

SUPREME COURT OF NIGERIA

31ST OCTOBER, 2011. SC. 272/2011 (CON)

**CORAM:- W. S. N. ONNOGHEN, J. A. FABIYI, S.
GALADIMA, S. N. NGWUTA, M. PETER-ODILI, JJSC**

PEOPLES DEMOCRATIC PARTY

AND

1. DR. GOODLUCK EBELE

JONATHAN

(PRESIDENT AND C-IN-C OF THE
ARMED FORCES OF THE FEDERAL
REPUBLIC OF NIGERIA)

2. ARCHITECT MOHAMMED

NAMADI SAMBO

AND

1. CONGRESS FOR PROGRESSIVE
CHANGE

2. INDEPENDENT NATIONAL
ELECTORAL COMMISSION

3. CHIEF NATIONAL ELECTORAL
COMMISSIONER

..... APPELLANTS

4. DR. GOODLUCK EBELE

JONATHAN

(PRESIDENT AND C-IN-C OF THE
ARMED FORCES OF THE FEDERAL
REPUBLIC OF NIGERIA)

5. ARCHITECT MOHAMMED

NAMADI SAMBO

6. 36 STATES AND F.C.T. RESIDENT
ELECTORAL COMMISSIONERS

AND

1. CONGRESS FOR PROGRESSIVE
CHANGE

2. PEOPLES DEMOCRATIC PARTY

3. INDEPENDENT NATIONAL
ELECTORAL COMMISSION

..... RESPONDENTS

4. CHIEF NATIONAL ELECTORAL

COMMISSIONER

5. 36 STATES AND F.C.T. RESIDENT

ELECTORAL COMMISSIONERS

CONSTITUTIONAL LAW - Constitution - Interpretation - Manner of - Where the words used are unambiguous - They must be given their ordinary meaning (H1)

CONSTITUTIONAL LAW - Constitution - Supremacy of - It binds all authorities and persons in Nigeria - And any law which is inconsistent with its provisions - Is void to the extent of the inconsistency (H2)

WORDS & PHRASES - “Shall” - Meaning - In 1999 Constitution s. 285(7) - It refers to a mandatory act which admits of no discretion (H3)

COURTS - Vacation period - Computation of - Applicable law - Constitutional provisions take priority over rules of court (H4)

FACTS

These consolidated appeals i.e. SC/272/2011 and SC/276/2011 arose from the ruling of the Court of Appeal, Holden at Abuja sitting as the Presidential Election Tribunal in Petition No. CA/A/EPT/PRESS/1/2011 delivered on the 14th July 2011 on a motion on notice praying the court to dismiss the petition on the ground, inter alia, that the petition was filed on a Sunday thereby rendering same incompetent. The court refused to grant the prayers on the motion papers. Being dissatisfied, appellants appealed to Supreme Court. Parties duly filed their respective briefs of argument prior to the annual vacation of the court in July, 2011. When this appeal was called for hearing on 27th October 2011, the 60 days mandated by the provision of section 285 (7) of the 1999 Constitution of Federal Republic of Nigeria (as amended) had passed.

The court then requested counsel to the parties to proffer address on the effect of same on the two appeals. Gadzama SAN, for appellant in SC. 272/2011 submitted that the two consolidated appeals are still alive and that the period of 60 days will exclude Satur-

days, Sundays and the entire vacation period of which the court can take judicial notice. On the contrary, Wole Olanipekun, SAN for appellants in SC. 276/2011 observed that section 285 (7) of the constitution (as amended) was made to avoid delays in election matters. He therefore submitted that the court cannot bend the provisions of the constitution. He referred to Section 1 (1) and (3) of the constitution and submitted that the Rules of Supreme Court must give way to the provision of section 285 (7) of the Constitution (as amended).

HELD (Unanimously striking out the appeals per **ONNOGHEN JSC**)

Constitution - Interpretation - Manner of

1. It is settled law that in interpreting a constitutional provision the court should adopt a broad approach to the process. Also settled is the principle that where the words of the constitution or statute are plain, clear and unambiguous, they must be given their natural, ordinary meanings as there is nothing, in effect to be interpreted. In that case, the words must be given their plain/natural meanings, as there is nothing to interpret.

I have read over and over the provisions of Section 285(7) of the 1999 Constitution (as amended) and have found the words used therein to be clear, unambiguous and simple and straight forward.

I therefore hold that the words used herein are not subject to any interpretation at all. They are to be given their natural meanings. That the natural meanings of the words are that appeals from a decision of an election tribunal or the Court of Appeal in an election matter shall be heard and determined within sixty (60) days from the date the judgment/decision appealed against was delivered, by the tribunal or Court of Appeal. (pp. 2467 G/2468 B)

Constitution - Supremacy of

2. It is also settled law that the provisions of the constitution of the Federal Republic of Nigeria are supreme and have binding force on all authorities and persons throughout the Federal Republic of Nigeria and that any other law which is inconsistent with its provisions is void to the extent of the inconsistency as the constitutional provision must prevail over such Act/law. (p. 2467 H)

“Shall” - Meaning

3. It is clear that by the use of the word “shall” in Section 285(7) of the 1999 constitution the framers of the constitution meant to make and did make the provision mandatory as it admits of no discretion whatsoever. It means that the sixty (60) days allotted in Section 285(7) of the 1999 constitution (as amended) cannot be extended even for one second as the decision of the appellate court must be rendered “within” sixty (60) days of the delivery of the judgment on appeal.

