

KINGS LAW REPORTS

(ALL SC/NOVEL CA)

(2008) KLR VOL 12 PART 259 pp. 3161 - 3460

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Dedicated to the King of kings

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1. Nigeria Customs Service v. Bazuaye p. 3445 CA

{Note: No SC judgment in Sept. - Nov., so no vols 9 - 11 KLR}

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ACTIONS - Commencement - Originating summons - Propriety of - In view of nature of the issue to be tried - Originating summons is the most appropriate means to commence this action - Affidavit evidence of parties provide sufficient material to deal with the issue (H4) *Agbakoba v. INEC* p. 3333

ACTIONS - Reliefs - Special damages - Necessity for proof - Claim for pension and gratuity being claim for special damages - Ought to have been strictly proved but was not - Court of Appeal was therefore right to have dismissed it (H6) *Shell Petroleum v. Olarewaju* p. 3421

ADMINISTRATIVE LAW - Delegation of powers - Attorneys-General - 1999 Constitution, s. 211 - Power of State Attorneys-General to delegate their powers under section 211 - Is not limited to delegation to officers of their department (H1) *Amadi v. Federal Republic of Nigeria* p. 3401

AFFIDAVITS - Conflicts - Constituents - Fact that a party's set of documents contain *ex facie* lies - Does not necessarily mean there is a conflict - Such as to necessitate the taking of oral evidence to resolve it (H5) *Agbakoba v. INEC* p. 3333

APPEALS - Briefs - Respondent's brief - Tenor of - A respondent who has not cross-appealed against a judgment - Is estopped from raising and arguing any issue that is not based on appellant's grounds of appeal - As he is deemed satisfied with the judgment (H6) *Agbakoba v. INEC* p. 3333

APPEALS - Issues - Badly couched - Attitude of court thereto - As it is unjust to hold that because a blunder has been committed - The party in blunder has lost the opportunity of having his case determined on the merits - Courts would re-frame such issues in the interest of justice (H1) *Agbakoba v. INEC* p. 3333

CHARGES - Formal defects - Objections thereto - Time to take - Any objection to a charge for formal defect on the face thereof - Shall be taken immediately after charge is read over to accused - Not later (H3)

Amadi v. Federal Republic of Nigeria p. 3401

CHARGES - Signing & filing - Fiat to EFCC - Any staff of EFCC can exercise the power delegated to EFCC by any Attorney-General - Subject to the general powers of the respective Attorneys-General to take over proceedings (H2) Amadi v. Federal Republic of Nigeria p. 3401

COURTS - Supreme Court - Powers of - Supreme Court Act, s. 22 - Applicability - The section is applicable where the lower court failed - To decide an issue which it had power to decide - And in respect of which there was evidence before it (H12) Agbakoba v. INEC p. 3333

CRIMINAL PROCEDURE - Prosecution - Delegation of powers - Attorneys-General - 1999 Constitution, s. 211 - Power of State Attorneys-General to delegate their powers under section 211 - Is not limited to delegation to officers of their department (H1) Amadi v. Federal Republic of Nigeria p. 3401

DOCUMENTS - Exhibits - Reliability - On the facts of the instant case - It is obvious that exhibits 1 and 2 of the 3rd respondent have lied ex facie - As such they are most unreliable documents liable to be discountenanced as an afterthought (H10) Agbakoba v. INEC p. 3333

ELECTION PETITIONS - Tribunals - Jurisdiction - Scope of - Election tribunal which is a special tribunal - Created by the Constitution to handle post-election disputes - Has no jurisdiction over pre-election disputes - Such as substitution of candidates (H8) Agbakoba v. INEC p. 3333

ELECTION PETITIONS - Unlawful exclusion - Proof of - A petitioner alleging unlawful exclusion - Must plead and prove facts showing inter alia - That his name was not included in the list of candidates - The instant petitioner failed to do so (H3) Abubakar v. Yar'adua p. 3161

ELECTION PETITIONS - Validity of elections - Grounds of challenge

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- Electoral Act 2006, s. 145 (1) - Ground of unlawful exclusion is mutually exclusive - With the rest of the grounds provided in the section - As it presupposes non-participation in the elections while the rest presuppose actual participation (H1) Abubakar v. Yar'adua p. 3161

ELECTION PETITIONS - Validity of elections - Grounds of challenge - Reliance on mutually exclusive grounds - Effect - It amounts to a petitioner approbating and reprobating - And has the effect of destroying his alternative case by his alternative evidence (H4) Abubakar v. Yar'adua p. 3161

ELECTIONS - Candidates - Sponsorship by political parties - Implication of - In the true sense of the letter and spirit of s. 221 of 1999 Constitution - It is the political parties that sponsor candidates that are the real winners or losers in an election - Not the candidate (H13) Agbakoba v. INEC p. 3333

ELECTIONS - Candidates - Substitution of - Validity - It is settled that once the reasons given for the change - Are not cogent and verifiable the case fails - The reason given in the instant case is neither cogent nor verifiable (H11) Agbakoba v. INEC p. 3333

ELECTIONS - Pre-election disputes - Jurisdiction - 1999 Constitution, s. 251 (1) (r) - The Federal High Court has exclusive jurisdiction to hear and determine pre-election disputes - Including disputes on submission of names of and substitution of names of nominated candidates (H2) Agbakoba v. INEC p. 3333

