

SUPREME COURT OF NIGERIA
27TH MARCH, 2009 SC. 251/2007
CORAM:- D. MUSDAPHER, G. A. OGUNTADE, W. S. N.
ONNOGHEN, I. F. OGBUAGU, F. F. TABAI, C. M. CHUK-
WUMA-ENEH, M. S. MUNTAKA-COOMASSIE, JJSC

HOPE DEMOCRATIC PARTY (HDP) APPELLANT
AND

1. INDEPENDENT NATIONAL
ELECTORAL COMMISSION (INEC) RESPONDENTS
2. PROF. MAURICE IWU (CHAIRMAN INEC)
3. PEOPLES DEMOCRATIC PARTY (PDP)
4. ALH. UMARU YAR'ADUA (PDP)
5. THE NIGERIA POLICE FORCE

ELECTION PETITIONS - Inelegant drafting - Grounds of complaint
- Notwithstanding the inelegance in drafting - The instant petition
contains a recognised ground of complaint (H1)

ELECTION PETITIONS - Validity - Sufficiency of pleadings - In view
of the facts of noncompliance pleaded - Court of Appeal was in error
to hold that the petition was not based on any ground known to law
(H2)

ELECTION PETITIONS - Parties - Competency - Mistake in the writ-
ing of the name notwithstanding - The facts show that the appellant
intended to sue INEC - The Court ought to have judicially noticed
this name (H3)

ELECTION PETITIONS - Technicalities - Applicability of - The inten-
tion of the Act is to do substantial justice - So any conclusion tending
to bar a case from hearing on the merits - Ought not to be encour-
aged (H4)

ELECTION PETITIONS - Mistake in name - Effect - Respondents
and Court were not misled as to the person sued - In view of the
acronym added to that name - Court of Appeal wrongfully held that
it was a non-juristic person (H5)

ELECTION PETITIONS - Parties - Capacity - Effect - The 2nd respondent was sued in his personal capacity - Whereas the law says he should be sued in official capacity - Court of Appeal rightly struck out his name (H6)

FACTS

The petitioner/appellant petitioned the Court of Appeal in its capacity as the Presidential Election Tribunal. The appellant was challenging the presidential election of April, 2007 on the ground of non-compliance with the Electoral Act and on the ground of corrupt practices. The defence counsel variously raised preliminary objections to the petition on the grounds, inter alia, that some of the respondents were non-juristic persons and that the petition did not contain a ground of complaint known to the electoral law.

The objections were consolidated and heard. The Court of Appeal upheld the objections and consequently struck out the petition. Aggrieved, the appellant has brought this appeal against that ruling of the Court of Appeal.

ISSUES FOR DETERMINATION

“1. Whether the tribunal’s interpretation of section 145 of the Electoral Act, 2006 and paragraph 4(1) (d) of the first schedule to the Electoral Act, 2006 was right and or justified based on which the petition was struck out for non-compliance with the said provisions of the Electoral Act,

2. Whether the jurisdiction of the tribunal was not invoked going by the content and issues of law canvassed in the petition as relevant to the petitioner’s case satisfying or complying with the provisions of section 145 and paragraph 4(1) (d) of first schedule to the Electoral Act., 2006 or whether compliance with all the grounds and condition of the said sections and paragraph to the Act is in mandatory terms.

3. Whether the tribunal was right to strike out the election petition for non-joinder of necessary parties following its decision that the 1st and 2nd respondents are non-juristic persons due to observed omission of the word “National” in one of the five sets of document/ processes filed before the tribunal OR whether the tribunal was right in entertaining the objections form (sic) on technical grounds raised by the respondents after having waiver (sic) their rights and taken

fresh steps without compliance with the Rules”.

HELD (Unanimously allowing the appeal per **ONNOGHEN JSC**)
ELECTION PETITIONS - Inelegant drafting

1. I had earlier stated that the petition is not elegantly drafted. However, by looking at the paragraphs of the petition reproduced in this judgment, it is very clear that the petition contains a ground recognized by the relevant section of the Electoral Act, 2006 particularly section 145(1) (b) thereof which provides that:

“(b) That the election was invalid by reason of corrupt practices or non-compliance with the provisions of this Act”.(p. 635 B)

ELECTION PETITIONS - Validity - Sufficiency of pleadings

2. The facts on which the ground of non-compliance with the provisions of the Electoral Act, 2006 is based have also been pleaded - that the ballot papers were neither bound in booklet form nor numbered serially as required by the Electoral Act, 2006 - see paragraph 21 of the petition and section 45(2) of the Electoral Act, 2006.

In the circumstance I am of the view that the lower court was in error when it held that the petition was not based on any ground known to law and that it did not disclose any cause of action.(p. 635 D/F)

ELECTION PETITIONS - Parties - Competency

3. The facts demonstrate in no uncertain terms that the appellant intended to sue the Independent National Electoral Commission (INEC) instead of Independent Electoral Commission (INEC) particularly as the acronym INEC added to Independent Electoral Commission clearly demonstrates. It is in no doubt whatsoever that the said acronym INEC refers to no other body other than Independent National Electoral Commission which the court can under the provisions of section 74 of the Evidence Act, take judicial notice of. (p. 637 E)

ELECTION PETITIONS - Technicalities - Applicability of

4. Since the intention of the Electoral Act and other laws employed in litigation are geared towards ensuring that substantial justice is done to the parties at the expense of technicalities, any conclusion that

tends to shut out an aggrieved party from the temple of justice by not hearing him on the merit ought not to be encouraged in the interest of peace and democracy. (p. 638 A)

ELECTION PETITIONS - Mistake in name - Effect

- B 5. I therefore hold that having regards to the acronym INEC which was added to the name of the 1st respondent in the petition, the respondents and the court were not misled as to the person being sued by the appellant particularly as the appellant made the mistake only on the petition while the other documents filed by the appellant as well as those by the 1st respondent clearly described the 1st respondent as Independent National Electoral Commission (INEC). In the circumstance, I hold the view that the lower court was in error when it held that the 1st respondent is a non-juristic person. (p. 638 D B)

ELECTION PETITIONS - Parties - Capacity - Effect

- E 6. I hold the considered view that the 2nd respondent as described in the instant petition is sued in his personal capacity, not in his official capacity. The person sued is clearly Prof. Maurice Iwu while the clause (Chairman INEC) serves only to qualify him. The law says that he has to be sued in his official status not private or personal capacity. I therefore hold the view that the lower court was right in striking out the name of the 2nd respondent from the petition. (p. 639 A/B)

NOTABLE POINTS OF INTEREST

ONNOGHEN JSC

1. The name of the 4th respondent alone was sufficient

- G Is it not rather strange that even the name of the statutory respondent, the 4th respondent was not considered by the lower court as being sufficient to sustain the petition granted that all the other respondents were non-juristic persons as held by the lower court. Is the 4th respondent also not a juristic person capable of being sued in the instant election petition? The answer is very obvious. (p. 639 D)

OGUNTADE JSC

2. Even a weak case deserves a hearing

That a case is weak or likely to fail is not a reason to peremptorily

terminate it. All persons who have legitimate complaints against government or authority must have their day in court. It is one thing to afford a citizen a hearing and at the end of it dismiss the case and quite another to drive him away from the judgment seat without a hearing.

