

SUPREME COURT OF NIGERIA
25TH JANUARY, 2008 S.C.288/2007
CORAM:- N. TOBI, G. A. OGUNTADE, M.
MOHAMMED, F. F. TABAI, I. T. MUHAMMAD, JJSC

1. ALHAJI ATIKU ABUBAKAR, GCON
2. SENATOR BEN OBI APPELLANTS
3. ACTION CONGRESS (AC)

AND

1. ALHAJI UMARU MUSA YAR'ADUA
2. DR. GOOD LUCK JONATHAN
3. PEOPLES DEMOCRATIC PARTY (PDP)
4. INDEPENDENT NATIONAL RESPONDENTS
ELECTORAL COMMISSION
5. PROF. M. IWU (CHAIRMAN, INEC)
6. CHIEF ELECTORAL COMMISSIONER
& 804 OTHERS

CONSTITUTIONAL LAW - Appeals - Interlocutory appeals - Leave - Is not necessary in all cases - In view of s. 233(2) of 1999 Constitution (H1)

APPEALS - Leave - Grounds of appeal - Competence - Appeal on ground of law alone is as of right - Even if there be some invalid grounds - An appeal can be sustained by one valid ground (H2)

CONSTITUTIONAL LAW - Appeals - Interlocutory appeal - Right to file - Being Constitutional - Court lacks jurisdiction to take it away - Based on preliminary objection (H3)

PRACTICE & PROCEDURE - Interrogatories - Definition - They are pretrial discovery device - Written questions submitted by one party to the other (H4)

INTERROGATORIES - Nature - Aim and objective - Is to uphold case of the applicant - And destroy that of his opponent - To elicit admissions from the opponent (H5)

INTERROGATORIES - Pleadings - Fishing and oppressive interrogatories - Party who has categorically denied a fact vide pleadings - Should not be interrogated thereupon - And court will not allow mala fide interrogatories (H6)

INTERROGATORIES - Proof - Burden placed on plaintiff - Cannot be shifted to defendant vide crafty interrogatories - Court will stop such smartness - By invoking its equitable jurisdiction (H7)

INTERROGATORIES - Questions asked - Relevance of - Where found relevant by the Supreme Court - Are ordered to be answered (H8)

INTERROGATORIES - Fair hearing - Is denied - Where interrogatories are wrongfully refused - Need for speedy hearing - Does not justify Court of Appeal's refusal of interrogatories - In this case (H9)

PRACTICE & PROCEDURE - Pleadings - Further and better particulars - Purpose and object of asking for it - By a party - Is to make pleadings exact and narrow the issues (H10)

PLEADINGS - Better particulars - Issues - Where clearly joined by the parties - Application for further and better particulars will be refused - For being unnecessary (H11)

RULES OF COURT - Noncompliance - Mere irregularity - Can be waived in the interest of justice - Object of court - Is to decide rights of parties - And not to punish them for mistakes - They make in litigation process (H12)

RULES OF COURT - Obedience - Justice - Though rules of court are meant to be obeyed - It should not be to the point that justice is destroyed (H13)

COURTS - Technicalities - Justice - Election petitions - Court of Appeal rightly held - That full opportunity should be given to parties in the interest of justice - For we are now in days of court pursuing

substantial justice (H14)

MOTIONS - Election petitions - Leave to call additional witnesses - Being supported by facts in the affidavit - Was rightly granted - To give parties opportunity to ventilate their cases - Without due regard to technicalities (H15)

MOTIONS - Substance of - Is what court must pursue - Appellants' quarrel with lower court's use of phrase - That properly brings out substance of the motion - Is too technical (H16)

FACTS

These are two interlocutory appeals arising from a presidential election petition filed by appellants in respect of the 2007 election pending before the Court of Appeal as the Tribunal of 1st instance. The appeals are consolidated. One is against Court of Appeal's ruling refusing leave to petitioners/appellants to file interrogatories against Professor Maurice Iwu, 5th respondent; and refusal of further and better particulars sought against Alhaji Musa Yar' Adua and Dr. Goodluck Jonathan, 1st and 2nd respondents. The other appeal is against the ruling granting extension of time to 4th - 808th respondents to file 213 additional witnesses' statements on oath.

On the issues of interrogatories and further particulars, the lower court ruled that the answers being required and particulars sought can easily be ascertained from witnesses during hearing of the petition. That in an election matter, anything that will impede speedy trial must be avoided. In the 2nd appeal, appellants felt that lower court's use of a proper phrase not used by the respondents was a mark of being sentimental and awarding a relief that was not claimed. Court of Appeal's statement under attack is - "... what the relief is seeking is actually not amendment of the petition but leave to call more witnesses with their statements on oath"... . Appellant raised two issues to be determined by the apex court.

ISSUES FOR DETERMINATION

"2.1 Whether the petitioners/Appellants' motion for leave to administer interrogatories on 5th respondent and further and better particulars from 1st and 2nd respondents were rightly refused by the

lower court in the light of the decision of this court cited to but ignored in the Ruling?

2.2 *Whether the lower court acted without jurisdiction when it granted 4th, - 808th respondents leave to call additional witnesses notwithstanding that no such prayer was canvassed by the 4th - 808th respondents before their Lordships; and the time mandatorily prescribed for such an application was not sought.*

HELD (Unanimously allowing the 1st appeal in part and dismissing the 2nd appeal per **TOBI JSC**)

Interlocutory appeals - Leave not necessary in all cases

1. Let me take the preliminary objection first. I do not agree with the submission of learned Senior Advocate for the 4th to 808th respondents that in all interlocutory appeals leave is necessary. He cited section 233(3) of the Constitution. With respect, the subsection does not say so; not even in the way he has subtracted the contents of section 233(2) from those of section 233(3). Interlocutory appeals come under section 233(2); not under section 233(3). I say this because, in my view, appeal under section 233(2) covers both final and interlocutory appeals. And so I will determine the objection in the light of section 233(2) and (3). If I come to the conclusion that the grounds of appeal come within section 233(2) then the objection fails. If I come to the conclusion that the appeal falls within the precinct of section 233(3) then it will be upheld. (p. 22 G)

Grounds of appeal - Competence

2. Grounds 1, 2, and 3 complain about the refusal of the Court of Appeal to administer interrogatories. Interrogatory is a straight and strict aspect or area of law. I do not see any fact or mixed law and fact deserving the leave of court. Appeal on grounds of law alone is as of right. See C.C.B. (Nig) Plc v. Attorney-General of Anambra State (1992) 8 NWLR (Pt. 261) 528. Ground 4 complains about the refusal of the Court of Appeal to ask for further and better particulars from the 1st and 2nd respondents. That could involve mixed law and facts or facts simpliciter. The law is trite that an appeal can be sustained by even one valid ground of appeal. There are three valid grounds of appeal. I am of the view that they can sustain this appeal,

and I so hold. (p. 24 C)

Interlocutory appeal - Right to file

3. Appeal is a constitutional right which cannot be taken away from or denied an appellant. No court of law has the jurisdiction to take away from or deny an appellant his constitutional right to appeal. I cannot deny the appellants their right of appeal based on the two grounds of the preliminary objection. Whether the parties have taken steps in the matter in the Court of Appeal developing into the closure of their cases and awaiting adoption of written addresses, this court is not competent to deny the appellants their constitutional right to file an interlocutory appeal. (p. 25 B)

Interrogatories - Definition

4. The first issue is on the interrogatories. Interrogatories are a set of series of written questions drawn up for the purpose of being propounded to a party, witness, or other person having information of interest in the case. They are a pre-trial discovery device consisting of written questions about the case submitted by one party to the other party or witness. The answers to the interrogatories are usually given under oath, that is, the person answering the questions signs a sworn statement that the answers are true. See Black's Law Dictionary Sixth edition, page 819.

Interrogatories are legal questionnaires submitted to an opposing party as part of pre-trial discovery. The plural noun "interrogatories" derive from the commonplace or market place expression of interrogation which means the act or process of questioning in depth or questioning as a form of discourse. (p. 26 B)

INTERROGATORIES - Nature - Aim and objective

5. Interrogatories are never at large. They must have a nexus with the matter or matters in issue. They must be related to the matter or matters in issue. This does not mean that the interrogatories are strictly confined to the facts directly in issue, but extend to the existence or non-existence of the facts directly in issue. The answers to the interrogatories need not be conclusive on the issues provided that they have some bearing on them. The main aim of interrogatories is to

uphold the case of the party interrogating and destroy that of his opponent. Interrogatories elicit admissions from the opponent and admissions are most valuable evidence for determining liability.
(p. 27 C)

B *Fishing and oppressive interrogatories*

6. Courts will not allow fishing interrogatories, which are interrogatories completely outside the pleadings. After all, pleadings are the fulcrum and parameters of the case and a plaintiff cannot, under the guise of interrogatories move out of the pleadings. An owner of an aquarium may, but certainly not the court. That will be a fishing expedition and the court will not allow such an expedition. Therefore, interrogatories outside the pleadings will go to no issue, and the opponent has no legal duty to provide answers.

D Similarly, a court of law will not allow interrogatories which are oppressive. Oppressive interrogatories are interrogatories which put the party interrogated in an undue burden which is out of all proportion to the benefit to be gained by the interrogating party. A party who has unequivocally or categorically denied a fact in his pleadings
E should not be interrogated on it because he has made his position known in his pleadings. A court will dismiss such an interrogation as a waste of time. Interrogatories must be administered bona fide. They must not be administered mala fide. A court will not allow interrogatories administered mala fide. (p. 27 H)
F

INTERROGATORIES - Proof - Burden placed on plaintiff

7. Although interrogatories which meet with positive answers save the burden of proof placed on the plaintiff, a plaintiff cannot by sheer craftiness or artifice in administering the process of interrogatories, shift the burden of proof on the defendant. That will be reversing the trend of our adjectival law in sections 136, 137 and 139 of the Evidence Act. In other words, a court will not allow a plaintiff to lure a defendant to admit a fact which is unequivocally or categorically denied in the statement of defence. A court will invoke its equitable jurisdiction to stop such smartness on the part of the plaintiff.
(p. 28 E)

INTERROGATORIES - Questions asked

8. Learned Senior Advocate for the 2nd and 3rd respondents described the questions as pertaining to commercial transaction and therefore not relevant to the petition of the appellants. With respect, I disagree. I think most of the questions are relevant. They may help the case of the petitioners. They may not. That is left for the Court of Appeal to decide. We are not there and we cannot jump the gun. It can hurt us in the process of a shoot-out. Apart from their relevance, they are within the knowledge of the 5th respondent, Professor Maurice Iwu. Our law requires that he provides answers to the interrogatories, and 1 so order. (p. 31 B) C

INTERROGATORIES - Fair hearing

9. The Court of Appeal, in rejecting the application to administer interrogatories, said that it will impede speedy trial of the case. Courts of law cannot sacrifice the constitutional principle of fair hearing at the alter of speedy hearing of cases when the content of the speedy hearing is not in consonance with fair hearing in the sense of availing the parties, as in this appeal, the right to administer interrogatories. A party, who is entitled in law to administer interrogatories and is denied that right, is denied the right to fair hearing. And when I say that, I am not oblivious of the law that speedy hearing is one vocal and important aspect of fair hearing. The point I am struggling to make is that speedy hearing of a case which denies a party access to pre-trial evidence, such as interrogatories, is not fair as it runs contrary to the constitutional principle of fair hearing. I do hope I have succeeded in making the point. It is fairly difficult one and quite a mouthful. Accordingly, I am of the firm view that Professor Iwu should answer the 27 questions. (p. 31 F) D E F G

Further and better particulars - Purpose and object of

10. A party asks for further and better particulars where, in his view, the pleadings are not only generic and omnibus but vague, nebulous and lacking specificity. In such a situation, the party asks for further and better particulars to make the pleadings more exact or precise. The purpose of further and better particulars is not to amend or rewrite the pleadings. The purpose is to explain them so that they H

can sound more exact and precise. Thus, where a party has any doubt about any matter pleaded, he can ask for further and better particulars. The object of further and better particulars is to put the adverse party on notice as regards the kind of evidence he would meet at the trial. Another object is to limit the generality of the pleadings. They *"prevent surprise at the trial, and limit inquiry at the trial to matters set out in the particulars; they tend to narrow issues..."* (p. 32 C)

PLEADINGS - Better particulars - Issues

11. On a community reading of paragraphs 20 to 22 of the Petition and Paragraph 21 of the Reply by the 1st and 2nd respondents, I come to the inescapable conclusion that the parties have clearly joined issues on clear issues and there is therefore no legal basis whatsoever for any further and better particulars. The issues in the dispute are so clear to me that the Court of Appeal will not run into any difficulties in deciding the matter one way or the other without further and better particulars. I will not go further on the issue other than concluding that the further and better particulars are not necessary in the light of the fact that the parties have clearly joined issues on the matters. (p. 38 D/G)

RULES OF COURT - Noncompliance - Mere irregularity

12. I take the non-compliance as an irregularity which is curable. And here, I entirely agree with counsel for the 4th to 808th respondents. It is not every non-compliance with rules of court that will vitiate the proceedings or do harm to the party in default. As a matter of our adjectival law, and by the state of the non-compliance rules, the courts will regard certain acts or conducts of non-compliance as mere irregularity which could be waived in the interest of justice. Again, as a matter of our adjectival law, non-compliance rules in their aggregate content point more to this trend than the reverse position of a punitive nature against the non-complying party. The state of the law is more in favour of forgiving non-compliance with rules of court, particularly, when such non-compliance, if waived, will be in the interest of justice.

The basic principle of law is that it is the object of the court to

decide the rights of the parties and not to punish them for mistakes they make in the litigation process, particularly when the mistakes are really mistakes. It is a known fact that blunders must take place in the litigation process and because blunders are inevitable, it is not fair, in appropriate cases, to make a party in the blunder to incur the wrath of the law at the expense of hearing the merits of the case. Rules of Court, which include here Practice Directions, are not intended to be ridiculously applied to a slavish point particularly if such an application will do injustice in the case. (p. 39 F)

RULES OF COURT - Obedience - Justice

13. Rules of Court are meant to be obeyed. Of course, that is why they are made. There should be no argument about that. But there is an important qualification or caveat and it is that their obedience cannot or should not be slavish to the point that justice in the case is destroyed or thrown overboard. The greatest barometer, as far as the public is concerned, is whether at the end of the litigation process, justice has been done to the parties. Therefore, if in the course of doing justice, some harm is done to some procedural rule which hurts the rule, such as paragraph 7 of the Practice Directions, the court should be happy that it took that line of action in pursuance of justice. This court cannot myopically or blindly follow the Practice Directions and fall into a mirage and get physically and mentally absorbed or lost. Let that day not come. (p. 40 E)

Technicalities - Justice - Election petitions

14. I am in entire agreement with the Court of Appeal when the court held that full opportunity should be given to parties in the interest of justice without due regard to technicalities. Gone are the days when courts of law were only concerned with doing technical and abstract justice based on arid legalism. We are now in days when courts of law do substantial justice in the light of the prevailing circumstances of the case. It is my hope that the days of the courts doing technical justice will not surface again.