ELECTIONS - Unlawful exclusion - Electoral Act 2006, s. 145 (1) (d) - Import - The phrase contemplates the literal exclusion of a validly nominated candidate - It does not admit of constructive or implied exclusion (H2) Abubakar v. Yar'adua p. 3161

EVIDENCE - Admissions - By implication - Uncontroverted affidavit evidence - In actions initiated by originating summons affidavits take the place of pleadings - So any material paragraph of the affidavit not

specifically denied is deemed admitted (H9) Agbakoba v. INEC p. 3333

EVIDENCE - Offences - Proof - Having proved the ingredients of the offences for which appellant was charged - Prosecution has proved the offences beyond reasonable doubt (H4) Amadi v. Federal Republic of Nigeria p. 3401

EVIDENCE - Proof - Standard - Flexibility of - There is no absolute standard of proof be it in civil or criminal trial - The more serious the allegation the higher the standard of proof to eliminate its unlikelihood (H2) Shell Petroleum v. Olarewaju p. 3421

FAIR HEARING - Rules of natural justice - Breach - Evidence of - There is ample evidence on record - In support of the concurrent findings of the courts below - That there was a breach of the rules of natural justice in the proceedings indicting the respondent (H3) Shell Petroleum v. Olarewaju p. 3421

MASTER & SERVANT - Miscarriage - Proof of - Where employee is dismissed for gross misconduct - It is not for the employee to prove that the proceedings of the panel were prejudicial to him - It suffices that there is a risk of prejudice (H4) Shell Petroleum v. Olarewaju p. 3421

MASTER & SERVANT - Termination - Rules of natural justice - Employer is not bound to give reason for termination - But where he does the reason must be justifiable - And the proceedings indicting the servant must observe the rules of natural justice (H1) Shell Petroleum v. Olarewaju p. 3421

PRACTICE & PROCEDURE - Rules - Noncompliance - Objection thereto - Need to raise timeously - Where an action has been started by an irregular procedure - A party who took part in the proceedings without prior objection - Cannot be heard later to complain of the irregularity (H3) Agbakoba v. INEC p. 3333

TORTS - Unlawful arrest - Instigation of police - Liability of complain-

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ant - There is a distinction between mere report of an incident to police
- And instigating the police to arrest - As the appellant was found to have done in this case (H5) *Shell Petroleum v. Olarewaju* p. 3421

WORDS & PHRASES - Post-election disputes - Purport of - In contrast to pre-election disputes - Post-election disputes arise from the holding of elections or return of elected candidates - They cover such grounds as qualification or unlawful exclusion of candidates among others (H7) *Agbakoba v. INEC* p. 3333

COURT OF APPEAL

APPEALS - Interlocutory appeals - Time within which to appeal - Computation of - It presupposes existence of an interlocutory order - It is from the time of making the order that time begins to run (H1) *Nigeria Customs Service v. Bazuaye* p. 3445 CA

APPEALS - Issues - Fresh issue on appeal - Manner of raising - Where an issue is not raised at the trial - It can not be properly raised on appeal except with the leave of court - Which leave was not obtained in this case (H4) *Nigeria Customs Service v. Bazuaye* p. 3445 CA

CROSSEXAMINATION - Effect - Witnesses - Failure to cross examine a witness - Upon a particular matter - Is a tacit acceptance of the truth of his evidence (H2) *Nigeria Customs Service v. Bazuaye* p. 3445 CA

EVIDENCE - Documents - Admissibility - Duty of court and the opposite party - Court is to admit and act only on legally admissible evidence - While opposite party should immediately object - To admission of inadmissible evidence (H3) *Nigeria Customs Service v. Bazuaye* p. 3445 CA

INDEX OF STATUTES & RULES

Advance Fee Fraud and Other Fraud Related Offences Act, Cap A6, Vol 1, L. F. N., 2004, ss. 1 (3), s (1) and 8 (b) Amadi v. Federal Republic of Nigeria p. 3401

Constitution of the Federal Republic of Nigeria, 1999, ss. 251 and 285 Agbakoba v. INEC p. 3333; ss. 174 and 211 Amadi v. Federal Republic of Nigeria p. 3401

Court of Appeal Act, s. 16 Agbakoba v. INEC p. 3333

Criminal Code Law, cap C 17, Vol. 2, Laws of Lagos State of Nigeria, 2003, ss. 467 & 468 Amadi v. Federal Republic of Nigeria p. 3401

Electoral Act, 2006, ss. 141 & 146 Abubakar v. Yar'adua p. 3161; ss. 32, 34, and 140 Agbakoba v. INEC p. 3333

Evidence Act, s. 132 Shell Petroleum v. Olarewaju p. 3421; ss. 51, 74, 135, 136, 137, 138 & 150 Abubakar v. Yar'adua p. 3161

Supreme Court Act, s. 22 Agbakoba v. INEC p. 3333

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Court of Appeal Act, ss. 15 (1) and 25 (2) (a) Nigeria Customs Service v. Bazuaye p. 3445 CA

Court of Appeal Rules, O. 3 r. 22 Nigeria Customs Service v. Bazuaye p. 3445 CA

Public Service Rules, Chapter 9, s. 3 Nigeria Customs Service v. Bazuaye p. 3445 CA