 29th April, 2008, which said date conforms with the Constitutional period of tenure of four years certain as provided in the Constitution.

E 7. An order of perpetual injunction restraining the 1st Defendant, its agents or privies from conducting an election to the office of Governor of Oyo State on the 14th April, 2007 as schedule by the 1st Defendant, or at any other time without first taking into consideration the period of eleven months, when the Plaintiffs tenure of four years certain
F would have been accommodated.

In its judgment, the trial Federal High Court dismissed the plaintiffs claim. The trial court held that:

G *"The plaintiffs term of office is four years, calculated from the date the plaintiff took his oath of allegiance and oath of office, which is 29th May 2003 - 29th May 2007."*

H On appeal, the Court of Appeal held that by virtue of Section 285 of the 1999 Constitution and Section 15(1) of the Court of Appeal Act, only the National Assembly Election Tribunal is competent to hear and determine this matter.

I think the Court of Appeal misunderstood the case of the plaintiff. The claim of the plaintiff is an invocation of the interpretative jurisdiction

of the High Court by Section 251(1) (q) and (r) of the Constitution of the Federal Republic of Nigeria, 1999. It provides as follows:

"251(1) Notwithstanding anything to the contrary contained in this constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters -

(a) (p)

(q) subject to the provisions of this constitution, the operation and interpretation of this constitution in so far as it affects the Federal Government or any of its agencies; and

(r) any action or proceeding for a declaration or injunction affecting the validity of any executive or administrative action or decision by the Federal Government or any of its agencies."

The claim as endorsed on the originating Summons cannot be conceivably said to be an election matter. It is not. All that the plaintiff claimed was an interpretation of Section 180(2) (a) of the 1999 Constitution as it affects his tenure of office. And it is crystal clear that the Federal High Court has the jurisdiction to interpret the provisions of the Constitution and to make declaratory and injunctive reliefs as conferred upon it by Section 251(i)(q) and (r) of the Constitution. One does not require a soothsayer to see that the Federal High Court has the jurisdiction to hear and determine the present claim. It was on this score that I allowed the appeal on jurisdiction.

In the interest of justice and the fact that all the material facts were before this court, I invoked the powers vested in this court under Section 22 of the Supreme Court Act. I have earlier on stated why the plaintiff went to court. It was contended that the period of eleven months during which the Governor was removed from office does not form part of the plaintiff's term of four years as Governor of Oyo State. This claim was unmeritorious. The Constitution of the Federal Republic of Nigeria, 1999 did not grant this court the power to grant an extension of tenure to a Governor who has been improperly impeached. To hold otherwise would amount to reading into the Constitution provisions that are not there.

It was for these reasons that I dismissed the main claim of the plaintiff without an award of costs.

OGUNTADE JSC

B

The appellant, as plaintiff, on 15-3-07 took out an originating summons against the 1st and 2nd respondents asking the Federal High Court Abuja to determine the question:

C

"Whether having regard to the provision of section 180 of the Federal Republic of Nigeria, 1999 (which relates to the tenure of office of a Governor of a State) and the judgment of the Supreme Court in suit No SC/272/2006 nullifying the purported removal of the Plaintiff from office as Governor of Oyo State of Nigeria, the period of eleven months

D

for which the Governor was illegally removed from office, forms part of the Plaintiff's four years terms of office as Governor of Oyo State."

The reliefs which the plaintiff/appellant sought from the court below are these:

E

" 1. A Declaration that the Plaintiff is entitled to a term of four uninterrupted years in office as Governor of Oyo State of Nigeria commencing from 29th May, 2003 by virtue of Section 180(2)(a) of the Constitution of the Federal Republic of Nigeria, 1999.

F

2. A Declaration that the Plaintiff as the person duly elected and sworn in as Governor of Oyo State can only be required to vacate office in the manner prescribed under Section 188 and 189 of the Constitution, that is until the expiration of four years from date on which he swore to the oath of allegiance and oath of office.

G

3. A Declaration that the purported removal of the Plaintiff, a sitting Governor in breach of this provision of the Constitution shall not affect or interfere with the certainty of tenure of office of the Plaintiff as Governor as provided for in Section 180(2) of the Constitution.

H

4. A Declaration that by virtue of Section 180 of the Constitution of the Federal Republic of Nigeria, 1999 and the decision of the Supreme Court of Nigeria nullifying the purported removal of the Plaintiff from office as Governor of Oyo State, the period of eleven months dur-

ing which the Governor was removed from office does not form part of the Plaintiffs term of four years as Governor of Oyo State.

5. A Declaration that by virtue of the provisions of Section 180(2)(a) of the Constitution of the Federal Republic of Nigeria, 1999 the Plaintiff is entitled to remain in office until 29th April, 2008 when his four years certain term of office as Governor of Oyo State shall have expired.

6. A Declaration that the Plaintiff is not required to vacate office as Governor until 29th April, 2008, which said date conforms with the Constitutional period of tenure of four years certain as provided in the Constitution.

7. An Order of Perpetual Injunction restraining the 1st Defendant, its agents or privies from conducting an election to the office of Governor of Oyo State on the 14th April, 2007 as Scheduled by the 1st defendant, or at any other time without first taking into consideration the period of eleven months, when the Plaintiffs tenure of four years certain would have been accommodated."

The trial court on 4/04/07 dismissed plaintiff/appellant's claim. Dissatisfied, the plaintiff appellant brought an appeal before the Court of Appeal, Abuja (hereinafter referred to as 'the court below'). The court below however, did not determine the appeal on its merits. In its judgment on 16-4-07, the court below held that the trial court ought not to have entertained plaintiff/appellant's suit as it had no jurisdiction. It held that only the National Assembly Election Petition had jurisdiction in the matter. The court below finally transferred the matter to the National Assembly Election Tribunal of Oyo State. The Plaintiff/Appellant was dissatisfied with the judgment of the court below. He has come before this Court on a final appeal. In the appellant's brief filed, the issue for determination on the appeal was identified as:

"Whether the learned Justices of the Court of Appeal are right to hold that the Federal high Court has no jurisdiction to determine the tenure of office of a Governor, except National Assembly Election Tribunal, under S.285 (1) (b) of the Constitution of the Federal Republic of Nigeria 1999 and if not, whether the Appellant is not entitled to his

claims and reliefs as contained in the declaration sought in the lower Court which this Honourable Court can entertain under Section 22 of the Supreme Court Act."

My learned brother, Mohammad J.S.C. has in his lead judgment ably stated why the appeal on jurisdiction must succeed and the dismissal of the suit affirmed. I entirely agree with him. I only want to emphasize some aspects of the judgment especially on the issue of jurisdiction.

