

SUPREME COURT OF NIGERIA

13TH JULY, 2007 SC. 5/2006, SC. 6/2006

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

IFEANYI CHUKWU OKONKWO APPELLANT
(SUING FOR HIMSELF AND ON
BEHALF OF NIGERIA ADVANCE PARTY)

AND

1. DR. CHRIS NWABUEZE NGIGE

AND

2. MR. PETER OBI RESPONDENTS

3. INDEPENDENT NATIONAL ELECTORAL
COMMISSION (INEC) & 449 OTHERS

CONSTITUTIONAL LAW - Elections - Appeal - Character of - Is not changed - By section of Constitution relied upon - Though appellant comes under s. 243 (a) - The matter relates to elections under s. 246 1999 Constitution (H1)

CONSTITUTIONAL LAW - Election petitions - Appeal - Where ruling of Court of Appeal appealed against - Relates to Governorship election under s.246(3) 1999 Constitution - The matter terminates at the lower court - Leaving no spill over room to the Supreme Court (H2)

SUPREME COURT - Jurisdiction - Appeal - Where right of appeal is not constitutionally conferred - The court has no jurisdiction to entertain the appeal (H3)

FACTS

The appellant was a governorship Candidate sponsored by the Nigeria Advance Party (NAP) in the April, 2003, election conducted in Anambra State. As he lost the election, he challenged the result by a petition filed before the Governorship Tribunal Awka, Anambra State, which

dismissed the petition. His appeal to the Court of Appeal Enugu was equally dismissed by the judgment of that Court delivered on 7-7-2003, reported as *Okonkwo v. Okonkwo v. Independent National Electoral Commission* (2004) 4 KLR (pt. 174) 817 CA, (2004) 1 NWLR (pt 854) 242. However, on 9-11-2005, appellant again filed an application before the Court of Appeal Enugu. He prayed for enlargement of time to seek leave to appeal, leave to appeal, enlargement of time within which to file and serve the notice and grounds of appeal against the decision of the Governorship Tribunal Awka, given on 12-8-2006, in a pending appeal before the Court of Appeal in which the present respondents are parties. He brought his application as a party having interest in that pending appeal.

The Court of Appeal after hearing the application, dismissed it vide its ruling of 16-1-2006, for being an abuse of the court's process. Dissatisfied with that ruling, appellant has now appealed to the Supreme Court. The respondents raised a preliminary objection against the appeal pursuant to s. 246 (3) of the 1999 Constitution which makes Court of Appeal's decision in governorship election petitions final. Appellant argued that as his application was brought under s. 243 (a) of the 1999 Constitution, s. 246 (3) should not apply.

HELD (Unanimously dismissing the appeal per **MOHAMMED JSC**)
Elections - Appeal - Character of

1. The fact that the appellant's application was brought under section 243(a) of the 1999 Constitution does not change the character or substance of the then pending appeal, in which the respondents in the present appeal were the only parties, from being an appeal arising from the decision of the Governorship and Legislative Houses Election Tribunal, the proceedings in which are governed by section 246 of the same Constitution. In otherwords as the pending appeal No. CA/E/EPT/5/2005, which the appellant was applying for leave at the court below under section 243(a) of the Constitution to join as a party having interest in the matter is an appeal from the decision of the Governorship and Legislative Election Tribunal sitting at Awka, Anambra State, the Ruling of the court below refusing or dismissing his application is a final decision as far as

that court is concerned with same status of a final judgment if the appeal were heard and determined pursuant to section 246 of the Constitution. (p. 3620 H)

Election petitions - Appeal

2. The relevant provisions of section 246 of the Constitution quoted above are quite clear and unambiguous. From the undisputed facts of the present case, it is not in doubt whatsoever that the appellant's application that was heard and dismissed by the court below, the decision in the Ruling that emerged and which is now on appeal in this court, concerned a matter arising from election petitions within the scope of sub-section (3) of section 246 of the Constitution. The determination of the rights of the appellant in respect of the matter therefore, terminates at the Court of Appeal, with the Constitution leaving no room whatsoever for such proceedings spilling over to the Supreme Court even if they are brought by virtue of the right of appeal given under section 243(a) of the Constitution. (p. 3621 H)

SUPREME COURT - Jurisdiction - Appeal

3. The law is well settled that a right of appeal must be clearly conferred by the Constitution or any other statute which is not in conflict with the provisions of the Constitution on the same subject matter.

In the result, having regard to all the circumstances of this case, I have come to the inevitable conclusion that this court has no jurisdiction to entertain the appellant's appeals. The preliminary objections raised separately by the respondents therefore succeed. Accordingly the appeals SC.5/2006 and SC.6/2006 are hereby struck out. (p. 3622 E)

REPRESENTATION

Appellant in person.