And what is more, election petitions are sui generis and should be treated in that domain or realm. If courts of law are bound to do substantial justice in ordinary civil matters, how much less in an elec-

tion petition. I should take the question to another level or layer and it is this. If tribunals are bound to do substantial justice in election petitions, how much less, a Presidential Election petition in which the whole country of Nigeria is one constituency. I do not think that the Court of Appeal was wrong in giving one extra kilometre to accommodate the 4th to 808th respondents. The court did a good job and I commend the Justices. (p. 41 A)

Election petitions - Leave to call additional witnesses

C 15. I entirely agree with the submission of learned Senior Advocate for the 4th - 808th respondents that the view of the Court of Appeal on the matter "was supported by all the facts before the court as made out in the affidavit in support of the application." Paragraphs 5, 6, 7 and 8 of the affidavit in support clearly vindicate the position D taken by learned Senior Advocate. The paragraphs have explained the reason why the sworn statements of the witnesses were not ready at the time the Reply was filed. If the appellants are not satisfied with the reasons, I am. So too the Court of Appeal. And so, why the storm or furore?

E The further list of witnesses and witnesses' statements were duly filed and served and so the appellants were not misled by the words "amend their reply to the petition". I am therefore with the Court of Appeal when it granted the motion. I reproduce part of Ruling of the court at the expense of prolixity, and it is good for emphasis, particularly in the light of the submission of learned Senior Advocate for the F appellants:

G *"In a presidential election petition of this magnitude, it is in the interest of justice that parties are given full opportunity to ventilate their cases without due regard, to technicalities. Since the list of witnesses and their statements on oath were all filed in the registry of this court on the 17th of August, 2007, they are properly, before the court and accordingly I grant leave to the applicants to call additional witnesses whose statements on oath were duly filed on the 17th of August, 2007 and they are deemed properly filed and served today."*

H In the light of the above, the cases cited in paragraphs 3.37 to 3.48 are inapposite. I do not agree with learned Senior Advocate that the Court of Appeal drifted into the realm of sentiments when it

held that in a presidential election every opportunity should be given to parties to ventilate their grievances. The Court of Appeal is very correct. I do not see any sentiment. As a matter of fact, the statement justifies the law that election petitions are sui generis.

(p. 42 C/H)

B

MOTIONS - Substance of - Is what court must pursue

16. I have reproduced the motion above and it is clear that the motion was for filing additional list of witnesses and witnesses' statements on oath as shown in the schedule thereto. The only quarrel of the appellants is the words "to amend their reply to the petition", because the Court of Appeal, rightly in my view, held that the motion was not to amend the reply but to call additional witnesses. The position taken by the appellants, with respect, is too technical for my liking. The court is bound to examine the substance of the motion and nothing else. The court must pursue the substance and not the shadow. The substance of the motion is to file additional list of witnesses and witnesses statements on oath. The shadow is the inclusion of the words: "to amend their reply to the petition." I choose or pick the substance. I drop and disregard the shadow. (p. 42 E)

E

NOTABLE POINTS OF INTEREST

OGUNTADE JSC

1. Election petition - Justice & fair hearing should be given to parties. It is important that I stress here that paragraph 5 of the First Schedule to the Electoral Act, 2006 reproduced above is in its effect superior to the Election Tribunal and Court Practice Directions 2007 issued by the President of the Court of Appeal. It seems to me that anything contained in the Election Tribunal and Court Practice Directions 2007 which conflicts with the provisions of paragraph 5 above must be discountenanced. The clear intendment of paragraph 5 above is that justice and fair hearing be given to parties in election petitions. This explains why paragraph 5(a) above uses the words "to prevent surprise" and 5(b) "to ensure fair and proper hearing". (p. 45 A)

H

2. Need for wide use of interrogatories in Nigeria

I would like to say here that a more widespread use of interrogatories

in our system in Nigeria will in fact aid the speedy dispensation of justice because answers are delivered by affidavit evidence which puts the persons upon whom they are delivered at the risk of being commuted for perjury if he does not truthfully and fully answer the questions.

B The 5th Respondent is the Chairman of INEC who conducted the Presidential elections in Nigeria on 21-04-07. Given his important office it is obvious that if the delivery of interrogatories was allowed, the answers on oath would have been conclusive on some of the issues arising from the Petition. The relevant information on these
C questions could only be obtained from the 5th respondent. As the 5th Respondent was shielded from answering the questions as to whether or not election materials were imported too late into Nigeria to ensure their distribution across the country, how then could it be
D determined whether or not there was compliance with the provisions of the Electoral Act, 2006 as to the necessity to ensure that all eligible persons were allowed to vote. It seems to me that quite apart from the immediate or direct interest of the parties to this case, there is the need to ensure that all relevant evidence is given to ensure that justice is seen to be done and in order to ensure that future elections are
E made better. (p. 50 A)

MUHAMMAD JSC

3. Object of interrogatories - Is to secure admission

F Interrogatories have been defined to be a set or series of written questions or questionnaire drawn up for the purpose of being propounded to a party, witness, or other persons having information of interest in the case. It is a pre-trial discovery device consisting of written questions about the case submitted by one party to the other
G party or witness. The answers to the interrogatories are usually given under oath, i.e. the person answering the questions signs a sworn statement that the answers are true. In the case of *Famuyide v. R. C. Irving & Co. Ltd.* (1992) 7 NWLR (Pt.256) 639, this court stated the
H object of interrogatories as follows:

"The object of interrogatories is to enable a party to obtain an admission from the other party and to relieve himself from the necessity of adducing evidence." (p. 60 E)

4. Purpose and Use of better particulars

The general position of the law and legal practice is that the furnishing of particulars to a pleading is meant to eliminate the element of surprise being sprung on the opposite party to a case. It also enables the party to adequately prepare his defence or cross-examination of the witness. But where the particulars given by a party in his pleadings are insufficient under the rules of court, the court on its own initiative or on the application of any of the parties to the case, may order particulars of any claim, defence or any matter pleaded to be given since the function of particulars is to aid the operation of the basic principle that litigation should be conducted fairly, openly and without surprises as well as to reduce costs. There is nothing to prevent any of the parties from asking for particulars even after the statement of defence has been filed, and where a party omits to set out details, he ought to have given, and his opponent does not apply for particulars, he is entitled to give evidence at the trial of any fact which supports the allegations to the pleadings. Thus, failure by a party to comply with an order to furnish further particulars to his pleadings will preclude the party so defaulting from leading evidence on the facts of which further particulars is required. (p. 64 D)

REPRESENTATION

Prof. A. B. Kasunmu (SAN), with him Mr. Ricky Tarfa, (SAN) Mr. Emeka Ngige, (SAN) Dr. M. Ladan, H. A. Nganjuwa Esq; A. J Owonikoko Esq; Dr. (Mrs) Ego Ezuma, Gabriel Tsenyen Esq; Kolawole Olowookere Esq; R. Okotie-Eboh (Miss), Deborah Tarfa (Miss), H. Kwabe 1. Ngige Esq; A. C. Aderemi , Tunde Osadare Esq; For the Appellants

Chief Wole Olanipekun (SAN) with him Dr. Alex Izinyon (SAN) Pauline B. Abuhonin, Gbenga Adeyemi Esq; J. B. Udebang Esq; P. M. Ayim Esq;

H. Abdurahman, A. Dada, T. Terhemba Esq; For 1st and 2nd Respondents

R. O. Yussuf Esq, (with him Mr. Lawal Abani S.I. Bamgbose) For the 3rd Respondents

Chief Amaechi Nwaiwu (SAN), him Chief C. Ekomaru, O. N. Efut Esq; I. C. Acholonu, D. Osawe, Esq E. Agabi Esq; J Ochogwu Esq; O. Enebeh, For 4th to 808th Respondents.

C.I. Irabo, Assistant Chief Legal Officer, Federal Ministry of Justice (with him Lamey Jibril) for 810 Respondent.

B

CASES REFERRED TO

Famuyide v. R. C. Irving and Co. Ltd. (1992) 7 NWLR (Pt. 256) 639

Afribank (Nig) Plc. v. Akwara (2006) 1 S.C. (pt.11) 41

C AIC Ltd. v. NNPC (2005) 5 S.C. (Pt.11) 60

Umoru v. Zibiri (2003) 11 NWLR (Pt. 832) 647 at 658

Ogolo v. Ogolo (2003) 12 S.C. (Pt. 1) 56

WAB Limited v. Savannah Ventures Ltd, (2002) 5 S.C. (Pt. 11) 84

Nnamani v. Nnaji (1999) 7 NWLR (Pt. 610) 313

D Ohowofeyeke v. Attorney-General of Oyo State (1996) 10 NWLR (Pt. 477) 190 at 210

Olochukwu v. Emeregwa (1999) 5 NWLR (Pt. 602) 179 at 183

Onochie v. Odogwu (2006) 6 NWLR (Pt 975) 65 at 99

Baker Marine Ltd. V. Chevron (2006) 26 NSCQR (Pt. 2) 1121 at

E 1137 Nyah v. Noah (2007) 4 NWLR (Pt. 1024) 320

Abubakar v. Bebeji Oil Ltd. (2007) NSCQR 1634

Agwasim v. Qjichie (2004) 18 NSCQR 359

Marriot v. Chamberlain (1886) 17 QBD154 at 163

F

STATUTES & RULES REFERRED TO

Constitution of Nigeria 1999 ss. 233 (1), (2) & (3)

Election Tribunal and Court Practice Directions No. 1 of 2007 para.

3 (7)(f), para. 2

G Federal High Court (Civil Procedure) Rules 2000 O. 33 r. 1

High Court of Lagos (Civil Procedure) Rules 2000 O. 27 r. 2

English Rules of Supreme Court O. 26 r. 1 (3)

Electoral Act, 2006, 1st Schedule para. 5

Evidence Act ss. 136, 137, 139

H

BOOKS REFERRED TO

Black's Laws Dictionary 6th Ed. p. 819

Civil Procedure in Nigeria - Nwadialo p. 618

Dictionary of Modern Legal Usage, 2nd Ed. p. 463 - B. A. Garner (1995)

LEAD JUDGMENT BY TOBI JSC

This appeal was argued on Tuesday, 22nd January, 2008 and it was adjourned to today, Friday, 25th January, 2008 for judgment. This was as a result of the urgency involved in the appeal. The parties in this appeal are scheduled to adopt their addresses on Monday, 28th January, 2008 and the outcome of the appeal is very likely to have an impact on the proceedings on 28th January, 2008. In the circumstances, we had to expedite this judgment; not easy, though.

This is a consolidated appeal. Two interlocutory appeals are consolidated. One is against the Ruling of the Court of Appeal refusing leave to the petitioners/appellants to file interrogatories against Professor Maurice Maduakolam Iwu, the 5th respondent, and seek further and better particulars against Alhaji Umaru Musa Yar'Adua and Dr. Goodluck Jonathan, the 1st and 2nd respondents, respectively. The other is against the Ruling of the Court of Appeal granting extension of time to the 4th to 808th respondents to file 213 additional witnesses' statements on oath. The interlocutory appeals emanate or emerge from the Presidential Election Petition filed by the appellants: Alhaji Atiku Abubakar, Senator Ben Obi and the Action Congress. All the parties to the Presidential Election are involved in this interlocutory appeal.

In the Ruling on the interrogatories, the Court of Appeal said at pages 720 and 721 of Record (Volume E2):

"I have listened to the learned senior counsel on all sides and I thank them for their industry. I am of the view that the answers being required by the interrogatories and particulars sought for in this application can easily be ascertained from witnesses during the hearing of the petition. In an election matter, anything that will impede speedy trial must be avoided. In the circumstances, I refuse the application and it is hereby dismissed."

In the Ruling to file 213 additional witnesses' statements on oath, the Court of Appeal said at page 723 of the Record (Volume E2):

"The learned senior counsel for the petitioners/respondents opposed the motion on the grounds of incompetence of the relief and

the failure of the applicants to exhibit the statements on oath of the witnesses in the motion papers.

I have given a very serious thought to the submissions of counsel on all sides and it is clear that the motion paper has some lapses which counsel for the applicants should have corrected before filing the application. For example, what the relief is seeking is actually not amendment of the petition but leave to call more witnesses with their statements on oath.

In a presidential election petition of this magnitude, it is in the interest of justice that parties are given full opportunity to ventilate their cases without due regard to technicalities. Since the list of witnesses and their statements on oath were all filed in the registry of this court on the 17th of August, 2007, they are properly before the court and accordingly I grant leave to the applicants to call additional witnesses whose statements on oath were duly filed on the 17th of August, 2007 and they are deemed properly filed and served today."

Dissatisfied, the appellants have come to the Supreme Court. Briefs were filed and duly exchanged. The appellants formulated the following two issues for determination.

"2.1 Whether the petitioners/Appellants' motion for leave to administer interrogatories on 5th respondent and further and better particulars from 1st and 2nd respondents were rightly refused by the lower court in the light of the decision of this court cited to but ignored in the Ruling? (Grounds 1, 2, 3 and 4) hereinafter referred to as Appeal No. 1.

2.2 Whether the lower court acted without jurisdiction when it granted 4th, - 808th respondents leave to call additional witnesses notwithstanding that no such prayer was canvassed by the 4th - 808th respondents before their Lordships; and the time mandatorily prescribed for such an application was not sought. (Grounds 1, 2 and 3 of the Notice of Appeal) hereinafter referred to as Appeal No. 2."

The 1st and 2nd respondents also formulated two issues;

"1. Whether the lower court was right in refusing the application for interrogatories and further and better particulars.

2. Whether the lower court was right in granting 4th-808th respondents leave to call additional witnesses for their defence."

So too the 4th to 808th respondents. The issues read:

"(a) Whether appeal lies as of right or at all from an interlocutory decision of the Court of Appeal made in the course of hearing a presidential election petition and if not whether this Honourable Court can entertain this appeal, filed without leave, either of the Court of Appeal or the Supreme Court.