Even a weak case deserves a hearing; and in any case no court knows the strength of a case without first hearing it. (p. 642 E)

OGBUAGU JSC

3. There has been a waiver of the alleged error

I note that at page 38 of the Records, a Conditional Appearance, was entered for the 3rd Respondent wherein its name is stated as PEOPLES' DEMOCRATIC PARTY (PDP). This in my respectful view, amounted to a waiver of any error or irregularity or mistake (although I see none) that may have appeared in the Petition.(p. 644 E)

CHUKWUMA-ENEH JSC

4. Paragraph 21 satisfies the purpose of pleadings

In so far as pleading is to acquaint the other side of the nature of the case to expect and even then, against the strict requirements under Section 145(1) and paragraph 4(1) of the Electoral Act, the above paragraph 21 has met the strict standard of pleading in the circumstances, thus raising a triable issue for determination. (p. 650 E)

REPRESENTATION

Chief A. A. Owuru for the appellant with him are Messrs. E. O. Udeogu, T. P. Onwuagba, M.C. Dim-Udebuam and Dr. Nnanna Ewa. Okon Efut Esq., for the 1st and 2nd respondents with him are Olana G Ogal (Mrs.), Kami Agabi Esq., Tochi Onyeachonam and C. Ikeazor (Miss).

R. O. Yusuf Esq. for the 3rd respondent with him are Mrs. S. I. Bamgbose, Mrs. F. M. Garga, A. U. Ringim Esq., I. E Marcus. Dr. Alex A. Izinyon, SAN for the 4th respondent with D. D. Dodo Esq., SAN.

M. B. Adike Esq., SAN and others as per the list of appearance.

C. U. Ekomaru Esq. for the 5th respondent with him are Chris Imy Erhabor 1 and J. Igbiniedion (Miss.).

CASES REFERRED TO

- Buhari V. Obasanjo (2005) 13 NWLR (pt. 941) 58
 Ogboru vs Ibori (2004) 7 NWLR (Pt.871) 192 at 223-224
 Obi Odu vs Duke (N0.2) (2002) 10 NWLR (Pt.932) 105 at 144-145
 B BELLO V. A.G. OYO STATE (1986) 5 NWLR (Pt.) 828 at 876

STATUTES REFERRED TO

- Constitution of the Federal Republic of Nigeria, 1999, s. 153(1)
 C Electoral Act 2006, ss. 140, 144 &145
 Evidence Act, s. 74 ???

LEAD JUDGMENT BY ONNOGHEN JSC

This is an appeal against the ruling of the lower court sitting at
 D the Presidential Election Tribunal, holden at Abuja in Election Petition NO. A/A/EP/5/07 delivered on the 20th day of August, 2007 in which the court struck out the petition of the appellant for being incompetent.

On the 18th day of May, 2007, the petitioner/appellant presented an election petition before the lower court in which it prayed the court, in paragraph 23 (a) and (b) as follows:-

- “(a) *An order of the tribunal, that the election is invalid for reason of non-compliance with substantial sections of the Electoral Act, 2006.*
 F (b) *An order of the tribunal that the election is invalid for reasons of corrupts (sic) practices”.*

It is not disputed that the appellant is one of the duly registered political parties that took part or participated in the April, 2007
 G Presidential Election in Nigeria and was dissatisfied with the outcome of the said election hence the petition. The petition is against the following respondents:

- (1) *Independent Electoral Commission (INEC)*
 (2) *Prof. Maurice Iwu (Chairman INEC)*
 H (3) *People Democratic Party (PDP)*
 (4) *Alh. Umaru Yar’adua (PDP)*
 5) *The Nigerian Police Force*

On the 31st day of July, 2007, learned senior counsel for the 4th respondents, Chief Wole Olanipekun, SAN, filed a motion in the

lower court praying that the petition be struck out on the following grounds:-

“1. The 1st, 3rd and 5th respondents are not juristic persons or persons known to law.

2. It does not comply with section 145(1), paragraph 4(1) of the 1st schedule to the Electoral Act, 2006. B

3. The petition is not properly constituted as persons or institutions who are proper, necessary or desirable parties and whose presence are required for a just determination of the petition have not been made parties. C

4. The petition is hypothetical, moot or academic.

5. The reliefs being claimed by the petition are at large and same vest no right or benefit in the petitioner”.

On the 3rd day of August, 2007 the learned senior counsel for the 1st and 2nd respondents, Kanu Agabi Esq., SAN also filed a motion and a preliminary objection praying for the striking out or dismissal of the petition on grounds very similar to those earlier reproduced in this judgment.

The objections/motions were consolidated and heard together and in a reserved ruling delivered on the 20th day of August, 2007 E the lower court, sustained same as a result of which the petition of the appellant was held to be incompetent and consequently struck out. The instant appeal is against the said ruling.

In the appellant’s brief filed on 12/9/07, learned counsel for the appellant, Chief A. Owuru identified the following issues for de- F termination:-

“1. Whether the tribunal’s interpretation of section 145 of the Electoral Act, 2006 and paragraph 4(1) (d) of the first schedule to the Electoral Act, 2006 was right and or justified based on which the G petition was struck out for non-compliance with the said provisions of the Electoral Act,

2. Whether the jurisdiction of the tribunal was not involved going by the content and issues of law canvassed in the petition as relevant to the petitioner’s case satisfying or complying with the pro- H visions of section 145 of the petition and paragraph 4(1) (d) of first schedule to the Electoral Act., 2006 or whether compliance with all the grounds and condition of the said sections and paragraph to the Act is in mandatory terms,

3. *Whether the tribunal was right to strike out the election petition for non-joinder of necessary parties following its decision that the 1st and 2nd respondents are non-juristic persons due to observed omission of the word “National” in one of the five sets of document/processes filed before the tribunal OR whether the tribunal was right in entertaining the objections form (sic) or technical grounds raised by the respondents after having waiver (sic) their rights and taken fresh steps without compliance with the Rules”.*

On behalf of the 1st and 2nd respondents, the following issues have been formulated by Kanu Agabi Esq., SAN in the brief of argument filed on the 4th day of January, 2008:

“2.01. *Whether the appellant failed to comply with the mandatory provisions of section 145 of the Electoral Act, 2006 and paragraph 4 (1)(d) of the first schedule to the Electoral Act and if so whether the lower court was right to strike out the petition on that ground (Grounds 1,2 and 3).*

2.02. *Whether the lower court was right in holding that the 1st and 2nd respondents were not juristic persons within the contemplation of the law and if so whether that court was right in striking out the petition on the ground of nonjoinder of necessary parties (Grounds 4 and 5).*

2.03. *Whether the respondents had waived their right to move the court to strike out the petition as incompetent by taking fresh steps in the proceedings after becoming aware of the issues giving rise to the application to strike out the petition”.*

Similar issues were formulated and argued by learned senior counsel for the 3rd respondent, *Chief Joe-Kyari Gadzama, SAN* in the brief deemed filed on 12/2/08; *Chief Wole Olanipekun, SAN* in the brief of argument filed on behalf of the 4th respondent on 8/10/07 and C. *UEkomaru, Esq* for the 5th respondent in his brief deemed filed on the 15th day of January, 2009.