1st Respondent absent and not represented.

Dr. Onyechi Ikpeazu SAN with Prisca Ozoilesike (Miss) for 2nd Respondent.

Dr. A. Layonu with A. Oguntoye, O. Oyewunmi for 3rd to 449th

Respondents.

CASES REFERRED TO

- ONUAGULUCHI VS NDU (2001) & NWLR (Pt.712) 309
- B AWUSE VS ODILI (2003) 18 NWLR (Pt.851) 116
- ADEYEMI VS ATTORNEY GENERAL OYO STATE (-1984) 6 SC 135
- ESSAN VS SANUSI (1984) 1 SCNLR 353
- WILLIAM VS MOKWE (2005) 1 SC (Pt.11) 153
- C AWUSE VS. ODILI (2003) 18 NWLR (Pt.851) 116
- UMANAH VS ATTAH (2006) 17 NWLR (Pt. 1009) 503
- ONITIRI VS BENSION (1960) SCNLR. 314 (1960) 5 FSC 150
- ADEYEMI VS A-G OYO STATE (1984) 6 SC 135
- EYESAN VS SANUSI (1984) 1 SCNLR 353
- D Williams v. Mokwe (2005) 7 SC (pt.11) 153
- Olatunde v. Abidogun (2001) 12 SC (pt.1) 123
- Shell Petroleum Development Co. Nigeria Ltd. v. Isaiah (2001) 5 SC (pt. 11) 1
- E Attorney General of the Federation v. Sode (1990) 1 NWLR (pt.126) 500
- Okolo v. Union Bank (Nig) Plc (2004) 1 SC (PF 1) 1

STATUTE & RULES REFERRED TO

- F Supreme Court Rules O. 2 r. 9
- Constitution of the Federal Republic of Nigeria 1999 ss. 246 (1), (2) & (3), 233, 243 (a), 232

LEAD JUDGMENT BY MOHAMMED JSC

- G The appellant in these appeals heard together on 19/4/2007, was a candidate sponsored by Nigeria Advance party (NAP) for the Governorship election conducted in April, 2003 in Anambra State. Having lost in the election, the appellant challenged the result of the election by a petition filed before the Governorship and Legislative Houses Election Tribunal in Awka, Anambra State which after hearing the petition dismissed it.
- H The Appellant 's appeal to the Court of Appeal, Enugu against the decision of the Tribunal was equally dismissed by the Court in its judgment

delivered on 7/7/2003, which had been reported under the title of OKONKWO VS INEC (2004) 4 KLR (pt. 174) 817 CA, (2004) 1 N.W.L.R. (Pt.854) 242.

However, on 9/11/2005, the appellant again filed an application at the Court of Appeal, Enugu for enlargement of time to seek leave to appeal, leave to appeal and enlargement of time within which to file and serve the notice and grounds of appeal against the decision of the Governorship and Legislative Houses Election Tribunal Awka, given on 12/8/2006, in a pending appeal at the Court of Appeal in which the Respondents in the present appeal are parties. The appellant brought his application as a party having interest in the pending appeal. This application was heard by the Court of Appeal which in its ruling delivered on 16/1/2006, dismissed the appellant's application on the grounds among which was that the application was an abuse of the process of the court. Dissatisfied with the decision against him, the appellant is now on further appeal to this court.

Although the Appellant filed his appellant's brief of argument and duly responded to the respective, respondent's briefs of argument filed on behalf of the 2nd Respondent Mr. Peter Obi and the 3rd Respondent, INEC and 449 others in appropriate appellant's Reply briefs, the 1st Respondent Dr. Chris Nwabueze Ngige who was absent and not represented by counsel at the hearing, did not file any respondent's brief of argument. In addition to their respondents' briefs of argument, the 2nd and 3rd Respondents, also filed Notices of Preliminary Objection under Order 2 Rule 9 of the Supreme Court Rules to the appellant's appeal. The notice filed by the 2nd Respondent, dated 9/3/2006 reads:-

"1. By Section 246(3) of the 1999 Constitution of the Federal Republic of Nigeria the Appellant has no right of Appeal to the Supreme Court of Nigeria from the decision of the Court of Appeal in a Governorship Election Petition Appeal.

2. By Section 233 1999 Constitution the Appellant has no right of H appeal as of right to the Supreme Court of Nigeria and has not sought leave.

3. Appellant has not presented before the Supreme Court suffi-

cient materials to compel a determination of the appeal on the merits.”