The Court below in holding that the Federal High Court has no jurisdiction to entertain plaintiffs claim reasoned thus:

"The relevant provision in S.285 (1) (b) i.e. whether the term of office of any person under this Constitution has ceased. The contention of the appellant is that his term of office as Governor of Oyo State will cease only in April, 2008 because he was illegally and unconstitutionally removed from office by the Oyo State House of Assembly for eleven months. According to him, he is entitled by law to serve the eleven months, the time he was purportedly impeached. The respondents' contention is that the appellant's term of office, as Governor of Oyo State ceases on 29th May 2007. They further contend that the appellant's term of office is for four years and since he took the oath of office on 29th May, 2003, his term of office ceases on 29th May, 2007.

In interpreting a provision of the constitution, the primary function of the court is to search for the intention of the lawmaker. Where a constitutional provision is clear and unambiguous, the court must give the words their ordinary meaning unless it will lead to absurdity and inconsistency with the provision of the constitution as a whole. The true meaning of the words used and the intention of the legislature in a constitution can best be properly understood if the constitution is considered as a whole. It is a single document and every part of it must be considered as far as relevant in order to get the true meaning and intent of any particular portion of the enactment. Also a constitution must be interpreted and applied liberally. It must always be construed in such a way that it protects what it sets out to protect or guides what it sets out to guide. By necessity a constitutional provision must be interpreted broadly. See Okogie v. A. G. Lagos State (1981) 2 NCLR 337; Garuba v. FCSC

(1988) 1 NWLR (71) 449; *P.D.P. v. INEC* (1999) 11 NWLR (Pt. 626) 200; *Egolum v. Obasanjo* (1999) 7 NWLR (Pt. 611) 355; *Araka v. Egbue* (2003) 17 NWLR (Pt. 848) 1 and *Awuse v. Odili* (2003) 18 NWLR (Pt. 851) 116.

The provisions of S.285 (1) (b) of the 1999 Constitution is clear and unambiguous and as such the words must be given their ordinary meaning. Simply put, S.285 (1)(b) gives exclusive original jurisdiction to the National Assembly Election tribunals to entertain and determine petitions as to whether the term of office of any person under the said constitution has ceased. No any other court or tribunal has original jurisdiction to entertain the matters. B
C

I therefore hold that the Federal High Court has no jurisdiction to hear and determine the matter. Only the National Assembly Election Tribunal have original jurisdiction to the exclusion of any court or tribunal, to hear and determine the matter." D

Now, was the court below right in its reasoning above? I think not. The court below had relied on Section 285(1) (b) of the 1999 Constitution to arrive at the conclusion that the plaintiff's case could only be heard by the National Assembly Election tribunal. Section 285 provides: E

"285 (1) There shall be established for the Federation one or more election tribunals to be known as the National Assembly Election Tribunals which shall, to the exclusion of any court or tribunal have original jurisdiction to hear and determine petitions as to whether F

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

(b) the term of office of any person under this Constitution has ceased; G

(c) the seat of a member of the Senate or a member of the House of Representatives has become vacant; and

(d) a question or petition brought before the election tribunal has been properly or improperly brought. H

(2) There shall be established in each State of the Federation one or more election tribunals to be known as the Governorship and Legislative Houses Election tribunals which shall, to the exclusion of any court

or tribunal, have original jurisdiction to hear and determine petitions as to whether any person has been validly elected to the office of Governor or Deputy Governor or as a member of any legislative house.

(3) The composition of the National Assembly Election -Tribunals, Governorship and Legislative Houses Election Tribunals shall be as set out in the Sixth Schedule to this Constitution.

(4) The quorum of an election tribunal established under this section shall be the Chairman and two other members."

C (underlining mine)

The court below erroneously took the view that the plaintiffs suit was about whether or not his term in office as Governor had ceased. I earlier reproduced above the claims of the plaintiff. It is clear to me that what the plaintiff's suit was about was for Section 180(2) of the Constitution could be interpreted in order to grant him an extension of tenure to compensate for the period of 11 months that he was unconstitutionally impeached as Governor of Oyo State. It was not about whether or not his term in office had ceased. The error of the court below arose because it did not advert its mind to the provisions of Section 189 of the Constitution which deal with the question when the term of office of a Governor shall cease. There is a similar provision in Section 144 of the Constitution in relation to when the term of office of the President or Vice President shall cease. Section 189 provides:

"189(1) The Governor or Deputy Governor of a State shall cease to hold office if

(a) *by a resolution passed by two-thirds majority of all members of the executive council of the State, it is declared that the Governor or Deputy Governor is incapable of discharging the functions of his office; and*

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

(2) *Where the medical panel certifies in its report that in its opinion the Governor or Deputy Governor is suffering from such infirmity of*

body or mind as renders him permanently incapable of discharging the functions of his office, a notice thereof signed by the Speaker of the House of Assembly shall be published in the Official Gazette of the Government of the State.

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

(4) *The medical panel to which this section relates shall be appointed by the Speaker of the House of Assembly of the State, and shall comprise five medical practitioners in Nigeria -*

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

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

(5) *In this section, the reference to 'executive council of the State' is a reference to the body of Commissioners of the Government of the State, howsoever called, established by the Governor and charged with such responsibilities for the functions of Government as the Governor may direct."*

The period of office of a Governor 'ceases' when two-thirds majority of all the members of the Executive of a State pass a resolution that the Governor is incapable of discharging the functions of his office; and such resolution is followed by the procedure prescribed under Section 189 above.

It is the dispute arising from such resolution that is committed to the jurisdiction of the National Assembly Election Tribunal under Section 285(1) (b) of the Constitution. As the plaintiff had merely asked the court to interpret the provisions of Section 180(2) of the Constitution, plaintiff's suit in my view falls within the jurisdiction of the Federal High Court under Section 251(1) (q) and (r) of the 1999 Constitution. It is apparent that the two courts below fell into error because they had not given the word 'cease' the restricted meaning given to it under Sections 144 and

189 of the Constitution.

My learned brother Mohammed J.S.C. reasoned in the lead judgment that in a case as straightforward as this, where all that is required is the interpretation of section 180(2) of the 1999 Constitution, there being
 B no dispute on the facts, it is unnecessary to send the matter back to the court below as we might otherwise have done. I agree with him. On the state of the Law and facts before us, and given the constitutional importance of the issues raised in this appeal, and the necessity to remove the
 C uncertainties arising therefrom, I ought to proceed to consider the merits of the appellant's case.

There is no doubt that the tenure of the plaintiff as Governor of Oyo State was improperly interfered with through his impeachment on 12/1/06 which this Court declared illegal on 11/12/06. That unconstitutional
 D occurrence kept him out of office for eleven months. By his suit the plaintiff seeks the elongation of his tenure by 11 months.

Now Section 180 of the 1999 Constitution provides:

*"180 (1) Subject to the provisions of this Constitution, a person
 E shall hold the office of Governor of a State until -*

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

*(2) Subject to the provisions of subsection (1) of this section, the Governor shall vacate his office at the expiration of a period of four
 G years commencing from the date when -*

*(a) in the case of a person first elected as governor under this Constitution, he took the Oath of Allegiance and oath of office; and
 (b) the person last elected to that office took the Oath of Allegiance and oath of office or would, but for his death, have taken such
 H oaths.*

(3) If the Federation is at war in which the territory of Nigeria is physically involved and the President considers that it is not practicable to hold elections, the National Assembly may by resolution extend the

period of four years mentioned in subsection (2) of this section from time to time; but no such extension shall exceed a period of six months at any one time."

