

COURT OF APPEAL  
15TH APRIL, 2011. CA/A/117/2011 (CON)  
CORAM:- M. L. GARBA, P. A. GALINJE, J. O. BADA, R. O.  
NWODO, M. A. A. ADUMEIN, JJCA

INDEPENDENT NATIONAL ..... APPELLANT  
ELECTORAL COMMISSION

AND

ADMIRAL MURTALA NYAKO ..... RESPONDENTS  
(RTD) & ANOR

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STATUTES - Interpretation - Provisions of - Should not be interpreted in isolation - But rather along with other related and relevant provisions thereof (H1)

STATUTES - Interpretation - Constitution - Liberal and other rules of interpretation - Where a provision is clear and unambiguous - It is the duty of the court - To give a literal and liberal interpretation (H2)

ACTIONS - Nullification - Meaning - Nullification of any action or order by a court - Is to render such action or order void ab initio (H3)

ELECTIONS - Gubernatorial - Oaths taking - Election of a person as Governor under Constitution - Is a condition precedent to taking of the Oaths of Allegiance and of Office - To mark the beginning of the tenure of office (H4)

ELECTIONS - Nullification - Effect of - A nullified election is not a valid election in law - No person can be said to have been validly elected (H5)

ELECTIONS - Gubernatorial - Validity of Oaths - Where Oaths were taken by a person first elected as Governor - But not in compliance with provisions of the Constitution and Electoral Act - Such oath is deemed void ab initio (H6)

ELECTIONS - Gubernatorial - Commencement of tenure - By vir-

**1102 Independent National Electoral Commission v. Nyako (2011) 4 KLR CA**

tue of s. 180 (2)(a) of Constitution - Tenure of 1<sup>st</sup> respondent commenced - When he took the Oath of Office on 5<sup>th</sup> April 2008 - After the rerun election (H7)

STATUTES - Interpretation - Duty of courts - It is the duty of courts to interpret the provisions of all Statutes and the Constitution - As not having retrospective effect - But as affecting future acts or cases (H8)

STATUTES - Interpretation - Rules of - Amendment of 1999 Constitution - "Expressio unius est exclusio alterius - Express mention of a commencement date herein - Shows that the amendment was not intended to apply in retrospect - To a governor elected before that date (H9)

APPEALS - Briefs - Reply brief - Failure to file in response to an objection - Legal consequence - Is that such a party is deemed to have no answer - And therefore has conceded the points (H10)

ACTIONS - Appeals - Consolidation of actions - Suits consolidated do not lose their distinct identities - They retain their identities for the purposes of hearing and determination (H11)

APPEALS - Grounds - Issues - Validity - Whereas an issue can be distilled from more than one ground of appeal - More than one issue cannot be raised from a single ground of appeal (H12)

**FACTS**

At the Federal High Court Abuja, each of 1<sup>st</sup> respondents contended that by virtue of Section 180(1)(a)(2)(a) of Constitution of Federal Republic of Nigerian 1999 (as amended in 2010), their respective tenure of office has not elapsed by virtue of the Oaths of Allegiance and of Office they took after the re-run election in their respective states. On the other hand, appellant (i.e Independent National Electoral Commission) herein contended that by Section 180(1)(a)(2)(a) of Constitution of Federal Republic of Nigeria 1999, the tenure of office of each of 1<sup>st</sup> respondents had elapsed on 29<sup>th</sup> May 2011.

This contention is based on the Oaths of Allegiance and of Of-

fice taken by each of 1<sup>st</sup> respondents on 29<sup>th</sup> May 2007. The Court ruled in favour of each of 1<sup>st</sup> respondents. Dissatisfied with the decision, appellant appealed to Court of Appeal, Abuja. Appeals Nos. CA/A/117/2011, CA/A/113/2011, CA/A/119/2011, CA/A/115/2011, CA/A/118/2011 and CA/A/128/2011 were with the agreement by all learned Counsel for the parties therein, consolidated and heard by the Court. 1<sup>st</sup> respondents raised preliminary objections challenging the validity of the action.

### **ISSUES FOR DETERMINATION**

*"i. Whether the learned trial judge was right in holding that the tenure of office of the in (sic) Respondent as Governor of Adamawa State commenced from the date he assumed office after taking the Oath of Allegiance and the Oath Office on 5th of April, 2008, after the re-run election conducted on 28th March, 2008.*

*ii. Whether the learned trial judge was right in holding that the Amendment to Section 180 of the 1999 Constitution was inapplicable to the position of the 1st Respondent who was elected into office of Governor of Adamawa State under the 1999 Constitution prior to the 2010 Amendment*

*iii. Whether the learned trial Judge was right in holding that the Constitution as amended cannot apply retrospectively to affect rights which have been acquired under the 1999 Constitution prior to the amendment."*

**HELD** (Unanimously dismissing the appeal per **GARBA JCA**)  
**STATUTES - Interpretation - Provisions of**

1. The learned Senior Counsel for both Appellant and 1st Respondent are right that the law is settled that the provisions of the Constitution should not be interpreted in isolation but rather along with other related and relevant provisions thereof which assist in achieving the object intended by the framers. (p. 1133 B)

### **STATUTES - Interpretation - Liberal rules**

2. Similarly, the law is also well known that where the provisions of a Statute or Constitution are clear and unambiguous, the duty of the court would simply be to give them their plain and ordinary meaning since the words used best say the purport of the provisions. The only caveat is that where giving plain and ordinary meaning would result

in an absurdity, giving the peculiar facts and circumstances of a case. In addition, in the interpretation of constitutional provisions, all the accepted canons or rules of interpretation would be employed and would not abate in the effort to get at what the aim and intent of provisions are in the context of the facts to which they are to be applied.

It is also settled law that the provisions of the Constitution are to be interpreted literally and liberally particularly where they admit of no ambiguity.

It is the law that where the provisions of a Statute or Constitution are clear and unambiguous, no aid, internal or external is required to be employed in construing and ascribing the meaning of the words used therein and all that a court is to do is to ascribe to them their plain meaning in the sense they are employed by the framers.

(pp. 1133 F/1135 F)

### ***ACTIONS - Nullification - Meaning***

3. I would start a consideration of the point by saying that the law is now beyond argument that the effect of a nullification of a thing is to completely wipe out, obliterate, remove, undo, erase or render it ineffective, useless as if it had never been in the first place. In judicial and legal terms and context, the nullification of any action or order by a court is to render such action or order void from the very beginning, ab initio, as if it had never taken place, happened or made or issued as the case may be. Once an action or order is nullified by a competent court, then in law and all practical purposes to which it applies, the action had been erased, wiped out and had never, ever happened or taken place originally. (p. 1137 F)

### ***ELECTIONS - Gubernatorial - Oaths taking***

4. As has now appeared clearly, election of a person as Governor under the Constitution is a condition precedent to the taking of the Oaths of Allegiance and of Office to mark the beginning of the tenure of the office. Until and unless a person is first elected as Governor under the Constitution, the Oaths of Allegiance and Office even if taken by him cannot effectively start the tenure provided for in the provisions of the Constitution. (p. 1139 H)

***ELECTIONS - Nullification - Effect of***

5. It has been argued strenuously and seriously too that the nullification of the Oath of Allegiance and Oath of Office is a judicial myth.

The word “myth” was defined to mean in brief, a story from ancient times or something that many people believe but does not exist or is false. See Oxford Advanced learner’s Dictionary, 6th Edition at page 776. A judicial myth is therefore a story from the ancient times told by the Judges who decide cases in courts or something which many of them believe but which are non-existent or even false. With due respect to the learned Senior Counsel for the Appellant it is not correct to say that the nullification of the Oath of Allegiance and Oath of Office is any of the above in view of the sound reasoning proficiently proffered by the courts for the position in line with the established principle of law that when an act is declared a nullity, it becomes void ab initio and nothing can be founded on it. It cannot be disputed that a nullified election is not a valid election in law and no person can be said to have been validly elected in an invalid election. (p. 1140 A)

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***ELECTIONS - Gubernatorial - Validity of Oaths***

6. In addition, the material issue in relation to the oaths has been said by the learned Senior Counsel to be the election itself. I am in agreement with him that the election itself is the material issue in relation to the oaths in the sense that the oaths are founded or predicated on the valid election conducted in accordance with the Constitution and the Electoral Act and at which a person was first elected as Governor. So where the oaths were taken or subscribed to by a person first elected as Governor but not in compliance with the provisions of the Constitution and the Electoral Act the basis of which the election was nullified and voided by court, life would automatically be snipped out of the oaths since the source is completely wiped out of existence. Even without a specific order, the natural consequence of an order voiding an election is that all oaths taken on the basis of such an election were void, ab initio and had therefore not been subscribed to in law. That is the context in which the cases of OBI v. INEC and EHIRUM v. IMO STATE ELECTORAL COMMISSION both (supra) are applicable on the issue of the effect of the nullification of

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an election on the oath of office and Allegiance. (p. 1141 B)

***ELECTIONS - Gubernatorial - Commencement of tenure***

7. In this appeal sight must not be lost that the issue under consideration is when the tenure of office of a person first elected as Governor under the Constitution commences. It is not on what the person had done de facto before being first elected in accordance with the Constitution and the Electoral Act in relation to valid oaths of Allegiance and office, the taking of which signals the beginning of the tenure provided for in Section 180(2)(a). As far as this Section is concerned, it provides in clear and unambiguous terms, that the tenure shall commence from the date when a validly elected person had validly taken the oaths set out therein. In the determination of the said tenure, it is the time or date that the oaths are taken by a person first elected as Governor under the Constitution that is relevant and not whatever other acts or actions done or taken by the said person prior to the taking of the oaths.

For the reasons stated earlier, employing all the known rules of Statutory and Constitutional interpretation, I find that the Federal High Court was right in its interpretation of the provisions of Section 180(2)(a) of the 1999 Constitution to the effect that the tenure of the 1st Respondent as Governor of Adamawa State commenced when he took the oath of Allegiance and oath of Office on the 5th April 2008 after he was first elected under the Constitution in the re-run election held or conducted on the 26th March 2008. (p. 1144 G/1145 H)

***STATUTES - Interpretation - Duty of courts***

8. From the submissions of all learned Counsel for the parties, they are one and I also say right, that unless expressly stated, provisions of all Statutes and the Constitution are construed as having no retrospective effect, but as affecting future acts or cases. In addition to the cases already cited in the briefs of argument, the cases of NJOKOLOBO v. ALAMU (1987) 7 SCNJ. 98 and OJUKWU v. OBASANJO (supra) have restated the principle of law on retrospectively of Statutory or Constitutional provisions.

In the case of OLANIYI v. AROYEHUN (1991) 5 NWLR (194) 652, the Supreme Court had lucidly stated the principle as follows:-

*“A Constitution like other Statutes, operates prospectively and not retrospectively unless it is expressly provided to be otherwise. Such legislation affects only rights which come into existence after it has been passed.”*

The above position represents the current principle of law in Nigeria about which there can be no arguments. All courts in Nigeria are bound to apply the principle in the interpretation of provisions of the Constitution or other Statutes in all matters that come before them without exception. (p. 1146 C)

### **STATUTES - Interpretation - Rules of**

9. The law as I know it is that the express mention of a thing in a Statute means an intention to exclude what is not so mentioned and it is a known rule of interpretation to exclude what is not stated in the Statute or Constitution. The expression in Latin is “expressio unius est exclusio alterius.”

The express mention of a commencement date clearly shows that the amendment was not intended by the framers to apply to whatever had happened or taken place before the commencement date. For the above reasons, I am with the learned Counsel for the Respondents that the amendment was not intended to have retrospective effect and find that the decision by the Federal High Court to that effect is on firm terrain and unassailable.

The Federal High Court was right that the amendment was inapplicable to the 1st Respondent who was elected Governor under the 1999 Constitution before or prior to the amendment as it did not intend to apply retrospectively.

In the result, I find no merit in the Appellant’s submissions on the issues (ii) and (iii).. I accordingly resolve the said issues against the Appellant and in favour of the Respondents.

In the final result, with the resolution of all the three (3) issues submitted for determination in the appeal against the Appellant, the appeal is left wanting in merit. (p. 1148 A)

### **Briefs - Reply brief - Failure to file - Legal consequence**

10. I have not seen any record of a response or reaction by way of an Appellant’s Reply brief from the Appellant. In other words, the Appellant did not file a Reply brief to react, respond or answer the

objection raised by the 2nd set of the Respondents. The legal consequence of the choice or failure to answer points in a brief of argument by the party affected is now elementary. In law such a party is deemed to have no answer to and therefore has conceded to the points. (p. 1156 C)

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***ACTIONS - Appeals - Consolidation of actions***

11. By the above statement, it is clear that though the Appellant's name was struck out in Suit No. FHC/ABJ/CS/650/2010, the Appellant had remained a party in the Suit No. FHC/ABJ/CS/651/2010 up to judgment. I have at the early stage, of this judgment stated why the courts adopted the practice of consolidation of suits and the principle of law that suits consolidated do not lose their distinct and separate identities by the fact of the consolidation. Such suits retain their

D identities for the purposes of hearing and determination. That is why it is necessary at the hearing of the suits, learned Counsel representing the parties in each of the suits would have to address or adopt written addresses in respect of each of the suits separately. That was what happened at the hearing of the consolidated suits at the Federal

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High Court and, from the extract of the judgment set out above, the Appellant had initially and up to judgment remained a party in the Suit No. FHC/ABJ/651/2010. By the Appellant's notice of appeal which appears at pages 416-419 of the record of appeal, the Appellant being dissatisfied with the decision of the Federal High Court in

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Suit No. FHC/ABJ/651/2010 as a party, has brought the present appeal. Since the Appellant was evidently a party in the named Suit, he does not require leave to appeal against the final decision of Federal High Court sitting as a trial court. It also needs to be pointed out that

G the Appellant's name was not struck out of the consolidated suits but out of Suit No. FHC/ABJ/650/2010 alone as borne out by the extract of the Federal High Court judgment at page 366 quoted above. (p. 1157 E)

***H APPEALS - Grounds - Issues - Validity***

12. However it was argued that the issue 1 relates to ground one while issues 2 and 3 relate to ground 2 and we were urged to reject the arguments in Paragraphs 2.34, 2.35 and 2.36 of the 1st Respondent amended brief. Let me quickly deal with the statement by the

learned SAN for the Appellant that his Issues 2 and 3 relate to ground of appeal 2. In effect what he is saying is that his issues 2 and 3 were distilled from ground 2. Well, it should be remembered that the established principle of law on practice in the appellate courts is that while an issue can be distilled and formulated from more than one ground of appeal, more than one issue cannot be raised from a single ground of appeal. In other words, a single ground of appeal cannot be used to formulate more issues than one as that would amount to proliferation of issues which is not permitted but deprecated by the courts. (p. 1161 G) B  
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### **NOTABLE POINTS INTEREST**

#### **GARBA JCA**

##### *1. Foreign legislations and decisions – Applicability of*

It cannot seriously be disputed that the Nigerian Constitution, the provisions of which fell for interpretation and application before the Federal High Court is unique particularly as it relates to the provisions calling for decision in the case before that Court. The underlying principles of our Constitution, like many others in the Commonwealth, have been borrowed from foreign jurisdictions, however it has not been suggested that any of such foreign jurisdictions have same or similar provisions as in Section 180(2) of our Constitution which were interpreted and applied for them to be relevant for our purposes, as persuasive authorities. So mere reference to foreign decisions which do not directly deal with provisions of Statutes or Constitutions which are similar to our own laws and our peculiar circumstances would not with due respect, aid our jurisprudence with any qualitative improvement. D  
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With decisions of our Courts on the interpretation and application of specific provisions of our law and Constitution available, embarking on reference and reliance on foreign decisions in the interpretation and application of similar or same provision by the lawyers and judges would clearly be unnecessary and even unwarranted. It needs to be pointed out that in appropriate cases, our Courts in application of the provisions of our statutes and even the Constitution do refer with approval, to some foreign decisions which would in the circumstances form part of our judicial precedence. Be that as it may, on the authorities of A.G. BENDEL STATE v. A.G. FEDERA- G  
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TION relied on by the Federal High Court, it was right in law to have preferred and restricted itself to the relevant Nigerian decisions rather than the unnamed foreign decisions cited before it by Counsel.  
(p. 1131 G)

B 2. *"A person first elected as Governor" - Interpretation*

When taken together, the above words then mean a person who was initially, for the first time, chosen as Governor by the process of an election conducted in accordance or compliance with provisions of the Electoral Act and the Constitution. In other words, a person who at the beginning was voted in to the office of a Governor in the process of an election conducted or held in line with or as provided in the Electoral Act and the Constitution. Also a person who was for the first time chosen through the process of an election which satisfy the provisions of the Electoral Act and the Constitution, as Governor of a State is a person first elected as Governor under the Constitution. The salient point that should be noted in the provisions of the subsection is that a person must have first been chosen as Governor in the process of an election which complies with and satisfies the provisions of the Constitution before the provisions would be applicable to the tenure provided therein. Consequently, the provisions would not apply to a person chosen by the process of an election which was not conducted or held in compliance or accordance with the provisions of the Constitution. The constitutional provisions cannot be said to contemplate or envisage application to any election which did not comply with or was conducted or held not in accordance with the relevant provisions of the Constitution. Put another way, it is not within the purview of the provisions that the election to which they are applicable would be one or the process of which was not conducted in obedience to the relevant provisions of the Constitution. (p. 1136 D)

3. *Statutory Interpretation – Courts to follow the law not history*

H I am prepared to agree with the Appellant that yes, for the purposes of history to be kept for future generation and human memory, the 1st Respondent was in fact person who occupied the office of Governor of Adamawa State between the 29/5/2007 when he took the Oaths of Allegiance and of office. However in the eyes of the law, the

1st Respondent was never elected Governor in April, 2007 pursuant to which the oaths were taken in May 2007 because there was no election then. The oaths which were not predicated on valid election could not draw validity and effectiveness from an invalid election. So what do we do in the circumstances? Do we as a court of law deliberately disregard and ignore the law and bow to de facto occupation; to history which has also now registered in our memory? Are the courts not of law but of history? The courts in Nigeria are creatures of the laws and Constitution and they are courts of law and justice according to law. Their primary duty is to interpret and apply the law as it is in the resolution of disputes that come before them. The jurisdiction of the courts which translates into the judicial authority and power over matters that come before the courts is limited to the interpretation and application of laws to any given situation. (p. 1144 C)

### **REPRESENTATION**

#### 1. CA/A/117/2011

A.S. Awomolo (SAN) with A.B. Mahmud (SAN), Dr. O. Ikpeazu (SAN), H.M. Liman, Emeka Etiaba, Aminu Sadauki, I.M. Dikko, Hadi Jazuli, Y.D. Dangana, I.N. Akoso, I. Shaibu, D.E. Daniel, Anulika Osuigwe, Prisca Ozolisika, Marcus Abu, Feyisayo Folorunso and Ike Ogbogu

#### 2. CA/A/113/2011

A.S. Awomolo (SAN) with A.B. Mahmoud (SAN), Dr. O. Ikpeazu (SAN), I.K. Bawa (DLS INEC), H.M. Liman, Emeka Etiaba, Aminu sadauki, I.M. Dikko, Hadi Jazuli, Y.D. Dangana, I.N. Akoso, I. Shaibu, D.E. Daniel, Anulika Osuigweo Prisca Ozolisika, Marcus Abu, Feyisayo Folorunso and Ike Ogbogu

#### 3. CA/A/119/2011

A.S. Awomolo (SAN) with A.B. Mahmoud (SAN), Dr. O. Ikpeazu (SAN), I.K. Bawa (DLS INEC), H.M. Liman, Emeka Etiaba, Aminu Sadauki, I.M. Dikko, Hadi Jazuli, Y.D. Dangana, I.N. Akoso, I. Shaibu, D.B. Daniel, Anulika Osuigwe, Prisca Ozolisika, Marcus Abu, Feyisayo Folorunso and Ike Ogbogu

#### 4. CA/A/115/2011

A.S. Awomolo (SAN) with A.B. Mahmoud (SAN), Dr. O. Ikpeazu

**1112** Independent National Electoral Commission v. Nyako (2011) 4 KLR CA

(SAN), I.K. Bawa (DLS INEC), H.M. Liman, Emeka Etiaba, Aminu Sadauki, I.M. Dikko, Hadi Jazuli, Y.D. Dangana, I.N. Akoso, I. Shaibu, D.E. Daniel, Anulika Osuigwe, Prisca Ozolisika, Marcus Abu, Feyisayo Folorunso and Ike Ogbogu

**B** 5. CA/A/118/2011

A.S. Awomolo (SAN) with A.B. Mahmoud (SAN), Dr. O. Ikpeazu (SAN), Femi Falana, H.M. Liman, Emeka Etiaba, Aminu Sadauki, f.M. Dikko, Hadi Jazuli, Y.D. Dangana, I.N. Akoso, I. Shaibu, D.E. Daniel, Anulika Osuigwe, Prisca Ozolisika, Marcus Abu, Feyisayo Folorunso and Ike Ogbogu

6. CA/A/128/2011

Lorenzo Omo-Atigbe with Maurice Asielue

**D** (CONSOLIDATED) For the Appellants

1. CA/A/117/2011

Chief Kanu Agabi (SAN), Ayo Akam, Patricia Obi, Murphy Enebeh, Dickson Otuagoma, D.A.N. Eke, Ikani Agabi

**E** Chief Olusola Oke with A.A. Ibrahim, O. Gbadeyan, M. Onyiaike, B. Abdulazeez, S.G. Ikuesan, F.B.A. Nabena

2. CA/A/113/2011

**F** Paul Erokoro (SAN) with C. Onyemaizu, I. Arum, R. Osibu and G. Orimoleye

Sunday Edward, with C.N. Agomuo and Jegede Oarhe for the Party seeking to be joined as Interested Party.

