

SUPREME COURT OF NIGERIA

13TH JULY 2007. SC. 123/2007

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

PETER OBI APPELLANT
AND

1. INDEPENDENT NATIONAL ELECTORAL
COMMISSION [INEC]

2. ALL NIGERIA PEOPLES PARTY RESPONDENTS

3. PRINCE NICHOLAS UKACHUKWU

4. PEOPLES DEMOCRATIC PARTY

5. DR. ANDY UBA

6. PEOPLES MANDATE PARTY

7. ARTHUR OBIEFUNANWANDU

COURTS - Jurisdiction - Appeals - Grounds of appeal - Reference to Court of Appeal - Where a court declines jurisdiction - Striking out the suit is the only step to take - Grounds seeking different step - Were rightly struck out by lower court (H1)

COURTS - Jurisdiction - How examined - Definition - When a court is said to have original or appellate jurisdiction - A decision without jurisdiction is tantamount to nothing (H2)

ACTIONS - Reliefs - Declaratory reliefs - Plaintiff must have necessary standing to sue - Judgment which is discretionary - Will only be granted to a party - Fully entitled to exercise of Court's discretion (H3)

ACTIONS - Jurisdiction - Elections - Declaratory order - Nature - Plaintiff who intends to have an enforceable legal right - Must also seek injunctive order and or Damages - High Court can entertain this action (H4)

CONSTITUTIONAL LAW - Tenure of Governor's Office - Election Tribunals - S. 184 of 1999 Constitution - Question of appellant's four year term as Governor - Is not for Election Tribunal to determine - Given the circumstances of this case (H5)

CONSTITUTIONAL LAW - Jurisdiction - Federal High Court - S. 251 (1) (q) & (r) of 1999 Constitution empowers the court - With duty of interpreting the Constitution - And the phrase notwithstanding - Is meant to preserve and not fetter the section (H6)

ACTIONS - Jurisdiction - Tenure of Governor's office - Where appellant seeks Constitutional pronouncement - As to his tenure in office - Federal High Court has jurisdiction - Lower courts' contrary decision is set aside (H7)

APPEALS - Court of Appeal - Powers - Court of Appeal Act s. 16 - Nature of power conferred on the Court - Conditions precedent to application of the section - Include that trial court must have jurisdiction (H8)

APPEALS - Justice - Supreme Court - Powers - Supreme Court Act s. 22 - Purpose and when to be invoked - Is where Court of Appeal fails to apply s. 16 C A Act - And all necessary materials for determination of the case - Are before the Court (H9)

STATUTES - Interpretation - Constitution - Principles of interpreting - Demand that Judges give no colouration to clear provisions - In line with intention of the Legislature (H10)

CONSTITUTIONAL LAW - Governor's four-year term - Calculation of vide s. 180 (2) (a) of 1999 Constitution - For a person first elected as Governor - Begins to run from date of his taking Oath of Office (H11)

CONSTITUTIONAL LAW - Interpretation - Elections - Governor's four-year term of office - Court's application of s. 180 (2) (a) of 1999 Constitution - Will not truncate election time table - Judge is to declare what the law is - Not what it ought to be (H12)

FACTS

On the 12-2-2007, the plaintiff/appellant filed an originating summons against the 1st defendant/respondent, Independent National Electoral Commission (INEC), before the Federal High Court, Enugu. Appellant sought the determination of two questions namely:

“(1) Whether having regard to Section 180 (2) (a) of the 1999 Constitution, the tenure of office of a Governor first elected as Governor begins to run when he took the Oath of Allegiance and the Oath of Office.

(2) Whether the Federal Government of Nigeria through the defendant being its agent can conduct any Governorship election in Anambra State in 2007 when the incumbent Governor took Oath of Allegiance and Oath of Office on 17th March 2006 and has not served his four-year tenure as provided under Section 180 (2) (a) of the 1999 Constitution.”

Appellant inter alia, prayed for a declaration that his four year tenure of office as Governor of Anambra State began to run from the 17-3-2006, being the date he took his Oath of Allegiance and Oath of Office. He also sought an injunction restraining the first respondent from conducting any election in Anambra State until the expiration of a period of 4 years from the 17-3-2006. The suit was supported by a 15 paragraph affidavit.

The 1st respondent entered a conditional appearance. It filed a Notice of Preliminary Objection on the 26-2-2007, challenging the trial court's jurisdiction to entertain the suit. All the other defendants/respondents were joined in the suit at various stages upon their applications to be so joined. Appellant also filed motion notice praying for accelerated hearing of the proceedings/pending applications including accelerated reference of the 7 questions formulated by him to the Court of Appeal for adjudication. In

a considered ruling, the learned trial Judge held that questions 2 - 7 do not constitute materials for reference to the Court of Appeal and dismissed that motion. He declined jurisdiction to entertain the matter and therefore struck out the originating summons. Appellant's appeal to the Court of Appeal was dismissed. Still aggrieved, he has further appealed to the Supreme Court.

ISSUES FOR DETERMINATION

C “(1) *Whether the learned justices of the Court of Appeal were correct when they upheld the decision of the Federal High Court declining jurisdiction and held that the prayers in the appellant's originating summons were election matters within the exclusive jurisdiction of the Election Tribunal.*

D (2) *Whether the Court of Appeal was right in striking out Ground IV of the appellant's ground of appeal and issue IV distilled therefrom.*

E (3) *Whether having regard to the proper appreciation of the appellant's prayers in the originating summons the Court of appeal was right in not invoking the powers under Section 16 of the Court of Appeal Act.”*

HELD (Unanimously allowing the appeal per **ADEREMI JSC**)

Reference to Court of Appeal

F 1. The trial court had ruled that it lacked jurisdiction to adjudicate in the matter before it. That decision was final and binding until it was set aside. Let me quickly say here that once a court declines jurisdiction to entertain a suit, the only other step it could take in the matter is to make an order striking out the suit. Any other order or pronouncement made by the court after declaring that it lacks jurisdiction to entertain a suit, is null and void and of no effect. A careful reading of the particulars to ground 4 shows that the appellant wanted the trial court to have made a reference to the court below, on the assumption by the appellant, that the court below had the legal power to enter into adjudication on the matter. I am in a serious difficulty to see on what basis the trial court could have proceeded to do that having, in unmistakable terms said it lacked the legal power to adjudicate in the case before it. I pause here to say that before a proper

reference known to and sanctioned by the law could be made, the court making it must have made some findings upon the materials placed before it and in so doing, the trial court must be convinced that it had jurisdiction to hear the matter. In the instant case, I repeat, the trial court had said in clear terms that it lacked the power to hear the matter. If anything would B form the basis of any complaint against the verdict of the trial court, it is that, it said it lacked jurisdiction and no more. Whether that verdict by the trial court on jurisdiction is sustainable in law, is another matter. But, until it is set aside by due process of law, it is binding. The court below C did not set it aside. Issue touching on jurisdiction is a matter of law. And that is what is before us now. The grounds of appeal could therefore not be reasonably said to have flowed from the judgment of the trial court. The court below is, in my humble view, right in the order made striking D out the said two grounds of appeal which are unrelated to the decision of the trial court and of course, the issues erroneously formulated therefrom, have no legal foundation, their being struck out is justifiable. (p. 3542 G)

COURTS - Jurisdiction - How examined

2. Jurisdiction is the legal power or legal authority that enables a judge to enter into adjudication in a matter before him. It should however be noted that the jurisdiction should be examined not when it is invoked but when the cause of action arose. I wish further to say that a court is said to have F original jurisdiction in a particular matter when that matter can be initiated before it and as a corollary, a court is said to have appellate jurisdiction when it can only go into the matter on appeal after it had been adjudicated on by a court of first instance. It follows, therefore, that where a G court takes upon itself to exercise power under jurisdiction which it does not possess; its decision is tantamount to nothing. Let it be noted that an action of a judge which relates not to his office, is of no force; there can never be obedience to any order he may make. The question may then be asked: what determines the jurisdiction of a court? The answer is this: H generally, it is the claim of the plaintiff which determines the jurisdiction of a court entertaining the same. (p. 3544 G)

Declaratory reliefs - Plaintiff must have necessary standing to sue

3. A declaratory judgment such as what was sought by the plaintiff/appellant is discretionary. It is the form of judgment which should be granted only 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.

I wish to go further by saying that to be able to claim declaratory reliefs, a plaintiff must have the necessary standing to sue. He does not need to have a subsisting cause of action or a right to some other relief, but some legal right of his own must be in issue, actually or contingently. Unless this is the case, there is nothing relating to his legal position which the court can declare. (p. 3546 A/ H)

Elections - Declaratory order - Nature

4. As I have said, a declaratory order or judgment merely declares a right or an entitlement or the position of the law. Therefore, a plaintiff who intends to have an enforceable legal right from a declaratory judgment or order that inures in his favour must also seek injunctive order and damages. That is what the plaintiff/appellant has done in the instant case, of course, less claim for damages. I have said earlier in this judgment that the main claims are an invitation to the court to make a pronouncement as to the position of the law, and that going by the decisions I have cited supra, a High Court or any court of record can entertain it. However, the 1st to 5th respondents have, through their various written briefs argued strenuously that the reliefs sought relate to electoral matters and that the Federal High Court does not have the jurisdiction to entertain them adding that the only body that can entertain this suit is Election Petition Tribunal. (p. 3547 D)

Election Tribunals - Question of appellant's four year term

5. It is my view that Sec. 184 (a) supra does not apply to the appellant who has, through legal process, got himself declared as the person who had the highest lawful votes in the gubernatorial election of April 2003 - the court's verdict so declaring him was given on the 16th of March

2006. The present appellant was denied by INEC the mandate of the people to be their Governor from 2003. Dissatisfied with the verdict of INEC, the appellant, in a way pursuant to the provisions of Section 184 (a) (1) of the Constitution, challenged the validity of the election of Ngige, a case, as I have said, he finally won on 16th March 2006. It was after his being sworn in as the Governor of Anambra State on 17th March 2006 that the foundation of his cause of action arose; the preparation by INEC to conduct an election on 14th May 2007 fully created a cause of action; that is, a judicial declaration as to the tenure of his office as Governor. All his rights under the Electoral Act which might be justiciable in an Election Petition Tribunal ended with the judgment of Court of Appeal (Enugu Division) on the 16th of March 2006. It must always be remembered that an Election Petition Tribunal is not an all- purposes court that can entertain all sorts of claims or reliefs. It is created for election matters alone. The appellant had exhausted all the legal avenues opened to him to get himself restored to the seat of Governor of Anambra State sequel to the 2003 election. What he is now seeking is legal pronouncement as to when his four-year term would end as Governor having regard to the fact that he first took his Oath of Allegiance and Oath of Office on the 17th of March 2006. The provisions of Section 184 supra will not avail him as by its provisions, Election Petition Tribunal is no longer the proper seat of justice to approach. (p. 3549 C/ E)

Jurisdiction - Federal High Court - S. 251 (1) (q) & (r)

6. It is clear that by Section 251 (1) (q) supra, 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), (q) and (r) puts it beyond any doubt that the Federal High Court has the power to enter into adjudication on any action or proceeding seeking declaratory and injunctive reliefs. Indeed, this section defines the jurisdiction of the Federal High Court. Even though Section 251 of the Constitution starts with the words “NOTWITHSTANDING ANY THING CONTRARY CONTAINED IN THIS CONSTITUTION”, I fail to see how the provisions of Section 184 quoted supra

fetters Section 251 (1); more importantly Section 184 does not contain any “exclusion or ouster clause”. The word “NOTWITHSTANDING” was judicially considered by this court in NDIC V. OKEM LTD & ANOR (2004) 10 NWLR (pt.880) 107 when at pages 182/183 it reasoned thus:

B - “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.”

D I adopt and hold myself bound by the above dictum. (p. 3550 G)

Where appellant seeks Constitutional pronouncement

7. All the plaintiff/appellant is seeking is a legal pronouncement or a declaration in law, as to when his tenure as the Governor of Anambra State would come to an end as dictated by the Constitution. Drawing from the decisions I have reviewed supra, the Federal High Court has an unfettered jurisdiction to make such declaration in respect of the contested rights of parties, whether subsisting or future. Again I have not seen anything in Section 285 (1) and (2) of the Constitution which fetters the right of the Federal High Court as conferred on it by the provision of Section 251 (1), (q) and (r) to adjudicate in this matter. Indeed, going by the decision of this court in the OKEM case supra, nothing can supplant the provisions of Section 251 (1), (q) and (r). The irresistible conclusion that I must reach, based on the judicial authorities that I have reviewed supra and the relevant provisions of the Constitution which I have considered, and which I now reach is that the Federal High Court has the jurisdiction - the legal power to entertain the suit of the plaintiff/appellant as presented before it. Having so held, I hereby set aside the decision of the two courts below declining jurisdiction. (p. 3552 C)

Court of Appeal Act s. 16 - Nature of power conferred

8. Broadly speaking, the provisions of Section 16 of the Court of Appeal Act confer legal power on the Court of Appeal to make any order which the court below it could have made in the interest of justice. This presupposes that the court below, the Court of Appeal, must have got jurisdiction to entertain the suit and the court below it also had jurisdiction in the matter but failed to exercise it. The provisions do not confer on the Court of Appeal the power to make an order which the trial court could not have made in resolving the dispute between the parties in the suit before it. The purpose of Section 16 aforesaid, is in my view, to obviate, delayed justice. It follows from what I have been saying above, that certain conditionalities must be present before the provisions of this section can be invoked; and they are: -

“(1) the lower court or trial court must have the legal power to adjudicate in the matter before the appellate court can entertain it.

(2) the real issue raised up by the claim of the appellant at the lower court or trial court must be seen to be capable of being distilled from the grounds of appeal.

(3) all necessary materials must be available to the court for consideration.

(4) the need for expeditious disposal of the case - or suit to meet the ends of justice must be apparent on the face of the materials presented and

(5) the injustice or hardship that will follow if the case is remitted to the court below, must clearly manifest itself.” (p. 3553 G)

Supreme Court Act s. 22 - Purpose and when to be invoked

9. The court below erroneously failed to take the advantage of the aforesaid provisions of the Court of Appeal Act. Would this then be the end of the road for a citizen who has approached the citadel of justice seeking remedies for wrong done to him? I think not. The law, must not and cannot be wanting in dispensing justice. And since justice according to law is the pre-occupation of a judex, a court must always rise up to such an occasion. It is to meet this exigency that Section 22 of the Supreme

Court Act, Cap 424, Laws of the Federation of Nigeria 1999, was enacted to confer general powers on this court to do all such things that will bring about unalloyed justice. The provisions of Section 22 of the Supreme Court Act quoted above are, in pari materia, with the provisions of Section 16 of the Court of Appeal Act. The present suit was begun by originating summons, a process often used when the facts of a case are not in controversy. As expected, the summons was accompanied by affidavit in support authenticating the plaintiff/appellant's case. Upon the service of the plaintiff/appellant's process, the defendants/respondents who wished to file counter-affidavit did so. Therefore, all that is required for this court to determine the real issue in controversy in this appeal are present before us. The interest of justice now demands that I should invoke the provisions of Section 22 of the Supreme Court Act and address the real question in controversy. (pp. 3554 F/ 3555 E)

Constitution - Principles of interpreting

10. As I have said, the next issue is one that calls for interpretation of the provisions of the Constitution. The power of interpretation must be lodged somewhere and the custom of the Constitution has lodged it in the judges. If they are to fulfil their functions as judges that power could hardly be lodged elsewhere. But, justice according to law which any good judge must ensure he dispenses at all times, demands that even when he (the judge) is seen to be free by the enormity of the power conferred on him, he is still not wholly free. He is not to innovate at pleasure. He is not a knight-errant roaming at will in pursuit of his own ideal of beauty or goodness or what colouration a piece of law should take. The judge must always draw his inspiration from consecrated principles. The next question that follows, is, what are these principles? Judges, in the exercise of their interpretative jurisdiction, must only interpret the words of a statute or constitutional provision, where they are as clear as crystal, according to their ordinary and grammatical meanings without any colouration. It is true that courts are always enjoined, in the course of interpreting the provisions, to find out the intention of the legislature, but there is no magical wand in this counseling.

The intention of the legislature, or put bluntly, the intention of National Assembly at the Federal level or the State House of Assembly at the State level, is not to be judged by what is in its mind but by its expression of that mind couched in the words of the Statute. (p. 3557 G)

Governor's four-year term - Calculation of vide s. 180 (2) (a)

11. When the verdict of the Court of Appeal (Enugu Division) declaring the present appellant-as the rightful person to have been declared as having won the gubernatorial election of April 2003, was handed down, the effect is that the return of Dr. Chris Ngige as the person who won the election was null and void and of no legal consequence. So, Ngige's oath taking at that time cannot be a point of reference for calculating the four-year term of the appellant. Ngige was and cannot be a person first elected as Governor under this Constitution; his election having been declared null and void. It was after the judgment of the Court of Appeal on the 16th of March 2006, and by force of law, that the appellant (Peter Obi) took his Oath of Allegiance and Oath of Office on the 17th of March 2006. Applying the provisions of Section 180 (2) (a) of the Constitution to facts of this case, which are not in dispute, the four-year term of office of Peter Obi, as Governor of Anambra State would start running from the 17th of March 2006 only to terminate on the 17th of March 2010. To interpret the provisions of Section 180 (2) (a) otherwise will be to read into that sub-section what the legislators never intended. The duty of a judex is to expound the law and not to expand it. (p. 3558 H)

Application of s. 180 (2) (a) - Will not truncate election time table

12. It was argued that if Section 180 (2) (a) is accorded the interpretation I have given it supra, it would truncate the election timetable in this country. I do not buy that argument. In the first place, there is nothing in our 1999 Constitution which says all elections into political offices in this country at the Federal and State levels, should be held at the same time. If there was a provision to that effect, that would negate the concept of federalism which we have freely chosen to practice. In the second place, a judge has a standing and abiding duty to do no more than to accord a

very clear provision of Section 180 (2) (a) of the 1999 Constitution under discussion, their ordinary, natural and grammatical meanings. I hold the strong view that “law making”, in the strict sense of that term, is not the function of the judiciary but that of the legislature. Let there be no incursion by one arm of the government into that of the other. That will be an invidious trespass. Let me point out that no Constitution fashioned out by the people, through their elected representatives for themselves, is ever perfect in the sense that it provides a clear-cut and/or permanent or everlasting solution to all societal problems that may rear their heads from time to time. As society grows or develops, so also must its Constitution, written or unwritten. Our problems as judges should not and must not be to consider what social or political problems of today require; that is to confuse the task of a judge with that of a legislator. More often than not, the law, as passed by the legislators, may have produced a result or results which do not accord with the wishes of the people or do not meet the requirements of today. Let that defective law be put right by new legislations but we must not expect the judex, in addition to all his other problems to decide what the law ought to be. In my humble view, he (judex) is far better employed if he puts himself to the much simpler task of deciding what the law IS. (p. 3559 E)

NOTABLE POINTS OF INTEREST
ADEREMI JSC

1. Need to wait for out come of pending proceedings

I only need to add that as at 14th April 2007 when the 1st respondent (INEC) was conducting gubernatorial election in Anambra State, the seat of the Governor of that State was not vacant. That election was a wasteful and unnecessary exercise. The 1st respondent was aware at that time that the appellant was in court pursuing his legal rights. A body that has respect for rule of law, which INEC ought to be, would have waited for the outcome of the court proceedings; particularly when it was aware of it. (p. 3560 D)

