

SUPREME COURT OF NIGERIA
28TH JANUARY, 2011. SC. 283/2010
CORAM:- F. F. TABAI, I. T. MUHAMMAD, M. S.
MUNTAKA-COOMASSIE, J. A. FABIYI,
B. RHODES-VIVOUR, JJSC

PEOPLES DEMOCRATIC PARTY APPELLANTS
AND
1. DR. EMMANUEL ONWE
2. SENATOR JULIUS UCHA
3. RETURNING OFFICER, EBONYI
CENTRAL SENATORIAL DISTRICT RESPONDENTS
4. INDEPENDENT NATIONAL
ELECTORAL COMMISSION (INEC)
5. THE CLERK OF NATIONAL ASSEMBLY

ELECTIONS - Tribunals - Jurisdiction - Scope of s. 285 (1) (a) of the Constitution - By the authority of *Ededo v. INEC* - The sub paragraph creates jurisdiction over post-election matters - Not pre-election proceedings (H1)

COURTS - Jurisdiction - Pre-election matters - Only the Federal High Court - Or the State High Court - Has jurisdiction over pre election matters (H2)

FACTS

The petitioner/1st respondent petitioned against the rest of the parties to the National Assembly election petition tribunal in respect of Ebonyi central senatorial district seat in the senate of the National Assembly. It was the case of 1st respondent that he was the duly nominated candidate of the appellant in respect of the senatorial district at the party's primary election held on 2nd December, 2006. Accordingly, that he was presumed in law to be the candidate that actually contested the election of 21st April, 2007, as the party's flag bearer. He therefore sought to be declared the senator representing the senatorial district as opposed to the 2nd respondent.

In reaction to the petition, the appellant inter alia, raised the following issues:- that the 1st respondent has no locus to bring the

petition and that the tribunal lacked the jurisdiction to entertain the petition on the ground that the subject matter and cause of action therein were not only pre-election matters but also intra-party affairs. This objection was initially heard and dismissed and the matter proceeded to trial. However, at the end of hearing, the tribunal dismissed the petition on the same ground that it lacked jurisdiction. Aggrieved, 1st respondent appealed to the Court of Appeal which allowed his appeal and gave him judgment as prayed. Dissatisfied, appellant has brought this appeal, contending that the tribunal and as such the Court of Appeal lacked jurisdiction over the matter.

ISSUES FOR DETERMINATION

“1. Whether the tribunal lacks the jurisdiction to entertain the petition, in that the subject matter, cause of action therein, are matters or events preceding the election of the 21st April, 2007 and as well an intra party affair;

2. Whether the said petition is incompetent, in that the petitioner has no locus standi to present the petition.”

HELD (Unanimously allowing the appeal per **TABAI JSC**)

Jurisdiction - Scope of s. 285 (1) (a) of the Constitution

1. As I stated at the beginning of this judgment, this appeal is identical with the appeal in SC. 282/2010. Both appeals turn on the interpretation of section 285 (1) (a) of the 1999 Constitution. The section has been interpreted by this court in a number decisions. In **EDEDO Vs INEC (2008) 17 NWLR (part 1117) 554 at 602** this court per Niki Tobo interpreted section 285 (1) of the Constitution as follows:-

“It is not my understanding of section 285 (1) (a) of the Constitution that the subparagraph can accommodate pre election matters. It is rather my understanding that the subparagraph provides for determination of whether any person has been validly elected as a member of the National Assembly. In my humble view, the subparagraph provides for election matters which give rise to post-election and not pre-election proceedings. As the reliefs sought by the Appellants are pre-election matters, section 285 (1) (a) could not avail him as the sub-paragraph does not provide for litigation arising from party primaries....”

Section 285 (1) (a) of the Constitution was also given interpretation in **AGBAKOBIA Vs INEC (2008) 18 NWLR (part 1119) 489 at**

554 which I reproduced in SC. 282/2010.

I have no cause to depart from these authorities which I therefore adopt. (p. 229 C)

COURTS - Jurisdiction - Pre election matters

2. The dispute which gave rise to the petition was the Appellant's nomination/substitution exercise of December, 2006. It is clearly an intra party pre-election dispute and has nothing to do with the election of 21st of April, 2007 over which therefore the Election Tribunal had no jurisdiction. Being a pre-election matter, only the Federal High Court or a State High Court has jurisdiction.

In conclusion, I allow the appeal. Both the trial Election Tribunal and the Court of Appeal had no jurisdiction and so the petition ought to have been struck out. The proceedings including the judgment of both the Tribunal and the Court of Appeal are null and void and same are hereby set aside. The originating petition is accordingly struck out for want of jurisdiction. (p. 229 G)

REPRESENTATION

Emeka Etiaba, with him, Lynda Ikpezu (Miss.), T. Nweke, Prisca Ozoikesike, for the appellant.

Emeka Mozie, with him, Ike Obidike, Tony Mozie, for the 1st respondent.

Prof. I. A. Okafor, SAN, with him, C. Okafor, N. Amagbor, for the 2nd respondent.

Alex Ejiesiene for the 4th respondent.

3rd and 5th respondents absent but served on 03/11/10

CASES REFERRED TO

EDED0 Vs. INEC (2008)17 NWLR (part 1117) 554 at 602

AGBAK0BA Vs. INEC (2008) 18 NWLR (part 1119) 489 at 554

LEAD JUDGMENT BY TABAI JSC

This appeal is identical with appeal No. SC. 282/2010 which I have earlier disposed of. The parties are the same and the cause of action also the same. The only difference is that, the Appellant herein the People Democratic Party (PDP) is the 4th Respondent in SC. 282/2010, while the 2nd Respondent herein SENATOR JULIUS ALI UCHA

was the Appellant in SC. 282/2010. The cause of action was the PDP's nomination exercise in December, 2006, for the choice of its flag bearer representing Ebonyi Central Senatorial District for the 21st of April, 2007 elections.

