

# **KINGS LAW REPORTS**

## **(ALL SC/NOVEL CA)**

**(2008) KLR VOL 12 PART 260 pp. 3461 - 3760**

**DECEMBER 2008**

**Dedicated to the King of kings**

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ACTIONS - Declaratory reliefs - Proof - Court below correctly found that burden of proof - In an action for declaratory relief is entirely on plaintiff - It was therefore wrong to have relied on the evidence of defendant in its judgment (H3) *Dumez Ltd v. Nwakhoba* p. 3683

ACTIONS - Relief not claimed - Power of court to grant - Limits - A court is bound to limit itself to the claim before it - It may only go outside the terms of such claim - In making incidental orders flowing naturally from the claim - (H5) *Dumez Ltd v. Nwakhoba* p. 3683

ACTIONS - Reliefs - Declaratory reliefs - Proof - Declarations of right cannot be made on admission - Or in default of pleading by defendant - Or even in reliance on evidence of defendant witnesses - Plaintiff must prove his claim by his own evidence (H1) *Dumez Ltd v. Nwakhoba* p. 3683

ADMINISTRATIVE LAW - Commissions of inquiry - Nature of - The setting up of a commission of inquiry has some content of quasi-judicialism - So findings of the commission are clearly judicial - Therefore appropriate courts of law have jurisdiction to inquire into their validity (H22) *Buhari v. INEC* p. 3461

ADMINISTRATIVE LAW - Commissions of inquiry - Power to set up - Scope of - Power of state governor to set up commissions of inquiry - Does not extend to setting up commissions - To inquire into activities of public servants in another state - Under our Constitution (H24) *Buhari v. INEC* p. 3461

AFFIDAVITS - Depositions - Admissibility of - Evidence Act, s. 83 - A court is not to admit in evidence an affidavit proved to have been sworn - Before a person on whose behalf it is offered or before his legal practitioners - This includes by extension written deposition of witnesses (H11) *Buhari v. INEC* p. 3461

AFFIDAVITS - Validity - Evidence Act, ss. 86 & 87 - Effect of - Where some depositions in an affidavit comply with s. 86, while some violate s. 87 - The entire depositions are invalid - As a court is not competent

to pick those that comply and ignore others (H16) Buhari v. INEC p. 3461

APPEALS - Abuse of process - Issues - Where rendered academic by subsequent events - Continued prosecution of instant appeal - After a subsequent favourable ruling on its substance by the Court of Appeal - Is an abuse of judicial process (H1) Yar'dua v. Ababakar p. 3753

APPEALS - Concurrent findings - Attitude of appellate courts - Unless there is miscarriage of justice - Or violation of some principles of law or procedure - Which is not the case herein - Appellate court will not interfere therewith (H3) Omoregie v. State p. 3731

APPEALS - Findings - By trial court - Interference by appellate court - Appellate court may only interfere with findings of fact by trial court - Where such findings are perverse - Or not supported by the facts relied upon - Which is not the case herein (H6) Dumez Ltd v. Nwakhoba p. 3683

APPEALS - Grounds - Nature of - Determinant factor - The important consideration is not the form of the ground but the question it raises - If it borders on a misunderstanding or misapplication of the law - As in the instant case - They are grounds of law (H1) First Bank Plc v. Abraham p. 3707

APPEALS - Grounds of appeal - Basis of - A ground of appeal must be based on the ratio decidendi of the judgment appealed against - Not on an orbiter dictum (H20) Buhari v. INEC p. 3461

APPEALS - Grounds of appeal - Validity - Effect of - An appeal may still be competent though several of its grounds be invalid - Since a single valid ground can sustain an appeal (H1) Buhari v. INEC p. 3461

CONTRACTS - Loans - Recovery action - Proper venue - Appropriate venue could be where the contract was made - Where it was performed or was to be performed - Or where defendant resides or

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does business - Court of Appeal was therefore wrong to hold that trial court lacked jurisdiction (H2) *First Bank Plc v. Abraham* p. 3707