It is my further opinion that the sixty (60) days allotted in section 285(7) of the 1999 constitution (as amended) includes Saturdays, Sundays and Public holidays as well as court vacations because if it was the intention of the framers of the constitution to exclude these days they would have so stated in clear and unambiguous terms. The only exception may be where the last day of the sixty (60) days happens to be Sunday or a public holiday then the action contemplated in section 285(7) of the 1999 constitution (as amended) can be completed on the next working day - as settled by a long line of authorities. (p. 2468 D)

COURTS - Vacation period - Computation of

4. On the aspect concerning application of court rules in computation of time with regards to periods of court vacation, I must say that rules of court have the status of subsidiary legislation far below constitutional provisions which sit at the apex of the hierarchy and consequently supreme.

Secondly, no court rules which are contrary to section 285(5), (6) and (7) can apply to election matters or be valid. (p. 2469 E)

NOTABLE POINT OF INTEREST
ONNOGHEN JSC

1. Hearing in election matters should not be unduly delayed

The absurdity in not applying the natural and plain meaning of the words in section 285(7) of the 1999 constitution (as amended) can be seen in the computation by learned senior counsel, chief Gadzama, SAN, which makes an appeal against the decision delivered on 14th July, 2011 to remain valid up to 14th December, 2011. Would that not defeat the purpose of the provision which is clearly aimed at curtailing the inordinate delays arising from election matters where

some learned counsel engaged in delay tactics resulting in long delays in the hearing and conclusion of election matters to the embarrassment, not only of the legal profession in particular but, the nation in general.

The intention of the drafters of the constitution being to stop the practice of unnecessary delays in election matters; it is our duty to ensure compliance with the law by doing what is needed within the time frame. It may be difficult, in fact it is very difficult but it is a sacrifice we all must make in the interest of our democracy until our politicians learn to accept the verdict of the people as expressed through the ballot box. (p. 2468 H)

REPRESENTATION

1. SC. 276/2011, SC. 272/2011

Chief Wole Olanipekun, SAN with him are Messrs Alex Izinyon SAN, I. Imadegbelo, SAN, J. T. U Nnodum, SAN, O. A. Omonuwa, SAN, F. F. Egele, Gbenga Adeyemi Esq, Hannatu Abduraham (Mrs.), U. Egbon Esq, Barbara Omosun Esq, Otonvwen Ibori, Njideka Odili (Miss), Kenechukwu Azie Esq, Okonache Ogor Esq, Aisha Ali (Miss), Nnamdi Ekwem Esq, F. O. Izinyon Esq and Alex Izinyon II Jnr., for the Appellants, 4th and 5th Respondents

2. SC. 276/2011, SC. 272/2011

Chief J. K. Gadzama, SAN with him Messrs Dr. Sir Amaechi Nwaiwu, SAN, Chief Duro Adeyele, SAN, M. A. Abubakar Esq, J. N. Egwuonwu Esq, Aruodo Uche (Miss), Sola Ephraim Oluwanuga, mni, Chief Olusola Oke, E. S. Oluwabiyi Esq, J. O. Adesina (Mrs.), Magai Vimtim Magai Esq, A. C. Ozioko Esq, Afam Osigwe Esq, Nneka Bob-Nwakanna (Mrs.), C. P. Oli Esq, Theophilus Okwute Esq, N. N. Shaltha (Miss), Ifeanyi Okechukwu Esq, Funmilayo Oshunwusi (Miss), Chijioke Uwandu Esq, Ewuwuni Onnoghen (Miss), I. H. Ngada Esq, J. U. Ugbeji (Miss), Ayo Babalola Esq, Odum Ifeanyi Esq, C. T. Adanaya Esq, Chinelo Oragba (Miss), F. I. Nwodo Esq, O. O. Ogunlade Esq, B. S. Barau Esq, Kukoyi Tinuola Adetoun (Mrs.) and Chioma Oji (Miss) for the 2nd Respondent and Appellants

3. SC. 276/2011, SC. 272/2011

O. Okpeseyi, SAN with him Messrs. A. Malami, SAN, A. Olowoyeye

Esq, A. B. Mahmud Esq, Ismaila Alasa Esq, S. O. Imhanobe Esq, Chuks Nwana Esq, O. O. Obono Obla Esq, J. Obono-Obla (Mrs.), Tope Adebayo Esq, Joshua Akor Esq, Mary Ekpere (Miss), Daisy Anagenda Esq and Ikebe Emmanuel Idoko Esq. for 1st Respondent

B 4. SC. 276/2011, SC.272/2011

Ben Osaka, Esq. with him Messrs. Lynda C. Ikpeazu, Mavis Ekwechi, I. Nwabueze, A. D. Auta and F. Bukar for the 3rd - 7th Respondents and 2nd, 3rd, 6th - 42nd Respondents

C **CASES REFERRED TO**

Emeson v. Nwachukwu (1999) 6 NWLR (Pt. 605) 163 at 169
Adefemi v. Abegunde (2004) 15 NWLR (Pt. 895) 1 at 27 (C.A)
Rafiu v. Kano State (1980) 8 - 11 S.C 130 at 149

