

**SUPREME COURT OF NIGERIA**  
5TH MARCH, 2010. SC. 132/2009  
**CORAM:- D. MUSDAPHER, G. A. OGUNTADE, F. F. TABAI,**  
**I. T. MUHAMMAD, O. O. ADEKEYE, JJSC**

HON. EHIOZE EGHAREVBA ..... APPELLANT  
AND

1. HON. CROSBY OSADOLOR ERIBO

2. EDO STATE INDEPENDENT

ELECTORAL COMMISSION

3. ATTORNEY GENERAL, EDO STATE

4. GOVERNOR OF EDO STATE

5. HON. JUSTICE R. I. AMAIZE

6. HON. JUSTICES. O. OIGBOKIE

7. HON. JUSTICE P. I. IMOEDMHE ..... RESPONDENTS

(For themselves and on behalf of the

Local, State Local Government

Election Appeal Tribunal)

8. HON. JUSTICE M. IGHODALO

9. HON. JUSTICE EFE IKPONMWONBA

10. HON. JUSTICE TIMOTHY OBOH

11. JOHN FISHER AYO AKHIME

12. MRS. A. NWOHA

(For themselves and on behalf of the

Local Government Election

Petition Tribunal)

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COURTS - High Courts - Supervisory jurisdiction - Limits - It covers the civil and criminal proceedings - But is not stretched to cover election petitions or appeals (H1)

ELECTION PETITIONS - Nature - Civil suit with difference - Election petition is a proceeding which is *sui generis* - Not to be treated as ordinary civil suit in court - For an election legislation creates a special jurisdiction (H2)

JURISDICTION - Courts - Claims - As basis - The jurisdiction of a court to adjudicate on a matter - Is predicated upon the facts placed

before it - Especially the phraseology of the plaintiff's claim (H3)

### ***FACTS***

The 1st respondent, as petitioner, had petitioned the Local Government Election Tribunal, Benin, challenging the result of the election on the ground that he was the validly nominated but unlawfully excluded candidate of the Peoples' Democratic Party in the election to the office of the chairman Egor Local Government Area, Edo State. The tribunal ruled that the petition was incompetent and dismissed same. But 1st respondent successfully appealed to the Election Appeal Tribunal. In reaction, appellant applied to the High court of Edo State for an order of certiorari quashing the proceedings and judgment of the Election Tribunal and the Election Appeal Tribunal on the ground that they had no jurisdiction to hear and determine the claim of 1st respondent as it bothered on pre-election matters.

Eventually, the High court granted appellant's application for certiorari as prayed. Aggrieved, 1st respondent appealed to Court of Appeal which allowed the appeal and set aside the judgment of the High court. That court held that the power of judicial review of the High court does not extend to election petitions. Dissatisfied, appellant has appealed to Supreme Court against the judgment of Court of Appeal.

### ***ISSUE FOR DETERMINATION***

Whether the lower court was right when it held that the trial court had no jurisdiction to entertain the certiorari application of the appellant.

### ***HELD*** (Unanimously dismissing the appeal per **ADEKEYE JSC**) ***High Courts - Supervisory jurisdiction - Limits***

1. Under the Nigerian Legal System, courts are set up under the Constitution, Decrees, Acts, Laws and Edicts - they also clothe the courts with the powers and jurisdiction of adjudication.

Moreover since courts are creatures of Statutes, their jurisdiction is therefore confined, limited and circumscribed by the statutes creating them. A court must not give itself jurisdiction by misconstruing the statute creating it.

The supervisory jurisdiction of the High Court is well defined and specific.

It covers the civil and criminal proceedings but such jurisdiction is not stretched to cover election petitions or appeals.  
(pp. 889 B/D/890 B)

***ELECTION PETITIONS - Nature - Civil suit with difference***

2. In the case of *Obi v. Mbakwe* (1984) 1 SCNLR at pg. 192, the court held that: -

*"There is no doubt at all that an election petition is a proceeding which is sui generis and is not to be treated as a normal civil proceedings. It is conducted under the peculiar provisions of the relevant electoral law and is not particularly related to the ordinary rights and obligations of the parties concerned."*

It must therefore be remembered that an election petition is not always to be treated as the ordinary civil suit in court. An election legislation creates a special jurisdiction and the ordinary rules of procedure in civil cases do not always serve to effectuate its purpose.  
(p.890 C/F)

***JURISDICTION - Courts - Claims - As basis***

3. In the case of *Adeleke v. OSHA* (2006) 16 NWLR pt. 1006 pg. 608 *"it was held that where the issue of the jurisdiction of a court over a suit is challenged, the court is entitled under Section 6 of the 1999 Constitution to consider the plaintiff's claim in order to decide whether it has jurisdiction to entertain it. The jurisdiction of a court to adjudicate on a matter is predicated upon the facts placed before it, and more importantly the phraseology of the plaintiff's claim."*

Before the Local Government Election Tribunal, the claim of the 1<sup>st</sup> respondent as petitioner was that he was validly nominated by his party the Peoples Democratic Party but was unlawfully excluded from the election - in that his name was not only substituted with that of the appellant by the Edo State Independent Electoral Commission, but the same body prevented him from fulfilling certain mandatory requirements in Section 6 of the Local Government Electoral Law 2002.

