

KINGS LAW REPORTS

(ALL SC/NOVEL CA)

(2008) KLR VOL 1 PART 247 pp. 237 - 480

JANUARY 2008

Dedicated to the King of kings

O. O. NOEL ESQ. Chief Editor

INDEX OF CASES REPORTED

JANUARY CONTD.

7. Amaechi v. Independent National Electoral Commission p. 237
8. Obi v. Independent National Electoral Commission p. 443
9. Tsokwa Motors (Nig) Ltd v. United Bank for Africa Plc p. 453

ii ***INDEX OF SUBJECT MATTER IN (2008) 1 KLR***

ACTIONS - Declarations - Are not made by Court - On admission or in default of defence - Without hearing evidence - But absence of viva voce evidence does not mean absence of evidence - Seeing that parties agreed to rely on undisputed documentary evidence (H11) Amaechi v. INEC p. 237

ACTIONS - Justiciability - Elections - Pre-election matter - Premised on breach of the Constitution and Electoral Act - Issue of wrongful substitution of party candidate - Court has a duty to enforce valid laws - A political party is bound by the Constitution and laws (H10) Amaechi v. INEC p. 237

ACTIONS - Proof - Pleadings - Cheques - Where evidence is given on a fact not pleaded - Defendant is not bound to respond - Plaintiff failed to prove its claim in this case (H5) Tsokwa Motors Ltd v. UBA Plc p. 453

APPEALS - Elections - Fresh evidence on appeal - Power of Court to receive - Basis under O. 1r. 19(2) Court of Appeal Rules - Include that the evidence should be credible - Lower court was wrong in receiving fresh evidence of previous judgment - And in relying on it in this case (H4) Amaechi v. INEC p. 237

APPEALS - Interference - Findings of fact - Will not be disturbed by appellate court - Save in certain circumstances - Including obvious error in appraisal of evidence (H4) Tsokwa Motors Ltd v. UBA Plc p. 453

APPEALS - Notice of appeal - Place of filing - Where filed in the Court of Appeal - Instead of court of trial as provided by O. 3 r. 2 (1) Court of Appeal Rules - It becomes voidable - And such non compliance can be waived under the rules (H1) Obi v. INEC p. 443

CONSTITUTIONAL LAW - Elections - Vide s. 221 of 1999 Constitution - Only political parties - Shall canvas for votes for any candidate - Thus, it is a party that wins or loses - For there is no individual candidacy (H14) Amaechi v. INEC p. 237

CONSTITUTIONAL LAW - Governor's immunity - S. 308 of 1999 Constitution - Purpose of - It cannot be relied upon - Where the res in dispute will be permanently destroyed - With the effluxion of time (H9) Amaechi v. INEC p. 237

CONSTITUTIONAL LAW - Governor's office - Eligibility - Crime - Fair trial - A citizen should not be found guilty of a crime - Without being given fair trial before a court - Mere finding of guilt by a tribunal - Without prosecution in court - Does not remove eligibility to Governor's office (H6) Amaechi v. INEC p. 237

CONSTITUTIONAL LAW - Governor's office - Eligibility of candidates - S. 182 (1)(i) of 1999 Constitution - Should be construed along with s. 36 - To avoid politicians using s. 182 - To hinder the emergence of their opponents (H5) Amaechi v. INEC p. 237

CONSTITUTIONAL LAW - Jurisdiction - Elections - Ss. 178 & 285 (2) of 1999 Constitution - Cannot be construed to destroy court's jurisdiction in pre-election matters - As related provisions of a law are not interpreted in isolation (H12) Amaechi v. INEC p. 237

CONSTITUTIONAL LAW - Supremacy - Elections - Political parties - Liberty to put up any candidate they deem fit - Is subject to the 1999 Constitution - And Electoral Act 2006 - Dalhatu & Onuoha cases are no longer applicable (H2) Amaechi v. INEC p. 237

COURT PROCESSES - Service - Non-service of process on a proper party - Will render proceedings null and void - But there is evidence of service in this case (H1) Tsokwa Motors Ltd v. UBA Plc p. 453

