

**SUPREME COURT OF NIGERIA**  
31ST OCTOBER, 2011. SC. 332/2011 (CON)  
**CORAM:- W. S. N. ONNOGHEN, J. A. FABIYI, S.**  
**GALADIMA, S. N. NGWUTA, M. U. PETER-ODILI, JJSC**

1. ALHAJI KASHIM SHETTIMA  
2. ALHAJI ZANNA UMAR  
MUSTAPHA

AND

ALL NIGERIA PEOPLES PARTY

AND

1. ALHAJI MOHAMMED GONI  
2. PEOPLES DEMOCRATIC PARTY ..... APPELLANTS

AND

1. ALHAJI MOHAMMED GONI  
2. AMBASSADOR SAIDU SHETTIMA  
PINDAR  
3. PEOPLES DEMOCRATIC PARTY  
4. ALL NIGERIA PEOPLES PARTY  
5. INDEPENDENT NATIONAL  
ELECTORAL COMMISSION

AND

1. ALHAJI MOHAMMED GONI  
2. PEOPLES DEMOCRATIC PARTY  
3. INDEPENDENT NATIONAL  
ELECTORAL COMMISSION  
4. ALHAJI KASHIM SHETTIMA  
5. ALHAJI ZANNA UMAR ..... RESPONDENTS  
MUSTAPHA

AND

1. ALHAJI KASHIM SHETTIMA  
2. ALHAJI ZANNA UMAR  
MUSTAPHA  
3. ALL NIGERIA PEOPLES PARTY  
4. INDEPENDENT NATIONAL  
ELECTORAL COMMISSION

**APPEALS** - Ground of appeal - Competence - It must attack or complain about the ratio in the judgment (H1)

**APPEALS** - Issues - Basis - Propriety - Issues must be distilled from grounds of appeal - Otherwise they are deemed incompetent and liable to be struck out (H2)

**STATUTES** - Interpretation - Principles - Where the words used are unambiguous - They must be given their ordinary meaning - Save where it will lead to absurdity (H3)

**ELECTION PETITIONS** - Proceedings - Time limit - By 1999 Constitution (as amended) s. 285(5)(b) - The proceedings must be concluded within 180 days (H4)

**ORDERS OF COURT** - Election petitions - Appeals - Order made to arrest judgment - Propriety - The order is contrary to the accelerated hearing of the petition - And the provisions of paragraph 18(1) Practice Directions 2011 (H5)

**JUDGMENTS** - Arrest of - Vide stay ordered by appellate court - Propriety - Rules of court do not provide for arrest of judgments about to be delivered - Save to prevent abuse of court process (H6)

**WORDS & PHRASES** - "Decision" - Meaning - Under 1999 Constitution s. 285(7) - It refers to any determination of a court - Which includes judgment or orders (H7)

**APPEALS** - Election petitions - Time limit - By 1999 Constitution s. 285(7) - They must be heard and disposed of by appellate court - Within sixty days from date of delivery of judgment (H8)

**SUPREME COURT** - Jurisdiction - It can exercise its power under s. 22 Supreme Court Act - Where Court of Appeal has jurisdiction over the matter in issue (H9)

### **FACTS**

Appellants in SC/352/2011 are petitioners before the Borno State Governorship Election Tribunal, Holden at Maiduguri in Petition No.BO/EPT/GOV/1/11 filed on the 17th day of May, 2011 challenging the victory of 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents in SC/352/2011 who are also the appellants in SC/332/2011 and SC/333/2011. As a result of security challenges, the venue of the tribunal was relocated to Abuja from Maiduguri. At the conclusion of pleadings 1st - 3rd respondents in SC/332/2011 filed motion Ex-Parte at the Tribunal seeking the issuance of Pre-Hearing Notice and Pre-Hearing Information Sheets pursuant to paragraph 18(1) and (2) of the 1st schedule to the Electoral Act, 2010 (as amended) and order 26 Rule 8 of the Federal High Court (Civil Procedure) Rules, 2009. The issue was raised as to whether the application ought to have been made by Motion on Notice instead of the Motion Ex-Parte. In its ruling on 10<sup>th</sup> August 2011, the tribunal struck out the Ex-Parte motion for failure to comply with the provisions of paragraph 47(2) of the 1st schedule to the Electoral Act, 2010 (as amended). 1st - 3rd respondents were aggrieved by the ruling and consequently appealed against same on 12th August 2011 and also filed a motion on Notice on 11<sup>th</sup> August 2011 for extension of time within which to apply for Pre-hearing Notice. Appellant, 4th and 5th respondents in SC/332/2011 filed processes at the Tribunal seeking a dismissal of the petition on the ground that same be deemed abandoned for failure of 1st - 3rd respondents to file their application for Pre-Hearing Notice in compliance with paragraph 18(1) of the 1st schedule to the Electoral Act, 2010 (as amended). The ruling was adjourned to 20th September, 2011.

Meanwhile, the appeal filed by 1st - 3rd respondents challenging the decision of the Tribunal on the Ex-parte application was re-scheduled for 19th September, 2011 from 21st September, 2011. On the 19<sup>th</sup> day of September 2011, learned senior counsel for 1st - 3rd respondents who are also appellants in SC/352/2011 informed the Court of Appeal that there was a pending ruling following an application to dismiss the petition, of which was adjourned to 20th September, 2011. He urged the court to invoke its powers under section 15 of the Court of Appeal Act, 2004 to preserve its jurisdiction to hear and determine the appeal. The application was opposed

by the other parties including appellant in SC/332/2011. The court subsequently gave an interim order staying the delivery of the pending ruling of the Tribunal scheduled for 20th September, 2011. Consequently, Appeal Nos. SC/332/2011 and SC/338/2011 were instituted against the ruling of the Court of Appeal. Following the appeal against the ruling of 19th September, 2011, appellants also filed an application for stay of the proceedings of the lower court pending the determination of the appeals before the Supreme Court. On the 26th day of September, 2011 when appeal No. CA/J/EPT/GOV/151/2011 came up for hearing at the Court of Appeal, learned senior counsel for the respondents objected to the hearing of the appeal on the grounds, inter alia, that appeal Nos. SC/332/2011 and SC/333/2011 had been entered at the Supreme Court. Consequently, the appeal at Court of Appeal was adjourned sine die. The appeals in the Supreme Court are consolidated.

### **ISSUES FOR DETERMINATION**

- “1. *Whether having regard to the mandatory provisions of section 142 of the Electoral Act, 2010 (as amended) and paragraph 18 of the Election Tribunal and Court practices Directions 2011, the court below was right or possess the vires to have granted an interim order against the Tribunal from delivering its ruling stated for the 20th day of September, 2011.*
2. *Whether the Court of Appeal was right to have granted the interim order the effect of which is to arrest the ruling of the Tribunal especially when the appeal before it was not ripe for hearing.”*

**HELD** (Unanimously allowing Appeal Nos. SC.332/2011 and SC.333/2011, while striking out Appeal No. SC.352/2011 per **ONNOGHEN JSC**)

### ***Ground of appeal - Competence***

1. It is settled law that grounds of appeal must attack or complain about the ratio in the judgment on appeal while issue(s) is/are formulated from the grounds of appeal so filed and that any issue for determination not arising from the grounds of appeal is deemed incompetent and liable to be struck out. (p. 2496 B)

### ***Issues - Basis - Propriety***

2. The only other way the said sole issue could be taken into account

in the determination of the appeal is if 1st- 3rd respondents had filed an appeal or cross appeal or a respondent's notice in which the constitutionality, etc of the provisions in question are challenged in the grounds of appeal; as it is settled law that an issue before an appellate court must arise from the grounds of appeal else it is incompetent and liable to be struck out. (p. 2496 C) B

### ***STATUTES - Interpretation - Principles***

3. It is my considered view that the three provisions quoted supra are clear and unambiguous and by the principles of interpretation of statute, to the effect that where the words of any statute are clear and unambiguous, they must be given their ordinary meaning unless this would lead to absurdity or be in conflict with other provisions of the constitution or statute, effect must be given to those provisions without recourse to any other consideration, they ought to be so treated. D

I agree with the submission of learned senior counsel for the 1st and 2nd respondents that once the constitution or statute defines a word or term the court cannot go outside it to seek the meaning of that word or term as the same has been duly defined within the confines of the constitution/statute. See *Uhunmwangho vs Okojie* (1989)12 S.C 142 at 156. To my mind, the words used in section 285(7) of the 1999 Constitution are very clear and unambiguous and therefore, as settled by law, do not need any interpretation. The words have to be deployed in their plain and ordinary meanings as the court is not permitted to read into any piece of legislation words and/meanings not contained therein or stretch the meanings to include matter(s) not in the contemplation of the framers/drafters of the constitution or statute. (pp. 2500 C/2507 A) E F

### ***ELECTION PETITIONS - Proceedings - Time limit*** G

4. By the ordinary meaning of the words used in the provisions supra, it is clear that:-

- i. An election tribunal must, of necessity deliver its judgment/decision in writing in an election petition within 180 days from the date of the filing of the petition H
- ii. An election petition and an appeal arising therefrom must be given accelerated hearing and must take precedence over all other cases or matters before the tribunal or court.

iii. An interlocutory appeal shall not operate as a stay of proceedings nor shall it form a ground for stay of proceedings before a tribunal.

All the above provisions emphasize the essential nature of an election matter either at trial or on appeal which is that it is an urgent matter.