In arguing issue 1, learned counsel for the appellant, *Chief Owuru* referred to the provisions of section 145 (1) (b) of the Electoral Act, 2006 and submitted that the said section allows the petitioner a choice of grounds appropriate to its case and that the relevant ground on which the instant petition was based is clearly stated in the petition - which learned counsel submitted is that the election was “invalid by reason of corrupt practices and non-compliance with

the Electoral Act, 2006”; that the petition is not questioning the number of votes scored in the election by the candidates thereto; that the petition conforms with the provisions of sections 140(1) and 145(1) (b) of the Electoral Act, 2006 as is evidenced in the pleadings in paragraphs 1,2,3,4,5,6,7,8,9,20,21,22 and 23 of the petition which show that the ballot papers used for the election was not bound and numbered serially as required by section 45(2) of the Electoral Act, 2006 and advertised in the Punch Newspaper of 13th April, 2007; that the provisions of paragraph 4(1)(d) of the first schedule to the Electoral Act, 2006 refer to the same grounds as required by section 145(1) (a) to (d) of the Electoral Act, 2006 and ought not to be treated or interpreted in isolation from the said section 145; that the objections of the respondents to the petition have to do with the form in which the petition is presented which ought not to have been countenanced having regards to the provisions of paragraph 49(1) D and (4) of the first schedule to the Electoral Act, 2006; that the petitioner has a cause of action contrary to the holding of the lower court and urged the court to resolve the issue in favour of the appellant.

Learned senior counsel for the 1st and 2nd respondents, *Kanu Agabi Esq, SAN* referred to the provisions of section 145(1) of the Electoral Act, 2006 and submitted that the appellant’s petition has no ground alleging that the 4th respondent is not qualified to contest the election; that the election was invalid by reason of corrupt practices or non-compliance with provisions of the Act; that the 4th respondent was not elected by majority of lawful votes cast at the election neither was there any ground alleging that the appellant’s candidate was unlawfully excluded from the election; that once there are no grounds in support of a petition, the petition is deemed to be invalid and that the lower court was right when it struck same out, relying on the Court of Appeal decision in *Ogboru vs Ibori (2004) 7 NWLR (Pt.871) 192 at 223-224*.

Learned senior counsel also referred to the provisions of paragraph 4(1) of the first schedule to the Electoral Act, 2006 and submitted that the petition failed to comply with that provision and that the lower court was right by virtue of the provisions of paragraph 4(6) of the first schedule to the Electoral Act, 2006 in striking out the petition, relying on *Obi Odu vs Duke (NO.2) (2002) 10 NWLR (Pt.932) 105 at 144-145*; that the lower court also found that there

was no cause of action disclosed in the petition and urged the court to resolve the issue against the appellant.

On his part, learned senior counsel for the 3rd respondent submitted that the lower court was right in striking out the petition for non-compliance with the provisions of section 145(1) of the Electoral Act, 2006 and paragraph 4(1) (d) of the first schedule to the Electoral Act, 2006 as the same did not disclose any cause of action; that the petition made general and wild allegations of fraud and forgery and corrupt practices etc. and urged the court to resolve the issue against the appellant.

The submission of the learned senior counsel for the 4th respondent *Chief Wole Olanipekun, SAN* and counsel for the 5th respondent, C. *UEkomaru Esq* on the issue 1 is substantially the same with what had already been summarized in this judgment. They too urged the court to resolve the issue against the appellant.

The relevant provisions to the resolution of issue 1 are sections 145(1) of the Electoral Act, 2006 and paragraph 4(1) (d) of the first schedule to the Electoral Act, 2006. These provide as follows :-

“ 145 (1) An election may be questioned on any of the following grounds-

(a) That the person whose election is questioned was at the time of the election not qualified to contest the election.

(b) That the election was invalid by reason of corrupt practices or non-compliance with the provisions of the Act;

(c) That the respondent was not duly elected by the majority of lawful votes cast at the election or;

(d) That the petitioner or its candidate was validly nominated but was unlawfully excluded from the election”.

Paragraph 4 (1) (d) supra provides thus:-

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

(a) Specify the parties interested in the election petition.

(b) Specify the right 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 ground or grounds on which the petition is based and the relief sought by the petitioner”.

It is very clear that a combined reading of section 145(1) and paragraph 4(1) of the first schedule both supra clearly sets out four distinct grounds for presenting an election petition as non-qualification of the candidate(s) returned; invalidity of an election by means of corrupt practices or non-compliance with the provisions of the Electoral Act, 2006; that the respondent was not duly elected by majority of lawful votes cast at the election; and, valid nomination of a candidate who was wrongfully excluded from the election. It is clear that the grounds for questioning an election by way of an election petition mentioned in paragraph 4(1) (d) supra are as specified in section 145(1) of the Electoral Act, 2006. The lower court, in dealing with the issue under consideration stated thus, *inter alia*:

"I have taken time to read through the petition several times. I cannot see where the grounds for the petition have been stated, not to talk of stating it clearly. And the same cannot be left to conjecture. I need to also state that facts relied upon were often generalized".

The court also stated *inter alia*:

"No ground is stated as forming the pivot of the petition as enjoined by the provision of paragraph 4(1) (d) of the first schedule to the Electoral Act, 2006..... there appears to be a failure of cause of action in toto..... I strongly feel that the petitioner should be told that since he failed to comply with the rules set out in paragraph 4 (1) (d) of the first schedule to the Act (sic) and did not state any cognizable ground for bringing his petition as mandated by the provisions of section 145(1)(a) to (d) of the act she failed to initiate her petition by due process of the law. After all, where a statute provides for a particular method of performing a duty regulated by statute, that method and no other must have to be adopted".

The question that calls for an answer is whether the lower court is right in holding supra. It is not in dispute that a petitioner is required by law to state in his petition the ground or grounds on which the petition is predicated in addition to stating therein the facts relied upon to sustain the said ground or grounds and finally the relief(s) sought, The provisions are mandatory.

Did the appellant state any ground or grounds on which the petition is based? While the appellant argues that it did, the respondents and the lower court are of the view that it did not. Since the facts stated in the petition constitute the pleadings, it is necessary to

take a close look at the petition of the appellant in the determination of the issue under consideration.

I must confess that the petition is not well or elegantly drafted particularly as it did not separately state the grounds for presenting the petition under separate heads or subheads. This means that for one to determine whether the petition is based on any ground(s) as required by law, one has to read through the paragraphs of the petition to see what the petitioner pleaded.

In paragraph 1, the petitioner/appellant pleaded as follows:-

“Your *petitioner is a political party which participated in the election under question and which sponsored and presented a candidate for the proposed April, 21st 2007 Presidential Election, which election did not hold or conducted at all by the 1st and 2nd respondents in accordance with the 1999 Constitution, electoral laws, rules and guideline of the proposed election*”.