D Nafiu Rabi v. The State (1980) 8-11 SC 130

Ohua v. The State (1988) 1 NWLR (pt. 72) 565 at 587
Nigerian Army v. Aminu Kano (2010) 5 NWLR (pt. 1188) 429
Egbe v. Adefarasin (1985) 1 NWLR (Pt. 3) 549
Agboola v. Saibu (1991) NWLR (pt.175) 566

E Aper-Aku v. Unonso (1985) 1 SC

A-G Abia State v. A-G Fed. (2006) 16 NWLR (pt.1005) p.265
Ehuwa v. O. S. I. E. C (2006) 18 NWLR (pt. 1012) 544
Ifezue v. Mbadugha (1984) 1 SCNLR 431

F Rosseck v. A. C. B. Ltd (1993) 8 NWLR (Pt.312) 382 at 498

Kraus Thompson Organisation v. NIPSS (2004) 7 NWLR (pt.901) 44
Fawehinmi v. IGP (2007) 7 NWLR (pt. 767) 606

G **STATUTES REFERRED TO**

Constitution of Federal Republic of Nigeria 1999 (as amended), ss. 1(1)(3), 285(5)(6)(7)
Public Holidays Act Cap. P40 LFN 2004, s. 2(3)
Interpretation Act Cap. 123 LFN 2004 1st Schedule, s. 15(4)

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LEAD JUDGMENT BY ONNOGHEN JSC

The consolidated appeals arose from the ruling of the Court of Appeal, Holden at Abuja sitting as the Presidential Election Tribunal in petition No. CA/A/EPT/PRESS/1/2011 delivered on the 14th day

of July, 2011 on a motion on notice praying the court to dismiss the petition on the ground, inter alia, that the petition was filed on a Sunday thereby rendering same incompetent. The lower court refused to grant the prayers on the motion papers as a result of which appellants appealed to this court vide a notice of appeal filed on the 21st day of July, 2011 and 25th July, 2011 respectively. All the processes have been duly filed and exchanged between the parties. B

When the appeals came up for hearing on the 27th day of October, 2011 learned senior leading counsel for the appellants urged the court to adjourn the appeals to abide the decision/ judgment of the lower court on the petition which has been reserved to a date to be communicated to the parties/counsel. C

On the other hand, learned senior counsel for the 1st respondent O. Okpeseyi, SAN wondered whether the appeals are still valid before the court having regards to when the decision appealed against was delivered. D

Ben Osaka Esq, for the 2nd, 3rd, 6th - 42 respondents in SC.272/2011 and 3rd - 7th respondents in SC.276/2011 shared the same opinion with Okpeseyi, SAN. It was at this stage that the court called on counsel for the parties to address it on the effects of Section 285(7) of the constitution of the Federal Republic of Nigeria, 1999 (as amended), [herein after referred to as the 1999 Constitution (as amended)]. E

Chief Gadzama, SAN for the appellant in SC/272/2011 and 2nd respondent in SC/276/2011, submitted that the consolidated appeals are alive as the sixty (60) days provided in Section 285(7) of the 1999 constitution within which an appeal against the decision of a tribunal or court should be heard and decided excludes the entire period of court vacation and that the court should take judicial notice of the vacation period which is usually not less than six weeks. F G

Secondly that in computing the sixty (60) days, Saturdays, Sundays and Public Holidays are to be excluded and that when these are excluded the appeals still have up to 14th December, 2011 before they expire; that in interpreting the provisions of Section 285(7) of the 1999 Constitution, the court should adopt a liberal approach so as to do justice to the parties particularly as the failure to determine the appeals within the sixty (60) days was not due to the fault or negligence of the appellants as they had filed all the processes H

within time as well as affidavit of urgency and an application for accelerated hearing but the appeals could not be heard early due to the court being on vacation.

Learned senior counsel referred the court to Section 2(3) of the Public Holidays Act CAP P40 L.F.N. 2004 and the 1st Schedule thereto and Section 15(4) of the interpretation Act, cap 123, L.F.N. 2004; *Adefemi v. Abegunde* (2004) 15 NWLR (Pt. 895) 1 at 27 (C.A) and the case of *Emesim v. Nwachukwu* (1999) 6 NWLR (Pt. 605) 163 at 169 and urged the court to hold that the appeals are extant.

On his part, learned senior counsel for the appellant in SC/276/2011 and 4th and 5th respondents in SC/272/2011, Chief Wole Olanipekun, SAN submitted that in interpreting a constitutional provision, the court should inquire as to why the provision was put in place; that it was put in place due to the inordinate delays that attended proceedings relating to election matters to the embarrassment of all; that the Supreme Court cannot bend the constitutional provisions which are supreme to all laws and rules by virtue of Section 1(1) and 1(3) of the 1999 Constitution (as amended); that Section 285 supersedes all rules of courts in Nigeria with regards to time to do anything in relation to election matters/proceedings.

Learned senior counsel however suggested that the court recommends to the National Assembly to include a proviso to Section 285(7) to the effect that the party complaining of non compliance with Section 285(7) of the 1999 Constitution should show what injustice or miscarriage of justices has resulted in the non-compliance; that there should be another proviso to the effect that the period of vacation should not be taken in computing the sixty (60) days under Section 285(7) of the said 1999 Constitution.

Finally learned Senior Advocate submitted that in the present circumstances he cannot, in good conscience, say that an appeal in an election matter not determined within sixty (60) days is alive.

