

SUPREME COURT OF NIGERIA
4TH DECEMBER 2009 SC. 233/2008
CORAM:- A. I. KATSINA-ALU, M. MOHAMMED,
W. S. N. ONNOGHEN, C. M. CHUKWUMA-ENEH,
M. S. MUNTAKA-COOMASSIE, JJSC

1. RT. HON. MICHAEL BALONWU
2. HON. BEN CHUKS NWOSU
3. HON. UCHENNA OKONKWO OKOM
4. HON. OSITA CHINWUBA APPELLANTS
5. HON. DR. BEN OBIDIGBO
6. HON. EMMA ILOEGBUNAM
(For themselves and on behalf of
Honourable Members of
Anambra State House of Assembly
who held the first session
of the House of Assembly
of the State upon the proclamation
for the holding of the first session
by His Excellency Mr. Peter Obi
(excluding those Honourable
members of Anambra State
House of Assembly who do not
support this suit)

AND

1. GOVERNOR OF ANAMBRA STATE 1ST RESPONDENT

2. HON. ANAYO NNEBE (SPEAKER)
3. HON. DISMAS B. A. OBI (DEPUTY SPEAKER)
4. HON. NJIDEKA EZEIGWE (MAJORITY LEADER)
5. HON. NKIRU UGOCHUKWU (DEPUTY LEADER)
6. HON. BARR. GABRIEL ONYENWIFE (CHIEF WHIP)
7. HON. IFEANYI IGWE (DEPUTY CHIEF WHIP)
8. HON. EGBOKA TIMOTHY
9. HON. PRINCE EBERE NZECHUKWU
10. HON. MICHAEL O. OFFOR 2ND TO 30TH
11. HON. CHIEF JOE ISAGU RESPONDENTS
12. HON. SYLVESTER OKEKE
13. HON. JOSEPH DIMOBI

14. HON. BONIFACE A. OKONKWO
15. HON. CYPRIAN O. UGHAMADU
16. HON. UCHENNA S. UMERIE
17. HON. SIMON OHAJIANYA
18. HON. SIMON U. OKPALEKE
19. HON. ANTHONY NWOYE. EZECHI
20. HON. JOSEPH C. OKEKE
21. HON. AMECHI M. IKENNA
22. HON. BRIGHT C. CHUKWUKA
23. HON. LILIAN OKOSI
24. HON. CHINWE C. NWAEBILI
25. HON. CHINEDU MOKUWE
26. HON. OBIORA CHUKWUKA
27. HON. EJIOFOR F. A. EGBUATU
28. HON. EMEKA G. IDU
29. UCHE OGBONNA
30. HON. PAULINUS OBICHUKWU

31. HON. SOLOMON ANUSIKE
32. HON. SHEDRACK N. ANAKWUE 31ST TO 34TH
33. CHIEF JOHN MUORAH RESPONDENTS
34. HON. GODDY EJIAMIKE

(For themselves and as representing
other candidates who contested
April 14, 2007 election for all the
30 seats of Anambra State House
of Assembly for the session covering
June 2007 - June 2011 excluding
those candidates who are not in support)

APPEALS - Grounds - Basis - Obiter dicta - An appeal cannot be brought against the obiter of a court - Except where such obiter is so linked with the ratio decidendi - To have radically influenced the ratio (H1)

CONSTITUTIONAL LAW - State House of Assembly - First sitting of
- Governor's proclamation of - Validity - Effect of his removal by
tribunal - Since he was a serving governor at time of proclamation -

It is valid - It is immaterial that his election is subsequently nullified (H2)

CONSTITUTIONAL LAW - State House of Assembly - How dissolved - S. 105 of 1999 Constitution - Whether or not there had been proclamations for the holdings of its first session - A House stands dissolved at expiration of four years from its first sitting (H3)

FACTS

Before the Awka High Court of Anambra State, plaintiffs/appellants sued defendants/respondents claiming sundry reliefs by which they asserted that, though they were elected in May 2003, their tenure of office as members of the Anambra State House of Assembly subsisted till March 2010. The main ground of appellants' claim hinged on the interpretation of section 105 (1) and (3) of the 1999 Constitution as to when the tenure of office of member of a State House of Assembly starts and when it ends. The undisputed facts are that following the declaration and swearing in of Dr. Chris Ngige as winner in the Anambra State gubernatorial election in 2003, he duly issued a proclamation and the State House of Assembly held its first session. Subsequently, Dr. Ngige lost out at the election tribunal which declared Peter Obi as winner of the election. After Peter Obi was sworn-in in 2006, he issued another proclamation and appellants as members of the House held what they described as their first session. It is their view that since Ngige was not duly elected when he issued his proclamation in 2003, all the sessions held by the House between that proclamation and the proclamation by Peter Obi were as good as not held.

Consequently, following Supreme Court's declaration of Peter Obi's tenure as subsisting till 2010 appellants brought the instant action seeking similar relief. After hearing, trial court dismissed their action. Dissatisfied, they appealed to Court of Appeal which dismissed their appeal. Still aggrieved, they have brought this further appeal to Supreme Court.

ISSUES FOR DETERMINATION

1. Did the Appellants' Counsel misquote Justices of the Supreme Court, was he dishonest, and did the decision of Omage J.C.A in that respect cause a miscarriage of justice?

2. Was the lower Court right by not giving Section 105(3) of the Constitution of the Federal Republic of Nigeria, 1999 its ordinary meaning and by not giving effect to the word “Shall have power” when interpreting same, despite the fact that His Excellency Mr. Peter Obi is the elected Governor of Anambra State who made the Constitutional proclamation?

3. Are actions of Dr. Chris Ngige and Mr. Andy Uba saved in law contrary to the decision of the Supreme Court of Nigeria in *Adefulu vs. Okulaja* (1996) 9 N.W.L.R. Part 475 Pg. 668 @ 693D - E?

C HELD (Unanimously dismissing the appeal per **MOHAMMED JSC**)
APPEALS - Grounds - Basis - Obiter dicta

1. The law is quite clear that a good ground of appeal must constitute a complaint against the decision of the Court. In other words an appeal is usually against the *ratio decidendi* of the judgment of a lower Court and not in respect of an *obiter dicta* made by the Court in the course of the said judgment, except in cases where the *obiter dicta* is so clearly linked with the ratio as to be deemed to have radically influenced the ratio decidendi.

In the present case, the derogatory remarks of the learned Justice of the Court below has no link whatsoever to the Appellants case in which the Appellants were seeking elongation of their tenure as members of the Anambra State House of Assembly from May 2003 to March, 2010 by the interpretation of Section 105(1) and (3) of the 1999 Constitution. (p. 2580 H)

Validity of governor's proclamation

2. As quite rightly found by the trial Court and affirmed by the Court below the proclamation issued by the elected Governor Chris Ngige on 5th June, 2003 before the first sitting of the Appellants on 9th June, 2003, is quite valid in law under Section 105(3) of the Constitution being a serving Governor of the State who issued the same immediately after his being sworn in as the Governor of Anambra State. The fact that he had to vacate office at the end of the Court proceedings challenging his election in accordance with the provisions of the Constitution and the Electoral Act, cannot invalidate any powers or duties exercised or performed by him while in office. This is in line with the provisions of Section 138 of the Electoral Act 2002

which allows the Governor to remain in office and perform the functions of the office pending the determination of his appeal against the decision of the Election Tribunal by the Court of Appeal.
(p. 2587 A)

State House of Assembly - How dissolved

3. The provisions of Section 105(1) and (3) of the Constitution are quite plain and clear and must be given their ordinary meaning on the tenure of a House of Assembly. Section 105(1) of the Constitution is on its own and its application does not depend on the provisions of Section 105(3) of the Constitution at all. In other words, whether or not there had been proclamations for the holding of the first session of the House of Assembly or for its dissolution by a person elected Governor of a State, that House stands dissolved at the expiration of a period of four years commencing from its first sitting. Proclamation for the holding of the first session of the House under Section 105(3), is not a condition precedent to the date of the first sitting of the House under Section 105(1) of the Constitution.
(p. 2587 H)

NOTABLE POINTS OF INTEREST
MOHAMMED JSC

1. Court cannot question existence of rights created by Constitution

It has been said time without number in many decisions of this Court that the Constitution is an organic instrument which confers powers and also creates rights and limitations. It is the supreme law in which certain principles of fundamental nature are established. Thus, once the powers, the rights and the limitations under the Constitution are identified as having been created, their existence cannot be disputed in a Court of law. However, the extent of such powers rights and limitations and their implications may be sought to be interpreted and explained by the Court in cases properly brought before it.
(p. 2584 H)

CHUKWUMA-ENEH JSC

2. A proclamation is not needed to terminate the tenure of a House

Subsection 1 by its clear provisions has without more made certain the life tenure of a House. And so, a House of Assembly stands dis-

solved by mere efflux of time as clearly provided in this subsection and is not by proclamation as used to be the case under the parliamentary system. From the plain words of the subsection a proclamation does not have to issue to terminate the life tenure of a House, so that it is proper to say that the termination of a House is more or less automatic after 4 years from the date of the holding of the first session in the life of a House of Assembly. (p. 2597 E)

3. Section 105 of 1999 Constitution - 105 (3) is subordinate to (1)
 These words are used to make the subject section and in this case, subsection 3 of section 105 subservient or subordinate to the provisions of the Constitution including in this instance, subsection 1 of Section 105. Clearly, Section 105 (3) cannot be read in isolation. In other words, it is not intended that the operation of Section 105 (1) shall be affected by the provisions of the “subject section”. And so, it goes without much saying that any conflict between the two subsections, the provisions of subsection 105 (1) shall prevail i.e. it shall not otherwise be limited by the provisions of subsection 3 of Section 105. (p. 2598 B)

REPRESENTATION

Festus Keyamo with Oghenovo Otema and Ugochukwu Ezekiel for the Appellants.

O. J. Nnadi with V. O. Muoneke for the 1st Respondent.

Arthur Obi Okafor with U. I. Igweneme and Lynda Ikpeazor (Miss) for 2nd - 30th Respondents.