In paragraph 1 the petitioner/appellant pleads thus:-

“*The petitioner avers that the ballot papers used for the April 21st, 2007 Presidential Election where (sic) not bounded in booklet and numbered serially as mandatorily required by law given (sic) room for undue manipulation and perpetuation of fraud on the election day. The petitioner shall at the trial found and rely on the loose ballot papers without serial numbers for the said April Election the 1st and 2nd respondent (sic) are hereby given notice to produce copies of the ballot papers for the April, 2007 Presidential Election*”

Finally, in paragraph 23 the petitioner/appellant pleaded thus:-

“*The petitioner shall contend that the election being fraught with grave non-compliance with the constitutional and statutory laws regulating the said election with obvious omissions and in-built manipulation that the 1st and 2nd respondents (sic) with clear in-built mechanism for fraud, no candidate in that election ought to have been returned at (sic) duly elected including the 4th respondent as the purported election was not free, fair and credible and stands vitiated by those factors as a non-election illegal and therefore non (sic) and void in the circumstance.*

i. Grave non-compliance and corrupt practices must affect the election results substantially and wholly.

ii. No candidate can be validly elected or returned in such circumstance.

WHEREFORE THE PETITIONER PRAYS THAT IT BE DETERMINED AS FOLLOWS:-

a. AN ORDER of the tribunal, that the election is invalid for reason of non-compliance with substantial sections of the Electoral Act, 2006,

b. AN ORDER of the tribunal that the election is invalid for reasons of corrupt practices”.

I had earlier stated that the petition is not elegantly drafted. However, by looking at the paragraphs of the petition reproduced in this judgment, it is very clear that the petition contains a ground recognized by the relevant section of the Electoral Act, 2006 particularly section 145(1) (b) thereof which provides that:

“(b) That the election was invalid by reason of corrupt practices or non-compliance with the provisions of this Act”.

The facts on which the ground of non-compliance with the provisions of the Electoral Act, 2006 is based have also been pleaded - that the ballot papers were neither bound in booklet form nor numbered serially as required by the Electoral Act, 2006 - see paragraph 21 of the petition and section 45(2) of the Electoral Act, 2006, which clearly provides that:

“(2) The ballot papers shall be bound in booklets and numbered serially with differentiating colours for each office being contested”.

In the circumstance I am of the view that the lower court was in error when it held that the petition was not based on any ground known to law and that it did not disclose any cause of action. I therefore resolve the issue in favour of the appellant.

On issue 2, I hold the view that the resolution of issue 1 has done away with issue 2 as formulated by learned counsel for the appellant. The issue as formulated is:

"Whether the jurisdiction of the tribunal was not invoked going by the content and issues of law canvassed in the petition as relevant to the petitioner's case satisfying or complying with the provisions of section 145 of the Act and paragraph 4(1)(d) of the first schedule to the Electoral Act., 2006 or whether compliance with all the grounds and condition of the said sections and paragraph to the Act is in mandatory terms”.

The above issue is therefore discountenanced by me.

On issue 3, learned counsel for the appellant admitted that there was a typographic error relating to the omission of the word “*National*” in the nomenclature of the 13th respondent in the petition, which is one out of five documents filed at the registry of the lower court as required by statute. Learned counsel however submitted that the error does not make the 1st respondent to be a non-juristic person as well as the 2nd respondent as described in the petition; that the addition of the acronym “*INEC*” to the name of the 1st respondent clearly shows that the appellant intended to sue the Independent National Electoral Commission (INEC); that the court should take judicial notice of the use of the name “*INEC*” by invoking section 74 of the Evidence Act to hold that it refers to the 1st respondent; that an election petition is properly constituted when the person elected or returned is joined as a party and any other respondent is a deemed respondent depending on the complaint against him and that a non-joinder of same does not affect the competence of the petition, relying on sections 140(1) and 144 (2) of the Electoral Act, 2006; that in the instant case, the 4th respondent was joined in the petition as a statutory respondent whose presence validated the petition once it is clear that the petitioner has *locus standi* to present the petition and urged the court to resolve the issue in favour of the appellant and allow the appeal.

On his part, learned senior counsel for the 1st and 2nd respondents submitted that the courts have no jurisdiction over non-juristic persons such as the 1st and 2nd respondents mentioned in the petition; that the 2nd respondent is sued in his personal capacity, referring to the provisions of section 144(2) of the Electoral Act, 2006 learned senior counsel submitted that the appellant has no right to sue the 2nd respondent in his personal capacity and that the lower court was right in striking out his name from the petition; that there is a world of difference between the Independent National Electoral Commission and the Independent Electoral Commission as one is known to law while the other is not and urged the court to resolve the issue against the appellant and dismiss the appeal.

On his part, learned senior counsel for the 3rd respondent *Chief Gadzama, SAN* referred the court to section 153(1) of the 1999 Constitution on the establishment and name of the Independent

National Electoral Commission comparing same with the 1st respondent as described in the petition; that the name of the 3rd respondent was also not correct as it is described or called People Democratic Party, instead of Peoples Democratic Party; that even the name of the 5th respondent was wrongly stated on the processes.

Learned senior counsel also referred to section 144(2) of the Electoral Act, 2006 and submitted that the appellant was wrong in suing the 2nd respondent in his personal capacity and urged the court to resolve the issue against the appellant and dismiss the appeal.

There is no doubt, that the 1st respondent whose real name is Independent National Electoral Commission with the acronym of INEC was described/named in the petition as Independent Electoral Commission (INEC); apart from the petition, the name of the 1st respondent was properly described in all the other documents filed along with the petition to wit, notice of petition; receipt of petition; witness statement on oath; list of witnesses.

From the above, it is very clear that the omission of the word “National” in the name of the 1st respondent between “Independent” and “Electoral” in the petition alone out of the five documents filed challenging the election is an error on the part of the appellant. The question is whether the error is fatal to the petition of the appellant as held by the lower court.

It must be borne in mind that ***the facts demonstrate in no uncertain terms that the appellant intended to sue the Independent National Electoral Commission (INEC) instead of Independent Electoral Commission (INEC) particularly as the acronym INEC added to Independent Electoral Commission clearly demonstrates. It is in no doubt whatsoever that the said acronym INEC refers to no other body other than Independent National Electoral Commission which the court can under the provisions of section 74 of the Evidence Act, take judicial notice of.*** It should be noted that though election petitions are said to be *sui generis* they are concerned with the political rights and obligations of the people — particularly those who consider their rights injured by the electoral process and need to ventilate their grievances. Such people ought to be encouraged to do so with some latitude knowing that in the process of initiating proceedings to ven-

tilate their grievances, mistakes, such as those in the instant case may occur. ***Since the intention of the Electoral Act and other laws employed in litigation are geared towards ensuring that substantial justice is done to the parties at the expense of technicalities, any conclusion that tends to shut out an aggrieved party from the temple of justice by not hearing him on the merit ought not to be encouraged in the interest of peace and democracy.***

I therefore hold that having regards to the acronym INEC which was added to the name of the 1st respondent in the petition, the respondents and the court were not misled as to the person being sued by the appellant particularly as the appellant made the mistake only on the petition while the other documents filed by the appellant as well as those by the 1st respondent clearly described the 1st respondent as Independent National Electoral Commission (INEC). In the circumstance, I hold the view that the lower court was in error when it held that the 1st respondent is a non-juristic person.