It is the views of learned counsel for the 1st respondent in both appeals, O. Okpeseyi, SAN that the authorities cited and relied upon by Chief Gadzama, SAN deal with interpretation of Acts of the National Assembly, not the provisions of the constitution; that Section 285(7) of the 1999 Constitution is specific and mandatory and associated himself with the submissions of Chief Olanipekun, SAN.

On his part, learned counsel for the 2nd, 3rd, 6th - 42nd respondents in SC/272/2011 and 3rd-7th respondents in SC/276/2011, Ben Osaka Esq associated himself with the submission of Chief Olanipekun, SAN and Okpeseyi, SAN and urged the court to hold that the appeals are no longer alive.

After the submission, the matter was adjourned to today 31st October, 2011 for ruling.
Section 285(7) of the 1999 Constitution (as amended) provides as follows:-

“An appeal from a decision of an election tribunal or Court of Appeal in an election matter shall be heard and disposed of within sixty (60) days from the date of the delivery of judgment of the tribunal or Court of Appeal”.

There is no doubt that the ruling of the lower court which gave rise to the instant appeals was delivered on the 14th day of July, 2011. Also not disputed is the fact that between that date and 27th October, 2011, when the issue of the continued validity of the appeals was raised, is clearly much more than the sixty (60) days allotted in Section 285(7) of 1999 Constitution (as amended).

It is, however, the contention of learned senior counsel, Chief Gadzama, SAN that the court should adopt the broad rule of interpretation of constitutional provisions as stated in the case of Rafiu v. Kano State (1980) 8 - 11 S.C 130 at 149 in interpreting Section 285(7) of the constitution and that in so doing the court should count out all the Saturdays, Sundays and Public holidays appearing since the delivery of the ruling and that if that is done, it will be clear that the sixty (60) days envisaged by Section 285(7) of the 1999 constitution would expire by 14th December, 2011.

It is settled law that in interpreting a constitutional provision the court should adopt a broad approach to the process. Also settled is the principle that where the words of the constitution or statute are plain, clear and unambiguous, they must be given their natural, ordinary meanings as there is nothing, in effect to be interpreted. In that case, the words must be given their plain/natural meanings, as there is nothing to interpret.

It is also settled law that the provisions of the constitution of the Federal Republic of Nigeria are supreme and have

binding force on all authorities and persons throughout the Federal Republic of Nigeria and that any other law which is inconsistent with its provisions is void to the extent of the inconsistency as the constitutional provision must prevail over such Act/law.

B I have read over and over the provisions of Section 285(7) of the 1999 Constitution (as amended) and have found the words used therein to be clear, unambiguous and simple and straight forward.

C I therefore hold that the words used herein are not subject to any interpretation at all. They are to be given their natural meanings. That the natural meanings of the words are that appeals from a decision of an election tribunal or the Court of Appeal in an election matter shall be heard and determined D within sixty (60) days from the date the judgment/decision appealed against was delivered, by the tribunal or Court of Appeal.

E It is clear that by the use of the word “shall” in Section 285(7) of the 1999 constitution the framers of the constitution meant to make and did make the provision mandatory as it admits of no discretion whatsoever. It means that the sixty (60) days allotted in Section 285(7) of the 1999 constitution (as amended) cannot be extended even for one second as the decision of the appellate court must be rendered “within” sixty F (60) days of the delivery of the judgment on appeal.

G It is my further opinion that the sixty (60) days allotted in section 285(7) of the 1999 constitution (as amended) includes Saturdays, Sundays and Public holidays as well as court vacations because if it was the intention of the framers of the constitution to exclude these days they would have so stated in clear and unambiguous terms. The only exception may be where the last day of the sixty (60) days happens to be Sunday or a public holiday then the action contemplated in section H 285(7) of the 1999 constitution (as amended) can be completed on the next working day - as settled by a long line of authorities.

The absurdity in not applying the natural and plain meaning of the words in section 285(7) of the 1999 constitution (as amended)

can be seen in the computation by learned senior counsel, chief Gadzama, SAN, which makes an appeal against the decision delivered on 14th July, 2011 to remain valid up to 14th December, 2011. Would that not defeat the purpose of the provision which is clearly aimed at curtailing the inordinate delays arising from election matters where some learned counsel engaged in delay tactics resulting in long delays in the hearing and conclusion of election matters to the embarrassment, not only of the legal profession in particular but, the nation in general. B

The intention of the drafters of the constitution being to stop the practice of unnecessary delays in election matters; it is our duty to ensure compliance with the law by doing what is needed within the time frame. It may be difficult, in fact it is very difficult but it is a sacrifice we all must make in the interest of our democracy until our politicians learn to accept the verdict of the people as expressed through the ballot box. C

In the instant case, what would the appellants loose if they were to await the final decision of the lower court before appealing against all that they do not agree with? Nothing, to my mind, but much to gain by all and sundry. E

On the aspect concerning application of court rules in computation of time with regards to periods of court vacation, I must say that rules of court have the status of subsidiary legislation far below constitutional provisions which sit at the apex of the hierarchy and consequently supreme. F

Secondly, no court rules which are contrary to section 285(5), (6) and (7) can apply to election matters or be valid.

