

**SUPREME COURT OF NIGERIA**

25TH OCTOBER, 2007. SC.252/2007

**CORAM:- A. I. KATSINA-ALU, D. MUSDAPHER,  
G. A. OGUNTADE, M. MOHAMMED, W. S. N. ONNOGHEN,  
I. T. MUHAMMAD, P. A. ADEREMI, JJSC**

RT. HON. ROTIMI CHIBUIKE AMAECHI ..... APPELLANT  
AND

1. INDEPENDENT NATIONAL  
ELECTORAL COMMISSION

2. CELESTINE OMEHIA ..... RESPONDENTS

3. PEOPLES DEMOCRATIC PARTY (PDP)

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ELECTIONS - Candidates - Disqualification - Substitution - Argument that indictment against appellant - Constituted a reason for his disqualification - Is untenable - Not being substituted lawfully - He remained his party's nominated candidate (H1)

CONSTITUTIONAL LAW - Governor's immunity - S. 308 of 1999 Constitution - Does not avail - Where the wrong has been in existence - Before the election (H2)

ELECTIONS - Candidates - Substitution - Orders of Court - Where appellant's name was unlawfully removed - He remained PDP'S candidate that won the election - And Supreme Court has jurisdiction - To make a consequential order that justice demands (H3)

**FACTS**

The facts and issues in this case are similar to that of Ugwu v. Ararume (2007) 6 KLR (pt 239) 2635, (2007) 12 NWLR (pt 1048) 367. That case dealt with the proper procedure a political party wishing to substitute its election candidate must follow for it to be in compliance with the provisions of s. 34 (2) of the Electoral Act, 2006. In this brief judgment, the Supreme Court found in favour of the appellant and or-

**4000 Amaechi v. Independent National Electoral Commission (2007)**

dered that he be sworn in as the Governor of Rivers State immediately, while it fixed 18-1-2008 as the date to give full reasons for this judgment.

**HELD** (Unanimously allowing the appeal per **KATSINA-ALU JSC**)  
***ELECTIONS - Candidates - Disqualification***

1. In the arguments of respondents counsel, it was submitted that the fact that there was an indictment against the appellant constituted a reason for INEC to disqualify the appellant. My reaction is that the submission is untenable because there was no indictment known to law against the appellant. No court of law pronounced the appellant guilty of any criminal offence justifying his exclusion from the election. Indeed, he was never charged before any court. It is my finding that the appellant was not substituted in accordance with the law and therefore remained the 3rd Respondent's nominated candidate for the Rivers State Governorship election held on 14/4/07. (p. 4002 C)

***Governor's immunity***

2. The submission of the respondents that section 308 enures to the benefit of 2nd respondent is untenable. The wrong upon which the appellant premised his claim had been in existence before the election. The court below correctly decided that the section 308 did not avail the 2nd respondent. I am unable to accept that 2nd respondent enjoys any immunity in this matter. (p. 4002 E)

***ELECTIONS - Candidates - Substitution - Orders of Court***

3. It is my view that the candidate for P.D.P. at the election was the appellant. His name was unlawfully removed. In the eyes of the law, he remained the candidate and this court must treat him as such. My view is that it was the appellant and not the second respondent who must be deemed to have won the elections. The argument that the appellant must be held to his claims overlooks the fact that this court has the wide jurisdiction to give consequential orders and to grant reliefs which the circumstances and the justice of a case dictate. Wherever justice demands it, this court shall rise to do justice without regard to technicality.

I ought not to make an order which does not address the grievance of a party before this court. The only way to accord recognition to his rights unlawfully trampled upon is to declare that the appellant and not the 2nd respondent must be deemed to have won the April 14 Gubernatorial Election. (p. 4002 G)

### **REPRESENTATION**

L. O. Fagbemi, SAN, Awa U. Kalu SAN. Ricky Tarfa. SAN, N. O. O. Oke SAN. S. R. Dapaa Addo, S. O. Sanni, O. I Olorundare, F. A. Esu, Soji Olowolafe, Joshua F. Aloba, Sola Egbeyinka, H. O. Afolabi, F. Z. Edema, K. O. Fogbenu, A. O. Popoola, Segun Adebayo, C. W. Jerome, N. C. Awa (Mrs), C. V. Chia Esq., O. O. Ibigun (Mrs.) for the Appellant. Chief Amaechi Nwaiwu (SAN), with C. U. Ekomaru Esq., D. M. Mando Esq., Odili Achileke Esq., I. C. Acholonu (Miss) and L. Ilo Esq. for 1st Respondent.

J. B. Daudu, SAN with Mr. Joe Agi, SAN Cyril Ogbekene, K.E.A. Akojori, I. L. Ogor for 2nd Respondent.

Chief J. K. Gadzama, SAN, A. T. Kehinde Yusuf, G. U. Nwaneri, H. Odanda (Miss) S. F. Oyefeso (Miss) for the 3rd Respondent.