B The urgency involved in election matters advised the National Assembly to fix a time limit of 180 days in Section 285(5)(b) of the 1999 Constitution (as amended) while Section 142 of the Electoral Act, 2010 (as amended) grant automatic accelerated hearing to election petition and/or appeal arising therefrom to the extent that such matters take precedence over all other cases and matters, including criminal matters.

D The importance of time being of the essence in election matters is further emphasized by paragraph 18(1) of the Practice Direction, 2011, supra, which forbids the use of interlocutory appeal as a ground for stay of proceedings before a tribunal.

E I hold the considered view that the above provisions are mandatory and not permissive as they admit of no discretion and the sooner both the Bar and Bench realize this and comply to the spirit and letter of the provisions the better for this nation's democracy. (p. 2500 E)

### ***Appeals - Order made to arrest judgment - Propriety***

F 5. Whatever term one likes to use in describing the above order, its effect on the trial tribunal concerned is to STOP it from delivering the ruling in an application seeking a dismissal of the petition before it. The order definitely was not designed nor intended nor did it give an accelerated hearing of the petition so as to enable the tribunal deliver its judgment/decision within 180 days of the filing of the petition as constitutionally enjoined. In fact the order is clearly in collision course with the provisions of paragraph 18 (1) of the Practice Directions, 2011 as it stopped any further proceedings in the matter by the trial tribunal until the determination of an appeal which was yet to be ripe for hearing in an election matter where time is of the essence. (p. 2501 G)

### ***JUDGMENTS - Arrest of***

6. Apart from the peculiar nature of the proceedings giving rise to

the appeal, generally speaking and by the decision of this court in Newswatch Communications Ltd vs Attah (supra), the rules of court have no provision for arrest of judgments about to be delivered by a court. There is however an exception to that general rule as can be gleaned from the decision of this court in the case of Dingyadi vs INEC (No.1) (2010) 18 NWLR (Pt.1224) 1; (2010) 4 - 7 SC (pt.1) <sup>B</sup> 76 where the Sokoto Division of the Court of Appeal sitting on appeal in an election matter was stopped by this court from delivering a judgment in an appeal arising from election petition filed in abuse of process as it is the duty of every court to prevent abuse of its process <sup>C</sup> or the process of the court. (p. 2502 A)

### ***“Decision” - Meaning***

7. Much argument have been advanced as to the meaning of the words ‘decision’ and ‘judgment’ used in above section 285 (7) of the constitution by senior counsel for the contending parties. However, Section 318 of the said 1999 Constitution defines the word decision thus:

*“Decision: Means in relation to a court, any determination of that court and includes judgment; decree, order, conviction, sentence <sup>E</sup> or recommendation”.*

Once the above is borne in mind, it becomes necessary to state that the meaning of the word “decision, as defined in Section 318 of the 1999 Constitution is as it relates to a court (and I may add tribunal) <sup>F</sup> and it is clear that it is synonymous with the determination of the court in the form of judgment, decree, order, conviction, sentence or recommendation. In other words, it is my considered view that the word “decision” therein means the same as a determination, judgment, decree, order conviction, sentence or recommendation of a <sup>G</sup> court or tribunal, and, I may add, any quasi judicial tribunal, authority or body.

I hold the view, therefore, that there is no legally cognizable difference between the words “decision” and “judgment” as used in Section 285(7) of the 1999 Constitution as the learned senior counsel <sup>H</sup> for the appellants would want us believe and hold.

It is also of much importance to note that the words “decision” and “judgment” as defined in the said Section 285(7) of the 1999 Constitution applies generally to the determination of a court either

in an interlocutory proceeding or in the final decision. The definition admits of no distinction between interlocutory and final proceedings/decisions. A court or tribunal can make an order either in an interlocutory proceeding or in the final decision and it would still be an order or decision or judgment of the court by the provisions of Section 285(7) of the 1999 Constitution. (pp. 2506 H/2507 D)

***Election petitions - Time limit***

8. The above being the case, it is clear and I hereby hold that by the provisions of Section 285(7) of the 1999 Constitution an appeal from a decision of an election tribunal or court either in an interlocutory proceeding or final decision must be heard by the appellate court and disposed of within sixty (60) days from the date of the delivery of judgment/decision/order/decreed/ conviction/sentence or recommendation of the tribunal or court. (p. 2508 B)

***SUPREME COURT - Jurisdiction***

9. Learned senior counsel for the appellants has not denied the fact that the appeal pending at the lower court had expired hence his alternative contention that the instant appeal is against the decision of that court made on 26th September, 2011. I hold the view that the above argument is of no moment particularly when one considers the fact that the appellants are calling on this court to invoke its powers under Section 22 of the Supreme Court Act to hear and determine the very expired appeal.

It is settled law that this court can only exercise its powers under the said Section 22 by exercising the jurisdiction of the lower court where that court has the jurisdiction to act, not where that court has ceased to have jurisdiction over the matter. In short the jurisdiction of this court under Section 22 of the Supreme Court Act depends completely on the Court of Appeal having jurisdiction to deal with the matter in issue and pending before it. (p. 2508 E)

**H NOTABLE POINT OF INTEREST  
NGWUTA JSC**

*1. When a suit is considered as being academic*

I appreciate the candour exhibited by the learned Senior Counsel in his reference to S. 318 of the Constitution 1999 (as amended) for



the meaning of the word “decision” but I do not agree that for the purpose of s. 318 of the Constitution, there is a difference between the two words “decision” and “Judgment”. In my humble view, the appeal has been spent. It has become time-barred. It has been rendered academic, and stuff for hypothetical exposition by the law faculties in our Universities. A suit is academic where it is purely theoretical, makes empty sound and, of no practical utilitarian value to the plaintiff even if judgment is given in his favour. A suit is academic if it is not related to practical situation of human nature and humanity. See *Plateau State v. A-G Federation* (2006) 3 NWLR (pt. 967) 346 at 419 SC. B  
C

The appeal, by the passage of time, has lost touch with the human situation from which it drew its breath. It is therefore dead. (p. 2518 H)

### **REPRESENTATION**

1. SC/332/2011

Yusuf Ali, SAN for the 1st appellant

2. SC.333/2011

Dr. Izinyon, SAN for the appellant D  
E

3. SC.352/2011, S.C 333/2011, SC.352/2011

L. O Fagbemi, SAN for the Appellants, 4th and 5th respondents and 1st & 2nd respondents; with him are Messrs Adebayo Adenipekun, SAN, A.S Adeyi Esq, Dr. W.O Egbewole, I. M Chul Esq, Usman Tatama Esq, Boye Sobanjo Esq, A. M Kura Esq, A. F Fagbola (Mrs.), Mas’ud Alabelewe Esq, K. K Eleja Esq, Etukwu Onah Esq, S.A. Oke Esq, Wahab Ismail Esq, Alex Akoja Esq, B. Karumi Esq, A.O Olori-Aje Esq, S. O. Babakebe Esq, B. S Zanna Esq, K.T. Suleiman (Miss), T.E. Akintade (Miss), P.I. Ikegbu (Mrs.) K.O. Lawal Esq and Kehinde G Ogunwumiju Esq F

4. SC.332/2011, SC. 352/2011

(sic) for 4th respondent and 3rd respondent; with him are Chief Lawal Rabana, SAN, B. K Abu Esq, K. S Lawan Esq, F. O Izinyon Esq, Wale Odeleye Esq, B.S. Zanna Esq, A. H. Goni Esq, L. O. Fagbemi Esq and Alex Izinyon II Esq H

5. SC.332/2011, SC. 333/2011

(sic) for 1st - 3rd respondents and 1st & 2nd respondents; with him are messrs Chief J. K Gadzama, SAN, T. Oyetibo, SAN, Chief Bolaji

- Ayorinde, SAN, Wale Akoni, SAN, Dr. Joseph Nwobike, SAN, J. N. Egwuonwu Esq, I. A Kaigama Esq, M. Monguno Esq, M. V. Magi Esq, A. C Ozioko Esq, Z. Hamza Esq, C. P Oli Esq, A. A Modu Esq, M. S Dukas Esq, M. Burka Esq, N. N Shaltha (Miss), A. S Akingbade Esq, O. I Arasi Esq, L. Imolode Esq, K. S. Umar Esq, U.M Jawur Esq, B C.E Uwandu Esq, F. Oshunwusi (Miss), M.A Tar Esq, B. G Shettima Esq, I. H. Ngada Esq, J. M Ugbeji (Miss), A. A. Abbo Esq, M. A. Oladele Esq, G.A. Ashaolu Esq, P. C. Igwenazor Esq, F. I. Nwodo Esq and Paul Erokoro Esq,
6. SC.332/201, SC.333/2011, SC.352/2011
- C (sic) SAN for 5th respondent, 3rd respondent and 4th respondent; with him are Ifeyinwa Arum (Miss); K. Odey, Esq; p. Abang, Esq; J. Omokri (Miss); C. Ajaegbu (Miss) and Swaben Audu.

