

SUPREME COURT OF NIGERIA

9TH MAY 2008 SC. 246/2007

**CORAM:- A. I. KATSINA-ALU, G. A. OGUNTADE, W. S. N.
ONNOGHEN, F. F. TABAI, I. T. MUHAMMAD, JJSC**

CHIEF EMMANUEL OSITA OKEREKE PETITIONER/
APPELLANT

AND

1. ALHAJI UMARU MUSA YAR'ADUA
2. DR. GOODLUCK JONATHAN
3. CHIEF RESIDENT RESPONDENTS
ELECTORAL COMMISSIONER
4. RESIDENT ELECTORAL
COMMISSIONER ADAMAWA STATE & 31 OTHERS

ELECTION PETITIONS - Procedure - Pre-hearing session - Failure to apply for - Under Election Tribunal and Court Practice directions 2007 - Failure to apply for pre-hearing session - As in the instant case - Robs court of all jurisdiction - Except that of dismissing the petition (H1)

ELECTION PETITIONS - Motions - Practice directions 2007 - Purport of paragraph 6 - Moving of motions are prohibited thereby - Except at pre-hearing sessions - Or where extreme circumstances are shown - Which is not the case herein (H2)

COURTS - Jurisdiction - Proceedings without - Effect of - No matter how well conducted - Proceedings by a court - That lacks jurisdiction - Over the relevant subject matter - Are a nullity (H3)

FACTS

On 21st May, 2007, Appellant, as petitioner petitioned the Court of Appeal holden in Abuja, under the court's original jurisdiction as the Presidential Election Tribunal, against the election/return of the 1st Respondent as President of the Federal Republic of Nigeria during the April 2007 Elections. It was the contention of the Appellant that the 1st and 2nd Respondents were at the time of their elec-

tion, as President and Vice President respectively, not qualified to contest election into those offices in that both of them were indicted for offences/breaches of law by Administrative panel of inquiry set up by Abia State Government on the activities of some persons and serving/past government functionaries between 1999-2007, which indictment was accepted by the Government of Abia State in its white paper. The petition was filed without the witness's written statement on oath contrary to the provisions of the Election Tribunal and Court Practice Direction 2007, made pursuant to Electoral Act 2006, which is the applicable Act to the 2007 general elections. On 18th July 2007 almost a month after filing the petition, Appellant filed a motion for an order to enable him furnish better and further particulars in the petition. This motion was withdrawn on 30th July 2007 and another motion of substantially identical terms filed on 8th August 2007.

Meanwhile, the 1st and 2nd Respondents had filed a Notice of Preliminary Objection on 23rd July 2007. The rest of the Respondents also filed Notices of Preliminary Objection on 2/8/07. Though the Practice Direction 2007 makes it mandatory for a petitioner to apply for pre-hearing session within 7 days of being served with respondent's reply, and for a respondent to make the application if the petitioner should fail to do so, neither the Appellant nor any of the Respondents made such application in respect of the petition in question. On 8th August 2007, the Tribunal took the Appellant's motion for better and further particulars, as well as the Notices of Preliminary Objection by the Respondents. The Tribunal dismissed the Appellant's motion and upheld the Preliminary Objections. It held that the Appellant's motion sought to substantially amend the petition and that such substantial amendment was both statute and time-barred. Hence Appellant has brought this appeal to the Supreme Court. He now contends that the Tribunal lacked jurisdiction to hear and determine the preliminary objections when it did.

ISSUE FOR DETERMINATION

"(i) Whether having regard to the provision of paragraph 6(1) of the Election Tribunal - Court Practice Direction. 2007. (No.1), the determination of the Motion on Notice and the Preliminary Objection by the tribunal was not without jurisdiction?"

HELD (Unanimously dismissing the appeal per **MUHAMMAD JSC**)
ELECTION PETITIONS - Procedure - Pre-hearing session

1. The Practice Directions must, from all intents and purposes be taken to form part and parcel of powers conferred on the Hon. President of the Court of Appeal by all the powers exercisable by him in that behalf, with a view to facilitating the tribunals or the court to dispose of electoral matters with the urgency they require.

As for the pre-hearing session and its requirements, the Practice Directions has provided the following:-

“3. pre-hearing session and scheduling:

(1) Within 7 days after the filing and service of the petitioner’s Reply on the respondent, or 7 days after the filing and service of the respondent’s Reply, whichever is the case, the petitioner shall apply for the issuance of pre-hearing notice as in Form TF007.

(2) Upon application by a petitioner under paragraph (1) above, the tribunal or court shall issue to the parties or their legal practitioners (if any) a pre-hearing conference notice as in Form TF007 accompanied by a pre-hearing information sheet as in Form TF008 for the purposes set out hereunder:

(a) Disposal of all matters which can be dealt with on interlocutory application;

(b) Giving such directions as to the future course of the petition as appear best adapted to secure its just, expeditious and economical disposal in view of the urgency of election petition;

(c) Giving directions on order of witnesses to be called and such documents to be tendered by each party to prove their cases having in view the need to expeditious disposal of the petition;

(d) Fixing clear dates for hearing of the petition.’

(3) The respondent may bring the application in accordance with sub-paragraph (1) above where the petitioner fails to do so, or by motion which shall be served on the petitioner and returnable in 3 clear days, apply for an order to dismiss the petition.

(4) Where the petitioner and the respondent fail to bring an application under this paragraph, the tribunal or court shall dismiss the petition as abandoned petition and no application for extension of time to take that step shall be filed or entertained.”

It has not been clear for me to decipher from the record of appeal, nor from the counsel's submissions whether all the steps stipulated above were followed by the parties, especially the petitioner/appellant. Secondly, sub-paragraph 4 of paragraph 3 as quoted above, makes it mandatory that where neither the petitioner nor the respondent files an application for a pre-hearing session, the tribunal or court is under a duty to dismiss the petition as abandoned and no application for extension of time to take that step shall be filed or entertained. Now, although the stipulation under sub-paragraph (4) of paragraph 3 of the Practice Direction, appears to me to be harsh on the petitioner by making an order for dismissal of the petition which forecloses any chance for him to represent the petition, it still had to be complied with by the tribunal or court as such steps are a condition precedent to the hearing of any matter in relation to the petition pending before the tribunal or court. Non-compliance thereof will strip off the tribunal or court of jurisdiction as one of the factors which confer jurisdiction on a court of law is not complied with. In the case of *Madukolu v. Nkemdilim* (1962) 1 All NLR 589, a court is said to be competent to determine a matter before it when the following are present:

- “(1) *If it is properly constituted with respect to the number and qualification of its membership;*
- “(2) *The subject matter of the action is within its jurisdiction;*
- “(3) *The action is initiated by due process of law; and*
- “(4) *Any action (condition precedent) to the exercise of its jurisdiction has been fulfilled.*”

Condition No. 4 above will be the determining factor as to the competence of the court below. (p. 2054 H)

ELECTION PETITIONS - Motions - Practice directions 2007

2. The motion and the objections were moved. The court below delivered its ruling on 20/8/2007, striking out the petition. At the risk of repetition, I need to quote once more, paragraph 6 of the Practice Directions:

- “6. *Motions and Applications!*
- (1) *No motion shall be moved. All motions shall come up at the pre-hearing session except in extreme circumstances with leave*

of tribunal or court.”

The paragraph above has made an outright prohibition of moving motions before the tribunal or court except if it is at the pre-hearing sessions or where extreme circumstances are shown and leave of the tribunal or court was sought and obtained. From the record of appeal, I fail to trace where such extreme circumstances were shown or where the court's leave was sought and obtained. I then wonder what was the basis upon which the court below relied to entertain the motion and the Preliminary Objection of the 1st and 2nd respondents in utter disregard to the provisions of the Practice Directions as contained in paragraph 6(1) above. Whatever was the basis, I think the law as set out earlier is that where any of the factors which entitle a court to assume jurisdiction is missing, that court lacks competence to adjudicate over the parties and the subject matter before it. (p. 2058 F)

Jurisdiction - Proceedings without - Effect of

3. Pre-trial sessions in the present dispensation are a condition precedent before a tribunal or court can proceed to entertain any election petition or matters relating thereto. The position of the law is trite that no matter how well conducted, where a court lacks the competence and jurisdiction to entertain a matter, the proceedings conducted thereon are a nullity.

I hold that the court below lacked competence and had no jurisdiction to entertain the Motion on Notice filed 08/08/07, by the petitioner and the Preliminary Objection filed by the 1st and 2nd respondents. The proceedings, including the ruling delivered on the 20th of March, 2007, are a nullity. They are hereby set aside. (p. 2059 C)

NOTABLE POINTS OF INTEREST **ONNOGHEN JSC**

1. *There is no alternative to statutory procedure*

It is settled law that where legislation lays down a procedure for doing a thing there should be no other method of doing it.

Paragraph 6(1) & (4) of the Election Tribunal and Court Practice Directions, 2007, provide as follows:-

“6 (1) No motion shall be moved. All motions shall come up at the pre-hearing session except in extreme circumstances with leave of the tribunal or court.

(4) Where the respondent to a motion intends to oppose the application, he shall within 7 days of the service on him of such application file his written address and may accompany it with a counter-affidavit.”

When then is the pre-hearing session?

It is clear from paragraphs 3(1) & (3) supra, that the tribunal or court does not, suo motu conduct or cause a pre-hearing session to be held. Such a session can only be held upon an application by either the petitioner or the respondent to the petition. In the instant case, both parties agree that no such pre-hearing session was applied for nor held though the applications determined by the lower court ought to have been determined at the pre-hearing session if one had been applied for and held. (pp. 2066 A/2067 C)

2. No extension of time to apply for pre-hearing

However, paragraph 3(4) supra, gives power to the lower court, where the petitioner and respondent fail to bring an application for pre-hearing session as in the instant case, to dismiss the petition as abandoned petition and that no application for extension of time to take that step i.e. apply for pre-hearing session, shall be filed or entertained. That is the law, though it may sound very harsh. It should however, be borne in mind that the provisions apply to election petitions in which time is of the essence.

