

SUPREME COURT OF NIGERIA

25TH FEBRUARY, 2011. SC. 259/2010

**CORAM:- M. MOHAMMED, F. F. TABAI, C. M. CHUK-
WUMA-ENEH, M. S. MUNTAKA-COOMASSIE,
S. GALADIMA, JJSC**

1. DAVID UMARU
2. ALL NIGERIA PEOPLES PARTY APPELLANTS
AND
1. DR. MUAZU BABANGIDA ALIYU
2. PEOPLES DEMOCRATIC PARTY (PDP)
3. INDEPENDENT NATIONAL
ELECTORAL COMMISSION
4. RESIDENT ELECTORAL
COMMISSIONER, NIGER STATE
5. ELECTORAL OFFICER, LAVUN
L.G.A. NIGER STATE
6. ELECTORAL OFFICER, EDATI
L.G.A. NIGER STATE
7. ELECTORAL OFFICER, BIDA
L.G.A. NIGER STATE
8. ELECTORAL OFFICER, LAPAI
L.G.A. NIGER STATE RESPONDENTS
9. ELECTORAL OFFICER, GBAKO
L.G.A. NIGER STATE
10. ELECTORAL OFFICER, MOKWA
L.G.A. NIGER STATE
11. ELECTORAL OFFICER, KATCHA
L.G.A. NIGER STATE
12. ELECTORAL OFFICER, WUSHISHI
L.G.A. NIGER STATE
13. ELECTORAL OFFICER, MAGAMA
L.G.A. NIGER STATE
14. ELECTORAL OFFICER, RIJAU
L.G.A. NIGER STATE
15. ELECTORAL OFFICER, AGAIE
L.G.A. NIGER STATE

CONSTITUTIONAL LAW - Courts - Appellate powers - Basis - Appellate powers of appellate courts are traceable to specific statute - And do not arise from the courts' inherent jurisdiction (H1)

ELECTION PETITIONS – Stare decisis - Appeals - Jurisdiction - Supreme Court has no jurisdiction to entertain an appeal - From decisions of Court of Appeal - Arising from election petition appeal – As decided in Sha'aban case (H2)

FACTS

The applicants/appellants had filed an election petition at the Governorship and Legislative Houses Election Petition Tribunal, Niger State, challenging the election of the 1st respondent as Governor of Niger State at the nationwide election held on 14th April, 2007. 1st respondent raised a preliminary objection to the hearing of the petition on the ground that it was filed out of time and was as such statute barred. The tribunal however overruled the objection and went on to hear the petition and eventually dismiss same for want of merit. Aggrieved, appellants appealed to the Court of Appeal, and 1st respondent cross-appealed in respect of his overruled objection. Court of Appeal dismissed the appeal and allowed the cross-appeal on 19th February, 2009.

However, on 1st April, 2009, appellants filed an application before the Court of Appeal, Abuja, urging the court to set aside its decision of 19th February, 2009, being a nullity. After hearing the parties on the application, the Court of Appeal struck it out in its ruling. Dissatisfied, appellants have brought this appeal against the ruling of Court of Appeal. In response to this appeal, the 1st, 2nd and 3rd - 15th respondents respectively, have raised preliminary objections to the hearing of the appeal, on the ground that the Supreme Court lacked jurisdiction to entertain same in view of s. 246 (3) of the 1999 Constitution, which makes the Court of Appeal a final court in matters arising from election petition appeals.

ISSUE FOR DETERMINATION

Whether this court by virtue of section 6 (6) (a) of the 1999 Constitution, has jurisdiction to hear this appeal, being an appeal arising from the decision of the Court of Appeal, originating from

decision of Election Tribunal.

HELD (Unanimously striking out the appeal per **MOHAMMED JSC**)

CONSTITUTIONAL LAW - Courts - Appellate powers - Basis

1. The provisions of section 6 (6) (a) of the 1979 Constitution, dealing with inherent powers of court, explained above in Adigun's case, relied upon by the learned senior counsel for the Appellant, are in pari-materia with section 6 (6) (a) of the 1999 Constitution, under which the learned senior counsel is asking this court to invoke its inherent jurisdiction to entertain this appeal. I am afraid it is the same Adigun's case that said this court cannot do so. Inherent powers cannot be invoked to hear appeals by this court because its appellate powers like any appellate courts (*sic, court*) are only traceable to specific statute which in the instant case is 1999 Constitution, section 246 (3) of which specifically provides -