The complaint before the Election Petition Tribunal was competent and within the jurisdiction of the Election Petition Tribunal.  
(pp. 892 F/893 A/F)

**NOTABLE POINT OF INTEREST**

**ADEKEYE JSC**

*1. High Court ordinarily has power to control tribunals*

Ordinarily our laws by virtue of Section 272 (2) of the 1999 Constitution  
 B our High Courts have the power to review administrative determinations  
 of inferior tribunals, in that the High Court has an inherent jurisdiction to  
 control all inferior tribunals not in an appellate capacity, but in a supervi-  
 sory capacity. That control extends not only to seeing that it observes the  
 C law, but also that the inferior Tribunals keep within its jurisdiction. The  
 control is exercised by means of a power to quash any determination by  
 the tribunal which on the face of it offends against the law. (p. 891 A)

**REPRESENTATION**

D Mr. I. E. Imadogbelo (SAN) with him K. O. Obamogie, U. Efon, M.  
 Eborge and S. O. Odiase for the Appellant  
 Mr. Ken Mozia for the 1st Respondent  
 J. I. Akhigbe (Mrs.) for the 2nd Respondent  
 Mr. Ohio (Min. Of Justice Edo State) for the 3rd - 12th Respondent.  
 E

**CASES REFERRED TO**

Awuse v. Odili (2003) 18 NWLR pt. 851 pg. 116  
 Oloba v. Akereja (1988) 3 NWLR pt. 84 pg. 508  
 F Nwarie v. Amauwa (1991) 8 NWLR pt. 207 pg. 68  
 Adeleke v. OSHA (2006) 16 NWLR pt. 1006 pg. 608  
 Abacha v. Fawehinmi (2000) 6 NWLR pt. 660 pg. 228  
 A-G Bendel State v. Aideyan (1989) 4 NWLR pt. 118 pg. 646  
 ANPP v. Returning officer ABSSD (2005) 6 NWLR pt. 920 pg. 140  
 G Alhaji Tukur v. Government of Gongola State (1989) 4 NWLR pt.  
 117 pg. 57  
 Udosen v. National Electoral Commission (1997) 5 NWLR pt. 506  
 pg. 570  
 Adedeji Oduwole v. Hon. Justice B. A. Famakinwa & Ors (1990) 4  
 H NWLR pt. 143, pg. 239  
 Abaribe v. Speaker Abia State House of Assembly (2002) 14 NWLR  
 pg. 788 pg. 466  
 Attorney-General Anambra State v. A-G Federation (1993) 6 NWLR pt.  
 802 pg. 692

African Newspapers of Nigeria v. Federal Republic of Nigeria (1985)  
2 NWLR pt. 6 pg. 137

Prince Uche Nwole v. Chief Amadi C. Iwuagwu & Ors. (2004) 15  
NWLR pt. 895 pg. 61 at page 87

Tanko Baba Abdullahi v. Emmanuel O. Elayo & Ors. (1993) 1 NWLR  
pt. 268 pg. 171 of pages 197- 198

B

### **STATUTES & RULES REFERRED TO**

Constitution of the Federal Republic of Nigeria, 1999, ss. 6, 251 and  
272

Local Government Electoral Law, 2002, ss. 36 & 31

Local Government Electoral Law, 2003, ss. 34

High Court (Civil Procedure) Rules of Bendel State, 1988, O. 43 r. 1

C

### **LEAD JUDGMENT BY ADEKEYE JSC**

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This appeal emanated from the decision of the court of Appeal Benin delivered on the 20<sup>th</sup> of April, 2009. By that decision, the Court of Appeal set aside the judgment of the High Court of Justice Edo State, Benin Judicial Division and allowed the appeal of the 1<sup>st</sup> Respondent in this appeal. The appellant before this court obtained the leave of the High Court which was granted on the 22<sup>nd</sup> of September, 2008 to file an originating motion on notice on the 3<sup>rd</sup> of October, 2008 to ask the court for the following reliefs:-

a) An order of certiorari to remove into the High Court of Edo State for the purpose of being quashed, the proceedings and judgment of the Edo State Local Government Council Election Tribunal delivered on 16<sup>th</sup> April, 2008 in Petition No. EIGEP/02/08 - Hon Crosby Osadolor Eribo v. Hon. Ehioze Egharevba & others.

b) An order of certiorari to remove into the High Court of Edo State for the purpose of being quashed, the proceedings and judgment of the Edo State Local Government Appeal Tribunal delivered in Appeal No. LGEAT/02/08 Hon. Crosby Osadolor Eribo v. Hon. Ehioze Egharevba & , others on Friday the 1<sup>st</sup> of August, 2008.

c) An order quashing the proceedings and judgment of the Local Government Election Tribunal for want of jurisdiction and necessary competence to hear and determine the petition and Appeal thereof.

d) An order directing the restoration of the Applicant to his

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office of Chairman of Egor Local Government Council to complete his tenure guaranteed by the provisions of section 10 (1) of the Local Government Law 2000 of Edo State (as amended).