The sections enact as follows-

“(5) an election petition shall be filed within twenty one (21) days after the date of the declaration of result of the elections; G

(6) an election tribunal shall deliver its judgment in writing within one hundred and eighty (180) days from the date of the filing of the petition:

(7) an appeal from a decision of an election tribunal or Court of Appeal in an election matter shall be heard and disposed (sic) date of the delivery of judgment of the tribunal or Court of Appeal”. H

I hold the considered view that in terms of time to do anything relating to an election petition or judgment thereon or arising

therefrom, it is the above provisions that apply and that no court has the power to extend the times as constitutionally provided in section 285(5) - (7) of the 1999 Constitution (as amended), by interpretation of the sections or otherwise.

B On the invitation of learned senior counsel Chief Wole Olanipekun, SAN that the court recommends exclusion of vacation period in the calculation of the sixty (60) days in section 285(7) of the 1999 constitution as amended, the following facts are not disputed:-

C (a) that the instant appeal is an interlocutory one, which could still have been taken up at the conclusion of trial and after final judgment;

(b) the ruling appealed against was delivered on 14th July, 2011 while this court started its vacation on Monday, 18th July, 2011;

D (c) that appellants did all they could within time to have the appeal ready for hearing.

However, do these facts qualify the appeal for such a recommendation? I do not think so. The appellants have nothing to lose if the appeal on the interlocutory matter were to be allowed to abide E the final decision of the court, as they now request this court to so order.

Secondly, I hold the view that to give the appellants the interpretation sought would definitely defeat the intention of the law makers. F

Thirdly, if the decision involved were to have been a final decision of the lower court, perhaps such a recommendation could be considered appropriate.

G In the circumstances, I find myself unable to accept the invitation of learned senior counsel to make the recommendations, which invitation is hereby declined.

H In conclusion, I hold the view that the consolidated appeal Nos. SC/272/2011 and SC/276/2011 having arisen from a decision of the lower court delivered on the 14th day of July, 2011 have lapsed by the 27th day of October, 2011 when senior counsel for the appellants sought leave of court to adjourn them to abide the judgment of the lower court on the substantive petition and consequently incompetent. The appeals are no longer alive to be adjourned. They have died by effluxion of the sixty (60) days allotted by Section 285(7)

of the 1999 constitution (as amended) and are hereby struck out.

Parties to bear their costs.

FABIYI JSC

It is not in contest that the Presidential Election was conducted on 16th April, 2011 through out the country. The 1st and the 2nd appellants in SC.276/2011 who were the candidates of the appellant in SC. 272/2011 were declared as winners and returned by INEC accordingly. The 1st respondent in SC.272/2011 felt dissatisfied and filed their petition at the Court of Appeal on a Sunday in May, 2011.

The appellants challenged the competence of the petition for the above stated reason at the Court of Appeal sitting in its first instance as a presidential Electoral Petition Court. It was duly addressed by learned Senior Counsel for the parties on the salient point. In its considered Ruling handed out on 14th July, 2011, it over ruled the preliminary objection taken and found that the petition was competent.

Both appellants filed their appeals before this court within time. Parties duly filed their respective briefs of argument just before this court went on annual vacation in July, 2011. When this appeal was called for hearing on 27th October, 2011, the 60 days mandated by the provision of section 285 (7) of the 1999 Constitution of Federal Republic of Nigeria, as amended, had passed. This court then requested counsel to the parties to proffer address on the effect of same on the two appeals.

Chief Joe Kyari Gadzama, SAN, who appeared for the appellant in SC. 272/2011 submitted that the two consolidated appeals are still alive and that the period of 60 days will exclude the entire vacation period of which the court can take judicial notice.

The Senior Counsel felt that Saturdays and Sundays which are public holidays should be excluded and that by their own calculation, they still have up to the middle of December, 2011. According to Senior Counsel, 51 days should be excluded and same will take the date of delivery of judgment to 14th December, 2011.

Senior Counsel further submitted that the court should aim at liberal interpretation of Section 285 (7) of the Constitution, as amended. He cited the cases of *Emesim v. Nwachukwu* (1999) 6

NWLR (pt. 605) 163 at 169; Adefemi v. Abegunde (2004) 15, NWLR (Pt. 895) 1 at 21; Nafiu Rabiu v. The State (1980) 8-11 SC 130, Ohua v. The State (1988) 1 NWLR (pt. 72) 565 at 587.

Senior counsel further referred to Section 2 (3) of the Public Holidays Act along with first schedule thereto, CAP. P40 LFN, 2004, section 15 (4) of the Interpretation Act, CAP. 123 LFN, 2004. He felt that the parties who did not cause any delay should be heard.

Chief Wole Olanipekun, learned senior counsel for the appellants in SC. 276/2011 observed that counsel have been called upon to interpret the purport of section 285 (7) of the constitution as amended which was made to avoid delays in election matters.

Senior counsel submitted that the court cannot bend the provisions of the constitution. He referred to Section 1 (1) and (3) of the constitution. He submitted that the Rules of the Supreme Court must give way to the provision of section 285 (7) of the Constitution as amended.

Senior counsel observed that they have not been negligent as the appeals and their respective briefs were filed in time but there is a constitutional imperative and same is a constitutional provision which the court cannot knock down. He urged the court to urge the Law Makers to make amendment by urging them to provide that the period of vacation should not be taken into consideration in the calculation of 60 days.