CASES REFERRED TO

- Ondo State (1997) 5 N.W.L.R. (Pt. 504) 237 at 271
- Ngige vs. Obi (2006) 14 N.W.L.R. (Pt. 999) 1 at 227
- Saude vs. Abdullahi (1989) 4 N.W.L.R. (Pt. 116) 387
- Adefulu vs. Okulaja (1996) 9 N.W.L.R. (Pt. 473) at 688
- Buhari vs Obasanjo (2005) 13 NWLR (Pt. 941) 1 at 88
- Ngige v. Obi (2007) 14 N.W.L.R. (Pt. 999) page 1 @ 209
- Edewor v. Uwogba (1987) 1 N.W.L.R. (Pt. 50) 313 at 339
- Yusuf vs. Obasanjo (2003) 15 N.W.L.R. (Pt. 847) 55 at 602
- Peter Obi vs. INEC (2007) 11 N.W.L.R. (Pt. 1046) page 565
- Saraki vs. Kotoye (1992) 9 N.W.L.R. (Pt. 264) 156 at 183 - 184

Adefulu vs. Okulaja (1996) 9 N.W.L.R. Part 475 Pg. 668 @ 693D

ADEFULU vs. OKULAJA (1996) 9 N.W.L.R. pt. 475 page 668

TUKUR V. GOVT. OF GONGOLA STATE (1989) 4 NWLR (Pt. 117)
517

AQUA LTD. V. ONDO STATE COUNCIL (1988) 4 NWLR (Pt.91)
622

B

STATUTES REFERRED TO

Constitution of Federal Republic of Nigeria, 1999, ss. 105, 184, 318

Electoral Act, ss. 138 and 149

C

LEAD JUDGMENT BY MOHAMMED JSC

The Appellants in this appeal as Plaintiffs had commenced their action by Originating Summons at the High Court of Justice of Anambra State sitting in Awka claiming a number of declaratory reliefs, the principal of which reliefs is on their tenure of office as members of the Anambra State House of Assembly who were elected in the general election conducted for all the Houses of Assembly in Nigeria in May, 2003. The Appellants action was against the Governor of Anambra State and the members of the Anambra State House of Assembly who were elected in the general election conducted for Houses of Assembly in the States of the Federation of Nigeria on 14th April. 2007. The reliefs claimed by the Appellants were based on the undisputed facts or factors surrounding the success of the Anambra State Governor Peter Obi in the election petition dispute between him and Governor Dr. Chris Ngige in the election to the office of the Governor of Anambra State held in 2003. The main ground of the Appellants' claims however was hinged on the interpretation of Section 105(1) and (3) of the 1999 Constitution prescribing the tenure of office of the members of the State House of Assembly.

At the conclusion of the hearing of the action by the Trial Court, on the application of the law to the undisputed facts arising from the affidavit in support of the Originating Summons and the counter-affidavit opposing the same, the learned trial Judge in his judgment delivered on 17th September, 2007, refused all the reliefs claimed by the Appellants and dismissed their action.

Dissatisfied with the decision of the trial Court, the Appellants

appealed to the Enugu Division of the Court of Appeal which also in a unanimous decision given on 26th June, 2008, dismissed the appeal, hence the present appeal by the Appellants to this Court.

The circumstances that gave rise to the dispute between the parties in this appeal are very clearly stated in the affidavit in support of the Originating Summons and the counter-affidavit of the Respondents. The Appellants were elected into the House of Assembly of Anambra State in May, 2003 to serve a four year term. Dr. Chris Nwabueze Ngige who was declared by the National Electoral Commission as the winner of the election to occupy the seat of the Governor of Anambra State in 2003, was duly sworn in as the Governor of the State. As required under Section 105(3) of the 1999 Constitution, the Governor duly issued a proclamation on 5th June, 2003 and the State House of Assembly held its first session on 9th June, 2003. After electing its officers and subscribing to the appropriate oaths of allegiance and oaths of office, the house continued to function in accordance with the Constitution until the vacation of office of the Governor of the State by Dr. Ngige following the judgment of the Court of Appeal declaring Mr. Peter Obi as the winner of the election and his subsequent swearing in as the Governor of Anambra State on 20th March, 2006.

Although the House of Assembly comprising the Appellants had been functioning for nearly three years, all the same, the newly sworn in Governor Obi issued another proclamation under Section 105(3) of the Constitution on 20th March, 2006. The following day 21st March, 2006, the Appellants as members of the House of Assembly elected since May, 2003, held what they described as their first session.

Meanwhile, on the approach of the date of the election in April, 2007, Governor Peter Obi went back to the Courts to ascertain the tenure of the office which he occupied on 20th March, 2006 though he was actually elected since May, 2003. He was successful at the Supreme Court which upheld his claim that his tenure of four years would not expire until March, 2010. Consequently, Governor Andy Uba who was declared the winner of the election conducted in April, 2007, was asked to vacate the seat for Governor Peter Obi to complete his tenure. The current members of the Anambra State House of Assembly who are the present 2nd to 30th Respondents held their

first session in June, 2007, after the proclamation issued by Governor Andy Uba after taking his oaths of allegiance and office as the Governor of Anambra State. In their action at the trial Court which culminated in this appeal, the Appellants are in all in earnest challenging the tenure of office of the 2nd - 30th Respondents who were elected and came into office and started their tenure in June, 2007. B

Before the appeal came up for hearing, in compliance with the rules of this Court, the Appellants' brief of argument, the 1st Respondents' brief of argument, the 2nd - 30th Respondents' brief of argument and the Appellants' Reply briefs to the 1st Respondent and 2nd - 30th Respondents briefs of argument, were duly filed and served by the parties. In the Appellants brief of argument the following three issues was raised- C

"1. Did the Appellants' Counsel misquote Justices of the Supreme Court, was he dishonest, and did the decision of Omage J.C.A in that respect cause a miscarriage of justice? (Formulated from ground 1)

2. Was the lower Court right by not giving Section 105(3) of the Constitution of the Federal Republic of Nigeria, 1999 its ordinary meaning and by not giving effect to the word "Shall have power" when interpreting same, despite the fact that His Excellency Mr. Peter Obi is the elected Governor of Anambra State who made the Constitutional proclamation? (Formulated from grounds 2, 4 and 5)

3. Are actions of Dr. Chris Ngige and Mr. Andy Uba saved in law contrary to the decision of the Supreme Court of Nigeria in Adefulu vs. Okulaja (1996) 9 N.W.L.R. Part 475 Pg. 668 @ 693D - E (Formulated from ground 3)" F

In the 1st Respondents' brief of argument, in addition to a Preliminary Objection raised to ground one of the Appellants' ground of appeal, the following three issues were also identified from the five grounds of appeal filed by the Appellants: G

"1. Assuming but without conceding that ground 1 of the Notice of Appeal is competent, whether the Court of Appeal judgment can be faulted on ground of wrong citation of authorities or wrong citation of names of justices that decided a case, when such alleged wrong citation of authorities and names of Justices of Supreme Court or Court Appeal did not affect the correctness of the decision of the Court (ground 1 of the Notice of Appeal)." H

2. Whether the Court of Appeal was right in the Court's interpretation of Section 105(3) of the 1999 Constitution of Nigeria as it relates to proclamation of the first sitting of Anambra State House of Assembly of which the Appellants were members (Grounds 2, 4 and 5 of the Notice of Appeal).

B *3. Whether the declaration of the election of Dr. Chris Nwabueze Ngige null and void by the Court of Appeal rendered null and void, the proclamation by Dr. Chris Nwabueze Ngige of the first sitting of Anambra State House of Assembly made up of the Appel-*
 C *lants as well as whether the Supreme Court decision in Obi vs. INEC reported as Peter Obi vs. INEC (2007) 11 N.W.L.R. (Pt. 1046) page 565 affected the proclamation of the first sitting of Anambra State House of Assembly by Dr. Andy Uba. (Ground 3 of the Notice of Appeal)."*

D The 2nd - 30th Respondents also raised a Preliminary Objection to ground one of the grounds of appeal and in addition, had formulated three issues for determination. They are –

"1. Whether the opinion of the Court of Appeal expressed obiter in its judgment on the conduct of Counsel for the Appellants at
 E *the hearing of the appeal including the allegation that the Court of Appeal did not consider in its judgment the cases of Obi vs. INEC (2007) 11 N.W.L.R (Pt. 1046) page 436 and Adefulu vs. Okulaja (1996) 9 N.W.L.R. (Pt. 473) at 688 cited by the Appellants in the Court of Appeal occasioned any miscarriage of justice.*

F *2. Whether the Court of Appeal was correct in its interpretation of Section 105(3) of the 1999 Constitution which provides that the person elected as the Governor of a State shall have power to issue a proclamation for the holding of first session of the State House*
 G *of Assembly is directory because the section is confined and qualified by other provisions of the Constitution.*

3. Whether the Honourable Court of Appeal was right when it affirmed the judgment of the High Court that Dr. Chris Ngige and Dr. Andy Uba were defactor Governors of Anambra State and their ac-
 H *tions while acting as such are saved in law."*

Looking at these issues as identified in the respective briefs of argument of the parties, it is quite plain that the first issue in all the three briefs of argument was predicated on the alleged derogatory comments made on the conduct of the learned senior Counsel for

the Appellants by the learned Justice of the Court of Appeal, Omage J.C.A who prepared and read the lead judgment. It is not surprising therefore that both the 1st Respondent and 2nd - 30th Respondents had attacked the ground of appeal from which this first issue was formulated in their respective notices of preliminary objection duly argued in their Respondents briefs of argument. I shall dispose of these preliminary objectives in a word or two before facing the main appeal. The first ground of appeal at pages 439 - 440 of the record of appeal reads –

“I. The learned Justices of the Court of Appeal erred in law and came to an erroneous decision when Omage, JCA held that:-

“My lord Justice Aderemi who made contribution to the judgment (2006) 14 N.W.L.R. did not make reference to the acts of Dr. Ngige as null and void and Justice Tabai JSC did not participate in the judgment. I find such practice by the Appellants’ Counsel dishonest particularly when statements of Supreme Court Justices are quoted out of context.”

This affected the judgment of the Court of Appeal despite the fact that the Appellants Counsel was not dishonest and quoted only once at page 6 of his Appellants’ brief paragraph 3.5 when he stated that

“The case of Ngige v. Obi (2007) 14 N.W.L.R. (Pt. 999) page 1 @ 209 A - B decided that in the interpretation of statutes, words must be given their ordinary meaning” but insisted as he cited ADEFULU vs. OKULAJA (1996) 9 N.W.L.R. pt. 475 page 668 @ 693 D - E at page 8 paragraph 3.17 of the Appellants’ brief that – ‘when an appointment is declared null and void, all it means is that the appointment was never made and all acts Of the appointee when he defactor held the appointment are unlawful, null and void and of no effect.’ The acts of Dr. Ngige were indeed unlawful, null and void.

PARTICULARS

(a.) Omage JCA was unfair to the Appellants’ Counsel Learned Senior Advocate of Nigeria, Nnamdi Ibegbu Esq. When he said that he is dishonest.