Not only did sub-paragraph 4 of paragraph 3 supra, give the tribunal or court the power to dismiss the petition for the default, sub-paragraph of the said paragraph 3 makes the dismissal of the petition in the circumstances final.

In view of the facts of this case and by virtue of the powers conferred on this court by Section 22 of the Supreme Court Act, this court can and does assume the powers of the lower court conferred on that court by paragraph 3(4) supra and exercise same by dismissing the petition of the appellant for non-compliance with the provisions of the Practice Directions, 2007. (p. 2067 E)

TABAI JSC*3. Issue of jurisdiction not subject to statutes or rules of court*

The first flaw is that by his insistence on the applicability of paragraph 6(1) of the election Tribunal and Court Practice Directions, 2007, to the respondents' Preliminary Objection, he attempts to reduce a Preliminary Objection to the status of an ordinary motion under the Rules of Court like the appellant's motion for leave to amend and for further and better particulars. B

The two sets of applications are miles apart. A motion by which a respondent challenges the competence of a suit and thus the jurisdiction of the court, (otherwise called a Notice of Preliminary Objection) is a special procedure whereby the respondent contests the competence of a suit and jurisdiction of the court and if upheld has the effect of terminating the life of the suit by its being struck out. The Jurisdiction of all Superior courts of record is constitutional, some having been donated by the Constitution and cannot therefore be circumscribed or limited by any other Statute, let alone Practice Directions. The issue of jurisdiction cannot therefore be subjected to the dictates of any Statute, including Rules of Court. A party's right to raise the issue of jurisdiction is available to him at all times. C D E

And that gives credence to the immutable principle that the issue of jurisdiction can be raised at any stage of the proceedings at the court of trial or in the appellate courts. In paragraph 4.08 of the appellant's Brief, the appellant not only conceded the validity of this principle but also advocated its application to this case when he said: "it is further submitted that being a jurisdictional question it can be raised at any stage of the proceedings including an appeal." F

It is therefore a contradiction in terms for the self same appellant to argue in the same paragraph 4.08 and elsewhere in the Brief G that the Preliminary Objection by which the issue of jurisdiction is raised could only have been taken and determined at the pre-trial session." (p. 2072 G)

4. Practice direction is subject to rules of court H

There is still another aspect of the submissions of learned counsel for the appellant which needs some comments. For the purpose of giving force to his arguments, counsel referred variously to the Practice

as statutes or enactments. I think he got it wrong . Practice Directions do not, strictly speaking, qualify as statutes or enactments. They do not even stand equal footing with Rules of Court. They are ancillary to and therefore subordinate to Rules of Court. Consequently, in the event of a conflict between a Rule of Court and a Practice Direction the rule must prevail. I have taken the liberty to emphasis these relative strengths of a Rule of Court and a Practice Direction because of the appellant's undue projection of the latter as a statute.

It is perhaps necessary to refer to *University of Lagos & Anor. v. Aigoro* (1984) NSCC 745, where this court had cause to embark upon some comparative analysis of the Supreme Court Rules and Practice Directions made by the Chief Justice of Nigeria and at page 756 Said:-

"The Supreme Court Rules, 1977 is an enactment while the Practice Directions do not qualify as such. Consequently, a Practice Direction has no force of law and cannot fetter a rule of court such as Order 1 Rule 5 and cannot tie the court in the exercise of its discretion. Where there is a conflict between a Rule of Court and Practice Direction the Rule must prevail." (p. 2074 A)

5. *No substantial amendments after 30 days of election results*

Section 141 of the Electoral Act, 2006, provides:

"An election petition under this Act shall be presented within thirty (30) days from the date the result of the election is declared."

This means that all amendments substantial to the extend as indicated in paragraph 14(2)(a) must be made before the expiration of thirty days from the date the result of the election is declared. The application for amendment sought to add amongst others a new ground that "1st and 2nd respondents did not resign from their respective public offices 30 days to the time of their nomination by their party in December, 2006, contrary to Section 137(1)(g) of Constitution of the Federal Republic of Nigeria, 1999." This, no doubt, is a substantial alteration of the original petition within the context of paragraph 14(2)(a)(ii) above. The amendment also seeks to bring in the written deposition on oath of the petitioner which is not in the original petition. This again, is another substantial addition to or alteration of the original petition as envisaged in paragraph 14(2)(a)(ii)

of the 1st schedule to the Electoral Act.

Amendments of this substantial nature can only be sought and granted before the expiration of thirty days from the date the result of the election was declared. Although the date the result of the election was declared is not indicated anywhere in the application, it was some time before the 21/5/2007, when this petition was filed. This motion for amendment was filed on the 8/8/2007 - over two and a half months from the date the petition was filed. It is clearly outside the period stipulated for amendments. In the premise, I fully endorse the opinion of the court below that the motion having been brought more than two months after the declaration of the result of the presidential election held on the 21/4/07, is statute barred and was rightly struck out for incompetence. (p. 2078 E)

6. *Petition without written deposition is invalid*

Paragraph 4 of the 1st schedule to the Electoral Act provides for the contents of an election petition. Paragraph 4(1)(a)-(d) provide as follows:-

“4(1) An election petition under this Act shall:-

‘(a) specify the parties interested in the election petition;

(b) specify the rights of the petitioner to present the election petition;

(c) state the holding of the election, the scores of the candidates and the person returned as the winner of the election; and

(d) state clearly the facts of the election petition and the grounds on which the petition is based and the relief sought by the petitioner.”

Paragraph 4(2), (3), (4) and (5) specify other contents of an election petition. And paragraph 4(6) provides:-

“An election petition which does not conform with sub-paragraph 1 of this paragraph or any paragraph of that sub-paragraph is defective and may be struck out by the tribunal or court.”

As I stated earlier in this judgment, the Practice Directions, 2007, are ancillary to the Electoral Act, 2006. They are complementary to the provisions of the 1st schedule to the Electoral Act and specially designed to meet the need for urgency in election matters. Thus, it is the combination of paragraph 4(1)-(5) of the 1st schedule of the Act and paragraph 1(1) of the Practice Directions that consti-

tute the complete contents of an election petition. Specifically paragraph 1(1)(b) of the Practice Directions provides for the proof of evidence by which the petition can be proved. The requirement is mandatory. The petition as presently constituted is without the witness's written statement on oath. In other words the petition is bare skeleton of a petition without the flesh to sustain it. It does not meet the requirements of the two provisions of paragraph 4(1)(d) of the 1st Schedule to the Electoral Act, and paragraph 1(1)(b) and 1(i) of the Practice Directions. The result is that the petition filed on the 21/5/07, is incompetent for non-compliance with the Electoral Act.
C (pp. 2079 D/2080 B)

REPRESENTATION

Prince Orji Nwafor Orizu, (with him; Chief Tagbo Ike and Ohafoagu D C. L), for the Appellant.

Dr. Alex Izinyon, SAN., (with him; D.D. Dodo, SAN., Chinedu Umeh, Hannatu Abdurahman, T. Gbashima, Festus Jumbo and Bello Abu), for the 1st and 2nd Respondents.

Kanu Agabi, SAN., (with him; Amaechi Nwaiwu, SAN., C.U. Ekomaru, E Okon Efut, I.C. Acholonu, B. Osawe, A. Abdullahi, E. Agabi. P. Osagiede, J. Ochogwu, O.M. Enebeli and Ezekiel Dygas), for the 3rd - 35th Respondents.

CASES REFERRED TO

- F Galadima v. Tambia (2000) 6 S.C. (Pt. 1) 196 at 206 - 207
Owoniboys Technical Services Ltd, v. John Holt Ltd. (1991) 7 S.C. (Pt. II) 161; (1991) 6 NWLR (Pt. 199) 550
Ezomo v. Oyaklaire (1985) 1 NWLR (Pt. 2) 195
G Madukolu v. Nkemdilim (1962) 1 All NLR 589
Okafor v. A.G. Anambra State (1991) 7 S.C. (Pt. II) 138; (1991) 6 NWLR (Pt. 200) 659
C.C.B Plc. v. The Attorney-General of Anambra State (1992) 10 SCNJ 137 at 163
H Nugu Sani Ibrahim v. INEC (1999) 8 NWLR (Pt. 614) 334; at 352, General Muhammadu Buhari & Anor. v. Alhaji Muhammadu Diko Yusuf (2003) 6 S.C. (Pt. II) 156; (2003) 4 NWLR (Pt. 841) 446 at 498

Gulaudu v. Kama (2005) All FWLR (Pt. 288) 119

Madukolu v. Nkemdilim (1962) 1 All NLR 587 at 596

STATUTES & RULES REFERRED TO

Electoral Act, 2006, and Election Tribunal and Court Practice Directions 2007 made thereunder

Supreme Act, Cap 15, LFN, 2004, s. 22

Federal High Court (Civil Procedure) Rules 2000, O. 26 rr. 6 & 7, O. 27 r. 1, O. 47 r. 1

LEAD JUDGMENT BY MUHAMMAD JSC

The relevant facts in this appeal are that the appellant as petitioner at the lower court, filed his election petition containing four grounds challenging that the 1st and 2nd respondents were not qualified to contest election into the offices of the President and Vice-President of the Federal Republic of Nigeria in that both were at the time of the election disqualified by their respective indictments by an Administrative Panel of Inquiry set-up by Abia State Government. He prayed for an order cancelling or nullifying the return or election of the 1st and 2nd respondents as aforesaid and prayed further, that the 35th respondent, (INEC) be ordered to conduct fresh and/or bye election into the two highest offices of the land.

The 1st and 2nd respondents filed a memorandum of conditional appearance, a Notice of Preliminary Objection, etc, on 23/7/07. The 3rd-35th respondents filed a Notice of Preliminary Objection on 2/8/07.