Subsection (2) of Section 180 provides that a Governor shall have a tenure of 4 years from the date he took the oath of allegiance and oath of office. There is however no provision covering the period of service denied a governor through an illegal impeachment as happened in this case. Chief Robert Clarke, SAN for the plaintiff/appellant, in his very persuasive argument before us referred to the Judgment of the Court of Appeal in *A.G. Federation v. A.N.P.P. & Ors.* (2003) 15 NWLR (Pt.844) 600. He contended that once the event which interrupted the tenure of the plaintiff/appellant was pronounced illegal, the court ought to compensate the plaintiff/appellant by granting him an extension of tenure for the period of 11 months which the improper impeachment denied him.

It is settled law, that when an act is declared null and void, the position is that from the angle of the law, the act never took place. It is completely wiped off and considered as extinct and deemed never to have existed. In *Adefulu v. Okulaja* (1996) 9 NWLR (Pt.475) 668 at 693 E cited by 4th respondent's counsel, this Court per Ogundare, J.S.C restated the position in these words:

"Much consideration was given by the trial judge to the fact that the 1st Defendant/Appellant 'occupied the throne of Olofin of Ilishan-Remo de facto from March 1981 up to 7 December, 1989'. With profound respect to the learned trial judge I think, he was, without realizing it swimming in a deep sea. When an appointment is declared null and void, all it means is that the appointment was never made and a
ll acts of the purported appointee when he de facto held the appointment are unlawful, null and void and of no effect. 'The result of a decree of nullity of marriage is that not only are the parties not now married buy they never were' - Per Russell, J. In Re Wombwell's settlement (1922) 2 CD 298 at P. 305 as it was put in an American case, Zogby v. State 53 H Misc 2d 740; 279 NYS 2d 665, 668. "

It is in the light of this legal position that plaintiff/appellant's counsel wanted this Court to discountenance the period of 11 months when

he was illegally impeached in the computation of the 4 year tenure granted him under the Section 180(2) of the Constitution. Much as one may be in sympathy with the plaintiff/appellant's cause, it seems to me that to accede to his request will occasion much violence to the Constitution. This court can interpret the Constitution but it cannot re-write it. In awareness of the possibility that an occurrence may prevent a Governor from being sworn in on the same date as his counterparts in the country, Section 180(2) states that tenure be computed from the date the oath of allegiance and oath of office is taken. There is no similar provision to protect a Governor improperly impeached. I am therefore, unable to perform a duty which the Constitution has not vested in the court. Regrettably, the plaintiff/appellant's case must fail.

I agree with the lead judgment of my learned brother Mohammed J.S.C. I would also make the same orders as in the lead judgment.

TABAI JSC

I was privileged to read in advance, the leading judgment of my learned brother Mahmud Mohammed J.S.C. I agree entirely with his reasoning and the conclusions reached thereat. The originating summons was filed at the Federal High Court about the 15/3/2007 at which time the Plaintiff/Appellant was the Governor of Oyo State. The summons was amended. In the Amended Summons dated the 29/3/2007 the Appellant submitted the following single question for determination:

"Whether having regard to the provision of section 180 of the Constitution of the Federal Republic of Nigeria 1999 (which relates to the tenure of office of a Governor of a state) and the judgment of the Supreme Court of Nigeria in Suit No SC/272/2006 nullifying the purported removal of the Plaintiff from office as Governor of Oyo State of Nigeria, the period of eleven months for which the Governor was illegally removed from office forms part of the Plaintiff's four years term of office as Governor of Oyo State."

He claimed six declaratory and one injunctive reliefs which are clearly set out in the leading judgment and I do not consider it necessary

to reproduce them. In its judgment, on the 16/5/2007 the court below restated some guiding principles in the interpretation of Statutes, applied what it considered the appropriate mode of construction and gave its interpretation of section 285(1)(b) of the 1999 Constitution as follows:

"The provisions of section 285(1)(b) of the 1999 Constitution is B clear and unambiguous and as such the words must be given their ordinary meaning. Simply put, section 285(1) (b) gives exclusive original jurisdiction to the National Assembly Election Tribunals to entertain and determine petitions as to whether the term of office of any person under C the said Constitution has ceased. No other court or tribunal has original jurisdiction to entertain the matters. I therefore hold that the Federal High Court has no jurisdiction to hear and determine the matter. Only the National Assembly Election Tribunals have original jurisdiction, to the D exclusion of any (other) court or tribunal to hear and determine the matter."

Pursuant to the foregoing conclusion the Court then ordered the transfer of the case to the National Assembly Election Tribunal Oyo State for determination. E

Section 285(1) of the Constitution provides:

There shall be established for the Federation one or more election tribunals to be known as the National Assembly Election Tribunals which shall to the exclusion of any court or tribunal have original jurisdiction to F hear and determine petitions as to whether:-

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

(b) the term of office of any person under this Constitution has G ceased;

(c) the seat of a member of the Senate or a member of the House of Representatives has become vacant;

(d) a question or petition brought-before the election tribunal has H been properly or improperly brought.

In arriving at its decision the Court below admittedly gave the provision *"the term of office of any person under this Constitution"* its ordinary grammatical meaning. But we are bound to interpret the said

provision in a sense harmonious with the clear objective of the entire section 285. It is also my view that in construing the provisions of an enactment recourse must first be made to the enactment itself to ascertain intention of the legislature. It is only when the precise intention of the legislature cannot be ascertained from the enactment itself that we make recourse to other provision of the Statute.

Now what is the scope and object of the enactment? What is the subject-matter in the mind of the Legislature as can be gleaned from entirety of section 285 of the Constitution. The heading is 'Election Tribunals.' The side note (or marginal note) is Establishment and Jurisdiction of Election Tribunals. The four subsections of section 285 all speak of the National Assembly Election Tribunals and the Governorship and Legislative Houses Election Tribunals, their composition, quorum, petitions presented therein and their determination. The clear subject-matter of the provision is the two categories of election tribunals and their exclusive jurisdiction over petitions presented therein.

In the first place the single question presented for determination and the seven reliefs sought have nothing to do either with the 2003 election or the 2007 election. The only question for determination is whether having regard to the provisions of section 180 of the Constitution the eleven months during which he was unlawfully kept out of office could be added to his term from the 29/5/07 to render his four year term complete. It is clearly not an election issue to be initiated by way of an election petition at an Election Tribunal. And having regard to the provisions of section 251(1)(q) and (r) the Federal High Court has the jurisdiction in civil matters and causes over the operation and interpretation of this Constitution in so far as it affects actions or decisions of the of the Federal Government or any of its agencies, I hold with respect that the court below erred in its decision about the Federal High Court's lack of jurisdiction to entertain the suit. The appeal on this issue of jurisdiction succeeds and the judgment of the Court below in respect thereof be and thereby set aside.