(b.) It is unfair for a Justice of the Court of Appeal to use such derogatory expression of being dishonest against the Appellants’ Counsel and there is nothing to show that the conduct of the Appellants’ Counsel is clearly beyond per adventure as decided in Saeby

Jernstoberi Maskin Fabri A/S vs. Olagun Enterprises Ltd. (1999) 14 N.W.L.R. Ft. 637 page 128 @ 143G-H.

(c.) Appellants Counsel who did not cite *Ngige vs. Obi (2007) 14 N.W.L.R. instead cited Adefulu vs. Okulaja (1996) 9 N.W.L.R. Pt. 999 page 668 @ 693 D - E at page 8 paragraph 3.17 of his Appellants' brief Contrary to the assertion of Omage JCA.*

(d.) *By this said decision there was a miscarriage of Justice."*

The 1st Respondent and 2nd - 30th Respondents in their preliminary objections to the above ground of appeal did not quote the ground of appeal in support of their arguments. The Appellants in their response to the Preliminary Objections in their Reply brief also did not bother to reproduce the ground of appeal either. I have therefore decided to quote the said ground one of the grounds of appeal the subject of the Preliminary Objections to show that the ground is entirely based on the derogatory comments or remarks made by Omage JCA in the lead judgment now on appeal on the alleged conduct of the learned Senior Counsel for the Appellants. While it is the stand of the Appellants as reflected in paragraph (d) of particulars of the ground of appeal and in their arguments opposing the Preliminary Objection that the comments of the learned Justice of the Court of Appeal is part of the decision of the Court below which occasioned a miscarriage of justice, the 1st and 2nd - 30th Respondents saw nothing in these derogatory comments or remarks than a mere orbiter dicta which by law, is not appealable.

Although on close examination of the remarks or comments made by the learned Justice of the Court below which were made the subject of this first ground of appeal show that they are highly uncomplimentary touching on the integrity and honesty of the learned senior Counsel to the Appellants, all the same these comments or remarks to me were merely passing remarks not against the Appellants who were parties to the appeal but against their learned senior Counsel who is not a party to the appeal. Therefore it is difficult to see how remarks on the learned senior could constitute a decision, to support a ground of appeal, within the meaning of Section 318 (1) of the 1999 Constitution. ***The law is quite clear that a good ground of appeal must constitute a complaint against the decision of the Court. In other words an appeal is usually against the ratio decidendi of the judgment of a lower Court and not in re-***

spect of an Obiter dicta made by the Court in the course of the said judgment, except in cases where the Obiter dicta is so clearly linked with the ratio as to be deemed to have radically influenced the ratio decidendi. See Saude vs. Abdullahi (1989) 4 N.W.L.R. (Pt. 116) 387 and Saraki vs. Kotoye (1992) 9 N.W.L.R. (Pt. 264) 156 at 183 - 184. B

In the present case, the derogatory remarks of the learned Justice of the Court below has no link whatsoever to the Appellants case in which the Appellants were seeking elongation of their tenure as members of the Anambra Sate House of Assembly from May 2003 to March, 2010 by the interpretation of Section 105(1) and (3) of the 1999 Constitution. The orbiter dicta which affected only the person of the learned Counsel to the Appellants, cannot therefore be deemed to have formed part of the ratio decidendi of the case, the merits of which is the correct interpretation of Section 105(1) and (3) of the 1999 Constitution in relation to the tenure of office of the Appellants. Putting it differently, the Appellants have no right under the Constitution, the law and rules of Court to fight the cause of or grievances of their learned Counsel in the course of the prosecution of their own appeal challenging the decision of the Court below against them. In the result, the Preliminary Objections to ground one of the Appellants grounds of appeal succeeds and it is hereby allowed. Consequently, ground one of the grounds of appeal of the Appellants is hereby struck-out for being incompetent. Consequently issue one arising from that ground of appeal just struck out shall be disregarded in the determination of this appeal. C D E F

On the remaining two issues for determination in the respective briefs of argument of the Appellants and the Respondents, it appears to me that the real and only issue for determination in this appeal having regard to the case of the Appellants at the trial Court and the Court of Appeal, is the interpretation and application of Section 105 (1) and (3) of the 1999 Constitution to the main complaint of the Appellants that their tenure as members of the Anambra State House of Assembly elected in 2003 shall not come to an end until 20th March, 2010. This is the issue raised as issue number two in the briefs of argument of the parties. It is my view that in the course of the resolution of this main issue for determination of the dispute be G H

tween the parties, the ancillary issue number three relating to the status in law of the three distinct proclamations issued by the three Governors namely. Dr. Chris Ngige, Mr. Peter Obi and Mr. Andy Uba respectively on the first sittings of the Anambra State House of Assembly can also be easily resolved. In fact this was what the learned
 B Counsel for the Appellant did when the third issue was argued together with the second issue in the Appellants brief of argument.

In support of the main issue for determination learned senior Counsel for Appellants had placed more emphasis on the interpretation of Section 105(3) of the 1999 Constitution which henceforth in
 C this judgment shall be referred to simply as ‘the Constitution.’ Counsel explained that the provisions of the subsection are quite clear and unambiguous and therefore the mere fact that the result of the application of the provisions may be unjust or absurd cannot prevent this
 D Court from pronouncing the obvious; that the proclamation made by Dr. Chris Ngige upon which the Appellants started sitting was unconstitutional as he was not the lawfully elected Governor of Anambra State; that the two gentlemen, Dr. Chris Ngige and Dr. Andy Uba who were not the duly elected Governors of Anambra State, had no
 E Constitutional powers to make proclamations for the first sitting of the Anambra State House of Assembly and consequently all the sittings and proceedings of the Appellants were null and void being also unconstitutional; that the House of Assembly of Anambra State constituting the Appellants elected in the year 2003, only came into law-
 F ful being and functioning in accordance with the Constitution after the proclamation by the duly elected Governor of the State Mr. Peter Obi on 20th March, 2006 and therefore the life tenure of that House shall not come to an end until March, 2010. A number of cases including Andrew Ajayi vs. Military Administrator of Ondo State (1997)
 G 5 N.W.L.R. (Pt. 504) 237 at 271; Achineku vs. Isagba (1988) 4 N.W.L.R. (Pt. 89) 411 at 420 and Edewor v. Uwogba (1987) 1 N.W.L.R. (Pt. 50) 313 at 339 were relied upon in support of the stand of the Appellants that the words “shall have power” used in
 H Section 105(3) of the Constitution are mandatory and must be complied with by the lawfully elected Governor of a State before the commencement of the first sitting of a State House of Assembly. Learned senior Counsel finally submitted that until the Anambra State House of Assembly was Constitutionally proclaimed and the Appel-

lants inaugurated, the Appellants remained private citizens and the 1st Respondent who is the elected Governor had a duty imposed on him for which he has the power to perform as public functionary which inures to the Appellants who could not have started to function as a House of Assembly without the proclamation in accordance with Section 105 (3) of the Constitution. B

For the 1st Respondent however, his emphasis is on the provision of Section 105(1) of the Constitution by which the Appellants' House of Assembly elected in the year 2003 stands dissolved at the expiration of four years commencing from the date of the first sitting of the House which in the present case was the date the House first sat, elected its officers and conducted the business of the House; that this date of first sitting need not necessarily be the same day as the date of inauguration of the House pursuant to Section 105(3) which in any case is subject to the provisions of the Constitution. Learned Counsel then urged this Court to adopt liberal approach to the interpretation of the provisions of Section 105(1) and (3) of the Constitution having regard to the authority of the cases such as Attorney General Bendel State vs. Attorney General of the Federation (1981) All N.L.R. 85; Awolowo vs. Shagari (1979) 6-9 S.C. 51; Salami vs. Chairman L.E.D.B. (1989) 5 N.W.L.R. (Pt. 123) 539 and Rabiun vs. The State (1981) 2 N.C.L.R. 293 in dismissing this appeal. C D E

With regard to the status and the effect of the actions of the persons elected and sworn as Governors of Anambra State whose elections were later nullified by the decisions of Tribunals and the Court of Appeal, learned Counsel observed that all their actions while in office were saved by the provisions of Section 138(1) and (2) of the Electoral Act 2002; that the attempt by the Appellants to rely on the proclamation by Mr. Peter Obi as a subterfuge for extension of the tenure of the Appellants, does not find support in Sections 59(c) and 138(1) of the Electoral Act, 2002. F G

As for the interpretation and application of the provisions of Section 105(3) of the Constitution regarding the meaning of the words - "*shall have power*," learned Counsel pointed out that whether or not the word 'shall' in this phrase is regarded as mandatory or directory is a non issue or academic as the power was intact exercised by all the three Governors whose actions are part of the dispute to be resolved in the appeal; that in any case, the use of the word 'shall' is H

always regarded mandatory where it confers a public duty as stated in *Ifezue vs. Mbadugha* (1984) 1 S.C.N.L.R. 427; *Odi vs. Osafire* (1985) 1 N.W.L.R. (Pt. 1) 17 and *Ogualaji vs. Attorney General Rivers State* (1997) 6 N.W.L.R. (Pt. 508) 209; that since the proclamation by Governor Ngige in 2003 was in pursuance of a public duty under the Constitution in Section 105(3), it remains Constitutional and valid with further support by Sections 59(c) and 138(1) of the Electoral Act. Learned Counsel therefore urged this Court to dismiss the appeal.

As for the 2nd - 30th Respondents, their learned Counsel after citing Section 10 of the Interpretation Act CAP 123 Laws of the Federation, 2004 dealing with the manner power or duties conferred by statute may be exercised, proceeded to submit that this case has to be assessed from the stand point of the construction of Section 105(1) and (3) of the Constitution; that it is quite clear from these provisions that sub-section (3) of Section 105 is subject to the provisions of subsection (1) of the same section of the Constitution, On guidance of Courts to the interpretation of the provisions of the Constitution, learned Counsel referred to the case of *I.M.B Securities Plc vs. Bola Tinubu* (2001) 3 N.S.C.Q.R. 1 at 13; that it is a cardinal rule of interpretation of statutes that where a provision in a statute is made subject to another provision that provision must be read subordinate to the provision it is subject to as stated in *Ngige vs. Obi* (2006) 14 N.W.L.R. (Pt. 999) 1 at 227; *N.P.A. vs. Eyamba* (2005) 12 N.W.L.R. (Pt. 939) 409 at 442 and *Yusuf vs. Obasanjo* (2003) 15 N.W.L.R. (Pt. 847) 55 at 602; that for this reason, Section 105(3) shall not be interpreted to override the provision of Section 105(1) of the Constitution. Learned Counsel finally concluded that on the undisputed facts of this case, the proclamation of the first sitting of the Appellants was made on 9th June, 2003 and the Appellants having served their statutory tenure in June, 2007, there is no merit at all in this appeal which this Court was urged to dismiss.