#### D **CASES REFERRED TO**

- Management Enter. Ltd vs Otusanya (1987) 2 NWLR (pt.55) 179  
 Oniah vs Onyia (1989) 1 NWLR (Pt. 99) 514 at 529  
 Adelaja vs Fanoiki (1990) 2 NWLR (Pt. 131) 137 at 148  
 Tinubu vs I.M.B. Securities Plc (2000) FWLR (Pt. 77) 1002
- E Nwanere vs Idris (1993) NWLR (Pt. 279) 1 at 14  
 NIDB vs Unisteel Works Ltd (1995) 3 NWLR (Pt. 356) 696  
 Nnovo vs Anichie (2005) 2 NWLR (Pt. 910) 263  
 Newswatch Communications vs Attah (2006) 12 NWLR (Pt.993) 144  
 La sun v. Awoyemi (2009) 16 NWLR (pt.1168) 513 at 525
- F Dingyadi vs INEC (No.1) (2010) 18 NWLR (Pt.1224) 1  
 Pam vs. Mohammed (2008) 16 NWLR (Pt. 1112) 1 at 48  
 Adeyemo vs. Ikeoluma & Sons Ltd (1993) 8 NWLR (pt.309) 27  
 Nkwocha vs. Government of Anambra State (1984) 1 SC NLR 634
- G Govt. of Kwara State vs. Dada (1986) 40 NWLR (pt. 38) 687  
 Bank of the North vs. Maidamisa (1997) 10 NWLR (pt. 525) 408

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

- Electoral Act 2010 (as amended), s. 142, para. 18(1) and (2) of 1st  
 H schedule  
 Federal High Court (Civil Procedure) Rules 2009, O. 26 r. 8  
 Court of Appeal Act 2004, s. 15  
 Election Tribunal and Court Practice Directions 2011, s. 18  
 Constitution of the Federal Republic of Nigeria 1999 (as amended),

ss. 285 (5)(b), (7), 246 (1)(b)(i)(ii)(iii)(2)(3), 294 (1) and 318  
Supreme Court Act, s. 22

***LEAD JUDGMENT BY ONNOGHEN JSC***

Appeal Nos. SC/332/2011 and SC/333/2011 are against the ruling of the Court of Appeal, Holden at Jos delivered on the 19th day of September, 2011 in appeal No. CA/J/EPT/GOV/151/2011 staying the ruling and proceedings of the Borno state Governorship Election Tribunal while No SC/352/2011 is against the decision of the said lower court delivered on the 26th day of September, 2011 in which the court adjourned the appeal pending before it sine die following the entry of appeal Nos. SC/332/2011 and SC/333/2011 at the Supreme Court of Nigeria.

The appellants in SC/352/2011 are the petitioners before the Borno State Governorship Election Tribunal, Holden at Maiduguri, in petition No. BO/EPT/GOV/1/11 filed on the 17th day of May, 2011 challenging the return of the 1st, 2nd and 3rd respondents in SC/352/2011 who are also the appellants on SC/332/2011 and SC/333/2011 respectively.

Due to serious security challenges, the venue of the tribunal was relocated to Abuja from Maiduguri in Borno state. At the conclusion of pleadings the 1st - 3rd respondents in SC/332/2011 filed a motion Ex-Parte on the 29th day of June, 2011 at the Tribunal seeking the issuance of Pre-Hearing Notice and Pre-Hearing Information Sheets pursuant to paragraph 18(1) and (2) of the 1st schedule to the Electoral Act, 2010 (as amended) and order 26 Rule 8 of the Federal High Court (Civil Procedure) Rules, 2009. The issue was raised as to whether the application ought to have been made by Motion on Notice instead of the Motion Ex-Parte.

In a considered ruling on the 10th day of August, 2011 the tribunal struck out the Ex-Parte motion for failure to comply with the provisions of paragraph 47(2) of the 1st schedule to the Electoral Act, 2010 (as amended) which provisions the tribunal considered mandatory. The 1st - 3rd respondents were aggrieved by the ruling and consequently appealed against same on 12th August, 2011 and, in addition filed a motion on Notice on 11th August, 2011 for extension of time within which to apply for Pre-hearing Notice.

The appellant and 4th and 5th respondents in SC/332/2011

filed processes at the Tribunal seeking a dismissal of the petition on the ground that same be/is deemed abandoned for failure of 1st - 3rd respondents to file their application for Pre-Hearing Notice in compliance with paragraph 18(1) of the 1st schedule to the Electoral Act, 2010 (as amended) and the ruling thereon was adjourned to  
B 20th September, 2011 after arguments on 2nd August, 2011.

Meanwhile the appeal filed by the 1st - 3rd respondents challenging the decision of the Tribunal on the Ex-parte application was rescheduled for 19th September, 2011 from 21st September, 2011.

C On the 19th day of September, 2011 learned senior counsel for the 1st - 3rd respondents who are also appellants in SC/352/2011 informed the lower court that there was a pending ruling in applications to dismiss the petition adjourned to 20th September, 2011 and urged the court to invoke its powers under section 15 of  
D the court of Appeal Act, 2004 to protect/preserve its jurisdiction to hear and determine the appeal, which application was opposed by the other parties including the appellant in SC/332/2011. The lower court acceded to the request of senior counsel for the 1st - 3rd respondents and made an interim order arresting or staying the delivery of the pending ruling of the Tribunal scheduled for 20th September, 2011. Appeal Nos. SC/332/2011 and SC/338/2011 are against that ruling. Following the appeal against the ruling of 19th September, 2011, the appellants also filed an application for stay of the proceedings of the lower court pending the determination of the appeals  
E before this court.  
F

On the 26th day of September, 2011 when appeal No. CA/J/EPT/GOV/151/2011 came up for hearing at the lower court, learned senior counsel for the respondents therein objected to the hearing of  
G the appeal on the grounds, inter alia, that appeal Nos. SC/332/2011 and SC/333/2011 had been entered at the Supreme Court etc as a result of which the lower court adjourned the appeal sine die.

Appeal No. SC/352/2011 is challenging the decision of the lower court in so adjourning the appeal sine die.

H A common issue therefore links the two set of appeals which issue is whether the lower court has the power or jurisdiction to arrest a ruling/stay proceedings/adjourn proceedings sine die in an election matter having regards to the state of the law and nature of election matters.

At the hearing of the appeals on the 24th day of October, 2011 this court consolidated the three appeals upon application by both counsel and heard same accordingly after which they were adjourned to today, 31st October, 2011 for judgment.

The issues for determination in SC/332/2011, as formulated by leading learned senior counsel for the appellants, YUSUF ALIESQ, SAN in the appellants' brief filed on 12th day of October, 2011 are as follows:-

"1. Whether having regard to the mandatory provisions of section 142 of the Electoral Act, 2010 (as amended) and paragraph 18 of the Election Tribunal and Court practices Directions 2011, the court below was right or possess the vires to have granted an interim order against the Tribunal from delivering its ruling stated for the 20th day of September, 2011.

2. Whether the Court of Appeal was right to have granted the interim order the effect of which is to arrest the ruling of the Tribunal especially when the appeal before it was not ripe for hearing"

On his part learned senior counsel for the 1st – 3rd respondents in SC/332/2011, CHIEF JOE KYARI GADZAMA, SAN, in the 1st -3rd respondents brief deemed filed and served on 24th October, 2011 formulated a single issue for determination, to wit:-

"Whether paragraph 18 of the Election Tribunal and Court Practice Directions 2011 supersedes the provisions of sections 6(6)(a), 24(6)(i) (b) (i), (ii),(iii), (2) and (3) of the 1999 Constitution of the Federal Republic of Nigeria and section 15 of the Court of Appeal Act, 2004".

Learned senior counsel for 4th respondent DR. ALEX A. IZINYON, SAN adopted the two issues formulated by the appellants in his brief filed on 21st October, 2011.

It should be noted that 5th respondent filed no brief of argument but urged the court, during oral arguments, to allow the appeal. The fight is therefore between appellants and 1st - 3rd respondents.

However, the issues formulated on behalf of the contending parties are so different as to make one wonder whether they really arise from the grounds of appeal filed in the appeal before us.

The amended grounds of appeal filed on 4th October, 2011 are as follows:-

"GROUND 1

The learned justices of the Court of Appeal erred in law and acted without jurisdiction in granting an interim order stopping the trial tribunal from proceeding to deliver its ruling on 20th September, 2011 contrary to the mandatory provisions of paragraph 18 of the Election Tribunal and Court Practice Direction 2011, made by the President of the Court of Appeal for the regulation of proceedings before the trial tribunal.

**PARTICULARS**

1. The practice direction forbids the granting of a stay of proceedings in an interlocutory appeal, from stopping the work of the tribunal.
2. The provisions of paragraph 18 were couched in mandatory language.
3. The order made by the court below was a nullity having regards to the provisions of the law.

**D GROUND 2**

The learned Justices of Court of Appeal erred in law and acted in excess of jurisdiction and against the spirit and intendment of the Electoral Act, 2010 (as amended) when it granted an interim order directing the trial tribunal from delivering of its ruling of 20th September, 2011.

**PARTICULARS**

1. Section 142 of the Electoral Act, 2010 (as amended) mandatorily requires all courts dealing with election matters to give it precedence over all other matters. The said section also mandatorily requires accelerated hearing of election cases.
2. The order of the court below was a clear antithesis of the provisions of Section 142 of the Electoral Act, 2010 (as amended).

**GROUND 3**

The court below erred in law by granting an interim order to stop the trial tribunal from delivering its ruling, which order was made per incuriam having regard to the provisions of Section 142 of the Electoral Act (as amended) and paragraph 1B of the Election Tribunal Court Practice Direction 2011.

**H PARTICULARS**

1. The order of the court below was made in ignorance of the mandatory provisions of the Electoral Act, 2010 (as amended).
2. The court below did not advert its mind to the mandatory provisions of the Electoral Act, 2010 (as amended) and the Practice Direc-

tion, in making the order.

#### GROUND 4

The Learned Justices of the court below erred in law in granting an interim order against the trial tribunal from delivering its ruling on 20th September, 2011, which amounted to an arrest of the said ruling, thereby promoting a procedure that is alien to the Nigeria juris-  
prudence. B

#### PARTICULARS

1. The procedure for the arrest of judgment is unknown under the Nigerian law.
2. There are the highest judicial authorities of the apex court disallowing any procedure that amounts to the arrest of the judgment or ruling of a court.
3. The order of the court below flew(sic) in the face of the settled position of our law as espoused by the decision of the Supreme Court. D
4. The order led to a grave miscarriage of justice.