The certiorari proceeding was heard by Okungbowa J. of the Benin High Court. In the reserved judgment of the High Court delivered on the 23<sup>rd</sup> of January 2009, it was held that both the trial Tribunal and the Appeal Tribunal had no jurisdiction to hear and determine the claim of the 1<sup>st</sup> Respondent as petitioner. The High Court found that the 1<sup>st</sup> Respondent's complain bothered on pre-election matters. Consequently, the High Court quashed the proceedings and the judgment of the trial, Tribunal in petition No. ELGEP/02/08 and the proceedings and judgment of the Appeal Tribunal in LGEAT/02/08.

I consider it utterly necessary to recapitulate the background facts of this case which prompted the procedure of invoking a prerogative writ in a regular court to quash proceedings and judgment before an Election Tribunal and an Election Appeal Tribunal.

The Local Government Election was held in Edo State on the 16<sup>th</sup> of December, 2007. The appellant Hon. Ehioze Egharevba was declared the winner of the election to the Office of the Chairman, Egor Local Government Council of Edo State. The 2<sup>nd</sup> Respondent, Edo State Independent Electoral Commission issued to him the Certificate of Return as the duly elected Chairman of Egor Local Government Council. The 1<sup>st</sup> Respondent, Hon Crosby Osadolor Eribo on the 14<sup>th</sup> of January 2008 filed an Election Petition Suit No. ELGEP/02/08 at the Local Government Council Election Tribunal Benin against the appellant, his political party People's Democratic Party, Edo State Independent Electoral Commission and three others. The Local Government Election Petition was constituted by the 8<sup>th</sup> -12<sup>th</sup> Respondents. His grouse was that he was the validly nominated but unlawfully excluded candidate of the People's Democratic Party in the election to the Office of the Chairman Egor Local Government, Edo State.

In a judgment delivered on the 16<sup>th</sup> of April 2008, the Tribunal declared his petition incompetent and dismissed it. Being aggrieved by that decision, the 1<sup>st</sup> Respondent filed an appeal to the High Court of Edo State sitting as Edo State Local Government Election Appeal Tribunal. In the judgment of the Appeal Tribunal delivered on the 1<sup>st</sup> of

August 2008, the judgment of the Election Tribunal was overturned. The consequential order of the Appeal Tribunal was that the Edo State Independent Electoral Commission should withdraw the certificate of return issued to the Appellant and that the 1<sup>st</sup> Respondent be issued with a fresh Certificate of Return as duly elected Chairman of Egor Local Government Council. Since the appeal to the Local Government Tribunal is final- this prompted the appellant to seek redress at the High Court of Edo State in the form of a prerogative order of certiorari to quash the proceedings and judgments of both the Local Government Election Tribunal and that of the Local Government Appeals Tribunal.

I have indicated earlier on in this judgment that the High Court granted the application on the basis that the Tribunals lacked the requisite jurisdiction to entertain the petition. The 1<sup>st</sup> Respondent filed an appeal to the Court of Appeal Benin. The crux of the argument in the appeal before the lower court was that the High Court does not have supervisory jurisdiction over the Local Government Election Petitions Tribunal. The lower Court concluded that the decision of the Edo State Local Government Election Appeal Tribunal is final by virtue of the provisions of section 36 (3) of the Local Government Electoral Law of Edo State 2002 and the case of *Awuse v. Odili* (2003) 18 NWLR pt. 851 pg. 116. Being aggrieved by the decision of the Lower court, the appellant filed a further appeal to this Honourable Court. The appeal is based on the Notice of Appeal filed on the 19<sup>th</sup> of June, 2009.

At the hearing of the appeal, the appellant adopted and relied on the appellant's brief of argument filed on 22/6/09. The under mentioned issues are settled for determination as follows:-

1. Whether the Lower court was right when It held that the trial court had no jurisdiction to entertain the certiorari application of the appellant.

2. Whether the feature of the Justices of the court of Appeal to allow the appellant to move his motion for extension of time to file his brief of argument or argue the substantive appeal breached his right to fair hearing as guaranteed by section 36 of the constitution of the Federal Republic of Nigeria 1999.