**G** 3. CA/A/119/2011

Chief Ladi Williams (SAN), Kemi Balogun, N.B. Ganiyu, A.K.A. Bakare, A.D. Olori-Aje, F.B.A. Nabena, Abang O. Ogar

Lorenzo Omo-Aligbe with Maurice Asielue for the 4th Respondents.

Chief Olusola Oke with A. Ibrahim, O. Gbadeyan, M. Onyiaike, B.

**H** Abdulazeez, S.G. Ikuesam and F.B.A. Nabena

4. CA/A/115/2011

P.A. Akubo (SAN) with Dr. J.O. Olatoke, A.O. Popoola, B.A. Oyi, Akeem Umoru, and M.A. Adelodun

Chief Olusola Oke with A. Ibrahim, O. Gbadeyan, M. Onyiake, B. Abdulazeez, S.G. Ikuesan and F.B.A. Nabena

5. CA/A/118/2011

S.I. Ameh (SAN) with C. Okoli, R.A Sadiq, O.A. Eze, B.A. Solake, E.M.D. Umukoro, R.O. Akakole, Nochano Emmanuel, U.U. Unogu, B. Janula Jibrit and C. Akubo

Chief Olusola Oke with A. Ibrahim, O. Gbadeyan, M. Onyiake, B. Abdulazeez, S.G. Ikuesan and F.B.A. Nabena

Dr. Garba Tetengi for Interested Party/seeking to be joined.

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6. CA/A/128/2011

Chief Ladi Williams (SAN), Kemi Balogun, N.B. Ganiyu, A.K.A. Bakare, A.D. Olori-Aje, F.B.A. Nabena, Abang O. Ogar, A.S. Awomolo (SAN) with A.B. Mahmoud (SAN), Dr. O. Ikpeazu (SAN), Femi Falana, H.M. Liman, Emeka Etiaba, Aminu Sadauki, I.M. Dikko, Iladi Jazuli, Y.D. Dangana, I.N. Akoso, I. Shaibu, D.E. Daniel, Anulika Osuigwe, Prisca Ozolisika, Marcus Abu, Feyisayo Folorunso and Ike Ogbogu.

- chief Olusola Oke with A. Ibrahim, O. Gbadeyan, M. Onyiake, B. Abdulazeez, S.G. Ikuesan and F.B.A. Nabena  
(CONSOLIDATED) For the Respondents

**CASES REFERRED TO**

OBI v. INEC (2007) 11 NWLR (1046), 565

LADOJA v. INEC (2007) ALL FWLR (377) 934

NNPC v. FAWEHINMI (1998) 7 NWLR (559) 625

ADEFULU v. OKULAJA (1996) 9 NWLR (475) 668

HARUNA v. MODIBBO (2004) 10 NWLR (900) 487

AKPAN v. UMAH (2002) 7 NWLR (767) 701 at 734-5

IBRAHIM v. BARDE (1996) 9 NWLR (474) 513 at 577

IFEZUE v. MBADUGBA (1984) 1 SCNLR 427. (84) SC. 79

OKORO v. NIG. ARMY COUNCIL (2000) 3 NWLR (647) 77

LABOUR PARTY v. INEC (2009) 6 NWLR (1137) 315 at 337

JINADU v. ESURONIBI-ARO (2005) 14 NWLR (944) 142 at 175

AFOLABI v. GOVERNOR OF OYO STATE (1985) 2 NWLR (9) 734

P.D.P. v. INEC. (1999) 7 SC. (Pt. II) 30, (1999) 11 NWLR (626) 200

EHIRUM v. IMO STATE INDEPENDENT ELECTORAL COMMIS-

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**STATUTES REFERRED TO**

Constitution of Federal Republic of Nigeria 1999 (as amended in 2010), ss.14(2), 153(1)(f), 178(1)(2), 180(2)(a), 241(1)(a), 243(a)

<sup>B</sup> Electoral Act 2006, s. 149(1)(2)

**BOOK REFERRED TO**

Oxford Advanced Learner's Dictionary 6<sup>th</sup> edition, pp. 442, 867, 776

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**LEAD JUDGMENT BY GARBA JCA**

On the 7th April, 2011, the appeals Nos.: CA/A/117/2011; INEC v. ADM. MURTALA NYAKO (GOVERNOR OF ADAMAWA STATE) & ANR., CA/A/113/2011; INEC v. SENATOR LIYEL IMOKE, <sup>D</sup> CA/A/119/2011; INEC v. CHIEF TIMIPRE SYLVA & 4 ORS. CA/A/115/2011; INEC v. ALH. IBRAHIM IDRIS (GOVERNOR OF KOGI STATE) & ANR & CA/A/118/2011; INEC V. ALH. MAGATAKARDA WAMAKKO & ANR, & ANR., and CA/A/128/2011; ATTORNEY-GENERAL OF THE FEDERATION v. INEC & 4 ORS were with the <sup>E</sup> agreement by all learned Counsel for the parties therein, consolidated and heard by the Court. Although there are no rules of Court which provide for consolidation of appeals it is an established and accepted judicial practice to consolidate actions or as the case may <sup>F</sup> be, appeals in which the same issues are raised by parties that are substantially the same against one or same decision of a lower Court for convenience and also save time in arguing them piece meal or separately. For that reason, consolidated appeals though heard at the same time, would retain their distinct and separate identities for <sup>G</sup> the purpose of determination and so the law requires that there be separate pronouncement by the Court on each of them.

JINADU v. ESURONIBI-ARO (2005) 14 NWLR (944) 142 at 175; ABANA v. OBI (2004) 10 NWLR (881) 319. HARUNA v. MODIBBO (2004) 10 NWLR (900) 487. With this position in mind, <sup>H</sup> I intend to consider each of the consolidated appeals on its own identity, but in so doing I would attempt not to merely repeat arguments on the same issues in the appeals as canvassed in the different briefs of arguments by the learned Counsel. I would rather refer to arguments on issues which are distinct to each of the appeals and deter-

mine them accordingly. However issues which are common to all or some of the appeals once decided in one would effectively determine the issues in the others without the need to waste verbiage by mere repetition of same or similar arguments and determination. Luckily, all the appeals emanated from and are against the same decision of the Federal High Court Abuja delivered on the 23/2/11 in the consolidated suits filed by the Respondents therein against INEC; who is Appellant. I intend to deal with the appeals in the order they were argued by the learned Counsel.

CA/A/117/2011

Two notices of appeal were filed by the Appellant; the first one on the 2/3/11 which appears at pages 247-257 of the initial record of appeal and the one on the 25/3/11 contained at pages 101-105 of the Supplementary record of appeal transmitted to the Court on the 4/4/2011. In line with requirements of the Rules of Court, parties filed briefs of argument in support of their respective positions in the appeal.

The Appellants' brief settled by A.B. Mahmoud, SAN, was filed on the 25/3/11, the 1st Respondent's brief was settled by Kanu G. Agabi (CON) SAN and filed on the 1/4/11. Chief Olusola Oke prepared the 2nd Respondent brief which was filed on 30/3/11 while the Appellant's Reply to the 1st Respondent's brief was filed on 6/4/11 to complete the filing and exchange of the briefs in the appeal. The briefs were duly adopted and relied on by the learned Senior and other Counsel for the parties as their submissions in support of their respective positions at the oral hearing of the appeals. We were urged to allow or dismiss the appeal as the case may be. However the learned Senior Counsel for the Appellant, Mahmoud had said he relied on the notice of appeal filed on the 25/3/11 and abandoned the one filed on the 2/3/11 which in consequence is hereby struck out.

From the 3 grounds contained on the notice of appeal filed on 25/3/11 the learned Senior Counsel' for the Appellant had submitted three (3) issues for determination in the appeal. They are as follows:-

*"i. Whether the learned trial judge was right in holding that the tenure of office of the in (sic, 1st) Respondent as Governor of Adamawa State commenced from the date he assumed office after*

*taking the Oath of Allegiance and the Oath Office on 5th of April, 2008, after the re-run election conducted on 28th March, 2008.*

ii. *Whether the learned trial judge was right in holding that the Amendment to Section 180 of the 1999 Constitution was inapplicable to the position of the 1st Respondent who was elected into office of Governor of Adamawa State under the 1999 Constitution prior to the 2010 Amendment*

iii. *Whether the learned trial Judge was right in holding that the Constitution as amendment (sic, as amended) cannot apply retrospectively to affect rights which have been acquired under the 1999 Constitution prior to the amendment.*”

The same issues were adopted with minor amendments in the 1st Respondent’s brief while two (2) issues which subsume the issues formulated by the Appellant were said to arise for determination in the 2nd Respondent’s brief.

In his submissions on the issue 1 raised by him, the learned SAN for the Appellant had started by faulting the approach by the Federal High Court in relying on Nigerian judicial authorities cited before him in preference to foreign decisions, arguing that it robs our jurisprudence of qualitative improvement. According to him, though foreign decisions are not binding on our courts, yet our courts cannot ignore the developments in other countries since the underlying principles of our Constitution have been borrowed from foreign jurisdictions. It was further argued that the Federal High court by narrowly interpreting the Constitution and focusing on formalistic provisions thereof in isolation without drawing guidance from other relevant provisions, has reached conclusions which are absurd and capable of defeating the fundamental purpose, intent and tenet of the Constitution. Learned Senior Counsel then went to define and distinguish between public and private rights in Nigeria’s election jurisprudence which he says are central to the consideration of the issues in the appeal. He said the Federal High Court based its decision on the following propositions : -

“i. *That the Constitution of the Federal Republic of Nigeria by its express provisions in section 180(2), makes Oath of allegiance and Oath of Office as the only reference point for calculating the four-year tenure of a Governor of a State; (emphasis added).*

ii. *The nullification of an election of the Respondent has the*

*legal effect of nullifying the Oath of allegiance and Oath of Office (earlier taken on 29th March, 2007); (emphasis added).*

*iii. The relevant Oath of Allegiance and Oath of Office was the one taken subsequent to the runoff election.”*

It was submitted that the Federal High Court was wrong in these propositions because first, the taking of Oath of Allegiance and Oath of office is not the only reference point in determining the tenure of a person elected to the office of Governor. Further that the Supreme Court had held in several cases that the Constitution is an organic document and its provisions should not be read in isolation and that all other relevant provisions ought to be read and constructed together. It was also submitted that in determining the tenure of office of Governor, all relevant provisions of the Constitution should be construed together in order to attain the organic scheme of government intended by the Constitution. In the view of the learned SAN, some of the relevant provisions that need to be considered include the following:-

*“i. Section 14(2). It is hereby declared that -*

*(a) sovereignty belongs to the people of Nigeria from whom government through this Constitution derives all its powers and authority;*

*ii. Section 178(1). An election to the office of Governor of a state shall be held on a date to be appointed by the Independent National Electoral Commission.*

*(1) An election to the office of Governor of a State shall be held on a date not earlier than sixty days and not later than thirty days before the expiration of the term of office of the holder of that office.*

*Section 180(1). Subject to the provisions of this Constitution, a person shall hold the office of Governor of a State until -*

*(a) when his successor in office takes the oath of that office; or*

*(b) he dies whilst holding such office; or*

*(c) the date when his resignation from office takes effect; or*

*(d) he otherwise ceases to hold office in accordance with the provisions of this Constitution.*

*(2) Subject to the provision of subsection (1) of this subsection the Governor shall vacate his office at the expiration of a period of four years commencing from the date when -*

(a) *In the case of a person first elected as Governor under this Constitution, he took the Oath of Allegiance and Oath of Office; and*

(b) *When the person last elected to that office took the Oath of Allegiance and the Oath of Office or would, but for his death have taken such Oaths.*

B (3) *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 (2) of this section from time to time, but no such extension shall exceed a period of six months at any one time.*

C iv. *Section 182 (sic) -(11). No person shall be qualified for election to the office of Governor of a State if ...*

(c) *he has been elected to such office at any two previous elections;*

D v. *Section 185-(1). A person elected to the office of the Governor of a State shall not begin to perform the function of that office until he has declared his assets and liabilities as prescribed in this Constitution and has subsequently taken and subscribed the Oath of Allegiance and Oath of Office prescribed in the Seventh Schedule to the Constitution.*

In further submission, it was said that a combined reading of the above provisions will reveal the following:-

F “i. *That Constitution clearly vests sovereignty in the people of Nigeria and all power and authority derive from the people;*

ii. *The Constitution limits the tenure of governors of States (as indeed all elected members of the executive branch of government to two terms of 4 years each;*

G iii. *The objective of the Constitution is to guarantee regular and periodic elections which are acknowledged to be the hallmark of democratic form of government;*

H iv. *It is only in state of war, in which the nation is physically involved, that elections may be postponed, even then for a period of no more than 6 months at any given time;*

v. *It is evidently not the intention of the Constitution to allow one single individual to continue to hold the office, by whatever means in whatever manner, for a period of more than 8 years or for indefinite period;*

*vi. The Constitution intends that the occupants of the office of Governor solemnly affirm their loyalty to the country and promise to uphold and protect the Constitution whilst carrying on the duties of the office of Governor.”*

It was then contended that if the Federal High Court had taken all the above into account along other provisions of the Constitution, it would have been evident that oath taking could not be the only relevant provision in construing the tenure of the office of Governor under the constitution. The case of *A.G. BENDEL STATE v. A.G. FEDERATION* (1981) 10 SC, 1; (1982) 3 NCLR. 1: (1981) LPELR - SC. 17/1981 was cited on the cardinal principles of interpretation of Constitution of two which are said to be:-

- (i) the Constitution of the Federal Republic of Nigeria is an organic scheme of government to be dealt with as an entity;
- (ii) a constitutional provision should not be interpreted to defeat its evident purpose.

It was the further contention of the learned silk that the decision by the Federal High Court that the nullification of an election also has the legal effect of nullifying an Oath of Allegiance and Office is a judicial myth which has no legal basis and amounts to rectifying a solemn and symbolic act or requirement to a level which the Constitution did not intend. That nullification of Oath of Allegiance and Office was not adjudicated upon. In addition, it was submitted that all that Sections 180 and 185 of the Constitution say is that a Governor elect cannot begin to discharge the functions of the office of Governor until he declares his assets and liabilities and also subscribes to the oath of allegiance and office and that such oaths do not admit of nullification. The oaths of allegiance and of office were set out and it was contended that the oath is in itself and by itself alone and confers no legal right or entitlement. Furthermore, that the only thing that stands to be nullified is the right to hold that office or the process by which that legal right was acquired and that nullifying oath will be doing violence and subverting the clear provisions of the Constitution which by Section 180 says that the tenure or term of office of a Governor is four years from the time he assumes office.

It was the further submission for the Appellant that the cases of *OBI v. INEC* (2007) 11 NWLR (1046), 565 and *EHIRUM v. IMO STATE INDEPENDENT ELECTORAL COMMISSION* (2008) 15

NWLR (111) 443 were relied on heavily by the Federal High Court but that the situation in *OBI v. INEC* was not exactly the same as the present case because in that case, there was no question of the nullification of first oath of office. The question before the Supreme Court in the case was when would tenure of Mr. Obi, who took the oath of  
B allegiance and office on the 17/3/2006, be deemed to have commenced. Was it from the date Dr. Ngige whose election was nullified was set aside, took the oath on the 29/5/2003 or when he Obi subscribed to the oaths on 17/3/2006? According to the learned silk, the  
C Supreme Court was not confronted with issues in this appeal nor did it advert its mind to the consequences that would follow that decision and that if the Federal High Court decision prevails, it would raise the issue of an endless tenure of office of a Governor. He said the case of *LADOJA v. INEC* (2007) ALL FWLR (377) 934 cited by both Coun-  
D sel to the Federal High Court was not given due consideration by it in its decision. That the question in the case was whether the period of eleven (11) months when Ladoja was unlawfully kept out of office through a purported impeachment which was declared illegal, null and void by the court should be excluded in completing LADOJA's  
E term of four (4) years provided for in Section 180 of the Constitution. Learned Senior Counsel said it is the collary (sic) to the argument in the present appeal and the Supreme Court in the LADOJA's case has held that it would tantamount to extending the tenure of the Governor contrary to the constitutional provisions. It was his  
F further contention that the LADOJA case does not support the proposition that the consequence of declaring an action a nullity is to wipe out every consequence since the annulment of the impeachment did not wipe out the eleven (11) months the Governor was kept out of  
G office illegally. Reference was made to the statement of OGUNTADE, JSC at pages 167-8 of the report and it was argued that the Supreme Court had rejected the argument of giving blanket meaning to the consequence of nullity and so the period he was illegally kept out of office was included as part of his four (4) years tenure. In further  
H argument, it was said that the Supreme Court predicated its decision in the case on the need to give effect to the clear wording or intendment of the Constitution by holding that the times Ladoja was both in "defacto" excluded from office was part of his "de jure" tenure. It was also submitted that the case of *EHIRUM* was wrongly decided as

it did not follow *OBI v. INEC* which did not decide on the effect of the tenure of a person who wins a second or fresh election after the nullification of his previous election and that it was not concerned with the office of the Governor and the extant of the constitutional provisions.

The learned SAN said that the tenure of a Local Government Chairman was governed by the provisions of the Imo State Local Government Administration Law No. 15 of 2000 and so the conclusion by the Federal High Court that the case illustrated important point was totally misplaced. B

The learned silk then argued that though the Federal High Court had held that the Constitution did not say that the period the 1st Respondent has been in de facto occupation of the office of Governor should be taken in to account in calculating his term of four (4) years, the Constitution does not also say that the period should be excluded. Furthermore that the question is then, which of the two interpretations best promotes the intents of the Constitution and its framers; one that creates an intermediate term of office (which he said the Federal High Court adopted) or one that guarantees that the period of 4 years specifically mentioned is not exceeded. C

It was the submission of the learned SAN that it is a well settled rule of constitutional interpretation that the interpretation that would serve the interest of the Constitution and best carry out its object and purpose should be preferred. Also that its relevant provisions must be read together and not disjointedly, relying on the case of *IFEZUE v. MBADUGBA* (1984) 1 SCNLR 427. (84) SC. 79. D

In further argument, it was contended that both the Constitution and the Electoral Act have adopted the approach that de facto occupation of public offices is so as not to create a vacuum in the exercise of duties of public offices and the definition of the phrase “De facto” in Blacks Law Dictionary , 6th Edition, page 418 was set out in the brief. It was then further argued that between the period of the 1st oath and 2nd oath, the 1st Respondent was the de facto Governor of Adamawa State even if the de jure basis was still in contention and had exercised the functions of that office and claimed all benefits that accrued to him but now seeks to take further benefits by saying that he was there illegally and so must enjoy the benefits that accrued de jure as well. According to learned SAN, it is clear that E

was not intended by the Constitution as it did not intend to wipe out the actions during the de facto occupation of office by the 1st Respondent. The provisions of Section 149 of 2006 Electoral Act was set out and said to have intended continuity of the office and to avoid a vacuum, in accord with the constitutional provision. We were urged to reject “any wipe off’ theory with regards to the computation of the tenure of office of a Governor which is said to be against the letter and spirit of the Constitution.

On the case of *BALONWU V. GOVERNOR OF ANAMBRA STATE* (2009) 18 NWLR (1172) 13, the Supreme Court was said to have given effect to the letter and spirit of the Constitution and was not only concerned with the Electoral Act as erroneously found by the Federal High Court. The statement by ONNOGHEN, JSC at page 40 of the report was set out as support of the position.

The Learned Senior Counsel then argued his issues II and III together and started by saying that the Federal High Court was wrong in concluding that the Constitution’s First Alteration Act 2010 did not apply retrospectively to affect the re-run election of all the Plaintiffs in the consolidated suits which took place in 2008. He then referred to the concept of retrospectively in legislation and how it was discussed or defined in retrospectively in Law (29) University of British Columbia Law Review 5, 1995 by Prof. Elizabeth Edinger. It was the case of the Appellant that in the sphere of civil law, laws are generally prospective and apply to situations and transactions arising after they have come into effect but that a law may be enacted and given a commencement date earlier than it was passed. It was argued that such a law would have retrospective effect; *ex post facto* effect which general principle is said to be well established in our jurisprudence citing *A.G. FEDERATION v. ANPP* (2003) 15 NWLR (844) where it was said to have been clearly set out. The decisions in *AKPAN v. UMAH* (2002) 7 NWLR (767) 701 at 734-5 and *A.G. PLATEAU v. CHIEF A. GOYOL* (2007) NWLR (1059) 51 were mentioned in the brief and it was submitted that the case of *A.G. FEDERATION v. ANPP* was not authority that the Constitution could not apply retrospectively but it supports the position that the intention of the legislature must be discerned from the words used and cannot be presumed. The case of *OMOGODO v. STATE* (1981) 5 SC. 5 was said to be a criminal case not applicable to the case while in the case of

AFOLABI v. GOVERNOR OF OYO STATE (1985) 2 NWLR (9) 734. The Court did not consider the retrospectively of constitutional provisions. It was then argued that a constitutional amendment can have retrospective effect and divest a public right in which case it cannot be claimed by persons temporarily or for the mean time occupying public offices. Learned SAN said technically, the constitutional amendment which came into force on the 16/7/2010 is not an *ex post facto* law as it was not given a commencement date earlier than the date it was passed by the legislature. However that any duty, function or responsibility to be carried out under the provisions of any law must be carried out in conformity with the provisions of the Constitution for the time being in force and that the argument that 1st Respondent had acquired a vested right to hold office regardless of the current state of the Constitution, is said to be absurd. It was contended that INEC cannot choose to implement an extinct law or carry out its Statutory functions in accordance with a previous law and that if it was the intention of the legislature to save any situation, it would have done so in a transitional or other provisions but did not do so. The question was then posed whether the legislature can retrospectively alter the tenure of a political office holder and it was argued that there is no such thing as a vested right to political office which is held in trust and so the legislature can alter the terms of the trust at any given time because the right does not vest in an individual or personal right. Reference was then made to an article in a foreign journal and some foreign cases on the discussion on public rights, private rights and retroactivity and it was submitted that in our case, the Nigerian legislature is pre-eminently qualified to amend our Constitution.