Having disposed of the issue of jurisdiction, the next is the substantive issue raised in the originating summons. My learned brother ex-

plained why it was not necessary to remit the case back to the Court of Appeal for its pronouncement on the substantive issue. I agree with that reasoning and by virtue of the provisions of section 22 of the Supreme Court Act I shall comment briefly on the substantive claim.

In a well considered judgment the learned trial Judge R.N. Ukeje, B.C.J. reasoned and concluded as follows:

"From the totality of the foregoing and to answer the issued raised for determination by the Plaintiff in the originating summons, the substantive suit herein I find that the Plaintiffs term of office is 4 years calculated from the date the Plaintiff took his Oath of Allegiance an Oath of office which is 29th May 2003 - to 29th May 2007. The 11 months during which the Plaintiff was out of office, albeit forcibly, having been declared null and void, cannot now confer any right or impose any obligation on the Plaintiff. To take cognisance of that period in calculating the period of 4 years of the Plaintiff's tenure so as to award to the Plaintiff an additional period of 11 months in office would have the effect of elongating or extending the Plaintiffs tenure of office beyond 29th May 2007 and push same to 29th April 2008. That is a thing that will clearly offend the provisions, particularly section 180(2) (a) and (b) of the Constitution."

The above in my view sums up the legal incidents of the Constitutional provisions. The Plaintiff/Appellant's impeachment was nullified in the case of *Inakoju & Ors v Adeleke & Ors* (2007) 4 NWLR (Part 1025) 423. The effect of that nullification takes effect from the date of the purported impeachment and the Plaintiff would be deemed not to have left office as Governor of Oyo State even for one day and entitled to all the benefits that accrued to him. To grant the 11 months extension sought would, in my humble view, create a situation never contemplated by section 180(2) of the Constitution.

On the whole while I allow the appeal on the issue of jurisdiction, I affirm the decision of the trial court on the reliefs claimed. I make no orders as to costs.

MUHAMMAD JSC

On the 14th day of June, 2007, I allowed this appeal and adjourned giving my reasoning to this day. My learned brother, Mohammed, J.S.C has afforded me an opportunity to read his reasons for allowing the appeal. I am in complete agreement with his reasoning process and I adopt same as mine. I do not have anything useful to add. I make no order as to costs.

C

ADEREMI JSC

On the 14th June, 2007, this appeal came before this court for determination. By a unanimous decision of the panel that heard the appeal of which I was a part; the appeal was allowed in part in the sense that the appellant succeeded on the issue of jurisdiction and was dismissed in part, in the sense that we refused to elongate the appellant's period of four years as Governor of Oyo State beyond the terminal date of 29th May 2007. I did say on that day that I would give my reasons for the judgment today. I now proceed to state my reasons.

Briefly, the facts of the case are as follows: the appellant was elected as the Governor of Oyo State in the general election that was conducted on the 19th of April, 2003. He took his oath of allegiance and oath of office as the Governor of Oyo state on the 29th May 2003. By force of law, he was to spend a four-year term in office calculated from the 29th May 2003; the day he took oaths. Sometimes in 2005, as a result of political dispute, the House of Assembly of Oyo State through a faction of the members of the House, got him removed by a purported impeachment. He was replaced by his deputy. He challenged the impeachment in the Federal High Court, the Court of Appeal and the Supreme Court. Suffice it to say that at last, the Court of Appeal and the Supreme Court allowed his appeal declaring the purported impeachment as unconstitutional, null and void; thus, he was reinstated to the office as the Governor of Oyo State. Suffice to say that by the unconstitutional impeachment, the appellant had been unlawfully kept out of his office as Governor for a period of eleven months. Prompted by the said judgment

which reinstated him into Office as Governor of Oyo State, the appellant approached the Federal High Court Abuja, eventually, by an amended Originating Summons dated 29th March, 2007 praying that court to determine the following issues: -

"Whether having regard to the provision of Section 180 of the Constitution of the Federal Republic of Nigeria (which relates to the tenure of office of a Governor of a State) and the judgment of the Supreme Court in Suit No SC/272/2006 nullifying the purported removal of the plaintiff from office as Governor of Oyo State of Nigeria, the period of eleven months for which the Governor was illegally removed from office, forms part of the plaintiffs four years term of office as Governor of Oyo State."

Upon the determination of the above question by the court, the present appellant, as plaintiff, simultaneously proceeded to seek the following reliefs:-

"(1) a declaration that the plaintiff is entitled to a term of four uninterrupted years in office as Governor of Oyo State of Nigeria commencing from 29th May, 2003 by virtue of Section 180 (2) (a) of the Constitution of the Federal Republic of Nigeria, 1999.

(2) a declaration that the plaintiff as the person duly elected and sworn in as Governor of Oyo State can only be required to vacate office in the manner prescribed under Sections 188 and 189 of the constitution, that is until the expiration of four years from date on which he swore to the Oath of Allegiance and Oath of Office.

(3) a declaration that the purported removal of the plaintiff, a sitting Governor in breach of this provision of the Constitution shall not affect or interfere with the certainty of tenure of office of the plaintiff as Governor, as provided for in section 180 (2) of the Constitution.

(4) a declaration that by virtue of Section 180 of the constitution of the Federal Republic of Nigeria, 1999 and the decision of the Supreme Court of Nigeria nullifying the purported removal of the plaintiff from office as Governor of Oyo State, the period of eleven months during which the Governor was removed from office does not form part of the plaintiffs term of four years as Governor of Oyo State

(5) *a declaration that by virtue of the provisions of Section 180 (2) (a) of the Constitution of the Federal Republic of Nigeria 1999, the plaintiff is entitled to remain in office until 29th April, 2008 when his four years certain term of office as Governor of Oyo State shall have expired.*

(6) *a declaration that the plaintiff is not required to vacate office as Governor until 29th April 2008, which said term confirms with the constitutional period of tenure of four years certain as provided in the Constitution.*

(7) *an order of perpetual injunction restraining the 1st defendant, its agents or privies from conducting an election to the office of the Governor of Oyo State on the 14th April 2007 as scheduled by the 1st defendant, or at any other time without first taking into consideration the period of eleven months, when the plaintiffs tenure of four years certain would have been accommodated."*

The grounds upon which the reliefs were founded are as follows: -

"(1) By virtue of Section 180 (2) (a) of the Constitution, the Governor of a State of the Federal Republic of Nigeria shall hold office for four years certain commencing from the date when he took the oath of office (sic) allegiance and oath of office and can only be removed pursuant to the provisions of the Constitution of the Federal Republic of Nigeria, 1999.