COURTS - Case file - Scrutinization of - Jurisdiction - Issue of - Was raised and canvassed before trial court - It was not raised suo motu by lower court - As wrongfully alleged (H2) Tsokwa Motors Ltd v. UBA Plc p. 453

COURTS - Damages - Double compensation - Where court has fully

iv ***INDEX OF SUBJECT MATTER IN (2008) 1 KLR***

compensated a victim of an injury under one head - It is not proper to award damages for same injury - Under another head (H6) Tsokwa Motors Ltd v. UBA Plc p. 453

COURTS - Justice - Technicalities - Let justice be done even if the heavens fall - Court can do what has never be done in any case - As adjudicatory power of the court - Will no longer be hindered by adherence to technicalities - (H13) Amaechi v. INEC p. 237

COURTS - Powers - Consequential reliefs - Though not claimed - Can be granted by the court - Towards stopping subversion of justice - So that though not claimed appellant is deemed - To be the winner of the election (H17) Amaechi v. INEC p. 237

CRIMINAL PROCEDURE - Crime - Investigation and prosecution of - Economic and Financial Crime Commission - Duty of - Is to prosecute before court of law - And not send case file to Government (H8) Amaechi v. INEC p. 237

CRIMINAL PROCEDURE - Guilt - Courts - Indictment by a judicial commission - Is not cognizable under the law - Without trial before a court - It is not permissible to find a person guilty (H7) Amaechi v. INEC p. 237

ELECTIONS - Candidates - Substitution - Political party's primary election results - Is binding on the parties vide s. 85 Electoral Act 2006 - Reason given for substituting appellant - Is untrue and unverifiable (H1) Amaechi v. INEC p. 237

ELECTIONS - Candidates - Substitution of - By a political party - Stating error as the reason - Did not meet requirement of s. 34 (2) of Electoral Act 2006 - That provided for cogent and verifiable reason - As held in Ugwu v. Araraume case (H3) Amaechi v. INEC p. 237

ELECTIONS - Nomination of candidates - Improper substitution by a political party - Demands that Court determines the valid candidate - Who merely steps into the shoes of the invalid candidate - To order

a new election is improper (H16) Amaechi v. INEC p. 237

ELECTIONS - Party primaries - Substitution of candidate - Where cogent and verifiable reason was not given - As provided by law - The change was never effected (H15) Amaechi v. INEC p. 237

PRACTICE & PROCEDURE - Appeals - Irregularity - Waiver - Where a party fails to promptly complain against a voidable error - He cannot do so at a time injustice will occur (H2) Obi v. INEC p. 443

STATUTES - Interpretation - Pending proceedings - Before Creation of State - Under s. 6 of the Decree - Is one that has progressed appreciably - So that starting de novo could be unjust (H3) Tsokwa Motors Ltd v. UBA Plc p. 453

SUPREME COURT - Judgments - Jurisdiction - To interfere with its final judgment - Falls within a very narrow compass - And cannot be invoked in this case (H3) Obi v. INEC p. 443

INDEX OF STATUTES & RULES

African Charter on Human Rights Cap. 10 LFN Art. 7(1)(a) Amaechi v. INEC p. 237

Constitution of Nigeria 1999 ss. 308, 285, 246, 233, 182, 36, 178, 221, 6 (6) (a), 137, 198 Amaechi v. INEC p. 237

Court of Appeal Rules 0.1 r. 19 (2) Amaechi v. INEC p. 237

Electoral Act 1982 Amaechi v. INEC p. 237

Electoral Act, 2006 ss. 32 (5), 34, 140, 85, 147, 144, 145, 1st Schedule para 27 Amaechi v. INEC p. 237

Evidence Act ss. 74, 73 Amaechi v. INEC p. 237

States (Creation and Transitional) Provisions (No.2) Decree No. 41 of 1991 s.6 Tsokwa Motors Ltd v. UBA Plc p. 453

Supreme Court Act s. 22 Amaechi v. INEC p. 237

Supreme Court Rules 0.8 rr. 16, 12 (2) & (5) Amaechi v. INEC p. 237