The Learned SAN for the Appellant maintained that it is absurd to contend that because an individual was elected under a previous constitutional provision, he must remain in office until his term expired under that previous Constitution. Further that whether the provisions of Section 180(2)(a) of the Amended 1999 Constitution should apply to incumbent Governors who have won re-run elections is clearly discernible from the words of the Section. We were urged to uphold the submission and resolve the two (2) issues in favour of the Appellant.

On his part, the Learned Senior Counsel for the 1st Respon-

dent; Kanu G. Agabi had argued his issues 1 and 2 together. After setting out the brief facts of the 1st Respondent's re-run election and swearing on 30/4/2008, he had submitted that the effect of the nullification of the April, 2007 election was that the oath of office and allegiance taken on 29/5/2007 were rendered null and void as the  
 B 1st Respondent was deemed not to have held office of Governor of Adamawa State prior to the 30/4/2008. The Supreme Court was said to have made the position clear at page 684 of the *OBI v. INEC* (supra) report. On the effect of nullification of an election, the cases  
 C of *LABOUR PARTY v. INEC* (2009) 6 NWLR (1137) 315 at 337, *AYISA V. AKANJI* (1995) 7 NWLR (405) 129 at 142 and *AMAECHI v. INEC* (2007) 9 NWLR (1040) 504 at 531-2 were cited and relied on and it was argued that the oath of allegiance and of office which the 1st Respondent swore to on the basis of April, 2007 election in  
 D Adamawa State was null and void in the light of these decisions. In further argument, the learned SAN said it stands to reason therefore that the only oath of office to be taken into account in the computation of the 1st Respondent's tenure of office is and remains the one sworn to on the 30/4/2008. For that reason, it was submitted that the  
 E Federal High Court was right when it concluded at page 236 of the record of appeal that the oath taken by the Plaintiffs on May 29th, 2007 was nullified by the nullification of the election of April 2007.

The learned silk then said that there was no appeal against the  
 F above finding by the Federal High Court and so the Appellant cannot now be heard to contend that the nullification of the election of April, 2007 did not have effect of or did not nullify the oath of allegiance and of office sworn to by the 1st Respondent pursuant to the annulled election. He said the oath sworn to after the April 2007  
 G election by the 1st Respondent which was annulled is no longer in issue since there is no appeal against the decision that it was nullified. The question was then asked by the learned SAN, whether the 1st Respondent's tenure as Governor commences from the date when he took the second oath of office.

H Section 180(2)(a) of the 1999 Constitution was set out and said to be clear that the tenure of a Governor commences from the date when he takes the oath of allegiance and of office and not when the outcome of an election is declared. Once more the case of *OBI v. INEC* at page 644 was referred to and it was submitted further that in

the 1st Respondent's case, this Court had affirmed the decision of the Tribunal that there was no election in Adamawa State on April 14th, 2007 and so winner could emerge or be sworn into office as having won it. In the eyes of the law, according to Mr. Agabi, SAN, no election took place for office of Governor in Adamawa State in April, 2007 and so time could not start for the tenure of the office until the fresh election ordered by this Court was conducted and the winner sworn in to office. B

Furthermore, that the term of office of a Governor of a State can only be computed from the time when he took the oath of office and of allegiance following a valid election and that whatever time a person spends in office following an invalid election is not time spent in the office and cannot recomputed as such a person was never Governor in law. It was also contended for the 1st Respondent that the Federal High Court did not conceive the idea of nullification of the oath of allegiance and office but it came from the decision of the OBI v. INEC case where the Supreme Court said that:- C D

*"The oath taken by Dr. Chris Ngige as Governor of Anambra State was nullified by the Election Petition Tribunal in August 2005. This nullification was upheld by the Court of Appeal, Enugu Division on the 15/3/2006. The effect of this nullification is that Dr. Chris Ngige was never elected and sworn in as Governor of Anambra State."* E

Similarly, it was submitted that the case of LADOJA does not support the case of the Appellant but rather that of the 1st Respondent. F

Since the 11 months spent by Ladoja out of office was construed as part of his tenure because the impeachment was null and void and so he did not take another oath of office since he never left office. The learned SAN said that it was impeachment that was annulled in Lagoja's case while in the 1st Respondent's case it was the election itself that was nullified and so in the eyes of the law, election never held. It was the case of the 1st Respondent that the 1999 Constitution has no special tenure for a Governor whose election was nullified but who was validly elected in a subsequent election as in the case of the 1st Respondent. The implication according to the learned silk for the 1st Respondent, is that the 1st Respondent enjoys the same four (4) year term from the date he took the oath of office and it is immaterial that he is the same person whose election was G H

nullified. In addition, he said the nullification of an election is also a nullification of oath of office and of allegiance and that it would amount to validating an election that has been nullified if the nullified oath of office is made a point of reference for the computation of the 1st Respondent's tenure.

B It was submitted that the oaths of office and of allegiance are not mere formalities since under the Constitution, they mark the commencement of the tenure of a Governor which was adjudicated upon by the Federal High Court.

C Mr. Agabi, SAN then argued that there are contradictions and inconsistencies in the Appellant's case, for instance having said that oaths of office and of allegiance are unimportant formalities, the Appellant still admitted that the tenure of a Governor commences when the oath is taken referring to paragraphs 16 and 5.20 of the Appellant's  
D brief. Furthermore, that the provisions of Section 180(2) of the 1999 Constitution are very clear, precise and unambiguous and that all that is required is to expound them as stated in the case of IBRAHIM v. BARDE (1996) 9 NWLR (474) 513 at 577. That the provisions have been subject of judicial pronouncements in the OBI v. INEC  
E and LADOJA cases and that the facts in OBI v. INEC are on all fours with the present case particularly as they relate to the issues of nullification of election, when the tenure of a Governor begins for the person who took over after the nullification of the election. The learned  
F SAN maintained that the 1st Respondent was not a person first elected under the Constitution when the election was nullified and voided and that it would be illogical to say that an election and all acts flowing from it are nullified while the oath of office taken under it will remain valid. It was his further submission that it has always been the  
G law that time does not run for actions which are void because they are deemed never to have taken place and so valid and invalid elections cannot be placed on the same footing.

H On the judicial precedence, it was submitted that the Federal High Court was bound by the decisions of this Court and the Supreme Court on the commencement of a Governor's tenure in order to ensure stability, consistency, predictability, certainty and continuity. Also that Nigerian judicial authority take precedence over foreign decisions and so the Federal High Court was right in its approach on the issue when it used and relied on Nigerian decision

rather than foreign ones which are only of persuasive authority.

In further argument, it was submitted that the duty of the court is to interpret and declare the law as it is and not to concern itself with the consequences of applying the law as it is.

Also, that a cardinal principle of interpretation of Statutes is that which is not specifically included is deemed excluded, relying on *IGP v. ANPP* (2007) 18 NWLR (1066) 457. 496-7. It was said the applicable law in all cases is the law in force at the time of the event giving rise to the cause of action on the authority of: *ADESANOYE v. ADEWOLE* 11. 27 NSCQR 783 at 798 SPDC (NIG.) LTD. v. *TIEBO* VIII (2005) 9 NWLR (931) 439.

Learned Senior Counsel said the 1999 Constitution does not stipulate that the period spent in office by a Governor purported to have been elected under an unlawful election declared null and void should be taken into account in computing his tenure of office and so nothing should be imported in the provisions which are sacred and sacrosanct being the grundnorm of our legal and political system. The case of *NNPC v. FAWEHINMI* (1998) 7 NWLR (559) 625 was cited and it was submitted that it was because of the absence of provisions on the above position that the Constitution [First Alteration] Act, 2010 was passed to insert paragraphs (a) and (b) to Section 180(2) to provide for Governors who may be elected in a re-run election after the first election had been annulled.

Turning to the distinction between private right and public right argued by the learned SAN for the Appellant, it was the view of Mr. Agabi, SAN that it is an attempt to complicate an otherwise simple case of when the tenure of a Governor elected under the Constitution, commences, which has nothing to do with public or private right. He pointed out that the Appellant had conceded that a private right is involved but that it has to be subordinated to the public right and yet did not tell the court what the private right is. It was his contention that the distinction between private and public right under the circumstances is unhelpful since the court cannot grant any relief to the public and so Sections 14(2), 178(l), 180(a)-(d), (2) and (3) 182(1)(c) and 185(1) of the Constitution relied on by the Appellant do not avail it in this case.

According to the learned Senior Counsel, the Appellant is overstretching the boundaries of jurisprudential analysis and its position is

absurd. In any case, it was argued for the 1st Respondent that the action giving rise to this appeal was against the Appellant and not the public and so it cannot plead the cause of the electorate or citizens at large as no such rights are in issue. Further that the courts cannot give effect to public rights which are not defined and that rights conferred by the Constitution cannot be compromised and it is the duty of the court to protect them. It was his contention that the courts have always leaned in favour of protecting private rights whenever the need had arisen to choose between private and public rights and that rights guaranteed by the Constitution are rights which vest in individuals rather than in the sovereign or the public. Further submissions were made on private and public rights with reference made to the case of *A.G. ANAMBRA STATE v. A.G. FEDERATION* (2007) 1 NWLR 12 NWLR (1047) 4 at 54-5.

While agreeing with the distinction between “de facto” and “de jure” situations made in the Appellant’s brief, he said it is very helpful to the 1st Respondent’s case in the sense that the Appellant’s case is that both valid and invalid elections bear the same fruits while nowhere in the Constitution is there mention of a de facto Governor who may be distinguished from a de jure Governor and that once an election is invalid, the term Governor does not apply.

In the light of the above submissions, we were urged to resolve issues 1 and 2 in favour of the 1st Respondent.

On his issue 3, Mr. Agabi SAN, said since the amendment to the Constitution did not specifically provide that it would apply retrospectively, it cannot be so applied. He said having conceded the commencement date of the amendment, the demolition of the Appellant’s case was completed, since by specifying the date of commencement of the amendment, the legislature has made it abundantly clear that it has no retrospective effect. It was submitted that the commencement date in a legislation is as binding and as sacrosanct as any other provisions in the legislation and that the amendment having come into effect on 16th July, 2010, applies to those who were elected into office from that day. Because the 1st Respondent took his oath of office on 30/4/2008, the amendment does not and cannot apply to him in the absence of any express provisions making it retrospective, argued the learned SAN, citing the case of *A.G. FEDERATION v. ANPP* (supra). He said the amendment was meant to cure the inad-

equacy in the old law and it was the old law that governs the tenure of the 1st Respondent until it expires. Submissions were made by him on the intention of amendments and the limits of the power of the legislature to amend the Constitution generally and references made to the Indian experience.

Nigerian cases of: OMOGODO v. STATE (supra), ADESANOYE v. ADEWOLE (supra), UMEJI V. A.G. IMO STATE (1995) 4 NWLR (391) 552, OJOKOLOBO V. ALAMU (1987) 3 NWLR (61) 377 AT 394, AKPAN V. UMAH (2002) 7 NWLR (767) 201 were also referred to on retrospectively of laws in addition to Halsbury's Laws of England, etc. and the English case CARSON V. CARSON & STOVER (1964) 1 ALL E.R. 681 AT 685-6.

We were urged finally to resolve the issue in favour of the 1st Respondent.

In conclusion, the learned Senior Counsel for 1st Respondent urged the Court to uphold the decision of the Federal High Court. Chief Olusola Oke, the learned Counsel for the 2nd Respondent in arguing his own two issues, made submissions which are substantially the same as those made by the learned Senior Counsel for the 1st Respondent which I have reviewed above. On his first issue he said in addition, that the Appellant had by the submissions in its brief, conceded that:-

“(i) where a candidate has been found not to have been validly or duly elected under the Constitution or the Electoral Act, the candidate could not validly subscribe to the Oaths prescribed in Sections 185 and 180 of the 1999 Constitution.

(ii) the oaths without valid election have no value as they confer no legal right, entitlement and we add, liability.

According to the learned Counsel, the above concessions contradict and knock out the Appellant's submissions that the Federal High Court was wrong in holding that the tenure of the 1st Respondent commenced on 29/5/2007 when he took the oath of office on the 14/4/2011 election which was nullified. He said the law is settled beyond argument that when an act is declared a nullity, in the eye of the law, it never existed or never took place, making reference to: a Black's Law Dictionary, 6th Edition;

OKAFOR v. A.G. ANAMBRA. (1999) 6 NWLR (200) 659, ADEFULU v. OKULAJA (1996) 9 NWLR (475) 668 and

MACFOY v. UAC (1961) 3 ALL ER 1169 at 1172 among other cases. Learned Counsel said the fallacies in the position of the Appellant are that:-

B *“(i) a false dichotomy is being drawn between election and the oaths predicated upon it. According to the Appellant, nullification of the election did not affect the oath predicated on it.*

*(ii) a false equation of the oaths of Allegiance and office with actions carried out by the 1st Respondent after subscribing to the Oath of Allegiance and Oath of Office.”*

C In further argument, he said that the foundation of an oath of office is the election of a person under Section 185(1) of the Constitution and so election is a condition precedent to the administration or taking of an oath of office. Once an election is nullified, then the substratum is removed and so the oath founded on it would collapse, said Chief Oke.

E He also pointed out that when the election of the 1st Respondent was nullified, the Speaker of the Adamawa State Assembly was sworn in as Acting Governor and it would be unimaginable to say that the oath of office sworn to by the 1st Respondent under the nullified election subsisted side by side with that taken by the Ag. Governor, or that the oath of 1st Respondent was put in abeyance while he lost the right to function as Governor. Learned Counsel maintained that election and oath of office are inseparable and that nullification of an election terminated the oaths predicated upon it. F The case of AKPAN v. UMAH (supra) was then said by Chief Oke not to be relevant to the appeal as there is no confusion as to the event on which the tenure of the 1st Respondent would be computed.

G In conclusion, we were urged to dismiss the appeal and uphold the decision of the Federal High Court.

H In his Reply to the 1st Respondent's brief, the learned Senior Counsel for the Appellant made further arguments on the applicability of the cases of OBI v. INEC and EHIRUM v. IMO STATE ELECTORAL COMMISSION, and the consequence of nullity. These with respect to the learned Senior Counsel, is not the purpose of a Reply brief which is required to react, respond to or answer new points canvassed in the 1st Respondent's brief in this Court. A Reply brief is not an avenue for further argument or re-argument of the points or issues already argued in the Appellant's brief. See: Order 17, Rule 5

of the Court of Appeal Rules, 2007,

OCHEMAJE V. STATE (2008) ALL FWLR (435) 1661 At 1681.

DADA v. DOSUNMU (2006) 18 NWLR (1010) 134.

OLAFISOYE v. FRN (2004) 4 NWLR (864) 580.

The learned Senior Counsel however said that the Appellant had appealed against the finding that the effect of nullifying an election is to also nullify the oath taken pursuant to it. That it is implicit in Appellant's ground One but pointed out the decision nullifying the election of the 1st Respondent was not that of the Federal High Court and the decision nullifying the oath could not be of that Court. He said the issue before the Federal High Court was the effect of the nullification of the election or the tenure of the 1st Respondent and that the Appellant's grounds cover the arguments on the issue. Once again the learned SAN made further submissions on the distinction between public and private rights as dealt with in the case of A.G. ANAMBRA v. A.G. FEDERATION cited in the 1st Respondent's brief.

Now, as may be recalled, the first point of complaint by the Appellant in arguing the issue I was that the Federal High Court had shun foreign authorities cited by learned Counsel before it and taken the view that the Nigerian Constitution is unique, and consequently misunderstood the dicta relied on in the Nigerian cases. As is manifest in the submissions by the learned Senior Counsel for the Appellant in paragraph 5.4 of the Appellant's brief, the complaint is not only aimed at the Federal High Court whose decision is the subject of the appeal, but also at "Both lawyers and judges" who are said to "adopt a somewhat dismissive approach to Counsel who try to embark on any serious intellectual arguments". Having conceded that the foreign decisions are not binding on Nigerian Courts, the learned Senior Counsel had not suggested that the Federal High Court was wrong in law to have confined itself to the relevant Nigerian authorities which bind it in the determination of the issues placed before it by the parties for resolution.

It cannot seriously be disputed that the Nigerian Constitution, the provisions of which fell for interpretation and application before the Federal High Court is unique particularly as it relates to the provisions calling for decision in the case before that Court. The underlying principles of our Constitution, like many others in the Commonwealth, have been borrowed from foreign jurisdictions, however it

has not been suggested that any of such foreign jurisdictions have same or similar provisions as in Section 180(2) of our Constitution which were interpreted and applied for them to be relevant for our purposes, as persuasive authorities. So mere reference to foreign decisions which do not directly deal with provisions of Statutes or  
 B Constitutions which are similar to our own laws and our peculiar circumstances would not with due respect, aid our jurisprudence with any qualitative improvement.

With decisions of our Courts on the interpretation and appli-  
 C cation of specific provisions of our law and Constitution available, embarking on reference and reliance on foreign decisions in the interpretation and application of similar or same provision by the lawyers and judges would clearly be unnecessary and even unwarranted. It needs to be pointed out that in appropriate cases, our Courts in  
 D application of the provisions of our statutes and even the Constitution do refer with approval, to some foreign decisions which would in the circumstances form part of our judicial precedence. Be that as it may, on the authorities of *A.G. BENDEL STATE v. A.G. FEDERATION* relied on by the Federal High Court, it was right in law to have  
 E preferred and restricted itself to the relevant Nigerian decisions rather than the unnamed foreign decisions cited before it by Counsel. See also:

ADISA v. OYINWOLA (2000) FWLR (8) 1349.

F UAC v. SOBODU (2006) ALL FWLR (329) 877 at 894.

The next point argued by the learned Senior Counsel for the Appellant was on the distinction between public and private rights under the Constitution or other laws and the theory that private rights are subordinated to the public rights which are said to be held in trust  
 G for the people.

I am constrained to say that these arguments have no practical meaning and relevance to the interpretation and application of Section 180(2)(a) of the Constitution on when the tenure of office of person first elected as Governor of a State commences.

H They may be useful for the purposes of academic discussion where propositions are proffered in the abstract without any particular set of facts and circumstances which require the application of specific provisions of laws for resolution of practical disputes. I am in agreement with the distinction between public and private rights as

provided for in the Constitution; however private rights guaranteed by the Constitution unless expressly provided by the Constitution itself cannot be denied simply because it is personal and I agree with the learned Senior Counsel for the 1st Respondent when he said that once a private right is legitimate, the courts have the duty to protect it even against the threat by public right. But that apart, submissions on the distinction between public and private rights are peripheral to the issues raised by the Appellant in the appeal. B

***The learned Senior Counsel for both Appellant and 1st Respondent are right that the law is settled that the provisions of the Constitution should not be interpreted in isolation but rather along with other related and relevant provisions thereof which assist in achieving the object intended by the framers.*** C  
For instance, in the case of P.D.P. v. INEC. (1999) 7 SC. (Pt. II) 30, (1999) 11 NWLR (626) 200 at 249, Uwais, CJN had pointed to what is required to be done in interpreting the provisions of a Statute or Constitution as follows:- D

*“It is settled that in interpreting the provisions or Section of a Statute or indeed the Constitution, such provisions or Sections should not be read in isolation of the other parts of the Statute or Constitution, In other words, the Statute or Constitution should be read as a whole in order to determine the intendment of the makers of the Statute or Constitution.”* See also OJUKWU v. OBASANJO (2004) 7 SC. (Pt. II) 117 at 124. E

***Similarly, the law is also well known that where the provisions of a Statute or Constitution are clear and unambiguous, the duty of the court would simply be to give them their plain and ordinary meaning since the words used best say the purport of the provisions. The only caveat is that where giving plain and ordinary meaning would result in an absurdity, giving the peculiar facts and circumstances of a case.*** F

RE: OLAFISOYE (2004) 1 SC (pt. II) 27 at 60.

OJUKWU v. OBASANJO (supra) at page 124.

AGBAREH v. MIMIRA (2008) 2 MJSC. 134, H

SHEHM v. GOBANG (2009) 6 MJSC (pt. II), 162.

***In addition, in the interpretation of constitutional provisions, all the accepted canons or rules of interpretation would be employed and would not abate in the effort to get at what***

***the aim and intent of provisions are in the context of the facts to which they are to be applied.*** See: FR.N. v. OSAHON (2006) ALL FWLR (312) 1975 at 2001, LEMBOYE v. OGUNSUJI (1990) 6 NWLR (155) 210. ***It is also settled law that the provisions of the Constitution are to be interpreted literally and liberally particularly where they admit of no ambiguity.***

That should do for restatement of established positions of the law on interpretation of Statute or Constitution at this stage.

Learned Counsel for the Appellant had cited Sections 142 (2), 178 (1) & (2), 180(1), (2) & (3), 182(1)(c) and 185(1) the combined reading which he said shows that sovereignty vests in the people, that tenure of Governors was limited to four (4) years, regular and periodic elections were guaranteed to be postponed only when the nation is at war, that no one person is allowed by whatever means and manner to hold office for more than eight years or indefinite period and lastly that a Governor should solemnly affirm their loyalty to Nigeria and promise to uphold and protect the Constitution while in office. He had argued that the Federal High Court should have taken into consideration all the above in its interpretation of Section 180. It is expedient to take a close look at the provisions of Section 180(2)(a) which the Federal High Court was called upon to interpret by the 1st Respondent in the originating summons filed before it. They are as follows:-

*“180.(2) Subject to the provisions of subsection (1) of this section the Governor shall vacate his office at the expiration of a period of four years commencing from the date when -*

*(a) in the case of a person first elected as Governor under this Constitution, he took the Oath of Allegiance and oath of office.”*

What cannot reasonably be disputed is that these provisions are simple, straightforward and clear as crystal in stating its object, using ordinary and plain words.