"The decision of the Court of Appeal in respect of appeals arising from election petition shall be final. (p. 519 E)

ELECTION PETITIONS - Appeals - Jurisdiction

2. Since the case of Adigun (*supra*), which the learned senior counsel to the Appellants was trying to hang on to distinguish this case from the two appeals numbers SC. 89/2010 and SC. 90/2010, Hon. Sani Sha'aban & Anor. v. Alhaji Namadi Sambo & Ors., delivered on 4th November, 2010, is not of any help to him in supporting his argument that this court has jurisdiction to hear this appeal, I am bound by the decision in these appeals, which are on all fours with the present appeal. In other words, like in the two appeals, in Sha'aban's case (*supra*) which arose from the decision of the Court of Appeal refusing to set aside its judgment in an appeal arising from decision of Election Tribunal, on the alleged ground that the judgment was a nullity, the position is the same in the present appeal. Accordingly, the preliminary objections by the Respondents that this court has no jurisdiction by virtue of section 246 (3) of the 1999 Constitution to hear and determine the present appeal, are hereby upheld and the appeal is hereby struck out with no order on costs. (p. 520 D)

NOTABLE POINT OF INTEREST

MUNTAKA-COOMASSIE JSC

1. The Constitution - Where s. 246 (3) is in issue - S. 6 has to wait

B It is simply that because of the existence of section 246 of the Consti-
tution, which denied this court power to entertain such cases which
emanate from the gubernatorial election petition. The Court of
Appeal's decision in this respect is final and it must remain so, irre-
spective of agitation or beautiful and powerful submissions to the
contrary. Hear what section 246 (3) of the 1999 Constitution is say-
C ing..... " *The decision of the Court of Appeal in respect of appeals
arising from election petitions shall be final*"

That being the case and without much ado, I hold that the
preliminary objections are in order and same are upheld. Once one
D is analysing the provisions of section 246 (3) of the Constitution above,
section 6 (6) of the same Constitution has to wait. That provision
overrides that of section 6 of the Constitution. (p. 523 C)

REPRESENTATION

E Chief Mike I. Ahamba, SAN with I. Mujaheed, C. Osuagwu, O.
Adegoke and J. Ugbogu for the Appellants
Olajide Ayodele, SAN with A. N. Yisa, G. Tumaka, M. Anache, A.
Usman, D. Baba and A. Danladi for the 1st Respondent
F Rotimi Ojo Esq., with T. Beji, M. Suleiman, M. Danjuma, V. Ndanusa
(Mrs.), T. Jiya (Miss), G. Mohammed, I. Folorunsho, E. Nwakpa (Miss),
H. Abdullahi, M. N. Mohammed, S. M. Jiya and A. H. Saba (Miss)
for the 2nd Respondent
Dr. S. S. Ameh SAN with U. Eyan (Miss), G. N. Iwujoku, O. S. Olaiya,
G I. L. Chukwukere (Uwa) and J. Shuaibu for the 3rd - 15th Respon-
dents.

CASES REFERRED TO

Yusuf v. Obasanjo (2003) 16 NWLR (pt. 847) 532
H Adigun & Ors. v. Attorney-General Oyo State No. 2 (1987) 2 N.W.L.R.
(Pt. 65) 197 at 235

STATUTE REFERRED TO

Constitution of the Federal Republic of Nigeria, 1999, ss. 6 (6) (a), 233 & 246 (3)

LEAD JUDGMENT BY MOHAMMED JSC

The dispute between the parties in this appeal arose from the election of the 1st Respondent as the Governor of Niger State following the nationwide election held on 14th April, 2007, in which the declaration of the results thereof on 15th April, 2007, saw the 1st Respondent as the winner. The Appellants who lost at the election, filed their election petition at the Election Tribunal and sought for the nullification of the election. The Election Tribunal after giving the parties a hearing, dismissed the 1st Respondent's preliminary objection to the hearing of the petition and proceeded to dismiss the petition as well on the merits.

Aggrieved by the decision of the Election Tribunal, the Appellant appealed against it to the Court of Appeal while the 1st Respondent also crossed-appealed. After hearing the appeal and the cross-appeal, the Court of Appeal in its judgment delivered on 19th February, 2009, dismissed the appeal but proceeded to allow the cross-appeal holding that the Appellants petition was filed out of time and therefore statute barred and consequently dismissed the same.