On 8/8/07, the petitioner/appellant filed a Motion on Notice, seeking the lower court's order for him to furnish better and further particulars to his petition, among others.

The lower court took together the petitioner's Motion on Notice of 8/8/07; 1st and 2nd respondents' Notice of Preliminary Objection of 23/7/07 and the 3rd-35th respondents' Notice of Preliminary Objection of 8/8/07.

After taking submissions by learned counsel for the respective parties, the lower court sustained the Notices of Preliminary Objection and struck out the petition for being incompetent.

Aggrieved with the lower court's decision, the petitioner (now

appellant before this court) filed his appeal to this court.

All the parties filed and exchanged Briefs of Argument including Reply Briefs (where necessary) as required by this court's Rules. The appellant distilled four issues for determination. They are as follows:-

B *“(i) Whether having regard to the provision of paragraph 6(1) of the Election Tribunal - Court Practice Direction. 2007. (No.1), the determination of the Motion on Notice and the Preliminary Objection by the tribunal was not without jurisdiction? (Distilled from ground one).”*

C *“(ii) Whether on the state of affidavit evidence by the petitioner, the tribunal reached a correct conclusion of law in its application of Section 14 to the Electoral Act, 2006, that all the amendments sought were statute and time-barred. (Distilled from grounds 2 and 4).”*

D *“(iii) Whether the tribunal's conclusion that the petition did not comply with provision of paragraph 4(1)(d) of the 1st schedule to the Electoral Act, 2006 and paragraph 1 (1)(a),(b),(c) and (2) of the Election Tribunal and Court Practice Directions, 2007, is not in total disregard of the documents filed before the tribunal and the contents of the petition as filed. (Distilled from ground 5).”*

E *“(iv) Whether the tribunal below properly directed itself as to cause of action in the petition having regard to paragraph 4(1) of the petition before it? (Distilled from ground six).”*

F 1st and 2nd respondents formulated three issues. They are as follows:-

G *“(1) Whether the Presidential Election Petition tribunal lacked the jurisdiction to hear and determine the Notice of Preliminary Objection filed by the 1st and 2nd respondents?”*

H *“(2) Whether the appellant's petition is not incompetent for failure to comply with the mandatory provisions of paragraphs 4 (1)(d) of the 1st schedule to the Electoral Act, 2006 and paragraph 1(b) of the Election Tribunals and Courts Practice Directions, 2007, and whether such fundamental breach can be aimed by way of amendment outside the period stipulated in Section 141 of the Electoral Act, 2006?”*

“(3) Whether by not averring to facts in support of the grounds

of the election petition, the petition did not fail to disclose a cause of action?"

3rd - 35th respondents formulated three issues. They are as follows:-

"(1) Whether the lower court had the jurisdiction to determine the Preliminary Objection of the 1st and 2nd respondents dated 23rd July, 2007, at the stage, and at the time it did. (based on ground 1 of the grounds of appeal)

(2) Whether the lower court was right to refuse the petitioner/appellant's motion which sought to effect a substantial alteration of the grounds and prayers of the petition, (based on grounds 2 and 4 of the grounds of appeal).

(3) Whether the lower court was right in dismissing the petition for non-compliance with mandatory provisions of paragraph 4(1) (d) of the 1st schedule to the Electoral Act, and paragraph 1(1)(a), (b), (c) and 2 of the Election Tribunal and Court Practice Directions, (2007) (based of (sic) grounds 5 and 6 of the grounds of appeal)."

All the parties to this appeal agree in their respective Briefs of Argument that issue one from each of the Briefs is premised on jurisdiction of the lower court to determine the Preliminary Objection of the 1st and 2nd respondents dated 23rd July, 2007, at the stage and time it did.

From the arguments marshalled by learned counsel for the appellant, Prince Orji Nwafor Orizu, Esq., of the Briefs, the bone of contention and upon which pungent submissions were made by him is that:-

"(a) The issue is a challenge to the jurisdiction of the lower court which it lacked to determine the Preliminary Objection.

(b) The issue did not raise the question of competence of the petition before that court.

(c) The main grouse of the appellant under the issue is as summarised below:-

'(1) The proceedings in relation to the Preliminary Objection was that the tribunal was sitting as the Presidential Election Petition Tribunal and Not a pre- hearing session.

(ii) Paragraphs 6(1) & (4) of the Election Tribunal and Court

Practice Directions, provide that no motion shall be moved. All motions shall come up at the pre-hearing session except in extreme circumstances with leave of the tribunal or court.

(iii) *The determination by the tribunal below, sitting as a tribunal instead of the pre-trial session is without jurisdiction and therefore null and void.”*

Both learned senior counsel for the 1st and 2nd respondents, Chief Olanipekun, SAN., and that for the 3rd - 35th respondents, Kanu Agabi. Esq., SAN., each on his part argued that:-

(i) *The tribunal below rightly assumed jurisdiction when it heard the objection of the respondents, determined same and consequently dismissed the petition of the appellant.*

(ii) *The provision of paragraph 4(1)(d) of the 1st schedule to the Electoral Act, 2006, (as amended) and paragraph 1(1)(b) of the Election Tribunal and Court Practice Directions, 2007, were not complied with/ violated by the appellant which rendered his petition incompetent and robbed the said tribunal of jurisdiction to hear and determine the petition.*

(iii) *Objection to the competence of a petition must be raised as soon as the defect is discovered (the 1st and 2nd respondents raised the objection before the tribunal timeously.*

Issue of competence of the petition borders on jurisdiction and it can be raised at any stage of the proceedings and once raised it must be heard and determined first by the tribunal. Cases in support were cited such as Ishola v. Ajiboye (1994) 6 NWLR (Pt.352) 506 at pp. 578 - 579 - H-A, 7UP Bottling Co. v. Abiola & Sons (2001) 6 S.C. 73: (2001) 13 NWLR (Pt.730) 469 at 513-514.

(iv) *The distinction between sitting of the court below as a tribunal and it's sitting at a pre-hearing session is like asking the difference between six and half a dozen. What is paramount is that the court at the time it determined that objection was properly constituted as a court or tribunal as required by the law establishing it and the tribunal below was properly constituted in law and fact when it heard and determined the objection.*

(v) *The issue of competence of a petition being jurisdictional can be raised at any stage of the proceedings whether at pre-hearing or outside pre-hearing. Referred to Ishola v. Ajiboye (supra). ”*

Learned SAN., for the 3rd -35th respondents toed the same line of argument. He however made the following additions:-

“(i) definition of “pre-trial.”

“(ii) That the ordinary grammatical meaning of that expression should be applied in determining whether the “session” in which the Preliminary Objection was argued and determined in the context of paragraph 6(1) of the Practice Direction, 2007, was pre-trial or post-trial or at trial. It was submitted that the processes were taken when actual trial was yet to commence, thus, it was pre-trial.

“(iii) A Preliminary Objection connotes an objection taken prior to commencement of trial proceedings in the instant case, it was an objection taken during the pre-trial or pre-hearing session and in full compliance with the provisions of the Election Tribunal and Court Practice Directions, 2007.”

As it has been seen from the facts which gave rise to this appeal, the whole matter had to do with the election of the President and Commander-in-Chief of the Federal Republic of Nigeria and his Vice during the election conducted on 21st April, 2007. Pursuant to the powers conferred upon him by Section 285(3) of the Constitution of the Federal Republic of Nigeria, 1999 and paragraph 50 of the First Schedule to the Electoral Act, 2006 and by virtue of other powers enable him in that behalf, the Hon. President of the Court of Appeal issued out on the 29th day of March, 2007, “Election Tribunal and Court Practice Directions, 2007”. The Practice Directions shall apply to the Presidential, Governorship, National Assembly and States Assembly Election Petitions. The conferment of powers on the Court of Appeal to assume original jurisdiction to hear and determine election petition in respect of elections to the offices of the President of the Federation and his Vice, is provided by Section 239 of the Constitution of the Federal Republic of Nigeria. The section states:-

“239(1) Subject to the provisions of this Constitution, the Court of Appeal shall to the exclusion of any other court of law in Nigeria, have original jurisdiction to hear and determine any question as to whether-

“(a) any person has been validly elected to the office of President or Vice-President under this Constitution; or

(b) the term of office of the President has become vacant.’

(2) in the hearing and determination of an election petition under paragraph (a) of subsection (1) of this section, the Court of Appeal shall be duly constituted if it consists of at least three Justices of the Court of Appeal."

B In reference to the Electoral Act, 2006, a "tribunal" is defined as "an Election Tribunal established under this Act or the Court of Appeal." On rules of procedure for the tribunal or court. Section 151 of the Electoral Act, (hereinafter referred to as "the Act") provides that the rules of procedure to be adopted for election petitions and C appeals arising therefrom shall be those set out in First Schedule to the Act. An Election Petition means any election petition under the Act including election petition which challenges the validity of election of persons into the office of the President and Vice-President of the Federal Republic of Nigeria.

D Paragraphs 50 and 51 of First Schedule to the Act provide as follows:-

"50. Subject to the express provisions of this Act, the practice and procedure of the tribunal or the court in relation to an election petition shall be as possible, similar to the practice and procedure of E the Federal High Court in the exercise of its civil jurisdiction, and the Civil Procedure Rules shall apply with such modifications as may be necessary to render them applicable having regard to the provisions of this Act, as if the petitioner and respondent were respectively the plaintiff and the defendant in an ordinary civil action."

F *51. Subject to the provisions of this Act, an appeal to the Court of Appeal or to the Supreme Court shall be determined in accordance with practice and procedure relating to appeals in the Court of Appeal or of the Supreme Court, as the case may be, regard being G had to the need for urgency on electoral matters."*

H Thus, according to the preamble of the Election Tribunal and Court Practice Directions, 2007, (referred to hereinafter as "the Practice Directions") which apply to election petitions for Presidential, Governorship, National and State Assemblies election, the Practice Directions, were made in exercise of the powers conferred on the Hon. President of the Court of Appeal by those provisions of the Constitution and by the Act set out earlier. **The Practice Directions must, from all intents and purposes be taken to form part and par-**

cel of powers conferred on the Hon. President of the Court of Appeal by all the powers exercisable by him in that behalf, with a view to facilitating the tribunals or the court to dispose of electoral matters with the urgency they require.