In plain everyday language, the provisions say that a Governor of a State shall, (must because no option is admissible) leave or vacate his office at the end of or expiration of a period of four years starting from the date when, as a person who was first elected as Governor under the Constitution, he swore to the Oath of Allegiance and Oath of his Office. No objective doubt or ambiguity can be said

to exist in these ordinary and clear words used by the framers of the provisions if calmly read. The law as demonstrated earlier requires that these clear and unambiguous provisions should be given their ordinary grammatical meaning in the court's interpretative duty. Because their aim and object can easily be discerned from the simple words used therein, no resort can properly be had to anything outside them in the guise of looking for or attempting to find the intentment of the framers. But because of their clarity, even if considered in the context of the other provisions cited by the learned Senior Counsel for the Appellants, the provisions would still retain and maintain their plain and ordinary meaning and object of restricting the term of a person first elected as Governor under the Constitution to four (4) years from the date he takes these oaths set out therein. While Sections 14(2) and 178 do not derogate from the tenure of office of a Governor who derived his power and authority from the people by being elected under the Constitution and whose election was held in accordance with Section 178(1) & (2), Section 180(1) to which subsection (2) was made subject, provides for situations when a Governor may cease to hold office. None of the situations in Section 180(1) can be said to have in any logical way affected in a negative or inconsistent manner, the purport on the provisions of subsection (2). Subsection (3) on its part only provides for an exception to the command in the application of subsection (2) and where a Governor can remain in office even at the expiration of four (4) years after he was sworn into office by taking the relevant oaths. ***It is the law that where the provisions of a Statute or Constitution are clear and unambiguous, no aid, internal or external is required to be employed in construing and ascribing the meaning of the words used therein and all that a court is to do is to ascribe to them their plain meaning in the sense they are employed by the framers.*** See: ODU INVESTMENT LTD. v. TALABI (2009) 10 NWLR (523) 1. OKORO v. NIG. ARMY COUNCIL (2000) 3 NWLR (647) 77.

In the above premises, whether construed alone in the context of the whole provisions of Section 180 or communally with the other Sections particularly the ones cited by the learned SAN for the Appellant, the provisions of subsection (2)(a) of Section 180 are to be given their ordinary meaning. It appears to me that from the sub-

missions made on the provisions for the Appellant, that its position revolves around the interpretation of the words “in the case of a person first elected as Governor under this Constitution” in the provisions. The crucial words in my view are “a person first elected as Governor under this Constitution.” Taking them individually, a “person” is defined in ordinary [and not legal language for our purposes here since legally a person may include artificial person] as a human being, or natural individual. See Oxford Advanced Learner’s Dictionary 6th Edition, Page 867.

The word “First” in the context of the provisions is defined in the same Dictionary as “happening or coming before all other things or people” at page 442. Put another way, first means beginning, starting before, initially etc., “Elected” on its part simply for the purpose of the provisions, means the fact of having been chosen for a political office by the process of an election in accordance with the Electoral Act and the Constitution. When taken together, the above words then mean a person who was initially, for the first time, chosen as Governor by the process of an election conducted in accordance or compliance with provisions of the Electoral Act and the Constitution. In other words, a person who at the beginning was voted in to the office of a Governor in the process of an election conducted or held in line with or as provided in the Electoral Act and the Constitution. Also a person who was for the first time chosen through the process of an election which satisfy the provisions of the Electoral Act and the Constitution, as Governor of a State is a person first elected as Governor under the Constitution. The salient point that should be noted in the provisions of the subsection is that a person must have first been chosen as Governor in the process of an election which complies with and satisfies the provisions of the Constitution before the provisions would be applicable to the tenure provided therein. Consequently, the provisions would not apply to a person chosen by the process of an election which was not conducted or held in compliance or accordance with the provisions of the Constitution. The constitutional provisions cannot be said to contemplate or envisage application to any election which did not comply with or was conducted or held not in accordance with the relevant provisions of the Constitution. Put another way, it is not within the purview of the provisions that the election to which they are applicable would be

one or the process of which was not conducted in obedience to the relevant provisions of the Constitution.

Election conducted and held in compliance or accordance with the provisions of the Constitution is therefore the foundation, the basis and the platform upon which the application of the provisions of the subsection can be premised. Being the grundnorm, it would be preposterous to suggest that its provisions would envisage that they are applicable to any other type of election other than the one conducted or held in compliance with its provisions. <sup>B</sup>

In this regard, only the Oaths of Allegiance and Office taken by a person chosen in the process of an election which complies with or was in accordance with the provisions of the Constitution would be relevant for the purpose of computing the tenure of office of a Governor under the provisions of Section 180(2)(a). Oaths of Allegiance and of Office taken in respect of an election which was conducted or held not in accordance with the provisions of the Constitution would not be oaths taken by a person first elected as Governor under the Constitution. <sup>C</sup>

In this context, the learned Counsel for the 2nd Respondent is right when he said that a valid election conducted in accordance with the provisions of the Constitution and the Electoral Act is a condition precedent to the validity of the oath of allegiance and of the office of a Governor. <sup>E</sup>

This brings me to the effect of the nullification of an election on the oaths taken by a person first elected as Governor in the said election. <sup>F</sup>

***I would start a consideration of the point by saying that the law is now beyond argument that the effect of a nullification of a thing is to completely wipe out, obliterate, remove, undo, erase or render it ineffective, useless as if it had never been in the first place. In judicial and legal terms and context, the nullification of any action or order by a court is to render such action or order void from the very beginning, ab initio, as if it had never taken place, happened or made or issued as the case may be. Once an action or order is nullified by a competent court, then in law and all practical purposes to which it applies, the action had been erased, wiped out and had never, ever happened or taken place originally.*** <sup>H</sup>

This much has been settled as seen in the many cases cited by the learned Senior Counsel in their briefs of argument on the point that I only need by way of emphasis, cite a few more judicial authorities. For instance, the Supreme Court in the case of OKOYE v. N.C.E. & CO. LTD. (1991) 6 NWLR (199) 501 at 538 had defined the word  
B “nullity” as follows:-

*“When a thing is a nullity, it is as if the thing never existed.”*

Similarly, the apex Court in the case of SALEH v. MONGUNO (2006) 15 NWLR (1001) 26 at 74 had explained the meaning of the  
C word “nullity” as follows:-

*“A nullity is in law a void act, an act which has no legal consequence. The act is not only bad, it is incurably bad. The position of the law therefore is that every proceeding, which is founded on a void act is also bad and incurably bad. You cannot put something on  
D nothing and expect it to stay there.”* [Underlining mine]. See also AMAECHI v. INEC (2007) 9 NWLR (1040) 504 at 531-2. DALORI v. DADIKWU (1998) 12 NWLR (516) 112 at 122.

In the same vein, the words “null and void” were defined in ISHOLA v. AJIBOYE (1998) 1 NWLR (532) 71 at 79 in the following  
E terms:-

*“Where an act or decision is declared “null and void”, it is meant to say that the act or decision binds no one and is (sic, in) any circumstance,”* [underlining mine]

F See also ADEFULU v. OKULAJA (1996) 9 NWLR (475) 668 at 691.

In respect of the effect of the nullification of an election, the law is also settled and beyond viable arguments as was established in the cases in the briefs of argument.

The position stated and restated in all the judicial authorities is  
G that the nullification of an election renders the said election purported, nonexistent, void, ab initio, never to have held or taken place at all for the purpose of and in the eyes of the law. When a thing is void ab initio then in law, it had never happened or existed and so would have no effect whatsoever from the beginning and for all times. A  
H nullified election in that sense would have been completely erased and wiped out for the purposes of the law and so cannot found any acts or action subsequent to it because it was nothing from the very beginning. That is the principle of law enunciated in the cases of LABOUR PARTY v. INEC (supra).

The Supreme court had stated in the *LABOUR PARTY v. INEC* that:

*“In summary, as rightly submitted by the Respondent once an election is declared null and void, the law regards whatever was purportedly done in the name or guise of an election as not having taken place at all. In the eyes of the law, the election is void ab initio, and a fresh election is conducted as if the earlier one did not take place at all”* <sup>B</sup>

The apex Court then restated the position in the *AYISA v. AKANJI* case when it said:-

*“Once an act is declared to be a nullity following detection of a fundamental vice as happened here, it is with due respect null and void and it is as if that act has never taken place before, See Skenconsult (Nig.) Ltd” & Anor. v. Godwin Sekondi Ukey (1981) 1 SC 6 at 9, a case in which this Court cited with approval the case of Macfoy v. UAC Ltd. (1962) A.C. 152, a Privy Council decision where Lord Denning said inter alia as follows:-* <sup>C</sup>

*“If an act is void then it is in law a nullity. It is not only bad but incurably bad. There is no need for an order of the Court to set it aside. It is automatically bad without more ado, though it is sometimes convenient to have it declared to be so. And every proceeding, which founded on it, is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse.”* <sup>E</sup>

On the authority of these cases, the Federal High Court was right when it held that the nullification of the April, 2007 election of the 1st Respondent, the effect was that no such election ever held and the 1st Respondent was never elected as Governor of Adamawa State in relation to the purported election which never existed in law. In the absence of an election, nobody, but the 1st Respondent in particular could have been chosen or elected either first or at all as Governor, by the process of an election conducted under the provisions of the Constitution and who would take the Oaths of Allegiance and of Office to mark the commencement of the four (4) year tenure of office. <sup>F</sup>

***As has now appeared clearly, election of a person as Governor under the Constitution is a condition precedent to the taking of the Oaths of Allegiance and of Office to mark the beginning of the tenure of the office. Until and unless a person is first elected as Governor under the Constitution, the Oaths of*** <sup>H</sup>

***Allegiance and Office even if taken by him cannot effectively start the tenure provided for in the provisions of the Constitution.***

***It has been argued strenuously and seriously too that the nullification of the Oath of Allegiance and Oath of Office is a judicial myth.***

***The word “myth” was defined to mean in brief, a story from ancient times or something that many people believe but does not exist or is false. See Oxford Advanced learner’s Dictionary, 6th Edition at page 776. A judicial myth is therefore a story from the ancient times told by the Judges who decide cases in courts or something which many of them believe but which are non-existent or even false. With due respect to the learned Senior Counsel for the Appellant it is not correct to say that the nullification of the Oath of Allegiance and Oath of Office is any of the above in view of the sound reasoning proficiently proffered by the courts for the position in line with the established principle of law that when an act is declared a nullity, it becomes void ab initio and nothing can be founded on it. It cannot be disputed that a nullified election is not a valid election in law and no person can be said to have been validly elected in an invalid election.*** The learned Senior Counsel has himself admitted that a person not validly or elected under the Constitution and the Electoral Act, could not validly subscribe to the oaths in the first place. This is what he said at Paragraph 5.20, lines 9-11(a) pages 15-16 of the Appellant’s brief:-

***“Evidently, a person not validly or duly elected, under the Constitution and the Electoral Act could not validly subscribe to the oaths in the first place. The only issue of materiality, in this context is of the election itself,”***

I am tempted to ask the question, If a person not validly or duly elected under the provisions of the Constitution and the Electoral Act cannot validly subscribe to the oaths in the first place, can such oaths by the said person now be used to determine when the term of office of a Governor elected under the Constitution in valid election, starts or commences? The straight answer from the correct statement that a person not validly elected could not validly subscribe to the oaths in the first place is that such oath if subscribed by

a person not validly or duly elected under the Constitution and the Electoral Act, would be invalid oaths which are of no effect whatsoever. Such oaths because of their invalidity cannot found any subsequent act or be used to mark the commencement of the tenure of office of a person first elected as Governor under the Constitution and the Electoral Act. There should be no difficulty in appreciating this position because something cannot be put on nothing and be expected to stand. Something cannot draw or come from nothing. It is nothing that can come or draw from nothing.

***In addition, the material issue in relation to the oaths has been said by the learned Senior Counsel to be the election itself. I am in agreement with him that the election itself is the material issue in relation to the oaths in the sense that the oaths are founded or predicated on the valid election conducted in accordance with the Constitution and the Electoral Act and at which a person was first elected as Governor. So where the oaths were taken or subscribed to by a person first elected as Governor but not in compliance with the provisions of the Constitution and the Electoral Act the basis of which the election was nullified and voided by court, life would automatically be snipped out of the oaths since the source is completely wiped out of existence. Even without a specific order, the natural consequence of an order voiding an election is that all oaths taken on the basis of such an election were void, ab initio and had therefore not been subscribed to in law. That is the context in which the cases of OBI v. INEC and EHIRUM v. IMO STATE ELECTORAL COMMISSION both (supra) are applicable on the issue of the effect of the nullification of an election on the oath of office and Allegiance.*** The Supreme Court in the OBI v. INEC case had made the position clear when it said:-

*“The appellant has argued that as a person first elected as Governor of Anambra State, he took his Oath of allegiance and Oath of office on the 17th of March, 2006 and that his four-year term would continue to run from that date. By mathematical calculation, it will end on the 17th of March, 2010, it was further argued. The submission was countered by his opponents who submitted that while conceding that he won his election case against Dr. Chris Nigige, the former Governor of Anambra State who was unlawfully sworn in as*

*Governor of that State on the 29th of May, 2003, his four-year term must start to run from the date Dr. Ngige was sworn in. The argument of the Respondents here is very tenuous. When the 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."*

The Supreme Court was interpreting the provisions of the same Section 180(2)(a) of the 1999 Constitution which is the subject of the issue being considered here even through the facts in the OBI v. INEC case are different from the ones in the present appeal. The difference is, while in OBI's case, two different persons were involved, one and same person; the 1st Respondent is affected by both the nullification of the election and swearing of a new oath after the re-run election. However the principle laid down in the OBI's case on the effect of the nullification of an election on the oath of office is applicable in this case since it was stated in relation to the time when the tenure of a Governor first elected under the Constitution begins.

The Federal High Court once again, right in relying on the case on the point. By the principle of *Stare decisis*, the Federal High Court had no option but to be guided and bound by the principle which was clearly applicable to the case before it. The Federal High Court did not misunderstand or misapply the laid down principle in the case and committed no wrong in following it. In this regard, I am in agreement with the learned Senior Counsel for the 1st and 2nd Respondents that the Federal High Court was entitled to refer to and rely on the two decisions named above. In particular, it has not been demonstrated in this appeal that the decision of the Court in *EHIRUM* case was reached *per in curia*, i.e. in disregard and conflict with any other decision of the Court or of the Supreme Court on the issue under consideration. Rather the decision, in line with the principle in *OBI* case, was that the tenure of - office of a person elected to an office could not be calculated from the day he took the oath of office

under the invalid election which had been nullified.

The Federal High Court has in the above circumstances committed no wrong in law for abiding by the principle of judicial precedence. It deserves commendation rather than condemnation.

I now come to the case of *LADOJA v. INEC* (supra) and the distinction drawn between *de facto* and *de jure* doctrines. These Latin doctrines mean simply “in fact” and “in law”. The learned Senior Counsel for the Appellant had argued that because the 1st Respondent was in fact *de facto* first elected Governor and swore or took the oath of office pursuant to the election in April, 2007 even though in law, there was never an election in April, 2007 at which he was first elected as Governor under the Constitution, the oaths he took under the purported April election should be used now to compute the term or tenure of the office to which the 1st Respondent was first elected to office as Governor under the Constitution. The case *LADOJA* said to have been cited before the Federal High Court but was not given due consideration by it was referred to as saying that it would be tantamount to extending the tenure of Governor contrary to the constitutional provision if the 11 months spent by Ladoja out of office were to disregard (sic, be disregarded) in computing his 4 year tenure.

This case, as rightly pointed out by the learned Senior Counsel for the 1st Respondent and Counsel for the 2nd Respondent did not make pronouncement on the effect of nullification of an election on the oath of office or when the tenure of office of Ladoja started or commenced as in the present appeal. This appeal is not and cannot be said to be concerned with tenure extension in the context of the facts in the Ladoja case which dealt with a portion or part of the tenure provided for in the Constitution. In any case, the tenure that is capable of being extended is the tenure of a person first elected as Governor under the Constitution in a valid election and who had taken valid oaths of Allegiance and of Office. Ladoja was a person first elected as Governor in a valid election under the Constitution and the Electoral Act and his four (4) year tenure of office started or commenced when he took his oath of allegiance and oath of office in 2003.

There was no dispute in that case as to when the tenure commenced but as to whether the eleven (11) he was *de facto* kept out

of office by the nullified impeachment should be part of the tenure. On the basis that in law or de jure, the nullified impeachment never existed, the Supreme Court held that to ignore the 11 months of being de facto kept out of office in the computation of the 4 year term would tantamount to tenure elongation.

B That clearly is not the issue or position in the present appeal.

It may be remembered that it was the case of the Appellant that because the 1st Respondent had de facto occupied the office of Governor drew benefits therefrom and exercised the functions thereof between the 1st and 2nd oaths, he should not benefit from the de jure position as well.

C I am prepared to agree with the Appellant that yes, for the purposes of history to be kept for future generation and human memory, the 1st Respondent was in fact person who occupied the office of Governor of Adamawa State between the 29/5/2007 when he took the Oaths of Allegiance and of office. However in the eyes of the law, the 1st Respondent was never elected Governor in April, 2007 pursuant to which the oaths were taken in May 2007 because there was no election then. The oaths which were not predicated on valid election could not draw validity and effectiveness from an invalid election. So what do we do in the circumstances? Do we as a court of law deliberately disregard and ignore the law and bow to de facto occupation; to history which has also now registered in our memory? Are the courts not of law but of history? The courts in Nigeria are creatures of the laws and Constitution and they are courts of law and justice according to law. Their primary duty is to interpret and apply the law as it is in the resolution of disputes that come before them. The jurisdiction of the courts which translates into the judicial authority and power over matters that come before the courts is limited to the interpretation and application of laws to any given situation. ***In this appeal sight must not be lost that the issue under consideration is when the tenure of office of a person first elected as Governor under the Constitution commences. It is not on what the person had done de facto before being first elected in accordance with the Constitution and the Electoral Act in relation to valid oaths of Allegiance and office, the taking of which signals the beginning of the tenure provided for in Section 180(2)(a). As far as this Section is concerned, it provides in clear and un-***

***ambiguous terms, that the tenure shall commence from the date when a validly elected person had validly taken the oaths set out therein. In the determination of the said tenure, it is the time or date that the oaths are taken by a person first elected as Governor under the Constitution that is relevant and not whatever other acts or actions done or taken by the said person prior to the taking of the oaths.*** B

However all other actions taken by such a person as shown in the briefs of argument, are specifically saved by the Law. Section 149 of the 2006 Electoral Act set out in the Appellant's brief provides C that:-

*"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 D 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, E 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"*

What can easily be discerned from the above provisions is that F they provide for continuity of office for the person whose election was nullified from the date of the nullification until the expiration of 21 days within which he can exercise the right of appeal against the nullification or pending the determination of an appeal against the G nullification. The provisions do not deal with the occupation of office before the nullification which was otherwise valid as the decision in the case of *BELONWU v. A.G. ANAMBRA* clearly shows. The decision in the case had decided other issues in addition to the provisions of the Electoral Act as rightly submitted by the learned SAN for the H Appellant in this brief.)

***For the reasons stated earlier, employing all the known rules of Statutory and Constitutional interpretation, I find that the Federal High Court was right in its interpretation of the provi-***

**sions of Section 180(2)(a) of the 1999 Constitution to the effect that the tenure of the 1st Respondent as Governor of Adamawa State commenced when he took the oath of Allegiance and oath of Office on the 5th April 2008 after he was first elected under the Constitution in the re-run election held or conducted on the 26th March 2008.**

In the result, I resolve the Issue 1 against the Appellant and in favour of the Respondents.

The issues (ii) and (iii) argued together primarily question the decision by the Federal High Court that the amendment to Section 180 of the 1999 Constitution in 2010 did not apply retrospectively to affect the position of the 1st Respondent who was elected prior to the amendment.

**From the submissions of all learned Counsel for the parties, they are one and I also say right, that unless expressly stated, provisions of all Statutes and the Constitution are construed as having no retrospective effect, but as affecting future acts or cases. In addition to the cases already cited in the briefs of argument, the cases of NJOKOLOBO v. ALAMU (1987) 7 SCNJ. 98 and OJUKWU v. OBASANJO (supra) have restated the principle of law on retrospectively of Statutory or Constitutional provisions.**

**In the case of OLANIYI v. AROYEHUN (1991) 5 NWLR (194) 652, the Supreme Court had lucidly stated the principle as follows:-**

**“A Constitution like other Statutes, operates prospectively and not retrospectively unless it is expressly provided to be otherwise. Such legislation affects only rights which come into existence after it has been passed.”**

**The above position represents the current principle of law in Nigeria about which there can be no arguments. All courts in Nigeria are bound to apply the principle in the interpretation of provisions of the Constitution or other Statutes in all matters that come before them without exception.** The statement by Prof. Elizabeth Edinger referred to by the learned SAN for the Appellant at paragraph 5.42 of the Appellant’s brief, remains an opinion or view of the writer even in British Columbia which their courts would be at liberty to consider in cases before them. Even if it

were an opinion of a Nigerian Professor/Author, it cannot stand in the way of the principle of law established by the judicial authorities cited above. Until in their wide wisdom the apex Court adopted the view expressed in the said article and modify the known principle, we are bound by it not minding being called conservatives or not being pro-active. B

There appears to be no dispute by learned Counsel that the Constitutional amendment in question had expressly stated the date of its commencement or coming to force or effect. The amendment titled “CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA (FIRST ALTERATION) ACT, 2010” was published in Federal Government Official Gazette No. 50. Vol. 97, ABUJA of 16th July, 2010. Having expressly and clearly given a date when it became operative as an alteration to the already existing provisions of the 1999 Constitution, every Section of the Act became effective and affected all acts, actions, offices, etc. from that date which was not left to presumptions. No doubting Thomases can embark on an exercise of questioning when the amendments were intended by the framers thereof to come into force or apply in the Country. D

The framers did not leave it to them to do so by expressly stating their intention in no uncertain terms. E

It has not been suggested in this appeal that the framers of the amendment have in other Sections thereof expressly stated an intention contrary to the one that the amendment became applicable and in force on the 16th July 2010. F

In the above circumstances, applying the established principle of law on the presumption that the amendment applies only from the date of its commencement, and thence, but not retrospectively, is apposite in this appeal. Like the Federal High Court, I am not in any doubt and do not hesitate to hold that the amendment by its express provisions and intention does not apply retrospectively so as to prejudicially affect any rights and obligations which had accrued and become vested under the provisions of the amended Constitution, before the amendment. I am also of the firm view that it is not material whether such rights and obligations are classified as private or public as contended in the Appellant’s brief. The right of the 1st Respondent to complete the four (4) years tenure prescribed by the Constitution before the amendment cannot logically be said to have been H

taken away by an amendment made after it accrued to and became vested in him without the express provisions in the amendment to that effect. To attempt to do so would clearly be importing into the amendment what is not contained therein or even intended by it.