The facts of this case which I have earlier narrated in this judgment are not in dispute between the parties. What is in dispute between the parties is the interpretation and the application of the provisions of Section 105(1) and 105(3) of the Constitution. It has been said time without number in many decisions of this Court that the Constitution is an organic instrument which confers powers and also

creates rights and limitations it is the supreme law in which certain principles of fundamental nature are established. Thus, once the powers, the rights and the limitations under the Constitution are identified as having been created, their existence cannot be disputed in a Court of law. However, the extent of such powers rights and limitations and their implications may be sought to be interpreted and explained by the Court in cases properly brought before it. See Attorney General Ondo State vs. Attorney General of the Federation (2002) 9 N.W.L.R. (Pt. 772) 222. This is exactly what happened at the trial Court and the Court of Appeal where the parties took their disputes requiring the interpretation and explanation by those Courts of the provisions of the Section 105(1) and 105(3) of the Constitution. The provisions of the entire Section of the Constitution now in dispute reads –

“105 (1) A House of Assembly shall stand dissolved at the expiration of a period of four years commencing from the date of the first sitting of the House.

(2) If the Federation is at war in which the territory of Nigeria is physically involved and the President considers that it is not practicable to hold elections, the National Assembly may by resolution extend the period Of four years mentioned in sub-section (1) of this Section from time to time but not beyond a period of six months at any one time.

(3) Subject to the provisions of this Constitution, the person elected as the Governor of a State shall have power to issue a proclamation for the holding of the first session of the House of Assembly of the State concerned Immediately after his being sworn, or for its dissolution as provided in this Section.”

In dealing with these provisions of the Constitution in his judgment delivered on 17th September, 2007, the learned trial judge Nweke J. has this to say at pages 235 - 238 of the record -

“The Constitution of Nigeria authorised the National Assembly to regulate elections in Nigeria. See Section 184 of the Constitution. The National Assembly enacted the Electoral Act 2002 and Electoral Act 2006. In Section 138 and 149 there in respectively it was enacted that where the Tribunal or Court as the case may be, determines that a candidate returned as elected was not validly elected, the person elected should remain in office pending the determina-

tion of the appeal. These provisions are not inconsistent with Section 105(3) of the Constitution or any other Section of the Constitution. My view is that if a person is asked to remain in office by law while his fate is determined by the Electoral Tribunal, the law cannot turn round to nullify his actions while he held forth as a defacto office holder."

B xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

Having dealt with Section 105(3) I shall now touch on Section 105(1) of the Constitution. My view is that Section 105(1) of the Constitution regulates the sitting and dissolution of the House of Assembly. It is that sub-section that is mandatory. It is mandatory that the House of Assembly shall stand dissolved at expiration of a period of 4 years commencing from the date of the first sitting of the House. The Plaintiffs had their first sitting on 9th June, 2003. So their tenure had expired by effluxion of time. The Plaintiffs do not have any right to go back to the House of Assembly of Anambra State under any guise."

The above views expressed by the learned trial Judge on the provisions of Section 105(1) and 105(3) of the Constitution and his findings on the facts as to the actual date of the first sitting of the Appellants House of Assembly elected in 2003, were completely affirmed by the Court of Appeal in its decision of 26 - 6 - 2008 which dismissed the Appellants' appeal against the decision of the trial Court. I must say here that the view's expressed by the learned trial Judge and his findings which were affirmed by the Court below on the position of the Constitution and the law on the elongation of tenure of office claims of the Appellants as the Plaintiffs at the trial Court are quite in order.

Starting with the provisions of Section 105(1) of the Constitution which I have earlier quoted in this judgment, the subsection is quite plain and clear. The Section means exactly what it says. That is, a House of Assembly including the Appellants' House of Assembly, shall stand dissolved at the expiration of a period of four years commencing from the date of the first sitting of the House. All what is required in applying the provisions of the subsection is to ascertain the date of the first sitting of the House in determining its tenure of four years prescribed by the subsection. The date of the first sitting of the Appellants having been determined to have been 9th June, 2003, counting from that date, there is no doubt all that the four year ten-

ure of the Appellants had already expired even before filing their Originating Summons dated 25th June, 2007 at the trial Court. ***As quite rightly found by the trial Court and affirmed by the Court below the proclamation issued by the elected Governor Chris Ngige on 5th June, 2003 before the first sitting of the Appellants on 9th June, 2003, is quite valid in law under Section 105(3) of the Constitution being a serving Governor of the State who issued the same immediately after his being sworn in as the Governor of Anambra State. The fact that he had to vacate office at the end of the Court proceedings challenging his election in accordance with the provisions of the Constitution and the Electoral Act, cannot invalidate any powers or duties exercised or performed by him while in office. This is in line with the provisions of Section 138 of the Electoral Act 2002 which allows the Governor to remain in office and perform the functions of the office pending the determination of his appeal against the decision of the Election Tribunal by the Court of Appeal.*** The fact this period lasted for over 35 months is of no moment having been effectively covered by the law.

In similar circumstances, the proclamation issued by Governor Andy Uba before the first sitting of the 2nd to 30th Respondents as members of the Anambra State House of Assembly elected during the 14th April, 2007 election, also being challenged by the Appellants is also quite valid in law in spite of his vacation of the office on the orders of this Court to allow Governor Peter Obi to complete his tenure of office on 20th March, 2010. This is by virtue of the provisions of Section 149 of the Electoral Act, 2006 which had clearly saved any power exercised or functions performed by him as the Governor of Anambra State during the period he served in the office. In this respect since the powers exercised and the functions performed by the Governors Dr. Chris Ngige and Dr. Andy Uba have been saved by the provisions of the law in Sections 138 and 149 of the Electoral Acts of 2002 and 2006 respectively, the arguments of the Appellants on the application of the case of Adefulu vs. Okulaja (1996) 9 N.W.L.R. (Pt. 475) 668 to the present case can hardly arise.

In the instant case, ***the provisions of Section 105(1) and (3) of the Constitution are quite plain and clear and must be given their ordinary meaning on the tenure of a House of As-***

sembly. Section 105(1) of the Constitution is on its own and its application does not depend on the provisions of Section 105(3) of the Constitution at all. In other words, whether or not there had been proclamations for the holding of the first session of the House of Assembly or for its dissolution by a person elected Governor of a State, that House stands dissolved at the expiration of a period of four years commencing from its first sitting. Proclamation for the holding of the first session of the House under Section 105(3), is not a condition precedent to the date of the first sitting of the House under Section 105(1) of the Constitution. It is indeed not true as argued by the Appellants that without proclamation by the Governor under Section 105(3) of the Constitution, the House of Assembly cannot function. The Constitution does not say so. The law is indeed trite that in the interpretation of the provisions of statute including the Constitution, where the words of the statute are clear and unambiguous, the words must be given their plain and ordinary meaning. See *Abioye vs. Yakubu* (1991) 5 N.W.L.R. (Pt. 190) 130 and *Odubeko vs. Fowler* (1993) 7 N.W.L.R. (Pt. 308) 637.

It is my view therefore that the attempt by the Appellants to have the period of their tenure as members of the Anambra State House of Assembly elected since the year 2003, extended to March, 2010, must fail woefully having regard to the undisputed date of the first sitting of the Appellants as members of that House. This appeal has no merit at all and the same is hereby dismissed. The decision of the trial Court as affirmed by the Court below is hereby further affirmed.

There shall be N50,000.00 costs to each of the two sets of the Respondents.

KATSINA-ALU JSC

I have had the advantage of reading in draft the judgment delivered by my learned brother Mahmud Mohammed JSC. I agree with it, and for the reasons he has given, I also dismiss the appeal as totally lacking in merit. I affirm the decision of the Court of Appeal.

ONNOGHENJSC

This is an appeal against the judgment of the Court of Appeal in appeal NO.CA/E/319/2007 Holden at Enugu delivered on the 4th day of July, 2008 in which the court dismissed the appeal of the appellants against the dismissal of their suit by the trial court in suit NO. A/75/2007 delivered by the High Court of Anambra State Holden at Awka, on the 17th day of September, 2007. B

The facts, relevant to the determination of the appeal, have been stated in detail in the lead judgment of my learned brother MOHAMMED, JSC, the draft of which I had the privilege of reading. I therefore do not intend to repeat them here except as may be needed or relevant to the point(s) being made. The issues for determination as identified by learned counsel for the appellant in the appellant brief filed on 26th August, 2008 by NNAMDI IBEGBU ESQ., SAN are as follows: C

“(1) Did the Appellants’ counsel misquote Justices of the Supreme Court, was he dishonest, and was the decision of Omage J.C.A in that respect cause a miscarriage of justice? (Formulated from Ground 1). D

(2) Was the lower court right by not giving section 105(3) of the constitution of the Federal Republic of Nigeria, 1999 its ordinary meaning and by not giving effect to the word “shall have power” when interpreting same, despite the fact that His Excellency Mr. Peter Obi is the elected Governor of Anambra State who made the constitutional proclamation? (Formulated from Grounds 2, 4 and 5) E

(3) Are actions of Dr. Chris Ngige and Mr. Andy Uba saved in law contrary to the decision of the Supreme Court of Nigeria in Adefulu vs Okulaja (1996) 9 NWLR Part 475 Pg 668 @ 693D-E? (Formulated from ground 3)”. F

There is a preliminary objection by learned counsel for the 1st respondent O. J. NNADI Esq., in the 1st respondent’s brief of argument deemed filed on the 3rd day of June, 2009 in respect of ground 1 of the grounds of appeal from which appellants’ issue 1, supra, was formulated. It is the contention of learned counsel for the 1st respondent that the ground and issue arising therefrom be struck out for not being based on the ratio decidendi of the decision on appeal. G

On the other hand, learned counsel for the appellants has argued, in the reply brief, that the comments made by the lower court H

about the conduct of appellants' counsel was in relation to counsel's alleged misquotation of the decision of the Supreme Court in the case of Ngige vs Obi (2006) 14 NNLR (Pt.999) 1 which resulted in a miscarriage of justice.