(b) Whether this appeal has become academic or hypothetical^B having been rendered nugatory or futile by the proceedings in the court below which have since reached address stage and may soon be adjourned for judgment with the full participation of the Appellants who have since closed their case?"^C

Learned counsel for the appellants, Professor A. B. Kasunmu, SAN, submitted that the Court of Appeal was wrong in refusing the motion of the appellants for leave to administer interrogatories on Professor Iwu and further and better particulars from Alhaji Umaru Yar'Adua and Dr. Goodluck Jonathan. He said that the court did not give any reason for the decision. He contended that the order the court made is totally at variance with the long established principles which guide the grant of leave to administer interrogatories, or the grant or refusal of further and better particulars. ^D

Learned Senior Advocate pointed out that Professor Iwu, who was sought to be interrogated, did not challenge the facts in support of the application and so the Court of Appeal made no finding against the facts in support of the affidavit. On the undisputed facts of the application, all that was left for the Court of Appeal to do was to apply the applicable law, learned Senior Advocate submitted. He relied on *Famuyide v. R. C. Irving and Co. Ltd.* (1992) 7 NWLR (Pt. 256) 639 and paragraphs 4, 5, 6, 7 and 8 of the affidavit in support of the application to administer interrogatories. He also relied on the interrogatories attached as Exhibit "A" to the application at pages 618 to 622 of the Record (Volume E2) and Exhibit B to the application at pages 623 to 628 of the Record (Volume E2). ^E

Learned Senior Advocate submitted that the refusal of interrogatories by the Court of Appeal is irreconcilably against the spirit and intendment of the Election Tribunal and Court Practice Directions No 1 of 2007 and the Federal High Court (Civil Procedure) Rules, 2000 with regards to matters for disposal at the pre-trial of the matter. He cited paragraph 3(7)(f) of the Practice Directions (as ^F ^G ^H

amended). He said that it was a serious misdirection in law for the Court of Appeal to have ruled that the facts to be interrogated can "..... easily be ascertained from witnesses during the hearing of the petition." Counsel pointed out that as Professor Iwu was not a listed witness to be called at the trial, the Court of Appeal was wrong in holding that the facts can easily be ascertained from witnesses during the hearing of the petition. Citing *Afribank (Nig) Plc. v. Akwara* (2006) 1 S.C. (pt.11)41; (2006) 5 NWLR (Pt. 974) 655, learned Senior Advocate submitted that the Practice Directions have the full force of law. He also relied on *AIC Ltd. v. NNPC* (2005) 5 S.C. (Pt.11) 60; (2005) 1 NWLR (Pt. 937) 563, and *Famuyide v. Irving and Co. Ltd.* (supra). Learned Senior Advocate submitted that the Court of Appeal did not direct itself to the relevant law or facts and consequently reached a decision which prejudiced the justice of the case. He cited *Umoru v. Zibiri* (2003) 11 NWLR (Pt. 832) 647 at 658 and *Ogolo v. Ogolo* (2003) 12 S.C. (Pt. 1) 56; 18 NWLR (Pt 852) 494 at 521.

On the further and better particulars, learned Senior Advocate contended that the pre-emptoriness and misdirection which affected the Ruling of the Court of Appeal on interrogatories also apply with equal force to the court's refusal to order 1st and 2nd respondents to supply the appellants with further and better particulars. He cited paragraph 17 of the 1st Schedule to the Electoral Act of 2006 and the case of *WAB Limited v. Savannah Ventures Ltd.*, (2002) 5 S.C. (Pt. 11) 84; (2002) 10 NWLR (Pt. 775)401 at 4333.

On Issue No. 2, learned Senior Advocate submitted that the application for leave for the 4th to 808th respondents to amend their Reply to the Petition by filing additional list of witnesses and witness' statements on Oath is grossly incompetent and incurably bad. He argued that the substance of the application is not an amendment of the Reply, rather, it is an attempt by the respondents to surreptitiously bring in statements that should have been filed along with their Reply, but which they failed to do. He argued further that the motion paper was faulty.

Learned Senior Advocate submitted that the Court of Appeal having rightly found that the application was misconceived, and that the respondents defiantly refused to take hint and apply for appropriate remedy, it was a serious misdirection for the court to have

proceeded to make out a case for 4th to 808th respondents and grant them relief's which they ought to seek but elected not to pray for; and which they did not make out on merit or at all. He condemned the injustice done to the appellants. He cited Nnamani v. Nnaji (1999) 7 NWLR (Pt. 610) 313; Ohowofeyeke v. Attorney-General of Oyo State (1996) 10 NWLR (Pt. 477) 190 at 210; and Olochukwu v. Emeregwa (1999) 5 NWLR (Pt. 602) 179 at 183, on a court raising a matter suo motu, non-compliance with rules of court, the exercise of discretionary power by the court, a court involving itself in sentiments and the meaning of "shall" in a statute. He urged the court to allow the appeal.

Learned Senior Advocate for the 1st and 2nd respondents, Chief Wole Olanipekun raised a preliminary objection. The grounds of objection read:

"1. Since the ruling in the two motions leading to the two appeals, the Appellants had taken steps by leading witnesses and tendering several thousands of documents in proof of their cases which the Appellants had sought at the lower court. The defence had equally opened and closed those case and written addresses ordered by the court."

2. It will become a mere academic exercise to determine the two issues arising from the two appeals as copious evidence have been led by both parties relating to this in which parties have been given time to file addresses awaiting adoption on 28/1/08."

Citing the case of Government of Plateau State v. Attorney-General of the Federation (2006) 1 S.C. (Pt. 1) 1; (2006) 3 NWLR (Pt. 967) 436 and 419, learned Senior Advocate submitted that the appeal was academic and should be struck out. He did not say more on the preliminary objection. And so be it.

Taking Issue No 1, Learned Senior Advocate submitted that the Court of Appeal rightly refused the appellants leave to administer interrogatories on the 5th respondent and further and better particulars from the 1st and 2nd respondents. He contended that the Court of Appeal gave sufficient reasons for the refusal of the application. He said that the case of Famuyide v. R. Irving and Co. Ltd. (supra) cited by counsel for the appellants is inapplicable to this appeal. He contended that it is not the law that once an affidavit is not contro-

verted, it must be believed by the court. Citing *National Bank v. Are Brothers* (1977) 6 S.C. 97; (1977) 6 S.C. (Reprint) 59, learned Senior Advocate submitted that an applicant must prove his petition; there is no escape route via interrogatories.

B Relying on the Practice Directions by the President of the Court of Appeal, learned Senior Advocate submitted that interrogatories are not for fishing expedition; they are expected to be related to the pleadings, as they cannot be issues at large. He referred to Order 33 Rules 1 and 2 of the Federal High Court (Civil Procedure) Rules, C 2000. Counsel argued that the interrogatories are not related to or vindicated by the pleadings. He regarded most of the questions as relating to commercial transactions.

On the further and better particulars, counsel submitted that the reason also given above covered the argument. By the nature of D the better and further particulars, the appellants were abdicating their case completely and relying on the respondents to prove their case for them.

On Issue No. 2, learned Senior Advocate submitted that the Court of Appeal was right in granting the application of 4th to 808th E respondents to file additional list of witnesses, as the court exercised its discretion judiciously and judicially. He cited *Abacha v. State* (2002) 3 S.C. 53; (2002) 5 NWLR (Pt. 761) 638 at 653. Counsel pointed out that filing of additional witnesses is not the same thing as filing a F reply to the petition. The list of additional witnesses is material evidence to prove the already filed replies. It is not the case of filing a new reply, counsel argued. He urged the court to dismiss the appeal.

Learned Senior Advocate for the 4th to 808th respondents, Chief Amaechi Nwaiwu, also raised a preliminary objection in the G following terms:

"1. No leave of court was sought and obtained before filing the appeals.

2. The issues in these Appeals have become academic and hypothetical.

H *3. These appeals constitute an abuse of judicial process."*

Learned Senior Advocate submitted that an interlocutory appeal to the Supreme Court requires leave of the Court of Appeal or the Supreme Court. He cited section 233(3) of the 1999 Constitu-

tion and the cases of *Usani v. Duke* (2004) 7 NWLR (Pt. 871) 116 at 138 and *Orubu v. NEC* (1988) 12 S.C. (Pt.871) 5 NWLR (Pt. 94) 323. He argued that as the "grounds of appeal at best can be classified as grounds of mixed law and fact, leave was required. He cited *Maduabuchukwu v. Maduabuchukwu* (2006) 10 NWLR (Pt. 989) 475 at 494; *Nwadike v Ibekwe* (1987) 4 NWLR (Pt. 67) 718; *Ojemen v. Momodu* (1983) 1 SCNLR 188; *Coker v. Uba* (1997) 2 NWLR (Pt. 490) 641; *NNSC Ltd. v. Establishment Sima of Vadux* (1990) 7 NWLR (Pt. 164) 526; *UBN v. Sogunro* (2006) 27 NSCQR 182 at 192-193; *Inakoju v. Adeleke* (2007) 29.2 NSCQR 959 at 1185 and 1186 and *Ukpong v. Commissioner for Finance* (2006) 28 NSCQR 508 at 529.

Taking Issue No. 2, learned Senior Advocate submitted that as all the parties have closed their cases and the matter adjourned to 28th January, 2008 for adoption of addresses of counsel, and thereafter for judgment, the appeal is now academic. To learned Senior Advocate, the proceedings in the Court of Appeal cannot now be reopened to enable the appellants serve the interrogatories. He also said that the witnesses called by the appellants cannot now be recalled. He cited *Onochie v. Odogwu* (2006) 6 NWLR (Pt 975) 65 at 99; *Baker Marine Ltd. V. Chevron* (2006) 26 NSCQR (Pt. 2) 1121 at 1137; *Nyah v. Noah* (2007) 4 NWLR (Pt. 1024) 320; *Abubakar v. Bebeji Oil Ltd.* (2007) NSCQR 1634 and *Agwasim v. Qjichie* (2004) 18 NSCQR 359. He urged the court to uphold the preliminary objection.

On Issue No 1, learned Senior Advocate relied on paragraph 2 of the Practice Directions, 2007 and argued that the provision does not stipulate the consequence of failing to attach the written statement on oath at the time of filing the Reply. He contrasted this with the provision of paragraph 1 (2) of the Practice Directions relating to filing of the petition where consequences immediately attend the failure to file the written statements along with the petition. The Court of Appeal did not think fit to impose upon the respondents a limitation or burden which the Practice Directions did not see fit to impose, learned Senior Advocate contended.

Referring to paragraph 7 of the Practice Directions, learned Senior Advocate argued that if further particulars may be given in respect of facts which have been pleaded, there is no reason why

witness deposition may not be furnished in respect of facts that have been pleaded. He contended that the appellants have not been able to show that the exercise of the discretion of the Court of Appeal in favour of granting leave to file additional witness depositions occasioned a miscarriage of justice. He cited the unreported case of Eboh v. Akpotu SC.167/66. Citing Alsthom_SA v. Saraki (2000) 4 NWLR (Pt 687) 514, learned counsel submitted that the issue was a mere irregularity and urged the court not to follow technicalities but to do substantial justice.

On the issue that the relief granted by the Court of Appeal was not sought by the respondents, learned Senior Advocate contended that the respondents sought leave to amend their reply by listing additional witnesses whose depositions were attached. He argued that the view of the court that it was not an application to amend but merely one to call additional witnesses is supported by all the facts before the court as made out in the affidavit in support of the application; and so the Court of Appeal rightly exercised its discretion in favour of the respondents.

On Issue No. 2, learned Senior Advocate submitted that the Court of Appeal correctly rejected the application for interrogatories. He contended that the premise upon which the leave to administer interrogatories was founded was too weak. He also contended that the character of the information sought related to the internal administration of the 41h respondent which is not relevant to the prosecution or just determination of the petition. The interrogatories represented nothing less than a bold and undisguised attempt on the part of the petitioners to make an issue out of the internal administration of the 4th respondent. The interrogatories related either to pre-election issues or the internal affairs of the 4th respondent or were merely intended to embarrass or scandalize the respondent. He urged the court to uphold the Rulings of the Court of Appeal.

Let me take the preliminary objection first. I do not agree with the submission of learned Senior Advocate for the 4th to 808th respondents that in all interlocutory appeals leave is necessary. He cited section 233(3) of the Constitution. With respect, the subsection does not say so; not even in the way he has subtracted the contents of section 233(2) from those

of section 233(3). Interlocutory appeals come under section 233(2); not under section 233(3). I say this because, in my view, appeal under section 233(2) covers both final and interlocutory appeals. And so I will determine the objection in the light of section 233(2) and (3). If I come to the conclusion that the grounds of appeal come within section 233(2) then the objection fails. If I come to the conclusion that the appeal falls within the precinct of section 233(3) then it will be upheld. Let me read the Grounds of Appeal minus the particulars:

"GROUND ONE

The learned Justices of the Court of Appeal misconstrued and erroneously misapplied the principles guiding the grant of leave to administer interrogatories and thereby refused the Petitioners/Appellants application for same by holding thus:

'I have listened to the learned counsel on all sides and I thank them for their industry I am of the view that answers being required by the interrogatories and particulars sought in this application can easily be ascertained from witnesses during the hearing of the petition. In an election matter, anything that will impede speedy trial must be avoided. In the circumstances, I refuse the application and it is hereby dismissed.'

GROUND TWO

The refusal of interrogatories by their lordships is irreconcilably against the spirit and intendment of the Election Tribunal and Court Practice Directions No. 1 of 2007, and the Federal High Court (Civil Procedure) Rules, 2000 with regards to matters for disposal at the pre-trial, including requirement for cutting down on number of witnesses to be called at the trial as enjoined by Paragraph 3(7) (f) of the Practice Directions (as amended) which provides that at the pre-hearing session'-

'Tribunal or Court shall consider and take appropriate action in respect of the following as may be necessary or desirable:

(f) Narrowing the field of dispute between certain types of witnesses especially the Commission's staff and witnesses that officiated at the election, by their participation at pre-hearing session or in any other manner.'