Mr. Dipo Okpeseji, SAN for the 1st respondent observed that all the authorities cited by Mr. J. Kyari - Gadzama, SAN are matters in respect of Acts made by the National Assembly; not the constitution. He observed that Section 285 (7) of the 1999 constitution as amended is a specific provision which in all situations, will prevail. He observed that the law makers used the word 'shall' which is mandatory. He submitted that the appeals are dead and should be knocked down.

Ben Osaka, Esq. for the 3rd respondent in SC. 276/2011 and 2nd, 3rd and 6th - 42nd respondents in SC. 272/2011 associated himself with the views of Chief Wole Olanipekun, SAN. He observed that section 285 (7) of the constitution, as amended, is mandatory.

For a proper appreciation of the purport and intendment of the provision of Section 285 (7) of the 1999 constitution as amended, it is apt to reproduce it as follows:-

“Section 285 (7) - an appeal from a decision of an election Tribunal or Court shall be heard and disposed of within 60 days from the date of the delivery of judgment of the tribunal.”

Let me observe here that the constitution is the grundnorm; otherwise known as the basic norm from which all the other laws of the society derive their validity. Each legal norm of the society derives its validity from the basic norm. Any other law that is in conflict with the provision of the Constitution must give way or abate. B

It must also be stated in clear terms here that where the provision of the Constitution as reproduced above is clear, in interpreting same the court should give it its plain and ordinary meaning. See: *Nigerian Army v. Aminu Kano* (2010) 5 NWLR (pt. 1188) 429 at 460. By the provision of section 285 (7) of the 1999 Constitution as reproduced above, it is clear that it prescribed the time for the determination of any appeal arising from election petitions. C

In construing the above reproduced provision of section 285 (7) of the 1999 Constitution, as amended, I must bear in mind the fact that the basic function of every court called upon to interpret same is to seek out the intention of the Legislator as could be gathered from the provision of the statute. Same should be interpreted as it is and not as it ought to be. In strict sense, the law was enacted to avoid delays in election matters. D

It should be further pointed out that the law makers employed the use of the word ‘shall’ which is a mandatory term. It connotes the mandatory sense that drafters typically intend and which courts typically uphold. E

Put bluntly, the mathematical permutations made on behalf of the appellant in SC. 272/2011 in a bid to extend the 60 days mandated were to no avail. In the same vein, the case of *Nafiu Rabi v. The State* (1980) 8-11 130 at 151 in which this court ruled in favour of broad interpretation - liberal approach or even the employment of a global view had to do with issue of fair hearing. The law makers are aware of section 36 of the Constitution which covers same. F

The provision of Section 285 (7) of the constitution, as amended which comes after Section 36 of same, is specific and designed to fix the time for completion of election matters. It is a constitutional imperative which this court cannot knock down. For now, it is sacrosanct; as it were, and must be accorded its due effect. G

It is not in contest that the appeals filed in July, 2011 are now more than 60 days in existence. They are constitutionally barred; or may be I should say statute-barrred. Unfortunately, they are dead and should be knocked to the ground. As the appeals have become spent, they are hereby struck out. I agree with my learned brother, B Onnoghen, JSC. I give kudos to each Senior Counsel to the parties for his respective stand point. For now, let each one preserve his armour. That is how it should be.

C

NGWUTA JSC

SC.272/2011 and SC/276/2011 (Consolidated) are appeals against interlocutory decision in CA/A/EPT/PRES/1/2011 before the Court of Appeal, Abuja. SC.272/2011 is the appeal against the ruling of the Court below delivered on 14/7/2011. The notice of appeal was filed on 21/7/2011. SC.276/2011 is the appeal against the ruling delivered by the lower court also on 14/1/2011. The Notice of Appeal was filed on 25/7/2011.

When the appeals were called for hearing on 27/1/2011, the E Court, in view of the facts stated above, asked learned counsel for the Parties to address it on whether or not the two appeals are still alive in view of S.285(7) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

F Learned Senior Counsel for the Appellant, Chief Gadzama, SAN, in his elaborate submissions relied on case law as well as Public Holiday Act and the 1st Schedule thereto; S.15(4) of the Interpretation Act Cap. 123 Law of the Federation 2004 among others and urged the Court to exclude the period of the Court's annual vacation G from the computation of the period of 60 days within which the appeal shall be heard. Learned Counsel passionately prayed the Court to adopt a liberal interpretation of S.285 (2) of the Constitution (as amended) so as not to deny the appellant a hearing. Learned Senior Counsel stressed the fact that the appellant did all it had to do timeously and was in no way responsible for the delay. He urged the H court to rely on the computation he presented and to hold that the appeals will not expire till about 14th December, 2011. He urged the court to hear the appeals and determine same on the merits.