3. Whether the court was right in determining the appeal with two subsisting notices of Appeal.

4. Whether the lower court was right in entertaining oral argument from the 3rd -12th Respondents counsel who filed no Respondents brief of argument without leave.

The 1<sup>st</sup> Respondent adopted and relied on the 1<sup>st</sup> Respondent's brief filed on 15/10/09 whereupon three issues were formulated for the determination in this appeal namely:-

(a) Whether the Justices of the Court of Appeal infringed on the right of the appellant to fair hearing by inviting counsel suo motu to address the court on the issue of jurisdiction after affirming that hearing Notices were served on the appellants counsel.

(b) Whether the conclusion of the Justices of the Lower court that the High court lacked jurisdiction to entertain the action was wrong.

(c) Whether there were irregularities in the procedure adopted by the Lower court in *Suo motu* raising the issue of jurisdiction and if such is capable of vitiating the proceedings.

The 2<sup>nd</sup> Respondent adopted and relied on the brief filed on 11/12/09 wherein three issues were distilled for determination in this appeal which reads:

(1) Whether the Lower court was right when it held that the trial court had no supervisory jurisdiction over Election Tribunal established by the Local Government Law 2002 made by Edo State House of Assembly.

(2) Whether failure of the Justices of the court of Appeal to allow the appellant move his motion for extension of time to file his brief of argument or argue the substantive appeal occasioned a miscarriage of justice.

(3) Whether the lower court in entertaining oral arguments from the 3rd -12th Respondents counsel on issue of Law-without a brief has occasioned a miscarriage of justice.

The 3rd -12th Respondents adopted and relied on their joint brief filed on 7/9/09 where three issues similar in context to those of the 2<sup>nd</sup> Respondent in its brief were raised namely –

(1) Whether the lower court was not right when it held that the trial court had no jurisdiction over Election Tribunals established by the Local Government Law 2002 made by Edo State House of Assembly.

(2) Whether the failure of the Justices of the Court of Appeal to allow the Appellants move its motion for extension of time to file his

brief of argument or argue the substantive appeal occasioned any miscarriage of Justice.

(3) Whether the lower court in entertaining oral arguments from the 3rd -12th respondents counsel on issue of law without a brief has occasioned a miscarriage of Justice.

I am not particularly comfortable with the issues raised by the appellant in this appeal. They did not raise any substantial point for consideration. The issues were dancing round the periphery rather than hitting the nail on the head. B

I observe that the germane issue for consideration is whether the lower court was right when it held that the trial court had no jurisdiction to entertain the certiorari application of the appellant. All the respondents raised a similar issue in their briefs. C

The appellant argued and submitted that the lower court erred when it held that the High Court had no jurisdiction to hear and determine the appellant's claim of certiorari contrary to Section 272 of the Constitution of the Federal Republic of Nigeria 1999, which gives the State High Court unlimited jurisdiction to hear and determine civil proceedings subject to the provisions of Section 251 and other provisions. Further, Section 272 (2) gives the State High Court appellate and supervisory jurisdiction. The appellant elaborated on this further that the Local Government Law 2000 did not create the two Tribunals as superior courts of record. Both remain inferior courts or statutory tribunals subject to the supervisory jurisdiction of the lower court. A statutory tribunal no matter how highly clothed with power is still a tribunal and so an inferior court subject to the supervisory jurisdiction of a superior court of record. D  
E  
F

The High Court derived its jurisdiction to adjudicate on the appellants certiorari application from the provisions of Section 6 (2) (3) (5) (e) (6) and 272 (1) and (2) of the 1999 Constitution of the Federal Republic of Nigeria. G

The High Court can make the order by virtue of Order 43 of the High Court (Civil Procedure) Rule of Bendel State, 1988 applicable in Edo State. H

The appellant cited the case of *R v. Cripps Expert Muldoon & others* (1983) 3 AER page 72 at page 84 where the Queens Bench by an Order of Certiorari quashed the decision of a Local Election Court.

The appellant cited Nigerian authorities like

Nwarie v. Amauwa (1991) 8 NWLR pt. 207 pg. 68

Udosen v. National Electoral Commission (1997) 5 NWLR pt. 506 pg. 570

Sken Consult Nig. Ltd. V. Ukey (1981) 1 SC pg. 1

The appellant submitted that a party affected by an order or judgment of a tribunal delivered without jurisdiction is entitled to seek redress in the appropriate court such as the High Court of Edo State specifically vested with supervisory jurisdiction over statutory tribunals by Section 272 (2) of the Constitution. The appellant distinguished the case of Awuse v. Odili (2003) 18 NWLR pt. 851.