KATSINA-ALU JSC

2. Election Tribunal lacks jurisdiction to determine term of office

This tribunal clearly does not have the jurisdiction to determine whether the term of office of any person elected to the office of Governor has ceased. Its duty is to determine whether the person was validly elected into that office. That however is not the case of the plaintiff/appellant. The issue of whether he was validly elected was laid to rest by the decision of the Court of Appeal given on 16 March 2006. His claim which pre-dates the election held on 14 June 2007, was whether INEC could validly conduct an election for the office of Governor of Anambra State which was not vacant, having regard to the fact that he was sworn in as Governor on 17 March 2006. His cause of action arose when the 1st Respondent (INEC) proposed and scheduled an election for 2007 for the office of Governor of Anambra State. (p. 3566 H)

OGUNTADE JSC

3. S. 184 1999 Constitution merely vests power in the National Assembly

Let me emphasize here at the beginning of the discourse that section 184 of the 1999 Constitution reproduced above is not a provision dealing with any question as to the jurisdictions of the election tribunals or court. Rather, it vests power in the National Assembly to make laws in respect of the matters listed thereunder. It is important to bear in mind section 184(a) only enables the National Assembly to make laws in respect of “persons who may apply to an election tribunal.....” In other words, the National Assembly is vested with power to make laws concerning persons who may apply to the election tribunals for the determination of the questions listed under section 184. (p. 3577 B)

MOHAMMED JSC

4. Speculative claim - When reliefs sought accrued to appellant

It should be also noted that the Trial Court and the Court of Appeal were in gross error in expecting the Appellant to have included the reliefs sought at the trial Federal High Court in the reliefs he sought in his Election Petition in 2003 at the Election Tribunal for determination, merely in an-

icipation of victory at the Tribunal. It is surprising that both Trial Court and Court of Appeal failed to realise that such reliefs even if they were claimed would have been purely speculative which the Tribunal or any Court of law for that matter has no power to determine. This is because
 B the reliefs the Appellant sought at the trial Court did not accrue to him after the declaration of the result of the election in April, 2003 which he challenged before the Tribunal. These reliefs or right of action only accrued to the Appellant after his success at the Tribunal and the Court of
 C Appeal where he was declared the winner of the Governorship Election in Anambra State and his ultimate subscription to the oath of allegiance and oath of office as the duly elected Governor on 17th March, 2006. In otherwords without first showing that he was the duly elected Governor of Anambra State under the 1999 Constitution, the Appellant would not
 D have had the locus or standing to have asked for the reliefs sought at the trial Court. Putting it differently, the dispute on which the Appellant dragged the 1st Respondent to the trial Court for resolution did not arise for determination at the time he filed his Election Petition at the Election Tribunal
 E in 2003, up to the time the case was concluded in his favour at the Court of Appeal in March, 2006. (p. 3591 E)

REPRESENTATION

F Dr. O. Ikpeazu, S.A.N and Mr. P.I. Ikwueto, S.A.N. with them, Mr. P.A. Afuba, Dr. V.I. Azinge, Mr. E.D. Chukwura, Mr. O. J. Nnadi, Mr. E.C. Ezenduka, Mr. T.U. Oguji, Mr. Ike Chude, Mr. P.E. Ogroko, Mr. V.E. Okonkwo, Mr. Onyeka Nwokolo, Mr. C.N. Abiakam, Mr. Victor Ekim, Mr. Echezona Etiaba, Mr. J.I. Idigo, Mrs. Prisca Ozo Ilesike, Mr. Emeka
 G Offor and Mr. O. Nwankwo for the Appellant.
 Chief Anthony Idigbe, S.A.N. and Chief Chris Uche, S.A.N. with them, Mr. I. Nwogu, Miss Bunmi Opeagbe, Mr. Ebele Chukwu and Mr. Abraham Akpe for the 1st Respondent.
 H Mr. Arthur Obi Okafor with him, Mr. Anthony Musa for the 2nd Respondent.
 Mr. Ikechukwu Ezechukwu with him Mr. A.T. Udechukwu and Mr. Ogbechi Ogbonna for the 3rd Respondent.

Mr. Ifeanyi Udenze for the 4th and 5th Respondents.

Prince Orji Nwafor-Orizu with him, Mr. Ugochukwu Onyechukwu for the 6th and 7th Respondents.

CASES REFERRED TO

Alhaji Atiku Abubakar v. A-G. of the Federation (2007) 3 NWLR (pt.1022) page 601

ADEYEMI & ORS. V. OPEYORI (1976) 9 & 10 S.C.31

FALEYE & ORS V. OTAPO & ORS (1995) 3 NWLR (pt.381) 1

INAKOJU V. ADELEKE (2007) 4 NWLR (pt.1025) 423

DAPIANLONG & ORS V. DARIYE (2007) 8 NWLR (pt.1036) 239

Major & Co. Ltd. v. Schroeder (1992) 2 NWLR (Pt. 101)1

Ogboru v. Ibori (2005) 13 NWLR (Pt. 942) 319 at 360

Nabaruma v. Ofodile (2004) 13 NWLR (Pt. 891) 599 at 623

Enagi v. Inuwa (1992) 3 NWLR (Pt. 231) 584 at 565

A.G. Abia State v. A.G. Federation (2006) 16NWLR (Pt. 1005) 265

A.G. Bendel State v. A.G. Federation (1982) 3 NCLR 1

A. G. Federation v. A. G. Abia State & 35 Ors. (2001) 11 NWLR (Pt. 725) E 689 at 698

Marbury v. Madison 5 US 337, 1 Cranch 137, 2 L. Ed. 60

Bronik Motors v. Wema Bank [1983] 1 SCNLR 296 at 342

Senator Abraham Adesanya v. The President of the Federal Republic of Nigeria & Anor. [1981] 5 S.C. 112 at 137

STATUTES REFERRED TO

Constitution of Nigeria 1999 ss.180 (2) (a), 251 (1) (r) & (q), 178, 184, 285, 189, 139, 318, 144, 68, 69, 109, 110, 135 (2) (a)

Court of Appeal Act s. 16

Supreme Court Act s. 22

LEAD JUDGMENT BY ADEREMI JSC

On Thursday 14th of June 2007, I delivered my judgment in the open court in this matter sequel to taking the addresses of the respective counsel representing the parties in this appeal and I did say that I would

give my reasons for the judgment today. I now proceed to give my reasons.

I start by saying that the appeal here is against the judgment of the Court of Appeal [Enugu Division] delivered on the 22nd of May 2007 dismissing the appeal of the appellant herein against the judgment of the Federal High Court, Enugu Division delivered on the 30th of March 2007 in Suit No. FHC/EN/CS/27/2007: PETER OBI V. INDEPENDENT NATIONAL ELECTORAL COMMISSION in which the trial court declined jurisdiction to adjudicate in the matter placed before it. Suffice it to say that by Originating Summons dated 12th of February 2007 and filed the same date, the appellant, who was the plaintiff before that court had claimed for the determination of the following questions: -

“(1) Whether having regard to Section 180 (2) (a) of the 1999 Constitution, the tenure of office of a Governor first elected as Governor begins to run when he took the Oath of Allegiance and the Oath of Office.

(2) Whether the Federal Government of Nigeria through the defendant being its agent can conduct any Governorship election in Anambra State in 2007 when the incumbent Governor took Oath of Allegiance and Oath of Office on 17th March 2006 and has not served his four-year tenure as provided under Section 180 (2) (a) of the 1999 Constitution.”

Simultaneously, he prayed for the following orders: -

“(1) A declaration that the four year tenure of Office of the plaintiff as Governor of Anambra State began to run from the date he took the Oath of Allegiance and the Oath of Office being the 17th day of March 2006.

(2) A declaration that the Federal Government through the defendant being its agent cannot lawfully conduct any governorship election in Anambra State in 2007 in so far, as the plaintiff as the incumbent Governor has not served his four-year term of office commencing from when he took the Oath of Allegiance and Oath of Office on 17th March, 2006.

(3) Injunction restraining the defendant by themselves, their agents, servants, assign and privies or howsoever from in any way, conducting

any regular election for the Governorship of Anambra State until the expiration of a period of 4 (four) years from the 17th of March, 2006, when the plaintiff's tenure of office will expire."

The originating summons was supported by a 15-paragraph affidavit. The defendant entered a conditional appearance. The present 2nd B and 3rd respondents filed an application on the 23rd of February 2007 praying the court for an order joining them as defendants in the suit. The 1st defendant/respondent filed a Notice of Preliminary Objection on the 26th of February 2007 challenging the jurisdiction of the trial court to entertain the suit. The 4th and 5th respondents also brought an application C filed on 2nd March 2007 praying the trial court to join them as 4th and 5th defendants respectively to the summons. So also the 6th and 7th respondents had applied to be joined in the suit as defendants. The other respondents after being joined as parties, upon their applications, filed written D applications, and addresses challenging the competence of the action. In his 15-paragraph affidavit in support of the originating summons, the plaintiff/appellant had deposed that sequel to the election for the Governorship of Anambra State on the 19th April 2003, Dr. Chris Ngige was E wrongfully declared the winner by the 1st respondent (Independent National Electoral Commission). Dissatisfied with the said declaration of results, the appellant lodged a petition at the Election Petition Tribunal. The declaration was set aside by the Tribunal and it was held that the F appellant, who secured the majority of the lawful votes cast at the election was the candidate duly elected. The appeal lodged by Dr. Chris Ngige to the Court of Appeal [Enugu Division] against the decision of the Election Petition Tribunal was dismissed and the appellate court upheld the G decision of the Tribunal, consequent upon which the appellant [Peter Obi] was sworn in as the Governor of Anambra State on the 17th of March, 2006.

The basis of the appellant's case before the trial court as can be gathered from the questions posed by him for determination by the trial H court as set out above by me, is that by the provisions of Section 180 (2) (a) of the Constitution of the Federal Republic of Nigeria 1999, his four-year tenure of office commenced from the date he was sworn in as the

Governor of Anambra State; that is 17th March, 2006 and that election into that Office ought not be proposed for 14th April 2007 as the 1st respondent planned to do; for by necessary inference, that office would not be vacant on 14th April, 2007.

B By a motion on notice dated and filed on 28th February 2007, the plaintiff/appellant prayed the trial court for accelerated hearing of the proceedings/pending applications including the accelerated reference of the questions formulated by him to the Court of Appeal for adjudication. The questions formulated for reference to the Court of Appeal as set out
C in the body of the motion are as follows: -

*“(1) Whether having regard to Section 251 (1) of the Constitution of the Federal Republic of Nigeria, 1999, the Federal High Court has jurisdiction to entertain the case which in the main, calls for the correct
D interpretation of Section 180 (2) (a) of the Constitution of the Federal Republic of Nigeria, 1999.*

*(2) Whether the plaintiff is “a person first elected as Governor” within the meaning of Section 180 (2) (a) of the Constitution of the
E Federal Republic of Nigeria, 1999.*

*(3) In view of Section 180 (2) (a) of the Constitution of the Federal Republic of Nigeria 1999, when did the tenure of office of the plaintiff begin to run having regard to the fact as admitted by both parties,
F that the plaintiff took the Oath of Allegiance and Oath of Office as Governor of Anambra State on 17th March, 2006?*

*(4) Having regard to the fact that the plaintiff took the Oath of Allegiance and Oath of Office on 17th March 2006, is the plaintiff not entitled to enjoy the full tenure of 4 years for the office of Governor as
G prescribed by Section 180 (2) (a) of the Constitution of the Federal Republic of Nigeria, 1999?*

*(5) Can the defendant lawfully abridge the tenure of 4 years prescribed by the Constitution of the Federal Republic of Nigeria 1999 for
H a person such as the plaintiff elected as Governor of a State by holding election for the office of Governor for a State in the middle of plaintiffs tenure, in other words, can the defendant lawfully conduct a Governorship Election in Anambra State in April 2007 notwithstanding the fact*

that the plaintiff took the Oath of Allegiance and Oath of Office only on the 17th March 2006?

(6) On a proper interpretation of Section 180 of the 1999 Constitution of the Federal Republic of Nigeria particularly Section 180 (2) (a), must election be held in all the 36 States of the Federal Republic of Nigeria on the same date or at the same period irrespective of the date the Governor of a State was sworn and regardless of the provisions of Section 180 (2) (a) of the 1999 Constitution of Nigeria.

(7) Has the plaintiff waived his right to continue to remain in office as the Governor of Anambra State for the full tenure of four years when the plaintiff is not a candidate recognised by the defendant in the 2007 general elections into the gubernatorial election in Anambra State?"

After taking arguments of all counsel on the motions and the preliminary objection as to jurisdiction; in a considered ruling delivered on the 30th of March 2007, the learned trial judge held that questions 2-7 do not constitute materials for reference to the Court of Appeal and he consequently dismissed the motion for reference. On the most important issue which is Issue No.1 relating to matter of jurisdiction, the learned trial judge declined jurisdiction to entertain the summons, he therefore struck out the summons. The appellant, being dissatisfied with the decision, lodged an appeal to the court below (Court of Appeal). Following the exchange of briefs among the counsel and taking of their respective arguments on the said briefs filed, the court below, in a reserved judgment delivered on the 22nd of May 2007, dismissed the appeal in toto. In so doing, it held, inter alia, that the reliefs sought by the appellant were mainly election matters which according to it, were within the exclusive jurisdiction of the Election Tribunal and therefore the Federal High Court lacked the jurisdiction to entertain same and that by extension, following its holding that it was the Election Tribunal that was vested with jurisdictional power in the matter, the court below (the Court of Appeal) could not invoke the provisions of Section 16 of the Court of Appeal Act and adjudicate in the substantive matter. The court below also upheld the preliminary objection raised by the 1st respondent against ground 4 of the grounds of appeal and issue No.4 in the appellant's brief to the effect that the trial court

having refused to make a reference, should have proceeded to pronounce on the merits of the case for reason that it was not raised before the trial court. Again, being dissatisfied with the decision of the Court below, the appellant appealed to this court by a Notice of Appeal dated 22nd May B 2007 which has incorporated into it four grounds. Distilled from the said grounds of appeal and incorporated into the appellant's brief of argument, for determination, are three issues which are in the following terms:

C *“(1) Whether the learned justices of the Court of Appeal were correct when they upheld the decision of the Federal High Court declining jurisdiction and held that the prayers in the appellant's originating summons were election matters within the exclusive jurisdiction of the Election Tribunal.*

D *(2) Whether the Court of Appeal was right in striking out Ground IV of the appellant's ground of appeal and issue IV distilled therefrom.*

E *(3) Whether having regard to the proper appreciation of the appellant's prayers in the originating summons the Court of appeal was right in not invoking the powers under Section 16 of the Court of Appeal Act.”*

The 1st respondent (INEC) identified four issues for determination; and as contained in its brief of argument, they are as follows: -

F *“(1) Whether the Court of Appeal was right in upholding the preliminary objection to ground 4 and issue developed therefrom.*

G *(2) Whether the Court of Appeal were correct when they upheld the decision of the learned judge to decline jurisdiction over the subject matter of the plaintiff/ appellant's originating summons and in particular:*

H *(i) whether the subject matter in the appellant's claim did not border on tenure of office for which the 1999 Constitution of the Federal Republic of Nigeria (hereafter the Constitution or CFRN), Cap C23, Laws of the Federation of Nigeria, 2004 has exclusively, vested special jurisdiction on a specialised court, to wit Election Tribunal by virtue of Sections 285 (2) and 184.*

(ii) Whether the lower court was correct in following, judicial precedents of the Supreme Court with respect to the ouster of the court's

jurisdiction bordering on electoral and tenure matters provided for in Sections 285 and 184 of the 1999 Constitution, having regard to the subject-matter disclosed by the appellant's originating summons.

(3) *Whether the lower court was right in holding that the matter sought to be referred to the (sic) it as a Higher Court were not proper subjects for reference in view of the recent Supreme Court case of Alhaji Atiku Abubakar v. A-G. of the Federation (2007) 3 NWLR (pt.1022) page 601, and a host of other cases on the issue of constitutional reference.*

(4) *Whether this was an appropriate case for the exercise of the general powers of the Court of Appeal under Section 16 of the Court of Appeal and if so whether the reliefs sought in the originating summons of the appellant ought to be granted having regard to the clear provisions, frame work and intendment of the 1999 Constitution."*

For their part, the 2nd respondent (All Nigeria People's Party) raised three issues for determination, as contained in their brief of argument. They are as follows: -

"(i) Whether the learned justices of the Court of Appeal were correct when they upheld the decision of the Federal High Court declining jurisdiction and held that the prayers in the appellant's originating summons were election matters within the exclusive jurisdiction of the Election Tribunal.

(ii) Whether the Court of Appeal was right in striking out Ground IV of the appellant's ground of appeal and Issue IV distilled therefrom.

(iii) Whether having regard to the proper appreciation of the appellant's prayers in the originating summons the Court of Appeal was right in not invoking the powers under Section 16 of the Court of Appeal Act."

The 3rd respondent (Prince Nicholas Ukachukwu) also raised three issues for determination by this court, and as could be gathered from his brief; they are as follows: -

"(1) Whether the Court of Appeal was right in upholding the decision of the learned trial judge declining jurisdiction on the ground that the reliefs in the originating summons, are within the exclusive jurisdic-

tion of the Election Tribunal as they are related to a determination of the tenure of the Governor of Anambra State.

(2) *Whether the Court of Appeal was right when it declined to invoke its powers under Section 16 of the Court of Appeal Act to hear and determine the substantive case as per the originating summons.*

(3) *Whether the Court of Appeal was right to have struck out the ground IV of the appellant's ground of appeal as well as the issue distilled therefrom."*

The 4th and 5th respondents (Peoples Democratic Party and Dr. Andy Uba) on their own identified three issues for determination through their joint brief and they are as follows: -

"(1) *Whether the Court of Appeal was right in upholding the preliminary objection to ground 4 of the Appellant's ground of appeal and issue No.4 distilled therefrom.*

(2) *Whether the Court of Appeal were correct when they upheld the decision of the Federal High Court Enugu Division declining jurisdiction over the subject-matter of the plaintiff/appellant's originating summons.*

(3) *Whether this was an appropriate case for the exercise of the general powers of the Court of Appeal under Section 16 of the Court of Appeal Act and accordingly whether the Court of Appeal was right in refusing to do so."*

The 6th and 7th respondents (Peoples Mandate Party and Arthur Obiefuna Nwandu) through their joint brief of argument raised for determination by this court, two issues which as could be gleaned from the said briefs; are in the following terms: -

"(1) *Whether the questions sought to be determined and reliefs sought are election matters within the exclusive jurisdiction of the Election Petition Tribunal as decided by the court below or Constitutional interpretation within the jurisdiction of Federal High Court.*

(2) *If the answer to question one is that it is within the jurisdiction of the Federal High Court, then whether the plaintiff/appellant has made out a case on the merit in the originating summons to have the case determined in his favour by the Court of Appeal pursuant to its power*

under Section 16 of the Court of Appeal Act.”