Learned Senior Counsel for the 4th and 5th Respondents who

is Counsel for the Appellants in SC.276/2011 argued that the Constitution is supreme. He relied on sections 1(1) and (3) of the Constitution and urged the Court not to bend the provisions of S. 285(7) of the Constitution. He aligned with his brother Silk Gadzama, SAN that the Appellants did not in any way contribute to the delay in the appeals. B

In support of his argument on the supremacy of the Constitution, learned senior counsel referred to *Aper-Aku. v. Unonso* (1985) 1 SC wherein the Supreme Court knocked out a provision of the Electoral Act of 1983 on time to complete election petition for inconsistency with the provisions of the Constitution. He argued that since S.285 (7) is a provision of the Constitution the Court cannot strike it out as a provision of an Electoral Act. He submitted that the appeals had lapsed and urged the Court to recommend an amendment of S.285 (7) of the Constitution to exclude the period of vacation from the period within which an appeal shall be heard and disposed of. C D

Okpeseyi, SAN, in his own submission, contended that authorities relied on by the learned Silk for the appellant are Acts of the National assembly and not the Constitution itself. He referred to the word “shall” in S.285 (7) of the Constitution (as amended) and submitted that the provision is specific and must override any inconsistent law or rule. Associating with his brother Silk, Chief Olanipekun, SAN, he said that the appeals are dead. He suggested the constitution of a special panel of the Court to hear appeal from election petitions during the period of vacation. E F

Ben Osaka, Esq., adopted the submission of the learned Silk, Okpeseyi, SAN. Section 285(7) of the 1999 Constitution (as amended) provides:

“(7): An appeal from a decision of an election tribunal or Court of appeal in an election matter shall be heard and disposed of within 60 days from the date of the delivery of judgment of the tribunal or Court of Appeal.” G

The ruling of the Court of Appeal giving rise to the appeals was delivered on 14/7/2011. The issue herein is whether S.285 (7) of the Constitution should be given a liberal interpretation to exclude vacation, Saturdays, Sundays and Public Holidays from the computation of the period specified therein or the provision should be applied strictly even though Appellants were not responsible for the delay. H

Learned Silk for the appellant argued that the Constitution 1999 (as amended) is a law made by the National Assembly. Be that as it may, the Constitution belongs to, and is alone in its own exclusive class. The validity of all other laws in the country will be determined by reference to the Constitution. Its supremacy is not in doubt.

B See S. 1 (1) of the Constitution 1999 (as amended).

Section 285(7) of the Constitution (as amended) is a statute of limitation with regard to the hearing and disposal of appeal in election matters. Any action brought outside a statutorily limited period is time-barred. See *Egbe v. Adefarasin* (1985) 1 NWLR (Pt. 3) 549; *Agboola v. Saibu* (1991) NWLR (pt.175) 566.

Much as I agree and sympathize with the Appellants, that they are not in any way responsible for the delay in the matter, I am unable to subscribe to the view that S.285 (7) of the Constitution 1999 D (as amended) which is intended to limit time should be interpreted to expand time. That will be contrary to the intendment of the subsection. Rather, I will endorse the call for amendment of S.285 (7) of the Constitution to exclude the period of vacation in the computation of the period specified therein. As an interim measure, I also E endorse the suggestion that a panel be put in place to hear and dispose of appeals in election matters during vacation.

I read in draft the lead ruling just delivered by my Lord Onnoghen, JSC and I adopt His Lordship's reasoning and conclusions.

F Based on the above, I agree that the determination and disposal of appeals Nos. SC. 212/2011 and SC.276/2011 is time-barred under S.285 (7) of the Constitution 1999 (as amended). The appeals are dead and are consequently struck out. I make no order for G costs.

PETER-ODILI JSC

This is a consolidated process of the two interlocutory appeals H viz: SC.272/2011 and SC.276/2011. I had the privilege of reading the draft of the rulings just delivered by my learned brother, W.S.N. Onnoghen which decisions and reasoning I agree with.

In the first appeal, the facts briefly are that the 1st Respondent had on Sunday, the 8th day of May, 2011 filed an Election petition

against the Appellant and the 2nd to 42nd Respondents challenging the Election of the 4th and 5th Respondents herein as President and Vice-President of the Federal Republic of Nigeria respectively in the April 2011 Presidential Election. The 1st Respondent sought from the court of Appeal, Abuja Division inter alia a determination and declaration that the election and return of the 4th and 5th Respondents herein (3rd & 4th Respondents in the lower court) was voided by corrupt practices and substantial non-compliance with the relevant provisions of the Electoral Act, 2010 (as amended). B

The Appellant (5th Respondent in the court below) filed a preliminary objection, which among other things urged the court to dismiss and/or strike out the petition in limine on the ground that the petition was filed on Sunday, May 8th, 2011 which is a public holiday. C

The 4th and 5th Respondents herein (3rd and 4th Respondents in the court below) also filed a preliminary objection challenging the competence of the petition. The court below heard the two objections and in a considered ruling held that the petition is valid or competent even though filed on Sunday. Against that ruling the Appellant has come to this court seeking this court's setting aside that ruling, allow the appeal and strike out the petition for incompetence. D E

In SC.276/2011 the Appellants, Dr. Goodluck Ebele Jonathan (president and Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria) and Architect Mohammed Namadi Sambo against Congress for Progressive Change and 40 Ors praying for this court's order setting aside the Ruling of the court of Appeal delivered on 14th July, 2011 in which that court upheld the validity of the petition which had been brought before it by the 1st Respondent irrespective of the fact that the said petition had been filed on a Sunday, a public holiday. F G

Seeing that the two appeals are really the same side of a coin, this court ordered the consolidation of the two appeals so they could be heard together and on the 27th October, 2011, the appeals were slated for hearing. Chief Gadzama, learned counsel for the Appellant in SC.272/2011 informed the court that he had discussed with other counsel, and it was their impression that the matters be deferred to await the judgment of the Court of Appeal in the main suit and so these interlocutory appeals and whatever the outcome in the ex- H

pected judgment in the court below would then be considered all together.