As for the 3rd to 449th Respondents, the grounds in support of the notice of preliminary objection are:-

“1. By virtue of section 246(1) of the 1999 Constitution of the Federal Republic of Nigeria, the Appellant has no right of Appeal to the Supreme Court.

2. By the combined effect of section 246(1) and (3) of the 1999 Constitution of the Federal Republic of Nigeria, the Appellant cannot appeal a decision of the Court of Appeal before this Honourable Court.”

The combined attack on the appellant’s appeal by the respondents was rooted principally on the provision of section 246(1), (2) and (3) of the Constitution of the Federal Republic of Nigeria, 1999. Dr, Onyechi Ikpeazu, learned senior counsel for the 2nd Respondent referred to the provisions of section 246 of the 1999 Constitution and submitted that in the present case where the Court of Appeal heard the appellant’s application in exercise of its appellate jurisdiction on a matter arising from election petition, the decision of the Court of Appeal cannot form the subject matter of appeal to the Supreme Court. This basic state of the law was emphasized, according to the learned senior counsel, by this court in numerous cases, some of which are; ONUAGULUCHI VS NDU (2001) NWLR (Pt.712) 309 and AWUSE VS ODILI (2003) 18 NWLR (Pt.851) 116. Citing a number of cases particularly, ADEYEMI VS ATTORNEY GENERAL OYO STATE (-1984) 6 SC 135 and ESSAN VS SANUSI (1984) 1 SCNLR 353, learned senior counsel concluded that the appellant has no right of appeal to this court against the decision of the Court of Appeal refusing his application for leave to appeal and therefore urged this court to strike out the appeal.

In the same vein, learned counsel for the 3rd to 449th Respondents, Dr. A. I. Layonu, also emphasized that the interpretation of the provisions of section 246 of the 1999. Constitution by this Court in AWUSE VS ODILI (supra) is very instructive regarding the finality of the decision of the Court of Appeal, arising from decision of Governorships and Legislative Houses Election Tribunal. Learned counsel therefore urged this court to uphold the preliminary objection by declaring the appellant’s

appeal incompetent and unconstitutional.

The appellant who appeared in person, maintained in his appellant's Reply brief of argument in answer to the respondents' preliminary objection that his appeal is quite competent having arisen from his application brought under section 243(a) of the 1999 Constitution at the Court of Appeal. He argued that the jurisdiction of the Court of Appeal having been invoked under the said section 243(a) of the Constitution, his right of appeal to this court was not affected by the decision in AWUSE VS ODILI (supra), relied upon by the respondents, which decision was predicated on section 246(3) of the 1999 Constitution. Appellant further pointed out that since he was not appealing against the final decision of the Court of Appeal in an election petition matter between Mr. Peter Obi and Dr. Chris Ngige and others delivered on 15/3/2006, his right of appeal was not affected as a person having interest in the pending appeal, relying on the case of WILLIAM VS MOKWE (2005) 1 SC (Pt.11) 153 at 157.

The claim of the appellant that his application that was heard and refused by the Court of Appeal did not arise from the decision of an election Tribunal, is certainly not born out of the record of this appeal, particularly the terms of the reliefs sought in the application and the affidavit in support thereof. The reliefs sought by the appellant at the court below are:

“(a) An order of the honourable court granting leave to the applicant to appeal to the Court of Appeal and or to join in the appeal against the decision of the Governorship and Legislative Houses Election Tribunal, holden at Awka, Anambra State, dated 12/8/2005 in the petition No. EPT/AN/GOV/42/2003 as a person having interest in the matter or to joint in the appeal in that capacity.

(b) An order for enlargement of time within which to seek “leave” to appeal.

(c) An order for leave to appeal.

(d) An order for extension of time within which to appeal.

(e) An order seeking leave to appeal on issue of jurisdiction as a new issue, same having not been raised in the tribunal below and is before the Court of Appeal for the first time.”

The appellant who also personally deposed to facts contained in the affidavit in support of his application at the court below stated in paragraphs 1 to 6 as follows:-

B “1. I depose to this affidavit for myself and on behalf of the Nigeria Advance Party, with its mandate and authority, and I am very familiar with the facts in connection to this present application.

C 2. That I know as a fact that the existence of the Nigeria Advance Party as a political party is known to law with right vested in it under the statute, and the Electoral Act, 2002.

D 3. The mandate of the Nigeria Advance Party was unanimously donated to me at its extra Ordinary General Meeting to pursue the case before the Honourable Court as a party interested and to do all acts for the protection of the party’s interest a fact within my personal knowledge and belief.