#### GROUND 5

Learned Justices of the court below misdirected themselves in granting an interim order in stopping the trial tribunal from delivering its ruling on 20th September, 2011, on the assumption that the appeal before it was ripe for hearing when factually this was not so from the record. E

#### PARTICULARS

1. The court below has a legal duty to consult its record in determining whether an appeal is ripe for hearing or not, based on the processes filed. F
2. On 19th September, 2011, when the appeal was called up for hearing, all the briefs had not been filed nor exchanged between the parties. G
3. The Appellants herein had a pending motion for extension of time and leave to file Respondents' Notice and Brief of Argument thereon
4. The Appellants equally had a pending motion to file Respondents' Brief.
5. These motions were extant and had not been heard. H
6. In granting the order, the court below, with respect, put the cart before the horse".

It is very obvious that the sole issue formulated by learned senior counsel for the 1st - 3rd respondents and reproduced supra

does not arise from the amended grounds of appeal filed by the appellants and also reproduced supra. However, in deciding the appeals, arguments of learned senior counsel for the 1st - 3rd respondents relevant to the issue(s) in contention will be taken into account even though the sole issue, as formulated by him, is hereby discounted for not arising from the grounds of appeal, and therefore incompetent.

***It is settled law that grounds of appeal must attack or complain about the ratio in the judgment on appeal while issue(s) is/are formulated from the grounds of appeal so filed and that any issue for determination not arising from the grounds of appeal is deemed incompetent and liable to be struck out.***

***The only other way the said sole issue could be taken into account in the determination of the appeal is if 1st- 3rd respondents had filed an appeal or cross appeal or a respondent's notice in which the constitutionality, etc of the provisions in question are challenged in the grounds of appeal; as it is settled law that an issue before an appellate court must arise from the grounds of appeal else it is incompetent and liable to be struck out.*** See *Management Enterprises Ltd vs Otusanya* (1987) 2 NWLR (Pt.55) 179; *Oniah vs Onyia* (1989) 1 NWLR (Pt. 99) 514 at 529; *Adelaja vs Fanoiki* (1990) 2 NWLR (Pt. 131) 137 at 148; *Tinubu vs I.M.B Securities Plc* (2000) FWLR (Pt. 77) 1002 at 1023 - 1024.

Have the 1st - 3rd respondents filed any appeal/cross appeal or respondent notice against the decision of the lower court delivered on 19th September, 2011? I have gone through the record and seen nothing of the sort. The conclusion is therefore clear, that the sole issue does not arise from the grounds of appeal filed by appellants neither have 1st - 3rd respondents raised any grounds of appeal/cross appeal or respondent notice from which the said issue could be traced. Either way, the issue is incompetent and liable to be struck out.

Dr. Alex A Izinyon, SAN formulated a single issue for determination in the appellants' brief filed on 12th October, 2011, to wit: "Whether the learned Justices of the Court of Appeal have the jurisdiction to halt/stay the proceedings of the Borno State Governorship



Election Tribunal in BO/EPT/GOV/I/11 having regards to the provisions of Section 18 of the Election Tribunal and Court Practice Directions, 2011 and Section 285 (5)(b) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)”

The above issue is adopted by learned senior counsel for 4th and 5th respondents therein Yusuf Ali Esq, SAN in the 4th and 5th respondents’ brief filed on 21st October, 2011. B

On the other hand, senior counsel for the 1st and 2nd respondents formulated the same issue he raised in SC/332/2011 earlier reproduced in this judgment and is caught by the settled principles of law on formulation of issues for determination in the appellate courts and is consequently subject to the same treatment meted out in SC/332/2011. C

The 4th respondent filed no brief of argument but urged the court to allow the appeal during oral arguments. In respect of SC/352/2011, the sole issue formulated for determination in the appellants’ brief filed on 11th October, 2011 by Chief Joe-Kyari Gadzama, SAN is as follows:- D

*“Whether the refusal by the learned justices of the court below to hear this Appeal No. CNJ/EPT/GOV/151/2011 on the ground that Appeal Nos. SC/332/2011 and SC/333/2011 have been entered in the Supreme Court is not in breach of the Appellants’ right to fair hearing and thereby unjustified in law”.* E

It is, however, the view of senior counsel for 1st and 2nd respondents, Yusuf Ali Esq, SAN that the issue calling for determination in the appeal is:- F

“ Whether the court below was not right to have adjourned appeal No. CA/J/EPT/GOV/15/2011 sine die having regard to the entry of appeal Nos.SC/332/2011 and SC/333/2011 at the Supreme Court with the motions for stay of proceedings of the court below before the Supreme Court, and having regard to the principle of stare decisis and judicial precedent, the facts and general circumstances of this case”. G

I must state that the above issue goes far beyond the grounds of appeal in the appeal. There is no appeal or cross appeal or respondent notice by the 1st and 2nd respondents to ground the wide issue so formulated. I will, therefore, in the consideration of the appeal prune or limit the issue to only the essential elements relevant to H

the determination of the appeal and discountenance all else.

From the reproduced issues in the appeals above, it is clear that the issues in SC/332/2011 and SC/333/2011 are similar as the appeals relate to the ruling of 19th September, 2011 and can therefore be conveniently treated together. I intend to so treat them herein  
B below.

In arguing the issues, learned senior counsel for the appellants in SC/332/2011 submitted, in respect of issue 1, that the lower court acted not only in error but in excess of jurisdiction and contrary to the provisions of Section 142 of the Electoral Act, 2010 (as amended)  
C and paragraph 18 of the Election Tribunal and Court Practice Directions, 2011 when it made the order of 19th September, 2011. Senior counsel then proceeded to reproduce the provisions of Section 142 of the Electoral Act, 2010 and paragraph 18 of the Practice  
D Direction, 2011 and submitted that since the provisions are unambiguous, they be given their ordinary meaning; relying on *Nwanere vs Idris* (1993) NWLR (Pt. 279) 1 at 14 and *NIDB vs Unisteel Works Ltd* (1995) 3 NWLR (Pt. 356) 696 at 699; that it is clear from the above provisions that the proceedings of a trial tribunal cannot be  
E stalled, stultified or slowed down under any circumstance; that the two provisions are mandatory as the word “shall” is used therein, relying on *Nnovo vs Anichie* (2005) 2 NWLR (Pt. 910) 263; that time is of the essence in an election matter/proceeding.

It is the further submission of learned senior counsel that arrest  
F of judgment or ruling is unknown to our laws, relying on *NewsWatch Communications vs Attah* (2006) 12 NWLR (Pt.993) 144 or (2006) ALL FWLR (Pt. 318) 580 at 581 and that the lower court was in error when it failed/refused to follow the above decision of this court  
G which was cited and relied upon in opposing the application. Finally, senior counsel urged the court to resolve the issue in favour of the appellants.

In respect of SC/333/2011, it is the submission of learned counsel for the appellant that the lower court is without jurisdiction in  
H granting the relief complained of, relying on the provisions of section 285(5)(b) of the 1999 constitution (as amended) and paragraph 18 of the practice Direction 2011. It is the submission of senior counsel that the word “within” as used in section 285(5)(b) of the 1999 constitution (as amended) admits of no extension of time beyond the

180 days allotted; that the said section 285 (5)(b) therefore does not contemplate stay of proceedings of an election matter, and urged the court to resolve the issue in favour of the appellant and allow the appeal.

It is the submission of senior counsel for the 1st - 3rd respondents in SC/332/2011 and 1st and 2nd respondents in SC/333/2011 that the lower court has jurisdiction to entertain electoral matters vide the provisions of section 246(1) (b)(i),(ii),(iii) and (2) and (3) of the 1999 constitution and that the powers of the lower court to make orders such as stay of proceedings, execution, etc is an inherent power donated by section 6(b) (a) of the 1999 constitution in the interest of justice and to preserve the jurisdiction of the court, relying also on Section 15 of the Court of Appeal Act and *La sun v. Awoyemi* (2009) 16 NWLR (pt.1168) 513 at 525; that the powers vested on the lower court cannot be inhibited by any subsidiary legislation; that the lower court did not stay proceedings but ordered that the ruling on the dismissal of the petition should abide the appeal; that the lower court did not arrest the judgment/ruling of the trial tribunal as such the case of *Newswatch Communications vs Attah* (supra) does not apply and urged the court to dismiss the appeal.

It should be noted that both senior counsel for the appellants in SC/332/2011 and SC/333/2011 filed reply briefs which in effect reinforced the arguments/submission in the main briefs of argument and earlier summarized in this judgment.

It is not disputed that the appeal pending before the lower court and in which the controversial order complained of was made on 19th September, 2011 was an interlocutory appeal filed by appellants in SC/352/2011, who are also, the 1st and 2nd respondents in SC/332/2001. Also not disputed is the fact that the appeal was or arose from an election matter pending before an election tribunal.

By the provisions of section 285(5)(b) of the constitution of the Federal Republic of Nigeria 1999 (as amended/alterred) (hereinafter referred to as the 1999 constitution as amended/alterred).

“An election tribunal shall deliver its judgment in writing within 180 days from the date of the filing of the petition”.

In section 142 of the Electoral Act, 2010 (as amended), the National Assembly enacts that:

“Without prejudice to the provisions of Section 294 (1) of the

Constitution of the Federal republic of Nigeria, an election petition and an appeal arising therefrom under this Act shall be given accelerated hearing and shall have precedence over all other cases or matters before the Tribunal or the court’.