Chief Olanipekun for Appellant in SC.276/2011 was of the same mind as Chief Gadzama and Chief Okpeseyi for the 1st Respondent in SC.272/2011 agreed but called the court's attention to the fact that the appeals had exhausted the 60 days allowed by the constitutional provision.

Mr. Osaka for 2nd, 3rd, 6th and 42nd Respondents in the two appeals towed the line of thinking of the counsel for 1st Respondent, Chief Okpeseyi. In the light of that development this court ordered counsel to address it on the provisions of section 285(7) of the 1999 constitution as amended in the context of the passage of more than 60 days for appeals that ought to have been heard and determined and that not done.

Chief Gadzama for the Appellant in SC.272/2011 submitted that the consolidated appeals are still alive since the 60 days should exclude the entire vacation period of this court and even the Court of Appeal. Also to be excluded would be Saturdays and Sundays plus the public holidays in between. That this computation would then mean the 60 days would be completed by the middle of December 2011. He said this court should adopt a liberal interpretation of section 285 of the constitution as amended. He cited *Emesim v. Nwachukwu* (1999) 6 NWLR (pt.605) 163 at 169; S.2 (3) of the Public Holidays Act, 3rd Schedule Laws of the Federation of Nigeria 2004; S.15 (4) Interpretation Act Cap 123 Laws of the Federation; *Adefemi v. Abegunde* (2004) 15 NWLR (pt. 895) 1 at 21.

He reminded the court that the delay was not caused by the appellants who had acted timeously in getting their processes into court. Chief Olanipekun SAN of counsel for the Appellant in SC.276/2011 and 1st & 5th Respondents in SC.272/2011 said the court in interpreting a constitutional provision should ask why it was put in place. That in this instance S. 285(7) of the Constitution was put there to avert the slow pace in disposing of electoral matters and the next question is, if this court can bend the provisions of the constitution being a creation of the same constitution itself. He referred to Section 1(1), (3) of the 1999 constitution as amended. That what is on ground is a constitutional imperative and every one has to be on ground is a constitutional imperative and every one has to be dispassionate and must strictly apply. He cited *Aper-Aku v. Unonso*

(1985) 1 SC. That only by an amendment to the constitutional provision would the court be energized to go along with the route charted by Chief Gadzama.

Mr. Okpeseji for 1st Respondent in both appeals said the authorities cited by Chief Gadzama are unhelpful since they are on statutory provisions and not on constitutional provisions. That Section 285(7) of the Amended 1999 Constitution is a specific provision and would prevail, more so where the matters of the provisions had used the word “shall”. That section 285 is a mandate and cannot be circumvented.

Mr. Osaka learned counsel for 2nd, 3rd, 6th - 42nd Respondents in both appeals aligned with the submissions of Chief Olanipekun in that Section 285 is sacrosanct.

Having heard from counsel, one has to remind himself as a judge that he is hired to interpret the laws of the country which include the constitution and statutes. Therefore once there is an infraction of the law, the court has a constitutional duty to say so. In carrying out this duty, the proper approach when faced with clear words of a constitutional provision is to follow them in their simple, grammatical and ordinary meaning rather than look further afield because that is what on the face of it is what gives them, their most reliable meaning. See *Attorney - General Abia State v. Attorney - General of the Federation* (2006) 16 NWLR (pt. 1005) 265; *Ehuwa v. O. S. I. E. C* (2006) 18 NWLR (pt. 1012) 544.

Situating the guiding principles of interpretation of statutes and in this case a constitutional provision, within the context of what is relevant before us, that is whether or not the 60 days provided for in Section 285 (7) of the constitution as amended had expired in the hearing and determination of the appeals before this court and if the answer is yes, what next? In this instance the lawmakers had used the word “shall” in way leaving nothing to sway into a possible option or choice, rather in a way as to give a command or a mandate and in plain view is the fact that there is no room to modify, alter or qualify the language used in Section 285(7) of the Constitution. The object of all interpretations is to discover the intention of the law makers which is usually done from the language deployed and in this case seeing that the meaning is clear it is not for this court or any other to defeat that plain meaning of the provision by the introduction of any

other words or possible meaning. When that is the case as I see it as such here and now the only road open is to give effect to that constitutional provision undiluted.

In keeping with the principles above stated, it is not the function of a court of law to sympathize with a party in the interpretation of a constitutional provision merely because, appellants acted timeously and due to no fault of theirs, there is an effluxion of time allotted for the hearing and final determination of the appeal. Going along with what Chief Gadzama is asking of this court is to enter into and possibly take over the functions of the legislature and so the only avenue in dealing with the appeals before us is to do what ought to be done within the context of this constitutional provision of Section 285 and declare the appeals dead and they have been dead for more than 40 days and that is the reality on ground. Nothing can change that. See *Ifezue v. Mbadugha* (1984) 1 SCNLR 431; *Rosseck v. A. C. B. Ltd* (1993) 8 NWLR (Pt.312) 382 at 498, *Kraus Thompson Organisation v. NIPSS* (2004) 7 NWLR (pt. 901) 44, *Fawehinmi v. Inspector General of Police* (2007) 7 NWLR (pt. 767) 606.

In the light of the foregoing and wider reasoning in the leading Ruling, I strike out these appeals viz: SC.272/2011 and SC.276/2011. Parties are to bear their own costs.

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