B I agree with the contention of the learned counsel for the 1st respondent that what is being attacked in ground 1 of the grounds of appeal and which constitutes the foundation of Issue NO 1 of the appellants is the *obiter dictum* of the lower court as contained at page 439 of the record where that court stated, *inter alia*, thus:

C “...I find such practices by the Appellants’ counsel dishonest, particularly when statements of Supreme Court Justices are quoted out of context”.

D It is on record that the issues before that court did not include an issue on the integrity of learned counsel and as such any comment made on that matter is clearly obiter which cannot attract any ground of appeal. It therefore follows that ground 1 of the grounds of appeal and Issue 1 formulated therefrom are incompetent and are consequently struck out - see Oredoyin vs Arowoho (1989) 4 NWLR (Pt. 114) 172; Buhari vs Obasanjo (2005) 13 NWLR (Pt. 941) 1 at E 88.

F Having done away with Issue 1, it is very clear that Issues 2 and 3 can be conveniently compressed into a single issue which runs through the case of the appellants from the trial court to the lower court, to wit:-

Whether it was the proclamation by Dr. Chris Ngige on 5th day of June, 2003 or the one by Mr. Peter Obi on the 21st day of March, 2006 that heralded the first session of Anambra State House of Assembly and whether the acts of Dr. Ngige and Dr. Andy Uba G were valid in law while acting as Governors of the State.

H It is the contention of the learned counsel for the appellants that the lower court was in error in not giving section 105(3) of the constitution of the Federal Republic of Nigeria, 1999 its ordinary meaning in interpreting the phrase “*shall have power*” despite the fact that Mr. Peter Obi is the duly elected Governor of Anambra State who made the constitutional proclamation; that since the acts of Dr. Ngige and Mr. Uba were not saved in law as envisaged by the decision of this court in the case of Adefulu vs Okulaja (1996) 9.NWLR (Pt.475) 668 at 693. The decision of the lower court validating same

is erroneous and should be set aside.

This court is consequently urged to allow the appeal. The argument of the respondents, on the other hand, is to the effect that the interpretation of section 105(3) of the 1999 Constitution by the lower court took into consideration the provision of section 105 (1) of the said Constitution as well as other authorities relevant thereto; that the authority of Adefulu vs Okulaja (supra) relied upon by the appellants was duly considered by the lower court in relation to the acts of Dr. Ngige and Mr. Uba prior to the nullification of their elections and that the approval of their acts in the circumstance is in accord with the defacto officer principle or doctrine which should be sustained. The court is therefore urged to dismiss the appeal.

From the relevant facts, it is not disputed that the appellants were the duly elected members of the Anambra State House of Assembly in the 2003 general elections held on the 19th day of April, 2003; during the said election, Dr., Ngige was returned as the duly elected Governor of Anambra State, who, after being duly sworn in as such, proceeded to issue a proclamation as required by the Constitution and inaugurated the appellants as members of Anambra State House of Assembly on the 9th day of June, 2003. By the provisions of section 105 (1) of the Constitution of the Federal Republic of Nigeria, 1999 (hereinafter referred to as the 1999 Constitution), the Anambra State House of Assembly so inaugurated by Dr. Ngige *“shall stand dissolved at the expiration of a period of four years commencing from the date of the first sitting of the House”*.

After the inauguration, appellants functioned as members of that Assembly as laid down in the 1999 Constitution by passing Bills, approved commissioners and other appointments and passed appropriation Bills as well as electing the principal officers of the House which include the 1st appellant.

However, on the 15th day of March, 2006, the Court of Appeal sitting in respect of governorship election appeals nullified the election of Dr. Ngige resulting in the swearing in of the 1st respondent, Mr. Peter Obi as the Governor of Anambra State on the 17th day of March, 2006, On the 27th day of March, 2006, Governor Peter Obi acting under the provisions of section 105(3) of 1999 Constitution proceeded to issue another proclamation which inaugurated the appellants the second time. Later on, this court held that the

tenure of office of Mr. Peter Obi will not expire until March, 2010.

The above facts laid the foundation of the contention of the appellants that since the election and return of Dr. Ngige as Governor of Anambra State had been declared null and void, all acts done by Dr. Ngige including the proclamation order of 9th March, 2003 are null and void and of no effect whatsoever; that it is the proclamation made by Mr. Peter Obi on 21st March, 2006 that is valid and by extension that upon a proper interpretation of sections 105(1) and (3) of the 1999 Constitution the tenure of office of the appellants, as members of the Anambra State House of Assembly, commenced on the 20th day of March, 2006 and will expire on the 21st day of March, 2010. Interestingly, nothing is being said by the appellants about the huge sums of money they had earned by way of salaries and allowances from June, 2003 to March, 2006. Appellants needed to say something about that money as a way of demonstrating good faith in the rule of law particularly as their contention is that the official acts of Governor Ngige including the proclamation which resulted in their inauguration as a House of Assembly for four years were null and void and of no effect whatsoever. By that argument, it is clear that the salaries and allowances they earned within that period had no foundation in law. In any event, that appears not to be in the contemplation of the appellants. They are rather interested in tenure elongation and with it the perquisites of the office!!

Turning to the issue under consideration, section 105 (1) of the 1999 Constitution clearly provides as follows:-

“A House of Assembly shall stand dissolved at the expiration of a period of four years commencing from the date of the first sitting of the House”.

The question is which is “the date of the first sitting of the House”? Whereas the appellants contend that it is the 20th day of March, 2006 when Governor Peter Obi inaugurated the House after the nullification of the election and return of Dr. Ngige, the respondents contend that it was in June, 2003 when the first proclamation was made by Dr. Ngige.

Two proclamations relevant to the determination of this appeal have their origin from the provisions of section 105 (3) of the 1999 Constitution which provides as follows:

“Subject to the provisions of this constitution, the person elected as

the Governor of a state shall have the power to issue a proclamation for the holding of the first session of the House of Assembly of the State concerned immediately after being sworn in or for its dissolution as provided in this section”

This court has laid down the twelfth golden rules of interpretation of the constitution in the case of A-G Bendel State vs A-G of the Federation (1981) ALL NLR 85. See also Awolowo vs Shagari (1979) 6-9 S.C 51; Salami vs Chairman L.E.D.B (1989) 5 NWLR (pt. 123) 539. In general, the court is to adopt the broad and liberal approach to the interpretation of the constitution. It is also settled law that where the words used in statute or constitution are clear and unambiguous, they ought to be given their ordinary meaning since in such a case there is nothing to be construed or interpreted. In the instant case, I hold the view that the words used in sections 105 (1) and (3) are very clear and unambiguous and would be given their ordinary meanings which include the fact that the life span of a House of Assembly is, by constitutional arrangement, four years calculated from the date of the first sitting of the House after a proclamation by the Governor of the State who must have been sworn in at the time of the proclamation after having been elected by the people.

Was Dr. Ngige the elected and sworn in Governor of Anambra State at the time he issued the proclamation which inaugurated the Anambra State House of Assembly in June, 2003? The answer is clearly in the positive. No one has denied that fact; not even the appellants. What the appellants are contending is the consequences of the nullification of the election of Governor Ngige on his official acts including the proclamation, which they argue is null and void. Are the appellants correct?

To answer that question we have to have recourse to the provisions of section 149 (1) and (2) of the Electoral Act, 2006. It provides as follows:-

“(1) If the Election Tribunal or the Court, as the case may be, determines that a candidate returned as elected was not validly elected, then if notice of appeal against that decision is given within 21 days from the date of the decision, the candidate returned as elected shall, notwithstanding the contrary decision of the Election Tribunal or the Court, remain in office pending the determination of the appeal.

(2) If the Election Tribunal or the Court, as the case may be,

determines that a candidate returned as elected was not validly elected, the candidate returned as elected shall, notwithstanding the contrary decision of the Election Tribunal or the Court, remain in office pending the expiration of the period of 21 days within which an appeal may be brought”.

B The above provisions clearly states that a person returned as elected and whose election is nullified by a tribunal or court shall remain in office despite the nullification pending the determination of his appeal, where one is filed, but, where an appeal is not filed, the
C person shall continue in office for a period of 21 days from the date of the decision - being the time allowed for the person within which to exercise his right of appeal against the decision nullifying his election.

The provisions do not say that the person involved should not
D function or perform any function relating to the office he is allowed, by law, to continue to occupy until the expiration of the time allowed. It is therefore proper to hold that the intention of the legislature is to ensure continuity of governmental action in order to avoid a vacuum. So, you have a situation where a person, whose election
E or return has been declared by a competent tribunal or court to be null and void being allowed, by law, to continue and function in the office to which he had been elected pending either the determination of his appeal or the expiration of the time within which he is to have exercised his right of appeal i.e. 21 days by that Act. It follows
F therefore, and I hereby hold, that whatever act(s) done by the person so affected is valid in law, the nullification of his election or return notwithstanding.

Applying the same reasoning to acts done by the person prior
G to the nullification, it becomes very clear that such act (s) is/are valid, legal and enforceable. If the intention of the legislature is to render them equally null and void, they would have said so in no uncertain terms.

It is therefore my considered view that by the combined effects
H of the provisions of sections 105(1) and (3) of the 1999 Constitution and section 149(1) and (2) of the Electoral Act, 2006, the proclamation of Governor Ngige made in June, 2003 by virtue of which the appellants were inaugurated as the 1st session of the Anambra State House of Assembly constitutes a valid and relevant proclamation in

relation to which the four year tenure of the office of the appellants, as members of that House, is determinable. It follows therefore that the subsequent proclamation by Governor Peter Obi following the nullification of the election and return of Governor Ngige was clearly superfluous as it cannot be used to determine the four year tenure of office as envisaged in section 105(1) of the 1999 Constitution. B

I therefore agree with the reasoning and conclusion of my learned brother MOHAMMED, JSC, that the appeal is unmeritorious and should be dismissed and order accordingly.

I abide by the consequential orders contained in the said lead judgment including the order as to costs, C
Appeal dismissed.