GROUND THREE

The refusal of the interrogatories sought against the 5th Respondent has occasioned a miscarriage of justice, in that the facts sought to be elicited by the interrogatories were within the peculiar knowledge of 5th Respondent, who is not listed or intended to be called as a witness; but has generally and evasively denied same in his Reply to the
 B *petition.*

GROUND FOUR

The learned Justices of the Court of Appeal erred in law and thus occasioned a miscarriage of justice to the Petitioners/Appellants when they held that it is in the interest of justice to refuse application for
 C *further and better particulars of the 1st and 2nd Reply to the petition."*

Grounds 1, 2, and 3 complain about the refusal of the Court of Appeal to administer interrogatories. Interrogatory
 D ***is a straight and strict aspect or area of law. I do not see any fact or mixed law and fact deserving the leave of court. Appeal on grounds of law alone is as of right. See C.C.B. (Nig) Plc v. Attorney-General of Anambra State (1992) 8 NWLR (Pt. 261) 528. Ground 4 complains about the refusal of the***
 E ***Court of Appeal to ask for further and better particulars from the 1st and 2nd respondents. That could involve mixed law and facts or facts simpliciter. The law is trite that an appeal can be sustained by even one valid ground of appeal. There***
 F ***are three valid grounds of appeal. I am of the view that they can sustain this appeal, and I so hold.***

I am almost forgetting the objection on abuse of judicial process. I can forget it for good because there is not much in it, if there is anything in it all. What is in the appeals that constitute an abuse of
 G the judicial process? Is it the application to administer interrogatories? Is it the request for further and better particulars? What is it, I ask? There is nothing in this appeal that constitutes an abuse of the judicial process. Both the process of interrogation and further and better particulars are known to our adjectival law and they cannot
 H therefore constitute an abuse.

That takes me to the preliminary objection of the 1st and 2nd respondents. They are two. The first one is to the effect that the appellants had taken steps by leading witnesses and tendering several

thousands of documents in proof of their cases and the defence had equally opened and closed their case and written addresses ordered by the court. The second one is that the appeal is now a mere academic exercise as the parties have led copious evidence and they have been given time to file addresses awaiting for adoption on 28th January, 2008.

Appeal is a constitutional right which cannot be taken away from or denied an appellant. No court of law has the jurisdiction to take away from or deny an appellant his constitutional right to appeal. I cannot deny the appellants their right of appeal based on the two grounds of the preliminary objection. Whether the parties have taken steps in the matter in the Court of Appeal developing into the closure of their cases and awaiting adoption of written addresses, this court is not competent to deny the appellants their constitutional right to file an interlocutory appeal.

It does not even appear that learned Senior Advocate argued the first objection in his brief. That is enough for me not to take it. I have taken it with great caution and in the alternative that I am wrong in my conclusion that counsel did not argue it in his brief.

He argued the second ground dealing with academic exercise. He cited the case of *Government of Plateau State v. Attorney-General of Federation*, supra. I said at page 419 of the Report:

"A suit is academic where it is merely theoretical, makes empty sound and of no practical utilitarian value to the plaintiff even if judgment is given in his favour. A suit is academic if it is not related to practical situations of human nature and humanity"

An academic matter in a suit is one which is raised for the purpose of intellectual argument qua reason which cannot in any way affect the determination of the live issues in the matter. It is merely to satisfy intellectual prowess qua intellect. It is a matter which is theoretical and not related to practical situation. And in the context of this appeal, the practical situation is the application of the outcome of this appeal to the petition in the Court of Appeal. An academic matter could be built on some hypothesis when they are based only on a suggestion that has not been proved or shown to be real because they are imaginary. And an hypothesis is an assumption made, especially in order to test its logical or empirical consequences.

All the parties say that the Court of Appeal has adjourned the case to 28th January, 2008 for them to adopt their addresses. Today is 25th January, 2008, some three days to the date the matter is adjourned for adoption of addresses. I do not think the appeal is merely academic. The parties can make use of the judgment of this court in the Court of Appeal. Accordingly, the objection of the 1stand 2nd respondents also fails.

I go to the appeal. ***The first issue is on the interrogatories. Interrogatories are a set of series of written questions drawn up for the purpose of being propounded to a party, witness, or other person having information of interest in the case. They are a pre-trial discovery device consisting of written questions about the case submitted by one party to the other party or witness. The answers to the interrogatories are usually given under oath, that is, the person answering the questions signs a sworn statement that the answers are true. See Black's Law Dictionary Sixth edition, page 819.***

Interrogatories are legal questionnaires submitted to an opposing party as part of pre-trial discovery. The plural noun "interrogatories" derive from the commonplace or market place expression of interrogation which means the act or process of questioning in dept or questioning as a form of discourse. This court dealt with the nature and functions of interrogatories in *Famuyide v, Irvinq and Co. Ltd.* (1992) 7 NWLR (Pt 256) 639. Delivering the judgment of the court, Karibi-Whyte, JSC, said at page 653:

"Order 27 rules 2 of the High Court of Lagos (Civil Procedure) Rules 1972 provides as follows:

'... Leave shall be given as to such only of the interrogatories as shall be considered necessary either for disposing fairly of the cause or matter or for saving costs.'

This rule has its origin in the English RSC Order 26 Rule 1(3). The principles governing the application of this rule have been clearly enunciated in several decided cases in Courts in England. These cases have constituted guides to our own Courts where confronted with similar situations. After the pleadings of the parties it is generally allowed to put questions to the opponent for the purpose of extracting

information as to the facts material to the questions between them which the party interrogating has to prove on any issue raised between them, or for the purpose of securing admissions as to those facts to avoid delay and save costs. It is also allowed to enable the opponent to find out whether the particular averment in the pleadings of the party interrogating who has the burden of proof are true or untrue, and also to ascertain the case he has to meet. In essence, the interrogatory is aimed at ascertaining the real issue, so as to prevent surprise. It also enables the person interrogating to reveal the case of the person interrogated, or to elicit facts in support of the case of the person interrogating."

Interrogatories are never at large. They must have a nexus with the matter or matters in issue. They must be related to the matter or matters in issue. This does not mean that the interrogatories are strictly confined to the facts directly in issue, but extend to the existence or non-existence of the facts directly in issue. See *Marriot v. Chamberlain* (1886) 17 QBD 154 at 163. **The answers to the interrogatories need not be conclusive on the issues provided that they have some bearing on them.** See *Balir v. Haycock Caddie Co.* (1917) 34 TLR 39. **The main aim of interrogatories is to uphold the case of the party interrogating and destroy that of his opponent.** See *Plymouth Mutual Corporative Society v. Traders Publishing Association* (1967) 1 KB 403 at 416; *Hennessy v Wright (No.2)* (1888) 24 QBD 447. **Interrogatories elicit admissions from the opponent and admissions are most valuable evidence for determining liability.**

Dealing with interrogatories in his book, *Civil Procedure in Nigeria*, Nwadioalo said at page 618:

"The interrogatories should be directed at obtaining admissions of facts or other pieces of information which are materially important for proving the case of the party administering them. A party may not interrogate to elicit information that has bearing exclusively on the case of his opponent for in such a case, the interrogatories will not assist him in establishing his own case."

Courts will not allow fishing interrogatories, which are interrogatories completely outside the pleadings. After all,

pleadings are the fulcrum and parameters of the case and a plaintiff cannot, under the guise of interrogatories move out of the pleadings. An owner of an aquarium may, but certainly not the court. That will be a fishing expedition and the court will not allow such an expedition. Therefore, interrogatories outside the pleadings will go to no issue, and the opponent has no legal duty to provide answers.

Similarly, a court of law; will not allow interrogatories which are oppressive. Oppressive interrogatories are interrogatories which put the party interrogated in an undue burden which is out of all proportion to the benefit to be gained by the interrogating party. See Heaton v. Goldney (1910) 1 KB 653. A party who has unequivocally or categorically denied a fact in his pleadings should not be interrogated on it because he has made his position known in his pleadings. A court will dismiss such an interrogation as a waste of time. Interrogatories must be administered bona fide. They must not be administered mala fide. A court will not allow interrogatories administered mala fide.

Although interrogatories which meet with positive answers save the burden of proof placed on the plaintiff, a plaintiff cannot by sheer craftiness or artifice in administering the process of interrogatories, shift the burden of proof on the defendant. That will be reversing the trend of our adjectival law in sections 136, 137 and 139 of the Evidence Act. In other words, a court will not allow a plaintiff to lure a defendant to admit a fact which is unequivocally or categorically denied in the statement of defence. A court will invoke its equitable jurisdiction to stop such smartness on the part of the plaintiff.

I have talked some law. Let me go now to the factual position. And this I will do by producing the ipsissima verba of the interrogatories they are 27. They read;

"1. Did you award a fresh contract for printing of ballot papers for the presidential election, less than 5 days to the date of the election?"

2. If yes, did you not award the said contract to a company in South Africa after the company originally contracted, declined on

the ground that the delivery deadline was unrealistic if the ballots must carry serial numbers, and in booklet forms with counterfoils?

3. *If you deny that the contract was re-awarded to a different company less than 5 days to the election for reasons stated in question No. 2, what was the reason for re-awarding the printing contract less than 5 days to the date of the presidential election?* B

4. *Did you not agree with the second company that printed the ballot papers less than five days to the election to print same without serial numbers and booklet forms with counterfoils?*

5. *If you answer No to question number,4, have you annexed to the said answer your contract documents evidencing the terms on which the ballot papers were to be printed?* C

6. *When (date and time of arrival) were the ballot papers air-freighted to Nigeria, on which airline and in what quantity?*

7. *Did you obtain a destination inspection report before taking delivery of the ballot papers?* D

8. *Have you annexed copies of the destination inspection report of each such delivery to your answer?*

9. *How many days did it take INEC to take full delivery of the ballot papers from the airport?* E

10. *By what means did you ascertain the total number of ballot papers supplied by the contractor in South Africa?*

11. *Did the ballot papers used in the presidential election of 21st April 2007, have serial numbers, or counterfoils and made in booklet forms?* F

12. *How many ballot papers did you supply to each of the Resident Electoral Commissioners in each of the following states for the conduct of the presidential elections, namely: Anambra, Adamawa, Bauchi, Benue, Cross River, Ebonyi, Edo, Ekiti, Enugu, Gombe, Imo, Jigawa, Katsina, Kebbi, Kwara, Kogi, Nasarawa, Niger, Ogun, Osun and Zamfara.*

13. *If you indicate the figures of ballot papers supplied to each resident electoral commissioner in respect of the states listed in question No 10 above, have you supplied the Form EC.40 duly signed by the commissioners and/or witnessed by party agents in respect of the supply of such ballot papers to each state?* H

14. *Do you have record of true identity by name of the Elec-*

toral Officers who received the ballot papers, the quantity received by the electoral officer and the time of receipt, as well as evidence that such receipt was witnessed by party agents other than the agents of Peoples Democratic Party?

B *15. If you answer yes, can you give, and if so have you supplied, the names of the other party agents and their parties apart from PDP who witnessed the distribution and delivery of the said ballot papers in each local government area of the states listed, in question No 12 above?*

C *16. If you answer yes to any of the sub-questions in twelve (12) and thirteen (13) above, have you annexed to your answer the documents evidencing the record, in respect of each of the local government areas?*

D *17. Did you publish list of candidates standing nominated to contest the presidential election of 21st April, 2007 as mandatory required by the Electoral Act?*

18. If yes, on what date was the publication and have you annexed a certified true copy of same to your answer?

E *19. Did you communicate to the petitioners or to the public, the fact that the names of 1st and 2nd Petitioners had been restored to the list of candidates after the judgment of the Supreme Court delivered on Tuesday 16th April, 2007?*

F *20. If you answer question 16, yes, on what date did you publish a fresh list of candidates standing nominated to contest the presidential election inclusive of 1st Petitioner?*

21. On what date did you display the voters registers used for the presidential election and up till what date did you sustain the display?

G *22. Was there objection to the list, and if so, did you indicate in your answer the correction made to the list, in respect of each of the states listed in question No. 12?*

H *23. Did you award, or authorize the award of a contract for the erection of voting cubicles to be used for thumb-printing ballot papers in secret before dropping same in the ballot boxes in the open, in any of the polling stations during the presidential election?*

24. How much was the contract, and to whom was the contract awarded?

25. Was the contract executed?

26. If yes, can you list the locations of the polling units in each of the states mentioned in question No. 12 where such voting cubicles were erected?

27. Have you annexed to your answer the certificate of completion issued to the said contractor showing that it had performed the contract?" B

Learned Senior Advocate for the 2nd and 3rd respondents described the questions as pertaining to commercial transaction and therefore not relevant to the petition of the appellants with respect, I disagree. I think most of the questions are relevant. They may help the case of the petitioners. They may not. That is left for the Court of Appeal to decide. We are not there and we cannot jump the gun. It can hurt us in the process of a shoot-out. Apart from their relevance, they are within the knowledge of the 5th respondent, Professor Maurice Iwu. Our law requires that he provides answers to the interrogatories, and I so order. C D

The Federal High Court (Civil Procedure) Rules 2000 govern proceedings of the Court of Appeal as an election tribunal in Presidential Elections Order 33 Rule 1 provides for the delivery of interrogatories. Rule 1(1) provides: E

"After the close of pleadings in any cause or matter any party by leave of court or Judge in Chambers may deliver interrogatories in writing for the examination of any other party or parties, and those interrogatories when delivered shall state clearly which of the interrogatories each of the parties is required to answer." F

The Court of Appeal, in rejecting the application to administer interrogatories, said that it will impede speedy trial of the case. Courts of law cannot sacrifice the constitutional principle of fair hearing at the alter of speedy hearing of cases when the content of the speedy hearing is not in consonance with fair hearing in the sense of availing the parties, as in this appeal, the right to administer interrogatories. A party, who is entitled in law to administer interrogatories and is denied that right, is denied the right to fair hearing. And when I say that, I am not oblivious of the law that speedy hearing is one G H

vocal and important aspect of fair hearing. The point I am struggling to make is that speedy hearing of a case which denies a party access to pre-trial evidence, such as interrogatories, is not fair as it runs contrary to the constitutional principle of fair hearing. I do hope I have succeeded in making the point.
B It is fairly difficult one and quite a mouthful. Accordingly, I am of the firm view that Professor Iwu should answer the 27 questions.

The next consideration is the request for further and better particulars from the 1st and 2nd respondents. **A party asks for further and better particulars where, in his view, the pleadings are not only generic and omnibus but vague, nebulous and lacking specificity. In such a situation, the party asks for further and better particulars to make the pleadings more exact or**
D precise. The purpose of further and better particulars is not to amend or rewrite the pleadings. The purpose is to explain them so that they can sound more exact and precise. See Nwodo v. Onoh (1984) 1 SCNLR 1. **Thus, where a party has any doubt about any matter pleaded, he can ask for further and**
E better particulars. See Okafor v. NHDS (1972) 4 SC 175. **The object of further and better particulars is to put the adverse party on notice as regards the kind of evidence he would meet at the trial.** See Obikoya v. Ezenwa & 3 Ors. (1973) 11 SC 135.
F Another object is to limit the generality of the pleadings. They "prevent surprise at the trial, and limit inquiry at the trial to matters set out in the particulars; they tend to narrow issues..." See Thomson v. Birkley (1882) 47 LT 700.