It is the requirement of paragraph 6(1) and (4) of the Practice Directions, that:-

“6 (1) No motion shall be moved. All motions shall come up at the pre- hearing session except in extreme circumstances with leave of the tribunal or court.

(4) Where the respondent to a motion intends to oppose the application he shall within 7 days of the service on him of such application, file his written address and may accompany it with a counter-affidavit. “

As for the pre-hearing session and its requirements, the Practice Directions has provided the following:-

“3. pre-hearing session and scheduling:

(1) Within 7 days after the filing and service of the petitioner’s Reply on the respondent, or 7 days after the filing and service of the respondent’s Reply, whichever is the case, the petitioner shall apply for the issuance of pre-hearing notice as in Form TF007.

(2) Upon application by a petitioner under paragraph (1) above, the tribunal or court shall issue to the parties or their legal practitioners (if any) a pre-hearing conference notice as in Form TF007 accompanied by a pre-hearing information sheet as in Form TF008 for the purposes set out hereunder:

(a) Disposal of all matters which can be dealt with on interlocutory application;

(b) Giving such directions as to the future course of the petition as appear best adapted to secure its just, expeditious and economical disposal in view of the urgency of election petition;

(c) Giving directions on order of witnesses to be called and such documents to be tendered by each party to prove their cases having in view the need to expeditious disposal of the petition;

(d) Fixing clear dates for hearing of the petition.'

(3) The respondent may bring the application in accordance with sub-paragraph (1) above where the petitioner fails to do so, or by motion which shall be served on the petitioner and returnable in 3 clear days, apply for an order to dismiss the petition.

(4) Where the petitioner and the respondent fail to bring an application under this paragraph, the tribunal or court shall dismiss the petition as abandoned petition and no application for extension of time to take that step shall be filed or entertained."

It has not been clear for me to decipher from the record of appeal, nor from the counsel's submissions whether all the steps stipulated above were followed by the parties, especially the petitioner/appellant. Secondly, sub-paragraph 4 of paragraph 3 as quoted above, makes it mandatory that where neither the petitioner nor the respondent files an application for a pre-hearing session, the tribunal or court is under a duty to dismiss the petition as abandoned and no application for extension of time to take that step shall be filed or entertained. Now, although the stipulation under sub-paragraph (4) of paragraph 3 of the Practice Direction, appears to me to be harsh on the petitioner by making an order for dismissal of the petition which forecloses any chance for him to represent the petition, it still had to be complied with by the tribunal or court as such steps are a condition precedent to the hearing of any matter in relation to the petition pending before the tribunal or court. Non-compliance thereof will strip off the tribunal or court of jurisdiction as one of the factors which confer jurisdiction on a court of law is not complied with. In the case of *Madukolu v. Nkemdilim* (1962) 1 All NLR 589, a court is said to be competent to determine a matter before it when the following are present:

"(1) If it is properly constituted with respect to the number and qualification of its membership;

(2) The subject matter of the action is within its jurisdiction;

**(3) The action is initiated by due process of law; and
(4) Any action (condition precedent) to the exercise of
its jurisdiction has been fulfilled.”**

See further: A-G Federation v. Guardian Newspaper Ltd.
(1999) 5 S.C. (Pt. II) 59; (1999) 9 NWLR (Pt. 618) 187 Alao v. Alao
(1985) 5 NWLR (Pt.45) 802.

**Condition No. 4 above will be the determining factor as
to the competence of the court below.** Thus, it was wrong in my
view, of the court below to go ahead to hear the motion and the
Preliminary Objections as filed by the parties.

Further, it is pertinent as well to look at paragraph 7 of the
Directions 2007, which provides:-

*“(7) At the pre-hearing session, the tribunal or court shall con-
sider and take appropriate action in respect of the following as may
be necessary or desirable;*

*‘(a) amendment and further and better particulars;
(d) hearing and determination of objections on point of law;
(i) such other matters as may facilitate the just and speedy
disposal of the petition bearing in mind the urgency of the election
petitions.”*

These steps, although they provide for treating of amendment
and further and better particulars; objections on point of law and
such other matters which may facilitate the just and speedy disposal
of the petition, were not followed by the court below. The motion
and the Preliminary Objections were simultaneously taken by the
court below sitting as a court entertaining the petition filed by the
petitioner. This too, I think, is wrong.

Now, turning to the motion filed by the petitioner. It is true that
it was moved before the court below. The Preliminary Objection filed
by the 1st and 2nd respondents was moved before the lower court
on 9/8/07. Below is what transpired in the court “below on 9/8/2007.

“Petitioner in court.

Chief T. Ike for petitioner/applicant.

*Chief W. Olanipekun with Y. Ali, SAN., and 20 others for the
1st and 2nd respondents.*

*Chief K. Agabi, SAN., for 3rd-35th respondents with O. O.
Uzzi and 8 others.*

Chief Ike: we have a motion filed on 8/08/07.

Chief Olanipekun: We filed a motion of Preliminary Objection which has been fixed for today. My learned friend has replied to it. It should take precedence by virtue par 49(5) of 1st schedule of Electoral Act, 2006.

B *Chief Agabi: we have an identical application. If the petitioner survives the objection, he can move his motion.*

Chief Ike: there is a conflict of law. The motion is to save the petition and it should be given priority over motion to strike out the
C *petition. See par 49(4) of 1st schedule which allow for amendment.*

Court: The motion fixed for hearing is the Preliminary Objection. The petitioner filed a motion yesterday to be allowed to provide better particulars to his petition. We shall take both applications together.

D *Chief Olanipekun: I will reply on points of law.*

Chief Agabi: I will reply on points of law.

Chief Ike: The motion filed yesterday is for order to allow petitioner to furnish better and further particulars, and leave to allow the petitioner to advance and rely on proposed documents. I rely on
E *the supporting affidavit and exhibit attached. I filed a written address filed on 8/08/07. I adopt it. I urge the court to allow the application.*

Chief Olanipekun: I oppose the application on following grounds of law.

F *Chief Agabi: I associate myself with submission of my learned brother, Olanipekun."*

What else can I say? **The motion and the objections were moved. The court below delivered its ruling on 20/8/2007, striking out the petition. At the risk of repetition, I need to**
G **quote once more, paragraph 6 of the Practice Directions:**

"6. Motions and Applications!

(1) No motion shall be moved. All motions shall come up at the pre-hearing session except in extreme circumstances with leave of tribunal or court."

H **The paragraph above has made an outright prohibition of moving motions before the tribunal or court except if it is at the pre-hearing sessions or where extreme circumstances are shown and leave of the tribunal or court was sought and ob-**

tained. From the record of appeal, I fail to trace where such extreme circumstances were shown or where the court's leave was sought and obtained. I then wonder what was the basis upon which the court below relied to entertain the motion and the Preliminary Objection of the 1st and 2nd respondents in utter disregard to the provisions of the Practice Directions as contained in paragraph 6(1) above. Whatever was the basis, I think the law as set out earlier is that where any of the factors which entitle a court to assume jurisdiction is missing, that court lacks competence to adjudicate over the parties and the subject matter before it. See the locus classicus case of *Modukolu v. Nkemdilim* (supra).

Pre-trial sessions in the present dispensation are a condition precedent before a tribunal or court can proceed to entertain any election petition or matters relating thereto. The position of the law is trite that no matter how well conducted, where a court lacks the competence and jurisdiction to entertain a matter, the proceedings conducted thereon are a nullity. See: *Achiakpa & Anor v. Nduka & Ors.* (2001) 7 S.C. (Pt. III) 125; (2001) 7 SCNJ 585, *International Bank for West Africa Ltd. v. Pavex International Co. (Nig.) Ltd.* (2000) 4 S.C. (Pt. II) 196; (2000) 4 SCNJ, 200, *Adesola v. Abidoye & Anor.* (1999) 10-12 S.C. 109; (1999) 12 SCNJ 61.

I hold that the court below lacked competence and had no jurisdiction to entertain the Motion on Notice filed 08/08/07, by the petitioner and the Preliminary Objection filed by the 1st and 2nd respondents. The proceedings, including the ruling delivered on the 20th of March, 2007, are a nullity. They are hereby set aside.

My Lords, in view of my holding above, and in view consequential orders I shall make hereinbelow, I do not consider the necessity or treating the remaining two issues i.e. issues (2) and (3) formulated by the appellant.

In the final result, I find no merit in this appeal and it is hereby dismissed. Accordingly, I make an order sinking out the motion and the Preliminary Objections filed on 8th of August, 2007, and on the 25th of July, 2007 and 2nd August, 2007, as incompetent. By the

provision of Section 22 of the Supreme Court Act, (Cap. Section 15, the Laws of the federation, 2004), which entitles me to exercise all those powers and jurisdiction that are exercisable by the lower court and as the lower court is empowered by paragraph 3(4) of the Practice Directions, to dismiss the petition where the petitioner and the
B respondent fail to bring an application for such dismissal, I hereby dismiss the appellant/petitioner's petition pending in the court below. I order each party to bear its own costs.

C

KATSINA-ALU JSC

I have had the advantage of reading in draft the judgment of my learned brother. I. T. Muhammad, JSC. I entirely agree with his reasoning and conclusion. There is nothing I can usefully add.

D

OGUNTADE JSC

I have had the advantage of reading in draft the leading judgment by my learned brother, Muhammad JSC. I agree with him that
E this appeal has no merit.

I would also dismiss it and make the same order as in the leading judgment.

F

ONNOGHEN JSC

This is an appeal against the ruling of the Court of Appeal holden in Abuja, in the exercise of its original jurisdiction as the Presidential Election Tribunal in election petition No. CA/EP/4/07, on the
G 20th day of August, 2007, striking out the said petition.