B The third and final provisions relevant to the determination of the issue and also relied upon by the appellants is paragraph 18(1) of the Election Tribunal and Court Practice Directions, 2011 which Provides thus:-

C “An interlocutory appeal shall not operate as a stay of proceedings, nor form a ground for a stay of proceedings before a Tribunal”.

***It is my considered view that the three provisions quoted supra are clear and unambiguous and by the principles of interpretation of statute, to the effect that where the words of any statute are clear and unambiguous, they must be given their ordinary meaning unless this would lead to absurdity or be in conflict with other provisions of the constitution or statute, effect must be given to those provisions without recourse to any other consideration, they ought to be so treated.***

E ***By the ordinary meaning of the words used in the provisions supra, it is clear that:-***

***i. An election tribunal must, of necessity deliver its judgment/ decision in writing in an election petition within 180 days from the date of the filing of the petition***

F ***ii. An election petition and an appeal arising therefrom must be given accelerated hearing and must take precedence over all other cases or matters before the tribunal or court.***

G ***iii. An interlocutory appeal shall not operate as a stay of proceedings nor shall it form a ground for stay of proceedings before a tribunal.***

***All the above provisions emphasize the essential nature of an election matter either at trial or on appeal which is that it is an urgent matter.***

H ***The urgency involved in election matters advised the National Assembly to fix a time limit of 180 days in Section 285(5)(b) of the 1999 Constitution (as amended) while Section 142 of the Electoral Act, 2010 (as amended) grant automatic accelerated hearing to election petition and/or appeal***

**arising therefrom to the extent that such matters take precedence over all other cases and matters, including criminal matters.**

**The importance of time being of the essence in election matters is further emphasized by paragraph 18(1) of the Practice Direction, 2011, supra, which forbids the use of interlocutory appeal as a ground for stay of proceedings before a tribunal.**

**I hold the considered view that the above provisions are mandatory and not permissive as they admit of no discretion and the sooner both the Bar and Bench realize this and comply to the spirit and letter of the provisions the better for this nation's democracy.**

Having regards to what I have stated above, can it be said, in relation to the issue under consideration, that the lower court or any other court for that matter, has the requisite vires to order a stay of proceedings or arrest delivery of a ruling of an election tribunal which has time limit within which to conclude its proceedings and has been granted accelerated hearing?

It has been argued by learned senior counsel for the 1st - 3rd respondents in SC/332/2011 that what the lower court did on 19th September, 2011 did not amount to an arrest of the ruling of the tribunal. With due respect to the learned senior counsel I do not agree. The submission seeks to establish the difference between half a dozen and six which amounts to a distinction without a difference. The lower court, in its ruling at page 409 of the record ordered, inter alia, as follows:-

*"Accordingly, I hereby enter an interim order... directing that the said ruling of the tribunal should abide by the hearing of the appeal".*

**Whatever term one likes to use in describing the above order, its effect on the trial tribunal concerned is to STOP it from delivering the ruling in an application seeking a dismissal of the petition before it. The order definitely was not designed nor intended nor did it give an accelerated hearing of the petition so as to enable the tribunal deliver its judgment/decision within 180 days of the filing of the petition as constitutionally enjoined. In fact the order is clearly in collision course with**

***the provisions of paragraph 18 (1) of the Practice Directions, 2011 as it stopped any further proceedings in the matter by the trial tribunal until the determination of an appeal which was yet to be ripe for hearing in an election matter where time is of the essence. Apart from the peculiar nature of the proceedings giving rise to the appeal, generally speaking and by the decision of this court in Newswatch Communications Ltd vs Attah (supra), the rules of court have no provision for arrest of judgments about to be delivered by a court. There is however an exception to that general rule as can be gleaned from the decision of this court in the case of Dingyadi vs INEC (No.1) (2010) 18 NWLR (Pt.1224) 1; (2010) 4 - 7SC (pt.1) 76 where the Sokoto Division of the Court of Appeal sitting on appeal in an election matter was stopped by this court from delivering a judgment in an appeal arising from election petition filed in abuse of process as it is the duty of every court to prevent abuse of its process or the process of the court.***

In short, I resolve the issue in favour of the appellants in SC/332/2011 and SC/333/2011.

On the 2nd issue of the appellants in SC/332/2011, I am of the view that it has become irrelevant having regards to the resolution of issue 1. If the court has no vires or right under the law, having regards to the provisions of the Constitution, Act, and Statutory instrument relied upon in issue No. 1 to have done what it did, then it would remain without vires or right to do so whether the appeal before it and on which the order is predicated is ripe for hearing or not as the ripeness or otherwise of the appeal will not improve its lack of jurisdiction or vires in the first place.

Secondly, it is obvious that a resolution of issue 1 has effectively disposed of the appeal thereby rendering the second issue of no moment or superfluous.

In conclusion I hold as follows:-

- (i) That appeal No. SC/332/2011 is meritorious and is hereby allowed by me. It is hereby ordered that parties bear their costs.
- (ii) That appeal No. SC/333/2011 be and is hereby allowed by me with parties to bear their costs.

Turning now to Appeal No. SC/352/2011, it is the submission of learned counsel for the appellants that appeal Nos. SC/332/2011

and SC/333/2011, challenged the jurisdiction of the lower court to make the order of 19th September, 2011 directing that the ruling of the trial tribunal abides the hearing and determination of the appeal before it and therefore the entry of the said appeals before this court cannot be a ground for stay of the proceedings of the lower court under order 8 Rule 11 of the Supreme Court Rules. B

Learned senior counsel then proceeded to reproduce the provisions of Section 285 (6) and (7) of the 1999 Constitution and Order 8 Rule 11 of the Supreme Court Rules and submitted that it is not in all cases that the entry of an interlocutory appeal to an appellate court will rob the lower court of jurisdiction to continue with the substantive proceedings; that the grounds of appeal in Nos SC/332/2011 and SC/333/2011 have no bearing on appeal No. CA/J/EPT/GOV/151/2011 and their success would not affect the rights or remedies in CA/J/EPT/GOV/15/2011 and that the entry of appeal Nos. D SC/332/2011 and SC/333/2011 is not a valid ground to decline to hear appeal No. CA/J/EPT/GOV/151/2011. C

Secondly that the grounds of appeal in the two appeals- SC/332/2011 and SC/333/2011 only challenged the jurisdiction of the lower court with respect to the order it made on 19th September, 2011 not its jurisdiction to hear and determine appeal No. CA/J/EPT/GOV/151/2011. E

On Section 285(7) of the 1999 Constitution which stipulates that appeals before the lower court on election matters be heard within 60 days from the date of judgment appealed against, senior counsel submitted that by not hearing the appeal before 9th October, 2011 the lower court breached their right to fair hearing as provided under Section 36(1) of the 1999 Constitution that the adjournment of the appeal sine die on the face of the provisions of Section 285(7) of the 1999 Constitution (as amended/altere) infringes on the appellants' right to fair hearing, relying on the case of Pam vs. Mohammed (2008) 16 NWLR (Pt. 1112) 1 at 48. F G

It is the further submission of learned senior counsel that it would not be enough if this court merely declares the decision of the lower court a nullity for breach of appellants' right to fair hearing as the same would not meet the justice of the case but that since the petition pending before the trial tribunal would become spent by the 13th day of November, 2011, the court should invoke its power H

made under Section 22 of the Supreme Court Act to hear and determine appeal No. CA/J/EPT/GOV/151/2011 now pending before the lower court as requested in paragraph 4(4) (5) and (6) of the Notice of Appeal of the appellants as all the processes necessary for the determination of same have been completed. Relying on *Adeyemo vs. Ikeoluma & Sons Ltd* (1993) 8 NWLR (pt.309) 27; that to remit the matter to the lower court would result in hardship to the appellants.

Finally learned senior counsel urged the court to resolve the issue in favour of the appellants, allow the appeal and set aside the decision of the lower court made on 26th September, 2011 and hear appeal No. CA/J/EPT/Gov/151/2011; set aside the decision of the trial tribunal reached on 10th August, 2011 and give directions to the secretary of the said tribunal to issue Notice of Pre-Hearing session as in Form TF007 of the 1st schedule to the Election Act, 2010 (as amended) and direct that petition No. BO/EPT/GOV/1/2011 be heard by a different panel to be constituted by the president of the Court of Appeal.

It should be noted that 1st - 3rd respondents have raised objection to the competence of appeal No. CA/J/EPT/GOV/151/2011 pending before the lower court and which appellants seek the invocation of the powers of this court under the provisions of section 22 of the Supreme Court Act to hear and determine in view of the fact that by Section 285(7) of the 1999 Constitution, the lower court had sixty (60) days from the date of the decision on appeal to dispose of the appeal which sixty (60) days expired on 8th October, 2001 and that the instant appeal has therefore become an academic exercise and ought not to be countenanced, relying on *Nkwocha vs. Government of Anambra State* (1984) 1 SC NLR 634; *Government of Kwara State vs. Dada* (1986) 40 NWLR (pt. 38) 687 at 968; *Bank of the North vs. Maidamisa* (1997) 10 NWLR (pt. 525) 408 at 422.

In respect of the objection of the 3rd respondent, it is the contention of senior counsel for 3rd respondent that the issue of the petition becoming extinct on 15th October, 2011 and the applicability of Section 285(6)(7) of the 1999 Constitution as urged in the appellants' brief were not raised before the lower court neither is there any ground of appeal to support them and consequently urged the court to discountenance them.