The 1st Respondent submitted that the jurisdiction exercisable by the Supreme Court in this appeal is appellate, and it is limited to a consideration of the correctness of the decision of the lower court that in view of the clear provisions of Section 36 (3) of the Local Government Electoral Law 2002 of Edo State, the High court of Edo State Election Petition Tribunal Appeal and whether the High Court had no jurisdiction to review via certiorari proceedings, the decision of the statutory tribunal declared to be final. The decision of the lower court that the High Court of Edo State lacked jurisdiction to review the final decision of the Local Government Appeal Tribunal of Edo State is correct and in accord with the Supreme Court decision in ANPP v. Returning officer ABSSD (2005) 6 NWLR pt. 920 pg. 140.

The lower court was entitled to entertain oral arguments by counsel present in court on the issue of jurisdiction raised suo motu by court. The 1<sup>st</sup> respondent submitted that the condition precedent to the exercise of the supervisory jurisdiction of the High Court is that it must have jurisdiction to hear and determine the issue or matter in respect of which it is being called upon to exercise its supervisory jurisdiction. The jurisdiction of the High Court of Edo State particularly its supervisory jurisdiction is as specified in Section 272 (2) of the 1999 Constitution of the Federal Republic of Nigeria which does not include Local Government Election Tribunal, or Appeal Tribunal. Local Government Electoral Law 2003 section 34 (1) (d) sets out the ground on which an election petition may be questioned as:-

*"That the petitioner was validly nominated but was unlawfully excluded from the elections"*

The pleadings in the petition and the claim as reproduced raised

the foregoing issue. On the face of the record, the Tribunals dealt with an election petition which raised issues within their jurisdiction.

The court is urged to dismiss the appeal. The 2<sup>nd</sup> Respondent, the Edo State Independent Electoral Commission, submitted that the Lower court came to the right decision in holding that the High court wrongly assumed jurisdiction on the certiorari proceedings as confirmed by the lower court. Any errors committed by the Tribunal in the process of hearing the petition were committed within jurisdiction as conferred by the Local Government Electoral Law 2002. The High Court of Edo State has no jurisdiction to review and quash the decisions of the Election Petition Tribunals when it is shown that the Tribunals acted within jurisdiction.

The respondent cited the Case of Adedeji Oduwole v. Hon. Justice B. A. Famakinwa & Ors (1990) 4 NWLR pt. 143, pg. 239.

The counsel to the 3<sup>rd</sup> -12<sup>th</sup> Respondents associated himself with the submission of counsel to the 2<sup>nd</sup> Respondent in all material particulars. He urged this court to dismiss this appeal as a candidate claiming to be deprived of his electoral victory by the conduct of a 3<sup>rd</sup> party can present an election petition. If the Tribunal erred in law such errors were committed within the jurisdiction conferred on them by the Local Government Electoral Law.

I have given a microscopic consideration to the argument and submission of counsel in this appeal. Gleaning through the proceedings at the lower court at the time of hearing of the appeal, the court granted an application for abridgment of time and accelerated hearing of the appeal. Vide page 457 of the Record. The lower court considered that the tenure of the Chairman of the Local Government Council in question would lapse by July 2010 since the issue before the court was premised on whether the High Court lacked jurisdiction to quash the decision of the Election Appeal Tribunal; no valid issue could be left for further consideration by the lower court. In the scenario and having been confronted with a paramount and preliminary issue, the court called for a viva voce argument of counsel for the 3<sup>rd</sup> -12<sup>th</sup> respondents present in court. The legal point was whether or not the High Court could validly exercise supervisory jurisdiction over an Election Petition Appeal Tribunal statutorily created as a final court on Local Government Election matters. Jurisdiction is a term of comprehensive import embracing every kind of judicial ac-

tion.

It is the power of a court to decide a matter in controversy and presupposes the existence of a duly constituted court, with control over the subject matter and the parties. Jurisdiction also defines the power of the court to inquire into facts, apply the law, make decisions and declare judgment. It is the legal right by which judges exercise their authority. Jurisdiction is equally to court what a door is to a house. That is why the question of a court's jurisdiction is called a threshold issue, because it is at the threshold of the temple of justice. Jurisdiction is a radical and fundamental question of competence, for if the court has no jurisdiction to hear the case, the proceedings are and remains a nullity however well-conducted and brilliantly decided they might have been. A defect in competence is not intrinsic but rather extrinsic to adjudication.

- D Oloba v. Akereja (1988) 3 NWLR pt. 84 pg. 508.  
Obriode v. Oyebe (1984) 1 SCNLR pg. 390.  
Ezomo v. Oyakhire (1985) 1 NWLR pt. 2 pg. 105.  
Petrojessica Enterprises Ltd. V. Leventis Technical Co. Ltd.  
(1992) 2 SCNLR pg. .341
- E Barclays Bank v. Central Bank of Nigeria (1976) 6 SC pg. 175.  
African Newspapers of Nigeria v. Federal Republic of Nigeria  
(1985) 2 NWLR pt. 6 pg. 137.  
Adeleke v. OSHA (2006) 16 NWLR pt. 1006 pg. 608.  
Attorney-General Anambra State v. A-G Federation (1993) 6
- F NWLR pt. 802 pg. 692,  
Saleh v. Monguno (2003) 1 NWLR pt. 801 pg. 221.