On the 21st day of May, 2007, the appellant, as petitioner petitioned the Presidential Election Tribunal, sitting at Abuja against the election/return of the 1st respondent as President of the Federal Republic of Nigeria following the 2007 presidential election on the
H following grounds:-

“(i) That the 1st & 2nd respondents were at the time of the said election not qualified to contest the election into the offices of the President and Vice-President of Federal Republic of Nigeria re-

spectively, in that both of them were indicted for offences/breaches of law by Administrative Panel of Inquiry set up by Abia State Government on the activities of some persons and serving/past government functionaries between 1999-2007 dated 21/ 2/07, and which indictment was accepted by the Government of Abia State in its white paper. The petitioner shall at the trial found upon the copy of the said white paper. B

(ii) The petitioner shall also at the trial lead evidence and contend that the election was invalid by reason of corrupt practices or non-compliance with the provisions of the Electoral Act. C

(iii) The petitioner further avers that at the trial he shall lead evidence and contend that he was validly nominated for the election but was unlawfully excluded at the said poll. "

The petitioner/appellant consequently claimed the following reliefs:- D

"1. A declaration that the 1st and 2nd respondents were not qualified to contest the offices of President and Vice - President of Federal Republic of Nigeria, in that both were at the time of the election disqualified by then respective indictments by Administrative Panel of Inquiry set up by Abia State Government in the wise of section 137(1)(d)(1) Constitution of the Federal Republic of Nigeria, 1999. E

2. A declaration that the omission or commission of the 35th respondent in removing the petitioner's Party Logo/Symbol in most of the States of the Federation and Federal Capital Territory amounts to unlawful exclusion at the presidential election held on 21st April, 2007. F

3. An order canceling/nullifying the return or election of the 1st & 2nd respondent and (sic) President and Vice-President of G Federal Republic of Nigeria respectively at the presidential election held on 21st April, 2007.

4. An order canceling/nullifying the presidential election held on 21st April , 20007 and directing the 35th respondent to conduct fresh and/or bye-election into the offices of President and Vice-President of Nigeria. " H

On the 23rd of July, 2007, the 1st and 2nd respondents filed a memorandum of conditional appearance as well as a Notice of

Preliminary Objection to the petition contending that the tribunal lacked the jurisdiction to hear and determine “the petition as the petition is incompetent, irregular, nullity, incurably defective and for non compliance with the mandatory provision of the Electoral Act, 2006 and the Election Tribunal and court Practice Direction, (sic),
B 2007.”

On the 2nd day of August, 2007, learned senior counsel for the 3rd respondent, Kanu Agabi, Esq., SAN., filed a motion before the tribunal praying for an order dismissing the petition on the ground
C that the tribunal has no jurisdiction to entertain the petition as the same is not properly constituted for failure to comply with the provisions of paragraph 4(1)(a),(d) of the first Schedule to the Electoral Act, 2006.

On the 8th day of August, 2007, the petitioner filed a motion
D praying the lower court for the following orders:-

“(a) An order for petitioner/applicant to furnish better and further particulars in his petition in terms of the accompanying schedule hereto attached and marked Exhibit “A”,

*(b) Leave of this tribunal to allow the petitioner/ applicant to
E adduce and rely on the following proposed documents, to wit:*

(a) List of documents relied upon marked Exhibit “C”.

(b) Written deposition of petitioner marked Exhibit “D”.

The motion by the petitioner/appellant for the order to furnish
F better and further particulars is indeed very strange as it is usually the defendant/respondent to a petition who, by the rules of procedure is entitled to call for further and better particulars from the plaintiff/petitioner in an appropriate case and circumstance. It is clear from the facts deposed to in the supporting affidavit that what the peti-
G tioner is seeking is actually an amendment of the petition filed.

However, the lower court consolidated the above motions and heard same on the 9th day of August, 2007. On the 20th day of August, 2007, the lower court delivered its ruling sustaining the Preliminary Objection in the following terms:-

H *“In the instant petition, there was no list of witnesses that the petitioner intends to call in proof of his petition and written statement of witnesses on oath and copies or list of documents to be relied on for the hearing of the petition were also not attached to the petition*

as required by the Court Practice Directions, 2007. Though it is my candid view that the petitioner has the locus standi to present the petition by virtue of Section 144(1)(a) of the Electoral Act, 2006. Nonetheless, the petition as presently constituted is not only defective but incurably defective and ought to be struck out. The Preliminary Objection therefore succeeds and it is hereby allowed. The petition dated and filed on the 21st May, 2007, is hereby struck out for being incompetent."

The appellant is dissatisfied with the above ruling and has consequently appealed to this court on six grounds of appeal out of which learned counsel for the appellant, Prince Orji Nwafor-Orizu, has identified the following issues for the determination of the appeal:-

"i. Whether having regard to the provision of paragraph 6(1) of the Election Tribunal - Court Practice Directions, 2007, (No .1), the determination of the Motion on Notice and the Preliminary Objection by the tribunal was not without jurisdiction? (Distilled from ground one).

ii. Whether on the state of affidavit evidence by the petitioner, the tribunal reached a correct conclusion of law in its application of Section 14 of the Electoral Act, 2006, that all the amendments sought were statute and time barred. (Distilled from grounds 2 and 4).

iii. Whether the tribunal's conclusion that the petition did not comply with provision of paragraph 4(1) (d) of the 1st schedule to the Electoral Act, 2006 and paragraph 1(1) (a) (b) (c) and (2) of the Election Tribunal and Court Practice Directions, 2007, is not in total disregard of the documents filed before the tribunal and the contents of the petition as filed (Distilled from grounds).

iv.) Whether the tribunal below properly directed itself as to cause of action in the petition having regard to paragraph 4(1) of the petition before it'? (Distilled from ground six)."

It is very clear from the issues formulated that a positive resolution of issue 1, i.e in favour of the appellant, will make it unnecessary for the court to proceed any further since the said issue 1 deals with the competence or jurisdiction of the lower court to entertain the processes leading to the ruling on appeal while the remaining issues (2 - 4) deal with the merits of the case before the lower court, in

respect of the Preliminary Objection and the motion to furnish better and further particulars. If the lower court is found not to have had the jurisdiction to hear and determine the relevant proceedings, then whatever it decided becomes null and void however well conducted or determined. That is settled law, however, see *Madukolu v. B Nkemdilim* (1962) 1 All NLR 587 at 596.

In arguing issue 1, learned counsel for the appellant referred to paragraph 6(1) and (4) of the Election Tribunal and Court Practice Directions, 2007 and submitted that where a statute provides for a particular method of performing a duty regulated by the statute, that method and no other must have to be adopted. Relying on *C.C.B. Plc. v. A.G. Anambra State* (1992) 10 SCNJ 137 at 163, *Nuhu Sani Ibrahim v. INEC* (1999) 8 NWLR (Pt. 614) 334 at 352, *Buhari v. Yusuf* (2003) 6 S.C. (Pt. 11) 156; (2003) 4 NWLR (Pt. 841) 446 at 498 and *Gulaudu v. Kama* (2005) All FWLR (Pt. 288) 1119, that the provisions of paragraph 6(1) *supra*, is mandatory and that the only condition for moving a motion in the tribunal is in “extreme circumstance with leave of the court” as motions can only be moved at pre-trial session, relying further on paragraph 3(2) (a) and 3 (7) of the said Practice Directions. 2007.

Learned counsel then submitted that the facts of this case are similar to those in *Oraeh v. Okoro* (1999) 8 NWLR (Pt. 615) 356 at 368, where it was held that in an application for amendment of an election petition, the determination of that application by the tribunal sitting as a panel, is contrary to the provision of the relevant law which provides otherwise and that it raises a jurisdictional issue. It should be noted that in *Omeh's* case paragraph 27(1) of Schedule 5 to the National Assembly (Basic Constitutional and Transitional Provisions) Decree, No. 5 of 1999, gave the power to the Chairman of the Election Tribunal to hear and dispose of all interlocutory questions and matters but the application for amendment was considered, not by the Chairman. but by the tribunal (which included the Chairman). Learned counsel therefore urged the court to hold that the determination by the lower court instead of the pre-trial session is without jurisdiction and consequently null and void.

On his part, learned senior counsel for the 1st and 2nd respondents. Chief Wole Olanipekun, SAN., in the respondents' filed

on 14/1/08, but deemed filed on 22/1/08, submitted court below rightly assumed jurisdiction to hear and the objection; that the petition as filed by the petitioner/appellant was incompetent as it failed to slate facts in support of the grounds slated therein, contrary to paragraph 4(1)(d) of the 1st schedule the Electoral Act. 2006 and paragraph 1(1)(b) of the Election Tribunal and Court Practice Directions, 2007, which provisions are mandatory; that the distinction being drawn by learned counsel for the appellant between the tribunal sitting as a tribunal and “as a pre-hearing session is like asking of the difference between six and half a dozen:” that the tribunal, at the time it heard and determined the objection was properly constituted as a court or tribunal as required by the law establishing it: that this court cannot be bound by the decision in the case of Omeh v. Okoro, supra, as the same was reached by the Court of Appeal even though the same is distinguishable from the facts of the instant case; that the competence of the petition, being an issue of jurisdiction of the lower court, can be raised at any stage of the proceedings, whether at the pre-hearing session or at the hearing of the tribunal, relying on Ishola v. Ajiboye (1994) 6 NWLR (Pt 352) 506 at 578 - 579. Finally learned counsel urged the court to resolve the issue against the appellant.