CHUKWUMA-ENEH JSC

This appeal is against the concurrent findings of the courts below dismissing the plaintiffs/appellants' claim for the relief among others that their tenure of office as members of the Anambra State House of Assembly upon the election conducted in May 2003 should continued to 20/3/2010. D E

Their contention is founded on the interpretation of Section 105(1) and (3) of the 1999 Constitution in relation to their tenure as the members of the Anambra State House of Assembly elected in 2003. F

Aggrieved by the decision of the court below they have appealed to this court. However, ground one of the 5 grounds of appeal as per the Notice of Appeal filed on 14/7/2008 from which issue one has been distilled has raised the question of the derogatory remarks of His Lordship Omaxe JCA in the lead judgment against the appellants' Learned Senior Counsel. G

His lordship's most unfortunate, with respect groundless remarks as set out in the lead judgment of this court which informed the complaint as condensed in issue one for determination in this appeal although very damaging to the Learned Senior Counsel for the appellants cannot under any guise however viewed be posted any higher than an obiter observation meaning, in other words, what the term signifies, and, so, in my view is not an obiter dicta in the strict legal terms as it is neither incidental nor collateral to the reasons H

for the decision. It cannot be said that the ground and the issue formulated from it in any way whatsoever relate or present any challenge to the reasons for the decision reached in the decision. See: EGBE V. ALHAJI (1990) 1 NWLR (Pt. 128) 546 at 590. And so, the remarks not having arisen from the reasons for the decision of the court below cannot constitute a valid ground of complaint in the appeal. The preliminary objection to the said ground and issue has been rightly sustained. The said ground of appeal and issue one are hereby struck out.

From the submissions of the parties to this appeal, the two remaining issues for determination turn on the question of interpretation of Section 105 (1) and (3) of the 1999 Constitution vis-à-vis as to the Appellants' contention that the life tenure of the House elected in 2003 shall terminate by efflux of time on 30/3/2010 and more specifically on how the interpretation of Section 105(1) and (3) has impacted on the three distinct proclamations respectively issued by Governors Dr. Chris Ngige, Mr. Peter Obi and Dr. Andy Uba, with regard to convening on each occasion the first session of the House soon after each one of them has been sworn in as Governor. This is a remarkable stance for the appellants to take in this matter even as they have sat as members of the House elected in 2003 to its termination in 2007 by efflux of time.

To the above arguments the Respondents in a nutshell have contended that the life of the House elected on 2003 stands terminated at the expiration of 4 years certain commencing from the date of the holding of the House's first session and in compliance with the literary interpretation of Section 105 (1) and (3) of the 1999 Constitution. They have relied on Section 138(1) and (2) and Section 149(1) and (2) of the Electoral Acts of 2003 and 2006 respectively to submit that all the executive actions of Dr. Ngige and Dr. Uba in exercise of their office as Governors have been saved.

It is my view that the whole misconception of the Appellants' cause of action in this matter founded, as it were, on the breach of the provisions of Section 105 of the 1999 Constitution stems from a clear misapprehension of both the import and purport of the provisions of the said Section 105; it provides as follows:

"105(1) A House of Assembly shall stand dissolved at the expiration of a period of four years commencing from the date of the first

sitting of the House.

(2) If the Federation is at war in which the territory of Nigeria is physically involved and the President considers that it is not practicable to hold elections, the National Assembly may by resolution extend the period of four years mentioned in subsection (1) of this section from time to time but not beyond a period of six months at any one time. ^B

(3) Subject to the provisions of this Constitution, the person elected as the Governor of a State shall have power to issue a proclamation for the holding of the first session of the House of Assembly of the State concerned immediately after his being sworn in, or for its dissolution as provided in this section. ^C

On the peculiar facts of this matter it is clear from the provisions of subsection 2 of Section 105 that they do not apply to this case. For the resolution of the issues raised in this matter only subsections 105(1) and (3) are pertinent and due to be considered here. The provisions of subsection 1 (i.e. 105 (1)) are plain and simple being unambiguous and the words have in the circumstances to be given their ordinary grammatical meaning. In that wise, the life tenure of a State House of Assembly is fixed for a period not exceeding four years commencing from the date for the holding of the first session of the House. The tenure of a State House of Assembly is therefore, four years certain calculated from the date of the holding of the first sitting of the House. Subsection 1 by its clear provisions has without more made certain the life tenure of a House. And so, a House of Assembly stands dissolved by mere efflux of time as clearly provided in this subsection and is not by proclamation as used to be the case under the parliamentary system. From the plain words of the subsection a proclamation does not have to issue to terminate the life tenure of a House, so that it is proper to say that the termination of a House is more or less automatic after 4 years from the date of the holding of the first session in the life of a House of Assembly. By the provisions of section 105(1) therefore, what is material in calculating the life tenure of a House of Assembly is the date of the holding of its first session. Following from the above reasoning the subsection appears to stand on its own. ^D ^E ^F ^G ^H

I now come down to scrutinizing the entire subsection 3 of Section 105. The use of the words, "subjected to in the provisions of

the subsection clearly as settled in many cases of this court including NDIC V. OKEM ENTERPRISES LTD. (2004) 10 NWLR (Pt.880) 107, TUKUR V. GOVT. OF GONGOLA STATE (1989) 4 NWLR (Pt. 117) 517. OKE V. OKE (1974) 1 ANLR 443, and AQUA LTD. V. ONDO STATE COUNCIL (1988) 4 NWLR (Pt.91) 622 have conjured up a condition, a restriction or limitation, otherwise governed, subordinate, or subservient to. These words are used to make the subject section and in this case, subsection 3 of section 105 subservient or subordinate to the provisions of the Constitution including in this instance, subsection 1 of Section 105. Clearly, Section 105 (3) cannot be read in isolation. In other words, it is not intended that the operation of Section 105 (1) shall be affected by the provisions of the “subject section”. And so, it goes without much saying that any conflict between the two subsections, the provisions of subsection 105 (1) shall prevail i.e. it shall not otherwise be limited by the provisions of subsection 3 of Section 105. In other words, in the context of subsection 3 issuing of a proclamation by Governor Peter Obi could not have prolonged the life tenure of the Anambra House of Assembly elected in 2003 which has terminated by efflux of time; that is to say, at the expiration of 4 years from the holding of the first session of that House in accordance with Section 105(1).

This stance on the interpretation of Section 105(1) begs the question whether the subject section by using the words “*shall have the power*”, has thereby made issuing of proclamations by Governors, a condition precedent for holding of the first session of a House. In this regard the construction of the words “shall have the power” has in the provisions of Section 105(3) and indeed whether in the context of the provisions of Section 105 those words connote, enabling and discretionary or absolute power in the exercise of issuing of proclamations appears to me, with respect, to have been unnecessarily dragged into this dispute. The meaning of those words are not useful to determining this matter. I shall demonstrate the circumstances that have led to this conclusion anon.

Having considered the provisions of Section 105 (1) and (3) it is logical to narrow my reasonings to the resolution of the disputes in this case.

It is my view that on the peculiar facts of this matter no useful purpose is served by embarking on the tortuous journey of constru-

ing the words “shall have the power” as used in Section 105(3) solely for the purpose of determining in the context of the provisions of the constitution the nature of the power/capacity contemplated in the said subsection 105(3) whether it is enabling and discretionary or mandatory in the question of issuing of proclamations, as when otherwise this case can be resolved by having recourse to the respective provisions of Section 138 and Section 149 of the Electoral Acts 2003 and 2006, in other words, seek the assistance of those sections of the Electoral Acts. B

Section 149(1) and (2) is in pari materia with Section 138 (1) and (2) and has made provisions to the effect that a person elected as the Governor of a State as in this case Dr. Ngige, shall remain in office pending the determination of the appeal. These provisions have clearly saved the acts of the person (as Dr. Ngige) so elected pending the determination of the appeal. For ease of reference I set out the provisions of Section 149 (1) and (2) as follows: D

“149(1) If the Election Tribunal or the Court, as the case may be, determines that a candidate returned as elected was not validly elected, then if notice of appeal against that decision is given within 21 days from the date of the decision, the candidate returned as elected shall, notwithstanding the contrary decision of the Election Tribunal or the Court, remain in office pending the determination of the appeal.” E

(2) If the Election Tribunal or the Court, as the case may be, determines that a candidate returned as elected was not validly elected, the candidate returned as elected shall, notwithstanding the contrary decision of the Election Tribunal or the court, remain in office pending the expiration of the period of 21 days within which an appeal may be brought.” F

The provisions of Section 138(1) and (2) of the Electoral Act 2003 otherwise in pari materia with section 149(1) and (2) of the Electoral Act 2006 applies to the case of Dr. Ngige particularly in the sense that as held in the case of BUHARI V. OBASANJO (2005) 13 NWLR 1 - this section is relevant and indeed applies to a situation where as in the case of Dr. Ngige declared, returned as elected by INEC, the Election Tribunal has declared him not validly so elected. H

And the provision goes on to say that if notice of appeal against the Tribunal’s decision is filed within 21 days from the date of the

decision, the person so returned as elected should notwithstanding the Tribunal's decision remain in office pending the determination of the appeal. And that is to say, that where the person so elected as Dr. Ngige not being validly elected being the person so elected should notwithstanding the Tribunal's decision (of not being validly elected) remain in office i.e. as the Governor. This is what happened in the case of Dr. Ngige.

It is equally clear that the provisions have no application where the Tribunal (or Court of Appeal in a case where it sits as a court of first instance e.g. Presidential Election) has declared that the person as a Governor has been validly elected. In sum, therefore the section deals with the status of the person (in the instance Dr. Ngige) whose election has been invalidated and not one who has been declared validly elected.

What I am trying to say here on the backdrop of the accepted facts of this case is that the proclamation issued by Dr. Ngige for the holding of the first session of the House of Assembly elected in 2003 is saved and therefore valid and regular notwithstanding that an appeal on the election of Dr. Ngige has later on been declared null and void. The appellants have not contested, that sequel to the proclamation issued by Dr. Ngige they have sat in the proceedings of the House throughout the period from 2003 - 2007 when the life tenure of the House has terminated after the expiration of 4 years and conducted business. It does not therefore, lie in their mouth to challenge the said proclamation nor any executive acts of Governor Ngige during that period including for that matter holding of the first session of the House in 2003.

It is not in dispute that the Anambra State House of Assembly elected in 2003 of which the appellants have been the elected members having duly started its first session of sitting on 9/6/2003, has thereby automatically terminated 4 years thereafter, i.e. in 2007.

And so translating these reasoning to the facts-situation in this matter it is not arguable that once the life tenure of the House elected in 2003 has terminated by efflux of time, that is to say, 4 years from the holding of its first session, as provided in Section 105(1) any action as the instant one seeking a number of declarations and injunction cannot succeed. The Reliefs, being discretionary reliefs are to be granted at the discretion of the court and also being even moreso

belated should have dictated to the appellants the near frivolity of this action.

It is my conclusion from The above reasoning that this action is totally misconceived and highly speculative.

The appeal is most unmeritorious and I agree with the reasoning and conclusions of my learned brother Mohammed JSC, whose lead judgment in this matter I have read before now that the appeal should be dismissed, I too dismiss it with costs as in the lead judgment.