***The law as I know it is that the express mention of a thing in a***

***Statute means an intention to exclude what is not so mentioned and it is a known rule of interpretation to exclude what is not stated in the Statute or Constitution. The expression in Latin is “expressio unius est exclusio alterius” See AWOYE v. OBASANJO (2006) ALL FWLR (334) 1967 at 1979.***

***The express mention of a commencement date clearly shows that the amendment was not intended by the framers to apply to whatever had happened or taken place before the commencement date. For the above reasons, I am with the learned Counsel for the Respondents that the amendment was not intended to have retrospective effect and find that the decision by the Federal High Court to that effect is on firm terrain and unassailable.***

***The Federal High Court was right that the amendment was inapplicable to the 1st Respondent who was elected Governor under the 1999 Constitution before or prior to the amendment as it did not intend to apply retrospectively.***

***In the result, I find no merit in the Appellant’s submissions on the issues (ii) and (iii).. I accordingly resolve the said issues against the Appellant and in favour of the Respondents.***

***In the final result, with the resolution of all the three (3) issues submitted for determination in the appeal against the Appellant, the appeal is left wanting in merit.***

The appeal fails on all the grounds and issues raised therefrom and is consequently dismissed by me. Parties shall bear their respective costs of prosecuting the appeal

Appeals Nos. CA/A/113/2011, CA/A/115/2011, CA/A/118/2011, and CA/A/119/2011 as well as the above appeal No. CA/A/117/2011

which I have decided, are all by the same Appellant; INEC against the same decision of the Federal High Court, Abuja as indicated at the beginning the judgment.

All the grounds contained in the respective notices of appeal and the issues formulated in the briefs of argument filed by the learned

Senior Counsel for the Appellant are materially the same in all the appeals except for minor differences in formulation. All the briefs of argument filed by the learned Counsel for all the parties in the appeals were adopted at the oral hearing of the consolidated appeals on the 7/4/11. For a full appreciation of the issues submitted by the Appellant in all these appeals, I find it expedient to set them out separately. CA/A/113/2011: INEC v. SENATOR LIYEL IMOKE. B

In the Appellant's brief of argument settled by Dr. O. Ikpeazu, OON, SAN, filed on the 17/3/2011, the following issues were formulated for decision in the appeal at pages 3-4:- C

"1. Was the learned trial judge wrong when he held that the period during which the Respondent occupied the office of Governor of a State following his initial swearing-in should not be contemplated in computing the period of four (4) years the Respondent is constitutionally required to occupy the office of Governor? D  
 GROUNDS I and II.

2. Did the learned trial judge not misapply the decision of the Supreme Court of Nigeria in PETER OBI v. INEC & ORS. (2007) 11 NWLR (Part 1046) 565 in holding that the Respondent's tenure of four (4) years shall not include the period he served as Governor before his initial election was set aside. GROUNDS II E  
 (wrongly numbered).

3. Was the learned trial judge wrong in holding that the nullification of the election of the Respondent by the Court of Appeal effectively nullified the Oath of office previously taken by him? F  
 GROUND III.

On his part, Mr. Paul Erokoro, SAN submitted two (2) issues which he says call for decision in the appeal.

The issues which appear at page 5 of the Respondent's brief G settled by him and filed on 30/3/2011 but deemed (sic, filed) on the 31/3/2011, are thus:-

*"(1) Whether the Respondent's 4 year term of office as Governor, which commenced on the 28th day of August, 2008, will end earlier than the 28th day of August, 2012?" H*

*(2) Whether Section 180 of the Constitution of the Federal Republic of Nigeria, 1999 as amended, can apply retroactively to affect the Respondent's 4 year tenure as Governor? "*

CA/A/115/2011: INEC v. ALH. IBRAHIM IDRIS [GOVERNOR OF

KOGI STATE] AND ANR.

The Appellant's brief was filed on the 25/3/2011 and at page 7, three (3) issues were submitted by A.B. Mahmoud, SAN who settled the brief for determination in the appeal. They are:-

- B *(i) Whether the learned trial Judge was right in holding that the tenure of office of the 1st Respondent as Governor of Kogi State commenced from the date he assumed office after taking the Oath of Allegiance and the Oath of Office on 5th of April, 2008, after the re-run election conducted on 28th March, 2008.*
- C *(ii) Whether the learned trial Judge was right in holding that the Amendment to Section 180 of the 1999 Constitution was inapplicable to the position of the 1st Respondent who was elected into office of Governor of Kogi State under the 1999 constitution prior to the 2010 Amendment.*
- D *(iii) Whether the learned trial Judge was right in holding that the Constitution as amended cannot apply retrospectively to affect rights which have been acquired under the 1999 Constitution prior to the amendment."*

E For the 1st Respondent in the appeal, the Amended brief of argument filed on 5/4/2011 was deemed (sic, filed) at the hearing on the 7/4/2011.

F After arguing a preliminary objection to the appeal, two issues were submitted for decision in the alternative at pages 31-2 of the brief. They are as follows:-

- F *"(a) Whether the learned trial court was right when it held that the tenure of the 1st Respondent as the Governor of Kogi State commenced from the date he assumed office on (sic) to April, 2008 having regard to the entire circumstances? Ground 7.*
- G *(b) Whether the trial court was right in its conclusion that the amendment to section 180 of the 1999 Constitution was inapplicable to the position of the 1st Respondent as Governor of Kogi State? Ground 2."*

H I would deal with the preliminary objection argued in the appeal later.

The 2nd Respondent's brief of argument in the appeal was filed on the 30/3/2010 and at page 9 thereof two (2) issues were said to be the relevant ones for determination in the appeal. They are:-

*"1. Having regard to the facts and circumstance of this case,*

*was the trial Judge not right in holding that the 4 year term of office of the 1st Respondent as Governor of Kogi State commenced from the date he assumed office after taking the Oath of Allegiance and Oath of Office based on the re-run election conducted on 29th March, 2008.*

*2. Was the learned trial Judge not right in holding that the amendment to Section 180 of the 1999 Constitution which came into force in July 2010 could not be made applicable retrospectively to the position of the 1st Respondent who was elected on 29th March, 2008 into the office of the Governor of Adamawa State under the 1999 Constitution.”*

CA/A/118/2011: INEC v. ALHAJI A.M. WAMAKKO AND ANR. In the Appellant's brief filed on the 18/3/2011, two (2) issues were distilled by H.M. Liman, Esq. from the grounds of appeal for determination at page 7 as follows:-

*‘(i) Whether the learned trial judge was not wrong when he held that the period during which the 1st Respondent occupied the office of Governor of a State following his initial swearing-in should not be contemplated in computing the period of four (4) years the 1st Respondent is constitutionally required to occupy the office of Governor and by implication effectively nullified the Oath of office previously taken. [Distilled from Ground One, of the Notice of Appeal].*

*(ii) Whether the learned trial judge did not misapply the decision of the Supreme Court of Nigeria in PETER OBI v. INEC & ORS. (2007) 11 NWLR (part 1046) 565 when he held the tenure of office of the 1st Respondent of four (4) years does not include the period expended in office from the 29th day of May, 2007 before his initial election was set aside.”*

The 1st Respondent's brief, settled by Mr. S.I. Ameh, SAN was filed on the 1/4/2011 at page 4, the following two (2) issues are said to arise for decision by the Court. They are:-

*“(i) Whether by virtue of Section 180(1)(a) and 2(a) of the Constitution of the Federal Republic of Nigeria 1999, the duration or term of office of the Plaintiff as the Governor of Sokoto State will not be seen to have commenced from 28th May, 2008 when he took a fresh oath of office and allegiance.*

*(ii) Whether the amendment of Section 180 of the Constitu-*

*tion of the Federal Republic of Nigeria 1999 (as amended) will apply to the tenure of the Plaintiff as Governor of sokoto state, the Plaintiff having not been elected and/or having not subscribed to oaths of allegiance and office under the Constitution of the Federal Republic of Nigeria 1999 (as amended). ”*

<sup>B</sup> The 2nd Respondent’s brief was settled by Chief Olusola Oke Esq. and it was filed on the 30/3/2011. Two issues were said to arise for determination in the appeal at pages 7-8 as follows:-

<sup>C</sup> *“(i) Whether the learned trial Court was not right when it held that the Oath of allegiance and Oath of office taken by the 1st Respondent based on the Governorship Election of 14th April 2007 subsequently nullified by the Court of Appeal cannot be a point of reference or baseline for calculating the four year term of office of the 1st Respondent so as to make his term of office terminate earlier than four year from 28th of April 2008 when he took fresh Oath of Allegiance and Oath of Office based on the fresh election conducted on 11th April, 2008.*

<sup>E</sup> *(ii) Whether the learned trial Judge misapplied the Supreme Court decision in OBI v. INEC when he held “having had the opportunity to read the above cases, and others cited by the parties, I believe that the case of OBI v. INEC (supra) in which the Supreme Court interpreted the provision of Section 180(2) of the 1999 Constitution, is relevant to the determination of the issues relating to the tenure of the Plaintiff.”* CA/A/119/2011: INEC v. CHIEF TIMIPRE SYLVA AND 4 ORS’ Dr. O. Ikpeant, OON, SAN in the Appellant’s brief filed on 17/3/2011 at pages 3-4, set out three (3) issues which he said call for decision by the Court in the appeal.

They are:-

<sup>G</sup> “1. Was the learned trial Judge wrong when he held that the period daring which the 1st Respondent occupied the office of Governor of a State following his initial swearing-in should not be contemplated in computing the period of four (4) years the 1st Respondent is constitutionally required to occupy the office of Governor?  
<sup>H</sup> [GROUNDS I and II].

2. Did the learned trial Judge not misapply the decision of the Supreme Court of Nigeria in PETER OBI v. INEC & ORS (2007) II NWLR (Part 1046) 565 in holding that the 1st Respondent’s tenure of four (4) years shall not include the period he served as Governor

before his initial election was set aside?  
(ROUND II (wrongly numbered)).

3. Was the learned trial judge wrong in holding that the nullification of the election of the 1st Respondent by the Court of Appeal effectively nullified the Oath of office previously taken by him? (GROUND III). B

The 1st - 3rd Respondents' brief was filed on 30/3/2011 but deemed on 31/3/2011 and at pages 2-3, two (2) issues were submitted for determination in the appeal. They are thus:-

*"(i) Whether the four years prescribed in section 180(2) of the Constitution is an absolute and rigidly fixed period of four years running continuously during the time a person is in occupation of the office of Governor of a State, whether de jure or de facto, and terminating at the expiration of four years.* C

*This ground arises from the 1st ground and the two grounds which have been tagged as ground II contained in the Notice of Appeal.* D

*(ii) Whether the base-line from which the four-year term of the 1st Respondent is to be calculated is the date of his first swearing-in or the date of his second swearing-in following his election in the re-run. This issue arises from ground three in the Notice of Appeal."* E

The brief was prepared by Prof. Ben Nwabueze, SAN in collaboration with Chief Ladi Williams, SAN and Mutiu Ganiyu, Esq. The 4th Respondent in the appeal did not file a brief. F

The 5th Respondent's brief was filed on the 29/3/2011 and at page 5, Chief O. Oke, Esq. who settled it, said two (2) issues require decision in the appeal. They are as follows:-

*"(1) Whether the trial Court was not right in holding that the nullification of the election of the 1st Respondent effectively terminated the Oath of Allegiance and Oath of Office based in it and that the period of his de facto occupation of the office of Governor based on the nullified election shall not be taken into reckoning for the purpose of calculating his four year term of office under Section 180 of 1999 Constitution.* H

*(2) Whether the learned trial judge misapplied the Supreme Court decision in OBI v. INEC when he held 'having had the opportunity to read the above cases, and others cited by the parties, I believe that the case of OBI v. INEC (supra) in which the Supreme*

*Court interpreted the provision of Section 180(2) of the 1999 Constitution, is relevant to the determination of the issues relating to the tenures of the Plaintiff's."*

Now, even a cursory but calm reading of all the issues raised by the respective learned Counsel in the above appeals would easily show that they are materially the same in substance, the only differences being in the individual styles employed or used in their formulation by the learned Counsel. It can also be observed without difficulty that the issues in the appeals are primarily the same with the issues raised by the learned Counsel for the parties in the Appeal No. CA/A/117/2011 above, which I had earlier on set out. CA/A/128/2011: ATTORNEY-GENERAL OF THE FEDERATION v. INEC AND 4 ORS.

This appeal as stated at the beginning of this judgment was also consolidated with the above appeals and heard on the same date; the 7/4/2011. In the Appellant's brief settled by Mr. Lorenzo Omo-Aligbe, Esq., and filed on 25/3/2011, two issues were distilled from the grounds of the appeal for decision by the Court. They are at page 2 and as follows:-

- "(1) *Given the entire facts and circumstances of the case, whether or not the learned trial judge was right to have held that the term of office of the Governor of Bayelsa state would expire on March 29, 2012. (Framed from grounds 1 and 2 of the grounds of appeal).*
- (2) *Whether or not the learned trial Judge was right to have held that the 1st alteration to the 1999 Constitution is not binding on the Governor of Bayelsa State (Framed from ground 3 of the grounds of appeal)."*

The 2nd set of Respondents to the appeal had filed a notice of preliminary objection on 28/3/11 which was argued at page 2 of the 2nd set of Respondents' brief of argument filed and deemed on the 30/3/2011. Two issues were in the alternative submitted for determination in the appeal at page 3 thus:-

- "(i) *whether the constitution of the Federal Republic of Nigeria (First Alteration) Act 2010 applies to the term of office of the 1st Respondent as Governor of Bayelsa State. This issue arises from ground 3 contained in the Notice of Appeal.*

(ii) *whether the four years prescribed in section 180(2) of the Constitution is an absolute and rigidly fixed period of four years run-*

*ning continuously during the time a person is in occupation of the office of Governor of a State, whether de jure or de facto, and terminating at the expiration of four years. This issue arises from Grounds 1 and 2 contained in Notice and Grounds of Appeal”*

The 2nd Respondent’s brief (PDP’s) was filed on 30/3/2011 and at page 5, the following two (2) issues were formulated by Chief O. Oke, Esq., for determination in the appeal:-

“(1) Given the entire facts and circumstances of the case, whether the learned trial judge was not right to have held that the term of office of the Governor of Bayelsa State would expire on May 29, 2012 commencing from 29th of May 2008 when he subscribed to Oath of Allegiance and Oath of Office based on the fresh election of 25/5/08.

(2) Whether or not the learned trial judge was right to have held that the first alteration to the 1999 Constitution is not applicable to the case of the 1st Respondent have come into force after the election and inauguration of the said 1st Respondent on 29th May 2008.

The 1st Respondent; INEC did not file a brief of argument in the appeal.

Once more, it is apparent and evident too, that the issues raised by the learned Counsel in this appeal are essentially and substantially the same with the ones raised in all the other appeals listed above.

I would deal with the preliminary objection raised in the appeal before returning to the other appeals. The preliminary objection notice of which as indicated earlier was filed on 28/3/2011 is to the effect that this Court has no jurisdiction to entertain and determine the appeal. The two grounds of the objection set out on the face of the notice are:-

*“1. That the Appellant lacks locus Standi to invoke the jurisdiction of this Honourable Court, having applied at the trial Court to be struck off the suit and duly struck off,*

*2. The appeal constitutes an abuse of the process of this Honourable Court.”*

At the hearing of the appeal, Chief Ladi Williams, SAN leading other Counsel for the 2nd set of Respondents had adopted the arguments canvassed at page 2 of their brief in respect of the preliminary objection and urged us to uphold same. He also abandoned the

notice of preliminary objection filed on the 23/3/2011. For being abandoned, the said notice of preliminary objection is hereby struck out.

In the submissions on the preliminary objections, it was contended that the Appellant having been struck out of the suit by the Federal High Court, cannot file an appeal against the decision by that court delivered on the 23/2/2011. Pages 365-367 of the record of the appeal were referred as containing the ruling of the Federal High Court where the Appellant's application was granted for striking him out of the suits. It was further argued that since the Appellant's name was struck out of the suits, he could only appeal as an interested party with the leave of either this Court or the Federal High Court.

***I have not seen any record of a response or reaction by way of an Appellant's Reply brief from the Appellant. In other words, the Appellant did not file a Reply brief to react, respond or answer the objection raised by the 2nd set of the Respondents. The legal consequence of the choice or failure to answer points in a brief of argument by the party affected is now elementary. In law such a party is deemed to have no answer to and therefore has conceded to the points.*** See: OKONGWU v. NNPC (1989) 4 NWLR 115. OKOYE v. N.C. & F CO. LTD. (1991) 6 NWLR (199) 501. AYOLOGU v. AGU (1998) 1 NWLR (532) 129. AKANBI v. ALATEDE (2000) FWLR (11) 1928.

However the question I ask myself is; Do I merely on the basis that the Appellant has no answer to the preliminary objection, uphold same?

The law does not allow or permit me to do so as a matter of course on the sound reasoning that the objection is to succeed on its merit and not on the mere absence of an answer or response in a Reply brief. See AGBABIKA v. OKOJIE (2004) 15 NWLR (897) 503 at 522. For that reason, I would consider the objection on its merit to see and find if it is worthy of success. As seen above, the primary ground of the objection is that the Appellant had been struck out of the consolidated suits from which this appeal and the others emanated on his own application. In effect, the objection is that the Appellant was not a party to the suits in which the Federal High Court delivered judgment on the 23/2/2011. Pages 365-7 of the record were referred in the submissions in support of the objection. I have

seen page 366 of the record of appeal where in its judgment the Federal High Court had stated thus:-

“But if in spite of all these, the 1st Defendant is asking this Court to strike out its name from the suit, I am obliged to accede to his demand. This is because although the 1st Defendant is a desirable party, he is not a necessary party, given the fact that INEC, the 2nd Defendant in this suit whose activity is being challenged is ably represented by a Counsel of its choice who is capable of defending the action against it without the presence of the Attorney- General of the Federation. I am also satisfied that the suit can be effectively and completely determined without the presence of the Attorney-General of the Federation. B C

Accordingly I accede to the prayer of the 1st Defendant in suit No. FHC/ABJ/CS/650/2010 by striking out his name from the suit. So the 1st and 2nd grounds of objection succeed. D

It is clear that in the above portion of its judgment, the Federal High Court had struck out the name of the Appellant herein in Suit No. FHC/ABJ/CS/650/2010. However the Federal High Court later at page 367 of the record had observed as follows:-

*“But I do not lose sight of the fact that the Attorney-General of the Federation remains a party in one of the consolidated suits i.e. Suit No. FHC/ABJ/CS/651/2010 where he is made the 2nd Defendant”* E

***By the above statement, it is clear that though the Appellant’s name was struck out in Suit No. FHC/ABJ/CS/650/2010, the Appellant had remained a party in the Suit No. FHC/ABJ/CS/651/2010 up to judgment. I have at the early stage, of this judgment stated why the courts adopted the practice of consolidation of suits and the principle of law that suits consolidated do not lose their distinct and separate identities by the fact of the consolidation. Such suits retain their identities for the purposes of hearing and determination. That is why it is necessary at the hearing of the suits, learned Counsel representing the parties in each of the suits would have to address or adopt written addresses in respect of each of the suits separately. That was what happened at the hearing of the consolidated suits at the Federal High Court and, from the extract of the judgment set out above, the Appellant had initially and up*** F G H

**to judgment remained a party in the Suit No. FHC/ABJ/651/2010. By the Appellant's notice of appeal which appears at pages 416-419 of the record of appeal, the Appellant being dissatisfied with the decision of the Federal High Court in Suit No. FHC/ABJ/651/2010 as a party, has brought the present appeal. Since the Appellant was evidently a party in the named Suit, he does not require leave to appeal against the final decision of Federal High Court sitting as a trial court. It also needs to be pointed out that the Appellant's name was not struck out of the consolidated suits but out of Suit No. FHC/ABJ/650/2010 alone as borne out by the extract of the Federal High Court judgment at page 366 quoted above.**

For the above reason, I find no merit in the preliminary objection by the 2nd set of the Respondents and it is hereby dismissed.