On his part, learned senior counsel for the 3rd-35th respondents, Kanu Agabi, Esq., SAN., submitted that the submission of his learned friend for the appellant on issue 1 does not reckon with the provisions of paragraph 6(1) and (4) of the Election Tribunal and Court Practice Directions, 2007; learned senior counsel then defined “pre-trial” to mean “before trial” as distinguished from “during trial” or “after trial”: that applying the meaning of the term to the expression as used in paragraph 6(1) supra, it is clear that the “session” in which the Preliminary Objection was argued and determined was definitely pre-trial as at the time trial was yet to commence; that the motion by way of objection came up for hearing at the pre-hearing stage hence no leave of the lower court was needed before its being heard: that an issue of jurisdiction can be raised at any stage of the proceedings, relying on Galadima v. Tambia (2000) 6 S.C. (Pt. 1) 196 at 206 - 207. Owoniboy Technical Services Ltd, v. John Holt Ltd. (1991) 7 S.C. (Pt. II) 161; (1991) 6 NWLR (Pt. 199) 550, Ezomo v. Oyaklaire (1985) 1 NWLR (Pt. 2) 195, Madukolu v. Nkemdilim

(1962) 1 All NLR 589 and Okafor v. A.G. Anambra State (1991) 7 S.C. (Pt. II) 138; (1991) 6 NWLR (Pt. 200) 659 and urged the court to resolve the issue against the appellant.

It is settled law that where legislation lays down a procedure for doing a thing there should be no other method of doing it – see *C.C.B Plc. v. The A-G. of Anambra State* (1992) 10 SCNJ 137 at 163, *Buhari v. Yusuf* (2003) 6 S.C (Pt. II) 156; (2003) 4 NWLR (Pt. 841) 446 at 498. In the instant case, the necessary procedure to be adopted in case of motion by way of amendment or objection on point of law is said to be that laid down in paragraphs 6(1), (4), 3(2)(a) of the Election Tribunal and Court Practice Directions, 2007.

Paragraph 6(1) & (4) of the Election Tribunal and Court Practice Directions, 2007, provide as follows:-

“6 (1) No motion shall be moved. All motions shall come up at the pre-hearing session except in extreme circumstances with leave of the tribunal or court.

(4) Where the respondent to a motion intends to oppose the application, he shall within 7 days of the service on him of such application file his written address and may accompany it with a counter-affidavit.”

When then is the pre-hearing session? Paragraph 3(1)-(5) of the said Practice Directions, 2007, provides thus:-

“(1) Within 7 days after the filing and service of the petitioner’s Reply on the respondent; or 7 days after the filing and service of the respondent’s Reply whichever is the case, the petitioner shall apply for the issuance of pre-hearing notice in form TF007;

(2) Upon application by a petitioner under sub-paragraph (1) above, the tribunal or court shall issue to the parties or their legal practitioners (if any) a pre-hearing conference notice as in Form TF007 accompanied by a pre-hearing information sheet as in Form TF008 for the purposes set out hereunder;

‘(a) disposal of all matters which can be dealt with on interlocutory application;

(b) At the pre-hearing session, the tribunal or court shall enter a scheduling order for;

(c) Amending petition or Reply or any other process;

(d) Filing and adoption of written addresses on all interlocu-

tory application.... ‘

(3) *The respondent may bring the application in accordance with sub-paragraph (1) above where the petitioner fails to do so, or by motion which shall be served on the petitioner and returnable in three (3) days, apply for an order to dismiss the petition.*

(4) *Where the petitioner and the respondent fail to bring an application under this paragraph, the tribunal or court shall dismiss the petition as abandoned petition and no application for extension of time to take that step shall be filed or entertained.*

(5) *Dismissal of a petition pursuant to sub-paragraphs (3) & (4) above is final and accordingly, the tribunal or court shall be functus officio.”*

It is clear from paragraphs 3(1) & (3) supra, that the tribunal or court does not, suo motu conduct or cause a pre-hearing session to be held. Such a session can only be held upon an application by either the petitioner or the respondent to the petition. In the instant case, both parties agree that no such pre-hearing session was applied for nor held though the applications determined by the lower court ought to have been determined at the pre-hearing session if one had been applied for and held.

However, paragraph 3(4) supra, gives power to the lower court, where the petitioner and respondent fail to bring an application for pre-hearing session as in the instant case, to dismiss the petition as abandoned petition and that no application for extension of time to take that step i.e. apply for pre-hearing session, shall be filed or entertained. That is the law, though it may sound very harsh. It should however, be borne in mind that the provisions apply to election petitions in which time is of the essence.

Not only did sub-paragraph 4 of paragraph 3 supra, give the tribunal or court the power to dismiss the petition for the default, sub-paragraph of the said paragraph 3 makes the dismissal of the petition in the circumstances final.

In view of the facts of this case and by virtue of the powers conferred on this court by Section 22 of the Supreme Court Act, this court can and does assume the powers of the lower court conferred on that court by paragraph 3(4) supra and exercise same by dismissing the petition of the appellant for non-compliance with the provi-

sions of the Practice Directions, 2007. It is not enough for the appellant to argue that the lower court, sitting not in pre-hearing session, has no jurisdiction to entertain the applications when he failed and or neglected to present an application before that tribunal or court for a pre-hearing session to hear the applications.

B He cannot benefit from his own default. In the instant court, however, the lower court; and by extension this court; has the power to deal with the petition as provided in the Practice Directions, 2007. It is for the above and the much fuller reasons assigned in the leading judgment of my learned brother, Muhammad, JSC., that I too dismiss the appeal and affirm the ruling of the lower court delivered on the 20th day of August, 2007, except the order striking out the petition for which I hereby substitute an order dismissing the petition. I abide by the order as to costs contained in the said leading judgment.

TABAI JSC

E The petition which dismissal has given birth to this appeal was presented at the Registry of the court below on the 21/5/2007. In it, the petitioner claimed four reliefs. The grounds and facts to be relied upon in proof of the petition were stated therein to be:-

F *“(i) That the 1st and 2nd respondents were at the time of the said election not qualified to contest the election into the offices of the President and Vice-President of the Federal Republic of Nigeria respectively in that both of them were indicted for offences/breaches of law by Administrative Panel of Inquiry set up by Abia State Government on the activities of some persons and serving/past Government functionaries between 1999-2007 and which indictment was accepted by the Government of Abia State in its white paper. The petitioner shall at the trial found upon the copy of the said white paper.*

H *(ii) The petitioner shall also at the trial lead evidence and contend that the election was invalid by reason of corrupt practices or non-compliance with the provisions of the Election Act.*

(iii) The petitioner further avers that at the trial he shall lead evidence and contend that he was validly nominated for the election

but was unlawfully excluded at the poll."

The list of witnesses was stated to be only the petitioner. And the only document to be relied upon was stated to be:"

Abia State Government White Paper on Commission of Inquiry into the activities of some persons and serving/past Government functionaries between 1999 - 2007 dated 21/2/ 2007. " B

On the 18/7/2007, filed a motion for an order for the petitioner/appellant to furnish better and further particulars in the petition in terms of Exhibit "A" attached to the affidavit in support of the motion. This motion was withdrawn on the 30/7/07 and it was struck C out and another motion of substantially identical terms was filed on the 8/8/07.

Meanwhile, on behalf of the 1st and 2nd respondents a Notice of Preliminary Objection was filed. It was dated and filed on the 23/7/08 . D

The grounds of the objection were that:

"i) *The petition as presently constituted is devoid of any cause of action.*

ii) *The petitioner did not comply with the mandatory provision of the Election Tribunal and Court Practice Direction, 2007.* E

iii) *The petitioner lacks the locus standi to present this petition."*

Also on behalf of the 3rd respondent a second Notice of Preliminary Objection was filed on the 2/8/2007. The ground for the F objection was that the court had no jurisdiction and the petition incompetent in that it failed to comply with the mandatory provisions of paragraph 4(1)(a),(d) of the 1st schedule of the Electoral Act.

By its unanimous ruling on the 20/8/2007, the court below dismissed the petitioner/appellant's application of the 8/8/2007, G sustained the Preliminary Objections filed by the respondents and struck out the petition for incompetence.

This appeal is against that ruling. Briefs of Argument were filed and exchanged. Prince Orji Nwafor-Orizu, prepared the appellant's Brief. He also prepared appellant's Reply Brief to the Brief of the 1st and 2nd respondents and another Reply Brief to the 3rd -35th H respondents' Brief. The 1st and 2nd respondents' Brief was prepared by Chief Wole Olanipekun, SAN. While the 3rd - 35th respondents'

Brief was prepared by Kanu G. Agabi. SAN.

In the appellant's Brief, Orji Nwafor-Orizu formulated the following four issues for determination:-

B *"(i) Whether having regard to the provisions of paragraph 6(1) of the Election Tribunal-Court Practice Directions, 2007, (No .1), the determination of the Motion on Notice and the Preliminary Objection by the tribunal was not without jurisdiction.*

C *(2) Whether on the state of affidavit evidence by the petitioner the tribunal reached a correct conclusion of law in its application of Section 141 of the Electoral Act, 2006, that all the amendments sought were statute and time barred.*

D *(3) Whether the tribunal's conclusion that the petition did not comply with the provisions of paragraph 4(1)(d) of the 1st schedule to the Electoral Act, 2006 and paragraph 1 (1)(a)(b)(c) and (2) of the Election Tribunal and Court Practice Directions. 2007, is not in total disregard of the documents filed before the tribunal and the contents of the petition filed.*

E *(4) Whether the tribunal below properly directed itself as to the cause of action in the petition having regard to paragraph 4(1) of the petition before it."*

On behalf of the 1st and 2nd respondents. Chief Olanipekun, SAN., in their Brief, prepared the following issues:-

F *"(I) Whether the presidential election petition Tribunal lacked the jurisdiction to hear and determine the Notice of Preliminary Objection filed by the 1st and 2nd respondents?*

G *(2) Whether the appellant's petition is not incompetent for failure to comply with the mandatory provisions of paragraphs 4(1)(d) of the 1st schedule to the Electoral Act, 2006 and paragraph 1(b) of the Election Tribunals and Courts Practice Directions, 2007 and whether such fundamental breach can be cured by way of amendment outside the period stipulated in Section 141 of the Electoral Act, 2006?*

H *(3) Whether by not averring to facts in support of the grounds of the election petition, the petition did not fail to disclose a cause of action."*

In the 3rd-35th respondents' Brief of Argument, Kanu G. Agabi, SAN., also formulated three issues which are to the same ef-

fect as those of the 1st and 2nd respondents. A close comparison of the 1st issue of the appellants, the 1st and 2nd respondents and the 3rd - 35th respondents shows that they are substantially the same.