### **CASE REFERRED TO**

Ugwu v. Ararume (2007) 12 NWLR (pt. 1048) 367

### **STATUTES REFERRED TO**

Electoral Act 2006 s. 34 (2)

Constitution of Nigeria 1999 s. 308

### **LEAD JUDGMENT BY KATSINA-ALU JSC**

Let me start by thanking all the senior counsel for the parties for the adroit and impressive manner in which they have put across their arguments both in their different briefs and the oral arguments canvassed in support.

The issues in this appeal fall within a narrow compass. The starting point is the decision made by this court in Ugwu v. Ararume (2007)

12 NWLR (pt. 1048) 367. The simple issue decided in that case is that a political party wishing to substitute a candidate for another within 60 days to the election must give cogent and verifiable reasons to INEC for the substitution sought. In the said ARARUME case, this court decided  
 B that to offer the reason framed as 'error' for a change of candidate is not in compliance with S. 34(2) of the Electoral Act, 2006. In this case, the same reason relied upon by the 3rd respondent in the substituting the appellant with the 2nd respondent is the word 'error' without more. Clearly  
 C in my view the cases are similar and the same principle applies. **In the arguments of respondents counsel, it was submitted that the fact that there was an indictment against the appellant constituted a reason for INEC to disqualify the appellant. My reaction is that the submission is untenable because there was no indictment known to**  
 D **law against the appellant. No court of law pronounced the appellant guilty of any criminal offence justifying his exclusion from the election. Indeed, he was never charged before any court. It is my finding that the appellant was not substituted in accordance with the**  
 E **law and therefore remained the 3rd Respondent's nominated candidate for the Rivers State Governorship election held on 14/4/07.**

**The submission of the respondents that section 308 enures to the benefit of 2nd respondent is untenable. The wrong upon which**  
 F **the appellant premised his claim had been in existence before the election. The court below correctly decided that the section 308 did not avail the 2nd respondent. I am unable to accept that 2nd respondent enjoys any immunity in this matter.**

G The claims of the plaintiff/appellant at pages 68-70 of the record are declaratory and injunctive. He brought the claims so that he would not be substituted.

**It is my view that the candidate for P.D.P. at the election was the appellant. His name was unlawfully removed. In the eyes of the**  
 H **law, he remained the candidate and this court must treat him as such. My view is that it was the appellant and not the second respondent who must be deemed to have won the elections. The argument that the appellant must be held to his claims overlooks the**

**fact that this court has the wide jurisdiction to give consequential orders and to grant reliefs which the circumstances and the justice of a case dictate. Wherever justice demands it, this court shall rise to do justice without regard to technicality.**

**I ought not to make an order which does not address the grievance of a party before this court. The only way to accord recognition to his rights unlawfully trampled upon is to declare that the appellant and not the 2nd respondent must be deemed to have won the April 14 Gubernatorial Election.**

The cross-appeals by 2nd and 3rd respondents fail. The appeal succeeds. The decision of the court of appeal is hereby set aside. I declare the appellant the one entitled to be in the Governorship seat in Rivers State since he was the lawful candidate of the P.D.P. at the election. It is ordered that the 2nd respondent Celestine Omehia vacate the seat of Governor of River State immediately and that the appellant be forthwith sworn in his place. I will give my full reasons for the judgment on 18/1/2008.

I make no order as to costs.

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### **MUSDAPHER JSC**

I agree. The appeal is allowed and the cross appeals are dismissed. I order that the 2nd Respondent should vacate the seat of Governor of Rivers State. The Appellant should be sworn in to resume his position as Governor. No order as to costs. I will give my reasons on the 18/1/2008.

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### **OGUNTADE JSC**

I agree with the lead Judgment by Katsina-Alu, JSC. presiding.

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### **MOHAMMED JSC**

I entirely agree with the Judgment just delivered by Katsina-Alu, JSC. I shall give reasons for my Judgment on the 18th January, 2008.

**ONNOGHEN JSC**

I agreed with the reasons and conclusion of KATSINA-ALU, JSC in the lead Judgment just delivered. Detailed Judgment will be given on 18th January, 2008.

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**MUHAMMAD JSC**

Appealed allowed. The two cross appeals fail. I agree with the lead Judgment including all orders made therein. I shall give full reasons on the 18th of January, 2008.

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**ADEREMI JSC**

On return, the Judgment of the court was read by Justice Katsina-Alu, the presiding Justice allowing the appeal and dismissing the cross-appeals. The second respondent was ordered to vacate the Governorship seat of Rivers State immediately. Full reasons to be given on the 18th of January, 2008.