COURTS - *Functus officio* - Applicability - A court cannot be *functus officio* by giving an anticipatory order - Which is conditional to the possible implementation of the order - As in this case the order admitting the documents subject to later objections (H10) *Buhari v. INEC* p. 3461

COURTS - *Functus officio* - Meaning of - It means to become bereft of legal force, having fulfilled ones function and commission - So a judge who has decided a question brought before him becomes *functus officio* - And cannot review the decision (H9) *Buhari v. INEC* p. 3461

COURTS - Similar documents - Ruling on admissibility - Scope of - Court's ruling on admissibility of document - Is a specific adjudicatory act tied to the particular document - It does not automatically cover subsequent similar documents sought to be tendered in the proceedings (H21) *Buhari v. INEC* p. 3461

CRIMINAL LAW - Murder - Defences - Self defence - Application of - All an accused is required to do is raise the defence - Prosecution then has the burden of showing that it does not apply by the evidence called - As it did in this case (H1) *Omoregie v. State* p. 3731

CRIMINAL PROCEDURE - Murder - Self defence - Injury from deceased - Accused person who caused death in self defence - Should show his injury as justification to his act - At earliest opportunity - Which appellant failed to do (H2) *Omoregie v. State* p. 3731

DOCUMENTS - Admissibility - When to rule thereon - A court need not wait for final address of parties to rule an admissibility of a document - It may rule thereon at the point it is sought to be tendered - Though it always has power to reconsider its ruling when writing judgment (H15) *Buhari v. INEC* p. 3461

DOCUMENTS - Tendered as exhibits - By witness other than the maker - Power to comment thereon - Though a document may be tendered and admitted through a witness other than the maker - Such witness lacks the competence to comment thereon unless he is an expert (H17) Buhari v. INEC p. 3461

ELECTION PETITIONS - Documents - Admissibility - Objections thereto - When to raise - It ought to be raised timeously - And when the party raising the objection has not taken any fresh step in the proceedings - As was rightly done by the respondents herein (H12) Buhari v. INEC p. 3461

ELECTION PETITIONS - Evidence - Burden of proof - Where petitioner has alleged noncompliance as in this case - The onus lies on him not only to prove noncompliance - But also to prove that it could have affected the result of the election (H7) Buhari v. INEC p. 3461

ELECTION PETITIONS - Evidence - Proof - Nature of - Allegation that result sheets were not delivered or non-counting of votes - Cannot be proved by mere documentary evidence - It also requires direct evidence of those who observed the noncompliance (H26) Buhari v. INEC p. 3461

ELECTIONS - Presidential candidates - Qualifications - Challenge to - Proper time to raise - The proper time to challenge the qualification of a presidential candidate - Should be after the conduct of election and the announcement of result (H23) Buhari v. INEC p. 3461

ESTOPPEL - Estoppel by conduct - Import of - Practice directions - Once a party has intimated that he consents to an act - As appellant in this case has consented to use of the practice directions - He cannot later be allowed to question the legality of that act (H5) Buhari v. INEC p. 3461

EVIDENCE - Evaluation - Role of appellate court - Where evaluation of evidence is a matter of inference - To be drawn from established facts on record - Appellate court is in as good a position as trial court

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- But Court of Appeal was wrong in reversing the trial court here - In view of the facts on record (H4) Dumez Ltd v. Nwakhoba p. 3683

EVIDENCE - Notary public - Powers - Limitations thereto - No notary public shall exercise any of his powers - Including the power to administer oaths or to attest and certify documents - In any matter in which he is interested (H13) Buhari v. INEC p. 3461

EVIDENCE - Rebuttable presumption - Effect - Burden of proof - Where there is a rebuttable presumption of a fact - As in this case, the authenticity of election results declared by a returning officer - The burden is on the person who denies the authenticity to rebut the presumption (H6) Buhari v. INEC p. 3461

JUDGMENTS - Basis - Public opinion - Place of - Courts of law do not give judgments according to public opinions - But according to evidence and law - However true may appear the public opinion - It needs to be proved by evidence to influence the court (H28) Buhari v. INEC p. 3461