The second arm of the objection is that the issue of fair hearing



contained in ground 2 and argued in the brief is a fresh issue which is incompetent as no leave of the court was sought and obtained before raising same and urged the court to discountenance same.

In his reaction, learned senior counsel for the appellants submitted that the appeal before the lower court has not lapsed since the petition on which it arose is still pending at the trial tribunal; that the court should give Section 255(7) of the 1999 Constitution (as amended) a broad and liberal interpretation so as not to defeat the intent and purpose of the drafters of the constitution, relying on *Rabiu vs. Kano State* (1980) 8 - 11 S.C 130; that the court should not interpret the section in isolation but as part of a greater whole - relying on *Arubu vs. INEC* (1988) 5 NWLR (Pt. 94) 323; *Adewunmi vs. Ekiti State* (2002) 2 NWLR (Pt. 751) 474 at 522; that the court should in addition to section 285(7) consider section 6(6)(b); 318 and 285 of the 1999 Constitution; that the words “judgment” and “decision” as defined in Section 318 of the 1999 Constitution are different particularly as the Section uses the term “include”, relying on *Uhunmwangho vs. Okojie* (1989) 5 NWLR (pt. 122) 471 at 490; that it means that time does not begin to run until the tribunal or Court of Appeal has delivered its judgment and that since the tribunal has not delivered its judgment in petition No BO/EPT/GOV/1/2011 the sixty (60) days referred to in Section 285(7) of the 1999 constitution has not commenced to run; that the court should interpret the provision strictly as same is designed to oust the normal jurisdiction of the courts, relying on *Military Governor Ondo State v. Adewunmi* (1988) 3 NWLR (pt.82) 280 at 294 - 295; *A-G Federation v. Sode* (1990) 3 NWLR (Pt.128) 500 at 537 and *Nwosu vs. Imo state Environmental Sanitation Authority* (1990) 2 NWLR (pt.135) 688 at 715.

In the alternative, learned counsel submitted that the present appeal arose from the decision of the lower court delivered on 26th September, 2011 and not from the decision of the tribunal and that the present status of the appeal pending before the lower court which, however, senior counsel has urged the court to invoke its powers under section 22 of the Supreme Court Act to hear and determine, “does not in any way affect this appeal” and urged the court to discountenance the objection of the 1st and 2nd respondents and allow the appeal.

In respect of the objection of the 3rd respondent, learned senior counsel submitted that the objection of the 3rd respondent is based on facts without a supporting affidavit thereby rendering the same incompetent and should be dismissed.

Secondly that the arguments canvassed therein does not arise from the grounds of the objection filed on 19th October, 2011 and should be deemed abandoned and consequently struck out; in the determinative, that the complaint on fair hearing arose from the refusal of the lower court to proceed with the hearing of the appeal and therefore not a new/fresh issue as argued; that the issue was actually argued before the lower court; that appeal No. CA/J/EPT/GOV/151/2011 is not statute barred as the same is an interlocutory appeal against the ruling of the trial tribunal and went on to make further submissions on the issue similar to those in response to the objection of the 1st and 2nd respondents, and urged the court to overrule the objection.

In his reply on points of law, learned senior counsel for the 1st and 2nd respondents submitted that appellants have not denied that the appeal before the lower court had lapsed by effluxion of time; that once a word has been defined by statute resort cannot be had to any other source, relying on *Uhunmwangho vs. Okojie* (1989) 12 S.C 442 at 156, and that the word “include” in Section 318 of the 1999 Constitution is an enlarging word not restrictive and the words “decision” and “judgment” as used in Section 285(7) of the 1999 Constitution are synonyms and that to hold otherwise is to read into the plain words of the constitution words that are not there; that there is no difference between an interlocutory decision of the tribunal and a final decision on the merit on the invocation of the provisions of Section 285(7) of the 1999 Constitution (as amended).

Now section 285 (7) of the 1999 Constitution (as amended) provides as follows:

“An appeal from a decision of an Election Tribunal or court shall be heard and disposed of within sixty (60) days from the date of the delivery of judgment of the Tribunal”.

***Much argument have been advanced as to the meaning of the words ‘decision’ and ‘judgment’ used in above section 285 (7) of the constitution by senior counsel for the contending parties. However, Section 318 of the said 1999 Constitu-***

**tion defines the word decision thus:**

**“Decision: Means in relation to a court, any determination of that court and includes judgment; decree, order, conviction, sentence or recommendation”.**

**I agree with the submission of learned senior counsel for the 1st and 2nd respondents that once the constitution or statute defines a word or term the court cannot go outside it to seek the meaning of that word or term as the same has been duly defined within the confines of the constitution/statute. See Uhunmwangho vs Okojie (1989)12 S.C 142 at 156. To my mind, the words used in section 285(7) of the 1999 Constitution are very clear and unambiguous and therefore, as settled by law, do not need any interpretation. The words have to be deployed in their plain and ordinary meanings as the court is not permitted to read into any piece of legislation words and/meanings not contained therein or stretch the meanings to include matter(s) not in the contemplation of the framers/drafters of the constitution or statute. Once the above is borne in mind, it becomes necessary to state that the meaning of the word “decision, as defined in Section 318 of the 1999 Constitution is as it relates to a court (and I may add tribunal) and it is clear that it is synonymous with the determination of the court in the form of judgment, decree, order, conviction, sentence or recommendation. In other words, it is my considered view that the word “decision” therein means the same as a determination, judgment, decree, order conviction, sentence or recommendation of a court or tribunal, and, I may add, any quasi judicial tribunal, authority or body.**

**I hold the view, therefore, that there is no legally cognizable difference between the words “decision” and “judgment” as used in Section 285(7) of the 1999 Constitution as the learned senior counsel for the appellants would want us believe and hold.**

**It is also of much importance to note that the words “decision” and “judgment” as defined in the said Section 285(7) of the 1999 Constitution applies generally to the determination of a court either in an interlocutory proceeding or in the final decision. The definition admits of no distinction between**

**interlocutory and final proceedings/decisions. A court or tribunal can make an order either in an interlocutory proceeding or in the final decision and it would still be an order or decision or judgment of the court by the provisions of Section 285(7) of the 1999 Constitution.**

**B The above being the case, it is clear and I hereby hold that by the provisions of Section 285(7) of the 1999 Constitution an appeal from a decision of an election tribunal or court either in an interlocutory proceeding or final decision must be heard by the appellate court and disposed of within**  
**C sixty (60) days from the date of the delivery of judgment/decision/order/decreed/conviction/sentence or recommendation of the tribunal or court.** There is no dispute that the decision giving rise to appeal No. CA/J/EPT/GOV/151/2011 was made by the trial  
**D tribunal on the 10th day of August, 2011. Also not in dispute is the fact that sixty (60) days from the date of that decision expired on 9th October, 2011.**

The legal effect of the expiration of the sixty (60) days prior to the determination of the appeal before the lower court is to extinguish the appeal and with it the order of the lower court made on  
**E 26th September, 2011, the subject of the instant appeal being an interlocutory order made in the said appeal.**

**Learned senior counsel for the appellants has not denied the fact that the appeal pending at the lower court had**  
**F expired hence his alternative contention that the instant appeal is against the decision of that court made on 26th September, 2011. I hold the view that the above argument is of no moment particularly when one considers the fact that the appellants are calling on this court to invoke its powers under**  
**G Section 22 of the Supreme Court Act to hear and determine the very expired appeal.**

**H It is settled law that this court can only exercise its powers under the said Section 22 by exercising the jurisdiction of the lower court where that court has the jurisdiction to act, not where that court has ceased to have jurisdiction over the matter. In short the jurisdiction of this court under Section 22 of the Supreme Court Act depends completely on the Court of Appeal having jurisdiction to deal with the matter in issue**

**and pending before it.**

That apart, the instant appeal if it succeeds on the merit would result in the setting aside of the order of the lower court adjourning the hearing of appeal No. CA/J/EPT/GOV/151/2011. Sine die thereby resulting in the consequential order that the appeal be put back on the cause list of either the lower court or of this court; if the application to invoke section 22 of Supreme Court Act is granted; to be dealt with accordingly. In either case it would be an exercise in futility as both courts no longer have the jurisdiction to deal with the matter complained of. In the circumstances of this case and having regards to the state of the law on the relevant facts I hold that the preliminary objections of the 1st and 2nd respondents is meritorious and the same is accordingly sustained by me.

Consequently this appeal having become an academic exercise in view of the lost of jurisdiction by the lower court to hear and determine same is hereby struck out for being incompetent. However since appeal Nos. SC/332/2011 and SC/333/2011 have been allowed the parties should return to the tribunal to continue with the proceedings from where they stopped.

Appeal Nos. SC/332/2011 and SC/333/2011 are allowed while No. SC/352/2011 is struck out for being incompetent.

Parties to bear their respective costs.

**FABIYI JSC**

Appeal Nos. SC.332/2011 and SC.333/2011 were filed against the Ruling of the court of Appeal, Jos Division (“the court below” for short”) delivered on 19th September, 2011. Therein, the court below granted an interim order in which it stayed the ruling and/or the proceedings of the Borno State Governorship Election Tribunal. The issues formulated by the appellants in SC. 332/2011 are as follows:-

“1. Whether having regard to the mandatory provisions of Section 142 of the Electoral Act, 2010 (as amended) and paragraph 18 of the Election Tribunal and Court Practice Directions, 2011 the court below was right or possess the vires to have granted an interim order against the Tribunal from delivering its Ruling slated for the 20th day of September, 2011.