In Oquntokun v. Rufai (1945) 11 WACA 55 at 66 and 67, the
G West Africa Court of Appeal said:

"... Where a party omits to set out details which he ought to have given and his opponent did not apply for particulars, he is entitled to give evidence at the trial of any fact which supports the allegation in the pleading."

H In Ayeni v. Taiwo (1982) 5 SC 29, this court followed the decision in Oguntokun. Udo Udoma, JSC, said at page 36 of the judgment:

"As was said by the West African Court of Appeal in Joseph

Oguntokun v Amodu Rufai, 11 WACA 55 at p.56, there is nothing to prevent a defendant in a suit from asking for particulars of any averment contained in a Statement of Claim even after the Statement of Defence has been filed and delivered. And where therefore a party omits to set out in descriptive detail an allegation in his Statement of Claim and his opponent does not supply particulars, he is entitled to give evidence at the trial of any facts supporting the allegation given by him." B

And in the more recent case of WAB Limited v. Savannah Ventures Ltd. (2002) 10 NWLR (Pt. 775) 401, the Supreme Court, relying on the decision of Dean of Chester v. Smelting Corporation (1902) WN 5 and Hewson v. Cleeve (1904) 2 Ir. R. 536, said at page 433: C

"However, it has also been held that where the opponent omits to ask for particulars, evidence may be given which supports any material allegation in the pleadings." D

I would like to think that, apart from the genuine belief on the part of the appellants that further and better particulars are needed, it was also to avoid the legal consequences mentioned in the cases above that the appellants asked for them. Apart from that, paragraph 17 of the 1st Schedule to the Electoral Act is authority for the request. E

So far so good the law on that is settled. What is the factual situation? That is my next consideration. It is the case of the appellants that the request for further and better particulars was made "to avoid the ambush embedded in paragraph 21 of the 1st and 2nd respondents' Reply to the Petition." F

Paragraph 21 is one very long paragraph. It deposes to the election in twenty-six States: Anambra, Adamawa, Bauchi, Bayelsa, Benue, Cross River. Ebonyi, Edo, Ekiti, Enugu, Gombe, Sokoto, G Taraba, Imo, Jigawa, Katsina, Kebbi, Kwara, Kogi, Nasarawa, Niger, Ogun, Osun, Oyo, Rivers and Zamfara States.

The further and better particulars required are legion. They are 51 in number. I should reproduce them in their length:

"1. *The time when election materials arrived in each of the 21 local government areas in Anambra State.* H

2. *Names of the electoral officer who received the said material in each of the 21 local government areas.*

3. *Name of the person who physically witnessed the commencement of actual voting in each of the polling units in all the local government areas of Anambra State on the day of the presidential election.*
- B 4. *The time when election materials arrived in each of the local government areas in Bauchi State.*
5. *Names of the electoral officer who received the said material in each of the local government areas.*
- C 6. *Name of the person who physically witnessed the commencement of actual voting in each of the polling units in all the local government areas of Bauchi State on the day of the presidential election.*
7. *The time when election materials arrived in each of the local government areas in Bayelsa State.*
- D 8. *Names of the electoral officer who received the said material in each of the local government areas.*
9. *Name of the person who physically witnessed the commencement of actual voting in each of the polling units in all the local government areas of Bayelsa State on the day of the presidential election.*
- E 10. *The time when election materials arrived in each of the local government areas in Benue State.*
11. *Names of the electoral officer who received the said material in each of the local government areas.*
- F 12. *Name of the person who physically witnessed the commencement of actual voting in each of the polling units in all the local government area of Benue State on the day of the presidential election.*
- G 13. *The time when, election materials arrived in each of the local government areas in Cross River State.*
14. *Names of electoral officer who received the said material in each of the local government areas.*
- H 15. *Name of the person who physically witnessed the commencement of actual voting in each of the polling units in all the local government areas of Cross River State on the day of the presidential election.*
16. *The time when election materials arrived in each of the*

local government areas in Ebonyi State.

17. Names of electoral officer who received the said material in each of the local government areas.

18. Name of the person who physically witnessed the commencement of actual voting in each of the polling units in all the local government areas of Ebonyi State on the day of the presidential election. ^B

19. The time when election materials arrived in each of the local government areas in Edo State.

20. Names of electoral officer who received the said material in each of the local government areas. ^C

21. Name of the person who physically witnessed the commencement of actual voting in each of the polling units in all the local government areas of Edo State on the day of the presidential election. ^D

22. The time when election materials arrived in each of the local government areas in Enugu State.

23. Names of electoral officer who "received the said material in each of the local government areas.

24. Name of the person who physically witnessed the commencement of actual voting in each of the polling units in all the local government areas of Enugu State on the day of the presidential election. ^E

25. The time when election materials arrived in each of the local government areas in Gombe State. ^F

26. Names of electoral officer who received the said material in each of the local government areas.

27. Name of the person who physically witnessed the commencement of actual voting in each of the polling units in all the local government areas of Gombe State on the day of the presidential election. ^G

28. The time when election materials arrived in each of the local government areas in Sokoto State.

29. Names of electoral officer who received the said material in each of the local government areas. ^H

30. Name of the person who physically witnessed the commencement of actual voting in each of the polling units in all the local

government areas of Sokoto State on the day of the presidential election.

31. *The time when election materials arrived in each of the local government areas in Taraba State*

B 32. *Names of electoral officer who received the said material in each of the local government areas.*

33. *Name of the person who physically witnessed the commencement of actual voting in each of the polling units in all the local government areas of Taraba State on the day of the presidential election.*

C 34. *The time when election materials arrived in each of the local government areas in Imo State.*

35. *Names of electoral officer who received the said material in each of the focal government areas.*

D 36. *Name of the person who physically witnessed the commencement of actual voting in each of the polling units in all the local government areas of Imo State on the day of the presidential election.*

E 37. *Names and addresses of the agents of the petitioners who allegedly instigated hoodlums who set ablaze the 1st Respondent's office in Jigawa State.*

38. *The date on which the 4th respondent office was set ablaze.*

F 39. *Quantity of electoral material supplied in Katsina State, and quantity supplied in each of the local government areas of the state.*

40. *The time when election materials arrived in each of the local government areas in Kebbi State.*

G 41. *Names of electoral officer who received the said material in each of the local government areas.*

42. *Name of the person who physically witnessed the commencement of actual voting in each of the polling units in all the local government areas of Kebbi State on the day of the presidential election.*

H 43. *The time when election materials arrived in each of the local government areas in Kogi State.*

44. *Names of electoral officer who received the said material in each of the local government areas.*

45. *Name of the person who physically witnessed the commencement of actual voting in each of the polling units in all the local government areas of Kogi State on the day of the presidential election.*

46. *The time when election materials arrived in each of the local government areas in Nasarawa State.* B

47. *Names of electoral officer who received the said material in each of the local government areas.*

48. *Name of the person who physically witnessed the commencement of actual voting in each of the polling units in all the local government areas of Nasarawa State on the day of the presidential election.* C

49. *The time when election materials arrived in each of the local government areas in Rivers State.*

50. *Names of electoral officer who received the said material in each of the local government areas.* D

51. *Name of the person who physically witnessed the commencement of actual voting in each of the polling units in all the local government areas of Rivers State on the day of the presidential election.* E

I realize that a large number of the questions are really not for the 1st and 2nd respondents because they did not conduct the election. They only participated as candidates. The parties that the further and better particulars should have been addressed to, I know F but I will not say, the non-partisan Judge that I am and particularly at this interlocutory stage.

Learned Senior Advocate relied on paragraphs 20 to 22 of the Petition as basis for asking for further particulars. Let me quickly read them: G

"20. Before and during the election, the 5th Respondent exhibited acts of gross bias with impunity against the person and candidature of the 1st Petitioner including:

a. publicly calling the 1st Petitioner a 'frustrated politician';
b. falsely describing the 3rd Petitioner as an illegal organization H not having been registered by INEC;

c. after the Judgment in Suit No. FHC/ABJ/CS/03/07 pleaded in 16(iv) above, the 5th Respondent boasted that he will not comply

with the Judgment unless compelled by the Supreme Court;

d. in the course of processing the 1st Petitioner's nomination, the 5th Respondent falsely denied receipt of the 1st Petitioner's photograph required to be placed on the ballot paper when in actual fact same had been duly delivered.

B 21. *In addition to the specific instances of election malpractices stated above, the 4th Respondent abruptly announced postponement of the National Assembly election in several constituencies spanning 29 States of the Federation on the day of the election, thereby misleading eligible voters into believing that the Presidential Election*
 C *was equally postponed.*

22. *Your Petitioners state that the 1st Respondent did not score majority of lawful vote cast at the 21st April, 2007 Presidential Election by reasons of the facts pleaded in the preceding paragraphs of*
 D *this Petition which are herein repeated. Evidence shall be led by the Petitioners to show that the results credited to the 1st and 2nd Respondents were collated from unlawful votes recorded from the polling units to the collation centres."*

On a community reading of paragraphs 20 to 22 of the
 E ***Petition and Paragraph 21 of the Reply by the 1st and 2nd respondents, I come to the inescapable conclusion that the parties have clearly joined issues on clear issues and there is therefore no legal basis whatsoever for any further and better***
 F ***particulars. The issues in the dispute are so clear to me that the Court of Appeal will not run into any difficulties in deciding the matter one way or the other without further and better particulars.*** I am tempted to point out that Paragraphs 20 and 21
 G of the Petition are averments against the 5th and 4th respondents respectively. Where do the 1st and 2nd respondents fit in, I ask? I warn myself that I am concerned with an interlocutory appeal and I should so confine myself. ***I will not go further on the issue other than concluding that the further and better particulars are not necessary in the light of the fact that the parties have clearly***
 H ***joined issues on the matters.***

I think I have finished with Issue No 1. I should therefore move to Issue No 2. It is on the Order of the Court of Appeal granting the 4th to 808th respondents leave to call 213 additional witnesses. The

motion which resulted in the Order reads:

"(1) An Order granting leave to the Applicants to amend their reply to the petition by filing additional list of witnesses and witnesses' statements on oath as shown in the schedule thereto.

(2) An Order deeming the further list of witnesses and witnesses' statements hereto as regular duly filed and served.

(3) Any Further Order in furtherance of the above prayers."

The appellants have attacked the decision of the Court of Appeal from two angles. The first is the failure on the part of the 4th to 808th respondents to comply with paragraph 2 of the Practice Directions in the filing of a Reply. The second is that the Court of Appeal gave the respondents relief they did not seek in their 17th August, 2007 motion. I will take the issues seriatim.

I entirely agree with learned Senior Advocate for the appellants that paragraph 2 of the Practice Directions requires "the Respondents Reply to be a statement in summary form and shall be supported by copies of documentary evidence, list of witnesses and written statements on oath." Learned Senior Advocate for the 4th and 808th respondents submitted that the depositions were actually filed and were in the Registry and that failure to serve the documents on the appellants could be the fault of the Registry. That could be a point but I do not want to explore it. It is fairly slippery.

Assuming that learned Senior Advocate for the appellants is correct in the position he has taken on the conduct of the 4th to 808th respondents, should this court deal with the respondents in the way he has suggested? I do not think that the heavens will fall on the universe because the paragraph was not complied with. ***I take the non-compliance as an irregularity which is curable. And here, I entirely agree with counsel for the 4th to 808th respondents. It is not every non-compliance with rules of court that will vitiate the proceedings or do harm to the party in default. As a matter of our adjectival law, and by the state of the non-compliance rules, the courts will regard certain acts or conducts of non-compliance as mere irregularity which could be waived in the interest of justice. Again, as a matter of our adjectival law, non-compliance rules in their aggregate content point more to this trend than the reverse position of a***

punitive nature against the non-complying party. The state of the law is more in favour of forgiving non-compliance with rules of court, particularly, when such non-compliance, if waived, will be in the interest of justice.

The basic principle of law is that it is the object of the court to decide the rights of the parties and not to punish them for mistakes they make in the litigation process, particularly when the mistakes are really mistakes. It is a known fact that blunders must take place in the litigation process and because blunders are inevitable, it is not fair, in appropriate cases, to make a party in the blunder to incur the wrath of the law at the expense of hearing the merits of the case. Rules of Court, which include here Practice Directions, are not intended to be ridiculously applied to a slavish point particularly if such an application will do injustice in the case.

In *Eboh v. Akpotu* (1968) 1 All NLR 220, Coker, JSC, said;

"It is not every irregularity that can nullify entire proceedings and it may well be open to a party claiming by virtue of an irregularity to contend that such irregularity does not materially affect the merits of the case or engender a miscarriage of justice."

Rules of Court are meant to be obeyed. Of course, that is why they are made. There should be no argument about that. But there is an important qualification or caveat and it is that their obedience cannot or should not be slavish to the point that justice in the case is destroyed or thrown overboard. The greatest barometer, as far as the public is concerned, is whether at the end of the litigation process, justice has been done to the parties. Therefore, if in the course of doing justice, some harm is done to some procedural rule which hurts the rule, such as paragraph 7 of the Practice Directions, the court should be happy that it took that line of action in pursuance of justice. This court cannot myopically or blindly follow the Practice Directions and fall into a mirage and get physically and mentally absorbed or lost. Let that day not come.

The mere fact that the application was brought by the 4th to 808th respondents to call additional witnesses is clear that a mistake was committed somewhere when only two witnesses, were put in the

list of witnesses. Should this court punish the respondents for their mistake in such a big way of refusing them to call 213 witnesses? The answer is, No. That will be justice in inverted commas. That will be injustice. And I cannot sit in this court to do injustice.

I am in entire agreement with the Court of Appeal when the court held that full opportunity should be given to parties in the interest of justice without due regard to technicalities. Gone are the days when courts of law were only concerned with doing technical and abstract justice based on arid legalism. We are now in days when courts of law do substantial justice in the light of the prevailing circumstances of the case. It is my hope that the days of the courts doing technical justice will not surface again.