(2) The said period of eleven months when the plaintiff was removed from office does not form part of the plaintiffs four year certain term of office."

In a considered judgment delivered by the learned trial Chief Judge on the 4th April 2007, the prayers contained in the originating summons of the plaintiff/appellant supported by affidavit evidence were refused: holding inter alia, that to take cognisance of the period four-year tenure to which the plaintiff/appellant is entitled to constitutionally so as to award to him (plaintiff/appellant) an additional period of eleven months in office would be tantamount to extending his period as Governor beyond 29th May 2007; that, according to the learned Chief Judge, would run counter to the provisions of the 1999 Constitution as clearly stated in Sections

180 (2) and 178 (1) and (2). Dissatisfied with the decision, the plaintiff lodged an appeal to the court below urging it (court below) to set aside the judgment of the learned trial Chief Judge and grant all the reliefs contained in his Amended Originating Summons.

Sequel to taking the arguments of the counsel of the respective parties, upon the exchange of their respective briefs of argument, in a considered judgment delivered on 16th April 2007 allowing the appeal, the court below reasoned: -

"The provisions of Section 285 (1) (b) of the 1999 Constitution is clear and unambiguous and as such the words must be given their ordinary meaning. Simply put, Section 285 (1) (b) gives exclusive jurisdiction to the National Assembly Election Tribunals to entertain and determine petitions as to whether the term of office of any person under the said Constitution has ceased. No any other court or tribunal has original jurisdiction to entertain the matters. I therefore hold that the Federal High Court has no jurisdiction to hear and determine the matter. Only the National Assembly Election Tribunal have (sic) original jurisdiction to the exclusion of any court or tribunal to hear and determine the matter."

Perhaps I should add that exercising its powers under Section 15 of the Court of Appeal Act, the court below transferred the matter to the National Assembly Election Tribunal for Oyo State to hear and determine it.

Being dissatisfied with the said decision of the court below, the appellant, who was the plaintiff in the trial court, lodged an appeal to this court and he raised one issue for determination by this court; it reads: -

"Whether the learned Justices of the Court of Appeal are right to hold that the Federal High Court has no jurisdiction to determine the tenure of office of a Governor except National Assembly Election Tribunal under Section 285 (1) (b) of the Constitution of the Federal Republic of Nigeria 1999 and if not, whether the appellant is not entitled to his claims and reliefs as contained in the declaration sought in the lower court which this Honourable Court can entertain under Section 22 of the Supreme Court Act."

The 1st and 3rd respondents who were also dissatisfied with the

said judgment have cross-appealed individually to this court. The 1st respondent/cross-appellant, through his brief of argument, adopted the only issue identified by the appellant in his brief, for determination. The 2nd respondent, in his brief of argument, raised two issues for determination and they are in the following terms: -

B *"(1) Whether the learned Justices of the Court of Appeal were right to have declined jurisdiction on the appellant's case without inviting parties to address it on the issue of jurisdiction.*

C *(2) Whether in the circumstances of the case, the appellant is entitled to his claim."*

The 3rd respondent/cross-appellant for his part, formulated four issues for determination and they are as follows: -

D *"(1) Whether the learned Justices of the Court of Appeal were right to hold that the Federal High Court has no jurisdiction to determine the tenure of office of a Governor and that only the National Assembly Election Tribunal has jurisdiction to entertain the matter.*

E *(2) Whether the Federal High Court lacked jurisdiction to entertain the matter, the proper order for the court of Appeal to make is not a striking out of the case or whether it is the transfer of the case to the National Assembly Elections Tribunal.*

F *(3) Whether if the Supreme Court holds that the Court of Appeal had jurisdiction to entertain the appeal, whether the court can go ahead to consider the matter on its merits or whether the Court of Appeal not having considered the matter on its merits, the proper order would not be one remitting it back to the lower court to be determined on its merits.*

G *(4) Whether if the Supreme Court decides to consider the appeal to the lower court on the merits, the plaintiff/applicant (sic) deserves to be given judgment elongating his tenure by eleven months till April, 2008 as claimed in his Originating Summons."*

H *The 4th respondent, through its brief, identified two issues for determination by this court and as couched in the said brief, they are in the following terms: -*

"(1) Whether their lordships of the Court of Appeal were wrong to have declined jurisdiction on the case of the appellant.

(2) Whether in all the circumstances of this case, the appellant is entitled to the reliefs contained in his Amended Originating Summons."

I have carefully read all the briefs of the parties here. The summary of the argument of the appellant as could be gathered from his brief and highlighted by his counsel in the course of adopting the said brief B when this matter came in the open court for argument is that the court below was wrong to have referred the case to the National Assembly Election Tribunal for Oyo State acting under the provisions of Section 285 (1) (b) of the 1999 Constitution, which according to him, is not applicable to gubernatorial election; and that Section 285 (2) of the said C Constitution which is applicable to a Governor does not cover the declaratory reliefs sought by the appellant adding that the Federal High Court has jurisdiction to entertain the suit. Concluding his argument, it was submitted that if the learned trial Chief Judge had, in interpreting the D provisions of Section 180 of the 1999 Constitution, considered Sections 1 (2), 19 (1) and 305 of the 1999 Constitution, the decision that the Constitution did not provide for interruptions of the tenure of the Office of a Governor would not have been arrived at. The 1st respondent/cross- E appellant while finally urging that the appeal be dismissed, that the cross-appeal be allowed while affirming the decision of the court below predicated same on the submissions that issue of jurisdiction could be raised at any stage of the proceedings and before any court and even the court F can, suo motu, raise the issue; while finally contending that having found that it lacks jurisdiction to entertain a suit, the proper order to make is one striking out the entire suit and not one remitting the matter to another court or Tribunal as was done in this case.

The arguments of the 2nd respondent, in summary, boil down to G this; that by virtue of the provisions of Section 285 (1) (b) of the Constitution 1999, the jurisdiction of the regular courts on the issue of the determination of the cessation of tenure of the Governor in Office, is curtailed, finally urging that the appeal be dismissed. The 2nd respon- H dent, in his brief, submitted that by the provisions of Section 285 (1) (b) of the Constitution, it is only the National Assembly Election Tribunal that has original jurisdiction to determine if the tenure of a person as Gover-

nor of a State has expired; while conceding that the court below, suo motu, raised the issue of jurisdiction and did not hear the parties before pronouncing on it, he further submitted that the court below, indeed any court of law, has the jurisdiction to raise the issue of jurisdiction being a
B fundamental matter which must be addressed at the earliest; although the action of the court below in this case was irregular, he said through the brief, there was no substantial miscarriage of justice, he finally submitted while urging that the decision of the court below be upheld on the issue
C of jurisdiction. On Section 180 of the Constitution, a community reading of its provisions along with those of Section 191 of the same Constitution does not state that a Governor of a State can stay a day beyond four years from the date he took his Oath of Allegiance and Oath of Office and in the instant case, beyond 29th of May 2007. Concluding, he urged that
D the entire appeal be dismissed.