JUDICIAL PRECEDENTS - Stare decisis - Call for departure - Attitude of courts - As departure from a decision of court is a major judicial exercise - Which if done often will ruin the stable rules of judicial precedent - Courts will not do so just for the asking (H8) Buhari v. INEC p. 3461

ORDERS OF COURT - Dismissal order - Propriety of - Where a plaintiff fails to satisfy the court - As to his entitlement to declaratory relief sought on his own evidence - It is the duty of the court to dismiss the case of the plaintiff (H2) Dumez Ltd v. Nwakhoba p. 3683

PLEADINGS - Averments - Admissions - How determined - In considering whether an averment is admitted - Court must consider the totality of the relevant paragraph - Bearing in mind that admissions must be unequivocal, not speculative (H27) Buhari v. INEC p. 3461

PRACTICE & PROCEDURE - Court of Appeal - Practice directions of

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2007 - Legality of - As Court of Appeal Act defines rules of court to be rules made or deemed to have been made under that Act - Practice directions qualify as such - Therefore they are legal (H4) Buhari v. INEC p. 3461

PRACTICE & PROCEDURE - Court processes - Leave to file - Effect of grant - The granting of leave to file court processes by a court - Does not estop that court from subsequently ruling on the validity - Or merit of the processes in the same proceedings (H14) Buhari v. INEC p. 3461

PRACTICE & PROCEDURE - Depositions - Objections thereto - When to raise - If an objection is not radical like objection on jurisdiction - Such objection must be raised at the earliest opportunity - Or the party may be deemed to have accepted the state of things - And so be estopped (H19) Buhari v. INEC p. 3461

PRACTICE & PROCEDURE - Practice directions - Binding effect of - Extent - In the hierarchy of our jurisprudence practice directions come last in terms of authority - In event of conflict with the Constitution or even the enabling rules of court - The latter prevails (H18) Buhari v. INEC p. 3461

PRACTICE & PROCEDURE - Practice directions - Legal status - They have force of law in the same way as rules of court - Being themselves part of rules of court - But they are subordinate to the Constitution and to statutes - In our hierarchy of laws (H3) Buhari v. INEC p. 3461

PRACTICE & PROCEDURE - Practice directions - Meaning of - They could be described as a written explanation of how to proceed in a particular area of law - In a particular court - Which explanation is declared by the relevant authority - In this case the president of Court of Appeal (H2) Buhari v. INEC p. 3461

WORDS & PHRASES - Indictment - Meaning of - 1999 Constitution, s. 137 (1)(i) - Indictment embraces an allegation or committal of something in the nature of a felony - Warranting the drafting of a

charge with a view of prosecuting the indicted - Therefore Exhibit EP2/34 is not an indictment (H25) Buhari v. INEC p. 3461

## **INDEX OF STATUTES & RULES**

Constitution of the Federal Republic of Nigeria, 1999, s. 239 (1) (a) Yar'dua v. Ababakar p. 3753; ss. 6, 36, 248, 285 Buhari v. INEC p. 3461

Court of Appeal Act, s.16 Dumez Ltd v. Nwakhoba p. 3683

Court of Appeal Rules, O. 19 r. 7 Buhari v. INEC p. 3461

Criminal Code, Cap 48, Vol. II, Laws of Bendel State of Nigeria, 1976, as applicable in Edo State, ss. 319 & 321 Omoregie v. State p. 3731

Election Tribunal & Court Practice Amendment Directions, 2007 Buhari v. INEC p. 3461

Election Tribunal & Court Practice Directions, 2007, Paragraphs 1 & 2 Buhari v. INEC p. 3461

Electoral Act, 2006, ss. 45, 145, 146, 159 Buhari v. INEC p. 3461

Evidence Act, ss. 83, 86, 87, 91, 92, 93, 111, 112 & 146 Buhari v. INEC p. 3461

Exchange Control Act, Cap 113, L. F. N., 1990 First Bank Plc v. Abraham p. 3707

High Court of Lagos State (Civil Procedure) Rules, 1992, O. 10 rr. 1 & 2 and O. 2 r. 3 First Bank Plc v. Abraham p. 3707

Supreme Court Act, s. 22 First Bank Plc v. Abraham p. 3707