The issue of jurisdiction being fundamental can be raised and challenged at any stage of the proceedings in the lower court, in the Court of Appeal or even for the first time in the Supreme Court. The issue of jurisdiction being so pivotal can be raised suo motu by the court so long as the parties are accorded the opportunity to react to the issue. At the hearing of the appeal at the court below, the counsel were given the opportunity to address the court on the supervisory jurisdiction of the High Court on the Election Petition Appeal Tribunal proceedings and decisions.

*Pan Asian Co. Ltd. V. NICON (1982) 9 SC.*  
*Alhaji Tukur v. Government of Gongola State (1989) 4 NWLR*  
*pt. 117 pg. 57.*

*FRN v. Chief Ifegwu (2003) 11 NWLR pt. 671.*

*Bronik Motors v. Wema Bank (1983) 1 SCNLR pg. 296.*

*A-G Bendel State v. Aideyan (1989) 4 NWLR pt. 118 pg. 646.*

This takes me to the crucial issue of whether the High Court of Justice, Edo State in the supervisory jurisdiction - can exercise same over the decisions of the Election Petition Appeal Tribunal. ***Under the Nigerian Legal System, courts are set up under the Constitution, Decrees, Acts, Laws and Edicts - they also clothe the courts with the powers and jurisdiction of adjudication.*** If the Constitution, Decrees, Acts, Laws and Edicts do not grant jurisdiction to a court or tribunal, the court and parties cannot by agreement endow it with jurisdiction. As no matter how well and properly conducted the proceedings, once there is a defect in competence, it is a nullity and in exercise in futility. ***Moreover since courts are creatures of Statutes, their jurisdiction is therefore confined, limited and circumscribed by the statutes creating them. A court must not give itself jurisdiction by misconstruing the statute creating it.***

The High Court of a State is created as a superior court of Record by virtues of Section 6 Subsection (5) (d) of the 1999 Constitution. Section 272 of the Constitution defines the jurisdiction as follows: -

(1) Subject to the provisions of this Constitution and in addition to such other jurisdiction as may be conferred upon it by law, the High Court of a State shall have unlimited jurisdiction to hear and determine any civil proceedings in which the existence of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue or to hear and determine any criminal proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by any person.

(2) The reference to civil or criminal proceedings in this section includes a reference to the proceedings which originate in the High Court of a State and those which are brought before the High Court to be dealt with by the court in the exercise of its appellate or supervisory jurisdiction.

Order 43 of the High Court (Civil Procedure) Rules of Bendel State 1988 applicable in Edo State provides as follows:-

Order 43 Rule 1 (1) -

(1) An application for -

(c) An order of mandamus, prohibition or certiorari, or

(d) An injunction restraining a person from acting in any office in which he is not entitled to act, shall be made by way of an application for judicial review in accordance with the provisions of this order.

It is apparent that gleaning through the foregoing provisions, **the supervisory jurisdiction of the High Court is well defined and specific.**

**It covers the civil and criminal proceedings but such jurisdiction is not stretched to cover election petitions or appeals.**

**In the case of Obi v. Mbakwe (1984) 1 SCNLR at pg. 192, the court held that: -**

**"There is no doubt at all that an election petition is a proceeding which is sui generis and is not to be treated as a normal civil proceedings. It is conducted under the peculiar provisions of the relevant electoral law and is not particularly related to the ordinary rights and obligations of the parties concerned."**

In the case of Tanko Baba Abdullahi v. Emmanuel O. Elayo & Ors. (1993) 1 NWLR pt. 268 pg. 171 of pages 197- 198 it was held that:-

**"A legislation dealing with election is often a special one with special rights and duties. It is sui generis and with its peculiarities which a court must recognize and take into account."**

**It must therefore be remembered that an election petition is not always to be treated as the ordinary civil suit in court. An election legislation creates a special jurisdiction and the ordinary rules of procedure in civil cases do not always serve to effectuate its purpose.**

Oyekan v. Akinjide (1965) NWLR pg. 381.

Prince Uche Nwole v. Chief Amadi C. Iwuagwu & Ors. (2004) 15 NWLR pt. 895 pg. 61 at page 87.

Senator Haruna Abubakar & Anor v. Independent National Electoral Commission and Ors. (2004) 1 NWLR pt. 854 pg. 207.

Chief James Onanefo Ibori v. Chief Grant O. Ogboru & Ors. (2004) 15 NWLR pt. 895 pg. 154.