However on 1st April, 2009, the Appellants filed a motion on notice at the Court of Appeal Abuja, urging it to set aside its decision given on 19th February, in 2009 ex-debito to justitiae for being a nullity. It is not in dispute that the judgment of 19th February, 2009, which the Appellants wanted to be set aside on the ground that it was a nullity, arose from the decision of the Election Tribunal. The Court of Appeal therefore after hearing the parties on the application, struck out the same in its ruling given on 17th June, 2010. It is against this ruling that Appellants have now appealed to this court.

At the hearing of this appeal on 17th January, 2011, it turned out that 1st, 2nd and 3rd - 15th Respondents have in their responses to the notice of appeal and the Appellants brief of argument, filed separate notices of preliminary objection to the hearing of this appeal which were argued in their respective briefs of argument thereby resulting in the Appellants also filing their responses to the prelimi-

nary objections in Appellants' reply briefs. The appeal and the preliminary objections were heard together when learned senior counsel to the Appellants, 1st Respondents and 3rd - 15th Respondents and learned counsel to the 2nd Respondent respectively, adopted their briefs of argument before making submissions in support thereof.

B I shall start with considering the preliminary objections to the hearing of the appeal mainly on the ground that this court has no jurisdiction to hear the appeal, having regard to the provisions of section 246 (3) of the 1999 Constitution which makes the Court of Appeal a final court in matters arising from the decisions of Election
C Tribunals in gubernatorial elections. At the hearing of this matter, the attention of the learned senior counsel to the Appellant, Chief Mike Ahamba was drawn to the decision of this court in appeals numbers SC. 89/2010 and SC. 90/2010 Hon. Sani Sha'aban & Anor. v Alhaji
D Namadi Sambo & Ors. delivered on 4th November, 2010, which appeals were on all fours with the present appeal and in which also the learned senior counsel for the Appellants was also for the Appellants in those appeals to show why this court should not follow and apply its earlier decision of 4th November, 2010, to the present appeal. The
E reaction of the learned senior counsel was that in the present case he is relying on the decision of this court in Adigun & Ors. v. Attorney-General Oyo State No. 2 (1987) 2 N.W.L.R. (Pt. 65) 197 at 235, which he did not cite and rely upon in the earlier appeals and there-
F fore argued that following the decision of this court in the Adigun's case, whether this court by virtue of section 6 (6) (a) of the 1999 Constitution has jurisdiction to hear this appeal, being an appeal arising from the decision of the Court of Appeal, originating from decision of Election Tribunal.

G Close examination of what Oputa JSC said at page 235 of the Report in Adigun's case relied upon by the learned senior counsel to the Appellants, does not cloth this court with the jurisdiction to entertain the present appeal under section 6 (6) (a) of the 1999 Constitution, as claimed by the learned senior counsel.

H Probing into the meaning and nature of the inherent powers of courts of law, what Oputa JSC said at the page was:-

"Simply put, the inherent power of any court is that power which is itself essential to the very existence of the court as an institution and to its ability to function as such institution- namely as an

institution charged with the dispensation of justice, such as the power to punish for contempt, the power to grant an adjournment in the interest of justice etc. An inherent power has to be inherent, in the sense that it forms an essential and Intrinsic element in the whole process of adjudication. It is innate in a court, and is not a subject of specific grant by the Constitution or by legislation. That is why inherent powers of the courts cannot be taken away or abridged by legislation for he who gave, he only can take away. This explains section 6 (6) (a) of the 1979 Constitution which merely recognised and stated the obvious - that the inherent powers of a court of law exists 'notwithstanding anything in this constitution' for such powers were not granted by the constitution xxxxxxxxxxxx.

The inherent powers of courts differ considerably from the appellate powers. Inherent powers of courts are general powers; the power vested in any court to hear and determine an appeal is rather a specific and special power; Inherent powers are not conferred by legislation; appellate powers are. No court has Inherent power to hear an appeal. Any appellate power is traceable to a specific statute. That statute will then define the limit of the appellate Jurisdiction it conferred, the persons who can appeal and procedure for such an appeal."