When this appeal came before us for argument on the 14th of June 2007, senior learned counsel and learned counsel representing the parties in this appeal referred to, adopted and relied on the respective briefs filed on behalf of their respective clients. Dr. Ikpeazu, learned senior counsel B for the appellant after relying on appellant’s brief of argument filed on 24/5/07 and the reply brief filed on 11/06/07 in response to the 2nd respondent’s brief of argument (the two reply briefs filed on 1st June 2007 and 11th June 2007 respectively in reply to the 1st respondent’s brief of argument C having’ been withdrawn and consequently struck out) and submitted, that going by the reliefs sought, they were not within the realm of election matters; for according to him, through the brief of argument of the appellant, none of the parties challenged the returns made at any election or a determination made by the Election Tribunal ‘or the Court of Appeal D (the court below). It was the appellant’s further submission that by virtue of the provisions of Section 251 (1) (r) and (q) of the 1999 Constitution, the Federal High Court had the jurisdiction to entertain the suit. On Issue II the appellant submitted that it was wrong for the court below to E have struck out ground 4 of the grounds of appeal when, according to him, the purpose of that ground was to show that the trial court had jurisdiction to hear the suit and a fortiori, the court below could then invoke the provisions of Section 16 of the Court of Appeal Act. And since F the substantive appeal against the ruling of the trial court that it had no jurisdiction had not been determined by the court below, it was wrong of that court (the Court of Appeal) to hold that the aforesaid ground of appeal presumed that the trial court had jurisdiction. That ground, it was G further submitted, was competent and not being a fresh issue, it did not require any leave of court to file same. On issue No3, it was submitted that the essence of Section 16 of the Court of Appeal Act was to enable the court below, to which that section applies, have wide latitude of power to deal with any case before it from a trial court as if that case was H originally initiated before it; provided all the material necessary was present before it, it was his final submission on this point that all the material necessary were present before the trial court. The court below therefore

erred in law for not invoking the provisions of Section 16 of the Court of Appeal Act. He urged this court to invoke the provisions of Section 22 of the Supreme Court Act which are in *pari materia* and assume full jurisdiction over the entire substantive matter in this case while finally submitting
B that based on the interpretation of the provisions of Sections 180 (2) (a) and 185 of the Constitution of the Federal Republic of Nigeria 1999, an order should be proclaimed by this court, that the appellant, as the Governor of Anambra State is entitled to serve a four-year term from the date he took the Oath of Allegiance and Oath of Office, that being 17th day of
C March 2006. He urged that the appeal be allowed.

Chief Anthony Idigbe, learned senior counsel representing the 1st respondent, in highlighting the submissions contained in the brief of his client (INEC) submitted that from the reliefs sought by the appellant
D before the trial court, it was clear that the term of the office of the Governor of Anambra State was what the appellant was praying the trial court to determine; and that, according to him was a matter for an Election Tribunal: praying in aid of this submission the decision of this court
E in *A.N.P.P. V. RETURNING OFFICER S.C.78/2005* delivered on 22nd February 2007. The appellant, he submitted, was in the wrong court when he initiated his action in the Federal High Court; the proper venue, according to him, would be the Election Tribunal. Continuing, he said the
F trial court was right in holding that the Constitution did not confer any jurisdiction on the Federal High Court to entertain this suit; and the court below was right in upholding that decision; he prayed in aid, the decisions in *ISHOLA V. AJIBOYE* (pt.352) 506 at 619 and *MADUKOLU V. NKEMDILIM* (1962) 2 S.C.N.L.R. 341. On the issue of the propriety of
G the trial court's decision on refusal to make reference, it was submitted that the trial court was right in so refusing, having regard to its decision that it lacked jurisdiction to entertain the suit; and the court below, it was further submitted, was right in upholding that decision, reliance was placed
H on the decision in *IFEGWU V. FRN* (2003) 15 NWLR (pt.842) 150 and *BAMAIYI V. A-G FED* (2001) 12 N.W.L.R. (pt.727) 468 at 475. On its issue No.3 on whether the lower court ought to have invoked the provisions of Section 16 of the Court of Appeal Act; it was submitted that the

trial court having declined to have jurisdiction to entertain the suit, there was nothing left to be done; that finding, according to it, is what distinguishes the present case from the decision in *INALOJU V. ADELEKE* (2007) 4 N.W.L.R. (pt.1025) 423 in which the court below invoked the aforesaid provisions. The learned senior counsel finally urged that the appeal should be dismissed. B

Mr. Okafor, learned counsel for the 2nd respondent, through the brief of argument of his client filed on 4th June 2007, submitted that the court below was correct in upholding the decision of the trial court that it lacked the jurisdiction to hear the suit. He went further to submit that from the reliefs sought which, according to him was to determine the jurisdiction of the court, it was clear that the issue of tenure of office of the appellant within the interpretation of the provisions of Sections 184 and 285 (1) and (2) of the Constitution of the Federal Republic of Nigeria 1999 was what called for determination; and by the aforesaid provisions, it is only the Electoral Tribunal that can entertain the suit. Referring to the provisions of Section 251(1) (r) and (q) of the Constitution he submitted that they did not confer adjudicatory powers on the Federal High Court as, it was further submitted, the issue in this case is covered absolutely by the provisions of Section 285 of the Constitution. On its issue No.3 as to the propriety of the court below not invoking the provisions of Section 16 of the Court of Appeal Act and then proceed to entertain the claim, the learned counsel, through the brief of his client aligned himself with the submissions of Chief Idigbe S.A.N. learned senior counsel for the 1st respondent which is to the effect that based on all the provisions of the Constitution and the Electoral Act referred to, the nullification of Ngige's election (the Governor before Obi, the appellant) did not treat the period he (Ngige) served as a non-event. Therefore, Ngige having taken the Oath of Allegiance and Oath of Office on the 29th May 2003, the four-year mandate given by the electorate would start running from that day; and to hold otherwise would be to undermine and subvert the right of the people (electorate); more importantly, is the fact, according to him, that the matter in controversy is purely an electoral matter which must be within the exclusive jurisdiction of the Electoral Tribunal and not the C
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Federal High Court. The trial court, having lacked jurisdiction to entertain the substantive suit, the court below could not invoke the provisions of Section 16 aforesaid. Learned counsel finally urged us to dismiss the appeal.

B Mr. Ezechukwu, learned counsel for the 3rd respondent on going through the written brief of his client filed on 4th June 2007 for the purpose of highlighting salient points of argument said nothing new outside the briefs of the 1st and 2nd respondents. Suffice it to say that I have read all the briefs filed very carefully therefore, I do not consider it expedient
C to repeat all what others have said. Perhaps, I should say that he submitted, through the written brief, that ground 4 of the appellant's Notice of Appeal raised fresh issue for which the leave of the court was required and since none was sought and obtained, the court below was right in
D striking out the issue founded upon it. It was his final submission that the decision of the court below be affirmed and the main suit struck out.

Mr. Udenze, learned counsel for the 4th and 5th respondents, in presenting his arguments as set out in the joint brief of his clients (the 4th and 5th
E respondents) said nothing new from the arguments of counsel for the 1st, 2nd and 3rd respondents which I have reproduced supra. I consider it unnecessary repeating what has been earlier said. Suffice it to say that he also urged this court to dismiss the appeal in toto.

F The 6th and 7th respondents did not file any cross-appeal therefore, their joint brief shall not be considered as the law frowns at such brief that lacks foundation in a cross-appeal or an appeal.

I shall start the consideration of this appeal by first treating the substance of the Notice of Preliminary Objection of the 1st respondent
G that ground 3 of the grounds of appeal is incompetent for the reason that the particulars thereto refer to the error of the Federal High Court and not the Court of Appeal and that this court (Supreme Court) has no legal power to hear appeals directly from the High Court; referring to the par-
H ticulars of ground III, it was submitted that they are not a complaint against anything done by the court below (Court of Appeal) but that of the trial court (Federal High Court). Ground III he further submitted, was incompetent and issue II arising therefrom was not properly formu-

lated; we were therefore, urged to strike out ground III of the Notice of Appeal and issue No. II arising therefrom. Ground 4 and issue No.4 arising therefrom should also be struck out. In reply to the preliminary objection, the appellant in his reply brief submitted that ground 3 and its particulars demonstrate a complaint against the decision of the court below and not the trial court (Federal High Court). The substratum of the^B complaint according to him, was the decision on the preliminary objection that he made before the court below (Court of Appeal) that that court (Court of Appeal) failed to hold that the basis of ground 4 of the grounds^C of appeal was the failure of the trial judge to make a determination on the merits of the case when copious arguments had been advanced on the substantive case; adding that ground 3 herein only challenged the success of the preliminary objection and no complaint whatsoever was made with respect to the decision of the trial court. It is imperative that I reproduce grounds 3 and 4 of the grounds of appeal; and as set out on the records of proceedings, they are as follows: -^D

GROUND 3

“The learned justices of the Court of Appeal erred in law when they upheld the preliminary objection and struck out ground 4 of the grounds of appeal on the ground that it dwelt on matters which did not arise from the decision of the trial judge.

PARTICULARS OF ERROR

(i) The trial judge in his judgment clearly found that all materials and argument had been advanced on the merits of the originating summons. Such materials were indeed at all material times before the Court of Appeal.”

GROUND 4

“The learned justices of the Court of Appeal erred in law when they held that the learned trial judge correctly refused to refer the question of law raised by the appellant for the determination of the Court of Appeal.

PARTICULARS OF ERROR

(1) The Court of Appeal justified the non-reference to the Court of Appeal of the issue of reference on the ground that the trial court has no

jurisdiction.

(2) *The refusal of the trial court to make the reference was not because the trial court had no jurisdiction to entertain the suit.*

(3) *The court had jurisdiction to entertain the suit and make the reference under Section 295 of the 1999 Constitution of the Federal Republic of Nigeria.*

(4) *Interpretation of Sections 251(1), 180(2) (a), 178,184,185 and 285 of the 1999 Constitution of the Federal Republic of Nigeria is substantial.”*

The ground 4 of the appellant’s grounds of appeal placed before the court below (the Court of Appeal) was to the effect that the learned trial judge who had the jurisdiction to entertain the originating summons erred in law in not determining the originating summons after dismissing the application for reference. The issue 4 distilled from that ground 4 and also placed before the court below (Court of Appeal) for determination reads thus: -

“Whether the appellant who is the Governor of Anambra State shall hold office for four years from the date he took the oath of allegiance and oath of office having regard to Sections 180 (2) (a) and 185 of the 1999 Constitution of the Federal Republic of Nigeria.”

Looking at the whole gamut of the case presented before the trial court, the cognisable aspects of the appellant’s case pronounced upon by the trial court and decided by it are two and they are as follows: -

“(1) Whether the Federal High Court had jurisdiction to entertain the appellant’s originating summons.

(2) Whether the Federal High Court (the trial court) should refer questions to the court below (Court of Appeal).”

A careful reading of ground 4 reproduced above presupposes that the trial court had jurisdiction to entertain the suit but refused to hear and determine the substantive suit. But, the truth of the matter is that **the trial court had ruled that it lacked jurisdiction to adjudicate in the matter before it. That decision was final and binding until it was set aside. Let me quickly say here that once a court declines jurisdiction to entertain a suit, the only other step it could take in the**

matter is to make an order striking out the suit. Any other order or pronouncement made by the court after declaring that it lacks jurisdiction to entertain a suit, is null and void and of no effect. A careful reading of the particulars to ground 4 shows that the appellant wanted the trial court to have made a reference to the court below, on the assumption by the appellant, that the court below had the legal power to enter into adjudication on the matter. I am in a serious difficulty to see on what basis the trial court could have proceeded to do that having, in unmistakable terms said it lacked the legal power to adjudicate in the case before it. I pause here to say that before a proper reference known to and sanctioned by the law could be made, the court making it must have made some findings upon the materials placed before it and in so doing, the trial court must be convinced that it had jurisdiction to hear the matter. In the instant case, I repeat, the trial court had said in clear terms that it lacked the power to hear the matter. If anything would form the basis of any complaint against the verdict of the trial court, it is that, it said it lacked jurisdiction and no more. Whether that verdict by the trial court on jurisdiction is sustainable in law, is another matter. But, until it is set aside by due process of law, it is binding. The court below did not set it aside. Issue touching on jurisdiction is a matter of law. And that is what is before us now. The grounds of appeal could therefore not be reasonably said to have flowed from the judgment of the trial court. The court below is, in my humble view, right in the order made striking out the said two grounds of appeal which are unrelated to the decision of the trial court and of course, the issues erroneously formulated therefrom, have no legal foundation, their being struck out is justifiable.

I therefore uphold the preliminary objection of the 1st respondent and all issues in any of the briefs before us relating to the preliminary objection are hereby resolved against the appellant. Issue No.2 on the appellant's brief "of argument is, consequently answered in the affirmative; and from what I have been saying, Issues No.1 and 3 on the 1st

respondent's brief; Issue No.2 on the 2nd respondents brief, Issue No.3 on the 3rd respondent's brief and Issue No.1 on the joint brief of the 4th and 5th respondents; all of which are in pari materia with Issue No.2 on the appellant's brief are similarly answered in the affirmative.

B I have carefully read all the briefs of argument of the parties, having earlier disposed of Issue No.2 in the appellant's brief, Issues Nos.1 and 3 contained in the 1st respondent's brief; Issue No.2 in the 2nd respondent's brief; Issue No.3 on the 3rd respondent's brief and Issue
C No.1 on the joint brief of the 4th and 5th respondents; the remaining issues in the written briefs of the parties squarely deal with (a) jurisdiction of the trial court to enter into adjudication and (b) the invocation of the provisions of Section 16 of the Court of Appeal Act which would have enabled the court below to adjudicate on the substantive matter. I shall
D therefore take all together. Issue No.1 on the appellant's brief; Issue No.2 on the 1st respondent's brief; Issue No.1 on the 2nd respondent's brief; Issue No.1 on the 3rd respondent's brief; Issue No.2 on the joint written brief of 4th and 5th respondents and Issue No. 1 on the joint written brief
E of the 6th and 7th respondents; all relating to matter of jurisdiction of the trial court to enter into adjudication. Thereafter, I shall take together Issue No.3 on the appellant's brief; Issue No.4 on the 1st respondent's brief; Issue No.3 on the 2nd respondent's brief; Issue No.2 on the 3rd
F respondent's brief; Issue No.3 on the joint written brief of the 4th and 5th respondents and Issue No.2 on the joint written brief of the 6th and 7th respondents; all of which relate to the invocation by the court below of the provisions of Section 16 of the Court of Appeal Act which would have enabled the court below to adjudicate on the substantive matter.

G **JURISDICTION - ISSUES RELATING THERETO**

**Jurisdiction is the legal power or legal authority that enables a judge to enter into adjudication in a matter before him. It should however be noted that the jurisdiction should be examined not when
H it is invoked but when the cause of action arose. I wish further to say that a court is said to have original jurisdiction in a particular matter when that matter can be initiated before it and as a corollary, a court is said to have appellate jurisdiction when it can only**

go into the matter on appeal after it had been adjudicated on by a court of first instance. It follows, therefore, that where a court takes upon itself to exercise power under jurisdiction which it does not possess; its decision is tantamount to nothing. Let it be noted that an action of a judge which relates not to his office, is of no force; there can never be obedience to any order he may make. The question may then be asked: what determines the jurisdiction of a court? The answer is this: generally, it is the claim of the plaintiff which determines the jurisdiction of a court entertaining the same see ADEYEMI & ORS. V. OPEYORI (1976) 9 & 10 S.C.31. C

For a proper understanding of this judgment in the light of the dictates of the law, I shall again, reproduce the claims formulated by the appellant before the 'Federal High Court as the plaintiff before that court; they are in the following terms: - D

“(1) A declaration that the four-year tenure of office of the plaintiff as Governor of Anambra State began to run from the date he took the Oath of Allegiance and Oath of Office being the 17th day of March 2006.

(2) A declaration that the Federal Government through the defendant being its agent cannot lawfully conduct any governorship election in Anambra State in 2007 in so far as the plaintiff as the incumbent Governor has not served his four-year tenure of office commencing from when he took the Oath of Allegiance and Oath of Office on the 17th day of March 2006. F

(3) Injunction restraining the defendant by themselves, their agents, servants, assigns and privies or howsoever from in any way conducting any regular election for the Governorship of Anambra State until the expiration of a period of 4 (four) years from the 17th day of March, 2006 when the plaintiffs tenure of office will expire.” G

A critical examination of the three reliefs that I have reproduced supra convinces me beyond any doubt that the first two are declaratory in nature and the third one is injunctive in nature. The first two reliefs are only an invitation to the court to declare what the law on this issue is; that is, whether having regard to the provisions of any law including the Constitution, the four year tenure of office of the plaintiff/appellant as Gover- H

nor of Anambra State would begin to run from the 17th of March 2006 when he first took Oath of Office and Oath of Allegiance. I must quickly remind myself that **a declaratory judgment such as what was sought by the plaintiff/appellant is discretionary. It is the form of judgment which should be granted only 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. I make bold to say that from the claims formulated in the 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. Perhaps, I should also say that judicial authorities are ad idem in saying that courts must act judicially and judiciously when awarding declaratory judgment. Courts all over the world, in areas where the rule of law is prevalent, have come to recognise as veritable, declaratory judgments. This form of judgment started forcefully to receive acclamation when in the case of HAMSON V. RADCLIFFE URBAN DISTRICT COUNCIL (1922) 2 CH 490, LORD STERNDALÉ M.R. opined at page 507 and I quote: -

"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."

The dictum of LORD STERNDALÉ supra was quoted with approval by the Privy Council (England) in IBENEWEKA V. EGBUNA & ORS. (1964) 1 WLR 210. The need, for this class of relief, in the interest of justice was pushed forward by Lord Denning M.R. in the case of PYX GRANITE CO. LTD. V. MIN. OF HOUSING & LOCAL GOVT. (1958) 1 Q.B. 554 when, at page 571, he reasoned: -

"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."

I wish to go further by saying that to be able to claim declaratory reliefs, a plaintiff must have the necessary standing to sue. He

does not need to have a subsisting cause of action or a right to some other relief, but some legal right of his own must be in issue, actually or contingently. Unless this is the case, there is nothing relating to his legal position which the court can declare. This statement of mine was amplified by Lord Diplock when in *GOURIET V. UNION OF POST OFFICE WORKERS* (1978) A.C. 435 he reasoned thus at page 501 and I quote: -

“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 the litigation before it and not those of any one else.”

Going by our jurisprudential stand, I know that the decisions of foreign courts are no longer binding on our courts. But they remain persuasive. Since the decisions I have referred to above constitute an exposition of good law, I am persuaded by them. And I shall follow them. **As I have said, a declaratory order or judgment merely declares a right or an entitlement or the position of the law. Therefore, a plaintiff who intends to have an enforceable legal right from a declaratory judgment or order that inures in his favour must also seek injunctive order and damages. That is what the plaintiff/appellant has done in the instant case, of course, less claim for damages. I have said earlier in this judgment that the main claims are an invitation to the court to make a pronouncement as to the position of the law, and that going by the decisions I have cited supra, a High Court or any court of record can entertain it. However, the 1st to 5th respondents have, through their various written briefs argued strenuously that the reliefs sought relate to electoral matters and that the Federal High Court does not have the jurisdiction to entertain them adding that the only body that can entertain this suit is Election Petition Tribunal. They placed reliance for this content of the provisions of Sections 178 (1) and (2); 184, 251 (1), (p), (q) and (r) and 285 (1) and (2) of the Constitution of the Federal Republic of Nigeria 1999. The stand point of the aforesaid respondents has made me to bear in mind that the exercise of a jurisdiction to make a declaratory relief is not**

an exception to the general principle that where the Constitution has declared that the courts cannot exercise jurisdiction, any provision in any law to the contrary is null and void and of no effect. This point was lucidly explained by Karibi-Whyte J.S.C. in *UTIH V. ONOYIVWE* (1991)

B 1 NWLR (pt.166) 166 when at page 225, he opined thus: -

“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 void. The exercise of a jurisdiction to make a declaratory relief is not an exception to this general principle.”