The 2nd and 3rd issues proposed by the 1st and 2nd respondents in their Brief effectively covers the 2nd, 3rd and 4th issues of the appellant. In this judgment therefore I shall adopt the issues as formulated by the 1st and 2nd respondents. B

On the first issue of whether the court below had the jurisdiction to entertain and determine the motion and Preliminary Objection notwithstanding the provisions of paragraph 6(1) of the Election Tribunal - Court Practice Directions, 2007, (No. 1), Prince Orji Nwafor-Orizu proffered the following arguments, He referred to paragraph 6(1) and (4) of the Election Tribunal and Court Practice Directions, 2007 and submitted that “where a statute provides for a particular method of performing a duty regulated by the statute, that method and no other must have to be adopted. For this submission he relied on C.C.B Plc. v. The Attorney-General of Anambra State (1992) 10 SCNJ 137 at 163, Nugu Sani Ibrahim v. INEC (1999) 8 NWLR (Pt. 614) 334; at 352, General Muhammadu Buhari & Anor. v. Alhaji Muhammadu Diko Yusuf (2003) 6 S.C. (Pt. II) 156; (2003) 4 NWLR (Pt. 841) 446 at 498 and Gulaudu v. Kama (2005) All FWLR (Pt. 288) 119. He referred to the text “No motions shall be moved” in paragraph 6(1) of the provision and submitted that the provision is mandatory, and that motions can only be moved at the pre-trial session. Learned counsel referred further to paragraphs 3(2)(a) and 7(a) and (d) and submitted that Preliminary Objection on point of law can only be heard and determined at the pre-hearing session. D

On his part, Chief Olanipekun, SAN., submitted that the tribunal rightly assumed jurisdiction to entertain the Preliminary Objection and dismissed the petition. He referred to paragraph 4(1)(d) of the 1st schedule of the Electoral Act, 2006 and paragraph 1(1)(b) of the Election Tribunal and Court Practice Directions, 2007, and argued that they are mandatory provisions and relied on Buhari v. Yusuf (2003) 6 S.C. (Pt. II) 156; (2003) 14 NWLR (Pt. 841) 446 at 498-499. It was the submission that the failure of the appellant to comply with the said provisions rendered the petition incompetent and robbed the tribunal of any jurisdiction to hear and determine E

the petition. Learned senior counsel further referred to paragraph 49(2) of the 1st schedule to the Electoral Act, 2006 and contended that the Preliminary Objection, was by reason thereof raised timely. He, like the appellant, also submitted that the issue of the competence of petition bothers on jurisdiction which can be taken at any stage of the proceedings and once raised must be heard and determined first by the tribunal. Reliance was placed on *Ishola v. Ajiboye* (1994) 6 NWLR (Pt. 352) 506 at 578-579, *7UP Bottling Co. v. Abiola & Sons* (2001) 6 S.C. 73; (2001) 13 NWLR (Pt. 730) 469 at 513. Learned senior counsel argued that *Oraeh v. Okoro* (1999) 8 NWLR (Pt. 615.) 356 at 368, is quite distinguishable from the present case.

For the 3rd - 35th respondent, Kanu Agabi, SAN., submitted that the Preliminary Objection was raised and taken before the actual trial and so falls within the pre-trial session as provided in paragraph 6(1) of the Election Tribunal and Court Practice Directions, 2007.

Learned senior counsel further submitted that the issue of jurisdiction can be taken at any time and in any manner. He relied on *Galadima v. Tambia* (2000) 6 S.C. (Pt. 1) 196 at 206 -207. *Owoniboy Technical Services Ltd. v. John Holt Ltd.* (1991) 7 S.C. (Pt. II) 161; (1991) 6 NWLR (Pt.199) 550, *Ezomo v. Oyakhire* (1985) 1 NWLR (Pt. 2) 195, *Madukolu v. Nkemdilim* (1962) 1 All NLR 589 and *Okafor v. Attorney-General Anambra State* (19991) 7 S.C. (Pt. II) 138; (1991) 6 NWLR (Pt. 200) 659.

Let me first of all attempt a deliberation on the first issue since its possible resolution in favour of the appellant effectually determines the appeal. I have taken a close look at the submissions of the parties. It appears, in my humble view, that there are two fundamental flaws and misconceptions in the arguments of Orji Nwafor-Orizu.

The first flaw is that by his insistence on the applicability of paragraph 6(1) of the election Tribunal and Court Practice Directions, 2007, to the respondents' Preliminary Objection, he attempts to reduce a Preliminary Objection to the status of an ordinary motion under the Rules of Court like the appellant's motion for leave to amend and for further and better particulars.

The two sets of applications are miles apart. A motion by which a respondent challenges the competence of a suit and thus the juris-

diction of the court, (otherwise called a Notice of Preliminary Objection) is a special procedure whereby the respondent contests the competence of a suit and jurisdiction of the court and if upheld has the effect of terminating the life of the suit by its being struck out. See *Galadima v Tambia* (2000) 6 S.C (Pt. I) 196; (2000) 6 SCNJ (Pt. I) 196 at 207. The Jurisdiction of all Superior courts of record is constitutional, some having been donated by the Constitution and cannot therefore be circumscribed or limited by any other Statute, let alone Practice Directions. The issue of jurisdiction cannot therefore be subjected to the dictates of any Statute, including Rules of Court. A party's right to raise the issue of jurisdiction is available to him at all times.

And that gives credence to the immutable principle that the issue of jurisdiction can be raised at any stage of the proceedings at the court of trial or in the appellate courts. See *Madam Alice Okesuji v. Fatai Alabi Lawal* (1991) 2 S.C. 25; (1991) 1 NWLR (Pt. 170) 661 at 672. In paragraph 4.08 of the appellant's Brief, the appellant not only conceded the validity of this principle but also advocated its application to this case when he said: "it is further submitted that being a jurisdictional question it can be raised at any stage of the proceedings including an appeal."

It is therefore a contradiction in terms for the self same appellant to argue in the same paragraph 4.08 and elsewhere in the Brief that the Preliminary Objection by which the issue of jurisdiction is raised could only have been taken and determined at the pre-trial session."

There is yet another aspect of manifest internal conflict in the case of the appellant. His motion for leave to amend and for further and better particulars was filed on the 8/8/08, - over two months outside the period stipulated in the Practice Directions for proceedings at the pre-trial session. Going by his arguments therefore it is his motion that should be heard and determined at the pre-trial session. Yet the appellant proffered sustained arguments that the application be granted. By necessary implication, he singles out himself as an exception to the operation of paragraph 6(1) of the Election Tribunal and Court Practice Directions, 2007. He cannot eat his cake and still have it. In my view, having regard to the character of his motion, he is and should be the first and only victim of the Practice

Directions.

There is still another aspect of the submissions of learned counsel for the appellant which needs some comments. For the purpose of giving force to his arguments, counsel referred variously to the Practice as statutes or enactments. I think he got it wrong. Practice Directions do not, strictly speaking, qualify as statutes or enactments. They do not even stand equal footing with Rules of Court. They are ancillary to and therefore subordinate to Rules of Court. Consequently, in the event of a conflict between a Rule of Court and a Practice Direction the rule must prevail. I have taken the liberty to emphasise these relative strengths of a Rule of Court and a Practice Direction because of the appellant's undue projection of the latter as a statute.

It is perhaps necessary to refer to *University of Lagos & Anor. v. Aigoro* (1984) NSCC 745, where this court had cause to embark upon some comparative analysis of the Supreme Court Rules and Practice Directions made by the Chief Justice of Nigeria and at page 756 Said:-

"The Supreme Court Rules, 1977 is an enactment while the Practice Directions do not qualify as such. Consequently, a Practice Direction has no force of law and cannot fetter a rule of court such as Order 1 Rule 5 and cannot tie the court in the exercise of its discretion. Where there is a conflict between a Rule of Court and Practice Direction the Rule must prevail."

The result of the above is that if the motion of the 23/7/07, by which this issue of jurisdiction is raised is competent under the Federal High Court Rules which is the enabling enactment, the same cannot be rendered incompetent under paragraph 6(1) of the Election Petition and Court Practice Directions, 2007. In my consideration this is another reason why this issue should be resolved against the appellant.

I can identify yet another problem of the appellant which ought not to be glossed over. Paragraph 3(1) of the Election Tribunal and Court Practice Directions, 2007, provides for the much vaunted pre-hearing session and scheduling. Paragraph 3(1) states:-

"3(1) Within 7 days after the filing and service of the petitioner's Reply on the respondent, or 7 days after the filing and service of the

respondent's Reply, which ever is the case, the petitioner shall apply for the issuance of the pre-hearing notice as in form TF007.

(2) Upon application by a petitioner under sub-paragraph (1) above the tribunal or court shall issue to the parties or their legal practitioners (if any) a pre-hearing conference notice as in Form TF007 accompanied by a pre-hearing information sheet as in Form TF008 for the purposes set out hereunder:....."

It is clear from the above that it is the petitioner that has the responsibility to apply to the tribunal or court for the issuance of pre-hearing notice and pre-hearing conference. I cannot find any such application in the record. Nor is there any evidence of proceedings at any pre-hearing session. The inevitable conclusion therefore is that, the appellant failed to initiate any pre-hearing session. Yet the appellant's entire complaint is that the respondents' Preliminary Objection could only have been raised and determined at a pre-hearing session that never was. He is again caught by his own inactivity. He cannot benefit from his own default. This in my view is another reason for resolving the 1st issue against the appellant.