Ordinarily our laws by virtue of Section 272 (2) of the 1999 Constitution our High Courts have the power to review administrative determinations of inferior tribunals, in that the High Court has an inherent jurisdiction to control all inferior tribunals not in an appellate capacity, but in a supervisory capacity. That control extends not only to seeing that it observes the law, but also that the inferior Tribunals keep within its jurisdiction. The control is exercised by means of a power to quash any determination by the tribunal which on the face of it offends against the law. This power is exercised in respect of administrative decisions of any inferior tribunals, on the grounds of illegality or procedural impropriety or irrationality.

Okeahialam v. Nwamara (2003) 12 NWLR pt. 835 pg. 597. Coming back to the appeal in hand, the Edo State Local Government Electoral Law 2002 promulgated laws to be followed in the conduct of the Local Government Elections Section 31 (1) of the Local Government Electoral Law 2002 conferred original jurisdiction on the Local Government Election Tribunal to hear and determine petitions as to whether-

(a) Any person has been validly elected to the Office of Chairman or Vice Chairman or Councillor.

(b) The term of Office of the Chairman or Vice Chairman or Councillor.

(c) The term of Office of the Chairman, Vice Chairman and Councillor has ceased.

(d) The seat of the Chairman, Vice Chairman or Councillor is vacant.

Section 34 (1) states the grounds on which an election petition may be Questioned and if says:-

(a) That the person whose election was questioned was at the time of the election not qualified or was disqualified from being elected as a member of a council.

(b) That the election was voided by corrupt practices or offences against the law.

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

(d) That the petitioner was validly nominated but was unlawfully excluded from the election.

Section 36 of Edo State Local Government Electoral Law 2002

provides that:-

Section 36(1)

An appeal shall lie to the High Court made up of three (3) High Court judges sitting as an Appeal Tribunal from the decisions of Local Government Council election Tribunal established under this law on any grounds specified in Section 32 of this law or on any grounds specified in section 33 of this law or any question whether any person has been validly elected as chairman or any other member of a Local Government Council or whether the seat of any such person has become vacant.

(2) The time within which to appeal to the High Court sitting as an Appeal Tribunal shall be within one month of the decision of the Local Government Council Election Tribunal.

(3) The decision of the High Court sitting as an Appeal Tribunal shall be final.

In the interpretation of the 1999 Constitution and other Statute the courts have to resort to the cardinal rules of interpretation so as to ascertain the intention of the law makers from the words used by them, and to ensure that the object and true intent of the Constitution and Statutes are preserved.

Abioye v. Yakubu (1991) 5 NWLR pt. 190 pg. 130.

Itabib v. L.E.D.B. (1958) 5 SCNLR pg. 434.

Okogie v. A-G Lagos State (1981) 2 NCL pg. 337.

Abaribe v. Speaker Abia State House of Assembly (2002) 14 NWLR pg. 788 pg. 466.

***In the case of Adeleke v. OSHA (2006) 16 NWLR pt. 1006 pg. 608 "it was held that where the issue of the jurisdiction of a court over a suit is challenged, the court is entitled under Section 6 of the 1999 Constitution to consider the plaintiff's claim in order to decide whether it has jurisdiction to entertain it. The jurisdiction of a court to adjudicate on a matter is predicated upon the facts placed before it, and more importantly the phraseology of the plaintiff's claim."***

A-G Federation v. Guardian Newspapers Ltd (1999) 9 NWLR pt. 618 pg. 187

Adeyemi v. Opeyemi (1976) 9 - 10 SC pg. 31.

Abacha v. Fawehinmi (2000) 6 NWLR pt. 660 pg. 228.

A-G Anambra State v. A-G Federation (1993) 6 NWLR pt.

302 pg. 692.

**Before the Local Government Election Tribunal, the claim of the 1<sup>st</sup> respondent as petitioner was that he was validly nominated by his party the Peoples Democratic Party but was unlawfully excluded from the election - in that his name was not only substituted with that of the appellant by the Edo State Independent Electoral Commission, but the same body prevented him from fulfilling certain mandatory requirements in Section 6 of the Local Government Electoral Law 2002** namely: -

(a) Filling and submission of nomination form supplying the particulars of his nominations who must be registered voters spread over two thirds of the constituency.

(b) Payment of non-refundable deposit of N20,000 to the Commission.

(c) Production of evidence of payment of tax for the period of three years immediately preceding the election.

This fundamental non-compliance with the Local Government electoral Law was a deliberate design by the Edo State Independent Electoral Commission to exclude him from the election. In his claim as the petitioner, he petitioned to the Edo State Local Government Tribunal under Section 34 (1) (d) of the Local Government Election Law 2002.

*“That he was validly nominated but was unlawfully excluded from the election.”*

**The complaint before the Election Petition Tribunal was competent and within the jurisdiction of the Election Petition Tribunal.** There was no basis for it to be brought before the regular High Court to be quashed in its supervisory capacity.