B The case of the Petitioner DR. EMMANUEL ONWE who was the 1st Appellant at the court below and the 1st Respondent herein was that he was the duly nominated candidate of the Appellant (People Democratic Party) representing Ebonyi Central Senatorial District at the party's primary election held on the 2nd of December, 2006. And
C that he was by that fact of his nomination, presumed in law to be the candidate that contested the election of the 21st April, 2007 under the PDP and that he should be declared the Senator representing the Ebonyi Central Senatorial District in the Senate and not the 2nd Respondent, Senator Julius Ali Ucha.

D The case of the Appellant, on the other hand, was that the 2nd of December, 2006, primaries of its flag bearer for the Ebonyi Senatorial District was inconclusive as it was marred by violence insecurity and thuggery which was therefore cancelled. That in the re-scheduled primaries held on the 14th of December, 2006, the 2nd Respondent
E was nominated by a consensus vote of 604. In paragraphs 1 and 2 of its reply to the petition, the Appellant raised the issue of the 1st Respondent's lack of locus standi to bring this petition and the Tribunal's lack of jurisdiction to entertain same.

F Earlier on the 13th of June, 2007, the Appellant as 4th Respondent filed an application for an order striking out the petition on the following grounds:-

G *"1. That the Tribunal lacks the jurisdiction to entertain the petition, in that the subject matter, cause of action therein, are matters or events preceding the election of the 21st April, 2007 and as well an intra party affair;*

2. The said petition is incompetent, in that the petitioner has no locus standi to present the petition. "

H This application was however refused and the petition was tried on the merit. In its judgment on the 13th of September, 2007, the Tribunal dismissed the petition. Surprisingly it was dismissed on the very ground of the Tribunal's lack of jurisdiction, the cause of action being a pre election matter.

The Petitioner proceeded on appeal to the Court below

against the judgment of the Tribunal. In its judgment on the 16th of July, 2010, the appeal was allowed with the following orders:-

"1. This appeal is allowed.

2. The result, election and return of the 1st Respondent - Senator Julius Ali Ucha for the Ebonyi Central Senatorial Election conducted on the 21st April, 2007 are hereby nullified.

3. The Appellant - Dr. Emmanuel Onwe is hereby declared as the winner of the Ebonyi Central Senatorial election."

The 4th Respondent (PDP) has now come on appeal against the judgment of the Court of Appeal.

As I stated at the beginning of this judgment, this appeal is identical with the appeal in SC. 282/2010. Both appeals turn on the interpretation of section 285 (1) (a) of the 1999 Constitution. The section has been interpreted by this court in a number decisions. In EDEDO Vs INEC (2008) 17 NWLR (part 1117) 554 at 602 this court per Niki Tobi interpreted Section 285 (1) of the Constitution as follows:-

"It is not my understanding of section 285 (1) (a) of the Constitution that the subparagraph can accommodate pre election matters. It is rather my understanding that the subparagraph provides for determination of whether any person has been validly elected as a member of the National Assembly. In my humble view, the sub-paragraph provides for election matters which give rise to post-election and not pre-election proceedings. As the reliefs sought by the Appellants are pre-election matters, section 285 (1) (a) could not avail him as the sub-paragraph does not provide for litigation arising from party primaries...."

Section 285 (1) (a) of the Constitution was also given interpretation in AGBAKOBA Vs INEC (2008) 18 NWLR (part 1119) 489 at 554 which I reproduced in SC. 282/2010.

I have no cause to depart from these authorities which I therefore adopt. The dispute which gave rise to the petition was the Appellant's nomination/substitution exercise of December, 2006. It is clearly an intra party pre-election dispute and has nothing to do with the election of 21st of April, 2007 over which therefore the Election Tribunal had no jurisdiction. Being a pre-election matter, only the Federal High Court

or a State High Court has jurisdiction.

In conclusion, I allow the appeal. Both the trial Election Tribunal and the Court of Appeal had no jurisdiction and so the petition ought to have been struck out. The proceedings including the judgment of both the Tribunal and the Court of Appeal are null and void and same are hereby set aside. The originating petition is accordingly struck out for want of jurisdiction.

I make no orders as to costs.

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MUHAMMAD JSC

I had the advantage of reading the judgment delivered by my learned brother Tabai, JSC. I agree with my lord's conclusion that the appeal be allowed. I abide by all the consequential orders contained therein.

MUNTAKA-COOMASSIE JSC

Having had the opportunity before today of reading the lead judgment of my learned brother Francis Tabai, JSC, which he has just delivered. I entirely agree with his conclusions that this appeal is pregnant with merit and same is allowed. I abide by the consequential orders made by my learned brother in the lead judgment including that of costs.

The facts in this appeal are the same with the facts in SC. 282/2010. The judgment in this appeal, will abide by the earlier one.

Appeal is allowed.

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FABIYI JSC

I have read before now the judgment just delivered by my learned brother - Tabai, JSC. I agree with the conclusion therein that the appeal be allowed. I endorse the consequential orders made in the lead judgment.

RHODES-VIVOUR JSC

The issue in this appeal is substitution, a pre-election matter. The proper court to initiate the proceedings is the Federal High Court and not an Election Petition Tribunal as was done in this case. Accordingly, the judgment delivered by the Election Petition Tribunal on a pre-election matter is a nullity. The fact that appeals on election matters terminate in the Court of Appeal does not apply here, as appeals on issues of substitution terminates in this court. This court thus has jurisdiction to make pronouncements on pre-election matters (in this case substitution). Both judgments of the two courts below are nullities.

For this reasoning I would allow the appeal.

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