E 4. That both myself and the Nigeria Advance Party are persons who are affected by the decision now before the Court of Appeal, and are indirectly and consequently persons interested but not a party on the record, at the Tribunal below.

5. That both myself and Nigeria Advance Party have a common grievance such that the reliefs sought in this appeal is beneficial to all of us, a fact within my personal knowledge and belief.

F 6. That the Applicant has full interest in the matter, and aggrieved and dissatisfied with the decision of the Governorship and Legislative Houses Election Tribunal, Holden at Awka, Anambra State dated 12/8/2005. The judgment is contained in Vol. 7 pages 6568-7270 of the Record of Appeal, now entered as CA/E/EPT/5/2005, and I am relying on the said record.”

H The question is whether on the face of the glaring facts coming from the appellant himself in his affidavit and the reliefs sought in his application filed on 9/11/2005 and heard and refused by the Court of Appeal in its Ruling of 16/1/2006, which is the subject of the present appeal, the argument of the appellant that his application at the court below had nothing to do with election or election matters, is not correct.

The fact that the appellant’s application was brought under section

243(a) of the 1999 Constitution does not change the character or substance of the then pending appeal, in which the respondents in the present appeal were the only parties from being an appeal arising from the decision of the Governorship and Legislative Houses Election Tribunal, the proceedings in which are governed by section 246 of the same Constitution. In otherwords as the pending appeal No. CA/E/EPT/5/2005, which the appellant was applying for leave at the court below under section 243(a) of the Constitution to join as a party having interest in the matter is an appeal from the decision of the Governorship and Legislative Election Tribunal sitting at Awka, Anambra State, the Ruling of the court below refusing or dismissing his application is a final decision as far as that court is concerned with same status of a final judgment if the appeal were heard and determined pursuant to section 246 of the Constitution. The section reads:-

“246(1) An appeal to the Court of Appeal shall lie as of right from

(a)

(b) decisions of the National Assembly Election Tribunal and Governorship and Legislative Houses Election Tribunals on any question as to whether:

(i) any person has been validly elected as member of the a House of Assembly of a State under this Constitution.

(ii) any person has been validly elected to the office of Governor or Deputy. Governor; or

(iii) the term of office of any person has ceased or the seat of any such person has become vacant.

(2)

(3) The decisions of the Court of Appeal in respect of appeals arising from election petitions shall be final.”

The relevant provisions of section 246 of the Constitution quoted above are quite clear and unambiguous. From the undisputed facts of the present case, it is not in doubt whatsoever that the appellant’s application that was heard and dismissed by the court

below, the decision in the Ruling that emerged and which is now on appeal in this court, concerned a matter arising from election petitions within the scope of sub-section (3) of section 246 of the Constitution. The determination of the rights of the appellant, in respect of the matter therefore, terminates at the Court of Appeal, with the Constitution leaving no room whatsoever for such proceedings spilling over to the Supreme Court even if they are brought by virtue of the right of appeal given under section 243(a) of the Constitution. See *ONUAGULUCHI VS NDU* (2001) 7 NWLR (Pt.712) 309 at 321-322, *AWUSE VS. ODILI* (2003) 18 NWLR (Pt.851) 116 at 151 and *UMANAH VS ATTAH* (2006) 17 NWLR (Pt. 1009) 503 at 527-528 where Kutigi, JSC (as he then was) faced with the same situation as in the present preliminary objection by the respondents had this to say:-

“This court has held in a number of cases that it has no jurisdiction to entertain or hear election matters in respect of election to the office of Governor of a State. This is because by section 246(3) of the 1999 Constitution, the decision of the Court of Appeal in respect of appeals arising from election petitions to the office of Governor of a state is final.”

The law is well settled that a right of appeal must be clearly conferred by the Constitution or any other statute which is not in conflict with the provisions of the Constitution on the same subject matter. See *ONITIRI VS BENSION* (1960) SCNLR. 314 (1960) 5 FSC 150; *ADEYEMI VS A-G OYO STATE* (1984) 6 SC 135 AND *EYESAN VS SANUSI* (1984) 1 SCNLR 353.

In the result, having regard to all the circumstances of this case, I have come to the inevitable conclusion that this court has no jurisdiction to entertain the appellant’s appeals. The preliminary objections raised separately by the respondents therefore succeed. Accordingly the appeals SC.5/2006 and SC.6/2006 are hereby struck out with no order on costs.

KATSINA-ALU JSC

I have had the advantage of reading in draft the judgment delivered by my learned brother Mahmud Mohammed JSC. I entirely agree that this court has no jurisdiction to entertain the appeals which are election matters in respect of election to the office of Governor of Anambra State. This is because of section 246(3) of the Constitution of the Federal Republic of Nigeria, 1999 the decision of the Court of Appeal in such matters is final. That being so, the appeals are hereby struck out. I also make no order as to costs.