The provisions of section 6 (6) (a) of the 1979 Constitution dealing with inherent powers of court explained above in Adigun's case, relied upon by the learned senior counsel for the Appellant, are in Pari-materia with section 6 (6) (a) of the 1999 Constitution under which the learned senior counsel is asking this court to invoke its inherent jurisdiction to entertain this appeal. I am afraid, it is the same Adigun's case that said this court cannot do so. Inherent powers cannot be invoked to hear appeals by this court because its appellate powers like any appellate courts are only traceable to specific statute which in the instant case is the 1999 Constitution, section 246 (3) of which specifically provides -

"The decision of the Court of Appeal in respect of appeals arising from election petition shall be final."

Although by virtue of the provisions of section 233 of the 1999 Constitution, this court has exclusive jurisdiction to entertain all appeals from the decisions of the Court of Appeal, that jurisdiction does

not include decisions of that court arising from election petitions which came to that court on appeal from decisions of Election Tribunals. This is because as I have said earlier in this judgment, the appellate jurisdiction of this court like any other court is only traceable to a specific statute like the Constitution or any Act of the National Assembly. In the instant case therefore, while by section 246 (3) of the 1999 Constitution quoted above is quite clear that the decision of the Court of Appeal in respect of the appeal is final, resulting in depriving this court of jurisdiction to hear the appeal, the same Constitution gave this court exclusive jurisdiction to hear and determine appeals from decisions of the Court of Appeal on any question as to whether any person has been validly elected to the office of the president or vice-president under this Constitution or whether term of office of president or vice-president has ceased and whether the office of president or vice-president has become vacant under section 233 (1) (e) thereof.

Therefore ***since the case of Adigun (supra) which the learned senior counsel to the Appellants was trying to hang on to distinguish this case from the two appeals numbers SC. 89/2010 and SC. 90/2010 Hon. Sani Sha'aban & Anor. v. Alhaji Namadi Sambo & Ors. delivered on 4th November, 2010, is not of any help to him in supporting his argument that this court has jurisdiction to hear this appeal, I am bound by the decision in these appeals which are on all fours with the present appeal. In other words, like in the two appeals, in Sha'aban's case (supra) which arose from the decision of the Court of Appeal refusing to set aside its judgment in an appeal arising from decision of Election Tribunal on the alleged ground that the judgment was a nullity, the position is the same in the present appeal. Accordingly, the preliminary objections by the Respondents that this court has no jurisdiction by virtue of section 246 (3) of the 1999 Constitution to hear and determine the present appeal, are hereby upheld and the appeal is hereby struck out with no order on costs.***

TABAI JSC

Following the governorship election held on the 14th of April,

2007, in Niger State, the 1st Respondent herein was returned as the winner and was on the 29th of May, 2007, sworn as the Governor of Niger State. The Appellants who lost at the election filed a petition at the Election Tribunal seeking the nullification of the said election. The petition was dismissed. The Appellants were not satisfied with the decision of the Election Tribunal and proceeded on appeal to the Court of Appeal. In its decision on the 19th February, 2009, the Court of Appeal dismissed the appeal. B

However by their motion filed on the 1st of April, 2009, at the Abuja division of the Court of Appeal, the Appellants sought an order setting aside its decision of the 19th February, 2009, the ground being that the decision was a nullity. This application was struck out by the Court of Appeal in its ruling of the 17th of June, 2010. C

The appeal before us is against the said ruling of the Court of Appeal. There were notices of preliminary objection grounded on the provisions of section 246 (3) of the 1999 Constitution. By the said provision, the decision of the Court of Appeal in appeals from the decision of Governorship Election Tribunal is final. This court has no jurisdiction to entertain appeals from the decision of the Court of Appeal in view of the provisions of section 246 (3) of the 1999 Constitution. E

For the foregoing reasons and the detailed reasons contained in the lead judgment of my learned brother, Mahmud Mohammed JSC, I also uphold the preliminary objections. The appeal is accordingly struck out. And I abide by the order on costs contained in the lead judgment. F

MUNTAKA-COOMASSIE JSC

The appellants, after the declaration of the result of the 2007 governorship election in Niger State on 15th April, 2007, filed a petition against the said declaration on 15/5/2007, after some rudimentary arguments for and against, the tribunal ruled that the petition was not statute barred. It relied on the case of Yusuf v. Obasanjo (2003) 16 NWLR (pt. 847) 532. The tribunal consequently dismissed the petition. The petitioner then appealed to the Court of Appeal Abuja Division. The respondents herein cross-appealed against the tribunal's decision on statute bar. The Court of Appeal in the main G

dismissed the substantive appeal but allowed the cross-appeal. The appellants still applied to the Court of Appeal *ex debito justitiae* to set aside its judgment. The Court of Appeal finally refused to set aside its own judgment since their decision in this regard is final.