And what is more, election petitions are sui generis and should be treated in that domain or realm. If courts of law are bound to do substantial justice in ordinary civil matters, how much less in an election petition. I should take the question to another level or layer and it is this. If tribunals are bound to do substantial justice in election petitions, how much less, a Presidential Election petition in which the whole country of Nigeria is one constituency. I do not think that the Court of Appeal was wrong in giving one extra kilometre to accommodate the 4th to 808th respondents. The court did a good job and I commend the Justices.

Let me take the last issue. Learned Senior Advocate for the 4th to 808th respondents called our attention to the affidavit in support of the motion to call 312 witnesses. The affidavit in support of the motion reads in part:

"5. That at the lime the reply was filed many sworn statements of the witnesses were not ready because the said witnesses were dispersed throughout the nation and it was extremely difficult to reach them and obtain their statements. Many of them had travelled out of their stations and we had to await their return.

6. That all the said statements are now ready and are here shown to me and constitute the bundle of documents marked Exhibit 'A'. That I am informed by Senator Kanu G. Agabi, (CON), SAN, the lead Counsel of the Consortium of Lawyers and I verily

believe him that the statements on oath of the witnesses intended to be included will greatly assist the Tribunal in arriving at a just decision and they relate solely to the facts pleaded in the reply.

7. That it is in the interest of justice that the further list of witnesses and their statements on oath be admitted by this Honourable Court.

8. That the interest of the Petitioners or the other Respondents will not be jeopardized if leave is granted to add to the list of witnesses and witnesses' statements on oath"

I entirely agree with the submission of learned Senior Advocate for the 4th-808th respondents that the view of the Court of Appeal on the matter "was supported by all the facts before the court as made out in the affidavit in support of the application." Paragraphs 5, 6, 7 and 8 of the affidavit in support clearly vindicate the position taken by learned Senior Advocate. The paragraphs have explained the reason why the sworn statements of the witnesses were not ready at the time the Reply was filed. If the appellants are not satisfied with the reasons, I am. So too the Court of Appeal. And so, why the storm or furore?

I have reproduced the motion above and it is clear that the motion was for filing additional list of witnesses and witnesses' statements on oath as shown in the schedule thereto. The only quarrel of the appellants is the words "to amend their reply to the petition", because the Court of Appeal, rightly in my view, held that the motion was not to amend the reply but to call additional witnesses. The position taken by the appellants, with respect, is too technical for my liking. The court is bound to examine the substance of the motion and nothing else. The court must pursue the substance and not the shadow. The substance of the motion is to file additional list of witnesses and witnesses statements on oath. The shadow is the inclusion of the words:" to amend their reply to the petition." I choose or pick the substance. I drop and disregard the shadow.

The further list of witnesses and witnesses' statements were duly filed and served and so the appellants were not mis-

led by the words "amend their reply to the petition". I am therefore with the Court of Appeal when it granted the motion. I reproduce part of Ruling of the court at the expense of prolixity, and it is good for emphasis, particularly in the light of the submission of learned Senior Advocate for the appellants:

"In a presidential election petition of this magnitude, it is in the interest of justice that parties are given full opportunity to ventilate their cases without due regard, to technicalities. Since the list of witnesses and their statements on oath were all filed in the registry of this court on the 17th of August, 2007, they are properly, before the court and accordingly I grant leave to the applicants to call additional witnesses whose statements on oath were duly filed on the 17th of August, 2007 and they are deemed properly filed and served today."

In the light of the above, the cases cited in paragraphs 3.37 to 3.48 are inapposite. I do not agree with learned Senior Advocate that the Court of Appeal drifted into the realm of sentiments when it held that in a presidential election every opportunity should be given to parties to ventilate their grievances. The Court of Appeal is very correct. I do not see any sentiment. As a matter of fact, the statement justifies the law that election petitions are sui generis.

In sum, the first appeal succeeds in part. It succeeds in respect of the administering of interrogatories on Professor Maurice Iwu. It fails in respect of seeking for further and better particulars from the 1st and 2nd respondents the second appeal fails in its entirety. It is ordered that interrogatories be administered on Professor Iwu as couched in the 27 questions mentioned above for him to provide answers. In this judgment, I have given all the parties the right to be heard. That is the meaning of admitting the interrogatories for Professor Iwu to answer and allowing the 4th to 808th respondents call 213 additional witnesses. I think that is justice. It is justice according to law and not justice built on sentiment. I am not addressing the appellants here. By this, I have vindicated their constitutional right to fair hearing. That is good, very good indeed. I make no order as to costs.

OGUNTADE JSC

This Court consolidated two appeals for hearing in this matter. The first appeal arose from the order of the court below on which refused the appellants leave to file interrogatories against 5th respondent and for further and better particulars against 1st and 2nd Respondents. The second appeal arose out of the order made by the court below granting the 4th to 806 ' Respondents extension of time to file 213 additional witnesses statements on oath.

In the lead judgment of my learned brother Tobi. JSC, he has discussed why the second appeal challenging the extension of time to file additional witnesses' statement on oath must fail. I entirely agree with him and would adopt his reasoning as mine. In addition to the reasons given in the lead judgment, I wish to say that it is now belated to seek to excise from the record of the court below the evidence let into the proceedings of the court below following the ruling now being challenged. The court below would appear to have granted the 4th to 808n Respondents an underserved indulgence considering their failure to file their Reply within the period allowed under the Electoral Act, 2006. But I consider it unwise and inopportune at this stage to make an order which would substantially unsettle the proceedings of the court below in relation to 213 witnesses' statements on oath.

In relation to the first appeal, it is my humble view that the court below was in error to have refused the application of the petitioners/appellants to deliver interrogatories requiring the 5th Respondent to answer some questions. Paragraph 5 of the First Schedule of the Electoral Act, 2006 provides:

"5. Evidence need not be stated in the election petition but the Tribunal or court may order such further particulars as may be necessary:

- (a) to prevent surprise and unnecessary expense;*
- (b) to ensure fair and proper hearing in the same way as in a civil action in the Federal high Court; and*
- (c) on such terms as to costs or otherwise as may be ordered by the Tribunal or court;"*

It is important that I stress here that paragraph 5 of the First Schedule to the Electoral Act, 2006 reproduced above is in its effect superior to the Election Tribunal and Court Practice Directions 2007 issued by the President of the Court of Appeal. It seems to me that anything contained in the Election Tribunal and Court Practice Directions 2007 which conflicts with the provisions of paragraph 5 above must be discountenanced. The clear intendment of paragraph 5 above is that justice and fair hearing be given to parties in election petitions. This explains why paragraph 5(a) above uses the words "to prevent surprise" and 5(b) "to ensure fair and proper hearing".

The said paragraph 5 directs the hearing in an election petition be conducted in the same way as in a civil action in the Federal high Court. Now Order 33 Rule 1 of the Federal high Court (Civil Procedure Rules) 2000 provides:

"1. (1) After the close of pleadings in any cause or matter any party by leave of court or Judge in chambers may deliver interrogatories in writing for the examination of any other party or parties and those interrogatories when delivered shall state clearly which of the interrogatories each of the parties is required to answer.

(2) Interrogatories which do not relate to any matter in question in the cause or matter shall be deemed irrelevant, notwithstanding that they might be admissible on the oral cross-examination of a witness."

Now in paragraphs 4, 5, 6 and 7 of the affidavit in support of the application for leave to deliver interrogatories, one Kola Olowookere, of counsel for the Petitioners/Appellants deposed thus:

"4. That I know as a fact that pleadings have closed in this petition and that the Petitioners have filed their Replies to the Replies to the petition filed by all the Respondents.

5. That I am equally aware that upon the close of pleadings parties are at liberty to seek leave of court to administer interrogatories on their opponents, or to ask for further and better particulars of the pleadings filed by opposing parties where same is vague or did not adequately condescend upon, particulars.

6. That the 4th - 808th Respondents have indicated through their list of witnesses attached the reply, their intention not to call any of the 4th - 808th Respondents, as witnesses in support of their de-

fense.

7. *That as a result the Petitioners/Applicants wish to administer interrogatories on the 5th Respondent in respect of matters peculiarly within his knowledge which are relevant to the just and expeditious determination of the petition filed herein. Attached herewith and marked Exhibit 'A' is a copy of the interrogatories intended for the 5th Respondent to answer."*

`In paragraphs 14 and 15 of the plaintiffs/appellants' petition it was pleaded thus:

"14. *Your Petitioners state that the Presidential Election held on 21st of April, 2007 was vitiated by acts of unlawful exclusion, widespread corrupt practices, bias and partiality; your Petitioners also state that the result of the Election was substantially affected by non-compliance with the provisions of the Electoral Act, 2006.*

15. *The grounds in which this Petition is based are:*
(a) the 1st Petitioner was validly nominated by the 3rd Petitioner but was unlawfully excluded from the election;

Alternatively That: -

(b) the election was invalid by reason of corrupt practices;
(c) the election was invalid for reason of non-compliance with the provisions of the Electoral Act, 2006 as amended; and
(d) the 1st Respondent was not duly elected by the majority of lawful votes cast at the April 21, 2007 Presidential Election."

And further in paragraph 17(vii), (viii), (xv), (xvii), (xviii) and (xix) of the said petition it was pleaded thus:

"(vii) The ballot papers used for the April 21, 2007 Presidential Election were without serial numbers, without counterfoils and were not in booklet form as prescribed by the Electoral Act, 2006 and INEC Election Manual.

(viii) In consequence, it became impossible to trace or audit ballot papers issued (used and unused) by the 4th Respondent for the purpose of the election throughout the Federation.

(xv) Your Petitioners aver that the electoral materials were not made available to most of the states of the Federation, local government, wards and polling units, by the 4th Respondent, its agents and officers, on the 21st of April, 2007 for the Presidential Election, thereby denying majority of the electorate the right to vote for candi-

dates of their choice in general and the 1s' Petitioner in particular.

(xvii) Your Petitioners further aver that some of the electoral materials actually arrived Nigeria in the evening of Friday, 20th April, 2007 from the Republic of South Africa thereby making it logistically impossible to distribute to the various polling units, wards, local governments and the states of the Federation before the date fixed for the election.

Reliance will be placed on South African Newspaper, Mail & Guardian of April 26 to May 3rd, 2007.

(xviii) Your Petitioners aver that some other of the electoral materials was flown into Nigeria on the day of the election by private chartered flight.

(xix) Your Petitioners will contend at the trial of this Petition that with the terrain and remoteness of many local government, areas and states of the Federation, coupled with the fact that there was need to sort out the materials for distribution, such election materials could not have been distributed and were not so distributed by the time fixed for the election."

When the facts pleaded above are related to the questions raised on the interrogatories; it becomes apparent that the answers sought to the questions were meant to prove at the trial the facts pleaded by the petitioners in their petition. Questions 1 to 15 on the interrogatories read:

"1. Did you award afresh contract for printing of ballot papers for the Presidential election, less than 5 days to the date of the election?"

2. If, yes, did you not award the said contract to a company in South Africa after the company originally contracted, declined on the ground that the delivery deadline was unrealistic if the ballots must carry serial numbers, and in booklet forms with counterfoils?"

3. If you deny that the contract was re-awarded to a different company less than 5 days to the election for reasons stated in question No, 2, what was the reason for re-awarding the printing contract less than 5 days to the date of the Presidential election?"

4. Did you not agree with the second company that printed the ballot papers less than five days to the election to print same without serial numbers and booklet forms with counterfoils?"

5. *If you answer No to question number 4, have you annexed to the said answer your contract documents evidencing the terms on which the ballot papers were to be printed?*

6. *When (date and time of arrival) were the ballot papers air-freighted to Nigeria, on which airline and in what quantity?*

B 7. *Did you obtain a destination inspection report before taking delivery of the ballot papers?*

8. *Have you annexed copies of the destination inspection report of each such delivery to your answer?*

C 9. *How many days did it take INEC to take full delivery of the ballot papers from the airport?*

10. *By what means did you ascertain the total number of ballot papers supplied by the contractor in South Africa?*

D 11. *Did the ballot papers used in the Presidential election of 21st April 2007, have serial numbers, or counterfoils and made in booklet forms?*

E 12. *How many ballot papers did you supply to each of the Resident Electoral Commissioners in each of the following States for the conduct of the Presidential election, namely: Anambra, Adamawa, Bauchi, Benue, Cross River, Ebonyi, Edo, Ekiti, Enugu, Gombe, Imo, Jigawa, Katsina, Kebbi, Kwara, Kogi, Nasarawa, Niger, Ogun, Osun and Zamfara.*

F 13. *If you indicate the figures of ballot papers supplied to each resident electoral commissioner in respect of the States listed in question No. 10, above, have you supplied the Form EC.40 duly signed by the commissioners and/or witnessed by party agents in respect of the supply of such ballot papers to each State?*

G 14. *Do you have record of true identity by name of the Electoral officers who received the ballot papers, the quantity received by the electoral officer and the time of receipt, as well as evidence that such receipt was witnessed by party agents other than the agents of peoples Democratic Party?*

H 15. *If you answer yes, can you give, and if so have you supplied, the names of the other Party agents and their Parties apart from PDP who witnessed the distribution and delivery of the said ballot papers in each Local government Area of the States listed, in question No. 10 above."*

In refusing the petitioners/appellants' application, the court below in its ruling on 25/09/07 said:-

"I have listened to the learned senior counsel on all sides and I thank them for their industry. I am of the view that the answers being required by interrogatories and particulars sought can easily be ascertained from witnesses during the hearing of the petition. In an election matter anything that will impede speedy trial must be avoided. In the circumstances, I refuse the application and it is hereby dismissed"

I think with respect that their Lordships of the court below were in error on their conclusion. They failed to consider the purpose sought to be achieved by the application for the delivery of interrogatories. There is no doubt that there was the necessity to hear this case expeditiously. But the ends of justice ought not to be sacrificed just because of the desirability to have the case disposed of speedily

The principles to be borne in mind when considering whether or not to allow interrogatories include:

(1) The right to interrogate is not confined to the facts directly in issue but extends to any facts the existence or non-existence of which is relevant to the existence or non-existence of the facts directly in issue - see *Marriot v. Chamberlain* (1886) 17 QBD. 154 at 163; *Nash v. Layton* (1911) 2 Ch. 71 at 76 and 83; *Osram Lamp Works Ltd. V. Gabriel lampCo.* (1914) 2 Ch. 129.

(2) It is not necessary that answers to interrogatories be conclusive on the question at issue. It is enough that they have some bearing on the question and that they might help in establishing liability. See *Blair v. Haycock Caddle Co.* (1917) 34 T.L.R. 39 t.l.

(3) Interrogatories are not limited to giving a plaintiff that which he does not already know, but include the getting of admission of anything which he has to prove on any issue which is raised between him and the defendant: See *Attorney-General v. Gaskell* (1882) 20 Ch.D at 528.