2. Whether the Court of Appeal was right to have granted the

interim order the effect of which is to arrest the Ruling of the Tribunal especially when the appeal before it was not ripe for hearing.”

B For ease of reference, it is apt to reproduce the provisions of section 142 of the Electoral Act, 2010 (as amended) and paragraph 18 of the Election Tribunal and court practice Direction, 2011 as follows:-

C “Section 142 - “Without prejudice to the provisions of Section 294(1) of the Constitution of the Federal Republic of Nigeria 2 an election petition and an appeal arising therefrom under this Act shall be given accelerated hearing and shall have precedence over all other cases or matters before the Tribunal or the court.”

Paragraph 18 - An interlocutory appeal shall not operate as a stay of proceedings, nor form a ground for a stay of proceedings before a Tribunal.”

D A clear reading of the above relevant provisions of the law and Practice Direction depicts that they are made in mandatory terms. The provisions of the law are clear and unambiguous. They should be given their ordinary meaning. The court is bound to give effect to same. See: *Nwanezie v. Idris* (1993) NWLR (Pt. 279) 1 at 14.

E In both enactment, the word ‘shall’ is employed which points at mandatory and imperative realm. See: *Nnoye v. Anichie & Ors.* (2005) 2 NWLR (Pt. 910) 263, *Amaechi v. INEC* (2007) 18 NWLR (Pt. 1065) 170. The word ‘shall’ connotes mandatory discharge of duty or obligation and when used or employed in a statute, that requirement must be met. The word ‘shall’ when used connotes mandatory sense that drafters typically intend and that which courts typically uphold. (*Black’s Law Dictionary*, Ninth Edition, page 1499)

F With the above in view, one cannot surmise the rationale which G propelled the court below in making the order of 19th September, 2011 which put on hold the Ruling/proceedings of the Tribunal. It was an error which militated against the expeditious trial before the Tribunal and same was not in tandem with the above stated enactment.

H I come to the unalloyed conclusion that the appeal has merit and it is hereby allowed.

Appeal SC.333/2011 has the same background, facts and issues. It is meritorious and allowed as well.

SC.352/2011

This appeal is against the decision of the court below delivered on 26th September, 2011 adjourning the appeal of the appellants before it sine die because of the entry of appeal Nos SC. 332/2011 and SC.333/2011 in this court.

The learned senior counsel to the 1st and 2nd Respondents filed a Notice of Preliminary objection on 20th October, 2011. The grounds for same are as follows:-

1. The Notice of Appeal to the court below as shown at pages 169-173 of the Record was filed on 12th August, 2011.
2. The Ruling that gave rise to the appeal was delivered on 10th August, 2011.
3. Section 285 (7) of the 1999 Constitution (as amended) prescribes 60 days for the disposal of an appeal from an Election Tribunal from the date of the decision.
4. The appeal to the court below became stale and spent by effluxion of time on 9th October, 2011.
5. There is no more pending appeal before the court below. By reason of the foregoing, this present appeal is an academic exercise and hypothetical.
6. There is no appeal pending before the court below on which an order of remittance could be made.

Learned Senior Counsel for the objectors formulated one issue for determination as follows:-

“Whether in view of the provisions of Section 285 (1) of the 1999 Constitution (as amended) and facts and circumstances of this case, this present appeal is not purely academic and hypothetical.”

It is not contested that the appeal before the court below has become spent as at 10th October, 2011. Vide the provision of Section 285 (7) of the 1999 Constitution (as amended) which provides that 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, the court below can no longer hear the appeal before it. And by extension, this court cannot entertain same under any guise. The law employs the use of the word ‘shall’ which is mandatory. It excludes exercise of discretion. See: *Ogualaji v. Attorney-General Rivers* (1997) 6 NWLR (Pt. 508) 249.

It is not the function of a court of record to embark upon academic exercise. The appeal, having become spent, is not worthy

of any further consideration. See: Nkwocha v. Govt. of Anambra State (1984) 1 SCNLR 634.

In short, the preliminary objection is sustained. The appeal is clearly incompetent and is hereby struck out. I agree with the views ably expressed by my learned brother, Onnoghen, JSC.

B Each party should bear his/its costs.

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### **NGWUTA JSC**

C I read in draft the judgments just delivered by my learned brother, Onnoghen, JSC, and I entirely agree with the reasoning and conclusions reached in each of the three appeals as consolidated.

D In Petition No. BO/EPT/GOV/1/2011, the 1st-3rd Respondents challenged the return of 1st and 2nd Appellants as the Governor and Deputy Governor respectively, in the April 2011 general election in Borno State before the Governorship Election petition Tribunal constituted for the State.

E The 1st to 3rd Respondents, as Petitioners before the Election petition Tribunal in BO/EPT/GOV/1/2011 filed a motion ex parte pursuant to paragraph 18(1) of the 1st Schedule to the Electoral Act 2010 (as amended) and order 26 Rule 8 of the Federal High court (Civil Procedure) Rule 2009 for the Tribunal to issue pre-hearing Notice and pre-hearing Information sheets. The motion was supported by a 10 paragraph affidavit and a written address was filed with it.  
F Having heard arguments of the Appellants' counsel the Tribunal, on 10/8/2011 struck out the ex parte application for alleged non-compliance with paragraph 47(2) of the 1st Schedule to the Electoral Act, 2010 (as amended). The Tribunal also refused to order service  
G of the ex parte motion on the Respondents to the Petition.

Meanwhile, the 1st to 3rd Respondents also filed Motion on Notice for extension of time to apply for pre-hearing Notice. The application was contested by the Appellants and 4th and 5th Respondents. The Tribunal dismissed the application.

H The Appellants and 4th and 5th Respondents approached the Tribunal to deem the petition as abandoned for the failure of the 1st to 3rd Respondents (as petitioners) to comply with paragraph 18(1) of the 1st Schedule to the Electoral Act, 2010 (as amended).

Affidavits in support and counter-affidavits were filed and writ-



ten addresses exchanged.

After taking submissions, the Tribunal adjourned to 20/9/2011 for ruling. Meanwhile, the Court of Appeal shifted the hearing of the appeal filed by the 1st to 3rd Respondents from 21/9/2011 to 19/9/2011. The appeal could not be heard on 19/9/2011 for time constraints. However, learned counsel for the Appellants before the lower Court informed the Court of the pending ruling before the Tribunal in a motion to dismiss the petition and asked the lower court to stay the ruling pursuant to S.15 of the Court of Appeal Act, 2004. This oral application was opposed by learned counsel for the Appellants herein and the 4th and 5th Respondents-

In its ruling, the lower Court granted an interim order staying the delivery of the ruling pending the hearing and determination of the appeal filed by the 1st to 3rd Respondents herein. Appeal No. SC.332/2011 was filed by the Appellants against the order of the lower court arresting the ruling of the Tribunal. From the grounds of appeal, Appellants herein formulated the following two issues for determination

“1. Whether having regard to the mandatory provisions of Section 142 of the Electoral Act 2010 (as amended) and paragraph 18 of the Election Tribunal and Court Practice Directions 2011, the court below was right or possesses the vires to have granted an interim order against the Tribunal from delivering its ruling stated for the 20th day of September, 2011.

2. Whether the Court of Appeal was right to have granted the interim order the effect of which is to arrest the ruling of the Tribunal especially when the appeal before it was not ripe for hearing.”

The 4th Respondent in this appeal (SC.332.2011) also appealed against the order of the Court below stopping the delivery of the ruling of the Tribunal and from the sole ground of appeal, learned senior Counsel for the Appellant in SC.333/2011 formulated the following issue for determination:

“Whether the learned Justices of the Court of Appeal have the jurisdiction to halt/stay the proceedings of the Borno State Governorship Election Tribunal in BO/EPT/GOV/1/2011 having regards to the provision of Section 18 of the Election Tribunal and Court Practice Direction 2011 and Section 285(5)(b) of the Constitution of the Federal Republic of Nigeria of 1999 (as amended).”

Appeal No. SC.352/2011 was filed by the 1st and 3rd Respondents in SC.332/2011 who were also the 1st and 2nd Respondents in SC.333/2011. The appeal is against the order of the lower court adjourning Appeal No. CA/J/EPT/GOV/151/2011 sine die for the reason that appeals Nos. SC.332/2011 and SC.333/2011 both arising from the order of the lower Court in the appeal have been entered in this Court.

Learned Senior Counsel for the Appellants presented the following issue for determination:

“Whether the refusal by the learned Justices of the court below to hear this appeal No- CA/J/EPT/GOV/151/2011 on the ground that Appeals Nos. SC.332/2011 and SC/333/2011 have been entered in the Supreme Court is not in breach of the Appellants’ right to fair hearing and thereby unjust in law.”

In Appeal No. SC.332/2011, learned counsel for the Appellants and learned counsel for the 1st and 3rd Respondents and learned counsel for the 4th Respondent adopted and relied on their respective briefs. Learned counsel for the Appellants urged the court to allow the appeal and set aside the order of the lower court, while counsel for 1st and 3rd Respondents urged the court to dismiss the appeal. Counsel for 4th Respondent urged the court to allow the appeal. The 5th Respondent did not file a brief in the appeal.

In Appeal No. SC.333/2011, learned counsel for the Appellants adopted and relied on his brief and urged the court to allow the appeal. He also adopted and relied on his reply brief. Learned counsel for the 1st and 2nd Respondents adopted and relied on his brief and urged the court to dismiss the Appellants’ appeal. Learned counsel for the 4th and 5th Respondents practically adopted the Appellants’ brief and urged the court to allow the appeal. The 3rd Respondent did not file a brief.