With respect to the 2nd respondent, section 144(2) of the Electoral Act, 2006 provides as follows:

“2. The person whose election is complained of is, in this Act, referred to as the respondent, but if the petitioner complains of the conduct of an Electoral Officer, a Presiding Officer, a Returning Officer or any other person who took part in the conduct of an election, such officer or person shall for the purpose of this Act be deemed to be a respondent and shall be joined in the election petition in the official status as a necessary party”.

It is very clear from the above provisions that only the persons named/recognized by section 144(2) of the Electoral Act, 2006 can be made respondents to any valid election petition and that apart from the statutory respondent who has to be sued in his personal capacity every other respondent has to be joined in appropriate cases, in their “official status” or capacity.

The question is whether Prof. Maurice Iwu (Chairman INEC) is sued in his official status or capacity in the instant petition. Learned counsel for the appellant has argued that the 2nd respondent is sued in his official capacity as chairman of INEC or in the alternative that having regard to the fact that allegations of improper conduct have

been made in the petition against the person of the 2nd respondent, he has to be sued in his personal capacity.

I hold the considered view that the 2nd respondent as described in the instant petition is sued in his personal capacity, not in his official capacity. The person sued is clearly Prof. Maurice Iwu while the clause (Chairman INEC) serves only to qualify him. I have gone through the petition and I do not agree with the learned counsel for the appellant that Prof. Maurice Iwu played any personal role in the conduct of the April, 21st 2007 presidential election; even if he did, ***the law says that he has to be sued in his official status not private or personal capacity. I therefore hold the view that the lower court was right in striking out the name of the 2nd respondent from the petition.***

As regards the striking out of the names of the 3rd and 5th respondents on the ground that the letter S was not added to People to make it Peoples Democratic Party while the letter N was added to Nigeria in Nigerian Police Force is too trivial to be considered any further in this judgment.

By the way, is it not rather strange that even the name of the statutory respondent, the 4th respondent was not considered by the lower court as being sufficient to sustain the petition granted that all the other respondents were non-juristic persons as held by the lower court. Is the 4th respondent also not a juristic person capable of being sued in the instant election petition? The answer is very obvious.

In conclusion, I find merit in this appeal which is accordingly allowed by me. The ruling of the lower court delivered on the 20th day of August, 2007 is hereby set aside except the order striking out the name of the 2nd respondent from the petition which is hereby affirmed.

It is further ordered that the petition be and is hereby remitted to the lower court to be heard on merit before another panel to be constituted by the President of the Court of Appeal.

I make no order as to costs.

Appeal allowed.

"23 The petitioner shall contend that the election being fraught with grave non-compliance with the constitutional and statutory laws regulating the said election with obvious omissions and in-built manipulation that the 1st and 2nd respondents (sic) with clear in-built mechanism for fraud, no candidate in that election ought to have been returned at (sic) duly elected including the 4th respondent as the purported election was not free, fair and credible and stands vitiated by those factors as a non-election illegal and therefore non (sic) and void in the circumstance.

i. Grave non-compliance and corrupt practices must affect the election results substantially and wholly.

ii. No candidate can be validly elected or returned in such circumstance.

WHEREFORE THE PETITIONER PRAYS THAT IT BE DETERMINED AS FOLLOWS:-

a. AN ORDER of the tribunal, that the election is invalid for reason of non-compliance with substantial sections of the Electoral Act, 2006.

b. AN ORDER of the tribunal that the election is invalid for reasons of corrupt practices."

There was an application by some of the respondents before the court below that the Petition be struck out on grounds stated thus:

"1. The 1st, 3rd and 5th respondents are not juristic persons or persons known to law.

a. It does not comply with section 145(1), paragraph 4(1) of the 1st schedule to the Electoral Act, 2006.

b. The petition is not properly constituted as persons or institutions who are proper; necessary or desirable parties and whose presence are required for a just determination of the petition have not been made parties.

c. The petition is hypothetical, moot or academic.

d. The reliefs being claimed by the petition are at large and same vest no right or benefit in the petitioner."

The court below acceded to the Respondents' prayers and struck out the petition. In striking out the petition, the court below reasoned thus:

"I have taken time to read through the petition several times. I

cannot see where the grounds for the petition have been stated, not to talk of stating it clearly. And the same cannot be left to conjecture. I need to also state that facts relied upon were often generalized.

No ground is stated as forming the pivot of the petition as enjoined by the provision of paragraph 4(1)(d) of the First Schedule to the Electoral Act, 2006..... there appears to be a failure of cause of action in toto..... I strongly feel that the petitioner should be told that since he failed to comply with the rules set out in paragraph 4(1)(d) of the First Schedule to the Act and did not state any cognizable ground for bringing his petition as mandated by the provisions of section 145(l)(a) to (d) of the act she failed to initiate her petition by due process of the law. After all, where a statute provides for a particular method of performing a duty regulated by statute, that method and no other must have to be adopted.”

Was the court below right to have done so? I think not. Section 36(1) of the 1999 Constitution of Nigeria guarantees a citizen’s right to fair hearing. This provision embodies the right of a citizen to approach the court to air whatever grievance he may have against any person, government or authority. It is one of the cornerstones upon which a democratic governance is built. That a case is weak or likely to fail is not a reason to peremptorily terminate it. All persons who have legitimate complaints against government or authority must have their day in court. It is one thing to afford a citizen a hearing and at the end of it dismiss the case and quite another to drive him away from the judgment seat without a hearing.

Section 145(1) of the Electoral Act 2006 provides that petition may be brought on the ground:

“That the election was invalid by reason of corrupt practices or non-compliance with the provisions of this Act.”

And Section 45(2) of the same Act provides:

“The ballot papers shall be bound in booklets and numbered serially with differentiating colours for each office being contested.”

It seems clear to me that the ground raised by the appellant for his petition clearly fits into Section 45(2) above. The court below was therefore in error to have struck it out. I am not unaware that a multiplicity of petitions arising from the same election and based on the same grounds can be very troubling and difficult to manage for the same court. But it is a price that must be paid in order to sustain

our democracy and dispense justice to all. Even a weak case deserves a hearing; and in any case no court knows the strength of a case without first hearing it.

It is for the above reason and the others in the lead judgment of my brother Onnoghen JSC that I would also allow this appeal. I make no order as to costs. B

OGBUAGU JSC.