(4) In short, interrogatories are admissible which go to support the applicant's case or to impeach or destroy the opponent's case. See *Plymouth Mutual Co-operative Society v. Traders Publishing Association* (1906) 1.K.B 416 and. *Sounders v. Jones* (1877) Ch.D.

I would like to say here that a more widespread use of interrogatories in our system in Nigeria will in fact aid the speedy dispensation of justice because answers are delivered by affidavit evidence which puts the persons upon whom they are delivered at the risk of being commuted for perjury if he does not truthfully and fully answer the questions.

The 5th Respondent is the Chairman of INEC who conducted the Presidential elections in Nigeria on 21-04-07. Given his important office it is obvious that if the delivery of interrogatories was allowed, the answers on oath would have been conclusive on some of the issues arising from the Petition. The relevant information on these questions could only be obtained from the 5th respondent. As the 5th Respondent was shielded from answering the questions as to whether or not election materials were imported too late into Nigeria to ensure their distribution across the country, how then could it be determined whether or not there was compliance with the provisions of the Electoral Act, 2006 as to the necessity to ensure that all eligible persons were allowed to vote?. It seems to me that quite apart from the immediate or direct interest of the parties to this case, there is the need to ensure that all relevant evidence is given to ensure that justice is seen to be done and in order to ensure that future elections are made better.

The contention of 1st and 2nd Respondents' counsel that the Election Tribunal and Court Practice Directions have stipulated the proper practice to be followed in election matters and that allow the delivery of interrogatories after there has been a front-loading of affidavit evidence would negate the said practice directions would amount in my view to giving the said practice directions a precedence over the express provisions of the law in Paragraph 5 of the 1st Schedule of the Electoral Act, 2006. With respect to counsel, his submission on the point is untenable. I reject it.

In the final conclusion I would allow the first appeal partially and make an order that the petitioners/appellants be allowed to deliver to the 5 respondents the interrogatories filed and that 5th respondent should provide answers to the aforementioned interrogatories. I am unable to make an order for further and better particu-

lars against the 1st and 2nd respondents. I also dismiss the second appeal challenging the order made by the court below permitting the 4th to 808th respondents file 213 additional witnesses statement on oath.

I abide in all respects with the orders made in the lad judgment by my leaned brother, Tobi JSC. B

MOHAMMED JSC

I was privileged before today, to have read the judgment of my learned brother Niki Tobi, J.S.C., which he has just delivered. For the cogent reasons given in that judgment, I am in complete agreement with him in the manner the Preliminary Objection and the issues arising for determination in the consolidated appeals were dealt with and resolved. I adopt the judgment as mine in allowing the 1st appeal in part and in dismissing the other part together with the 2nd Appeal as lacking in merit. D

I abide with the order on costs in the said judgment.

TABAI JSC

On the 14/11/2007, this Court consolidated the two appeals before us. The appeals are against the two rulings of the Court below on the 25/9/2007. The first ruling was sequel to an application filed on the 20th of August 2007. It had two prayers. The first sought the leave of the court for the Petitioners/Appellants to serve interrogatories on the 5th Respondent in terms of the questions formulated in the interrogatories. They were altogether 27 questions so formulated. The second relief sought an order of the court directing the 1st and 2nd Respondent to supply Further and Better Particulars on the facts alleged to be relied upon in proof of the allegations contained in paragraph 21 of their joint Reply. The particulars sought were 51 in number. The 1st and 2nd Respondents filed a 9 paragraph counter affidavit. They also raised a preliminary objection challenging the competence of the application. The Petitioners/Appellants filed a Reply to the Preliminary objection. Briefs were filed and oral arguments taken. F G H

By its ruling on the 25/9/07 the court below refused the application in its entirety. The court, per Ogebe JCA said:

"I have listened to learned Senior Counsel on all sides and I thank them for their industry. I am of the view that, the answers, being required by the interrogatories and particulars sought for in this application can easily be ascertained from witnesses during the hearing of the petition. In an election matter, anything that will impede speedy trial must be avoided. In the circumstances, I refuse the application and it is hereby dismissed."

The second ruling was in response to a motion filed on or about the 17/8/07. It prayed for an Order granting leave to the 4th-808th Respondents/Appellants to amend their Reply to the Petition by filing additional list of witnesses and witness's statements on oath. In paragraphs 6, 7 and 8 of the 9 paragraph affidavit in support of the motion, it was deposed:

"6. That all the said statements are now ready and are, here shown to me and constitute, the bundle of documents marked Exhibit "A"

7. That if is in the interest of justice that the further list of witnesses and their statements on oath be admitted by this Honourable Court.

8. That the interest of the Petitioners or the other Respondents will not be jeopardized if, leave is granted or add to the list of witnesses and witnesses' statements on oath."

The Petitioner/Appellants opposed the application and filed a counter affidavit of 20 paragraphs. Oral and written submissions were made. By its ruling on the 25/9/07 the court below allowed the application. In part of the ruling the court below, per Ogebe JCA said:

"In a presidential election petition of this magnitude it is in the interest, of justice that, parties are given full opportunity to ventilate their cases without due regard to technicalities. Since the list of the witnesses and their statements on oath were all filed in the registry of this court on the if of August 2007 they are properly before the court and accordingly I grant leave to the applicants to call additional witnesses whose statements on oath were duly filed on the 17th of August 2007 and they are deemed properly filed and served today....."

The parties through their counsel filed and exchanged their

briefs of arguments. The Appellants formulated two issues for determination. They are:

(1) Whether the Petitioners/Appellants motion for leave to administer interrogatories on the 5th Respondent and Further and Better Particulars from 1st and 2nd Respondents was rightly refused by the lower court in the light of the decision of this Court cited but ignored in the ruling. B

(2) Whether the lower court acted without jurisdiction when it granted 4th-808th Respondents leave to call additional witnesses notwithstanding that no such prayer was canvassed by the 4th-808th Respondents before their Lordships; and the time mandatory prescribed for such an application was not sought. C

On behalf of the 1st and 2nd Respondents the following two issues for determination were submitted:

(1) Whether the lower court was right in refusing the application for interrogatories. D

(2) Whether the lower court was right in granting 4th - 808th Respondents leave to call additional witnesses for their defence.

For the 4th - 808th Respondents, the following two issues for determination were presented; E

(1) Whether it was within the jurisdiction of the Court below to grant leave for the 4th - 808th Respondents to call additional witnesses and whether the discretion was properly exercised in the instant case. F

(2) Whether the Petitioners/Appellants motion for leave to administer interrogatories on the 5 Respondent and further and better particulars from the 1st and 2nd Respondents were rightly refused by the court below. G

Both the 1st and 2nd Respondents and the 4th 0 808th Respondents raised preliminary objection to the competence of the appeals. One of the grounds for the objection is that in view of the steps taken by the parties in the proceedings and the fact that the trial is concluded it would be a mere academic exercise to determine the two issues in the proceedings. In support of this objection learned Senior Counsel for the 1st and 2nd Respondents cited *Government of Plateau State v. A.G of the Federation & Anor.* (2006) 3 NWLR H

(Part 967) 346 at 419. On the issue learned Senior Counsel for the 4th - 808th Respondents cited *Onochie v. Udogwu* (2006) 6 NWLR (Part 975) 65 at 99; *Baker Marine Ltd v. Chevron* (2006) 26 NSCQR (Part 2) 1121 at 1137. The second ground for the objection was raised by the 4th - 808th Respondent. It is that the appeals being
 B interlocutory appeals are incompetent since no leave was sought and obtained before they were filed. Reliance was placed on *U.B.N. v. Marcus* (2005) 23 NSCQR 1 at 11; *Orubu .v NEC* (1988) 5 NWLR (Part 94) 323; *Madubuchukwu v. Madubuchukwu* (2006) 10 NWLR
 C (Part 989) 475 at 494-496. It was submitted that the grounds of appeal in the two consolidated appeals are at best grounds of mixed law and fact because they question the exercise of discretion by the lower court.

Section 233(1) of the 1999 Constitution of the Federal Re-
 D public of Nigeria provides to the effect that an appeal from the decision of the Court of Appeal in any civil or criminal proceedings shall lie as of right to the Supreme Court where the ground of appeal involves questions of law alone. And this is irrespective of whether the decision is final or interlocutory. Thus where the ground of ap-
 E peal against the decision, whether final or interlocutory, involves questions of law alone and it is filed within the time stipulated by the Rules of Court, the appeal is competent. See *Mohammed v. Olawunmi* (1990) 2 NWLR (Part 133) 458. No leave is required in such a case.
 F The grounds of appeal contained in the Notice of appeal filed on the 4/10/07 are in my view grounds of law alone requiring no leave. It is my conclusion therefore that this arm of the preliminary objection fails.

With respect to the steps taken by the parties at the lower court
 G and the stage of the proceedings thereat, I must say that I am not persuaded by the arguments submitted by learned Senior Counsel for both sets of Respondents. On the 17/8/07 and the 20/8/07 when the appeals were filed there was no problem of the appeals being merely academic. Can it be seriously contended that an appeal which
 H was competent at the" time of filing-turns out eventually to be incompetent because of the stage of the proceedings at the lower court. I am not aware of any authority and none was cited to us on this point. The Court below and indeed the parties are, under the consti-

tutional arrangement, bound by and must abide the decision of this court or any appellate court for that matter in any pending appeal.

All the arguments about abuse of court process are completely misconceived. The two appeals cannot in any conceivable sense be described as abuse of court process.

In conclusion I hold that the preliminary objections fail and are accordingly dismissed. B

With respect to the appeals let me start with the 2nd appeal. The submission of learned Senior Counsel for the Appellants is that the application itself was misconceived and that despite the lower court's finding about the misconception it went ahead to exercise its discretion to grant the application. It was further submitted that the time for filing the witnesses and witnesses' dispositions had expired and rather than an application for extension of time to file same they sought leave to amend. It was argued that the lower court suo motu granted a prayer that was not sought. C D

In their reaction learned Senior Counsel for the 1st and 2nd Respondents submitted that the application called for the lower court's exercise of its discretionary powers and contended that there is no proof that the discretion was not exercised judicially and judiciously. E

I agree that the list of witnesses and witnesses' statements on oath were filed outside the time stipulated by law. I also agree that the application was not appropriately couched. The lower court appreciated and noted these but went ahead to grant the application. I have in this judgment reproduced above paragraphs 6, 7 and 8 of the affidavit in support of the motion. The substance of the depositions is that the depositions of 213 witness were ready and contained in the bundle of documents marked Exhibit "A" attached to the affidavit; that the application was in the interest of justice and not prejudicial either to the Petitioners/Appellants or to the other Respondents. F G

I have also reproduced above the Statement of Ogebe JCA. The text shows, that he was demonstrably persuaded by the desire to avoid technicalities in favour of substantial justice, And in her own contributory Ruling, U.M. Abba-Aji JCA remarked at pages 727 - H 728 of the record thus:

"While it is a fact that the application has its own flaws, nonetheless it is in the interest of Justice that the matter be heard on its

merit it is only on this overriding interest of justice that this application is granted. Consequently, leave is hereby granted to the 4th - 808th Respondents to file additional list of witnesses and their dispositions. The list and the depositions shall be deemed to have been properly filed today. This is without prejudice to the petitioners to file additional list of witnesses as well"

The above also shows the consideration upon which the lower court exercised its discretion to grant the application. The 4th - 808th Respondent was by the application and the ruling granted liberty to defend as best as they can. I am therefore reluctant to interfere with the lower courts discretion in the matter. Besides, the Appellants failed to show that they were prejudiced by the ruling of the court below.

For the foregoing and the fuller reasons contained in the leading judgment of my learned brother Tobi JSC I shall dismiss the 2nd appeal.

I now come to the first appeal. It has two facets. The 2nd of them sought 51 further and better particulars from the 1st and 2nd Respondents in view of their pleading in paragraph 21 of their reply. Although in the said paragraph 21 of their reply, the 1st and 2nd Respondents made assertions about the regularity of the elections in all the states, they are not in a position to produce the further and better particulars sought. In my view the application ought to have been directed at the 4th and 5th Respondent. I hold, in the circumstances that the application in that respect was rightly refused by the court below.

As respects the application for leave to deliver the interrogatories, I took time to study the 27 of them. In my consideration the answers to these questions are peculiarly within the knowledge of the 5th Respondent. Interrogatories and the answers should be put in evidence by the party who wishes to rely on them, and admissions made in a reply to interrogatories are conclusive of the facts admitted. See *Jamaledirie v. FR.I.R.* (Unreported) FSC 396/66 of 9/2/68 and *Federal Public Trustees v. Akinwunmi* (Unreported) FSC 95/1960 at 22/7/60.

I do not agree with the reasoning of the court below that the answers being sought by the interrogatories can easily be ascertained from witnesses during the hearing of the petition. It is my view that

the application with respect to interrogatories was wrongly refused. It ought to have been allowed.

In view of the foregoing considerations and the fuller reasons contained in the lead judgment of my learned brother Tobi JSC I also allow the appeal with respect to the application for interrogations. The appeal with respect to further and better particulars fails and is hereby dismissed. And as I already stated above the 2nd appeal is dismissed in its entirety.

I make no orders as to costs.

MUHAMMAD JSC

On the 14th day of November, 2007, this court granted leave for the consolidation of the two interlocutory appeals from the court of appeal sitting in Abuja delivered at the pre-hearing session in the presidential election petition before that court. The first of the two appeals is against the ruling of the court below refusing petitioner's application to administer interrogatories on 5th respondent and for further and better particulars against the 1 and 2 respondents. The second appeal is against the ruling of the court below granting leave to the 4th - 808th-respondents to file list and statements on oath of 213 additional witnesses.

In this court, parties filed and exchanged briefs of arguments. Learned counsel for the appellant distilled the following two issues for our consideration, viz:

"1. whether the petitioners/appellants' motion for leave to administer interrogatories on 5th respondent and further and better particulars from 1st and 2nd respondents were rightly refused by the lower court in the light of the decision of this court cited to but ignored in the ruling, Grounds 1, 2, 3 and 4. Hereinafter referred to as appeal No. 1

2. Whether the lower court acted without jurisdiction when it granted 4th - 808th respondents leave to call additional witnesses notwithstanding that no such prayer was canvassed by the 4th - 808th respondents before their Lordships; and the time mandatory prescribed for such an application was not sought, (Grounds 1, 2 and 3 of the Notice of Appeal) Hereinafter referred to as appeal No. 2."