I shall hereunder reproduce the provisions of the sections of the Constitution stated supra and examine them critically to see whether they D oust the jurisdiction of the Federal High Court in entertaining this suit:

Sec 178 (1)

“An election to the office of Governor of a State shall be held on a date to be appointed by the Independent National Electoral Commission.”

Section 178 (2)

“An election to the office of Governor of a State shall be held on a date not earlier than sixty days and not later than thirty days before the expiration of the term of office of the last holder of that office.”

The above quoted provisions of the Constitution confer the right or authority on the Independent National Electoral Commission to appoint a date for the election to the office of Governor of a State with a proviso that such a date shall not be earlier than sixty days and not later G than thirty days before the expiration of the term of office of the last holder of that office. But, has the term of office of the plaintiff/appellant expired bearing in mind that he took his oath of allegiance and oath of office on the 17th day of March 2006? It is common ground that the H tenure of office of a Governor, by the force of the Constitution, is four years. However, I shall answer that question ANON. Section 184 of the Constitution which deals with certain questions relating to elections provides: -

Section 184

“The National Assembly shall make provisions in respect of

(a) persons who may apply to an election tribunal for the determination of any question as to whether –

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

(ii) the term of office of a Governor or Deputy Governor has ceased, or

(iii) the office of Governor or Deputy Governor has become vacant.”

It is my view that Sec. 184 (a) supra does not apply to the appellant who has, through legal process, got himself declared as the person who had the highest lawful votes in the gubernatorial election of April 2003 - the court’s verdict so declaring him was given on the 16th of March 2006. By the judgment of the Court of Appeal given on 16th March 2006 returning the appellant to the seat of Governorship of Anambra State, it implies and rightly of course, that Dr. Chris Ngige was not in lawful occupation of the seat of Governor of Anambra State from April 2003 when he was unlawfully declared the winner of the election at that time. His (Ngige) return by ESTEC had been voided. **The present appellant was denied by INEC the mandate of the people to be their Governor from 2003. Dissatisfied with the verdict of INEC, the appellant, in a way pursuant to the provisions of Section 184 (a) (1) of the Constitution, challenged the validity of the election of Ngige, a case, as I have said, he finally won on 16th March 2006. It was after his being sworn in as the Governor of Anambra State on 17th March 2006 that the foundation of his cause of action arose; the preparation by INEC to conduct an election on 14th May 2007 fully created a cause of action; that is, a judicial declaration as to the tenure of his office as Governor. All his rights under the Electoral Act which might be justiciable in an Election Petition Tribunal ended with the judgment of Court of Appeal (Enugu Division) on the 16th of March 2006. It must always be remembered that an Election Petition Tribunal is not an all- purposes court that**

can entertain all sorts of claims or reliefs. It is created for election matters alone. The appellant had exhausted all the legal avenues opened to him to get himself restored to the seat of Governor of Anambra State sequel to the 2003 election. What he is now seeking is legal pronouncement as to when his four-year term would end as Governor having regard to the fact that he first took his Oath of Allegiance and Oath of Office on the 17th of March 2006. The provisions of Section 184 supra will not avail him as by its provisions, Election Petition Tribunal is no longer the proper seat of justice to approach.

I shall now examine the provisions of Sec. 251 of the constitution SECTION 251(1) (p), (q), and (r) of the Constitution which defines the jurisdiction of the Federal High Court, provides:

Section 251 (1), (p), (q) and (r):

“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:-

(a)... .. (o)

(p) *the administration or the management and control of the Federal Government or any of its agencies,*

(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.”*

It is clear that by Section 251 (1) (q) supra, 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), (q) and (r) puts it beyond any doubt that the Federal High Court has the power to enter into adjudication on any action or proceeding seeking de-

claratory and injunctive reliefs. Indeed, this section defines the jurisdiction of the Federal High Court. Even though Section 251 of the Constitution starts with the words “NOTWITHSTANDING ANY THING CONTRARY CONTAINED IN THIS CONSTITUTION”, I fail to see how the provisions of Section 184 quoted supra fetters Section 251 (1); more importantly Section 184 does not contain any “exclusion or ouster clause”. The word “NOTWITHSTANDING” was judicially considered by this court in NDIC V. OKEM LTD & ANOR (2004) 10 NWLR (pt.880) 107 when at pages 182/183 it reasoned thus: -

“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.”

I adopt and hold myself bound by the above dictum. I shall not want to end this discourse at this stage without having final recourse to Section 285 (1) and (2) of the 1999 Constitution which provides thus: -

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: -

(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)

“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
 B *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.”*

The above section of the Constitution pre-supposes that an election has been held and a petition has been presented. 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
 C election held on the 14th of April 2007. And, as I have said, **all the plaintiff/appellant is seeking is a legal pronouncement or a declaration**
 D **in law, as to when his tenure as the Governor of Anambra State would come to an end as dictated by the Constitution. Drawing from the decisions I have reviewed supra, the Federal High Court has an unfettered jurisdiction to make such declaration in respect of the**
 E **contested rights of parties, whether subsisting or future. Again I have not seen anything in Section 285 (1) and (2) of the Constitution which fetters the right of the Federal High Court as conferred on it by the provision of Section 251 (1), (q) and (r) to adjudicate in**
 F **this matter. Indeed, going by the decision of this court in the OKEM case supra, nothing can supplant the provisions of Section 251 (1), (q) and (r). The irresistible conclusion that I must reach, based on the judicial authorities that I have reviewed supra and the relevant provisions of the Constitution which I have considered, and which I**
 G **now reach is that the Federal High Court has the jurisdiction - the legal power to entertain the suit of the plaintiff/appellant as presented before it. Having so held, I hereby set aside the decision of the two courts below declining jurisdiction. Consequently, issue No.1**
 H **on the appellant’s brief, issue No.2 on the 1st respondent’s brief, issue No.1 on the 2nd respondent’s brief, issue No.1 on the 3rd respondent’s brief, issue No.2 on the joint brief of the 4th and 5th respondents’ brief are all resolved in favour of the appellant but against the 1st, 2nd, 3rd and 4th**

and 5th respondents. The 6th and 7th respondents have no cross-appeal.

I shall now proceed to treat the issues relating to the request for invocation of the provisions of Section 16 of the Court of Appeal Act and, a fortiori, the invocation of Section 22 of the Supreme Court Act. These issues are No.3 on the appellant's brief, No.4 on the 1st respondent's B brief, No.3 on the 2nd respondent's brief, No.2 on the 3rd respondent's brief, No.3 on the joint brief of the 4th and 5th respondents and No.2 on the 6th and 7th respondent's brief. For a proper appreciation of this all-important point, I consider it necessary to reproduce the provisions of C Section 16 of the Court of Appeal Act, Cap 75, Laws of the Federation of Nigeria which reads thus:

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

Broadly speaking, the provisions of Section 16 of the Court of Appeal Act confer legal power on the Court of Appeal to make any order which the court below it could have made in the interest of justice. This presupposes that the court below, the Court of Appeal, must have got jurisdiction to entertain the suit and the court below it also had jurisdiction in the matter but failed to exercise it. The provisions do not confer on the Court of Appeal the power to

make an order which the trial court could not have made in resolving the dispute between the parties in the suit before it. The purpose of Section 16 aforesaid, is in my view, to obviate, delayed justice. It follows from what I have been saying above, that certain
 B conditionalities must be present before the provisions of this section can be invoked; and they are: -

“(1) the lower court or trial court must have the legal power to adjudicate in the matter before the appellate court can entertain it.

*(2) the real issue raised up by the claim of the appellant at the
 C lower court or trial court must be seen to be capable of being distilled from the grounds of appeal.*

(3) all necessary materials must be available to the court for consideration.

*(4) the need for expeditious disposal of the case - or suit to meet
 D the ends of justice must be apparent on the face of the materials presented and*

*(5) the injustice or hardship that will follow if the case is remit-
 E ted to the court below, must clearly manifest itself.”*

See FALEYE & ORS V. OTAPO & ORS (1995) 3 NWLR (pt.381 1; INAKOJU V. ADELEKE (2007) 4 NWLR (pt.1025) 423 and DAPIANLONG & ORS V. DARIYE (2007) 8 NWLR (pt.1036) 239. I
 F have taken a critical examination of the contents of the originating summons used in initiating the case; everything needed to enable the court below (Court of Appeal) to invoke the provisions of the aforesaid Section 16 and to proceed to determine the main issue in the case was present.

The court below erroneously failed to take the advantage of the
 G aforesaid provisions of the Court of Appeal Act. Would this then be the end of the road for a citizen who has approached the citadel of justice seeking remedies for wrong done to him? I think not. The law, must not and cannot be wanting in dispensing justice. And since
 H justice according to law is the pre-occupation of a judex, a court must always rise up to such an occasion. It is to meet this exigency that Section 22 of the Supreme Court Act, Cap 424, Laws of the Federation of Nigeria 1999, was enacted to confer general powers

on this court to do all such things that will bring about unalloyed justice. I pause to say that the conditionalities which I have stated above that must be in place for the invocation of the provisions of Section 16 of the Court of Appeal Act aforesaid are also the condition precedent for the invocation of the provisions of Section 22 of the Supreme Court Act which provisions are as follows: -

“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 final judgment in 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.”

The provisions of Section 22 of the Supreme Court Act quoted above are, in pari materia, with the provisions of Section 16 of the Court of Appeal Act. The present suit was begun by originating summons, a process often used when the facts of a case are not in controversy. As expected, the summons was accompanied by affidavit in support authenticating the plaintiff/appellant’s case. Upon the service of the plaintiff/appellant’s process, the defendants/respondents who wished to file counter-affidavit did so. Therefore, all that is required for this court to determine the real issue in controversy in this appeal are present before us. The interest of justice now demands that I should invoke the provisions of Section 22 of the Supreme Court Act and address the real question in controversy. Consequently, issue No.3 on the appellant’s brief is answered in the affirmative; similarly, issues No.4 on the 1st respondent’s brief, issue

No.3 on the joint brief of the 4th and 5th respondents are answered in the affirmative and issue No.3 on the brief of the 2nd respondent is answered in the negative.

B The substance of the case which the plaintiff/appellant brought
for adjudication is, whether having regard to Section 180 (2) (a) of the
1999 Constitution of the Federal Republic of Nigeria, the tenure of office
of a person first elected as Governor begins to run when he took the
Oath of Allegiance and Oath of Office. And flowing from this question,
C whether the Federal Government of Nigeria, through the 1st respondent
(INEC) being its agent, can conduct any Governorship election in Anam-
bra State in 2007 when the incumbent Governor took Oath of Allegiance
and Oath of Office on the 17th of March 2006 and has not served his
four-year tenure as provided under Section 180 (2) (a) of the 1999 Con-
D stitution.

It is commonly agreed that the resolution of this matter cannot be
achieved without considering the effect of the provisions of Section 180
of the 1999 Constitution; particularly Section 180 (2) (a) of the 1999
E Constitution which is the foundation of the first question posed by the
plaintiff/appellant in his summons. It has been argued that a community
reading of Sections 184 and 285 (1) of the 1999 Constitution alongside
with Sections 251 (1), (q) and (r) and 180 (2) (a) of the 1999 Constitu-
F tion makes it abundantly clear that the matter involved here, according to
the 1st, 2nd, 3rd, 4th and 5th respondents through their briefs of argument
being an electoral matter, it is only the Election Petition Tribunal that has
an exclusive and original jurisdiction to entertain it. What is now called
for is the interpretation of the provisions of the Constitution. I have ear-
G lier in this judgment said that Sections 178 (1) and (2), 184 and 285 of
the 1999 Constitution relate to electoral matters, but the suit of the appel-
lant is far from being an electoral matter; it is one inviting the court to
declare, by examining the provisions of Section 180 (2) of the 1999
H Constitution, when the tenure of the office of the appellant as Governor
of Anambra State will come to an end having regard to the fact that he
took his Oath of Allegiance and Oath of Office on the 17th of March
2006. • Section 180 deals specifically with the tenure of the Office of a

Governor; it envisages that the elections are over and it now defines the period the successful candidate for the post of Governor will stay in office. That section is self-explanatory; it has nothing to do with electoral matters. I shall therefore not subscribe to a community reading of the afore-mentioned sections of the Constitution as urged. They are irrelevant here. Suffice it to say that I have held that the present suit is not an electoral matter; and that by virtue of Section 251 (1), (q) and (r) of the 1999 Constitution, the Federal High Court has the jurisdiction to entertain the suit by making an order declaring the legal rights of the parties before it thus ensuring the rule of law. Section 180 (1) and (2) of the 1999 Constitution provides: -

Section 180(1)

“Subject to the provisions of this Constitution, a person 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
(d) he otherwise ceases to hold office in accordance with the provisions of this Constitution.”*

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.”*

As I have said, the next issue is one that calls for interpretation of the provisions of the Constitution. The power of interpretation must be lodged somewhere and the custom of the Constitution has lodged it in the judges. If they are to fulfil their functions as judges that power could hardly be lodged elsewhere. But, justice according to law which any good judge must ensure he dispenses at

all times, demands that even when he (the judge) is seen to be free by the enormity of the power conferred on him, he is still not wholly free. He is not to innovate at pleasure. He is not a knight-errant roaming at will in pursuit of his own ideal of beauty or goodness or
B what colouration a piece of law should take. The judge must always draw his inspiration from consecrated principles. The next question that follows, is, what are these principles? Judges, in the exercise of their interpretative jurisdiction, must only interpret the words
C of a statute or constitutional provision, where they are as clear as crystal, according to their ordinary and grammatical meanings without any colouration. It is true that courts are always enjoined, in the course of interpreting the provisions, to find out the intention of the legislature, but there is no magical wand in this counseling.
D The intention of the legislature, or put bluntly, the intention of National Assembly at the Federal level or the State House of Assembly at the State level, is not to be judged by what is in its mind but by its expression of that mind couched in the words of the
E Statute. If at the end of the interpretative exercise carried out on the provisions of Statute or Constitution, a judex's personal conviction as to where the justice and Tightness of the matter lies is returned, that would make the judiciary lose its credibility, authority and its legitimacy. That
F will not be healthy for the development of law and its administration. I pause here to apply these principles to the interpretation of Section 180 (2) (a) supra. The appellant has argued that as a person first elected as Governor of Anambra State, he took his Oath of Allegiance and Oath of
G Office on the 17th of March 2006 and that his four-year term would continue to run from that date. By mathematical calculation, it will end on the 17th of March 2010, it was further argued. The submission was countered by his opponents who submitted that while conceding that he won his election case against Dr. Chris Ngige, the former Governor of Anam-
H bra State who was unlawfully sworn in as Governor of that State on the 29th of May 2003, his four-year term must start to run from the date Dr. Ngige was sworn in. The argument of the respondents here is very tenuous. **When the verdict of the Court of Appeal (Enugu Division) de-**

claring the present appellant-as the rightful person to have been declared as having won the gubernatorial election of April 2003, was handed down, the effect is that the return of Dr. Chris Ngige as the person who won the election was null and void and of no legal consequence. So, Ngige's oath taking at that time cannot be a point of reference for calculating the four-year term of the appellant. Ngige was and cannot be a person first elected as Governor under this Constitution; his election having been declared null and void. It was after the judgment of the Court of Appeal on the 16th of March 2006, and by force of law, that the appellant (Peter Obi) took his Oath of Allegiance and Oath of Office on the 17th of March 2006. Applying the provisions of Section 180 (2) (a) of the Constitution to facts of this case, which are not in dispute, the four-year term of office of Peter Obi, as Governor of Anambra State would start running from the 17th of March 2006 only to terminate on the 17th of March 2010. To interpret the provisions of Section 180 (2) (a) otherwise will be to read into that sub-section what the legislators never intended. The duty of a judex is to expound the law and not to expand it.

It was argued that if Section 180 (2) (a) is accorded the interpretation I have given it supra, it would truncate the election timetable in this country. I do not buy that argument. In the first place, there is nothing in our 1999 Constitution which says all elections into political offices in this country at the Federal and State levels, should be held at the same time. If there was a provision to that effect, that would negate the concept of federalism which we have freely chosen to practice. In the second place, a judge has a standing and abiding duty to do no more than to accord a very clear provision of Section 180 (2) (a) of the 1999 Constitution under discussion, their ordinary, natural and grammatical meanings. I hold the strong view that "law making", in the strict sense of that term, is not the function of the judiciary but that of the legislature. Let there be no incursion by one arm of the government into that of the other. That will be an invidious trespass. Let me point out that

no Constitution fashioned out by the people, through their elected representatives for themselves, is ever perfect in the sense that it provides a clear-cut and/or permanent or everlasting solution to all societal problems that may rear their heads from time to time. As
 B society grows or develops, so also must its Constitution, written or unwritten. Our problems as judges should not and must not be to consider what social or political problems of today require; that is to confuse the task of a judge with that of a legislator. More often
 C than not, the law, as passed by the legislators, may have produced a result or results which do not accord with the wishes of the people or do not meet the requirements of today. Let that defective law be put right by new legislations but we must not expect the judex, in
 D addition to all his other problems to decide what the law ought to be. In my humble view, he (judex) is far better employed if he puts himself to the much simpler task of deciding what the law IS.

I only need to add that as at 14th April 2007 when the 1st respondent (INEC) was conducting gubernatorial election in Anambra State, the seat
 E of the Governor of that State was not vacant. That election was a wasteful and unnecessary exercise. The 1st respondent was aware at that time that the appellant was in court pursuing his legal rights. A body that has respect for rule of law, which INEC ought to be, would have waited for
 F the outcome of the court proceedings; particularly when it was aware of it.

In the final analysis, for all I have been saying, which explains the reasons for my decision on the 14th of June 2007, it is my judgment that
 G this appeal is meritorious. It must be allowed, and I hereby allow the appeal. I set aside the judgments of the two courts below. In their place, I make the following declarations and orders which the justice of this case demands; they are: -

(1) That the office of Governor of Anambra State was not vacant
 H as at 29th May 2007.

(2) That the tenure of office of the appellant (Peter Obi) as Governor of Anambra State which is for four years certain will not expire until 17th March, 2010 for the reason of the fact that he being a person first

elected as Governor under the 1999 Constitution took Oath of Allegiance and Oath of Office on the 17th March 2006,

(3) It is hereby ordered that the 5th Respondent (Dr. Andy Uba) should vacate the office of the Governor of Anambra State with immediate effect to enable the plaintiff/appellant (Mr. Peter Obi) to exhaust his term of office. B

For the avoidance of any doubt, this judgment affects the office of the Governor of Anambra State alone.

There shall be no order as to costs.

C

KATSINA-ALU JSC

On Thursday 14 June 2007, I allowed the appeal and I did indicate that I would give my reasons for the judgment today. I do now give my reasons. D

I have had the advantage of reading in draft reasons for judgment given by my learned brother Aderemi JSC. I agree entirely with the reasons he has given. My learned brother set out in detail the facts of the case. I need not repeat them here. E

This appeal is from the judgment of the Court of Appeal (Enugu Division) delivered on 22 May 2007 dismissing the appeal of the appellant herein against the judgment of the trial Federal High Court, Enugu Division delivered on 30 March 2007. F

By an originating Summons dated 12 February 2007 and filed the same date, the appellant, who was the plaintiff before that court, had prayed that court for the determination of the following questions:- G

“1. A declaration that the four year tenure of office, of the Plaintiff as the Governor of Anambra State began to run from the date he took the Oath of Allegiance and Oath of Office being the 17th day of March, 2006.