In view of the foregoing considerations and particularly in view of the immutable principle that the issue of jurisdiction can be raised, entertained and determined at any stage of a proceeding, the motion or Preliminary Objection of the 23/7/07, was properly before the lower court which therefore had the jurisdiction to hear and determine it. The result is that the 1st issue is resolved against the appellant.

This leads me to the remaining twin issues of whether by virtue of the provisions of paragraph 4(1)(d) of the 1st Schedule to the Electoral Act, 2006 and paragraph 1(b) of the Election Petition and Court Practice Directions, 2007, the appellant's petition shows no reasonable cause of action and therefore incompetent and whether the defect (if any) in the petition is such that can be cured by way of an amendment in view of the provisions of Section 141 of the Electoral Act, 2006.

On this question of the competence or otherwise of the petition, Prince Orji Nwafor-Orizu argued that the finding by the court below that the petition is "incurably defective" was made without due regard to the documents filed. He admitted that the statement

on oath of the sole witness was not attached but submitted that the filing of such a statement on oath is not one of the requirements of paragraph 14(2)(i)(ii) of the 1st schedule to the Electoral Act, 2006. It was his submission that by the combined effect of Section 141 of the Electoral Act, 2006 and paragraph 14(2)(i) of the 1st Schedule
 B to the Electoral Act, an amendment which does not seek to introduce any of the requirements of 4 (1) of the said 1st Schedule to the Act is permissible. According to counsel, the amendment only seeks to introduce facts and/or materials in support of matters already contained in the petition and ought not to be granted. He referred to
 C Section 137(1)(i) of the 1999 Constitution and submitted that there are enough materials in the attached Abia State Government Gazette to prove that at the time of the election the 1st and 2nd respondents were not qualified to contest the election. He relied on *Onamade*
 D v. A.C.B (1997) 1 SCNJ 65 at 87-88, *Ezemba v. Ibeneme* (2004) 7 S.C. (Pt. 1) 45; (2004) 7 SCNJ 136 at 148.

Still on amendments, learned counsel further argued that it is only amendments which seek to introduce new grounds and new prayers that are regarded as substantial, contending that the proposed amendments which only seek to support existing grounds and prayer are therefore not substantial and ought to be granted. In conclusion, learned counsel invited this court to invoke its powers under Section 22 of the Supreme Court Act, to deem the amendment as
 E having been granted and remit the case back for trial and determination on the merits.
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On his part Chief Olanipekun, SAN., on behalf of the 1st and 2nd respondents argued that for a petition to be competent, must comply with the mandatory provisions of paragraph 4(1)(d) of the
 G 1st Schedule to the Electoral Act and paragraph 1 of the Election Tribunal and Court Practice Directions, 2007. He submitted that in view of the facts admitted by the statement on oath of witnesses the petition failed to meet the mandatory requirements of the Electoral Act and the Practice Directions. The consequence, he argued, is that
 H the petition discloses no cause of action and is incompetent. In support of this argument he relied on *Egolum v. Obasanjo* (1999) 5 S.C. (Pt. I) 1; (1997) 7 NWLR (Pt. 11) 355 at 410.

With respect to the appellant's motion for amendment, it was

the submission of learned senior counsel that the application having been made outside the time limited by Section 141 of the Electoral Act, 2006, was caught by the provisions of paragraph 14(2) of the First Schedule to the Electoral Act and was therefore rightly dismissed by the court below for incompetence.

The submissions of Kanu Agabi, SAN., for the 3rd -35th respondents were, in substance, to the same effect as those for the 1st and 2nd respondents. B

I have had a careful consideration of the petition, the motion for amendment and the address of counsel for the parties. Let me first attend to the issue of the amendments sought. The prayer sought in the motion paper is an order for the supply of further and better particulars. The lower court reasoned that the application was one for amendment under the guise of one for further and better particulars. This much, learned counsel for the appellant conceded both in his written and oral submissions at the lower court. The same is also conceded in appellant's Brief before this court. C D

As regards the competence or otherwise of the motion for amendment, the court below thoroughly examined facts of the holding of the election on the 21/4/07, the presentation of the petition on the 21/5/07, the nature of the proposed amendments and the various statutory provisions and some case law authorities and dismissed the application for the main reason that it was statute barred. It also held that the amendments sought were substantial and would radically change the complexion of the petition. Can the court below be faulted in its reasoning and conclusion? I do not think so. E F

The application for amendment is at page 71 of the record. As stated on the motion paper itself brought pursuant to Order 26 Rules 6 and 7(1), Order 27 Rule 1 and Order 41 Rule 1, of the Federal High Court (Civil Procedure) Rules, 2000. The enabling law is paragraph 50 of the 1st Schedule to the Electoral Act, 2006. As stated therein the Federal High Court Rules, apply only as nearly as possible and with such modifications as may be necessary for the control of proceedings in the tribunal or court with regard being had to the need for urgency in election matters. And more importantly, the Federal High Court Rules, apply subject to the express provisions of the electoral Act, 2006. Paragraph 14 of the 1st schedule to the electoral H

Act, 2006, provides expressly for the amendment of election petitions and replies and by reason thereof the application of the Federal High Court (Civil Procedure) Rules, to amendments is excluded. Thus, amendment of election petitions and replies is expressly reserved under paragraphs 14 and 50 of the 1st Schedule to the electoral Act.

The relevant provision is paragraph 14(2)(a) and it states:-

“14(2) After the expiration of the time limited by Section 141 of this Act for presenting the election petition, no amendment shall be made:

(i) introducing any of the requirements of sub-paragraph (1) of paragraph 4 of this schedule not contained in the original petition filed, or

(ii) effecting a substantial alteration of the ground for or the prayer in the election petition, or

(iii) except anything which may be done under the provisions of sub-paragraph (3) of this paragraph, effecting a substantial alteration of or addition to, the statement of facts relied on to support the ground for or sustain the prayer in the election petition.”

And Section 141 of the Electoral Act, 2006, provides:

“An election petition under this Act shall be presented within thirty (30) days from the date the result of the election is declared.”

This means that all amendments substantial to the extent as indicated in paragraph 14(2)(a) must be made before the expiration of thirty days from the date the result of the election is declared. The application for amendment sought to add amongst others a new ground that “1st and 2nd respondents did not resign from their respective public offices 30 days to the time of their nomination by their party in December, 2006, contrary to Section 137(1)(g) of Constitution of the Federal Republic of Nigeria, 1999.” This, no doubt, is a substantial alteration of the original petition within the context of paragraph 14(2)(a)(ii) above. The amendment also seeks to bring in the written deposition on oath of the petitioner which is not in the original petition. This again, is another substantial addition to or alteration of the original petition as envisaged in paragraph 14(2)(a)(ii) of the 1st schedule to the Electoral Act.

Amendments of this substantial nature can only be sought and

granted before the expiration of thirty days from the date the result of the election was declared. Although the date the result of the election was declared is not indicated anywhere in the application, it was some time before the 21/5/2007, when this petition was filed. This motion for amendment was filed on the 8/8/2007 - over two and a half months from the date the petition was filed. It is clearly outside the period stipulated for amendments. In the premise, I fully endorse the opinion of the court below that the motion having been brought more than two months after the declaration of the result of the presidential election held on the 21/4/07, is statute barred and was rightly struck out for incompetence. B

Let me now examine the issue of whether the petition as presently constituted is incompetent in view of the provisions of paragraph 4(1)(d) of the 1st schedule to the Electoral Act, 2006 and paragraph 1 (b) of the Election Tribunal and Court Practice Directions, 2007. Paragraph 4 of the 1st schedule to the Electoral Act provides for the contents of an election petition. Paragraph 4(1)(a)-(d) provide as follows:- D

“4(1) An election petition under this Act shall:-

‘(a) specify the parties interested in the election petition; E

(b) specify the rights of the petitioner to present the election petition;

(c) state the holding of the election, the scores of the candidates and the person returned as the winner of the election; and F

(d) state clearly the facts of the election petition and the grounds on which the petition is based and the relief sought by the petitioner.”

Paragraph 4(2), (3), (4) and (5) specify other contents of an election petition. And paragraph 4(6) provides:-

“An election petition which does not conform with sub-paragraph 1 of this paragraph or any paragraph of that sub-paragraph is defective and may be struck out by the tribunal or court.” G

And paragraph 1 of the Election Tribunal and Court Practice Directions, provides further for the mode of filing an election petition. It provides: H

" (1) All petitions to be presented before the tribunal or court shall be accompanied by;

‘(a) List of all the witnesses that the petitioner intends to call in

proof of the petition;

(b) Written statements on both of the witnesses; and

(c) Copies or list of every document to be relied on at the hearing of the petition.'

(2) A petition which fails to comply with sub-paragraph (1) of this paragraph shall not be accepted for filing by the Secretary."

As I stated earlier in this judgment, the Practice Directions, 2007, are ancillary to the Electoral Act, 2006. They are complementary to the provisions of the 1st schedule to the Electoral Act and specially designed to meet the need for urgency in election matters. Thus, it is the combination of paragraph 4(1)-(5) of the 1st schedule of the Act and paragraph 1(1) of the Practice Directions that constitute the complete contents of an election petition. Specifically paragraph 1(1)(b) of the Practice Directions provides for the proof of evidence by which the petition can be proved. The requirement is mandatory. The petition as presently constituted is without the witness's written statement on oath. In other words the petition is bare skeleton of a petition without the flesh to sustain it. It does not meet the requirements of the two provisions of paragraph 4(1)(d) of the. 1st Schedule to the Electoral Act, and paragraph 1(1)(b) and 1(i) of the Practice Directions. The result is that the petition filed on the 21/5/07, is incompetent for non-compliance with the Electoral Act. I have no cause to disturb the finding and conclusion of the lower court on this issue. I fully endorse the decision of the lower court striking out the petition.

It is for the foregoing reasons and the fuller reasons contained in the leading judgment of my learned brother, Muhammad, JSC., that I also dismiss the petition.

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