The appellants filed an appeal against the decision of the Court of Appeal and filed a notice of appeal with nine (9) grounds of appeal. Out of the grounds of appeal four (4) issues were formulated thus:-

(1) Whether the striking out of the application to set aside the judgment in CA/A/EPT/232/08 was proper in law (Grounds 3, 4, 5, 7, 8).

(2) Whether the Appellants' right to fair hearing was not infringed in the court below. (Ground 2).

(3) Whether the refusal of the Court Appeal to set aside its decision of, 19th February, 2009, is proper in law (Grounds 1 and 6).

(4) Whether the cost awarded by the Court of Appeal was not improper (Ground 9).

The 1st respondent, Dr. Muazu Babangida Aliyu, filed a preliminary objection to the hearing of this appeal herein on a number of grounds, the most important of which is that this court lacks jurisdiction to entertain the appeal brought by the Appellants under the provisions of section 246 (3) of the Constitution of the Federal Republic of Nigeria, 1999.

In his expatiation, he states that the Governorship and Legislative Houses Election Tribunal heard the petition of the petitioner against the election of the 1st respondent, who was the candidate of the Peoples Democratic Party (PDP) in the Governorship election in Niger State. The election Tribunal at the conclusion of the hearing of the petition dismissed the said petition.

The Appellants then unsuccessfully appealed to the Court of Appeal. The cross-appeal filed by the 1st Respondent, was upheld. The appeal was dismissed while the cross-appeal was allowed.

The Court of Appeal after hearing the parties and the submissions of their respective counsel on 17/6/2010, delivered its ruling. The appellants in a nutshell submitted that this court, despite the existence of section 246 (3) of the Constitution, has jurisdiction to entertain the appeal before, us. While the 1st Respondent's counsel and Dr. S. S. Ameh, SAN for the 3rd to 15th/Respondents, argued that

the Supreme Court lacks the jurisdiction to hear the appeal that emanates from the decision of the Court of Appeal in respect of the appeals arising from election petition. The decision of the Court of Appeal in such circumstances is final.

I think all courts are statutory including the Court of Appeal and this court. Section 6 of the 1999 Constitution has donated original jurisdiction and the appellate jurisdiction. The courts, especially the superior courts cannot confer upon themselves jurisdiction where none was conferred on them by the Constitution or any relevant statutes in a bid to do justice.

It is agreed that the Constitution is the donor of the required jurisdiction. Once the Constitution, a grundnorm, did not confer jurisdiction on a court, that court cannot fall back on its inherent jurisdiction to assume power to do something which the Constitution did not specifically allow it to do. It is simply that because of the existence of section 246 of the Constitution, which denied this court power to entertain such cases which emanate from the gubernatorial election petition. The Court of Appeal's decision in this respect is final and it must remain so, irrespective of agitation or beautiful and powerful submissions to the contrary. Hear what section 246 (3) of the 1999 Constitution is saying..... "The decision of the Court of Appeal in respect of appeals arising from election petitions shall be final"

That being the case and without much ado, I hold that the preliminary objections are in order and same are upheld. Once one is analysing the provisions of section 246 (3) of the Constitution above, section 6 (6) of the same Constitution has to wait. That provision overrides that of section 6 of the Constitution.

I have read the lead ruling of my learned brother Mahmud Mohammed JSC and I completely agreed with the reasons and conclusions arrived at by my learned brother. The appeal is therefore struck out as this court was deprived of any power or jurisdiction to hear and determine this appeal in SC. 259/2010. I make no order as to costs.

H

GALADIMA JSC

I have read in draft the lead ruling of my learned brother, MAHMUD MOHAMMED JSC. I agree with him that this appeal be

struck out having upheld the preliminary objections by the Respondents that this court has no jurisdiction to hear and determine the appeal by virtue of section 246 (3) of the 1999 Constitution. I too make no order as to costs.

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