2. A declaration that the Federal Government through the defendant being its agent cannot lawfully conduct any Governorship Election in Anambra State in 2007 in so far as the incumbent Governor has not served his four year tenure of office commencing from when he took the H

Oath of Allegiance and Oath of Office on 17th March, 2006.”

Whereupon the Appellant prayed the Federal High Court for the following orders, namely:-

B “1. *A declaration that the four year tenure of office of the Plaintiff as the Governor of Anambra State began to run from the date he took the Oath of Allegiance and oath of Office being the 17th day of March, 2006.*

C 2. *A declaration that the Federal Government through the defendant being its agent cannot lawfully conduct any Governorship Election in Anambra State in 2007 in so far as the plaintiff as the incumbent Governor has not served his four year tenure of office commencing from when he took the Oath of Allegiance and Oath of Office on 17th March, 2006.*

D 3. *Injunction restraining the Defendant by themselves, their agents, servants assigns and privies or howsoever from in anyway conducting any regular election for the Governorship of Anambra State until the expiration of a period of 4 (four) years from the 17th day of March, 2006*
E *when the plaintiffs tenure of office will expire.”*

The case of the appellant is simple. His case as can be gleaned from the question posed by him for determination by the trial court is that by the provisions of section 180(2)(a) of the Constitution of the Federal Republic of Nigeria 1999, his four year tenure of office commenced
F from the date he took his Oath of Allegiance and Oath of Office as the Governor of Anambra State, that is, 17 March 2006 and that election into that office ought not and must not be held on 14 April 2007 ostensibly because that office was not vacant by 14 April 2007. However the 1st
G Respondent inspite of its awareness that the case was still pending in court went on to conduct the elections into that office.

It was contended for the Appellant that by the provisions of section 180(2)(a) of the Constitution of the Federal Republic of Nigeria 1999,
H his four year tenure of office commenced from 17 March 2007 the date he was sworn in as Governor of Anambra State.

It was also submitted that by virtue of section 251 (1) (q) and (r) of the 1999 Constitution, the Federal High Court had the jurisdiction to

entertain the suit. It should be recalled that the trial Federal High Court held that it had no jurisdiction to hear the matter. It reasoned that the case was an election matter and the proper venue was the Election Petition Tribunal. The Court of Appeal affirmed the decision of the trial court. The crux of the Respondents' case was that the relief sought by the appellant was a matter for an Election Tribunal. It was said that the appellant initiated his action in the wrong court. It was further said that the Constitution did not confer any jurisdiction on the Federal High Court to entertain the suit and the Court of Appeal was right in upholding that decision. It was contended by the Respondents that Section 251(1) (q) and (r) of the 1999 Constitution did not confer jurisdiction on the trial court. It was their submission that this case is fully covered by sections 184 and 285(1) (2) and by the provisions of these sections, it is only the Election Tribunal that can entertain the suit.

This case is not as complicated as the parties have made it out. The plaintiff/appellant had in his claim before the High Court sought both declaratory and injunctive reliefs directed at protecting his four year term of office. It is not in dispute, indeed it is common ground that the tenure of office of a Governor, under the Constitution, is four years. It is pertinent at this stage to consider the sections of the Constitution relied upon by the parties.

Section 184

"The National Assembly shall make provisions in respect of:-

(a) persons who may apply to an election tribunal for the determination of any question or to whether -

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

(ii) the term of office of a Governor or Deputy Governor has ceased, or

(iii) the office of Governor or Deputy Governor has become vacant."

Section 285(1)

"There shall be established for the Federation one or more election tribunals to be known as the National Assembly Tribunals which

shall, to the exclusion of any other 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 *(b) the term of office of any person under this Constitution has ceased*

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

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

Section 285(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.”

E The appellant was the Governor of Anambra State at the time he brought his action on 12 February 2007. It will be recalled that he was sworn in on 17 March 2006 as the Governor of Anambra State. Whether therefore his action comes within the jurisdiction of the National Assembly Election Tribunal conferred upon it by section 285(1)(b) would be’
F considered under the provisions of section 189 of the Constitution which deal with when a Governor or his Deputy shall “cease” to hold office.

Section 189 provides that:

G *“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;
H and

(b) the declaration in paragraph (a) of this subsection 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 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, however called, established by the Governor and charged with such responsibilities for the functions of Government as the Governor may direct.”

The provisions of section 189 are clear and unambiguous. The Governor or Deputy Governor shall “cease” to hold office only where two-thirds of all the members of the Executive Council of the State declare that the Governor or Deputy Governor is incapable of discharging the functions of his office.

I have earlier on in this judgment set out the questions and the claims of the plaintiff/appellant. However for ease of reference I shall read it again:

“1. A declaration that the four year tenure of office of the Plaintiff as the Governor of Anambra State began to run from the date he took

the Oath of Allegiance and Oath of Office being the 17th day of March, 2006.

(2) *A declaration that the Federal Government through defendant being its agent cannot lawfully conduct any Governorship Election in Anambra State in 2007 in so far as the incumbent Governor has not served his four year tenure of office commencing from when he took the Oath of Allegiance and Oath of Office on 17th March, 2006.”*

Whereupon the Appellant prayed the Federal High Court for the following orders, namely:-

“1. *A declaration that the four year tenure of office of the Plaintiff as the Governor of Anambra State began to run from the date he took the Oath of Allegiance and oath of Office being the 17th Day of March, 2006.*

2. *A declaration that the Federal Government through the defendant being its agent cannot lawfully conduct any Governorship Election in Anambra State in 2007 in so far as the Plaintiff as the incumbent Governor has not served his four year tenure of office commencing from when he took the Oath of Allegiance and Oath of Office on 17th March, 2006.*

3. *Injunction restraining the Defendant by themselves, their agents, servants assigns and privies or howsoever from in anyway conducting any regular election for the Governorship of Anambra State until the expiration of a period of 4 (four) years from the 17th day of March, 2006 when the plaintiff s tenure of office will expire.”*

It will be seen clearly that the above questions and claims have nothing to do with the ability or capacity of the plaintiff/appellant to perform the duties of his office as Governor. His claim clearly does not fall within the jurisdiction of the National Assembly Tribunal.

Under sub-section (2) the tribunal created is the Governorship and Legislative Houses Election Tribunal, which has the exclusive 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.

This tribunal clearly does not have the jurisdiction to determine

whether the term of office of any person elected to the office of Governor has ceased. Its duty is to determine whether the person was validly elected into that office. That however is not the case of the plaintiff/appellant. The issue of whether he was validly elected was laid to rest by the decision of the Court of Appeal given on 16 March 2006. His claim B which pre-dates the election held on 14 June 2007, was whether INEC could validly conduct an election for the office of Governor of Anambra State which was not vacant, having regard to the fact that he was sworn in as Governor on 17 March 2006. His cause of action arose when the 1st C Respondent (INEC) proposed and scheduled an election for 2007 for the office of Governor of Anambra State.

As I have already indicated, the Federal High Court declined to entertain the matter on the ground that it was an election petition which should be heard and determined by an Election Petition Tribunal. On D appeal, the Court of Appeal unanimously agreed with the decision of the trial court and dismissed the appeal. Both courts were in grave error. It is trite law that the jurisdiction of the court is determined by reference to the claim of the plaintiff. See *Adeyemi v. Opeyori* (1976) FNLR 149; *Yahaya Adigun & ors. V. A.G. Oyo State & ors* (1987) 4 S.C. 272. The claim as endorsed on the originating Summons cannot conceivably be classified as an election matter.

I am in complete agreement with the submission by learned Senior F Counsel for the appellant that the Federal High Court has the jurisdiction to entertain the plaintiff/appellant's claim by virtue of section 251(1)(q) and (r) of the 1999 Constitution which provides as follows:

"251(1) Notwithstanding anything to the contrary contained in G 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) H

(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.”

One clearly does not need a magnifying glass to see that by section 251(l) (q) and (r) quoted above, the interpretation of the provisions of the Constitution is vested in the Federal High Court; and that court has the jurisdiction to entertain any action seeking declaratory and injunctive reliefs. It was for these reasons that I allowed the appeal on jurisdiction. The interest of justice demands that I should invoke the provisions of section 22 of the Supreme Court Act and deal or address the real question in controversy. The trial High Court was called upon to interpret section 180 of the 1999 Constitution as it affects the plaintiff’s tenure of office.

Section 180(1) and (2) of the 1999 Constitution provides:-

“180(1) *Subject to the provisions of the Constitution, a person 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) that date when his resignation from office takes effect; or

(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 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 oaths.”

The provision of section 180(2) (a) is very plain. It is unambiguous. It must be given its, natural meaning. Now Mr. Peter Obi was sworn in as Governor of Anambra State on 17 March 2006. Applying section 180(2)(a) to the fact of this case, which is not in dispute, the four year term of Mr. Peter Obi would expire on 17 March 2010. It was for the above reasons that I allowed the appeal on 14 June 2007 and made the

following declaration and order:

1. That the office of Governor of Anambra State was not vacant as at 29 May 2007.

2. It is ordered that the 5th Respondent Dr. Andy Uba should vacate the office of the Governor of Anambra State with immediate effect to enable the plaintiff/appellant Mr. Peter Obi to exhaust his term of office.

For the avoidance of doubt this judgment relates only to the office of the Governor of Anambra State.

C

OGUNTADE JSC

On 14-06-07, I allowed this appeal. I said then that I would give ray reasons for that decision today. I now do so.

D

The appellant, Mr. Peter Obi was the Governor of Anambra State. On 12-2-07, by an originating summons, the appellant as plaintiff commenced his suit seeking the determination of the following questions:-

“1. Whether having regard to Section 180(2)(a) ‘ of the 1999 Constitution, the tenure of office of a Governor first elected as Governor begins to run when he took the Oath of Allegiance and Oath of Office.

E

2. Whether the Federal Government of Nigeria through the defendant being its agent can conduct any Governorship Election in Anambra State in 2007 when the incumbent Governor took oath of allegiance and oath of office on 17th March, 2006 and has not served his four year tenure as provided under section 180(2)(a) of the 1999 Constitution.”

F

Depending on the answers given to the two questions above, the reliefs which the plaintiff sought are these:

G

“1. A declaration that the four year tenure of office of the plaintiff as Governor of Anambra State began to run from the date he took the oath of allegiance and oath of office being the 17th of March, 2006.

2. A declaration that the Federal Government through the defendant being its agent cannot lawfully conduct any governorship election in Anambra State in 2007 in as far as the Plaintiff as the incumbent Governor has not served his four year term of office commencing from

H

when he took the oath of allegiance and oaths of office on 17th March, 2006.

3. *Injunction restraining the defendant by themselves, their agents, servants, assign and privies or howsoever from in any way conducting any regular election for the Governorship of Anambra State until the expiration of a period of 4 (four) years from 17th day of March, 2006 when the plaintiffs tenure of office will expire.*”

It is worthy of note that the plaintiff commenced his suit against only the 1st respondent i.e. INEC. The 2nd to 8th respondents in this appeal later applied to be made parties to the suit. This explains how the Peoples Democratic Party and Dr. Andy Uba became parties to the suit as 4th and 5th defendants/respondents respectively.

The suit came before Faji J. at the Federal High Court, Enugu. There was no dispute as to the fact that the plaintiff took his oath of allegiance and oath of office on 17th March, 2006. The reaction of the 1st defendant (i.e. INEC) to plaintiff's suit was reflected in paragraphs 4, 5, 6, 7 and 8 of its counter-affidavit at pages 18-19 of the record of proceedings. The said paragraphs read:

“4. *That the tenure in respect of which the Plaintiff was sworn in as Governor of Anambra State is the tenure from 2003 to 2007.*

5. *That the Plaintiff had filled a nomination form and sworn to a requisite affidavit to contest for re-election in 2007.*

6. *That several candidates have filed for nomination by their respective Political parties for the gubernatorial election for the seat of the Governor of Anambra State which seat shall become vacant in May 2007.*

7. *That it will lead to chaos for every one of the 36 States of the Federation to have a different term or tenure of office or electoral calendar for Governors depending upon when the election petition of such State is concluded.*

8. *That I am advised by my said principal and I verily believe him that the judgments given in favour of the Plaintiff by the Election Tribunal and the Court of Appeal were in respect of the residue of the tenure of four years granted by the general elections of 2003.*

The 1st defendant then filed a notice of preliminary objection against plaintiff's suit. The substance of the preliminary objection as paraphrased by the trial court in its ruling on 30-03-07 at pages 287-288 of the record of proceedings reads:

"1. There is no reasonable cause of action disclosed or identified B by the summons. And the action is incompetent.

2. The action is purely speculative and an academic exercise, and inconsistent. The Plaintiff and his sponsored political party have already filled and presented nomination form and sworn to an affidavit to seek C re-election in 2007.

3. The tenure of the Plaintiff as Governor of Anambra State of Nigeria ceases when his successor in office takes the oath of the office in 2007 upon election as provided by Section 180(1)(a) of the 1999 Consti- D tution.

4. The Electoral law made pursuant to the Constitution had provided for Returned candidates to remain in office pending determination of appeal.

5. There is no Constitutional or Statutory provision for extension E of tenure of Office of Governor of a State to accommodate inability to take oath of allegiance and oath of office due to pending election appeal.

6. Documents referred to and relied upon by Plaintiff in support- F ing affidavit are not annexed are (sic) required by Rules of this Honourable Court.

7. The Honourable Court lacks the jurisdiction to entertain and/or determine Questions as to whether the term of office of a Governor or G Deputy Governor has ceased or when it will cease."

The parties by their counsel argued for and against the notice of preliminary objection. The trial court in its ruling on 30-03-07 struck out the plaintiff's suit. In doing so, the trial court reasoned thus at pages 372-373 of the record: H

"The subject-matter of a claim is material in determining the jurisdiction of the Court. See ONUORAH V. F.R.P.C. (supra). The subject-matter of the instant case is an electoral matter regardless of the guise

under which plaintiff has couched his claim. It is not a matter for any High Court whatsoever. The issue is: What is the effect of the Judgment of Tribunal? Yes, it is that Plaintiff is Governor of Anambra State but in the circumstances of this matter - from when? This matter should have
 B been put before the Tribunal as an ancillary relief and in the exercise of its inherent jurisdiction to grant orders that will give effect to its judgment.

I would venture to ask: If the Election petition had dragged on beyond 29/5/2007 - and this was a possibility, the petition having dragged
 C on for 3 years - would the plaintiff not have taken steps to protect his mandate at the Tribunal before 29/5/2007 - or would he have been able to make the instant claim post - 2007? I am of the view that the jurisdiction to determine who occupies the seat of Governor must in the present
 D circumstances - to be meaningful - include jurisdiction to determine when such an order takes effect. This is an order which the Tribunal ought to have been moved to make but which unfortunately it was not so moved. I therefore with due respect place reliance on the Supreme Court decision
 E in ANPP V. Returning officer Abia state (Supra).

I find that this Court lacks jurisdiction. The appropriate order is to strike out this action and I so order.”

The plaintiff was dissatisfied with the ruling of the trial court. He
 F brought an appeal before the Court of Appeal, Enugu (hereinafter referred to as the ‘the court below’). The full panel of the Court below on 22-05-07 unanimously dismissed plaintiffs appeal. At pages 21-22 of its judgment, the court below per Fabiyi JCA (Presiding) reasoned thus:

“A thorough and community reading of sections 184 and 285(1)
 G & (2) of the 1999 Constitution makes it clear that the election Tribunal has an exclusive and original jurisdiction on issues bordering on electoral matters. By virtue of section 285(2) of the 1999 Constitution, one or more election tribunal is established in each of the States of the Fed-
 H eration to adjudicate on electoral matters. Refer to Ogboru v. Ibori (2005) 13 NWLR (Pt. 942) 319 at 360.

I must note it here that section 251(1) of the Constitution gives the Federal High Court exclusive jurisdiction in respect of the matters listed

therein. But it does not cater expressly for jurisdiction of the Federal high Court on electoral matters. The law is expression unius exclusio alerius - the express mention of a thing excludes the others. See *Major & Co. Ltd. v. Schroeder* (1992) 2 NWLR (Pt. 101)1.

“It is clear to me that the Lawmaker has, without any reservation, B assigned to the Election tribunal exclusive jurisdiction on fallouts of election and tenure matters and therefore no other court can entertain same. The Federal High Court has its own exclusive jurisdiction in matters covered by section 251(1) of the Constitution. It is like what I may refer C to as division of labour. And where as in this case, section 285(1) and (2) give exclusive jurisdiction to Election Tribunal over electoral matters, the Federal High Court has no jurisdiction. The learned trial judge was right in the position taken by him. I respectfully call to mind my stand in the case of *Nabaruma v. Ofodile* (2004) 13 NWLR (Pt. 891) 599 at 623. D See also *Enagi v. Inuwa* (1992) 3 NWLR (Pt. 231) 584 at 565

Let me further state here that section 251(1) of the 1999 Constitu- E tion cannot be read literally as doing so may subvert the express and special jurisdiction granted by the makers of the Constitution to the elec- tion tribunal on matters touching on electoral matters generally. Such will go against well established canons of statute interpretation such as ‘liberalism,’ ‘harmonious construction’ or ‘whole statute’ rule. See *A.G. Abia State v. A.G. Federation* (2006 16NWLR (Pt. 1005) 265; *A.G. Bendel F State v. A.G. Federation* (1982) 3 NCLR 1.

It must be stated here that no one is trying to gag the appellant from pursuing his cause. The point being made is that he should initiate his process in the right tribunal. As aptly put by the Supreme Court in the case of *A. G. Federation v. A. G. Abia State & 35 Ors.* (2001) 11 NWLR G (Pt. 725) 689 at 698, ‘the question is not whether the plaintiff’s case has no merit but whether the plaintiff is in the right court.’”

Still dissatisfied, the plaintiff has brought a final appeal before this court. In the appellant’s brief filed, the issues for determination in the H appeal are these:

“(i) Whether the learned Justices of the Court of Appeal were cor- rect when they upheld the decision of the Federal High Court declining

jurisdiction and held that the prayers in the appellant's originating summons were election matters within the exclusive jurisdiction of the Election Tribunal (Ground 1).

(ii) *Whether the Court of Appeal was right in striking out Ground IV of the appellant's Ground of Appeal and issue IV distilled therefrom (Ground III).*

(iii) *Whether having regard to the proper appreciation of the appellant's prayers in the Originating Summons the Court of Appeal was right in not invoking the powers under Section 16 of the Court of Appeal Act (Ground II)."*

The 1st respondent's issues for determination are these:

"3.1 Whether the Court of Appeal was right in upholding the Preliminary Objection to Ground IV and issue developed therefrom.

3.2 Whether the Court of Appeal were correct when they upheld the decision of the learned Judge to decline jurisdiction over the subject matter of the Plaintiff/Appellant's Originating Summons and in particular:

i. Whether the subject matter in the Appellant's claim did not border on tenure of office for which the 1999 Constitution of the Federal Republic of Nigeria (hereafter the Constitution or CFRN), Cap. C23, Laws of the Federation of Nigeria, 2004 has exclusively vested special jurisdiction on a specialized court, to wit Election Tribunal by virtue of sections 285(2) and 184.

ii. Whether the Lower Court was correct in following judicial precedents of the Supreme Court with respect to the ouster of the Court's jurisdiction bordering on electoral and tenure matters provided for in sections 285 and 184 of the 1999 Constitution, having regard to the subject matter disclosed by the Appellant's Originating Processes.