Perhaps I should also decide the preliminary objection raised in Appeal No. CA/A/115/2011: INEC v. ALHAJI I. IDRIS & ANOR. The Notice of the objection was filed by the 1st Respondent on the 1/4/2011 and it is to the effect that the appeal is incompetent. The grounds of the objection are 13 in number and set out on the face of the notice as follows:-

*"1. The Appellant is an independent body whose neutrality should not be in doubt at any stage of the proceedings;*

*2. The Appellant lacks the locus standi to commence this appeal;*

*3. The Appellant ought not to appeal against the decision of the lower court;*

*4. The right of appeal by the Appellant is circumscribed by the provision of the Electoral Act on neutrality;*

*5. The Appellant cannot be seen as taking side with any of the parties to the suit;*

*6. The Appellant is neither prejudiced nor suffer any injury by the judgment of the lower court;*

*7. Ground three of the Notice of Appeal is incompetent;*

*8. Omnibus ground of appeal cannot be used to raise an issue of law as the Appellant did;*

*9. The Appellant formulated issues for determination in omnibus. Issues did not flow from nor related to or linked with any ground of appeal;*

*10. Issue 3 formulated for determination by the Appellant has no bearing with any of the three Grounds of appeal in the Notice of Appeal filed by the Appellant;*

*11. The omnibus ground of appeal is deemed abandoned there being no issue formulated thereof by the Appellant hence ought to be struck out;* B

*12. The notice of appeal dated the 2nd day of March, 2011 is incompetent for being signed by proxy; and*

*13. This court lacks jurisdiction to entertain an incompetent Notice of Appeal.”* C

The objection was argued at pages 3-22 of the 1st Respondent amended brief filed on 5/4/2011 but deemed on the date of hearing. The Appellant had reacted to the objection in the Appellant's Reply to the 1st Respondent's brief filed on 6/4/11 but deemed on hearing date; the 7/4/2011. The arguments in support and against the objection were adopted at the hearing by the learned Senior Counsel for the parties, Akubo, SAN and A.B. Mahmoud, SAN respectively.

In brief the submissions in support of the objection are to the effect that the Appellant lacks the locus Standi to appeal against the decision of the Federal High Court because it has no interest and suffered no injuries in the issues decided being an independent body. E

The cases of EKE v. MILITARY ADMINISTRATOR OF IMO STATE (2002) 13 NWLR (1052) 531 at 550, UBA PLC v. BTL INDUSTRIES LTD. (2004) 18 NWLR (904) 180, A.G.AKWA IBOM STATE v. ESSIEN (2004) 7 NWLR (872) 288 at 321, INEC v. OSHIOMOLE (2009) 4 NWLR (1132) 607 at 604-5 and AGAGU v. MIMIKO (2009) 7 NWLR (1140) 342 at 441 among others cited on locus Standi and interest or injuries on the Appellant by the decision of the Federal High Court in respect of when the appeal was filed. We were urged to dismiss the appeal on the simple ground that the Appellant does not have locus Standi to bring the appeal. F

Furthermore, it was contended that the ground Two on the notice of appeal offends Order 6, Rule 2(3) of Court of Appeal Rules, 2007 in that all the particulars under it are argumentative and/or conclusions thereby rendering the ground incompetent. Relying on DURUJI v. AZIE (1992) 7 NWLR (250) 688 at 696. We were urged to strike out the issues (ii) and (iii) on account of being distilled from G H

an incompetent ground.

In addition, ground Three of the appeal is said to be neither omnibus nor a ground alleging error in law as it is bereft of particulars of such error. On the authority of *DIKIBO v. IBALAYA* (2006) 16 NWLR (1006) 563 at 573 and *B.C.C.T. v. D. STEPHENS IND. LTD.* B (1992) 3 NWLR (232) 784 as well as Order 6, Rule 2(2) and (3) of the Court of Appeal Rules, 2007, we were invited to hold that the ground is competent for lacking in particulars and being vague, in general terms and disclosing no reasonable ground of appeal. It was C also argued that none of the 3 issues raised by the Appellant covers ground 3 and so it is in law deemed abandoned. Inter alia, the case of *UDOAKA v. ASUQUO* (2008) 9 NWLR (1091) 15 was cited on the point. It was the further argument by the 1st Respondent that if ground 3 was an omnibus ground, then it cannot be used to raise an D issue of law, citing *BEN v. STATE* (2006) 16 NWLR (1006) 582 at 602. Ground 3 was also said to question the evaluation of evidence adduced and so a ground of fact and reliance was placed on *MAIGORO v. GARBA* (1999) 10 NWLR (624) 568. Not done yet, it was submitted that none of the issues for determination formulated E by the Appellant relates to any of the grounds of appeal and so incompetent and that all arguments proffered in their support should be discountenanced. Cases were cited in support of the submission.

Next it was contended that the notice of appeal offends Order F 6, Rule 2(l) of Court of Appeal Rules, 2007 for not stating the addresses of the parties directly affected by the appeal and so is incompetent since the rules of court must be obeyed. A number of cases including *AGALA v. OKOSUN* (2010) 10 NWLR (1202) 412 at 440 were cited.

G Furthermore, the notice of appeal was said to have been signed by an unnamed proxy for and on behalf of A.B. Mahmoud, SAN, CON, FCL Arb., which is not allowed in law and renders it incompetent. The case of *A.C. v. KAIGAMA* (2008) 8 NWLR (1088) 165 at 179 and others were cited on the submission in which Sections 2(1) H and 24 of the Legal Practitioners Act were referred to. In conclusion, we were urged to strike out the appeal for want of locus Standi on part of the Appellant and incompetence of the notice and grounds of appeal.

In response, the Appellant has submitted that the argument by

the 1st Respondent on the lack of locus Standi by the Appellant to bring the appeal are in the least preposterous since the Appellant was sued in the Federal High Court by the 1st Respondent who now says it has no right to appeal in the case. It was pointed out that the right of appeal is constitutional and it is nowhere stated that a statutory body cannot appeal against a decision given against it. The Appellant as a Statutory body is said to have an interest in the correct interpretation of the Constitution especially where it has a direct bearing on its statutory functions. Being the principal and not a nominal party in the Suit filed by the 1st Respondent at the Federal High Court, it was argued, the 1st Respondent cannot say that Appellant cannot appeal. The case of OSHIOMHOLE was said to be inapplicable because the facts are different and the passage referred to was quoted out of context.

On the competence of the grounds of appeal, it was submitted for the Appellant that the arguments in Paragraphs 2.21, 2.22, 2.23 and 2.4 of the 1st Respondent's amended brief are incompetent as they do not relate to the ground complained of in the notice of preliminary objection. We were urged to strike them out. After reference to Order 2, Rule 3 of the Court of Appeal Rules, 2007, it was submitted that ground Two is specific in its complaint, clear in particulars and not vague or in general terms. Further that a ground cannot be struck out merely because it is inelegant because the essence of a ground is to give notice of the error complained of against the judgment appealed from to the Respondent to enable him know what to meet at the appeal. Cases of: ATUYEYE v. ASHAMU (1981) 1 NWLR (49) 267 at 282 and UBA v. ACHORU (1990) 21 NSCC (111) 351 at 370 were cited. It was admitted by the learned Senior Counsel for the Appellant that ground 3 of the notice of appeal intended as an omnibus ground, was not properly framed and that the issues do not touch on it. The ground was accordingly abandoned. It is hereby struck out.

***However it was argued that the issue 1 relates to ground one while issues 2 and 3 relate to ground 2 and we were urged to reject the arguments in Paragraphs 2.34, 2.35 and 2.36 of the 1st Respondent amended brief. Let me quickly deal with the statement by the learned SAN for the Appellant that his Issues 2 and 3 relate to ground of appeal 2. In effect what he***

**is saying is that his issues 2 and 3 were distilled from ground 2. Well, it should be remembered that the established principle of law on practice in the appellate courts is that while an issue can be distilled and formulated from more than one ground of appeal, more than one issue cannot be raised from a single ground of appeal. In other words, a single ground of appeal cannot be used to formulate more issues than one as that would amount to proliferation of issues which is not permitted but deprecated by the courts.** See: IBRAHIM v. OJOMO (2004) 1 SC, (Pt. II) L36. OMEGA BANK NIG. PLC. v. O.B.C. LTD. (2005) 1 SC. (Pt. D 49, NIGERIAN NAVY v. GARRICK (2006) ALL FWLR (315) 45. NWAIGBE v. OKERE (2008) 9 MJSC. 86. For being proliferated, issues 2 and 3 of the Appellant are liable to be and are hereby struck out.

D That leaves the Appellant's ground two without an issue properly distilled from it and therefore deemed abandoned. See: J.E. ELUKPO & SONS LTD. v. F.H.A. (1991) 3 NWLR (179) 322, EJURA v. IDRIS (2006) ALL FWLR (318) 646.

The said ground two for being abandoned is struck out.

E The learned SAN for the Appellant had also admitted that though the names of the parties to the appeal were set out on the notice of appeal, the addresses were not provided but argued that because the parties were the parties before the Federal High Court and no other party was added and that the addresses were provided

F on the next page to the notice of appeal, it is minor irregularity. The authorities cited by the learned SAN for the 1st Respondent on the point are said not to be applicable and that rules of court though to be obeyed, ought to be interpreted in accord with common sense.

G Learned SAN for the Appellant then pointed out that a notice of appeal dated 23/3/2011 and filed on the 25/3/2011 was signed 'by him personally and seeks to abandon the notice of appeal dated and filed on the 2/3/2011. He said that the appeal should be deemed to have been argued on the basis of the notice of appeal filed on 23/3/2011 and finally that rules of court are made to serve or aid the attainment of justice, citing the statement in the case of UTC (NIG.) LTD. v. PAMOTEI & ORS. (1989) 2 NWLR (103) 244 at 270.

H It may be recalled that the Appellant's ground 3 for being expressly abandoned and ground 2 for being deemed abandoned were

struck out. The Appellant's notice of appeal filed on 25/3/2011 contains three (3) grounds in all and with grounds 2 and 3 out, only ground one remains.

On the absence of the addresses of the persons directly affected by the appeal on the notice of appeal, I am in agreement with the learned SAN for the Appellant that the primary purpose of a notice of appeal is to give adequate notice and information to a Respondent or Respondents of what the grievance or complaint is against the decision of a lower court so as to enable it know what to meet at the appeal. The learned Senior Counsel for the 1st Respondent has not suggested that the absence of the address for service on the 1st Respondent had prevented him from knowing what he was to meet at this appeal. Even though it was not expressly stated, the 1st Respondent must have been notified or adequately informed of the notice of appeal for him to have briefed the learned Senior Counsel to represent him at the appeal and react or respond to it as required by the Rules of Court. Of course, as a matter of general practice, rules of court are meant to be obeyed but to read the rules in the absolute in situations as the present one, where a noncompliance with them is not shown to have occasioned any of the parties any real prejudice in the presentation of their case, would be making the rules master of the courts rather than the hand helps that they are intended to be to the courts in their primary duty of deciding disputes on the merit. Since the addresses were provided on the page after the notice and the 1st Respondent has not been demonstrated to be in any doubt and is not taken by surprise about what he was to meet at the appeal, I am prepared to consider the omission to set out the addresses on the pages of the notice of appeal as a simple and mere irregularity which does not affect the validity of the notice of appeal.

It is condonable and I do condone it by finding that it does not affect the competence of the notice of appeal.

As may be realized, the wind has been taken out of the 1st Respondent's argument on the proxy signing of the notice of appeal filed on 2/3/2011 by its being abandoned and struck out.

The same thing applies to the arguments on grounds two and three which have been abandoned and struck out.

Now to the main ground of the objection which is that the

Appellant lacks the locus Standi to bring the appeal.

This ground of the objection, is as aptly described by the learned SAN for the Appellant, in the least preposterous.

The 1st Respondent had dragged the Appellant to the Federal High Court vide a suit in which he sought reliefs against the Appellant among which was an injunction to stop it from carrying out or performing the primary or principal Statutory duties or function for which it was established under Section 153(1)(f) of the 1999 Constitution. The 1st Respondent got all the reliefs he sought from the Federal High Court against the Appellant and he now says the Appellant has no interest to protect or did not suffer any injury from the decision of the Federal High Court to have the requisite legal standing to bring this appeal against that decision. Wonders, it is said, shall never end. It is indeed very curious that a principal party to a suit and against whom a decision was given in the suit, who was vested with the right of appeal by the combined effect of Sections 241(1)(a) and 243(a) of the Constitution to appeal to this Court, can now be said by the very party that dragged it to the trial court, not to have the competence to exercise the constitutional right to appeal.

It did not occur to the 1st Respondent that the Appellant is an independent body that is supposed to be an impartial umpire in the discharge of its Statutory functions and duties when he dragged it to the Federal High Court. No, it is that the Appellant was such a body that possesses only the legal capacity to be sued at trial courts and to defend itself in the suits, but it lacks the same capacity to exercise the right of appeal against a decision in such suits with which it was dissatisfied for phantom reasons that can only avail in wonderland.

I have no difficulty whatsoever in rejecting the rather insipid and impotent reasoning of the 1st Respondent which defies perspicacity and discernment on the locus Standi of the Appellant to bring the appeal.

The learned Senior Counsel for the Appellant is right and I completely agree with him that it does not lie in the mouth of the 1st Respondent to say the Appellant cannot appeal against the decision of the Federal High Court which directly affected it, as the principal party in the case. In the result, the ground of the objection fails for lacking in merit and is dismissed. For the avoidance of doubt, the Appellant has the requisite locus Standi to bring the appeal against

the 1st Respondent in particular.

Over all, the Appellant's notice of appeal is a competent one since it contains the balance of the ground one which now remains alone as a valid ground. In addition, the Issue 1 contained in the Appellant's brief undoubtedly enures (sic) from the said ground 1, making both competent in the appeal. Consequently, only arguments contained in the learned Counsel's respective briefs would be relevant for consideration in the appeal. B

Having determined the preliminary objections in the appeals, I now return to the issues raised in all of them. I have stated earlier that the crucial issues in the appeal are essentially the same and the submissions by the Appellants in all the appeals as well as the submissions by the learned Counsel for the respective Respondents to the appeals are materially the same on the issues. In brief, while the Appellants maintained that the Oaths of Allegiance and Oaths of office taken by each of the 1st Respondents to the appeal in respect of the election which was nullified was to be used to compute their tenure of office, the Respondents on their part insist that the Oaths taken after the re-run election was the applicable point of the commencement of the tenure. C  
D  
E

Similarly, while the Appellants had said that the amendment of Section 180(2)(a) of the 1999 Constitution applies to the 1st Respondent's tenure, the 1st Respondents have contended that the amendment does not apply to them because there is no express provision therein that it has retrospective effect. These are the germane issues which arise for determination in all these appeals and which I have effectively, completely and finally decided in Appeal No. CA/A/117/2011: INEC v. ADMIRAL MURTALA NYAKO (GOVERNOR OF ADAMAWA STATE) & ANR above. It would not serve any practical and meaningful purpose for me to individually merely repeat to all the said submissions by the learned Counsel for the parties and my determination and reasoning in the appeals. It suffices for me in law to make pronouncement in each of the appeals in respect of the issues which I have already decided. F  
G  
H

Accordingly, for the reasons which I set out in the appeal No. CA/A/117/2011, I hold that the nullification of the April, 2007 election of each of the 1st Respondent in the appeals No. CA/A/113/2011, CA/A/115/2011, CA/A/118/2011, and CA/A/119/2011 also

nullified the oaths of office taken by each of them pursuant to that election.

I also hold that the oaths subscribed to by each of the 1st Respondents in the appeal pursuant to their election in the re-run elections conducted in their respective States were the oaths of office and of allegiance taken by them as persons first elected as Governors under the Constitution. Put another way, the four (4) year tenure of each of the 1st Respondent shall be computed from the date on which he took the oath of Allegiance and oath of Office pursuant to the re-run elections conducted in each of the States.

Furthermore, it is also my finding for the same reasons as set out in the earlier appeal, that in the absence of express provisions in the Constitution of the Federal Republic of Nigeria (First Alteration) Act, 2010; it does not operate retrospectively so as to apply to the re-run elections of the 1st Respondents in each of the appeals and the oath of Allegiance and oath of Office taken by each of them in May, 2008.

The Appeal No. CA/A/128/2011 by the A.G. FEDERATION v. INEC, as can clearly be seen from the issues raised therein which I have set out before now, have been effectively determined too by the above findings in the sister appeals. It is also my finding for the same reasons as stated in Appeal No. CA/A/117/2011 that the Federal High Court was right in holding that the 2010 amendment of the 1999 Constitution did not apply and as not applicable to the re-run election of the 1st of the 2nd set of Respondents in the appeal. Consequently the term of office of the 1st of the 2nd set of Respondents as Governor commenced when he took the oath of Allegiance and oath of Office after the re-run election in 2008.

In the final result, for the reasons which were stated for each of the appeals, I find no merit in the Appeals Nos. CA/A/113/2011, CA/A/115/2011, CA/A/118/2011, and CA/A/119/2011 and CA/A/128/2011. Each of them fails and is accordingly dismissed by me. The decision of the Federal High Court Abuja delivered on the 23/2/2011 in the consolidated suits from which all the appeal arose, is hereby affirmed.

Parties are to beat their respective costs of prosecuting the appeals in this Court.

**GALINJE JCA**

I have read in draft before now the judgment just delivered by my learned brother, Garba JCA in the consolidated appeals which numbers I have enumerated above. My learned brother has carefully and methodically considered the issues raised by parties for determination of these appeals. I entirely agree with the reasoning contained in the lead judgment and the conclusion arrived thereat. All the appeals emanate from the judgment of the Federal High Court which was delivered on the 23rd February 2011, by Bello J. The facts of the case that led to the various appeals are simple and straight forward, and same have been well articulated in the lead judgment. B  
C

On the 14th day of April 2007, gubernatorial elections were conducted in all the States of the Federal Republic of Nigeria by the Independent National Electoral Commission (INEC). At different dates in 2008, the gubernatorial elections in Adamawa, Bayelsa, cross River, Kogi and Sokoto States were annulled by the Court of Appeal and fresh elections were ordered. At the conclusion of the fresh elections, the governors whose elections were nullified were declared winners and returned elected. D  
E

The INEC, a body charged with the responsibility of conducting national elections in Nigeria sometimes towards the end of last year published in the newspaper that elections would be conducted in those states where fresh elections were held in January 2011. After the publication, INEC commenced preparations to conduct the elections. F

The governors of the various states aforementioned, by originating summons, separately filed, challenged the decision of INEC at the Federal High court. These cases were consolidated and heard together. In a reserved and considered judgment delivered on the 23rd February 2011, Bello J, upheld the claims of their Excellencies. G

The various appeals by INEC and one by the Hon. Attorney General of the Federation are against that decision. Having read through the briefs of argument submitted in these appeals, I am of the firm view that the only issues calling for determination of the various appeals are as follows:- H

*“1- Whether the amendment to section 180 of the 1999 con-*

*stitution of the Federal Republic of Nigeria which came into force in July 2010 could apply retrospectively to limit the tenure of the governors who were elected in re-run election in 2008.*

*2. whether the 4 year tenure of the five governors commenced in 2007 or 2008 when they were sworn in after the re-run election.*

B *On the first issue, the learned trial judge considered several authorities and concluded thus:-*

C *“By a global view ...of all the authorities cited above, it is incontestable that the “CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA (FIRST ALTERATION) Act 2010 which came into force on the 16th of July, 2010 cannot and does not apply retrospectively to affect the re-run erections of all the plaintiffs in the consolidated suits which took place in 2008.”*

D I entirely agree with the learned trial judge that the constitution like any other statutes cannot operates retrospectively. The Supreme Court per Nnaemeka-Agu JSC in *OLANIYI V. AROYEHUN* (1991) 5 NWLR (Pt. 194) 652 at ... paragraph B -C said:-

E *“A constitution like other statutes operates prospectively and not retrospectively unless it is expressly provided to be otherwise. Such legislation affects only rights which come into existence after it has been passed. See OMOGODO v. THE STATE (1981) 5 SC 5, A.G. FEDERATION V. ANPP (2003) 15 NWLR (pt.844) 667; HON. CHIGOZIE EZE & 147 ORS V. GOVERNOR OF ABIA STATE & 2 ORS (2011) 15 NWLR (PT.1216) 324.*

F Section 190 of the 1999 constitution was amended by inserting paragraph (2A) which reads as follows:-

G *“(2A) in the determination of the four year term, where a re-run election has taken place and the person earlier sworn-in wins the re-run erection, the time spent in office before the date the election was annulled shall be taken into account.”*

H The date of the commencement of the new paragraph to section 180 of the Constitution is 16th of July, 2010. The re-run election which were won by the Governors affected in the consolidated appeals were conducted in 2008, and the oath of office and the oath of Allegiance were administered on them in the same year. From the authorities I have made reference to, herein above, the amendment to section 180 above does not apply.

On the 2nd issue, the reference point is section 180 (1) and

(2) of the 1999 Constitution of the Federal Republic of Nigeria which provides as follows:-

*“(1) subject to the provisions of this constitution, a person shall hold the office of Governor of a State until:-*

*(a) When his successor in office takes the oath of office; or He dies whilst holding such office or the date when his resignation from office takes effect; or* B

*(d) He otherwise ceases to hold office in accordance with the provisions of this Constitution.*

*(2) Subject to the provisions of subsection (1) of this section, the governor shall vacate his office at the expiration of a period of four years commencing from the date when;* C

*(3) In the case of a person first elected as governor under this Constitution, he took the Oath of Allegiance and Oath of Office;*

*(4) The person last elected to that office took the oath of Allegiance and oath of office or would, but for his death, have taken such Oaths.”*

Section 180 (2) of the Constitution has been interpreted in a number of decided cases, some of which were cited by parties in their respective brief as follows:- E

OBI V. INEC (2007) 11 NWLR (Pt.1046) 565; A.G. ANAMBRA STATE V. AG FEDERATION (2007) 12 NWLR (Pt.1046) 1; LODOJA V. INEC & 2 ORS (2007) 12 NWLR (Pt.1047) 119.