I have had the privilege of reading before now, the Lead Judgment of my learned brother, Onnoghen, JSC just delivered. I agree with his reasoning and conclusion in allowing the appeal. However, for purposes of emphasis, I will make my brief contribution. C

I will deal with Issues 1 and 2 of the Appellant together. Both are substantially the same although differently couched. Can it be seriously contended as some of the Respondents have done and as the court below held inter alia, that the Petition, contains no ground recognizable or cognizable by the Electoral Act, 2006 or that there is no cause of action and that it was not initiated by due process of law in view or in spite of the pleading of the Appellant in paragraph 21 of the Petition? I or one may ask. With profound humility and the greatest respect to the learned counsel for the 1st, 2nd, 3rd and 4th Respondents in particular, and the court below, I think not. E

In paragraph 21 of the Petition, at page 12 of the Records, the following appear:

“The petitioner avers that the ballot papers used for the April Presidential election where (sic) (meaning were) not bounded in booklet and numbered serially as mandatorily required by law given (sic) (meaning giving) room for undue manipulation and perpetration of fraud on the election day. The petitioner shall at the trial found and rely on the loose ballot papers without serial numbers for the said April Election, the 1st and 2nd respondent (sic) are hereby given notice to produce copies of the ballot papers for the April, 2007 Presidential election”. F G

In the relief sought at page 13 thereof, it is stated as follows: H

“WHEREFORE THE PETITIONER PRAYS THAT IT BE DETERMINE AS FOLLOWS:

a. AN ORDER of the tribunal, that the election is invalid for reason of non compliance -with substantial sections of the electoral

act 2006. (sic)

b. *AN ORDER of the tribunal that the election is invalid for reasons of corrupt practices”*

Now, Section 145(1) (b) of the Electoral Act, 2006 (hereinafter called “the Act”) provides as follows:

B *“That the election was invalid by reason of corrupt practices or non-compliance with the provisions of this Act”,*

Section 45(2) of the Act, provides as follows:

C *“The ballot papers shall be bound and numbered serially with differentiating colours for each office being contested”.*

These are clear and unambiguous provisions of a statute. It is therefore, quite and plain to me, that the court below, with respect, was in grave error, to have held as I have earlier stated in this Judgment, that the Appellant’s Petition, was not based on any ground D known to the law and that it did not disclose any cause of action. This cannot be true or correct, having regard to the said pleading or averment in the Petition and the said provisions of the Act.

Touching briefly on Issue 3, I or one may ask, can it be seriously contended or submitted as the said Respondents have done in E their respective Brief, that any of their clients or themselves, was/were misled in the nomenclatures of the said Respondents? Afterwards, I note that at page 38 of the Records, a Conditional Appearance, was entered for the 3rd Respondent wherein its name is stated F as PEOPLES’ DEMOCRATIC PARTY (PDP). This in my respectful view, amounted to a waiver of any error or irregularity or mistake (although I see none) that may have appeared in the Petition. I even note that it filed a copious Reply to the Petition. Again, all the Respondents, were duly represented by learned counsel some of them, G eminent SANS. Does it not look or sound very amusing if not, with respect, ridiculous in the extreme, that for instance, the alphabet S, was not added to or omitted from the name of the Peoples Democratic Party (PDP) - the 3rd Respondent, rendered it to be a non-juristic personality? I or one may ask. The whole thing, to say the H least, to me, is very or most laughable. I say no more on this issue.

In my humble but firm view, the objection is trivial and of no moment, more so, as some of the Respondents, took some steps in the proceedings by filing Replies to the Petition. Again, the Petition, could have survived, with or in the name of the 4th Respondent at

least, if an amendment was not necessary at the point the said Ruling was made.

In concluding this Judgment, I note that the learned counsel for the Appellant, was the Presidential Candidate of the Appellant. I find as a fact and hold that the court below, with respect, was too legalistic so to say, and rather in a hurry or too hasty, to get rid of the Petition in its entirety. It is a pity. Justice, must not be sacrificed on the alter or flimsy excuse or reliance on technicality which has been deprecated by this Court in some of its decided authorities. If I or one may finally ask, Is the 1st Respondent's acronym, not INEC? What injustice or miscarriage of justice did the 1st Respondent suffer or say it suffered, when the word "National" was not added to its name in the Petition even though some of the documents attached to the Petition, bore its full names and even when in its said Conditional Appearance, its full names is shown therein/thereon? With respect, I see none.

It is from the foregoing and the more detailed Lead Judgment of my learned brother, Onnoghen, JSC, that I too allow the appeal and abide by the orders contained in the said lead Judgment.

TABAI JSC

This petition dated the 18th of May 2007 was presented at the Abuja Judicial Division of the Court of Appeal on the same date. The petition which contained 23 paragraphs with each containing several sub paragraphs contained a lot of allegations. These included violence logistical problems and arbitrary allocation of votes, fraud, forgery, electoral offences malpractices, corrupt practices and other non-compliances in violation of both the Constitution and the Electoral Act. And in the petition, the Appellant claimed;

(a) AN ORDER of the tribunal that the election is invalid for reason of non-compliance with substantial sections of the Electoral Act. 2006;

(b) AN ORDER of the tribunal that the election is invalid for reasons of corrupt practices.

By his motion filed on the 31/7/07 the 4th Respondent prayed the Court below to strike out or dismiss the petition on the grounds that:

(1) The 1st, 3rd and 5th Respondents are not juristic persons

or persons known to law;

(2) It does not comply with section 145(1) and paragraph 4(1) of the 1st Schedule to the Electoral Act 2006.

(3) The petition is not properly constituted as persons or institutions who are proper, necessary or desirable parties and whose presence are required for just determination of the petition have not been made parties.

(4) The petition is hypothetical moot or academic.

(5) The reliefs being claimed by the Petitioner are at large and same vest no right or benefit in the petitioner.

The 1st and 2nd Respondents also filed a Notice of Preliminary Objection on the 3/8/07 to dismiss the petition on the grounds that:

1. The Honourable Court lacks the jurisdiction and or vires to entertain the petition as constituted;

2. The petition has not disclosed any cause of action against the Respondents as there are no grounds in the petition and no particulars there-under as constituted to show that the election was not conducted substantially in accordance with principles of this Act or that the non-compliance affected substantially the result of the election as envisaged under the provisions of Section 145(1) of the Electoral Act 2006.

3. The petition is a gross abuse of the process of the Court.

The two applications were consolidated and taken. By its ruling on the 20/8/2007 the Court below sustained the preliminary objections on almost all the grounds. In its conclusion the Court per Fabiyi JCA, (as he / then was) had this to say:

“From whatever angle one views the petition, it is incompetent. The petition was not initiated by due process of the law. Due procedural requirements were not followed. Non-juristic persons were sued to the chagrin of the petitioner. The Court is derobed of its jurisdiction to entertain the petition. The preliminary objection filed by the 1st and 2nd Respondents, as well as the application filed by the 4th Respondent were well taken. As the petition filed on the 18/5/07 is incompetent, it is hereby struck out.”

The petitioner was aggrieved by this decision and has come on Appeal to this Court. Briefs have been filed and exchanged. Three issues for determination were identified by the parties and arguments

were submitted on them. The first issue deals with the grounds for the petition.

Section 145(1) of the Electoral Act 2006 contains the grounds upon which an election may be questioned. And paragraph 4(1)(d) of the 1st Schedule to the Electoral Act 2006 provides to the effect that "an *election petition under this Act shall state clearly the facts of the election petition and the ground or grounds on which the petition is based and the relief sought by the petitioner.*"^B

The Court below upheld the view of the Respondents that the petition contained no grounds. At page 196 of the record, the Court^C said:

'I have taken time to read through the petition several times. I cannot see where the grounds for the petition have been stated; not to talk of stating it clearly. And same cannot be left to conjecture,.....'

I do not, with respect, agree with the finding of the court below. The^D 23 paragraph petition contains numerous grounds for questioning the election.