3.3 Whether the Lower Court was right in holding that the matters sought to be referred to the it (sic) as a Higher Court were not proper subjects for reference in view of the recent Supreme Court case of Alhaji Atiku Abubakar v. Attorney-General of the Federation [2007] 3 NWLR (Ft. 1022) p. 601 and a host of other cases on the issue of constitutional reference.

3.4 Whether this was an appropriate case for the exercise of the general powers of the Court of Appeal under Section 16 of the Court of Appeal Act and if so, whether the reliefs sought in the Originating Summons of the Appellant ought to be granted having regard to the clear provisions, framework and intendment of the 1999 Constitution.” B

The 1st respondent in its brief also raised a preliminary objection as to the validity of the appellant’s third ground of appeal. It was argued under this notice of objection that the matter raised in appellant’s 3rd ground of appeal did not arise in the proceedings before the court below but rather in the proceedings before the High Court. It was further argued that this Court was without the jurisdiction to hear an appeal directly from a decision of the High Court. C

The other respondents filed their briefs of argument. The issues raised by these other respondents are amply accommodated under the issues of the appellant and 1st respondent. Given the history of this appeal and in particular, the arguments of counsel in their respective briefs, it seems to me that the major issues for determination are these: D

(1) whether or not the Federal high Court has-the jurisdiction to E entertain the appellant’s suit.

(2) whether the Court of Appeal ought to have considered appellant’s claim on its merit under its powers in section 16 of the Court of Appeal Act. A further derivative from this issue is whether or not this Court, in the event it holds that the High Court has jurisdiction to entertain appellant’s suit, ought to proceed to hear the merit of the case under Section 22 of the Supreme Court Act. F

In my view, the overriding nature of the two issues above has dwarfed or reduced into insignificance the preliminary objection of the 1st respondent. This is so because even if I uphold the same, it would not remove the necessity to consider the two major issues. G

I intend to deal first with the question of jurisdiction. It was the argument of some of the respondents that pursuant to Sections 184 and 285 of the 1999 Constitution, only the National Assembly Election Tribunal has the jurisdiction to entertain plaintiff/appellant’s suit. The two courts below by their judgments upheld this argument. Were they right in their H

decision? The appellant's counsel on the other hand contended that he had brought the suit before the Federal High Court under Section 251(l)(q) and (r) for an interpretation of section 180(2) (a) of the 1999 Constitution of Nigeria.

B Sections 184 and 285 of the 1999 Constitution provide:

“184. The National Assembly shall make provisions in respect of-

(a) Persons who may apply to an election tribunal for the determination of any question as to whether -

C *(i) any person has been validly elected to the office of Governor or Deputy Governor;*

(ii) the term of office of a Governor or Deputy Governor has ceased, or

D *(iii) the office of Governor or Deputy Governor has become vacant;*

(b) circumstances and manner in which and the conditions upon which such application may be made; and

E *(c) powers, practice and procedure of the election tribunal in relation to any such application.*

F *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;

G *(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.

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.”

(underlining mine)

Let me emphasize here at the beginning of the discourse that section 184 of the 1999 Constitution reproduced above is not a provision dealing with any question as to the jurisdictions of the election tribunals or court. Rather, it vests power in the National Assembly to make laws in respect of the matters listed thereunder. It is important to bear in mind section 184(a) only enables the National Assembly to make laws in respect of “persons who may apply to an election tribunal.....” In other words, the National Assembly is vested with power to make laws concerning persons who may apply to the election tribunals for the determination of the questions listed under section 184.

Let me also emphasise here that Section 184 has an important significance in the distinction or dichotomy it makes in 184(a)(ii) and (iii) between the questions (1) whether the term of office of a Governor or Deputy Governor has ceased; and (2) whether the office of Governor or Deputy Governor has become vacant. This, it must be stressed, is not an accidental occurrence because a similar provision in respect of the offices of President and Vice-President is to be found in Section 139 of the 1999 Constitution which gives power to the National Assembly to make laws as to who may apply to the Court of Appeal in such matters.

I now proceed to consider Section 285 of the Constitution in order to see what the impact the dichotomy highlighted in relation to section 184 above has on section 285. Section 285 of the Constitution creates two election tribunals - one is the National Assembly Election Tribunal under section 285(1) and the other is the Governorship and Legislative Houses Election Tribunal under Section 285(2). Under Section 285(2) above, the Governorship and Legislative Houses Election Tribunal is

granted the exclusive original jurisdiction to ‘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.’

B I reproduced earlier in this judgment the questions which the plain-
tiff/appellant asked the Federal High Court to answer and the claims he
made on the basis of the answer given. It is manifest from the claim that
the plaintiff/appellant was not asking for a determination of whether any
person has been validly elected to the office of Governor or Deputy Gov-
C ernor. He therefore had no business to transact with the Governorship
and Legislative Houses Election Tribunal created under Section 285(2) of
the 1999 Constitution.

D Now under Section 285(1) (b), the National Assembly Election
Tribunal has the exclusive jurisdiction to hear and determine petitions as
to whether the term of office of any person ‘under this Constitution has
ceased.’ Dr. Onyechi, Ikpeazu S.A.N has argued that the National As-
sembly Election tribunal could only be conferred with jurisdiction in mat-
ters concerning the elections to the National Assembly and that the juris-
E diction to Governorship matters could only be given to the Governorship
and Legislative Houses’ Election Tribunals under Section 285(2). I would
myself have thought so. There is quite some strength in counsel’s sub-
mission but I am unable to uphold same. But that is not the essence of the
F appeal before us on jurisdiction. The simple question is whether or not
the Federal High Court had the jurisdiction to entertain plaintiff/appellant’s
case.

G In interpreting Section 285(1) (b), it must be borne in mind that
the guiding principle in such a duty is to read together the related provi-
sions of the Constitution. In other words, the provisions of the Constitu-
tion ought to be interpreted as one whole scheme. In *Obanyuwawa v.*
Governor [1982] 12 SC.147 at 211, this Court per Nnamani JSC ob-
served:

H “It is an accepted principle of the interpretation of Constitutions
(or indeed any statute) that the provisions should be taken as a whole. It
cannot be presumed that any clause in the Constitution is intended to be
without effect. See *Marbury v. Madison* 5 US 337, 1 Cranch 137, 2 L.

Ed. 60”.

See also *Bronik Motors v. Wema Bank* [1983] 1 SCNLR 296 at 342 and *Senator Abraham Adesanya v. The President of the Federal Republic of Nigeria & Anor.* [1981] 5 S.C. 112 at 137.

Now Section 285(1) (b) which is the provision under consideration here provides:

“the term of office of any person under this constitution has ceased.”
The word ‘office’ under Section 318 of the Constitution is defined thus:

“‘office’ when used with reference to the validity of an election means any office the appointment of which is by election under this constitution.”

The elective offices under the 1999 Constitution are:

1. President/Vice President
2. Governor/Deputy Governor
3. Members of the Senate
4. Members of the House of Representatives
5. Members of the State Houses of Assembly.

With respect to these offices, sections 144 and 189 specifically provide how the President/Vice-President and Governor/Deputy Governor respectively shall cease to hold office. On the other hand the only procedure by which the tenure of office of a member of the National Assembly may be prematurely cut short is as provided in Sections 68 and 69 of the Constitution. Similar provisions are made for members of a State House of Assembly in Sections 109 and 110 of the Constitution.

The plaintiff/appellant in this appeal was the Governor of Anambra State at the time he initiated his suit on 12-2-07. That being the position, whether or not his suit falls within the jurisdiction committed under Section 285(1) (b) of the Constitution to the National Assembly Election Tribunal falls to be considered under the provisions of section 189 of the Constitution which deal with when a Governor or Deputy governor shall ‘cease’ to hold office. The said section 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.”

It is apparent from the above provisions of section 189 that the question whether or not a Governor has ‘ceased’ to hold office can only arise where two-thirds of all members of the Executive Council of the State declare that the Governor or Deputy governor of a State is inca-

pable of discharging the functions of his office. It is a dispute arising from such resolution of the executive of a State in respect of a Governor or Deputy Governor that is under Sections 285(1) (b) of the Constitution committed to the jurisdiction of the National Assembly Election Tribunal.

It is settled law that in deciding whether or not a court has the jurisdiction to hear and determine a case, it is the claim of the plaintiff as put before the court that ought to be considered. See *Adeyemi v. Opeyori* [1976] 9-10 S.C. 31; and *Tukur v. Government of Gongola State* [1989] 4 NWLR (Pt.117) 517. Now at the risk of making this judgment more prolix than it would otherwise have been, I reproduce the questions which the plaintiff/appellant brought before the Federal High Court, Enugu:

- “1. Whether having regard to Section 180(2) (a) of the 1999 Constitution, the tenure of office of a Governor first elected as Governor begins to run when he took the Oath of Allegiance and Oath of Office.
2. Whether the Federal Government of Nigeria through the defendant being its agent can conduct any Governorship Election in Anambra State in 2007 when the incumbent Governor took oath of allegiance and oath of office on 17th March, 2006 and has not served his four year tenure as provided under section 180(2)(a) of the 1999 Constitution.”

The claims made by plaintiff/appellant read:

- “1. A declaration that the four year tenure of office of the plaintiff as Governor of Anambra State began to run from the date he took the oath of allegiance and oath of office being the 17th of March, 2006.
2. A declaration that the Federal Government through the defendant being its agent cannot lawfully conduct any governorship election in Anambra State in 2007 in as far as the Plaintiff as the incumbent Governor has not served his four year term of office commencing from when he took the oath of allegiance and oaths of office on 17th March, 2006.
3. Injunction restraining the defendant by themselves, their agents, servants, assign and privies or howsoever from in any way conducting any regular election for the Governorship of Anambra State until the expiration of a period of 4 (four) years from 17th day of March, 2006 when the plaintiffs tenure of office will expire.”

It is apparent that the above questions and claims have nothing to do with the capacity of the plaintiff/appellant to perform the duties of his office as Governor. His case quite clearly therefore did not fall within jurisdictions committed to the National Assembly Election tribunal under B Section 285(1) (b).

I think that the error of the two courts below was the result of a failure to ascertain the meaning of the word ‘cease’ as used in Section 285(1) (b). The trial court took the view that the plaintiff/appellant ought C to have raised his claim before the election tribunal which heard his case against the declaration of Dr. Peter Ngige as to the winner of the 2003 election by the 1st respondent. This is an incorrect proposition. How could a petitioner before an election tribunal who had not yet been adjudged a winner by the tribunal raise a claim bordering on his tenure in office? I D think the trial court failed to advert its mind to the nature of the plaintiff/appellant’s case. It was the attempt made by the 1st respondent to arrange a governorship election in 2007 that gave the plaintiff/appellant a cause of action which he could not have had in 2003 before the election tribunal.

E The court below at page 23 of its judgment reasoned thus:

“By parity of reasoning, section 285 provides that the Election Tribunal shall have exclusive original jurisdiction to determine ‘(1) (b) whether the term of office of any person under this constitution has ceased.’ F The appellant, being the Governor of Anambra State, is a person under the Constitution who desired to know when his term of office will cease. Section 184 mandates the National Assembly to make provisions in respect of ‘(a) persons who may apply to an election tribunal for the determination of any question as to whether’(ii) the term of office of Governor or Deputy Governor has ceased.’ G The provision is similar to that of the President and Vice-President. I seriously feel that the case of Atiku Abubakar (supra) should have served as an eye opener to the appellant. He should have approached the Election Tribunal.”

H With respect to the court below, I think it failed to pay attention to the fact that section 184 is not a provision dealing with the jurisdiction of the election tribunal. Further the court below failed to appreciate that section 184(a) (ii) and (iii) deliberately makes a distinction between the

words ‘cease’ and ‘vacant’. In 184(a) (ii), it says “*the term of office of Governor or Deputy Governor has ceased while in 184(a) (iii) the term of office of Governor or Deputy Governor has become vacant.*”

Under Section 285, only the dispute concerning when term of a governor has ceased is committed to the jurisdiction of the National Assembly Election Tribunal whilst the jurisdiction as to when the office of a Governor has become vacant is not committed to any election tribunal. Clearly the two words, ‘cease’ and ‘vacant’ are not meant by the Constitution to mean the same thing.

In any case, at the time the plaintiff/appellant sued, he was the incumbent Governor of Anambra State. The suit was commenced on 12-2-07. There was at that date no dispute as to whether his term of office had ‘ceased’ or whether his office had become vacant. None of the parties made such a case. Indeed, the plaintiff/appellant’s case was in its true nature a pre-emptive one to stop INEC from conducting an election in 2007. If the true position of the law had been declared before the elections were conducted in the State on 14-5-07, the argument about ‘cease’ and ‘vacant’ would not have arisen. This was simply a case to enable the Federal High Court interpret the true meaning and effect of section 180(2) of the 1999 Constitution. There is no doubt that in its effect, the decision of the Federal High Court, if it assumed jurisdiction would have impacted on whether the office of the Governor of Anambra State would become vacant on 29/5/07, but that was not the question submitted to the Federal High Court. It would only be the consequence arising out of the decision.

My learned brother, Aderemi JSC, has in his lead judgment discussed the nature of the declaratory jurisdiction of the court. I do not wish to embellish further his lucid exposition of the law on the point. But I wish to emphasize on the indispensability of the jurisdiction of the court to give declaratory judgments in a democratic governance. The jurisdiction to interpret the provisions of the Constitution and all statutes generally enables the constituent organs of the State to function smoothly. It is particularly invaluable to citizens whose constitutional rights are threatened with invasion. It seems to me that all the anxieties arising from

litigating on a simple case as this over the interpretation of a simple provision of the Constitution, which provision is not in the least secondite, and which has culminated in this appeal would have been removed if the interpretative jurisdiction conferred by Section 251(1) (q) and (r) had been fully recognized by all the parties.

It seems to me also that the jurisdiction of a court or a tribunal ought to be conferred, in a very clear and unambiguous language which does not admit of any controversy. The jurisdiction of a court or tribunal is not something you employ a searchlight to discover. It ought to be plain for all to see. I am particularly disturbed that, in an important constitutional matter as this, bordering on the tenure in office of a Governor, the two courts below have had to squeeze to the marrow, the provisions of sections 184 and 285 of the Constitution in order to arrive at the conclusion that the appropriate venue for plaintiff/appellant's case is the Election Tribunal.

The next issue is whether or not I should invoke the jurisdiction of this Court under Section 22 of the Supreme Court Act to hear the simple issue arising for determination in the plaintiff/appellant's case. I observed earlier in this judgment that this suit was commenced by an Originating Summons at the Federal high Court. This procedure enabled the parties to bring before that court the relevant affidavit evidence. That simple evidence relates to the date when the plaintiff/appellant was sworn in as the Governor of Anambra State. Parties are ad idem that the date was 17-03-06. There being no dispute on that matter, the simple issue in this appeal is the interpretation of section ISO of the 1999 Constitution. My learned brother, Aderemi JSC, in the lead judgment, has stressed the necessity for this Court to invoke its powers under Section 22 of the Supreme Court Act which he also reproduced verbatim. I entirely agree with him. This is an appeal which arises in relation to the constitutional succession to the office of Governor of Anambra State. There are compelling reasons for this Court to remove the uncertainties as to the said succession speedily. I shall therefore hear the said plaintiff/appellant's case on the merit.

Section 180 of the 1999 provides:

“180.(1) *Subject to the provisions of this Constitution, a person 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* B
- (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 years commencing from the date when -* C

- (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 oaths.* D

(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.”* E

Section 180(2) above is to be read subject to the provisions of Section 180(1) which itself is to be read subject to the other provisions of the 1999 Constitution. There is no doubt that the intendment of the Constitution is to grant a tenure of 4 years to all the elective offices under the Constitution. F

However, a few occurrences may prematurely terminate the tenure. These include the death while in office of an office holder, resignation, or if the holder ceases to hold office as provided under the Constitution. These are matters which may affect the tenure of an office under the 1999 Constitution. I need to say here again that a Governor may cease to be so if he is removed pursuant to Section 189 of the Constitution. These are the matters which Section 180(1) of the Constitution directs attention to under Section 180(2). It may also happen that a Gov- G H

ernor may stay in office beyond 4 years if for instance the Federation is at war and it becomes impracticable to hold an election. [See Section 180(3)]. In that case it will only be possible for a successor to the office to take the oath of that office at the delayed date. See section 180(1).

B Now coming to Section 180(2) (a) which provides:

“(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 years commencing from the date when -

C (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 oaths.

D It is very easy to interpret section 180(2)(a) above given the fact that the predecessor-in-office of a new governor coming into the office for the-first time would himself have stayed four years in compliance with the 4 years term of office under the Constitution. If it happens that E the previous holder stays beyond 4 years arising from the provisions of section 180(3), the term of the new holder begin when he takes his oath of allegiance and oath of office. It is easily seen that the provisions are in a sense schematic with a view to ensuring continuity of office, and removing the possibility of a vacuum in governance.

F As I stated earlier, the plaintiff/appellant was on the undisputed evidence sworn into office on 17-03-06. His four year tenure will in accordance with Section 180(2) above begin to run from that date. This does not require any serious interpretation. It is only necessary to apply G the provision taking into consideration the impact which section 180(1) will have on it. It is however necessary to bear in mind that succession to the office of Governor can only be through an election conducted in compliance with the provisions of the Constitution.

H In the judgment of this Court delivered on 14-06-07, I ordered that the 5th respondent should vacate the office of Governor to enable the plaintiff/appellant exhaust his four year term of office. I now explain why I did so.

The 1st respondent (INEC) knew or ought to know that the plaintiff/appellant's case from its nature postulated that the 2007 Governorship elections in Anambra State ought not be held as he had not exhausted his term of office. Notwithstanding however, the 1st respondent proceeded to conduct an election in which the 5th respondent was declared the winner. Under the doctrine of *lis pendens*, parties to proceedings pending in court ought not to do anything which may have the effect of rendering nugatory the judgment of the court. The plaintiff/appellant had by his suit been seeking a declaratory and an injunctive relief. However, by the time we gave our judgment on 14-06-07, the elections had been held and 5th respondent supposedly installed a situation which would have confronted this Court with a *fait accompli* if this Court had not ordered that the 5th respondent should vacate the office which he took whilst proceedings were pending. The lesson is plain and straightforward. - A party may not alter to his advantage or disadvantage of his opponent the issues in contest in a pending suit.

In the final conclusion, I agree with the lead judgment of my brother Aderemi JSC. I also make the same orders as in the lead judgment. I subscribed to the order on costs.

MOHAMMED JSC

On 14th June, 2007 when this appeal was heard, I pronounced my decision allowing the Appellant's appeal and granted the relief sought by him. My reasons for the judgment which I promised to give today are as stated below:

I have had the privilege of reading in draft, reasons for judgment given by my learned brother Aderemi, JSC in which the facts of the case are fully stated and all the issues raised in the Appellant's brief of argument and the respective briefs of argument filed by all the Respondents in this appeal, are well set out and extensively discussed. I entirely agree with the reasoning and conclusion reached therein. However, I wish to throw more light on one or two matters already discussed.