In the joint brief of the 1st and 2nd respondents; learned SAN for the 1st and 2nd respondents Chief Olanipekun, raised and argued a preliminary objection against the hearing of the two appeals. He later formulated two issues for the determination of the appeal. These issues are:

B *"1. Whether the lower court was right in refusing the application for interrogatories?"*

2. Whether the lower court was right in granting 4th - 808th respondent leave, to call additional witnesses for their defence?"

C Learned counsel for the 3rd respondent formulated 2 issues:

"A. Whether the Lower Court was right in refusing the application by the petitioners/appellants for leave to administer interrogatories on the 5th respondent and refusing the request for further and better particular from 1st and 2nd respondents.

D *B. Whether the lower court was right in granting the application for leave by the 4th - 808th respondents to file list of additional witnesses' statement under oath out of time?"*

4th - 808th respondents' learned senior counsel Mr. Nwaiwu formulated the following issues:

E *"(a) Whether appeal lies as of right or at all from an interlocutory decision of the Court of Appeal made in the course of hearing a presidential election petition and if not whether this Honourable Court can entertain this appeal, filed without leave, either of the court of appeal or the supreme court.*

F *(b) Whether this appeal has become academic or hypothetical having been rendered nugatory or futile by the proceedings in the court below which have since reached address stage and may soon be adjourned for judgment with the full participation of the Appellants who have since closed their case?"*

Chief Nwaiwu, SAN, earlier on, raised a preliminary objection to the hearing of the appeal.

Permit me my Lords to consider the preliminary objections raised The 1st preliminary objection raised is that of 1st and 2nd respondents:

"TAKE NOTICE that the 1st and 2nd respondents hereby raised objection to the competence of the two appeals and urge this Honourable court to strike them out."

Ground of the objection

1. Since the ruling in the two motions leading to the two appeals, the appellants had taken steps by leading witnesses and tendering several thousands of documents in proof of their cases which the -appellants had sought at the lower court. The defence had equally opened and closed their case and written addresses ordered by the court,

2. It will become a mere academic exercise to determine the two issues arising from the two appeals as copious evidence have been led by both parties relating to this in which parties have been given time to file addresses awaiting adoption on 28/1/08."

The 2nd preliminary objection is that of the 4th - 808th respondents and it reads:

"NOTICE OF PRELIMINARY OBJECTION TO THE HEARING OF THE APPELLANTS' CONSOLIDATED APPEALS AGAINSTS:

1. Ruling of the court of appeal refusing leave to the petitioners/appellants to file interrogatories against the 5th respondent and seek further and better particulars against 1st and 2nd respondents.

2. Ruling of the court of appeal granting extension of time, to the 4th - 808th respondents to file 213 additional witnesses' statements on oath."

The grounds upon which the latter preliminary objections were based are that:

1. No leave of court was sought and obtained before filing the appeals

2. The issues in these appeals have become academic and hypothetical

3. These appeals constitute an abuse of judicial process.

I have carefully considered all the submission of both learned senior counsel on their respective preliminary objections and I come to the followings conclusions:

1. That the appellants have every right to serve interrogatories to the 5th ' respondents, if in their opinion they cannot get better answer(s) from any person apart from the 5th respondent.

2. That no leave of court was required to file the Notice of appeal. I have had a look at the four grounds of appeal. They are, in

my view, grounds of law. The law is trite that where a ground is that of law, it can sustain an appeal without any leave. Even where the appeal is interlocutory as in this one, no leave shall be required for filing the appeal as all the grounds are of law. It was stated in *Nwadike v. Ibekwe* (1987) 4 NWLR (Pt.67) 718 that the position of the law is that once grounds of appeal against an interlocutory decision are of facts or mixed law and facts it can only be filed in this court with leave of either the court below or this court, see *a/so: Lekwot v. Judicial Tribunal* (1993) 2 NWLR (Pt.276) 410.

3. This appeal is not an abuse of any court process as it is never shown that same issues are being considered by any other court simultaneously.

I therefore dismiss both preliminary objections. I would rather consider the appeal on its merit.

On the 2nd appeal, I will sustain the 1st ground of the 1st and 2nd respondent's grounds and the 2nd ground of the 4th - 808th respondent's grounds. This means that the 2nd appeal has now become otious, academic and not worthy of being pursued and should be dismissed.

I shall now consider the issues formulated by the appellant: Issue 1 is on interrogatories- Interrogatories have been defined to be a set or series of written questions or questionnaire drawn up for the purpose of being propounded to a party, witness, or other persons having information of interest in the case. It is a pre-trial discovery device consisting of written questions about the case submitted by one party to the other party or witness. The answers to the interrogatories are usually given under oath, i.e. the person answering the questions signs a sworn statement that the answers are true, (see B. A. Garner. (1995) *A Dictionary of Modern Legal Usage* 2nd Edition p. 463; *Blacks Law Dictionary*, sixth ed, Page 819). In the case of *Famuyide v. R. C. Irvinq & Co. Ltd.* (1992) 7 NWLR (Pt.256) 639, this court stated the object of interrogatories as follows:

"The object of interrogatories is to enable a party to obtain an admission from the other party and to relieve himself from the necessity of adducing evidence."

In their supporting affidavit sworn to by one Olowookere, the appellants deposed to the following facts;

"4. That I know as a fact that pleadings have closed in this petition and that the petitioners have filed their replies to the replies to the petition filed by all the respondents.

5. That I am equally aware that upon the close of pleadings parties are at liberty to seek leave of court to administer interrogatories on their opponents, or to ask for further and better particulars of the pleadings filed by opposing parties where same is vague or did not adequately condescend upon particulars.

6. That the 4th - 808th respondents have indicated through their list of witnesses attached the reply, their intention not to call any of the 4th -808th respondents as witnesses in support of their defence.

7. That as a result the petitioners/appellants wish to administer interrogatories on the 5th respondent in respect of matters peculiarly within his knowledge which are relevant to the Just and expeditious determination of the petition filed herein. Attached herewith and marked EXHIBIT "A" is a copy of the interrogatories intended for the 5th respondent to answer.

8. The 1st and 2nd defendant have also made very vague allegation of facts in paragraph 21 of their reply to the petition, and it is in the interest of justice that the petitioners seek further and better particulars of the allegation in order to effectively meet the case against them at the trial. Attached herewith and marked Exhibit 'B' is the request for further and better particulars from the 1st and 2nd respondents, (see pages 606-670 of the records)."

The set of interrogatories sought to be served on the 5th respondents were exhibited as Exh. 'A' to the application before the court below, They cover pages 618 - 622 of the second volume of the record of appeal. They pose such questions as:

"1. Did you award a fresh contract for printing of ballot papers for the presidential election, less than 5 days to the date of the election?"

2. If, yes, did you not award the said contract to a company in South Africa after the company originally contracted, declined on the ground that the delivery deadline was unrealistic if the ballots must carry serial numbers, and in booklet forms with counterfoils?"

3.If you deny that the contract was re-awarded to a different

company less than 5 days to the election for reasons stated in question No.2, what was the reason for re-awarding the printing contract less than 5 days to the date of the presidential election?

B *4. Did you not agree with the second company that printed the ballot papers less than five days to the election to print same without serial numbers and booklet forms with counterfoils?*

5. If you answer No to question number, 4 have you annexed to the said answer your contract documents evidencing the terms on which the ballot papers were to be printed?

C *6. When (date and time of arrival) were the ballot papers air-freighted to Nigeria, on which airline and in what quantity?*

7. Did you obtain a destination inspection report before taking delivery of the ballot papers?

D *8. Have you annexed copies of the destination inspection report of each such delivery to your answer?*

9. How many days did it take INEC to take full delivery of the ballot papers from the airport?

10. By what means did you ascertain the total number of ballot papers supplied by the contractor in South Africa?

E *11. Did the ballot papers used in the presidential election of 21st April, 2007, have serial numbers, or counterfoils and made in booklet forms?"*

F Looking at the nature of the questions as exemplified above, I do not think, as did the court below, that answers to such questions can easily be ascertained from witnesses during the hearing of the petition. I agree with the learned SAN for the appellant, Professor Kasunmu that the 5th respondent, who was sought to be interrogated, is the Chief Electoral Commissioner and Returning Officer at G the Presidential Election who officiated at the election. He filed no counter affidavit to the motion and did not participate at the pre-hearing. Worse still, he is not a listed witness to be called at the trial. It then follows, naturally, that the facts sought to be interrogated which relate directly to 5th respondent's acts in the conduct of the election H cannot be answered by any other person apart from the 5th respondent. This procedure will certainly narrow down the issues in controversy and will facilitate in the quick and early disposal of the petition. It is not a novel practice. This court, in *Famiyade v. Irving's_ & Co.*

Ltd. (supra), stated, per Karibi-Whyte; as follows:

"After the pleadings of the parties it is generally allowed to put questions to the opponent for the purpose of extracting information as to the facts material to the questions between them which the party interrogating has to prove on any issues raised between them, or for the purpose of securing admissions as to those facts to avoid delay and save costs. It is also allowed to enable the opponent find out whether the particular averment in the pleadings of the party interrogation who has the burden of proof are true or untrue and also to ascertain the case he has to meet. In essence the interrogatory is aimed at' ascertaining the real issues, so as to prevent surprise. It also enables the person, interrogating to reveal the case of the person interrogated, or to elicit facts in support of the case of the person interrogating."

Thus, the object of the interrogatories is more than an "at-tempt" on the part of the petitioners to make an issue out of the internal administration of the INEC, as submitted by learned senior counsel for the 4th - 808th respondents. It is certainly aimed at eliciting vital questions relating to the presidential election conducted which is now being tussled out legally before the court below. The court below ought to have granted leave to the appellants to conduct their interrogatories in relation to the 5th respondent's role in the said election. I will therefore allow the appeal on this aspect of the 1st issue.

On the 2nd aspect of the 1st issue i.e. the refusal of the court below to order 1st and 2nd respondents to supply the petitioners with further and better particulars. Relief No.2 of the motion on Notice filed by the appellants on 20th August, 2007 reads as follows:

"2. AN Order directing the 1st and 2nd respondents to supply Further And Better Particulars of the facts alleged to be relied upon in proof of the allegations contained in paragraph 21 of their joint reply as per the terms of request for further and better particulars set out in document attached to this application and marked as EXHIBIT 'B'."

The ground upon which the above relief was based reads as follows:

"2. The 1st and 2nd Respondents have made very vague allegation of facts in paragraph 21 of their reply to the petition, and it is

in the interest of justice that the petitioners seek further and better particulars of the allegations in order to effectively meet the case against them at the trial."

The 1st and 2nd respondents raised an objection challenging the competence of the Motion on Notice. In a short ruling, the court below held as follows:

"I have listened to the learned senior counsel on all sides and I thank them for their industry, I am of the view that the answers, being required by the interrogatories and particulars sought for in this application can easily be ascertained from witnesses during the hearing of the petition. In an election matter, anything that will impede speedy trial must be avoided. In the circumstances, I refuse the application and it is hereby dismissed."

Here again, looking at the nature of the questions put for further and better particulars, I agree with the court below that the answers required in this respect can be ascertained from witnesses during the hearing of the petition.

The general position of the law and legal practice is that the furnishing of particulars to a pleading is meant to eliminate the element of surprise being sprung on the opposite party to a case. It also enables the party to adequately prepare his defence or cross-examination of the witness. But where the particulars given by a party in his pleadings are insufficient under the rules of court, the court on its own initiative or on the application of any of the parties to the case, may order particulars of any claim, defence or any matter pleaded to be given since the function of particulars is to aid the operation of the basic principle that litigation should be conducted fairly, openly and without surprises as well as to reduce costs. There is nothing to prevent any of the parties from asking for particulars even after the statement of defence has been filed, and where a party omits to set out details, he ought to have given, and his opponent does not apply for particulars, he is entitled to give evidence at the trial of any fact which supports the allegations to the pleadings. See: *Nwachukwu v. Eneogwu* (1999) 4 NWLR (Pt.600) 629; *ABU v. Molokwu* (2003) 9 NWLR (Pt-825) 265. Thus, failure by a party to comply with an order to furnish further particulars to his pleadings will preclude the party so defaulting from leading evidence on the facts of which fur-

ther particulars is required. See: Nwachukwu v. Enoegwe (supra).

On the issue on hand, I do not think that the particulars requested to be furnished by the 1st and 2nd respondents can be taken to be within the possession or knowledge of the 1st and 2nd respondents. The 1st and 2nd respondents' position were that of presidential and vice presidential candidates presented by the 3rd respondent. Thus, questions such as:

"1. The time when election materials arrived in each of the 21 local government areas in Anambra State;

2. Names of the electoral officer who received the said material in each of the 21 local government areas;

3. Name of the person who physically witnessed the commencement of actual voting in each of the polling units in all the local government areas of Anambra state on the day of the presidential election;

4. The time when election materials arrived in each of the local government areas in Bauchi State;

5. Names of the electoral officer who received the said material in each of the local government areas;

6. Name of the person who physically witnessed the commencement of actual voting in each of the polling units in all the local government areas of Bauchi State on the day of the presidential election;

7. The time when election materials arrived in each of the local government areas in Bayelsa State;

8. Names of the electoral officer who received the said material in each of the local government areas;

9. Name of the person who physically witnessed the commencement of actual voting in each of the polling units in all the local government areas of Bayelsa state on the day of the presidential election

10. The time when election materials arrived in each of the local government areas in Benue state;

11. Names of the electoral officer who received the said material in each of the local government areas?"

I think, can only be competently answered by the 4th respondent which organized and conducted the election as scheduled, I do not see the relevance of such questions being put to the 1st and 2nd

respondents.

On appellants issue No.2, I already sustained some grounds of the preliminary objections raised by the 1st, 2nd and 4th -808th respondents and said I will dismiss this issue. I now dismiss this issue as lacking in any merit.

B On the whole, I allow the appeal on that part of appellants issue No.1 dealing with interrogatories. I dismiss the other part of the same issue dealing with supply of further and better particulars by the 1st and 2nd respondents to the appellants.

C For these and the fuller reasons of my learned brother, Tobi, JSC, I too allow the appeal partially. I remit the appeal to the court below to allow appellants administer their interrogatories to the 5th respondent to allow for a fair and just consideration of the matter in dispute. It is important that the case has to go a step backward. It is
D always better to err on the side of caution as justice rushed is justice denied. I abide by all consequential orders made by my learned brother, Tobi, JSC, in his leading judgment. I make no order as to costs.

E

F

G

H