Although there is no identifiable paragraph of the petition with the grounds specifically set out therein, a global reading of the petition shows clearly that there are grounds for questioning the election.^E The petitioner alleges and asserts that at the trial it will prove that the election was held amidst violence, logistical problems besire allocation of 24 million votes by the 2nd Respondent in favour of the 4th Respondent without recourse to the actual state of the election; an-^F nouncement of results even before voting was concluded and in respect of areas where no voting took place, use of result sheets that were not signed and counter-signed by accredited party agents, pro-^G curing the services of the 5th Respondent for stuffing ballot papers and hijacking of ballot boxes, use of mere loose and unserialised and unbounded ballot papers contrary to the stipulations in the electoral laws etc. The above and many other grounds for questioning the election of the 21/4/07 are contained in the petition. If the petitioner can establish these allegations at the trial, the petition can be sus-^H tained. In view of the foregoing, the court below was wrong to find that no grounds are stated in the petition.

On the issue of whether or not the 1st , 2nd and 5th Respon-
dents are juristic persons, the court below accepted the submission of the Respondents that by reason of some misnomer in the names of

the 1st, 3rd and 5th Respondents, they were non-juristic persons. The court held that in view of the use of INDEPENDENT ELECTORAL COMMISSION (INEC) instead of INDEPENDENT NATIONAL ELECTORAL COMMISSION, PEOPLE DEMOCRATIC PARTY instead of PEOPLES DEMOCRATIC PARTY (PDP), The NIGERIAN POLICE FORCE instead of THE NIGERIA POLICE FORCE, the necessary and desirable parties were thereof incompetent. At page 202 of the record the court concluded:

“The petition is manifestly incompetent for non-joinder of proper, necessary and desirable parties. The proper order to make in this circumstances is to strike out the petition.”

It is to be noted that in almost all the processes filed along with the petition the correct names INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC) and PEOPLES DEMOCRATIC PARTY (PDP) were stated. The List of witnesses, Lists of documents to be relied on, Receipt of Petition, Notice of Presentation of Petition and the Statements of Witnesses on Oath all contained the correct names of the 1st , 3rd and 5th Respondents.

Despite the misnomer in the names of the 1st , 3rd and 5th Respondents they were not in any doubt about their duties and responsibilities as such respondents and have all filed their answers to the petition wherein issues were joined with the petitioner. In such circumstances striking out the petition, as was done, was to lend too much credence to technical justice which sometimes inflicts injustice. The petitioner should be allowed to ventilate his grievances through a trial and determination of the petition on its merits.

For the foregoing and the detailed reasons ably articulated in the lead judgment of my learned brother Onnoghen JSC I also allow the appeal. The petition be and is hereby remitted back to the Court of Appeal for trial and determination on its merits. I make no orders as to costs.

CHUKWUMA-ENEH JSC

This appeal is against the decision of the Court of Appeal Abuja, (Court below) in peremptorily striking out the instant petition for want of cause of action and competent parties before it. The major issue as joined between the parties in this appeal from the Court of Appeal, (court below) in regard to the Election Petition from

the Election conducted under the aegis of the Presidential Election on 21/4/2007 is as summarized in the lower court's reasoning that.....

"No ground is stated as forming the pivot of the petition as enjoined by the provision of paragraph 4(1) (d) of the First Schedule to the Electoral Act, 2006 there appears to be a failure of cause of action in toto..... I strongly feel that the petitioner should be told that since he failed to comply with Rules set out in paragraph 4(1) (d) of the First Schedule to the Act and did not state any cognizable ground for bringing his petition as mandated by the provisions of Section 145 (1) (a) to (d) of the act she failed to initiate her petition by due process of the law."

Simply put, the lower court is saying all told, that there is a failure of cause of action in this matter; that the petition has not raised any triable issue in regard to the averments of facts in the petition to warrant a hearing on the merits. However, it is noticeable that the Respondents have already filed their respective Respondents' brief of argument, thus joining issues with the petitioner on its petition. This presupposes there are serious issues warranting determination by the court. Where such is the case I wonder at the unguarded turnaround by the Respondents howbeit to contend of want of cause of action in the petition; even where, as here, the Respondents have, in the circumstances, taken such decisive steps as filing their replies to the petition in the prosecution of their case in the matter; they cannot be heard to resile from their implications. It is substantially on want of cause of action and competent parties that the petition has been struck out; these factors are crucial constituents that clothe a petitioner with the necessary locus standi to maintain an action as the instant one. It is an issue that is tested on the plaintiff's pleadings, that is to say, on the petition in this instance.

The petitioner has contended that in the lower court it has pleaded sufficient facts constituting of its civil rights and obligations and the breaches of these rights and obligations giving rise to causes of action in this case to warrant the petition being heard on the merits. In BELLO V. A.G. OYO STATE (1986) 5 NWLR (Pt.) 828 at 876 this court in examining the term, cause of action has held that;

"the factual situation on which the plaintiff relies to support his claim must be recognized by law as giving rise to a substantive right capable of being claimed against the Defendant."

The facts of the petition belie the contention of lack of cause of action and at least a competent party (Respondent) in this case to meet the requirements stipulated under Section 145(1) and paragraph 4(1) of the First Schedule of the Electoral Act 2006 to sustain the petition as I will show anon.

B No matter how tedious and prolix, I have perused the facts of the petition as pleaded in this matter and I am satisfied that the provisions of Section 145(1) and paragraph 4(1) (d) of the First Schedule to the Electoral Act 2006 have been satisfied wherefore in paragraphs 21 of the petition the petitioner has pleaded thus:

C *“The petitioner aver that the ballot papers used for the April 21st, 2007 Presidential Election were not bounded in booklet and numbered serially as mandatorily required by law given (sic) room for undue manipulation and perpetuation of fraud on the election day. The petitioner shall at the trial found and rely on the loose ballot papers without serial numbers for the said April Election the 1st and 2nd Respondents (sic) are hereby given notice to produce copies of the ballot papers for the April, 21st, 2007 Presidential Election.”*

E The foregoing attests as to a clear averment in the petition as to non-compliance with the Electoral Act in this case. See: Section 45(2). And paragraph 23 of the petition (which I have set out below) has pleaded the facts of non-compliance with the provisions of Section 45(2) in this case. In so far as pleading is to acquaint the other side of the nature of the case to expect and even then, against the strict requirements under Section 145(1) and paragraph 4(1) of the Electoral Act, the above paragraph 21 has met the strict standard of pleading in the circumstances, thus raising a triable issue for determination. Paragraph 23 of the petition in dealing with the facts of non-compliance in regard to Section 45(2) and other breaches thereof has pleaded thus:

H *“23. The petitioner shall contend that the election being fraught with grave non-compliance with the constitutional and statutory laws regulating the said election with obvious omissions and in-built manipulation that the instant 2nd Respondents (sic) with clear in-built mechanism for fraud, no candidate in that election ought to have been returned at (sic) duly elected including the 4th Respondent as the purported election was not free, fair and credible and stands vitiated by those factors as, a non-election illegal and therefore non (sic)*

and void in the circumstances - (i) given non-compliance and corrupt practices must affect the election results substantially and wholly. (ii) No candidate can be validly elected or returned in such circumstance. ”

However softly-spoken the above averments as per paragraphs 21 and 23 may be, there can be no doubt that they raise serious issues for adjudication under the Constitution and the Electoral Act. B
Against the facts of the cause of action as pleaded above in paragraph 21, there can be no doubt that the petition is clearly maintainable.