C

MUNTAKA-COOMASSIE JSC

The appellants/plaintiffs were members of the Anambra State House of Assembly, who were elected in 2003. On the 5/6/03 they had their first sitting in the chambers of the House of Assembly where they took the oath of office and Oath of allegiance and the Governor Dr. Chris Ngige issued an order of proclamation. Be it noted that Dr. Chris Ngige was also elected in 2003 when he issued the order of proclamation.

Subsequently the election of Dr. Chris Ngige as the Governor of Anambra State was challenged at the Election Petition Tribunal, which set aside the said election, upon an appeal to election appeal Tribunal; the judgment of the lower Tribunal was upheld. The said election was set aside and Dr. Peter Obi was declared as the duly elected Governor of Anambra State.

Dr. Peter Obi was sworn-in as the Governor of Anambra State on 16/3/06 upon being sworn-in, he subsequently issued another order of proclamation to the appellants. While the four years terms constitutionally granted to Dr. Peter Obi to serve as the elected Governor of Anambra State had not expired or exhausted, the Independent National electoral Commission (INEC) purportedly conducted another Governorship election, which produced Dr. Andy Uba as the elected Governor of Anambra State in 2007, Dr. Andy Uba was sworn in as the elected Governor of Anambra State, who in turn issued an order of proclamation to the State House of Assembly. In the mean time, Dr., Peter Obi had already instituted an action in court challenging the powers of INEC to conduct another Governorship election when the four year term constitutionally granted as the

Governor has not expired. This court in *Obi V. INEC & 6 Ors.* (2007) 11 NWLR (pt. 1046) 565 at 644 held thus:-

B *“When verdict of the Court of Appeal (Enugu Division) declaring the present appellant as the rightful person to have been declared having-won the gubernatorial election of April 2003, was handed down, the effect is that the return of Dr. Chris Ngige as the person who won the election was null and void and of no legal consequence. So, Ngige’s Oath taking at that time cannot, be a point of reference for calculating the four year term of the appellant. Ngige was and cannot be a person first elected as Governor under this constitution; his election having been declared null and void. It was after the judgment of the Court of Appeal on the 16/3/2006, and by force of law, that the appellant (Peter Obi) took his Oath of allegiance and Oath of Office on the 17/3/2006”.*

D By the reasons of this judgment Dr. Andy Uba was ordered to vacate the office of the Governor of Anambra State.

2nd - 30th respondents were the set of the members of the House of Assembly that were elected in the House of Assembly election conducted in 2007 and who the removed Governor Dr. Andy Uba had earlier issued an order of proclamation. However, based on the removal of both Dr. Chris Ngige and Dr. Andy Uba as Governors of Anambra State, the appellants had also sought to extend their terms of office by instituting this action and claimed as follows:-

F 1. A DECLARATION that upon the interpretation of Section 105 (1) and (3) of the constitution of the Federal Republic of Nigeria, 1999 four years tenure of the plaintiffs at Anambra State House of Assembly commenced upon the proclamation for the holding of the first session of the House of Assembly of the State by the person G elected as Governor of the State who is His Excellency Mr. Peter Obi on the 20/3/2006.

H 2. A DECLARATION that in keeping with Section 105 (1) and (3) of the Constitution of Nigeria 1999 the first session of Anambra State house of Assembly after the said proclamation by the elected Governor of Anambra State who is Mr. Peter Obi took place of the 21/3/2006 and shall end and be dissolved by the Governor of Anambra State on the 20/3/2010 after the expiration of four years.

3. A DECLARATION that the proclamation for the first session of Anambra State House of Assembly by Dr. Chris Ngige who is not

an elected Governor of Anambra State is unconstitutional, ultra vires, null and void.

4. A DECLARATION that the proclamation for the first session of Anambra State House of Assembly by Dr. Andy Uba who is not an elected Governor of Anambra State is unconstitutional, ultra vires, null and void. B

5. A DECLARATION that the only person who shall sit as Honourable members of Anambra State House of Assembly shall be the Honourable members of the Anambra State house of Assembly duly elected, who upon the proclamation for the holding of the first session of the House of assembly of the State were entitled to and indeed participated in the first session of Anambra State House of Assembly which took place on 21/3/2006. C

6. AN ORDER that the four years tenure of the plaintiffs at Anambra State House of Assembly commenced upon the proclamation for the holding of the first session of the House of Assembly of the State by the person elected as Governor of the State who is His Excellency Mr. Peter Obi on the 20/3/2006, and in accordance with Section 105 (1) and (3) of the constitution of the Federal Republic of Nigeria, 1999 the first session of the third House of Assembly of Anambra State commenced after the said proclamation on the 21/3/2006 and their tenure shall terminate on 20/3/2010. D E

7. AN ORDER that the only persons who shall sit as Honourable members of Anambra State House of Assembly shall be person duly elected who upon the said proclamation for the holding of the first session of the House of Assembly were entitled to and indeed participated in the first session of Anambra State House of assembly which took place on the 21/3/2006 being the plaintiffs. F

8. AN ORDER that the defendant shall direct the Anambra State Police Commissioner to ensure that the plaintiffs shall continue unabated with their functions as Honourable members of Anambra State House of Assembly until the 20/3/2010. G

9. AN ORDER of injunction restraining the defendant from issuing a proclamation for the holding of the first session of Anambra State house of Assembly with respect to those persons purportedly elected as members of Anambra State House of Assembly on the 14th/4/2007. H

10. AN ORDER of injunction restraining those persons who

are presently occupying Anambra State House of Assembly who purported to be elected on the 14/4/2007 their servants, agents and otherwise to vacate the premises of Anambra State House of Assembly until after the 20/3/2010 when the tenure of the plaintiffs shall terminate.

B As earlier stated in this judgment, 2nd - 30th respondents are the product of Anambra State House of Assembly election conducted on the 14/4/2007. The said election has not been set aside nor the certificates of returns issued to them as duly elected members of the
C Anambra State House of Assembly set aside by an election Tribunal as required by Section 71 of the Electoral Act, 2006.

This action was heard by the trial court which dismissed the plaintiffs action for lack of merit. The learned trial judge Onochie J. found as follows:-

D *"I have carefully read the provisions of Section 105 (1) and 105 (3) of the 1999 Constitution. I have also read other provisions of the constitution. It is my view that it is provisions of Section 105 (1) of the 1999 constitution that governs the tenure of the Members of the House of Assembly of a State. It is also my view that Section (3)*
E *of the constitution merely confers a power on the Governor which the governor has a discretion to exercise. If it were the intention of framers of the 1999 constitution that the tenure of members of a House of Assembly should begin to run from the date proclaimed to the assumption of office by a member of House of Assembly of a*
F *State is the declaration of his assets and subscription to the Oath of Allegiance and the Oath of membership. See Sections 94 (1) and 94 (2) of the Constitution".*

Their claims were then dismissed by the trial court. The appel-
G lants were dissatisfied with the decision of the trial court and they consequently appealed to the Court of Appeal (Enugu Division) hereinafter called the lower court. The appeal was heard and dismissed.

On the interpretation of Section 105 (1) and (3) the lower court Per Omage JCA held as follows:-

H *"The question is whether the lower court erred in law in wrongly interpreting the phrase "shall have power", etc. The trial court had ruled in his (sic) judgment before the court, that the phrase "shall have power" merely inform the donee of the power his ability in relation to the issue in contest and under Section 10 of the interpre-*

tation Act, the power is exercisable as and when due or necessary. The phrase is not mandatory. The respondents counsel in the submission in his brief agrees with such definition. It is therefore correct to cite in support of the submission as authority the decision of the court as in Umar V. Governor of Kaduna State & Ors. Reported (1981) 2 NCL 689. B

The word “shall” Used without more may be one or all of these mandatory directives, or persuasive, it would depend on the circumstance in which it is used. See Ishoal V. Ajiboye (1994) 7-8 SCNJ 1 Per Iguh JSC. For instance in the 1979 Constitution, it was ruled by the Supreme Court that Section 238 thereon was used not in a mandatory or directory manner, but in a persuasive sense. See Karto V. Central Bank (1991) 12 SCNJ. In subsection (1) of Section 105 of the 1999 constitution which subscribed thus: A house of Assembly shall stand dissolved “At the expiration of four years” etc. The word shall therein used is mandatory. It allows for no alternative. The various house of Assembly in Nigeria shall necessarily stand dissolved when four years have concluded and their tenure ends. What is left uncertain is the date of the first sitting of the house. C

However, when in sub-section 3 of Section 105 of the 1999 constitution subscribes thus: “Subject to the provisions of this constitution the Governor of a State shall have power to issue a proclamation for the holding of the first session of the house of Assembly of the State house of Assembly concerned immediately after his being sworn in or for its dissolution” etc. The phrase “shall have power” therein used is only to inform the elected Governor of the power he possess as a Governor, an attribute of his gubernatorial power and position. There is no compulsion to use the power other than as it is necessary. The word shall therein used is not compulsory; it is only directory when it needs to be used. Shall have therein used is already confined and qualified by two conditions, “subject to the other provisions of the same constitution”, after he is sworn in, not compulsorily when he is sworn in as Governor, unless he may find the need to exercise the power to make proclamation for the dissolution of the house. For example should a need to dissolve the House of Assembly if political exigency demands such exigency. By the phrase “shall have power” used in the circumstance after his being sworn in, show that a Governor who has not been sworn -in as Governor may not D E F G H

issue a proclamation to the house. The phrase shall have power in the event does not impute that the Governor must issue a proclamation once he takes his Oath of office if there exist a functioning house of assembly which a previous Governor has proclaimed into life.

In an ideal situation, the membership of the House of assembly would not have had any sitting at the time a Governor takes his own Oath of office. The House of Assembly may have congregated in the House, and await the taking of Oath of the Governor Section 105 (3) would then be properly applied and the Governor may now make a proclamation of the first sitting of the House of Assembly now inaugurated by the proclamation of the Governor. My Lords, in my view, once such a proclamation has been made by a Governor to bring into life first sitting of house of assembly, the relevant House of Assembly has begun, there would be no need for further proclamation for another first sitting; as the sitting of the House has already commenced. The situation advocated by the appellants of having another first sitting after the House of Assembly of Anambra State had been sitting for over two years makes a ridicule of the respected procedure in an honourable house. It is not feasible. All the house needs to do is to disable the ruling Governor, then the house will have an endless session when a new Governor is in unable to proclaim a new fresh session. The word proclamation therein simply announces the first assemblage of the House of Assembly; not otherwise, it is not intended for use, when the House had previously been proclaimed by a Governor. For the several reasons stated above, the appellant is in error and is misconceived the purported and meaning of the phrase shall have power when the counsel submitted that the phrase is directory, it is not".