OGUNTADE JSC

This is an appeal against the decision of the Court of Appeal, Enugu (hereinafter referred to as ‘the court below’) given on 16-1-06. The appellant had brought an application before the court below seeking the following:

“(a) An order of the Honourable court granting leave to the applicant to appeal to the Court of Appeal and or to join in the appeal against the decision of the Governorship and Legislative Houses Election Tribunal holden at Awka, Anambra State, dated 12/8/05 in the petition No. EPT.AN/GOV/42/2003 as a person having interest in the matter or to join in the appeal in that capacity.

(b) An order for enlargement of time within which to seek “leave” to appeal.

(c) An order for leave to appeal.

(d) An order for extension of time within which to appeal.

(e) An order seeking leave to appeal on issue of jurisdiction as a new issue, same having not been raised in the tribunal below and is before the Court of Appeal for the first time.”

The court below dismissed the application. The appellant has now come before this court on a final appeal. In his appellant’s brief, the appellant has identified the questions for determination in the appeal as these:

“Whether the learned Justices of the Court of Appeal in their interpretative jurisdiction has power to construe section 243(a) of the 1999 Constitution by reading into the provision an implied term such as to defeat the obvious ends of the Constitution?”

B *Whether in the circumstance of the exercise of discretionary powers by the Court of Appeal under Section 243 of the 1999 Constitution, the Justices of the Court of Appeal were not in misapprehension of the law and its misapplication to facts already proved and accepted by relying on Electoral Act, 2002 which is not within the contemplation of sub-section*
 C *(b) of Section 243 of the said Constitution?”*

The 2nd and 3rd respondents have each raised a preliminary objection to the appeal. The 2nd respondent’s objection in its ambit covers that of the 3rd respondent. The said objection by 2nd respondent reads:

D *“1. By Section 246(3) of the 1999 Constitution of the Federal Republic of Nigeria, the appellant has no right of appeal to the Supreme Court of Nigeria from the decision of the Court of Appeal in a Governorship Election Petition Appeal.*

E *2. By Section 233 of 1999 Constitution the appellant has no right of appeal as of right to the Supreme Court of Nigeria and has not sought leave.*

F *3. Appellant has not presented before the Supreme Court, sufficient materials to compel a determination of the appeal on the merits.”*

My learned brother Mohammed J.S.C. in his lead judgment has given an exhaustive consideration to the Notice of Preliminary objection reproduced above and its impact on the validity of the appellant’s appeal. I entirely agree with him that this Court has no jurisdiction to entertain an
 G appeal from the Court of Appeal arising from an election petition in a Governorship election. Section 246(3) of the 1999 Constitution provides:

“3. The decisions of the Court of Appeal in respect of appeals arising from election, petitions shall be final.”

H I reproduced above the prayers which the appellant had made in his application to the court below. It is apparent from the said prayers that the appellant had been seeking leave to appeal or to join as a party interested in an appeal from the decision of the tribunal in an election

petition. In such a matter this Court has no jurisdiction. The position has been made clear in a number of cases which include *Onuagulushi v. Ndu* [2001] 7 NWLR (Pt.712) 309 and *Awuse v. Odili* [2003] 18 NWLR (Pt.851) 116.

In the result, this appeal must be struck out. I would also strike it out as in the lead judgment of my learned brother Mohammed JSC. I subscribe to the order on costs.

TABAI JSC

These two appeals were heard together on the 19/4/2007. The Appellant herein was a candidate at the Governorship election of Anambra State in 2003. Dissatisfied by the return of the 1st Respondent by the 3rd Respondent, he filed a petition at the Governorship and Legislature Houses Election Tribunal in Awka Anambra State. The petition was dismissed. His appeal to the Court of Appeal was equally dismissed. He further applied for leave to appeal to this Court which application was refused.

My learned brother Mohammed JSC who delivered the lead judgment stated all the salient facts therein. I agree with the opinion of my learned brother that this Court has no jurisdiction to entertain the two appeals which are accordingly struck out by me. There shall be no order as to costs.

CHUKWUMA-ENEH JSC

This is an interlocutory appeal against the Ruling of the Court of Appeal, Enugu Judicial Division (Court below) upon an application filed by the applicant wherein he sought the leave of the Court of Appeal to appeal or join in the appeal against the decision of the Governorship/Legislative Houses Election Tribunal Anambra State delivered on 12/8/2005. At the court below parties agreed that, any Order on CA/E/EPT/ H 5A/05 is binding on CA/E/EPT/5B/05.