The order striking out the petition vis-a-vis the petitioner therefore, tantamounts to precluding of the petitioner from proceeding with its case; in other words, it is not afforded the opportunity to canvass its case at a hearing on the merits. This, quite clearly contravenes the Rules of natural justice as encompassed in Section 36 of the 1999 Constitution under fair hearing and so, it has undermined D
the underlying principle of the 1999 Constitution of entrenching and deepening of democratic tenets and the Rule of law in this country. Under the Electoral Act 2006, Section 45(2) provides as follows:

“The ballot papers shall be bound in booklets and Numbered serially with differentiating colours for each office being contested.” E

The appellant has contended that the instant ballot papers used in the Presidential election of April 2007 are loose papers not serially numbered, and not in compliance with Section 45 (2) of the Electoral Act 2006.

One is therefore, left in no doubt that the petitioner on the backdrop of the foregoing provisions of Section 45(2) has raised a triable issue in regard to the instant petition, and paragraph 21 of the petition by itself alone can constitute a valid election petition in the circumstances. Definitely, there is a cause of action to sustain the petition; and the court below has acted in error in otherwise holding to the contrary. F

The other side of the coin to this matter is in regard to whether there are competent parties before the court as rights and obligations in an action can only be claimed by and enforced against legal persons. This aspect of the matter in this appeal has been adequately dealt with in the lead judgment of my learned brother, Onnoghen, JSC and I have been privileged to have read a copy in draft before now. And I agree with his reasoning and conclusions therein. H

For the above reasons and more contained in the lead judgment, the appeal should be allowed, I allow it and endorse *the* orders in the lead judgment.

MUNTAKA-COOMASSIE JSC

B The appellant presented a petition before the Presidential Election Tribunal, Holden at Abuja, hereinafter called the lower court, in which the election of the 4th respondent as the duly elected President of the federal Republic of Nigeria was challenged. The petition
C dated 18/5/07 contained about 23 paragraphs. Paragraph 1 of the petition described the appellant as a political party duly registered under the Constitution of the Federal Republic of Nigeria. Paragraph 2 stated the date the election was held, while paragraphs 4 and 5 of the petition alleged non-compliance with the enabling laws, rules and
D regulation guiding the conduct of the said election.

In paragraphs 6 and 7 the appellant alleged that votes were allocated to the 4th respondent when election did not take place in majority of the States of the Federation. In paragraph 8, the appellant alleged that the said election was characterized by fraud and
E forgery with particulars as follows:-

A) The purported election result was declared even when there was no election in major areas, units and states or at all.

b) The result forms from where the 2nd respondent announced
F the result, where (sic) not signed or counter-signed by required party agents in accordance with the law or at all.

c) The purported result announced by the 2nd respondent on 24/4/07 were not product of any open collation of result witnessed by any party agent or accredited observers or parties whose interests
G were affected as stipulated by law.

d) The result sheets not signed or counter-signed by stipulated party agents or participating parties to the purported election is a counterfeit or fake by law.

e) The election being invalid and misconduct, no result was
H expected which was not counter-signed by the agents of the parties including the petitioners agent. In paragraph 9 of the petition, the appellant alleged corrupt practices the particulars of which were given in 9 (a - h) of the petition; while in paragraph 13 the appellant gave the names and scores of the candidates who participated in the said

election. While paragraph 21 of the petition the appellant alleged non-serialisation of the ballot papers. In conclusion, the appellant prayed before the lower court as follows:-WHEREFORE THE PETITIONER PRAYS THAT IT BE DETERMINED AS FOLLOWS:-

a) AN ORDER of the tribunal, that the election is invalid for reason for non-compliance with substantial sections of the Electoral Act. 2006. B

b) AN ORDER of the tribunal that the election is invalid for reasons of corrupt practices.

The petition was accompanied with list of witnesses and the statements on Oath; and the list of documents to be relied on. C

Upon the service of the petition, the 3rd and 5th respondents filed the Memorandum of appearances. The 5th respondent, the Nigeria Police Force, filed their reply to the petition dated 26/07/07 together with the list of documents to be relied upon and depositions of the witnesses. The 3rd respondent, Peoples Democratic Party (P.D.P.), also filed reply to the petition dated 2/8/07. The 4th respondent's reply was dated 1st August 2007, with his list of witnesses and depositions, while the 1st and 2nd respondents reply was dated 3/8/07. D E

However, the 1st and 2nd respondent and the 4th respondent filed notices of preliminary objection. The 1st and 2nd respondents' preliminary objection was dated 3/8/07 in which the jurisdiction of the lower court was challenged. F

Both objections were heard by the lower court, and in a considered and consolidated ruling dated 20/8/07, the objections were upheld and the petition struck out. It is against this ruling that the appellant had appealed to this court. It filed a notice of appeal containing five (5) grounds of appeal. Three issues were formulated by the appellant. Both parties argued the issues and made their respective submissions through their counsel. G

The respondents have submitted that the petition does not disclose any ground cognizable under Section 145 (1) of the Electoral Act, 2006. The finding of the lower court that the petition is incompetent and is struck out, I think is perverse. The lower court on page 202 concluded thus- H

"The petition is manifestly incompetent for non joinder of proper, necessary and desirable parties. The proper order to make in

this circumstances is to strike out the petition". See Buhari V. Obasanjo (2005) 13 NWLR (pt. 941) 58.

It has been demonstrated that there is non-compliance with paragraphs 4 (1) (d) of the first schedule to the electoral Act, 2006 as well as the mandatory provisions of Section 145 (1) of the said Act.
 B Such has nothing to do with technicality. It goes to the root of the petition. The petition is incompetent and calls to question the jurisdiction of the court. See Saude V. Abdullahi (supra) at page 442 where it was held that:-

C *"There is non-compliance with due process of law when the procedural requirements have not been complied with. In such circumstance, the defect is fatal to the competence of the trial court to entertain the suit. This is because the court will in such a situation not be seized with jurisdiction in respect of the action"*.

D From whatever angle one views the petition, it is incompetent. The petition was not initiated by due process of the law. Due procedural requirements were not followed. Non-juristic persons were sued to the charging of the petitioner.

The court is derobed of it's jurisdiction to entertain the petition. The preliminary objection filed by the 1st and 2nd respondents, as well as the application filed by the 4th respondent, were well taken. As the petition filed on 18/5/07 is incompetent, it is hereby struck out.

F I make no order as to costs.

The appellant appealed against the above decision of the court below. Grounds of appeal and the submissions of all the counsel on the issues were duly filed and argued.

G I have read in draft the lead judgment rendered by my learned brother Walter Onnoghen JSC, and I agree with his reasoning and conclusion which I adopt as mine.

For the fuller reasons rendered in the lead judgment coupled with the foregoing little contribution, I too will allow the appeal. In the final analysis, I make an order allowing the appeal and it is hereby
 H remitted to the lower court to be heard on its merit before another panel to be reconstituted by the Hon. President of the Court of Appeal. I make no order as to costs.