Being dissatisfied with the judgment of the lower court, the appellants appealed to this court. Both parties filed and exchanged their respective brief of argument. The learned counsel for the appellants formulated three (3) issues for determination as follows:-

1. Did the appellants' counsel misquote Justices of the Supreme Court, was he dishonest, and was the decision of Omage JCA in that respect cause a miscarriage of justice? (Formulated from ground 1)

2. Was the lower court right by not giving Section 105 (3) of the Constitution of the Federal Republic of Nigeria, 1999 its ordinary meaning and by not giving effect to the word "shall have power"

when interpreting same, despite the fact that His Excellency Mr. Peter Obi is the elected Governor of Anambra State who made the Constitutional proclamation? (Formulated from ground 2, 4, and 5)

3. Are actions of Dr. Chris Ngige and Dr. Andy Uba saved in law contrary to the decision of the Supreme Court of Nigeria in *Adefulu V. Okulaja* (1996) 9 NWLR (pt. 475) p. 668 at 693 D - E? (Formulated from ground 3) B

The learned counsel to the 1st respondent couched its own issues differently as follows:-

1. Assuming but without conceding that ground 1 of the Notice of Appeal is competent, whether the Court of Appeal judgment can be faulted on ground of wrong citation of authorities or wrong citation of names of justices that decided a case, when such alleged wrong citation of authorities and names of Justice of the Supreme Court or Court of Appeal did not affect the correctness of the decision of the court (ground 1 of the Notice of Appeal)... C

2. Whether the Court of Appeal was right in the court's interpretation of Section 105 (3) of the 1999 Constitution of Nigeria as it relates to proclamation of the first sitting of Anambra State House of Assembly of which the appellants were members (ground 2, 4 and 5 of the Notice of Appeal) E

3. Whether the declaration of the election of Dr. Chris Nwabueze Ngige as null and void by the Court of Appeal rendered null and void, the proclamation by Dr. Chris Nwabueze Ngige of the first sitting of Anambra State House of Assembly made up of the appellants as well as whether the Supreme Court decision in *Obi V. INEC* reported as *Peter Obi V. INEC* (2007) 11 NWLR (pt. 1046) p. 565 affected the proclamation of the first sitting of Anambra State House of assembly by Dr. Andy Uba (Ground 3 of the notice of Appeal). F

The learned counsel to the 2nd – 30th respondent also formulated three issues for determination as follows:-

1. Whether the opinion the Court of Appeal expressed *Obiter* in its judgment on the conduct of counsel for the appellants at the hearing of the appeal including the allegation that the court of Appeal did not consider in its judgment the cases of *Obi V. INEC* (2007) 11 NWLR (pt. 1046) page 436 and *Adefulu Vs Okulaja* (1996) 9 NWLR (pt. 475) at 688 cited by the Appellants in the Court of Ap- H

peal occasioned any miscarriage of justice.

2. Whether the Court of Appeal was correct in its interpretation of Section 105 (3) of the 1999 Constitution which provides that the person elected as the Governor of a State shall have power to issue a proclamation for the holding of first session of the State House of Assembly is directory because the section is confined and qualified by other provisions of the Constitution.

3. Whether the Honourable Court of Appeal was right when it affirmed the judgment of the High Court that Dr. Chris Ngige and Dr. Andy Uba were defacto Governors of Anambra State and their actions while acting as such are saved in law.

Learned counsel to the appellants submitted in his brief that the manner in which Omage JCA, who delivered the lead judgment of the lower Court misquoted the decisions of the Supreme Court in *Obi Vs INEC* (supra) and *Ngige Vs Obi* (2006) 14 NWLR (part 999) it had occasioned miscarriage of justice. If the learned justice of the Court of Appeal had correctly quoted the dicta in that decision he would not have been described as dishonest. He cited the case of *Saeby Jerustoberi Manskinfabric A/S Vs Olaogun Enterprises Ltd* (1999) 14 NWLR (part 637) 128 at 143 G-H.

It was the submission of the learned counsel that section 105 (3) of the 1999 Constitution was not given its ordinary meaning. That Dr. Chris Ngige having been declared as not having duly elected Governor of Anambra State, his election was declared null and void; hence, all his actions as the Governor have no legal effect. Therefore the fact that the Appellants were unconstitutionally sitting with the proclamation of one who was not a Governor of Anambra State does not make their sitting constitutional at the time. He cited the case of *Adefulu V. Okulaja* (1999) 9 NWLR (part 475) 668 at 691, where it was held that once an appointment has been declared null and void by a Court of Law the effect in law is that the act was never carried out. Learned counsel cited the case of *Ajayi Vs The Military Administrator of Ondo State* (1997) 5 NWLR (part 504) 237 at 271, and submitted that the word “shall” in its ordinary meaning is a word of command and one which has always or which must be given a compulsory meaning, thus it denotes an obligation. He relies on the case of *Achineku Vs Isagba* (1988) 4 NWLR (part 89) 411 at 420 C-D.

Learned counsel for the appellants further submitted that proclamations issued by Dr. Chris Ngige and Dr. Andy Uba cannot be valid in law. Since, their elections have been declared null and void any actions done by them have no legal consequences. Since they are all un-lawful, all the acts of Ngige as Governor cannot be saved, since his election has been declared null and void, reliance was placed on the case of Adefulu Vs Okulaja (*Supra*). Learned counsel therefore urged this court to allow the appeal and grant the plaintiffs claims. B

Learned counsel to the 1st respondent raised a preliminary objection to the 1st issue formulated by the appellants on the ground that the ground of appeal was not directed against any of the findings of the lower court, other than on comments made by the Presiding Justice, Omege JCA to the effect that the Appellants' counsel was dishonest in the citation of the authorities. C

A close perusal of the brief of argument of the Appellants before the lower court revealed that it is the learned justice of the court below (Omege JCA) that misquoted the authorities cited by the learned counsel to the Appellants. Naturally a counsel worth his salt would want to remove the tag of dishonesty placed on him by the learned Justice of the Court of Appeal. It is on this basis that I disagree with the respondents' counsel that the tag of dishonesty "*was a mere comment*". I cannot regard this as a mere comment' as it touches on his integrity. This comment is utterly unjustifiable; it should not have been made. When a court comments on the conduct of a counsel in his handling of a case before it, a comment which impugns the character of counsel should not be made unless and until if the counsel's conduct is so disparaging and falls below the standard expected of him as a counsel, I say no more on this point. D E F

My Lords, it is my honest view that the only issue that calls for G determination in this appeal is:-

"Whether the proclamation order issued by Mr. Peter Obi on the 20/3/06 can extend the terms of the members of the Anambra State House of Assembly who took their Oath of Allegiance and office in 2003". H

The gist of the submission of the learned counsel to the Appellants is that the election of Dr. Chris Ngige who issued the proclamation order for the first sitting of the House of Assembly in 2003, having been declared null and void, all the actions he took have no legal

effect whatsoever inclusive of the proclamation issued, have all the sitting of the House of Assembly were illegal until the duly elected Governor, Mr. Peter Obi issued his own order of proclamation in 2006. Hence, the term of four (4) years of the Appellants began to run from 20/3/06 and will terminate on 20/3/2010, Counsel cited in support the case of: - Adefulu Vs Okulaja (1996) 9 NWLR (part 475) 668. Counsel again submitted that the phrase “shall have power” in Section 105 (3) of the 1999 Constitution is mandatory and compulsory.

Both counsel to the Respondents arguments are on the same line. It was their submissions that the case of Adefulu Vs Okulaja (Supra) relied on by the Appellants was decided in respect of an appointment of a traditional ruler, which appointment was declared null and void. The said authorities are not applicable to the matter at hand as this is a matter of election. It was their contention that the tenure of Chris Ngige before his election was declared null and void was protected by statute. They both submitted that the decision in Obi Vs INEC (Supra) only relates to the office of the Governor of Anambra State and not to the plaintiffs.

My Lords will recall that in this judgment I have earlier stated the decisions of the two lower courts. Before I come to the interpretation placed on the provisions of Section 105 (1) and (3) of our 1999 Constitution, I wish to quickly comment on the decision of this court in Adefulu Vs Okulaja (Supra). The decision was in respect of an appointment of a traditional ruler, which this court declared null and void as it was not made in accordance with the customs of the Ilisha. The case in hand is quite different. It relates to acts done by sitting Governor before his election was declared null and void. When a candidate has been returned as a Governor duly elected, he continues to act in that capacity until his election is declared null and void. Section 138 (1) of the Electoral Act, 2006 provides thus:-

138 (1) - If the Election Tribunal or the Court as the case may be determines that a candidate returned as elected was not valid elected and if the Notice of appeal against that decision is given within 21 days from the date of the decision, the candidate returned as elected shall, notwithstanding the contrary decision of the Election Tribunal or the court remain in office pending the determination of the appeal”.

(Underlining mine for emphasis)

The legal implication of the above provision in my view is that Dr. Chris Ngige was legally in office as the Governor of Anambra State, until March, 2006 when his appeal was determined and he was removed from office. It was therefore a misconception on the part of the appellants counsel to submit that the Order of proclamation issued by Chris Ngige in 2003 was null and void. The one issued by Mr. Peter Obi was a mere surplus sage. B

Now Section 105 (1) of the 1999 Constitution provides thus: -

“A House of Assembly shall stand dissolved at the expiration of a period of four years commencing from the date of the first sitting of the House”. C

In the instance case, all parties are in agreement that the appellants were elected in 2003, and they have their first sitting in June, 2006, when the sitting Governor issued an Order of proclamation. D In compliance with the above cited provisions, the four (4) years term of the House of Assembly of Anambra State expired in 2007. It is my considered view that the House of Assembly does not need the proclamation of the Governor before it commenced sitting provided the members have taken their Oath of Allegiance, Oath of office, and disclosed their assets. It is to be noted that these Oaths are administered by the Clerk of the House and not by the Governor. If the provision of Section 105 (3) is compulsory and mandatory before a House commences sitting a Governor faced with hostile House of Assembly where the opposition is in majority may frustrate the sitting of the House. Again it is my considered opinion that the power conferred on the Governor by virtue of Section 105(3) of the 1999 Constitution is only used when necessary. I completely agreed with the decision of the lower court that this appeal lacks merit. E F G

I have read in draft the lead judgment of my learned Lord Mohammed JSC just delivered. I agree with his reasoning and conclusion. I too would dismiss the appeal. Appeal lacks merit same is hereby dismissed by me. I endorse the orders as to costs. H