Aggrieved by the decision the applicant appealed to the Court of Appeal which court also dismissed the appeal. The court below in the

penultimate paragraph of its Ruling on appeal to this court held as follows:

“As mentioned by counsel to the 2nd respondent in this application; the applicants right as a candidate within the meaning of S.133(1)(a) of the Electoral Act 2002, and bringing a petition as a representative of his party were determined and laid to rest in the election petition CA/E/EPT/85/2003 in the judgment delivered on the 7th of July 2003 now reported as *Okonkwo v. INEC (2004) 1 NWLR (pt.854) 242*. The applicant has brought this application to be joined in the appeal after this same court had decided that he had no locus standi to institute an election petition, this step to all intents and purpose amounts to an abuse of the process of this court. The applicant prayed, this court for extension of time to file his appeal. Equally S.138 of the Electoral Act gave the applicant 21 days to file a Notice of Appeal against the decision of the Tribunal. S.50 of the First Schedule to the Electoral Act 2002, cannot be invoked here as there is duration to appeal fixed by the Act itself. Having failed to act timeously this court cannot waive that provision to consider this application, and non-compliance is fatal to the application to appeal out of time. No matter how recondite or substantial his ground of appeal on the issue of jurisdiction appears this can only be relevant if he is joined as a party and be allowed to exercise his right of appeal.” (Underlining for emphasis)

The applicant has finally appealed to this court by a Notice of Appeal dated 18/1/2006 containing two grounds of appeal. The applicant/appellant has filed a brief of argument and has distilled two issues for determination as follows:

“Question No.1

Whether the learned Justices of the Court of Appeal in their interpretative jurisdiction has power to construe Section 243(a) of the Constitution by reading into the provision an implied term such to defeat the obvious ends of the Constitution?

Question No.2

Whether in the circumstances of the exercise of discretional powers by the Court of Appeal under Section 243 of the 1999 Constitution

the Justices of the Court of Appeal were not in misapprehension of the law and its implication of facts already proved and accepted by relying on Electoral Act 2002, which is not within the contemplation of subsection (b) of Section 243 of the said Constitution.”

The 2nd respondent in his brief of argument filed in this matter B raised 3 issues for determination as follows:

“1. *Whether having regard to Section 246(3) of the 1999 Constitu- C tion, the appellant has a right of appeal to the Supreme Court of Nigeria from a decision of the Court of Appeal in, a Governorship Election Petition Appeal.*

2. *Whether having regard to Section 233 of the 1999 Constitution the appellant can appeal as of right to the Supreme?*

3. *Whether the appellant has presented before the Supreme Court of Nigeria sufficient materials to compel a determination on appeal.” D*

3rd to 450th respondents also filed a brief of argument and therein have raised a sole issue for determination as follows:

“*Whether the Court of Appeal was right in dismissing the applica- E tion of the appellant as a purported person having an interest or to be joined as such on the ground that appellant lacked locus standi to file same; that the application amounted to an abuse of court process and was statute barred?”*

The appellant also filed reply briefs to the preliminary objections F raised and argued in the briefs of argument of the 2nd and 3rd to 450th respondents. The two sets of respondents in this matter, that is, 2nd respondent vis-à-vis the 3rd to 450th respondents filed separately Notices of Preliminary Objection which have been argued in their respective briefs.

The 2nd respondent’s notice of preliminary objection reads as fol- G lows:

(1) *By Section 246(3) of the 1999 Constitution of the Federal Republic of Nigeria the appellant has no right of appeal to the Supreme Court of Nigeria from the decision of the Court of Appeal in a Governor- H ship Election Petition Appeal.*

(2) *By Section 233 1999 Constitution appellant has no right of appeal as of right to the Supreme Court of Nigeria and has not sought*

leave.

(3) *Appellant has not presented before the Supreme Court sufficient materials to compel a determination of the appeal on the merits.*”

The 3rd to 450th respondent’s notice of preliminary objection reads
B thus:

(1) *By virtue of Section 246(1) of the 1999 Constitution of the Federal Republic of Nigeria, the appellants has no right of appeal to the Supreme Court.*

C (2) *By the combine effect of Section 246(1) and (3) of the 1999 Constitution of the Federal Republic of Nigeria, the appellant cannot appeal a decision of the Court of Appeal before this Honourable Court.”*

I have endeavoured to set out above in miniature the solid facts behind this matter. All said, resolving this matter as can be seen turns on
D a true construction of Section 246(3) of the 1999 Constitution vis-à-vis the reliefs being sought here by the appellant. Concisely put, the main contention of the 2nd respondent and 3rd to 450th respondents in their respective notices of preliminary objection is that under Section 246(3)
E of the 1999 Constitution the appellant has no right of appeal to the Supreme Court from a decision of the Court of Appeal in an Election Petition Matter; in other words, in this matter which raises a question on the election petition. They urge that the appeal be struck out for want of
F jurisdiction.