In OBI V. INEC (SUPRA) at page 684 paragraph C-F, the Supreme Court per Tabai JSC had this to said:- F

*“The oath taken by Dr. Chris Ngige cannot in any conceivable sense be taken to be that of the Appellant Dr. Chris Ngige’s election as Governor of Anambra state was nullified by the Election Petition Tribunal in August 2005. This nullification was upheld by the court of Appeal Enugu Division on the 15/3/2006, The effect of this nullification is that on Chris Ngige was never elected and sworn in as Governor of Anambra State, He cannot therefore be “a person first elected as Governor” within the meaning of Section 180 (2) (a) of the Constitution.* H

In my respectful view, it is the Appellant that comes within that provision. The consequence is that the Appellant as a person first elected as governor of Anambra State only vacates his office at the expiration of four years from the 17/3/2000 when he took his Oath

of Allegiance and Oath of Office.”

The elections that were conducted on the 14th of April 2007 in respect of which the governors took the oath of Allegiance and the oath of Office were nullified in 2008. The effect of that nullification is that there was no election at all. For this reason, they couldn't have been first elected. The election contemplated under Section 180 (2) (a) is an election conducted in accordance with the Constitution and the Electoral Act. The purport of the nullification of the election is that the election was not conducted in accordance with the law as such it was a nullity. This being so the oath that was administered on the 29/5/2007 was a nullity as it was not the contemplation of the Constitution to administer oath on a person who was not elected to the office for which the oath is provided. The governors of the various states involved in the consolidated appeals herein were therefore first elected as governors after re-run in 2008, and I entirely agree with the decision of the lower court that their respective 4 year term commenced from the date they took the Oath of Allegiance and the Oath of Office after their victory at the re-run elections.

For these reasons and the more elaborate reasons in the lead judgment of my learned brother, Garba JCA, I too dismiss all the appeals and endorse all the consequential (sic, orders) made therein.

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### **BADA JCA**

I had the opportunity of reading in draft, the lead Judgment just delivered by my learned brother, MOHAMMED LAWAL GARBA, JCA.

My Lord has dealt with all the issues arising for determination in these consolidated appeals in a very lucid form.

I agree with the reasons contained in the Judgment as well as the conclusion reached.

I however want to make some comments by way of emphasis on the interpretation of the Provisions of Section 180(2) of the 1999 Constitution of the Federal Republic of Nigeria upon which consolidated Appeal revolves around.

The Appellant in these appeals contended that the reference point for calculating the 4 year term of the Respondent Governors should be from the time they were in occupation of the offices of Governors of their respective states based upon their initial election

before the annulments.

On the other hand the Respondent Governors are contending that their tenure as stipulated under Section 180(2) of the 1999 Constitution of the Federal Republic of Nigeria must be calculated with reference to the oath of allegiance and oath of office which they took after the fresh election conducted by INEC pursuant to the nullification of the previous elections conducted in May 2007. B

The Provisions of section 180(1)(2) and (2A) of the 1999 Constitution of the Federal Republic of Nigeria states thus:-

*“180(1) subject to the provisions of this constitution, a person shall hold the office of Governor of a State until:-* C

*(a) when his successor in-office takes the oath of that office or*

*(b) he dies whilst holding such office;*

*(c) the date when his resignation from office takes effect; or*

*(d) the otherwise ceases to hold office in accordance with the Provisions of this constitution.* D

*(2) subject to the provisions of subsection (1) of this Section the Governor shall vacate his office at the expiration of period of four years commencing from the date when-*

*(a) in the case of a person first elected Governor under this constitution, he took the oath of allegiance and, oath of office; and* E

*(b) the person last elected to that office took the oath of allegiance and oath of office or would, but for his death, have taken such oaths.*

*(2A) In the determination of the four year term, where a re-run election has taken place and the person earlier sworn in wins the re-run election, the time spent in office before the date the election was annulled shall be taken into account.* F

It is a common ground to all the parties in these appeals that the elections for the office of Governor in the various States of the Respondent Governors held in April 2007 were nullified. As a result fresh Governorship Elections were held and the Respondent Governors in the consolidated appeals were elected and returned. They were subsequently sworn in on various dates. G

The pertinent question here is - What is the effect of the nullification of the Governorship Elections conducted in April 2007 with reference to the Respondent Governors in the consolidated appeals under consideration? H

My humble view is that as a result of the nullification of the April 2007 Elections of the Respondent Governors, the Oath of Office and the Oath of Allegiance taken by them on 29th May 2007 were rendered null and void. The Respondent Governors were deemed not to have held office as Governors in their various States prior to the time they were sworn in after re-run election conducted by the Appellant.

I am fortified in my view above by the decisions of the Supreme Court in the following cases:-

(1) Peter Obi vs. INEC (2007) 11 NWLR Part 1046 Page 565 at 683 Paragraphs C - D, where the Court held thus:-

*“The oath taken by Dr Chris Ngige as Governor of Anambra State was nullified by the Election Petition Tribunal in August 2005. The Nullification was upheld by the Court of Appeal Enugu Division on the 15/3/2006.*

*The effect of this nullification is that Dr. Chris Ngige was never elected and sworn in as Governor of Anambra State.”*

(2) In Labour Party v. INEC (2009) 6 NWLR Pt 1137 Page 315 at 337 the Supreme Court per Ogbuagu JSC considered legal consequence of a nullified election and the true meaning of a fresh election, and held as follows:-

*“In summary, as rightly submitted by the Respondent once an election is declared null and void the law regards whatever was purportedly done in the name of guise of an election as not having taken place at all. In the eyes of the law, the election is void ab initio and fresh election is conducted as if the earlier one did not take place at all.”*

(3) Also in Ayisa v. Akanji (1995) 7 NWLR Pt. 405 Page 129 at G 142, the Supreme Court held that:-

*“Once an act is declared to be a nullity following detection of fundamental vice as happened, here, it is with due respect null and void and it is as if that act has never taken place before. See - Skenconsult (Nig) Ltd, & Another v. Godwin Sekondi Ukey (1981) 1 S.C. Page 6 at 9, a case in which this Court cited with approval the case of Macfoy v. U.A.C. Ltd (1962) A.C. Page 152, a privy Council decision where Lord Denning said inter alia as follows:-*

*“If an act is void then it is in law a nullity. It is not only bad but incurably bad. There is no need for an order of the court to set it*

*aside. It is automatically bad without more ado, though it is sometimes convenient to have it declared to be so. And every proceeding, which is founded on it, is also bad and incurably bad. You cannot put something on nothing and expect it to stay there it will collapse."*

In view of the foregoing, the oath of office and oath of allegiance taken by the respective respondent governors in the appeals under consideration on the basis of 14th April 2007 Governorship Elections were null and void. B

Therefore, the oath of office to be taken into consideration in the computation of the respective Respondent Governors tenure in office remains the one taken after the re-run Governorship Elections in their various States. C

The above view was exemplified by the Supreme Court in the case of:-

Obi v. INEC (supra) page 644 paragraph A - G thus:- D

*"When the verdict of the Court of Appeal (Enugu Division) declaring the present Appellant as the rightful person to have been declared having won the Gubernatorial 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."* E

*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 16th of March 2006, and by force of law, that the Appellant (Peter obi) took his oath of allegiance and oath of office on the 17th of March 2006. Applying the Provisions of section 180(2) (a) of the constitution to facts of this case, which are not in dispute, the four year term of office of Peter Obi, as Governor of Anambra state would start running from the 17th of March 2006 only to terminate on the 17th of March 2010. To interpret the Provisions of section 180(2) (a) otherwise will be read into the subsection what the legislators never intended."* F

It is for the above reasons and fuller reasons in the lead Judgment that I too dismiss the appeals. H

I abide by the consequential orders made in the lead Judgment.

**NWODO JCA**

I have had the privilege to read in advance the lead judgment of my learned brother GARBA JCA, just delivered in this consolidated appeal. His - Lordship has fully stated the issues raised canvassed in the appellants brief of argument and the respective briefs filed by the Respondents on the consolidated appeal. The issues have been extensively considered and determine. I agree entirely with the reasoning contained therein and the conclusion arrived thereat. The court consolidated six appeals for hearing and determination, each of the appeals as listed above maintaining its own distinct features for the purpose of determination and decision.

In appeal CA/A/117/2011 the appellant distilled three Issues for determination from the grounds of appeal in their notice of appeal, the three Issues read thus:

*i. Whether the learned trial Judge was right in holding that the tenure of office of the 1st Respondent as Governor of Adamawa State commenced from the date he assumed office after taking the oath of Allegiance and the oath of office on 5th of April, 2008, after the re-run election conducted on 28th March, 2008.*

*ii. Whether the learned trial Judge was right in holding that the Amendment to Section 180 of the 1999 Constitution was inapplicable to the position of the 1st Respondent who was elected into office of Governor of Adamawa State under the 1999 Constitution prior to the 2010 amendment.*

*iii. Whether the learned trial Judge was right in holding that the Constitution as amended cannot apply retrospectively to affect rights which have been acquired under the 1999 Constitution prior to the amendment."*

Issues two and three have raised the question of whether the provision under S.180 2(a) of the Constitution as amended has a retrospective effect to apply to the case of the 1st Respondent.

I am of the firm view that if the intendment of the legislature is that the amendment to S.180 will be retrospective, it would have expressly stated so, the effect cannot be implied. The presumption is that an enactment has no retrospective effect unless it is expressly so stipulated.

Therefore, the right of the 1st Respondent under S.180 can-

not be interpreted under the provisions of the amended Constitution when the re-run election was conducted and he was returned as elected in 2008. The learned trial Judge rightly held that the Amendment is not retrospective.

The learned trial judge in construing the length of tenure of the Governor under S.180 (2) of the 1999 Constitution held that the express provisions in that section makes Oath of Allegiance and Oath of Office as the only reference point for calculating the four year tenure of a Governor of the state. The trial court also held that there is no provision under the Constitution that De facto occupation of the office and performance of executive functions should play any role in the computation of the tenure of a Governor.

Learned senior counsel A.B Mahmoud contended that the distinction between private and public rights is central to the consideration of the issues in this appeal because the distinction is important in the interpretation of the constitutional provisions dealing with tenure of Governor. The learned senior counsel submitted that in determining the tenure of office of Governor, all the constitution will be construed together in order to attain the “organic scheme of government” intended by the constitution, he referred to S.14(2) S178(1), S 180(1)(2).

The learned senior counsel made a fine distinction between public right and private right but the action instituted in the court below was against the appellant by the 1st respondent, the holder of the Office and not the office. The right to vote and be vote for is vested as a private right on any eligible citizen who is qualified under the Constitution to stand for election on any of the elective positions. The argument on private right and public right in my view is not of relevance to the question raised in this appeal.

The crux of this appeal is the interpretation of the words under S.180 2(a) of the 1999 constitution. This Section reads thus:

*“Subject to the provisions of subsection (1) of this section the Governor shall vacate his office at the expiration of a period of four years commencing from the date when-*

*(a) in the case of a person first elected as Governor under this Constitution, he took the Oath of Allegiance and oath of office And*  
*(b) the person last elected to that office took the Oath of Allegiance and oath of office or would, but for his death, have taken*

*such oaths.”*

The general principles guiding the interpretation of constitutional provisions are well settled in a catalogue of decided cases. In general the provisions in the constitution must never defeat the obvious ends the constitution was designed to serve. The interpretation must accord and be consistent with the words and sense of which

such provisions will serve to enforce and protect such ends.  
See Mohammed v. Olawunmi (1990) 2 NWLR (pt.133) 458; Ishola v. Ajiboye (1994) 6 NWLR (pt.352) 506; Adatayo v. Ademola (2010) All FWLR (pt.533) SC 1806

The Supreme Court has also held in A.G Lagos State v. A-G Federation that in interpreting the constitution, a narrow meaning should not be given to the words rather a wide and liberal interpretation unless there is express provision to the contrary. The duty of the courts in interpreting the provisions in a statute or constitution is to ascribe meaning that will give effect to the intention of the makers of the constitution. One must never forget that the makers of this constitution by the preamble are the people of this country, the courts as custodians of the constitution, the organic and fundamental law of our country are enjoined to give effect to the intention of the legislation and must avoid in the process of interpretation to promulgate a new law or to amend the constitution. In the construction of S 180 (2)(a) of the constitution one must read its provision in line with the provisions under S179 (1), S180(1) and S181 of the 1999 constitution. In other words the relevant provisions should be read jointly. See Ifezue v. Mbadugba 19844 1 SCNLR 427(84) SC, 79. For appreciation of argument, I will reproduce the aforesaid sections hereunder.

S179. *“A candidate for an election to the office of Governor of a State shall be deemed to have been duly elected to such office where, being the only candidate nominated for the election-*

*(a) he has a majority of YES votes over NO votes cast at the election; and*

*(b) he has not less than one- quarter of the votes cast at the election in each of at least two-thirds of all the local government areas in the State.*

*But where the only candidate fails to be elected in accordance with this subsection then there shall be fresh nominations.”*

S180. "Subject to the provisions of this Constitution, a person shall hold the office of Governor of the State until-

- (a) When his successor in office takes the oath of the office: or
- (b) He dies whilst holding such office; or
- (c) The date when his resignation from office takes effect; or
- (d) He otherwise ceases to hold office in accordance with the provision of this Constitution. B

2. Subject to the provisions of subsection (1) of this section the Governor shall vacate his office at the expiration of a period of four years commencing from the date when-

- (a) In the case of a person first elected as Governor under this Constitution, he took the Oath of Allegiance and oath of office; C
- And

- (c) The person last elected to that office took the oath of allegiance and oath of office or would, but for his death, have taken such oaths. D

The principal section on the tenure of a Governor is S 181 (2)(a) of the constitution. S180 (2) must be read subject to the provisions of S180(1) which must also be read in line with related provisions in the constitution. E

The words used in all the aforesaid sections are simple and unambiguous and must be read in the context in which it has been prescribed.

S 180(2)(a) of the constitution used the phrase "a person first elected". F

A glossary view of this provision by a Layman will be interpreted by him to mean that the term first elected is the first time the person was elected to the office of Governor regardless of whether the election was later adjudged a nullity or not.

For the layman the computation of tenure of Governor should G commence from that first time he took Oath of office and the term should not exceed a period of more than four years. Certainly this expression is in his view what the law should be. Such interpretation will not be strange, because the ordinary words under Subsection 2(a) gives that instant impression but that is a misconception of the legal construction of S180 2(a). The term duly elected means that H the person was returned as elected in accordance with the law. Perhaps if the framers of the constitution had under S180 2 (a) used the phrase duly elected the controversy on the phrase first elected would

not have arisen.

Unfortunately the layman will not appreciate the principle of Constitutional interpretation. For him once a person is returned elected and sworn in as a Governor the tenure will run from that date regardless of whether the election was nullified. The impression and interpretation of S180(2)(b) by this Bystander is in line with the Construction ascribed to the section by the Appellant. The baseline of the argument is that the Constitution could not have intended the term of more than four years term for a Governor. I must say this argument is persuasive but not the correct interpretation under the law.

The duty of this court is to interpret S180 (2) (a) of the Constitution in line with the settled principles on constructions of the provisions of law and the constitution, not on sentiments or public expectation or morals' The court is constrained to confine itself to the ambit of the law.

The new amendment to S180 (2)(a) by the legislature which is effective from July 2010 appears to have addressed the issue of the tenure of Governors to run from the period first Oath of Allegiance and office is subscribed to whether first election was nullified or not' However that provision is not applicable in the instance appeals, as it is not retrospective. S179 envisages that a person is duly elected when he has the highest number of votes cast at the election and he has not less than one quarter of all the votes in each of at least two thirds of the Local Government Areas in the State. Where there is a default in election of a candidate elected and a rerun election is ordered that first election is void ab initio.

Therefore, it is inconceivable that the intendment of the draftsmen is that the phrase "first elected" includes any person whose election is adjudged void and nullified by the court. The constitutional provision by its unique and supreme nature should not be construed to give effect to illegality. The phrase "first elected" as Governor under this constitution must be interpreted to mean a person who has been duly elected as Governor in line with the provisions of the constitution. The description must be that of a person returned as duly elected in the election whose election was not nullified by the competent court. It is my firm view that the person first elected is that person duly elected in accordance with the law not a person whose election was nullified. The word first elected must be construed in reference

to the subject in the mind of the legislation and this cannot be an invalid election.

The nullification of the election of 1st respondent meant he cannot be the person duly elected rather he was duly elected when he was returned as so elected in the rerun election in 2008. I rely on the Supreme Court decision *Obi v. INEC* (Supra) B

S180 (2)(a) stipulates that the time of the person first elected will run from the date he took his Oath of allegiance and oath of office. The 1st Respondent's tenure can only run from the time he subscribed to oath of allegiance and office. The main contest is whether the computation should date from the oath of office administered for the first time before election was nullified. C

I agree with the submission of the learned senior counsel, Kanu Agabi that oath of office is an important formality that marks the commencement of the tenure of the Governor. It is a condition precedent that a Governor subscribes to oath of office before assuming the duties of his or her office. The constitutional provision is clear on this point. S180(1)(a) stipulates that an outgoing Governor holds forth in office until his successor takes his oath of office. S185 (1) provides that a person elected to the office of Governor shall not begin to perform the function of that office until he has declared his assets and subscribed to oath of Allegiance and oath of office. What then is the effect of the Oath of Allegiance and Oath of office taken by the first respondent before the nullification of the Governorship election held in Adamawa State on 14th of April 2007 and the second Oath of Allegiance and oath of office. D  
E  
F

In other words whether the nullification of the election that returned the 1st Respondent as Governor affected the oath of office. The court below held that the tenure of 1st Respondent commenced when he took the second oath of Allegiance and office. The Supreme Court in *Obi v. INEC* (Supra) per Tabai, JSC held thus:

*"The effect of this nullification is that Dr. Chris Ngige was never elected and sworn in as Governor of Anambra State. He cannot therefore be "a person first elected as Governor" within the meaning of section 180(2)(a) of the Constitution."* H

The oath of office on itself does not confer any legal right. It is a symbolic requirement and constitutional provision that a person elected to the office of Governor takes oath before the assumption of

office as Governor. A person not validly or duly elected under the constitution and electoral act could not validly subscribe to oath of office. When the court nullified the election it meant the 1st respondent was not validly elected.

B However his acts and actions in office as Governor during that tenure is preserved by S 149 of the Electoral law, the rational being founded on doctrine of necessity. The state of affairs and actions during that period after his first oath of office till time of nullification must be accepted for all practical purposes notwithstanding its illegitimacy.

C Thus that period is described as *de facto* and cannot be computed as part of the tenure for a *De jure* Governor who has been duly elected under the constitution and the electoral law. Once an election for which oath of office and Allegiance has been taken is nullified the D oath of allegiance and oath of office extinguishes, as there is no foundation on which it is based.

The oath subscribed to becomes inconsequential, lacking any legal effect. Thus once an election is nullified the act of oath taken is void and of no substance. The oath has no legal status anymore. The E reason is obvious. The oath administered was a precondition to assumption of office of Governor, when the election was declared a nullity the oath prerequisite to the assumption of office became void.

The nullification pronounced was in respect of the election however the implication is that the Oath of allegiance and office prerequisite to assumption of office of Governor can stand on nothing. Thus, F the oath of office and the declaration of asset goes with the nullification. I agree with Chief Olusola Oke that when the 1st Respondent's election was nullified and a speaker sworn in it would be unimaginable and unjustifiable to say that the oath of office administered on G 1st respondent subsisted.

The oath of allegiance and office became void *ab initio* once the election that returned 1st Respondent was nullified. The learned trial judge was right to compute the tenure of office of the 1st respondent from the date he took the oath of office following his return as H the candidate validly elected under the constitution and Electoral Act as the Governor sequel to the rerun election.

The orders of the court below were well founded premised on the construction of S180 (2)(a) of the constitution. For the forgoing

and the fuller reasons contained in the lead judgment, I hold this appeal is devoid of merit and is dismissed. I abide by all consequential orders.

CA/A/113/2011

Issues were distilled for determination in the appellants brief. This issues are similar to the issues distilled for determination in appeal CA/A/117/2011. The learned trial judge was not wrong when he held that the period 1st respondent occupied the office of Governor of the state following his swearing in should not form part of the calculation of the period of four years provided for, the 1st respondent to occupy the office. I adopt my reasoning in CA/A/117/2011 and the lead judgment therein. This court nullified the election and return of the 1st respondent after he took oath of office as Governor of Cross Rivers State of Nigeria.

The term “person first elected” under S180 (2)(b) means the person who contested election as a candidate for the office of Governor and was elected in accordance with the constitutional provision and the electoral law, the commencement date in computation of four years term will start from the date he took oath of office after he has been validly returned as winner, that election returning him in the eyes of the law is the election referred to as first elected. I am fortified by the decision of the Apex Court, in *Obi v. INEC* (Supra) See *Ehirim v. Imo State Independent Electoral Commission* (2008) 15 NWLR (Pt.1111) 443

I do concede that the facts in *Obi v. INEC* (Supra) are not similar to the present facts in this case. However, the construction of the provision of the constitution by the Supreme Court is unassailable. The same words used in S180(2)(a) were construed by the Supreme Court. The principle of law elicited on the construction of the provisions in the constitution becomes settled law and judicial precedent. The Supreme Court pronounced on various words in S180(1). By the principle of stare-decisis this court and the court below are bound by the interpretation of the said provision unless the circumstances are manifestly distinguishable. For the forgoing and the fuller reasons set out in the lead judgment which I adopt as mine, I hold this appeal is devoid of merit and thereby dismissed.