In Appeal No. SC.352/2011, learned Senior counsel for the Appellants adopted and relied on his brief and his reply brief in which he responded to the preliminary objection raised in the 3rd Respondent’s brief. He urged the court to allow the appeal, set aside the decision of the court below, invoke S.22 of the Supreme Court Act to hear the appeal No. CA/J/EPT/GOV/151/2011 and direct that Petition No. BO/EPT/GOV/1/2011 be heard by a different panel.

Learned senior counsel for 1st and 2nd Respondents also

adopted and relied on his brief of argument and urged the Court to dismiss the appeal.

I have given careful consideration to the submissions of learned counsel for the parties as well as the case laws and the relevant provisions of the constitution of the Federal Republic of Nigeria 1999 (as amended), as well as the Electoral Act 2010 (as amended).  
SC.332/2011

In Appeal No. SC.332/2011, the order complained of is at page 406 of the record. It is hereunder reproduced for ease of reference:

*“IT IS HEREBY ORDERED:*

*(i) That an interim order is hereby granted.*

*(ii) That the interest of all parties would best be served if the provision of Section 15 of the Court of Appeal Act is invoked for purposes of preserving the appeal which is coming up in two day's time.*

*(iii) That this line of action would not in our opinion prejudice the interest of the parties.*

*(iv) That it is hereby directed that the said ruling of the Tribunal should abide the hearing of the appeal.”*

The order was made on 19/9/2011. Section 142 of the Electoral Act 2010 (as amended) relied on by the Appellants provides for accelerated hearing of election petitions. The court below invoked s.15 of the Court of Appeal Act, 2004 to make an order that has the practical effect of scuttling the provisions of s.142 of the Electoral Act (supra) as well as paragraph 18 of the Election Tribunal and Court Practice Directions hereunder reproduced:

“Paragraph 18: An interlocutory appeal shall not operate as a stay of proceedings, nor form a ground for a stay of proceedings before a Tribunal.”

My Lords, I am of the humble view that the provision of S.15 of the Court of Appeal Act is inapplicable to matters not before that court or which that court did not send down for retrial- The ruling in respect of which the lower court made its order of 19/9/2011 was not before that court nor was the matter sent down to the Tribunal for rehearing.

The lower court predicated its order putting the ruling on hold on the opinion that the order would not prejudice the interest of the

parties. Now the word, “prejudice” connotes damage or detriment to one’s legal rights or claims. See Black’s Law Dictionary Eight Edition, p.1218. The Appellants filed a motion to dismiss the petition filed against the return in the Governorship election in Borno State. The motion was argued by both sides and it was adjourned for a ruling. It is the right of the Appellants to have a ruling on their application one way or the other. In the circumstances, with profound respect to their Lordships at the court below, the opinion that the order will not prejudice the parties is a fiction. It has no factual or legal basis. I agree with learned Senior counsel for the Appellants that the court below should not have made the interim order directing that the ruling already slated for delivery abide the hearing and determination of the appeal not ripe for hearing.

Appeal No. 333/2011

The lone issue raised and argued by learned Senior counsel for the Appellants is-

*“whether the learned Justices of the Court of Appeal have the jurisdiction to halt/stay proceedings of the Borno State Governorship Election Tribunal in BO/EPT/GOV/1/2011 having regards to the provision of S. 18 of the Election Tribunal and Court Practice Directions 2011 and S. 285(5)(b) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).”*

In contrast, learned senior counsel for the 1st and 2nd Respondent queried-

*“Whether paragraph 18 of the Election Tribunal and Court Practice Directions 2011 supersedes the provisions of Section 6(6) (a) 246(1)(b)(i), (ii), (iii)(2) and (3) of the 1999 constitution of the Federal Republic of Nigeria and Section 15 of the Court of Appeal Act 2004.”*

I will start with S.15 of the Court of Appeal Act 2004. As I said in the sister appeal No. SC.332/2011, the ruling slated for delivery but which was “arrested” on the order of the Court below is neither an appeal before the court below nor did the court below send it down to be reheard. The proceedings in BO/EPT/GOV/1/2011 including the ruling made to abide the decision of the Court below in appeal No. CA/J/EPT/GOV/151/2011 is not within the intendment of S. 15 of the Court of Appeal Act, 2004. The powers vested in the Court of Appeal by the constitution was not shown in the brilliant

submission of the learned senior counsel for the Respondent, to be eroded or impeded by any provision of the Electoral Act, 2004 (as amended) or the Practice Direction 2011.

The effect of the order made by the court below in a matter pending in the Tribunal flies in the face of S. 285 5(5) of the constitution and S. 18 of the Practice Direction 2011. The court below is without power to halt the delivery of a ruling in BO/EPT/GOV/1/11. SC.352/2011

Learned Senior Counsel for the Appellants herein asked the court to resolve the following lone issue-

*“Whether the refusal by the learned Justices of the court below to hear this appeal CA/J/EPT/GOV/151/2011 on the ground that Appeals Nos. SC.332/2011 and SC.333/2011 have been entered in the Supreme Court is not in breach of the Appellants’ right to fair hearing and thereby unjustified in law.”*

*The 1st and 2nd Respondents raised the following issue: “Whether the court below was not right to have adjourned Appeal No. CA/J/EPT/GOV/151/2011 sine die having regard to the entry of Appeal No. SC.332/2011 and SC.333/2011 at the Supreme Court with the motion for stay of proceedings of the court below before the Supreme Court and having regard to the provision of stare decisis and judicial precedent, the facts and general circumstances of this case.”*

The 3rd Respondent’s issue-

*“Whether the court below had the jurisdiction to stay its own proceedings in the light of Appeal Nos. SC.332/2011 and SC.333/2011 pending before this Honourable court had been duly entered.”*

The 4th Respondent formulated the following issue-

*“Whether this Appeal has not been rendered nugatory and therefore an academic exercise, taking into consideration the provisions of section 285(5) (c) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).”*

Also, learned senior counsel for the 3rd Respondent raised a two-pronged preliminary objection to the hearing of the appeal, thus;

*“Paragraph 4.28 and paragraph 4.31 (2nd paragraph) (a) the issue of the petition becoming extinct on 15th October, 2011 and the applicability of section 285(6)(7) of the 1999 Constitution (as amended) was not an issue before the Court below nor a ground*

*of appeal before this Honourable Court and therefore should be discountenanced.*

*(b) The issue of denial of fair hearing as contained in ground 2 of the Notice of Appeal and argued in paragraphs 4.29 - 4.31 of the Appellants' brief of argument is a fresh issue and is incompetent as no leave of this Honourable Court was sought to raise and/or argue same."*

The issues raised by the learned counsel in the 3rd, and learned counsel for the 4th Respondents are threshold issues. Whether or not the appeal will be determined of the merit is dependent on the success or failure of the issues raised. I will deal with the 3rd Respondent's issue first. Appeals on invitation to a higher Court to review the decision of a lower Court in order to find out whether on a proper consideration of the facts placed before it and the applicable law the lower Court arrived at a correct decision - see *Oredoyin v. Arowolo* (1989) 4 NWLR (pt. 114) 179 sc. It is a complaint against the decision of the trial Court and where there is no complaint against any act or omission of the trial Court, the appellate jurisdiction of the lower Court cannot be invoked. See *Babalola v. The State* (1989) 4 NWLR (pt. 115) 264 SC.

The issues raised and argued in the Appellants' brief were not raised and or pronounced upon by the Court below and ipso facto this Court is without power to pronounce on them in its appellate jurisdiction. The new issues were raised without the leave of the court below or this court first sought and had. The grounds of appeal from which the issues extraneous to the appeal were distilled are incompetent and so is the appeal itself. It is hereby struck out.

The issue raised in the 4th Respondent's brief is predicated on S. 285(3) of the 1999 Constitution (as amended). It provides:  
 "3. An Appeal from a decision of an Election Tribunal or Court of Appeal shall be heard and disposed of within 60 days from the date of the delivery of judgment of the Tribunal or Court of Appeal."

With profound respect to the learned Senior counsel for the Appellants, I am not persuaded to the view that the 60 days period within which the appeal shall be heard and disposed of will not begin to run until the delivery of judgment in petition No. BO/EPT/GOV/1/2011.

I appreciate the candour exhibited by the learned Senior Counsel in his reference to S.318 of the Constitution 1999 (as amended)

for the meaning of the word “decision” but I do not agree that for the purpose of s.318 of the Constitution, there is a difference between the two words “decision” and “Judgment”. In my humble view, the appeal has been spent. It has become time-barred. It has been rendered academic, and stuff for hypothetical exposition by the law faculties in our Universities. A suit is academic where it is purely theoretical, makes empty sound and, of no practical utilitarian value to the plaintiff even if judgment is given in his favour. A suit is academic if it is not related to practical situation of human nature and humanity. See *Plateau State v. A-G Federation* (2006) 3 NWLR (pt. 967) 346 at 419 SC. The appeal, by the passage of time, has lost touch with the human situation from which it drew its breath. It is therefore dead.

My Lords, the three appeals consolidated herein arose from the interpretation of S.18 of the 1st schedule to the Act, 2010 (as amended) by the Tribunals and the court below. The appeals transcended their origin which is not within the competence of this court to pronounce upon. Be that as it may, sooner than later the court will have the opportunity to deal with the matter decisively and put it to rest.

For the above and the fuller and more comprehensive reasoning in the lead Judgment of my Lord Onnoghen, JSC, I also allow appeals No. SC.332/2011 and SC.333/2011. I strike out appeal No. SC.352/2011 as incompetent.