The appellant, in a synopsis, says the objection is misconceived and he- is not appealing against the final decision of the court below in the Election Petition between Peter Obi and Dr. Chris Ngige & Others delivered on 16/1/2006. He says he comes under section 243 (a) of the
G 1999 Constitution as he was not a party to the action between Peter Obi and Dr. Chris Ngige and Others, from the beginning to the end of the matter. And that in the circumstances he can properly apply to the Court of Appeal for leave to appeal as interested party: See Williams v. Mokwe
H (2005) 7 SC (pt.11) 153 at 157. And so, that he comes under Section 243(a). He highlights on the difference between the rights of a person interested wishing to appeal under 243 (a) as against the position under Section 233 (3) of the 1999 Constitution. He urges the court to overrule

the preliminary objection, and proceed to hear his appeal.

It is therefore, appropriate to reproduce the provision of Section 246 and the reliefs sought in the application. Firstly, the reliefs claimed in this matter are as follows:

"(a) *An order of the Honorable Court granting leave to the appellant to appeal to the Court of Appeal and or to join in the appeal against the decision of the Governorship and Legislative House Election Tribunal, holding at Awka, Anambra State, dated 12/8/2005 in the petition, No.EPT/AN/GOV/42/2003 as a person having interest in the matter or to join in the appeal in that capacity.*

(b) *An order for enlargement of time within which to seek leave to appeal.*

(c) *An order for leave to appeal*

(d) *An order for extension of time within in which to appeal.*

(e) *An order seeking leave to appeal on issue of jurisdiction as a new issue, same having not been raised in the tribunal below and is before the Court of Appeal for the first time."*

An important point to note against the purport of the foregoing reliefs is that the Supreme Court like other Superior Courts of Record in the land is a creature of the Constitution and in that vein it also limits its power. In this regard, the 1999 Constitution and the Supreme Court Act Cap 424 Laws of the Federation of Nigeria 1990 confer jurisdiction on the Supreme Court. To this effect the Supreme Court is conferred with both appellate and original jurisdictions. See Sections 232 and 233 of the 1999 Constitution. Its original jurisdiction is provided for in Section 232 of the Constitution while its appellate jurisdiction is as provided in Section 233 of the Constitution. See: Attorney General Ondo State v. Attorney General of the Federation & Ors (1983) 2 SC NLR 269, A-G of the Federation v. A-G of Abia State & Ors (2001) 11 FWLR (pt.725) 689 and Onuaguluchi v. Ndu (2001) 7 NWLR (pt. 712) 309; Awuse v. Odili (2003) 18 NWLR (pt.851) 116. It follows that where an application for exercise of right of appeal to the Supreme Court cannot come within the ambit of either of the two Sections, it is incompetent. As regards its appellate jurisdiction which has been invoked in this proceeding I refer to the case

of Olatunde v. Abidogun (2001) 12 SC (pt.1) 123 as the principle laid down in that case is relevant to determining the questions being canvassed in this matter. The Supreme Court had to remind counsel in the immediate cited case to restrict his argument to proceedings in the Court of Appeal as it is only competent to entertain appeals from the Court of Appeal and not from the trial court and I dare say not from the Election Tribunals either. See also Kwajafa v. Bank of the North (2004) 5 SC (pt. 1) 103 at 118.

The usefulness of the foregoing preamble, as it were, to my discussion here is that it is on the appellant to show the provisions of the Constitution or Statute giving him the right of appeal to this court from the ruling of the court below in a matter pertaining to an Election Petition. It is convenient at this point to advert even if cursorily to the meaning of jurisdiction.

Jurisdiction has been beautifully defined by the learned authors in Vol.10, Halsbury's Laws of England, 4th Edition para. 715 p.323 and I, quote:

"Jurisdiction of a Court has been judicially defined a very fundamental and priceless "commodity" in the judicial process. It is the fulcrum, centerpiece, or the main pillar upon which the validity of any decision of any court stands and around which other issues relate. It cannot be assumed or implied, it cannot also be conferred by consent or acquiescence of parties." See the cases of Shell Petroleum Development Co. Nigeria Ltd. v. Isaiah (2001) 5 SC (pt. 11) 1, Attorney General of the Federation v. Sode (1990) 1 NWLR (pt.126) 500 at 541 and Okolo v. Union Bank (Nig) Plc (2004) 1 SC (PF 1) 1., in which this court has severally referred with approval to the above definition of jurisdiction.