The 3rd respondent on Section 285 (1) of the Constitution, submitted that the jurisdiction to determine the tenure of different categories of Public Officers has been vested in different judicial bodies and tribunals and not at all vested in the National Assembly Elections Tribunal as
E according to him, Section 285 (2) of the Constitution 1999 makes it abundantly clear. It was his further submission that there was no cross-appeal before the court below challenging the jurisdiction of the trial court
F upon which its decision to decline jurisdiction could have been founded, and neither the grounds of appeal nor the issues distilled therefrom touched on the issue of jurisdiction; adding that even if the trial court did not have jurisdiction to entertain the suit, it was not a matter which could be commenced or continued or even entertained by the National Assembly Election
G Tribunal whose own proceedings are sui generis with its own defined cause of action, its own procedure and does not admit any possible assimilation, adoption or commitment of an action commenced by Originating Summons seeking elongation of the plaintiffs tenure and finally, it
H has its own prescription of parties that can have locus standi before the Tribunal. It was his further argument that if this court holds that the court below was wrong in its decision declining jurisdiction, the only order it could make is to remit the case back to the court below to hear

the case on its merit and not to invoke its (Supreme Court) powers under Section 22 of the Supreme Court Act and hear the case on its merits. After referring to the provisions of Section 191 (1) of the Constitution 1999 and reading same along with the provisions of Section 180 of the same Constitution, a proper construction of the two Sections having regard to the nullification of the impeachment of the appellant by the Supreme Court, this (appellant) tenure will end on the 29th May 2007, the fourth anniversary of his taking Oaths. Finally having taken an overview of the entire facts of the case, he submitted that the reliefs claimed by the appellant are equitable in nature, and having delayed in action, he should not be entitled to the reliefs; consequently, he urged that the appeal be dismissed and the cross-appeal of the 3rd respondent/cross-appellant be upheld.

The 4th respondent (Peoples Democratic Party) submitted through its brief of argument that this appeal has now become a mere academic exercise for the reason that a new Governor, in the person of the former Deputy Governor (Otumba Alao Akala) of the present appellant (Senator Rashidi Ladoja) had been sworn in on the 29th of May 2007 and the appellant is no longer the Governor of Oyo State, it therefore urged this court to affirm the decision of the court below and dismiss this appeal. This disposes of Issue No 1 raised by the 4th respondent, it was submitted. On Issue No 2 it formulated which is as to whether the appellant is entitled to the reliefs sought in his amended originating summons, the 4th respondent submitted that Section 191 (1) and Section 1 (2) of the 1999 Constitution are not applicable to the appellant's case, because, according to it, the case prosecuted before the two lower courts borders on the dictates of the provisions of Section 180 of the 1999 Constitution. It was further argued that since the impeachment of the appellant had been declared null and void by the decisions of the Court of Appeal and this court (Supreme Court) sequel to the action earlier brought by the appellant in another suit, the effect of that was that he (the appellant) was never impeached, consequently his four-year tenure remains a continuous one under Section 180 (2) (a) of the 1999 Constitution; and since this court (Supreme Court) in a related case had pronounced that the tenure of the

office of the appellant would end on the 29th of May 2007; the reliefs sought by the appellant presently cannot be granted; it was submitted adding that they are against the clear provisions of Section 180 of the 1999 Constitution. In conclusion, this court has been urged to affirm the B decision of the court below and dismiss the appeal of the appellant.

The basis of the appellant's case mainly revolves around the interpretation of Section 180 of the Constitution of the Federal Republic of Nigeria 1999 in the sense that he is inviting the court to determine whether C the period of eleven months when he was put out of office as Governor by the force of an impeachment foisted on him by the Oyo State House of Assembly which impeachment was eventually declared null and void, forms part of his (plaintiff/appellant) four-year term of office as Governor of Oyo State. The two crucial questions to be answered in this appeal D are:

"(1) Whether the court below and indeed the trial court had jurisdiction to hear and determine the suit of the plaintiff/appellant and

(2) If the answer to question No 1 is in the affirmative, what is to E be done to the plaintiff/appellant's case?"

Broadly speaking, jurisdiction does not encompass "legal capacity", "power" or "authority" of a court to enter into adjudication or to do certain things. It pronounces on the competency of the court. A court is F said to be competent when it is properly constituted as regards the number and qualifications of members of the bench; and no member is disqualified for one reason or the other; the subject matter of the case is within its jurisdiction; the case is not afflicted with any feature which prevents the court from exercising its power over it; of course, the case G must be initiated by due process of law and upon fulfillment of any condition precedent to the exercise of jurisdiction. So fundamental is the issue of jurisdiction that it can be raised at any stage of the proceedings. But it is not a free-for-all procedure. It can be raised by either party to the H proceedings at any stage: even at the apex court. Let me add that the court can, suo motu, raise the issue of jurisdiction, but in so doing, the court must grant the two sides the opportunity of addressing on it; this is in conformity with the concept of fair hearing. The next question that

may be asked is, what determines the jurisdiction of a court? The answer is this: generally, it is the claim of the plaintiff that determines the jurisdiction of a court that is invited to adjudicate in the matter. See Adeyemi & Ors. v. Opeyori (1976) 9 & 10 S.C. 31.

I have set out the reliefs claimed by the plaintiff/appellant above; they are seven in number; six are declaratory reliefs and one injunction relief. The first six reliefs which I have said are mere declaratory in nature are only an invitation to the court to declare what the law is on the point raised. The grant of a declaratory relief, it must be noted, is discretionary. It will only be granted when the court is of the opinion that the party seeking it, is, when all facts are taken into consideration, fully entitled to the exercise of the court's discretion in his favour. See Odofin v. Ayoola (1984) 11 S.C. 72. From a careful scrutiny of the claims of the plaintiff/appellant contained in his amended originating summons, a substantial question of law has arisen in which the plaintiff/appellant has a real interest to raise and the respondents to oppose. Declaratory judgments, particularly in areas of the world where the rule of law is prevalent, have been accorded veritable recognition. In Hamson v. Radcliffe Urban District Council (1922) 2 CH. 490, Lord Sterndale M.R. in giving declaratory judgments due recognition, at page 507 reasoned thus; -

"The power of the court to make a declaration where it is a question of defining rights of two parties is almost unlimited; I might say only limited by its own discretion. The discretion should of course be exercised judicially but it seems to me that the discretion is very wide."

Legendary Lord Denning M.R. pushing forward the need for this class of relief in the interest of justice observed in the case of PYX Granite Co. Ltd v. Ministry of Housing & Local Govt. (1958) 1 Q.B. 554 at page 571 thus: -

"If a substantial question exists to which one person has a real interest to raise, and the other to oppose, then the court has a discretion to resolve it by a declaration which it will exercise if there is a good reason for so doing."