CA/A/119/2011

I have read before now the judgment of my learned brother

GARBA JCA just delivered. I agree with the reasoning contained therein and the conclusion arrived thereat dismissing the appeal. I adopt the reasons as mine; I abide by the order as to cost.  
CA/A/118/2011

B I was privileged to read in advance the lead judgment just delivered by my learned brother GARBA JCA. I adopt the reasons therein as mine and subscribe to the interpretation of S180(2)(a). This appeal I hold lacks merit and is dismissed.  
CA/A/128/2011

C I have read the reasoning and conclusion in the lead judgment of my learned brother GARBA JCA. His lordship has extensively dealt with the issue on the preliminary objections and the construction of the provisions and I adopt same as my view in holding that the appeal cannot be allowed.

D The appeal is dismissed. I abide by all the consequential orders made therein.

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### ADUMEIN JCA

E I had the opportunity of reading in draft the judgments just delivered by my learned brother - MOHAMMED LAWAL GARBA (JCA) in these consolidated appeals.

F In appeal NO: CA/A/117/2011- INDEPENDENT NATIONAL ELECTORAL COMMISSION V. ADMIRAL MURTALA NYAKO (RTD) & 1 OR. The issues refined for determination in the appellant's brief settled by A.B. MAHMOUD (SAN) and other learned counsel are as follows, namely:

G (i) *"Whether the learned trial Judge was right in holding that the tenure of office of the 1st Respondent as Governor of Adamawa State commenced from the date he assumed office after taking the Oath of Allegiance and the Oath Office on 5th of April, 2008, after the re-run election conducted on 28th March, 2008.*

H (ii) *Whether the learned trial Judge was right in holding that the Amendment to section 180 of the 1999 Constitution was inapplicable to the position of the 1st Respondent who was elected into office of Governor of Adamawa State under the 1999 Constitution prior to the 2010 Amendment.*

(iii) *Whether the learned trial Judge was right in holding that*

*the Constitution as amendment (sic) cannot apply retrospectively to affect rights which have been acquired under the 1999 Constitution prior to the amendment”.*

On behalf of the 1st respondent, KANU G. AGABI (SAN) framed the following three issues for determination, namely:

(i) Whether the learned trial Judge was right in holding that the tenure of office of the 1st Respondent as Governor of Adamawa State commenced from the date he assumed office after taking the Oath of Allegiance and the Oath of Office on the 30th day of April, 2008, after the re-run election conducted on 26th day of April, 2008. B C

(ii) Whether the learned trial Judge was right in holding that the Amendment to Section 180 of the 1999 Constitution was inapplicable to the position of the 1st Respondent who was elected into the office of Governor of Adamawa State under the 1999 Constitution prior to the 2010 Amendment. D

(ii) Whether the learned trial Judge was right in holding that the Constitution as amended cannot apply retrospectively to affect rights which have been acquired under the 1999 Constitution prior to the amendment.

In the 2nd respondent's brief settled by CHIEF OLUSOLA OKE and his team of learned lawyers, the following issues were distilled as arising for determination, namely: E

(i) Having regard to the facts and circumstance of this case, was the Trial Judge not right in holding that the 4 year term of office of the 1st Respondent as Governor of Adamawa State commenced from the date he assumed office after taking the Oath of Allegiance and Oath of Office based on the rerun election conducted on 28th March, 2008. F

(ii) Was the Learned Trial Judge not right in holding that the amendment to Section 180 of the 1999 Constitution which came into force in July 2010 could not be made applicable retrospectively to the position of the 1st Respondent who was elected on 28th March, 2008 into the office of the Governor of Adamawa State under the 1999 Constitution. G H

I am of the humble opinion that the two issues framed by CHIEF OLUSOLA OKE, learned counsel for the 2nd respondent, fully cover the threshold issues which call for determination. I hereby adopt them as the issues for determination in this appeal, with the

modification that the re-run election was conducted on the 26th day of April, 2008 instead of 28th March, 2008.

In respect of the first issue, that is the first issue formulated by the 2nd respondent, section 180 (2) (a) of the Constitution of the Federal Republic of Nigeria, 1999 provides thus:

B (2) Subject to the provisions of subsection (1) of this section, the Governor shall vacate his office at the expiration of a period four years commencing from the date when-

(a) in the case of a person first elected as Governor under this Constitution, he took the Oath of Allegiance and oath of office;”

C As a fact, the Supreme Court in PETER OBI V. INDEPENDENT NATIONAL ELECTORAL COMMISSION & ORS. (2007) 11 NWLR (Pt. 1046) 555 at 693, per CHUKWUMA -ENEH, JSC, opined that the section 180 (2) (a) should be given literal interpretation. The D learned Justice of Supreme Court stated thus:

“The foregoing provisions are plain and unambiguous and so ought to be construed by giving the words used therein their ordinary natural, grammatical meaning. In the case of section 180 (2) (a) under which the appellant’s case appears to have fallen it is clear that E section 180 (2) (a) has given to the Governor a four-year tenure commencing from the date in the case of a person first elected as Governor under this Constitution (he) took his oath of allegiance and oath of office. Construing of this provision literally has not led to F any absurdity, it settles the question that giving the words of the said section their natural meaning is the best way to get at the lawmakers’ intention...”

The provision relevant to this case is sub-section 2 (a) of section 180 of the Constitution of the Federal Republic of Nigeria, 1999. G Under this provision, it is only after a person has been “elected as Governor under this Constitution” and “he took the Oath of Allegiance and Oath of Office” that his tenure as Governor of his State commences. The word “elected” is the past tense or past participle of the word “elect” which means “to choose somebody by a vote, e.g. H for a public office” - ENCARTA WORLD ENGLISH DICTIONARY, page 605. It is clear, therefore, that the qualification of a person to take the Oath of Allegiance and Oath of Office as a Governor of his State is his election as Governor of that State. Taking of Oath of Allegiance and Oath of Office by a person as Governor is predicated

upon his election as Governor. Election as Governor and the taking of these Constitutional Oaths are tied together. Therefore, if a person has taken the requisite oaths upon being purportedly elected as Governor and his purported election was nullified by a final competent court of law, with no room for further appeal, as in the instant case, the oath-taking ceremony would be irrelevant to the computation of the tenure of that person as Governor, if he eventually wins a rerun election. B

Learned Senior Counsel for the appellant argued profusely that the Court should always bear in mind the difference between private rights and public rights. The appellant urged the Court to adhere to the requirements of public policy in this matter as interpretation which tend to “unwittingly ‘renew’ the tenure of a Governor on account of the so-called “nullifying of the Oath Office (sic) will be doing “violence and subverting the clear provision of the Constitution” and this would be contrary to public policy. With profound respect, the academic dichotomy penned between private rights and public rights is of no assistance to this Court in its interpretative jurisdiction. The wording of section 180 of the Constitution of the Federal Republic of Nigeria, 1999 is very clear and unambiguous. For a very long time it has been acknowledged that in interpreting a statute, the words therein should be given their plain English meaning. In other words, there should be literal interpretation of statutes unless a contrary intention is manifest in the statute itself. Thus in the old case of EX PARTE RASHLEIGH; IN RE DALZELL (1875) L.R. 2C.D.13, per JAMES, L.J. It was held as follows: E

*“No Court ought to depart from the plain meaning of plain English words, unless coerced to do so by, some serious injustice, a hardship which would arise from a literal interpretation....”* F

I see no “serious injustice” arising from a literal interpretation of section 180(2) (a) of the Constitution of Federal Republic of Nigeria, 1999. As a fact, when the appellant conducted the re-run election on the 26th day of April, 2008 it was clear to it and the electorate that the 1st respondent’s right to occupation of the Office of Governor of Adamawa State had been obliterated by the judgment of the Court of Appeal nullifying his purported election. It was clear then that if the 1st respondent won the re-run election he would serve a tenure of 4 years commencing (sic, from) the date he took H

the Oath of Allegiance and Oath of Office. This, perhaps, best explains why the appellant has placed heavy reliance on the amendment to the Constitution, which was effected in 2010 to cure the manifest mischief in the earlier provision.

I do not agree with the appellant that a literal interpretation  
 B would be contrary to public policy. The duty of a judge is to expound the law and declare it to be what it is. A judge is not a propagator of public policy. See *IN RE MIRANS, Ex PARTE OFFICIAL RECEIVER* (1891) 60 L.J. REP. (N.S.) Q.B. 399 where CAVE, J. said thus:

C *“Judges are more to be trusted as interpreters of the law than as expounders of what is called public policy.”*

HON. JUSTICE ADEREMI, JSC, cautioned judges in *OBI V. INEC* (supra) at 643 as follows:

“The power of interpretation must be lodged somewhere and  
 D the custom of the Constitution has lodged it in the Judges. If they are to fulfill their functions as Judges that power could hardly be lodged elsewhere. But, justice according to law which any good Judge must ensure he dispenses at all times, demands that even when he (the Judge) is seen to be free by the enormity of the power conferred on  
 E him, he is still not wholly free. He is not to innovate at pleasure. He is not a knight-errant roaming at will in pursuit of his own ideal of beauty or goodness or what colouration a piece of law should take. The Judge must always draw his inspiration from consecrated principles.  
 F The next question that follows, is, what are these principles?”

Judges, in the exercise of their interpretative jurisdiction, must only interpret the words of a statute or constitutional provision, where they are as clear as crystal, according to their ordinary and grammatical meanings without any colouration. It is true that courts are always  
 G enjoined, in the course of interpreting the provisions, to find out the intention of the legislature, but there is no magical wand in this counseling. The intention of the legislature, or put bluntly, the intention of National Assembly at the Federal level or the State House of Assembly at the State level, is not to be judged by what is in its mind but by  
 H its expression of that mind couched in the words of the Statute. If at the end of the interpretative exercise carried out on the provisions of Statute or Constitution, a judge’s personal conviction as to where the justice and rightness of the matter lies is returned, that would make the judiciary lose its credibility, authority and its legitimacy. That will

not be healthy for the development of the law and its administration. (Underlining mine)

In the present case, the 1st respondent took oaths of allegiance and office on the 29th day of May, 2007 after winning the Gubernatorial election held on the 14th day of April, 2007. The election of the 1st respondent as the Governor of Adamawa State was, however, nullified by an Election Petition Tribunal and the nullification was upheld by the Court of Appeal. A re-run election was conducted on the 26th day of April, 2008 and was won by the 1st respondent, who was subsequently sworn in on the 30th day of April, 2008. (See the unchanged affidavit evidence of the 1st respondent at pages 8-9 of the record of appeal). The effect of the nullification of the election purportedly conducted by the appellant on the 14th day of April, 2007 is that the respondent was never elected and sworn in on the 29th day of May, 2007. See *PETER OBI V. INDEPENDENT NATIONAL ELECTORAL COMMISSION & ORS.* (2007) 11 NWLR (Pt. 1046) 565 at 684, where Supreme Court per TABAI, JSC held as follows:

*“Dr. Chris Ngige’s election as Governor of Anambra State was nullified by the Election Petition Tribunal in August 2005. This nullification was upheld by the Court of Appeal Enugu Division on 15/3/2006. The effect of this nullification is that Dr. Chris Ngige was never elected and sworn in as Governor of Anambra State. He cannot therefore be “a person first elected as Governor” within the meaning of section 180 (2) (a) of the Constitution.”* (Underlining mine)

See also *LABOUR PARTY V. INDEPENDENT NATIONAL ELECTORAL COMMISSION* (2009) 6 NWLR (Pt.1137) 315 at 337. The case of *OBI V. INEC* (supra) is applicable to this case as the Supreme Court was called upon to interpret and it did interpret the provisions of section 180(2)(a) of the Constitution of the Federal Republic of Nigeria, 1999 prior to the alteration in 2010 by the National Assembly. It is the same provision that this Court is called upon to interpret in this case. The interpretation given by the Supreme Court is loud and clear and it is that a person, whose election is nullified by a competent court of final jurisdiction, does not qualify as “a person first elected as Governor within the meaning of section 180(2)(a) of the Constitution”. The Supreme Court does not need to shout itself hoarse before its interpretation of section 180(2)(a) of the 1999 Constitu-

tion becomes binding on all lower courts in Nigeria.

If an act or a thing is declared a nullity, the law regards that act or thing as having not existed at all. See *AYISA V. AKANJI* (1995) 7 NWLR (pt. 405) 129 AT 142, *AMAECHI V. INDEPENDENT NATIONAL ELECTORAL COMMISSION* (2007) 9 NWLR (Pt. 1040) B 504 at 531-522; *MACFOY V. UAC LTD.* (1962) AC 152 and *SKENCONSULT (NIG.) LTD. & ANOR. v. GODWIN SEKONDI UKEY* (1981) 1. SC 6 at 9.

The de jure tenure of the 1st respondent as Governor of Adamawa State commenced when he took the Oath of Allegiance and Oath of Office on the 30th day of April, 2008 after winning the fresh election conducted on the 26th day of April, 2008 as a result of the nullification of the purported election of 14th April, 2007. The nullification of the election of 14th April, 2007 meant that the 1st respondent was never a person first elected as Governor of Adamawa within the meaning of section 180 (2) (a) of Constitution. See *OBI V. INEC* (supra) at 684.

On the second issue for determination, it is clear that the amendment effected in 2010 to the Constitution of the Federal Republic of Nigeria, 1999 can not be retrospective. It is not stated in the amended Constitution that it should have retrospective effect. To admit that the amendment to section 180(2) (a) of the Constitution is retrospective, as canvassed by the appellant, would lead to an absurdity in its extreme. For example, assuming that section 177 of the Constitution of the Federal Republic of Nigeria, 1999 was amended by increasing the minimum age and educational qualification requirements from 35 years to 50 years and School Certificate to University First Degree, respectively and a person who was elected based on the present qualifying requirements and who had not attained the age of 50 years and had not been educated up to University Degree level would automatically lose his seat as Governor notwithstanding that his tenure had not expired. Such a situation will be an absolute absurdity. Such an end can not be the intention of the legislature. The amendment was merely to correct the error in the 1999 Constitution creating and resulting in the mischief highlighted by the appellant and was not intended to be retrospective.

In the present case, the rights and obligations of the 1st respondent were encapsulated by the provisions of the Constitution of

the Federal Republic of Nigeria, 1999 and other relevant statutes such as the Electoral Act, 2006. The amendment to the Constitution in 2010 can not apply retrospectively to adversely or otherwise affect the rights and obligations of the 1st respondent duly acquired prior to the amendment.

For the foregoing reasons and the very comprehensive reasons given in the lead judgment, I too will dismiss this appeal for lacking merit. This appeal is hereby dismissed.

I abide by all the orders in the lead judgment.

APPEAL NO: CA/A/128/2011

I read in advance the judgment just delivered by my learned brother - MOHAMMED LAWAL GARBA (JCA).

At the hearing of this appeal, CHIEF LADI WILLIAMS, (SAN), learned Senior Counsel for the 2nd set of respondents after the appellant had adopted and relied on its brief of argument and he (CHIEF LADI WILLIAMS (SAN)) had adopted the joint brief of the 2nd set of respondents, referred to and relied on the notice of preliminary objection dated the 25th day of March, 2011 but filed by the 2nd set of respondents on the 28th day of March, 2011 and argued in the respondents' brief.

With due respect to the learned Senior Counsel, the procedure adopted by him in this case was wrong. Therefore, I will not countenance the preliminary objection of the 2nd set of respondents. The said preliminary objection is struck out, accordingly.

The law appears to be well settled that, whereas a respondent can raise a preliminary objection by giving notice thereof and arguing same in his brief of argument, for the preliminary objection to be competent and arguable, a procedural step must be fulfilled-the respondent must first move the court, at the hearing of the appeal, in respect of his preliminary objection, before proceeding with the substantive appeal. Failure to do so makes the preliminary objection, so raised by the respondent, incompetent and not arguable, and accordingly not sustainable. This point was more clearly, concisely and precisely stated, recently, in the case of DR. JOHN OLUKAYODE FAYEMI & ANOR. v. OLUSEGUN ADEBAYO ONI & 7 ORS. (APPEAL NO: CA/IL/EPT/GOV/1/10) delivered on the 15th day of October, 2010 where the learned president of this Court, HON. JUSTICE SALAMI, PCA held as follows:

“The mere filling of a notice of preliminary objection does not ipso facto make it competent and arguable. It must first satisfy the test relating to its sustainability. Plethora of authorities relating to this would explain and expatiate for better clarification. In the case of *Agagu v. Mimiko* (2009) 7 NWLR (pt. 1140) page 342 for instance, this court  
B per Abullahi PCA at page 385 dealt at great extent on the subject, wherein he followed the decision of the Apex court and had this to say:-

“The notice of preliminary objection can be given in the  
C respondent’s brief, but a party filing it, in the brief, must ask the court for leave to move the notice of objection before the oral hearing of the appeal commences. Otherwise, it will be deemed to have been waived and therefore abandoned. In *Nsirim v. Nsirim* (1990) 3 NWLR (pt. 138) 285 at 296-297 the Court, per Obaseki, JSC stated as  
D follows:-

*“The respondent in the instant appeal has contended that although the objection was stated in the brief, the court was not moved at the oral hearing of the appeal to strike out the grounds for failure of particulars of errors. He therefore submitted that the appellant  
E herein should be taken to have abandoned the objection...*

*In my opinion there is substantial merit in the contention of the respondent. Being a preliminary objection, the objection should have been by motion on notice before the hearing of the appeal so  
F that arguments on its can be heard by the court. While notice of objection may be given in the brief, it does not dispense with the need for the respondent to move the court at the oral hearing for the relief prayed for.*

*The preliminary objection not having been raised and argued  
G at the oral hearing the Court of Appeal cannot be condemned as having erred in allowing the then appellant (now respondent) to argue his appeals. In the circumstances, all the preliminary objections concerning the grounds of appeal filed by all the appellant are hereby disposed of.”*

H In the present case, the 2nd set of respondents having allowed the appeal to be heard before moving their preliminary objection, are deemed to have abandoned same.

If for any reason I am wrong in my decision ignoring the preliminary objection, I agree with my learned brother’s judgment that

the preliminary objection be dismissed as it lacks merit. The preliminary objection is hereby dismissed, accordingly.

I agree that this appeal lacks merit and it ought to be dismissed and it is hereby dismissed accordingly.

I abide by the orders in the lead judgment.

APPEAL NO: CA/A/113/2011

B

I read in draft the judgment just delivered by my learned brother - MOHAMMED LAWAL GARBA (JCA).

I agree that this appeal lacks merit and it is hereby dismissed.

I abide by all the consequential orders in the lead judgment.

C

APPEAL NO: CA/A/119/2011

I read in draft the judgment just delivered by my learned brother - MOHAMMED LAWAL GARBA (JCA).

I agree that this appeal lacks merit and it is hereby dismissed.

The appeal is hereby dismissed, accordingly.

D

I abide by all the consequential orders in the lead judgment.

APPEAL NO: CA/A/115/2011

I read in draft the judgment of my learned brother - MOHAMMED LAWAL GARBA (JCA) delivered a few minutes ago.

Before the appeal was heard, MR. AKUBO (SAN), learned Senior Counsel for the 1st respondent rightly, and timeously too, informed the Court of the 1st respondent's notice of preliminary objection and the argument thereon embedded in the 1st respondent's brief. The learned Senior Advocate of Nigeria adopted and relied on the argument on the 1st respondent's preliminary (sic, objection) and urged the Court to sustain it.

E

F

In response to the preliminary objection, MR. MAHMOUD (SAN), learned Senior Counsel relied on his reply brief filed on the 6th day of April, 2011, but deemed filed on the 7th day of April, 2007 and urged the Court to dismiss the 1st respondent's preliminary objection. At page 8, paragraph 2.5 of the appellant's reply brief the learned Senior Advocate of Nigeria stated thus:

*"The 1st Respondent argued that our Ground 3 in the Notice of Appeal was incompetent for failing to give particulars of unreasonableness and it was also not properly couched as an omnibus ground and in any event no issue was formulated on the basis of Ground 3. We admit that ground 3 which was intended as an omnibus ground was not properly framed as such. We admit too, that issues formu-*

H

*lated do not touch on Ground 3. In the circumstance, the ground is deemed abandoned and the Appellant shall at the hearing seek to have ground 3 struck out."*

The learned senior Advocate of Nigeria, then argued at page 9, paragraph 2.6 of his reply brief, inter alia, as follows:

B *"The issues formulated clearly relate to and flow from the grounds of appeal. Issue No. 1 relates to Ground one which complains of error in construing the tenure of the 1st Respondent, that is whether it commenced after the run-off election and the 2nd oath of office or took effect from the time of the 1st Oath of office. Issues No*  
C *2 and 3 also relate to ground 2 which complain about the error in the interpretation of the altered provisions of the 1999 constitution."*

(Underlining mine) Ground 3 in the appellant's notice of appeal, having been abandoned by the appellant's learned senior counsel, is  
D hereby struck out.

The law is trite that under no circumstance should a party refine more than one issue from a ground of appeal. See AGU v. IKEWIBE (1991) 3 NWLR (pt.180) 385 and OGBE v. ASADE (2009) 18 NWLR (Pt.1172) 106. The appellant's Issue No 2 and Issue No 3,  
E having been distilled from on ground (sic, one) - Ground 2, are incompetent and are, accordingly, not countenanced.

For the foregoing reasons and the very comprehensive reasons given in the lead judgment, I agree that this appeal lacks merit and it is hereby dismissed.  
F

I abide by the orders in the lead judgment.

APPEAL NO: CA/A/118/2011

I had the privilege of reading before now the judgment just delivered by my learned brother - MOHAMMED LAWAL GARBA  
G (JCA).

I agree with His Lordship that this appeal ought to be dismissed for lacking merit. The appeal is hereby, accordingly, dismissed.

I abide by all the consequential orders in the lead judgment.

H