It is most appropriate at this stage that in considering the competence of the instant appeal to examine the provisions of Section 246(3) of the Constitution and I quote:

"246(1) An appeal to the Court of Appeal shall lie as of right from -

(a) decisions of the Code of Conduct Tribunal established in the Fifth Schedule to this Constitution;

(b) decisions of the National Assembly Election Tribunals and Governorship and Legislative Houses Election Tribunals on any question as to whether -

(i) any person has been validly elected as a member of the National Assembly or of a House of Assembly of a State under this Constitution;

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

(iii) the term of office of any person has ceased or the seat of any such person has become vacant.

(2) The National Assembly may confer jurisdiction upon the Court of Appeal to hear and determine appeals from any decision of any other court of law or tribunal established by the National Assembly.

(3) The decisions of the Court of Appeal in respect of appeals arising from election petitions shall be final." (Underlining for emphasis)

The Constitution as any other Statute conferring Right of Appeal usually provides for the kind of people that can invoke its appellate jurisdiction and under what conditions whether as of right or with leave.

S.246 provides for where the right of appellant shall lie as of right to the Court of Appeal with specific reference firstly, to the decisions of Code of Conduct Tribunal. That is to say, as to whether a person has offended any of the provisions of the Constitution relating to questions of Code of Conduct.

Also, appeals as of right lie from the decisions of the National Assembly Election Tribunals and Governorship and Legislative Houses Election Tribunals that is, as to whether or not any person has been validly elected as a member of the National Assembly, House of Assembly, Governor or Deputy Governor or the term of office of any person has ceased or the seat of any such person has become vacant. And clearly as every right of appeal is statutory, with regard to subsection 3 of Section 246 of the Constitution, no provision has been made for an appeal from the decisions of the Court of Appeal; its decision under sub-section 3 is final. So that it is erroneous on the part of the appellant to initiate any matter caught under the said sub-section 3 to this court for determina-

tion.

In particular, the provision of Section 246(3) of the 1999 Constitution is plain and unambiguous and so ought to be construed by giving the words used therein their natural or ordinary meaning bearing in mind that it is important in so doing to achieve a sensible meaning of the provision. To this end, the provision of sub-section 3 of Section 246 has to be construed in the context of the rest of the provisions of Section 246 as a whole with a view to achieving a consistent construction of the whole of the Section with other provisions of the Constitution and so get to the real intendment of the lawmakers. The provision makes it clear that the Court of Appeal is the final court in matters of Election Petitions. The finality of the decision of the Court of Appeal in this respect cannot be in any doubt of what this means in the context of this matter. It is clear that once it is showed that the instant ruling is from an Election Petition Matter the decision emanating from the court below on the application seeking leave to appeal or to join as an interested party being final under subsection 3 of Section 246 of the Constitution, this court has no jurisdiction to entertain the matter under its appellate jurisdiction. The appellant has been very hard put to invoking Section 243(a) of the Constitution in the circumstances and it is in my view rightly for that matter to no avail as it applies ordinarily to civil matters not matters pertaining to Election Petition.

I have also read the affidavit in support of the appellant's application seeking leave to appeal to this court and I am left in no doubt that the sum total of the depositions in the affidavit in support of the application is to achieve through the backdoor what the appellant has failed to achieve through the front door, that is to say, through his election petition No.CA/E/EPT/85/2003 thrown out of court for want of locus standi on his part and reported as *Okonkwo v. INEC* (2004) 1 NWLR (pt.854) 242. It has to be emphatically made clear to the appellant there is no way his application on the facts of his depositions can run independently albeit parallel to the proceedings of the Election Petition, that is suit No.EPT/ANGOV/42/2003. This court in the circumstances has no jurisdiction to hear and determine the appeal arising from the decision of the Court of Appeal

refusing his application in view of the provisions of Section 246(3) of the Constitution.

There is no merit whatsoever in the appellant's application to seek leave to appeal or be joined in the matter of suit No. EPT/ANGOV/42/2003. It has been showed to be an exercise in futility. I uphold severally the Notices of Preliminary Objection raised in this matter by the 2nd and 3rd to 450th respondents and dismiss the application accordingly for the above reasons and much fuller reasons in the lead judgment of my learned brother Mohammed JSC, which judgment I have had the advantage of reading before now. I agree with him that the appeals being incompetent for want of jurisdiction should also be struck out. I accordingly, strike out appeals Nos. SC.5/2006 and SC.6/2006. I abide by the order on cost as in the lead judgment.

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