The option opened to the loser before the tribunal was to appeal to the Election Petition Appeal Tribunal. The Appeal Tribunal’s decision was final by virtue of Section 36 (3) of the Local Government Election Law 2002 which stipulates that *“The decision of the High Court sitting as appeal Tribunal shall be final.”*

The intention of the law makers of that law is that all appeals against the decision of the Tribunal shall terminate at the Appeal Tribunal. No other court has the vires to review or sit on appeal over its decision thereafter. There is no provision in the Edo State Electoral

Act 2002 to that effect. Moreover, there are reported cases to confirm that decisions of Election Tribunals cannot be interfered with by an order of certiorari.

Professor De Smith in his book *Judicial Review of Administration* 4<sup>th</sup> Edition at page 384 emphasised that though order of certiorari and prohibition will issue against inferior courts, certiorari does not lie to an election court consisting of a High Court Judge trying a parliamentary election petition.

In the case *R. v. Election Court Exp Sheppard* (1975) 1 WLR 1319, at page 1323 it was held that: -

*"It is quite clear that the election court which deals with the parliamentary elections, consisting as it will do of a Queens Bench judge, is a superior court and it is clear that no question of the prerogative order could be available there.*

*D There is no law incorporating this procedure into our electoral process. In the case ANPP v. Returning Officer Abia State (2007) 11 NWLR pt. 1045 pg. 431 a recent decision of the Supreme Court at pg. 434 - 435 this court said that -*

*E "Election matters are in a class of their own and are entirely statutory. The writ of certiorari and mandamus being common law remedies cannot be invoked in a purely election matter and where they are invoked, they cannot change the character of the matter as an election matter clearly belongs to the election tribunal and clearly outside the jurisdiction of the High Courts."*

*F In sum the Lower court came to the right conclusion on the point that the High Court of Edo State has no supervisory jurisdiction on an Election Petition Appeal Tribunal sitting as a final court in Election Matters by virtue of the Edo State Local Government Election Law 2002.*

*G This court cannot interfere with such decision.*

*H Consequently, it is the conclusion of this court that the High court of Edo State lacked the jurisdiction which it wrongly assumed in invoking a certiorari proceeding for the purpose of quashing the decision of a Local Government Appeal Tribunal sitting as a final court over a Local Government Election matter. The proceeding is declared null and void and it is consequently struck out.*

*The appeal lacks merit and it is hereby dismissed. Judgment of the Lower court is affirmed. N50,000.00 costs of this appeal is awarded*

in favour of the Respondent.

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**MUSDAPHER JSC**

I agree.

B

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**OGUNTADE JSC**

I have had the advantage of reading in draft a copy of the lead judgment by my learned brother, Adekeye, JSC. I agree with her reasoning and conclusion that this appeal has no merit. I would also dismiss it. I affirm the order on costs made in the lead judgment.

C

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**TABAI JSC**

D

I have read the lead judgment of my learned brother ADEKEYE JSC and I agree with the reasoning and conclusion therein that the appeal is devoid of merit.

Section 34(1) of the Edo State Local Government Electoral Law 2002 provides for the grounds upon which an election may be questioned in an election petitioner. Section 34 (1) (d) thereof entitles a petitioner to question an election in a petition on the ground “that he was validly nominated but was unlawfully excluded from the election.”

E

It is true that nomination of candidates for an election is a pre-election matter. But where, as in this case, a candidate feels that he was properly nominated but was nevertheless prevented from contesting, he can, in my humble view, seek redress in a tribunal like the Edo State Local Government Election Tribunal. I hold in the circumstances that the Edo State Local Government Election Tribunal had the jurisdiction to entertain the election petition of the 1<sup>st</sup> Respondent.

F

Again Section 36(1) of the law provides to the effect that the High Court of Edo State sitting in a panel of three (3) shall constitute the Local Government Council Election Appeal Tribunal to hear and determine appeals from the decisions of the Local Government Council Election Tribunals. And by virtue of the provisions of Section 36(3) of the Law the decision of the High Court sitting as an appeal tribunal

H

shall be final. Thus as between the rights of the Appellant and the 1st Respondent the decision of the High Court sitting as an Appeal Tribunal delivered on the of 1st August 2008 is final and remains binding. It is therefore wrong for the High Court to entertain the present suit for the prerogative order of certiorari over the selfsame issue of the rights of the Appellant and the 1<sup>st</sup> Respondent on the question of their nomination for the Local Government Council Elections for Edo State. The High Court had no jurisdiction to entertain the suit and so the Court below was right in its decision.

The result is that this appeal lacks merit and is accordingly dismissed by me also. I abide by the order on costs contained in the lead judgment.

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**MUHAMMAD JSC**

I have had the privilege of reading before now, the judgment just delivered by my learned brother, Adekeye, JSC. I agree with her reasoning and conclusion. I abide by all orders made in the leading judgment including order as to costs.