Finally, Lord Diplock speaking in the same tone in *Gouriet v Union of Post office Workers* (1978) A.C. 435 reasoned at page 501 thus:-

"But the jurisdiction of the court is not to declare the law generally or to give advisory opinion; it is confined to declaring contested legal rights, subsisting or future, of the parties represented in litigation before it and not those of anyone else."

B I realise that the authorities I have cited above are foreign decisions which by the declaration of our courts, are no longer binding on Nigerian court. But, I wish to say that they remain persuasive. I am persuaded by the above authorities and I shall here approve of their application to the case at hand. Again I pause to say that I also realise that the exercise of a jurisdiction to make a declaratory relief is certainly not an exception to the general principle that where the Constitution has declared that the courts cannot exercise jurisdiction in a particular matter or matters, any provision in any law to the contrary is null and void and of no effect. This point was made very clear by Karibi-Whyte, JSC in *Utih v. Onoyivwe* (1991) 1 NWLR (pt.166) 166 when at page 225 he opined:

"The jurisdiction of our courts is derived from the Constitution. Hence, where the Constitution has declared that the courts cannot exercise jurisdiction, any provision in any law, to the contrary will be inconsistent with the provision of the Constitution and invalid. The exercise of a jurisdiction to make a declaratory relief is not an exception to this general principle."

F In submitting that the lower court was right in its judgment that the trial court had no jurisdiction to entertain the claims, the respondents placed reliance on Section 285 (1) and (2) of the 1999 Constitution which provides:

G Section 285 (1)

"There shall be established for the Federation one or more election tribunals to be known as the National Assembly Election Tribunals which shall, to the exclusion of any other court or tribunal, have original jurisdiction to hear and determine petitions as to whether: -

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

(b) the term of office of any person under this Constitution has ceased

(c) the seat of a member of the Senate or a member of the House of Representatives has become vacant; and

(d) a question or petition brought before the election tribunal has been properly or improperly brought."

Section 285 (2)

B

"There shall be established in each State of the Federation one or more election tribunals to be known as the Governorship and Legislative Houses Election Tribunals which shall to the exclusion of any court or tribunal, have original jurisdiction to hear and determine petitions as to whether any person has been validly elected to the office of Governor or Deputy Governor or as a member of any legislative house."

C

In construing the above provisions, it is my strong view that an election has been held and a petition has been lodged. The only adjudicating body that has exclusive jurisdiction to hear and determine such petition is the Election Petition Tribunal. The present action pre-dates the election held on the 14th of April 2007. As I said above, all the plaintiff/appellant is praying for is for declaratory judgment, of course, with an injunctive relief accompanying it. The provisions of Section 285 of the Constitution are not applicable to the present suit. The court below was in error to have relied on the aforesaid provisions to oust its own jurisdiction and that of the trial court in hearing and determining the suit of the appellant. For the umpteenth time, I wish to say that all the appellant is seeking are declaratory and injunctive reliefs. And a careful reading of the provisions of Section 251 (1) (q) and (r) of the Constitution of the Federal Republic of Nigeria 1999, in my respectful view, support my quoting, with approval, the dicta of foreign decisions to the effect that a superior court of record can make declaratory orders. Section 251 (1) (q) and (r) of the 1999 Constitution provides:-

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"Notwithstanding anything to the contrary contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the Federal High Court shall have and exercise to the exclusion of any other court in civil causes and matters:-

H

(a) (p)

(q) *subject to the provisions of this Constitution, the operation and interpretation of this Constitution in so far as it affects the Federal government or any of its agencies*

(r) *any action or proceeding for a declaration or injunction of any executive or administrative action or decision by the Federal Government or any of its agencies."*

For the above provisions, it is clear that the interpretation of the provisions of the 1999 Constitution is vested in the Federal High Court in so far as it affects the Federal Government or any of its agencies. To be specific, Section 251 (1) (r) puts it beyond peradventure that the Federal High Court has the power to entertain a suit seeking declaratory and injunctive orders. Section 251 of the Constitution aforesaid starts with the words "Notwithstanding, anything Contrary Contained in this Constitution", that word "Notwithstanding" has been judicially defined by this court in the case of NDIC v. Okem Ltd & Anor (2004) 10 NWLR (pt.880) 107 when at pages 182/183 it was said: -

"As has been observed, Section 251 (1) of the 1999 Constitution begins with the term "Notwithstanding" anything contrary to this Constitution, when the term "Notwithstanding" is used in a section of a statute, it is meant to exclude an impending effect of any other provision of the statute or other subordinate legislation so that the said section may fulfil itself. It follows that as used in Section 251 (1) of the 1999 Constitution no provision of the Constitution shall be capable of undermining the said section."

Going by the decision in Okem's case, nothing can supplant the provisions of Section 251 (1) (q) and (r) aforesaid. It follows therefore that the irresistible conclusion now reached by me is that the Federal High Court has the jurisdiction, the legal authority and power to hear and determine the suit of the plaintiff/appellant as presented before it. The court below was therefore wrong, in law, to have held otherwise. The appeal on the issue of jurisdiction therefore succeeds. The first part of the only issue raised by the appellant as to jurisdiction which issue was adopted by the 1st respondent/cross-appellant is answered in the affirmative; Issues No 1 on the 2nd respondent's brief; Issue No 1 on the 3rd

respondent/cross-appellant's brief are answered in the negative while I resolve Issue No 1 on the 4th respondent's brief against it.

The next issue for consideration is whether the appellant is entitled to the reliefs sought. The trial Chief Judge had ruled that the appellant was not entitled, based on the materials placed before the court of trial, to the reliefs sought; i.e. elongation of his tenure of office by eleven months for which he was not allowed to remain in office by the impeachment which has been adjudged to be unlawful and/or illegal. Suffice it to say that the court below did not make any pronouncement on that part of the judgment given by the trial court. The second arm of the only issue raised by the appellant for determination by this court poses the question whether the appellant is not entitled to the reliefs sought as contained in the amended originating summons. If I may say, the entire issue is distilled from the two grounds of appeal raised in the Notice of Appeal. That second limb of the issue must be considered by this court given the standpoint of judicial decision on determination of all properly raised issues before the court. But the court below, understandably, has not expressed any opinion as to whether the trial court was right or not in dismissing the reliefs sought. I say understandably, because the court below had ruled that the trial court had no jurisdiction to entertain the suit. I have said *supra* that the court below erred in law, on the issue of jurisdiction and that it ought not to have remitted the suit to any Election Petition Tribunal. Must I stop at this pronouncement on the issue of jurisdiction and say nothing further or must I go ahead to remit the case back to the court below to determine whether the plaintiff/appellant is entitled to the reliefs sought. I think not. Interest of justice will be defeated if I approach the second limb of the issue in that direction. But, I must remind myself that this court will not take an appeal directly from a trial court without the aggrieved party not first going through the court below (Court of Appeal). It is after the Court of Appeal has pronounced on the issue complained about in the judgment of the court of first instance that any party still not satisfied can approach this court on a further appeal.