It is observed that, apart from the Appellant who filed his Notice

and Grounds of Appeal from which the three issues raised in the Appellant's brief of argument were distilled, no Cross-Appeal or Respondent's Notice was filed by any of the seven Respondents in this appeal. However, the 6th and 7th Respondents in their joint Respondent's brief of argument, B identified only two issues for determination. They are:

"i. Whether the questions sought to be determined and reliefs sought are election matters within the exclusive jurisdiction of the Election Petition Tribunal as decided by the Court below or Constitutional interpretation within jurisdiction of Federal High Court.

ii. If the answer to question one is that it is within jurisdiction of the Federal High Court, then whether the Plaintiff/Appellant has made out a case on the merit in the Originating Summons to have the case determined in his favour by the Court of Appeal pursuant to its power D under Section 16 of the Court of Appeal Act."

Although the stand of these two Respondents on the merit of the appeal at the Court below was that the Federal High Court has no jurisdiction to entertain the case of the Appellant as conceived in the Originating Summons thereby completely agreeing with the decision of the Court below, in resolving the above two issues on the Appellant's appeal in this Court in their joint brief of argument, the learned counsel for the 6th and 7th Respondents made a complete somersault to support the case of the F Appellant while still remaining in their position as Respondents in the appeal. The question is whether these Respondents can be allowed to do so. The answer of course is in the negative. This is because this Court has stated in so many of its decisions that the traditional role of a Respondent to an appeal is to defend the judgment appealed against. If any G Respondent wants to depart from this traditional role by attacking the judgment appealed against in any manner, that Respondent is obliged by the rules of Court to file a cross-appeal. See *Lagos City Council v. Ajayi* (1970) 1 ALL N.L.R. 291, *Ellochin (Nig.) Ltd. & Ors. v. Victor Ngozi Mbadiwe* (1986) 1 N.W.L.R. (PT. 14) 47 and *Adefulu v. Oyesile* (1989) 5N.W.L.R. (Pt.122) 377 at 417. It is also the law that a Respondent to an H appeal who neither files a cross-appeal nor a Respondent's Notice, will not be allowed to even file a brief of argument attacking the judgment

appealed against or be allowed to present oral argument in the course of the hearing of the appeal. See *Oguma v. Associated Companies Limited v. I.B.W.A. Ltd* (1988) 1 N.W.L.R. (PT. 73) 658 and *Kotoye v. Central Bank of Nigeria* (1989) 1 N.W.L.R. (PT. 98) 419. Therefore without a cross-appeal, the 6th and 7th Respondents are not competent to play the role of an appellant they have attempted to play in this appeal. The effect of the action of these Respondents in the present appeal is that all the arguments in their Respondent's brief in support of the case of the Appellant in this appeal, shall be ignored in its determination.

On the main issue of jurisdiction, it is whether the questions sought to be determined and the reliefs sought by the Appellant/Plaintiff at the trial Federal High Court, are truly election matters within the exclusive jurisdiction of the Election Petition Tribunal as found by the Court of Appeal in its judgment at pages 763 - 764 of the record where the Court said -

“After a careful reading of the reliefs claimed by the Appellant at the lower Court, it goes without saying that the issue of when the tenure of the Appellant as Governor of Anambra State of Nigeria would cease is the real subject matter of the instant action. It does not matter however the reliefs are community reading of Section 184 and 285(1) & (2) of the 1999 Constitution makes it clear that the, Election Tribunal has an jurisdiction on issues bordering on election matters. By virtue of Section 285(2) of the 1999 Constitution, one or more election tribunal is established in each of the States of the Federation to adjudicate on electoral matters. Refer to *Ogboru v. Ibori* (2005) 13 N.W.L.R. (Pt.942) 319 at 360. I must note it here that Section 251(1) of the Constitution gives the Federal High jurisdiction in respect of the matters listed therein. But it does not cater expressly for jurisdiction in respect Court on election matters. XXXXXXXXXXXXXXXXXXXXXXXX It is clear to me that the Lawmaker has, without any reservation, assigned to the Election Tribunal exclusive jurisdiction on fallouts of election and tenure matters and therefore no other Court can entertain same.

There is no doubt whatsoever that the Court below was quite right in its judgment that a careful reading of the reliefs claimed by the Appel-

lant in Originating Summons at the trial Federal High Court shows that the issue of when the tenure of the Appellant as the Governor of Anambra State of Nigeria will cease, was what the trial Court was called to determine. With the greatest respect, that fact in itself does not make those
B reliefs election matters subject to the exclusive jurisdiction of the Election Petition Tribunal by virtue of Sections 184 and 285(1) and (2) of the 1999 Constitution. This is because although the provisions of Section 285(1) (b) of the 1999 Constitution which said -

C “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 an Court or Tribunal, have original jurisdiction to hear and determine petitions as to whether -

“(a) xxxxxxxxxxxxxxxxxxxxxxxx
D (b) the term of office of any person under this Constitution has ceased;

(c) xxxxxxxxxxxxxxxxxxxxxxxx
(d) xxxxxxxxxxxxxxxxxxxxxxxx

E might have influenced the decision of the Court below that the reliefs claimed by the Appellant at the trial Court are election matters, there is nothing in those reliefs to bring them within Sections 184 and 285(1) and (2) of the Constitution as found by that Court. No where in
F the reliefs claimed by the Appellant any question or allegation that the term of office of the Appellant as the Governor of Anambra State had ceased, was raised or even mentioned. The Appellant was not at the trial Court to challenge the action or declaration or claim by any person or organization that his tenure of office as the Governor has ceased. Close
G examination of the questions, for determination and reliefs sought in the Originating Summons and the affidavit in support of the Appellant’s case reveals that no where did the issue that the tenure of office of the Appellant had ceased or that the Appellant had vacated his office was raised for
H determination by the trial Court to pull out the Appellant’s case out of the jurisdiction of the trial Federal High Court under Section 251(1) (q) and (r) of the 1999 Constitution as examined by the Court below.

It has to be born in mind also that the Appellant’s action at the trial

Court was rooted in the Governorship election conducted in Anambra State and other States of the Federation on 19th April, 2003, the result of which the Appellant contested or challenged before the Election Petition Tribunal under Section 285(2) of the 1999 Constitution, the proceedings in which finally came to an end at the Court of Appeal under Section 246(3) of the 1999 Constitution upholding the victory of the Appellant. Therefore the right of the Appellant to seek any relief before Election Petition Tribunal under Section 285(1) and (2) of the 1999 Constitution in connection with the 2003 election, had ceased to exist with the final determination of the appeal against the judgment of the Election Petition Tribunal in his favour at the final Court in election matters, the Court of Appeal. Thus having taken his oath of allegiance and oath of office on 17th March, 2006, any dispute the Appellant might have with the 1st Respondent arising out of the 2003 election that brought him into the office of Governor of Anambra State before the expiration of the four year period of his tenure, shall certainly not be regarded as election matters for resolution before the Election Petition Tribunals. Simply put, such a dispute is one between an incumbent Governor of a State seeking to assert his Constitutional, right against the 1st Respondent, which no doubt is an agency of the Federal Government charged with the specific responsibility of conducting elections under the same Constitution.

It should be also noted that the Trial Court and the Court of Appeal were in gross error in expecting the Appellant to have included the reliefs sought at the trial Federal High Court in the reliefs he sought in his Election Petition in 2003 at the Election Tribunal for determination, merely in anticipation of victory at the Tribunal. It is surprising that both Trial Court and Court of Appeal failed to realise that such reliefs even if they were claimed would have been purely speculative which the Tribunal or any Court of law for that matter has no power to determine. See *Chinweze & Anor. v. Masi & Anor.* (1989) 1 N.W.L.R. (PT. 97) 254. This is because the reliefs the Appellant sought at the trial Court did not accrue to him after the declaration of the result of the election in April, 2003 which he challenged before the Tribunal. These reliefs or right of action only accrued to the Appellant after his success at the Tribunal and the Court

of Appeal where he was declared the winner of the Governorship Election in Anambra State and his ultimate subscription to the oath of allegiance and oath of office as the duly elected Governor on 17th March, 2006. In otherwords without first showing that he was the duly elected Governor of Anambra State under the 1999 Constitution, the Appellant would not have had the locus or standing to have asked for the reliefs sought at the trial Court. Putting it differently, the dispute on which the Appellant dragged the 1st Respondent to the trial Court for resolution did not arise for determination at the time he filed his Election Petition at the Election Tribunal in 2003, up to the time the case was concluded in his favour at the Court of Appeal in March, 2006.

These are therefore my reasons for holding the view that the questions for determination and the declaratory and injunctive reliefs sought by the Appellant/Plaintiff in his Originating Summons, are indeed within the exclusive original jurisdiction of the trial Federal High Court. See *Adeyemi v. Opeyori* (1976) 9 - 10 S.C. 31; *Yahaya Adegun & Ors. v. Attorney General Oyo State & Ors.* (1987) 4 S.C. 272 at 341 (1987) N.W.L.R. (PT.), *Tukur v. Government of Gongola State* (1989) 4 N.W.L.R. (PT. 117) 517 and *Inakoju v. Adelake* (2007) 4 N.W.L.R. (PT. 1025) 423.

As for the remaining issue for determination, from the undisputed facts of this case, particularly the status of the Appellant/Plaintiff as elected Governor of Anambra State of Nigeria who took his oath to assume the responsibilities of that office under the 1999 Constitution for four years beginning from 17th March, 2006, the Appellant/Plaintiff has clearly made out a case on the merit in his Originating Summons to have had the case determined in his favour. Since both the trial Federal High Court and the Court of Appeal have refused to determine the case and grant the Appellant/Plaintiff's relief, this Court in exercise of its powers under Section 22 of the Supreme Court Act, rightly proceeded to hear, determine and grant the appropriate reliefs to the aggrieved Appellant/Plaintiff with no order on costs in the judgment delivered on 14th June, 2007.

TABAI JSC

On the 14th of June 2007 this appeal was heard and later on that day I also announced my decision allowing the appeal and indicated there that I would give my reasons for the judgment today the 13th of July 2007 before today I have had the benefit of reading, in draft, the leading judgment of my learned brother Aderemi JSC. I agree entirely with the reasoning and conclusions in the said judgment. In the said judgment he restated the facts which are essentially not in dispute, reproduced relevant provisions of the Constitution and Statutes and recapitulated the issues and addresses of counsel for the parties. While I concur with my learned brother, I shall also make a brief discussion here under on the key issues of jurisdiction and the term of the Appellant presented for determination.

In the originating summons dated and issued at the Federal High Court Enugu on the 12/2/07 the Plaintiff who is the Appellant submitted for determination the following two questions:

1. Whether having regard to Section 180(2) (a) of the 1999 Constitution the tenure of office of a Governor first elected as Governor begins to run when he took the oath of Allegiance and Oath of Office.

2. Whether the Federal Government of Nigeria through the Defendant being its agent can conduct any Governorship election in Anambra State in 2007 when the incumbent Governor took oath of allegiance and oath of office on the 17th March 2006 and has not serve his four years tenure as provided under Section 180(2)(a) of the 1999 Constitution.

And based on these questions he sought the following reliefs:

“(1) A declaration that the four year tenure of office of the Plaintiff as Governor of Anambra State began to run from the day he took the Oath of Allegiance and the Oath Office being the 17th day of March 2006.

(2) A declaration that the Federal Government through the defendant being its agent cannot lawfully conduct any governorship election in Anambra State in 2007 in so far as the plaintiff as the incumbent Governor has not served his four year term of office commencing from when he took the oath of Allegiance and Oath of office on 17th March

2006.

(3) *Injunction restraining the Defendant by themselves, their agents, servants, assigns and privies or howsoever from in any way, conducting any regular election for the Governorship of Anambra State until the expiration of a period of 4 (four) years from the 17th of March 2006, when the plaintiff's tenure of office will expire.*"

When the action was filed on the 12/2/07 the 1st Respondent was the sole defendant. By the leave of court the other defendants/respondents were subsequently joined. A number of Notices of Preliminary Objection were filed by the Respondents, challenging the jurisdiction of the Federal High Court to entertain the suit. In its ruling on the 30/3/07 the suit was struck out for the court's lack of Jurisdiction. The appeal to the court below was dismissed. It affirmed the decision of the trial Federal High Court.

The Plaintiff/Appellant has now come on appeal to this Court. As I had earlier stated the issues raised and the arguments of counsel are recapitulated in the leading judgment. I shall not repeat them.

The first issue I like to comment upon is that of Jurisdiction. Had the Appellant the right to approach the Federal High Court for a determination of the two questions presented and the three reliefs sought. The word jurisdiction has been accorded nearly as many definitions as there are jurists and authors who have attempted to define it. Black's Law Dictionary 6th Edition adopts a number of definitions one of which is "*the power of the court to decide a matter in controversy and presupposes the existence of a duly constituted court with control over the subject matter and the parties.*"

In its judgment 'the court below restated some principles governing the interpretation of Statutes and the Constitution and examined, in particular, sections 184, 251(1)(p)(q) and (r) 285(1) (a)-(d) (2) (3) and (4) of the 1999 Constitution and stated:

"After a careful reading of the reliefs claimed by the Appellant at the lower court, its goes without saying the issue of tenure of the Appellant as Governor of Anambra State of Nigeria would cease is the real subject matter of the instant action. It does not matter however the reliefs

are couched.”

(See page 763 of the record)

And at pages 765-766 the court added:

“By parity of reasoning section 285 provides that the Election Tribunal shall have exclusive original jurisdiction to determine (1) (b) whether the term of office of any person under this Constitution has ceased. The appellant being the Governor of Anambra State is a person under the Constitution who desired to know when his term of office will cease. Section

184 mandates the National Assembly to make provisions, in respect of (a) persons who may apply to an election for the determination as to whether (ii) the term of office of Governor or Deputy Governor has ceased....”

The Court opined that although the reliefs claimed are declaratory and injunctive, they are in reality claims for the determination of his tenure of office. The court invoked in particular the provisions section 285(1) (a)-(d) and (2) of the 1999 Constitution. The relevant provisions of the said 285 provides:

“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 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 the 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.

(2) There shall be established in each State of the Federation one or more election tribunals to be known as the Governorship and the Legislative Houses Election Tribunals which shall, to the exclusion of any court or tribunal, have original jurisdiction to hear and determine peti-

tions 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.”

B Clearly, there is no controversy about the purport of section 285(2) of the Constitution. It is the authority on the basis of which the Appellant herein successfully challenged the Respondent’s wrongful and malicious declaration of Dr. Chris Ngige as the elected Governor of Anambra State in 2003.

C The controversy is only as to the provision of section 285(1) (b) of the Constitution on which the Court of Appeal relied to justify the trial court’s decision that it is the election tribunal that has the original jurisdiction to entertain the claim. According to the court below, “the appellant being the Governor of Anambra State is a person under the Constitution who desired to know whether his term of office has ceased.” In its D view the Appellant being the Governor of Anambra State falls within the meaning of “any person under the Constitution” in section 285(1) (b) of the 1999 Constitution. The court, in its wisdom, adopted the literal mode of interpretation and accorded the term “any person under the Constitu- E tion” its ordinary grammatical meaning without reference to the object or subject matter of the enactment. And it is the same literal mode of interpretation that is being urged by the Respondents.

F In my respectful view, that is interpretation in the abstract. In the abstract the text “any person under the Constitution” would include every person under the Constitution whether or not the complaint by or against or in respect of that person has anything to do with a particular election or matters related thereto. It would mean, for instance, that it is the election tribunals that would have exclusive original jurisdiction to G determine whether the term of office of the Vice-Chancellor of a University, the Chairman and members of the Civil Service Commission, Police Service Commission or any other commission, the Permanent Secretary, any civil servant or any other person enjoying a tenured appointment; has H ceased, since they also came within the meaning “any person under the Constitution.” The number of persons over whose tenure the election tribunals would exercise exclusive original jurisdiction would be infinite and too numerous.

In my view such a result could not have been the intention of the framers of the Constitution. The head note of section 285 itself says

“ELECTION TRIBUNALS.” It is clearly indicative of the subject matter of the enactment. And the side note (or marginal note) which is in the nature of the precise of the provision states “Establishment and jurisdiction of election tribunals.” It is self-explanatory. The provision of section 285 is therefore narrow in scope, restricted to election matters and the courts have a duty to interpret its provisions in a sense harmonious with that clear objective or subject-matter. While advocating this mode of interpretation MAXWELL ON INTERPRETATION OF STATUTES at page 55 says:

“It is therefore a canon of interpretation that all words if they be general and not express or precise are to be restricted to the fitness of the matter. They are to be construed as particular if the intention be particular; that is, they must be understood as used in reference to the subject-matter in the mind of the legislature and to if only.”

I adopt the above opinion in its entirety. If the literal mode of construction adopted by the court below and urged by the Respondents is applied to the term “any person” in section 285(1) (b) of the Constitution then an election tribunal would exercise exclusive jurisdiction on tenure related matters practically over every person with a tenured appointment. That would do violence to the clear restrictive objective of the enactment. The clear provision is that the person whose tenure comes within the exclusive jurisdiction of an election tribunal is that person whose tenure becomes an election issue in a petition presented before the election tribunal, and in respect of a particular election.

When the Appellant took his Oath of Allegiance and oath of office as Governor of Anambra State on the 17th of March 2006, he had no reason to believe that his four year term as stipulated in section 180 (2) (a) of the Constitution would be interrupted. He had no reason then to seek redress in a Court of law. It was when the 1st Respondent started preparation for election to the office of Governor of Anambra State that he got the real threat to the invasion of his rights as the incumbent Governor. It was then and only then that a cause of action accrued to him. In

reaction thereto, he filed this pre-emptive action at the Federal High Court on the 12/2/07. The question is, was the Appellant right to initiate the action at the Federal High Court? Section 251(1) (q) and (r) are relevant here.] By section 251(1) (q) of the Constitution the Federal High Court B enjoys jurisdiction in civil causes and matters relating to the operation and interpretation of this Constitution in so far as it affects the Federal Government or any of its agencies. The 1st Defendant/Respondent (INEC) is one of the agencies the Federal Government. And the action is one for C declarations and injunction affecting the validity of the then intended executive or administrative action or decision by the Federal Government or one of its agencies within the meaning of section 251(1) (r) of the Constitution. The questions presented and reliefs claimed have nothing to do with the Appellant's participation or anticipated participation at the D 2007 Governorship election in Anambra State. Nor had they anything to do with the 2003 Governorship election for Anambra State. The simple question is when, having regard to the fact that he took his Oath of Allegiance and Oath of office on the 17/3/2006 and the provisions of E section 180(2) (a) of the Constitution, his term of office as Governor of Anambra State ceases.

In view of the foregoing consideration, I hold that the Federal High Court has the jurisdiction to entertain the action. The decision of the F trial court declining jurisdiction and that of the Court of Appeal affirming same are both set side accordingly.

In his leading judgment my learned brother Aderemi JSC very ably articulated the reasons which warranted this court recourse to section 22 G of the Supreme Court Act to hear the substantive case. I need not repeat them.

Let me now consider the two questions submitted for determination and the reliefs claimed. They are both predicated on section 180 (2) of the 1999 Constitution. Section 180 subsections (1) and (2) provide as H follows:-

“180 (1) subject to the provisions of this Constitution, a person shall hold the office of Cover nor of a state until -

(a) when his successor in office take the oath of that office; or

(b) he dies while holding such office; or

(c) the date when his resignation from office takes effect; or

(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 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 oaths.”