Law, it must be said cannot be wanting in dispensing justice. The court below has failed to do what it ought to have done, in the interest of

justice. I have just said that the court below did not lack jurisdiction to entertain the suit. The real issue before us can be distilled from the grounds of appeal contained in the Notice. All the materials needed to take a decision on this crucial issue are now before us. I still say that the end of justice will be defeated if this appeal is remitted to the court below to determine the real issue. It is for this reason, if this court will justify itself for adjudication in the matter in controversy here once and for all, that the provisions of Section 22 of the Supreme Court Act must first be invoked. See *Faleye & Ors v Otapo & Ors* (1995) 3 NWLR (pt.38.1) 1; *Inakoju v. Adeleke* (2007) 4 NWLR (pt.1025) 423 and *Dapianlong & Ors v. Dariye* (2007) 8 NWLR (pt.1036) 239. The provisions of Section 22 of the Supreme Court Act read: -

"The Supreme Court may, from time to time, make any order necessary for determining the real question in controversy in the appeal, and may amend any defect or error in the record of appeal, and may direct the court below to inquire into and certify its findings on any question which the Supreme Court thinks fit to determine before the final judgment on the appeal and may make any interim order or grant any injunction which the court below is authorised to make or grant and may direct any necessary inquiries or accounts to be made or taken and generally shall have full jurisdiction over the whole proceedings as if the proceedings had been instituted and prosecuted in the Supreme Court as a court of first instance and may rehear the case in whole or in part or may remit it to the court below for the purpose of such rehearing or may give such other directions as to the matter in which the court below shall deal with the case in accordance with the powers of that court."

In my humble view, the provisions of Section 22 of the Supreme Court Act quoted supra constitute the enabling power by which this court can now adjudicate to finality in this matter given the present state of the facts. All the plaintiff/appellant is calling for determination is whether having regard to the provisions of Section 180 of the 1999 Constitution and the judgment of this court in SC.272/2006 referred to above nullifying the removal from office as Governor of Oyo State of Nigeria, the period of eleven months for which he as the Governor was illegally re-

moved from office forms part of his four-year term of office as the Governor. This question calls for the interpretation of the provisions of the Constitution and no more. The power of interpretation is lodged in the judex. In exercising this interpretative jurisdiction, the judex must draw his inspiration from consecrated principles. What are these principles? They are: where the words used in couching the provisions of a statute or sections of the Constitution are clear and unambiguous, a judex must accord such words used, their ordinary and grammatical meanings without any colourations. More often than not, courts are always enjoined in the course of exercising their interpretative jurisdiction, to find out the intention of the legislators. But, there is no magical wand in that advice. The intention of the legislators or put bluntly, the intention of our National Assembly at the Federal level or the State House of Assembly at the State level is to be found in no other place other than in the words used by the legislators in framing the provisions of the Constitution. Occasionally, the law passed by the legislators may not meet the modern day requirements, it may be defective. Let that defect be put right by the legislators. A judge is far better employed if he puts himself to the much singular task of deciding what the law IS. Let me now reproduce the provisions of Section 180 (2) of the 1999 Constitution hereunder: -
Section 180(2)

"Subject to the provisions of sub-section (1) of this section, the Governor shall vacate his office at the expiration of a period of four years commencing from the date when: -

(a) in the case of a person first elected as Governor under this Constitution, he took the Oath of Allegiance and the Oath of Office;
And

(b) the person last elected to that office took the Oath of Allegiance and Oath of Office or would, but for his death, have taken such oaths."

Applying the principles guiding the interpretation of the provisions of the Constitution as stated above to the provisions of Section 180 (2) (a) stated above, it is commonly agreed by all the parties that the plaintiff/appellant, sequel to the declaration by the 1st respondent/cross-appellant

that he won the gubernatorial election of 2003, he (1st respondent/cross-appellant) took his Oath of Allegiance and Oath of Office as Governor of Oyo State on the 29th of May 2003. The wordings of Section 180 (2) (a) and (b) are very clear and unambiguous. Being a person first elected as Governor, his four-year tenure would start to run from the 29th of May 2003. It is true that by the impeachment foisted on him by the State House of Assembly which impeachment was later declared null and void by court, he was kept out of office for a period of eleven months. It is for the reason of the impeachment that kept him out of office for a period of eleven months that he is praying the court to declare that he is entitled to a term of four uninterrupted years in office as Governor of Oyo State commencing from the 29th May 2003 and consequently, to hold that by virtue of the provisions of Section 180 (2) (a) of the Constitution applicable here, he is entitled to remain in office until 29th April, 2008 when, according to him, what he described as his term of four uninterrupted years as Governor of Oyo State would expire.

I have again carefully read the aforesaid provisions of the Constitution; the word "Uninterrupted" was not used to qualify the four-year tenure to which the plaintiff/appellant was entitled as Governor of Oyo State. It is a firm canon of interpretation of the provisions of a statute or the Constitution that words not used by the legislators must not be imported into the wordings of the provision by a 'judex'. "Law making" in the strict sense of that term, is not the function of the judiciary but that of the legislature. To accede to the prayer of the plaintiff/appellant and read the word "Uninterrupted" into the provision of the Constitution, now under consideration will be for the judicial arm of the government to engage in an unwelcome trespass into the territory of the legislative arm of the government. I am quite conscious of the fact that occasionally laws passed by the legislators do not accord with the wishes of the people or may not meet with the requirements of the time. Let that defective law or law that does not meet with the aspirations of the citizens be put right by the legislators. Even if there was no impeachment and a Governor had run his term smoothly, for the period he may be on leave during the tenure of his office, the Deputy Governor must have to stand in for him. That is a

form of interruption which the Constitution does not take cognisance of. The reliefs sought are, in the main, declaratory and injunctive in nature. As I have said above, the power to grant declaratory reliefs is very wide, almost unlimited except limited by the discretion of the court. But that discretion of the court must be exercised judicially and judiciously and in the absolute interest of justice. Taking an overall view of the facts of this case, it is my considered view that the interest of justice will never be served by the grant of the declaratory and injunctive reliefs as they relate to the elongation of the tenure of the office of the appellant as Governor of Oyo State beyond the 29th of May 2007.

It is for this little contribution by way of reasons for my judgment of 14th June 2007 but most especially for the detailed reasoning contained in the leading judgment of my learned brother, Mohammed JSC, that I allow the appellant's appeal on the issue of jurisdiction and dismiss the declaratory and injunctive reliefs already refused by the trial court. There shall be no order as to costs.

CHUKWUMA-ENEH JSC

On 14/06/2007, I declared my judgment in this matter. I did also say on that occasion I would give my reasons for the judgment today.

Now, I have had the privilege of a preview of the reason given in the lead judgment prepared by my learned brother Mohammed J.S.C and I agree with his reasoning and conclusions. I adopt the same as mine. I have therefore nothing useful to add save to say that I abide by the orders in the lead judgment.