The Appellant specifically sought the interpretation and application of section 180(2) (a) of the Constitution. The Appellant’s submission is that he is a person first elected as Governor of Anambra State within the meaning of section 180(2)(a) of the Constitution and that since he took his Oath of Allegiance and Oath of Office on the 17/3/2006 his four year terms ends on the 17/3/2010. The Respondents on the other hand argued that although the Appellant was ultimately declared the duly elected candidate and was sworn in as Governor of Anambra State on the 17/3/06, Dr. Chris Ngige (though wrongly declared) had earlier taken the oath of office of Governor of Anambra State on the 29/5/2003 and therefore that the Appellant would be deemed to have taken his oath on the 29/5/2003 there being no vacuum in the governance of Anambra State. I am not persuaded by the submission of the Respondents. The oath taken by Dr. Chris Ngige cannot in any conceivable sense be taken to be that of the Appellant. Dr Chris Ngige’s election as Governor of Anambra State was nullified by the Election Petition Tribunal in August 2005. This nullification was upheld by the Court of Appeal Enugu Division on the 5/3/2006. The effect of this nullification is that Dr. Chris Ngige was never elected and sworn in as Governor of Anambra State. He cannot “therefore be “a person first elected as Governor” within the meaning of section 180(2) (a) of the Constitution. In my respectful view, it is the Appellant that comes within that provision. The consequence is that the Appellant as a

person first elected as Governor of Anambra State only vacates his office at the expiration of four years from the 17/3/2006 when he took his Oath of Allegiance and Oath of Office. That is to say, the Appellant's four year term as Governor of Anambra State which commenced on the 17/3/2006 B ends on the 17/3/2010.

With respect to section 180(1) (a) of the Constitution, the uncontested facts are that this originating summons was filed oh the 12/2/2007. The 1st Respondent was the sole Defendant. The other Respon- C dents were subsequently joined on their own applications to be so joined. They all contested it at every stage of the proceedings. I do not think any one of them was in any doubt about the implications of this pending suit. The 1st Respondent in particular and indeed all other Respondents knew D that the conduct of the Governorship election in Anambra State and the eventual inauguration of the 5th Respondent as Governor of Anambra State were all subject to the ultimate decision in this pending suit. The decision Appellant that the Mr. Peter Obi is still the Governor and remains so until the 17/3/2010 supercedes, cancels and nullifies the purported E election and inauguration of the 5th Respondent as the Governor of Anambra State. The 5th Respondent was therefore not the Appellant's successor in office to have taken any oath of office within the meaning of section 180(1) (a) Constitution.

F It is for the foregoing reasons and the fuller reasons in the judgment Aderemi JSC that I also allow the appeal. I also grant the reliefs and the consequential order as contained in the leading judgment.

G **MUHAMMAD JSC**

On the 14th day of June, 2007, I allowed the appeal on jurisdiction and adjourned giving my reasons to today. I have had the advantage of reading the reasons proffered by my learned brother, Aderemi, JSC with H whom I am in complete agreement. I adopt same as mine. I do not think there is any need for me to overflog any of the issues ably treated by my learned brother, Aderemi, JSC. I make no order as to costs.

CHUKWUMA-ENEH JSC

On 14/6/20.07, I allowed this appeal and said on that occasion that I would give my reasons for the decision today.

In regard to the statement of facts and arguments of counsel on both sides of the matter, so comprehensively stated in the lead judgment of my learned brother Aderemi JSC, I have adopted the same as mine for purposes of my short contribution in this matter.

However, for purposes of this resume, I have, all the same, to highlight some critical facts upon which to premise my observation. It is a notorious fact that the appellant - Peter Obi contested the Governorship seat for Anambra State in the April 2003 general election and lost to Dr. Ngige who was declared by the 1st respondent as duly elected and sworn-in as Governor of Anambra State. He (i.e. Peter Obi) immediately headed to the Election Tribunal contesting the declaration of Dr. Ngige as the winner of the said election. The Election Tribunal found in his favour. He subsequently took the oath of allegiance and oath of office on 17/3/2006 as Governor of Anambra State. The issue in this matter came to a head when the 1st respondent as the agency statutorily charged with the conduct of elections in this country (as its name suggests) set about machinery for elections for elective offices in the April 2007 general elections including the Anambra State Governorship. The appellant rightly felt his term of office as Governor of Anambra was threatened.

Hence, he (the appellant) commenced the instant action at the Federal High Court, Enugu by an Originating Summons seeking the determination of the following reliefs:

“(1) Whether having regard to Section 180(2) (a) of the 1999 Constitution, the tenure of office of a Governor first elected as. Governor begins to run when he took the Oath of Allegiance and Oath of Office.

(2) Whether the Federal Government of Nigeria through the defendant being its agent can conduct any Governorship Election in Anambra State in 2007 when the incumbent Governor took oath of allegiance and oath of office on 17th March, 2006 and has not served his

four-year tenure as provided under section 180(2)(a) of the 1999 Constitution.”

The appellant accordingly prayed for the following orders:

B *“(1) A declaration that the four year tenure of office of the plaintiff as Governor of Anambra State began to run from the date he took the oath of allegiance and oath of office being the 17th of March, 2006.*

C *(2) A declaration that the Federal Government through the defendant being its agent cannot lawfully conduct any governorship election in Anambra State in 2007 in as far as the plaintiff as the incumbent Governor has not served his four year term of office commencing from when he took the oath of allegiance and oaths of office on 17th March, 2006.*

D *(3) Injunction restraining the defendant by themselves, their agents, servants, assign and privies or howsoever from in any way conducting any regular election for the Governorship of Anambra State until the expiration of a period of 4 (four) years from 17th day of March, 2006 when the plaintiff’s tenure of office will expire.”*

E The appellant filed an affidavit of 15 paragraphs, in support of the Originating Summons.

F I see the need to further buttress the ground for the lis by specific reference to paragraphs 8, 9, 11 and 12 of the affidavit in support of the originating summons in this action and I quote:

G *“8: I am aware that presently all the persons elected Governors in other States of the Federation under the 2003 General Election are about completing their four years tenure of office and the defendant is making efforts towards conducting the 2007 General elections for the office of Governor in Anambra State.*

H *9. Despite the fact that my tenure as Governor of Anambra State will not expire until about 17th March 2010, the defendant has called on all registered political parties to submit nomination of candidates for the Governorship election in April 2007, in Anambra State.*

11. The submission of my name by my political party as the party’s candidate for the 2007 Governorship election in Anambra State, is without prejudice .to my constitutional right to enjoy the full tenure of 4

(four) years as governor of Anambra State, which cannot be waived.

12. As informed by Dr. Onyechi Ikpeazu SAN as aforesaid the suit concerns principally the construction of Section 180(2) (a) of the 1999 Constitution and there is no likelihood that any or substantial dispute of facts will arise.”

The reason for instituting the instant action is clearly borne out from the foregoing depositions. The appellant’s term of office as Governor of Anambra State as can be seen, has been greatly threatened.

The rest of the parties i.e. 2nd to 7th respondents sought to be joined as parties in this matter and were duly so joined by order of the trial court. The 1st respondent apart from filing a counter affidavit to the originating summons filed also a Notice of Preliminary Objection challenging the jurisdiction of the trial court to entertain the matter. It is noteworthy that there is no rebuttal of the appellant’s assertion that the facts in the matter are not in issue so the legal implication is settled, even then, I cite the case of Long John v. Blakk (1998) 6 NWLR (pt.555) 524 at 532. The other parties also have severally by applications sought to challenge the competency of the action and filed their affidavit.

The two issues that have stood out prominently for determination in this matter are as follows:

“(1) Whether the questions sought to be determined and reliefs sought are election matters within the exclusive jurisdiction of the Election Petition Tribunal as decided by the court below or Constitutional interpretation within jurisdiction of Federal High Court.

(2) If the answer to question one is that it is within jurisdiction of the Federal High Court, then whether the Plaintiff/Appellant has made out a case on the merit in the Originating Summons to have the case determined in his favour by the Court of Appeal pursuant to its power under Section 16 of the Court of Appeal Act.”

The question of jurisdiction has become the fulcrum of the respondents’ case in this matter and the issue has however, been dealt with exhaustively in the lead judgment of my learned brother Aderemi JSC. I just want to underscore some salient points in this discourse sequel to the pendency of this matter at all material times vis-à-vis the order I made as

regards the 5th respondent to the effect that he vacates the office of Governor of Anambra State with immediate effect as the office of Governor of Anambra State has neither ceased nor become vacant as at 29/5/2007 when Dr. Andy Uba, the 5th respondent has purportedly been sworn in as the Governor of Anambra State. The appellant has not by then exhausted his term of office of 4 years certain from the date he took his oath of allegiance and oath of office that is to say -17/3/2006.

The issue of jurisdiction is at the root of this matter. The gist of the case of the respondents at the Federal High Court and the Court of Appeal put in a nutshell Is that the two lower courts have no power to entertain the appellant's suit in that his case fall squarely within exclusive jurisdiction of the Election Tribunal i.e. the National Election Tribunal by virtue of Section 285(1) (b) of the 1999 Constitution. This argument went down well with both lower Courts which upheld the same and struck out the appellant's case hence this appeal. To this argument to be precise the Court of Appeal has reacted particularly thus:

"After a careful reading of the reliefs claimed by the appellant at the lower court, it goes without saying that the issue of when the tenure of the appellant as Governor of Anambra State of Nigeria would cease is the real subject matter of the instant action. It does not matter however the reliefs are couched. A thorough and community reading of Sections 184 and 285(1) and (2) of the 1999 Constitution makes it clear that the Election Tribunal has an exclusive and original jurisdiction on issues bordering on election matters. By virtue of Section 285(2) of the 1999 Constitution, one or more election is established in each of the States of the Federation to adjudicate on electoral matters. Refers to Ogbom v. Ibori (2005) 13 NWLR (pt.942) 319 at 360. I must note it here that Section 251(1) of the Constitution gives the Federal High Court exclusive jurisdiction in respect of the matters listed therein. But it does not cater expressly for jurisdiction in respect of the Federal High Court on election matters..... .

It is clear to me that the lawmaker has, without any reservation, assigned to the Election Tribunal exclusive jurisdiction on fallouts of election and tenure matters and therefore no other court can entertain

same.”

Respectfully, I think the court below floundered in its reasoning and conclusion as per the above abstract from its judgment and so, it has come to a faulty conclusion; hence I held in my judgment of 14/6/2007 that in as much as the appellant by his reliefs has only sought from the two courts the interpretation of Section 180(2) (a) of the 1999 Constitution as regards when his term of office will end that the Federal High Court (a fortiori the court below) has by virtue of Section 251(1) (q) (r) of 1999 Constitution the power to interpret any provisions of the Constitution or the law and should have gone ahead to do so in this instance particularly as the act complained of has been done in pursuance of “executive or administrative action or decision” of the 1st respondent.

This apparent default in dealing with this matter has arisen from the misconstruction of Section 285 of the 1999 Constitution and I go on to show that this is clearly so. The two lower courts, if I may recap, have relied on Section 285 of the 1999 Constitution to deny the Federal High Courts jurisdiction over this matter which they have construed as within the exclusive jurisdiction of the Election Tribunal. I respectfully beg to disagree with the pronounced views of the two lower courts in this matter.

Section 235 of the 1999 Constitution provides as follows:

“285(1) *There shall be established for the Federation one or more 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 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.*

(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 the 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 At this stage it is important to reiterate the basic principle of statutory interpretation to the effect that the provisions of a statute must be construed as a whole, that is, not isolation if the true intendment of the lawmakers is to be ascertained. See *S.P.D.C. v. Isaiah* (1997) 6 NWLR (pt.505) 236.

D And more importantly in order to determine the meaning of any expression or phrase in an enactment, the basic question is what is the natural, ordinary or grammatical meaning of the words used in ordinary meaning of those words leads to some results which cannot reasonably
E be supposed to have been the intention of the lawmakers that it becomes proper to look for some other possible meaning of the words concerned. See *Uwaifo v. Attorney General Bendel State & Ors.* (1982) NSCC (vol. 13) 221 per Idigbe JSC; *S.P.D.C. v. Isaiah* (1997) 6 NWLR (pt.505) 236
F and *Omoijahe v. Umoru* (1996) 6 NWLR (pt.614) 178 at 188.

The provisions of Section 285 of the 1999 Constitution has to be read as a whole if the true intendment of the lawmakers is to be ascertained and a sensible meaning of the Section attained. I have read Section
G 285 very deeply. There can be no escaping the conclusion that the words of the Section are used in the context of election petitions: If I may expatiate, Section 285(1) (a) & (b) construed in the context of the entire Section implies that to the National Assembly Election Tribunals is conferred with the exclusive jurisdiction to hear and determine *petitions* as to
H whether any person has been validly elected as a member of the National Assembly and *as to whether the term of office of any person under the Constitution has ceased* and whether the seat of a member has become vacant. (Italicised for emphasis)

Section 285(2) on the other hand has conferred on the Governorship and Legislative Houses Election Tribunals with the exclusive 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*. (Italicised for emphasis) B

It is clear that Section 285(1) pertains to the jurisdiction and powers exclusively conferred on the National Assembly Election Tribunal while Section 285(2) relates to the powers exclusively given to the Governorship and Legislative Houses Election Tribunals. It is right therefore C to scrutinise Section 285 as a whole from the perspective of petitions vis-à-vis Election Tribunal. It is upon a community reading of the two provisions together as a whole that the wide meaning which Section 285(1) (b) construed in isolation portends as well as the clause in Section 285(2) as to whether any person has been validly elected.....as a member D of any legislative house “are synchronised meaningfully in the context of the Section. It shows that the jurisdiction under Section 285(1) relates only to offices encompassed under the National Assembly while under Section 285(2) despite the provision of the clause “as to whether any E person has been validly electedas a member of any legislative house” relates to matters pertaining to Governorship and Legislative Houses only. Upon this construction the two Election Tribunals are situate within their relative ambiances as defined in Section 285. F

The respondents trump card in this matter is their contention that the term of office of the appellant has ceased under section 285(1) (b). Respectfully, this is taking a myopic view of the appellant’s case and against the provisions of Section 285(1) (b). Firstly, the instant case G cannot by any stretch of imagination both in content or form be labelled an election petition as it is lacking in all the uniqueness of an election petition. This action commenced by an Originating Summons and not by way of a petition as contemplated under Section 285(1). Even moreso, H the term of office of the appellant at all material times has not ceased; nor could his office be said to be vacant. He cannot therefore, come within the contemplation of the person whose term of office has ceased. His term of office did not cease. For one, the appellant’s case defies becom-

ing fixed as an election petition under Section 285(1) (b) of the 1999 Constitution as I have endeavoured to show above and for the other the appellant's case is merely seeking to know when his term of office will end as provided under Section 180(2) (a) and no affinity with election B petition. In the light of my reasoning above, the cases of A.D. v. Fayose (2005) 10 NWLR (pt.932) 151 and PDP v. INEC (1999) 11 NWLR (pt.626) 200 where the Supreme Court held that it does not matter under what C guise a plaintiff moves the court as long as it is a matter of tenure, a matter which comes within Section 285, the High Court will cease to have jurisdiction since it will in effect be an election issue do not apply to this matter.

These two cases are dissimilar to the instant one. This case is D outside Section 285. More importantly, it is not an election matter as Section 285 is a red herring introduced without any basis into this matter to becloud the issue of interpretation of Section 180(2) (a) upon which the action is predicated.

The upshot of Obi's action is to seek an interpretation of Section E (180) (2) (a) of the 1999 Constitution vis-à-vis his term of office on the peculiar facts of his case. This being the case, the matter falls squarely within the jurisdiction of the Federal High Court. This is even moreso as per Section 251(1) (q) and (r) of the 1999 Constitution which confers on F the Federal High Court wide power.

As can be deduced from my reasoning above it is wrong to have suggested that Peter Obi's matter should have commenced at the Election Tribunal.

G Section 180 of 1999 Constitution provides as follows:

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

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

(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 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.

(3) If the Federation is at war in which the territory of Nigeria is physically involved and the President considers that it is not practical to hold election, the National Assembly may by resolution extend the period of four years mentioned in Sub-Section (2) of this Section from time to time but no such extension shall exceed a period of six months at any one time.”

The forgoing provisions are plain and unambiguous and so ought to be construed by giving the words used therein, their ordinary, natural, grammatical meaning. In the case of Section 180(2)(a) under which the appellant's case appears to have fallen it is clear that Section 180(2)(a) has given to the Governor a four-year tenure commencing from the date in the case of a person first elected as Governor under this Constitution (he) took his oath of allegiance and oath of office. Construing of this provision literally has not led to any absurdity, it settles the question that giving the words of the said Section their natural meaning is the best way to get at the law makers' intention; notwithstanding its crudity that henceforth governorship election for Anambra State has to be on a different date to all other 35 States of Nigeria. The appellant having taken his oath of allegiance and oath of office on 17/3/2006 his tenure of office stands to be exhausted on 17/3/2010. It is noteworthy there is no corresponding provisions with regard to members of the National Assembly and Legislative Houses. Although attention has however, been drawn to Section 135(2)(a), a similar provision as Section 180(2)(a) relating to the President, the question agitating some minds is whether it would be construed in the same manner as Section 180(2)(a). I think it is better to wait until we get there. It is not before this court.

On the whole therefore, it must be emphasised that it is the deci-

sion of the 1st respondent as the agency given the power to conduct elections indeed it has set the machinery for the same in motion in regard to the Anambra State Governorship election that is the gravamen of the appellant's complaint in this matter and as I have reasoned above the
 B Federal High Court has the jurisdiction to deal with the matter being a question of interpretation of a provision of the Constitution and even
 C moreso under the enlarged power conferred on it by Section 251(1)(q) and (r). It has nothing to do with election petition nor is it a fallout from the same. And I so hold. The appellant is in the court to assert his right to
 D exhaust his term of office as Governor of Anambra State having taken his oath of allegiance and oath of office on 17/3/2006. I must say that the court does not allow litigant parties pending litigation to foist on the court
 E a fait accompli and thus render the decision of the court utterly nugatory. In this regard the 1st and 5th respondents untoward consequences of hav-
 F ing proceeded unabashedly with the conduct of the governorship elec- tion in Anambra State and the as subsequent swearing in of the 5th re-
 G spondent as the Governor of Anambra State. The electoral process relat- ing to this office should have awaited the outcome of this matter and
 H save everybody, if I may so put it, the unnecessary embarrassment. The 1st respondent should have known better with a team of lawyers assisting it.

F This court has been called upon to invoke Section 22 of the Su-
 G preme Court Act in pari materia with Section 16 of the Court of Appeal Act to decide this matter here since the two lower courts have declined jurisdiction. There can be no doubt that every material to enable the two
 H courts below decide this matter now before this court were duly placed before them. This is an action initiated by Originating Summons with a supporting affidavit. Meaning that the facts are not in issue. Indeed no party in this matter has insinuated otherwise. The 1st respondent has filed a counter affidavit apart from the preliminary objection it has taken against
 the substantive matter. This is also the case with the other respondents. There is evident urgency to decide this matter expeditiously in the interest of justice and avert the hardship that will be occasioned to the appel-
 lant should this matter be allowed to run down the hierarchy of the courts.

Justice must in all circumstances not only be done but must be seen to be done. With all the factors to bringing Section 22 of Supreme Court Act into action in place in this court I proceeded on the final pronouncement in the matter as per my judgment of 14/6/2007.

For all this and much fuller and comprehensive reasons given in B the lead judgment of my learned brother Aderemi JSC, I agree with him that there is merit in this appeal and make the same orders as contained in the lead judgment.

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