

SUPREME COURT OF NIGERIA
16TH DECEMBER, 2011. SC. 280/2011
CORAM: - D. MUSDAPHER, W. S. N. ONNOGHEN, J. A.
FABIYI, O. O. ADEKEYE, M. U. PETER-ODILI, JJSC

HOPE DEMOCRATIC PARTY (HDP) APPELLANT
AND

1. MR. PETER OBI
2. MR. EMEKA NDUBUISI SIBEUDU
3. ALL PROGRESSIVE GRAND
ALLIANCE (APGA) RESPONDENTS
4. INDEPENDENT NATIONAL
ELECTORAL COMMISSION (INEC)
5. RESIDENT ELECTORAL
COMMISSIONER ANAMBRA STATE
6. THE RETURNING OFFICER,
ANAMBRA STATE

ELECTION PETITIONS - Jurisdiction - Supreme Court - 1999 Constitution s. 233(2)(e)(iv) as amended - Confers jurisdiction on Supreme Court to hear appeal - From decisions of Court of Appeal in Governorship election matter (H1)

WORDS & PHRASES - “Under this Constitution” - Meaning - It refers to 1999 Constitution as amended - Since the phrase did not exist under s. 233(2) of original 1999 Constitution (H2)

ACTIONS - Cause of action - Applicable law - Relevant law is the law in existence at the time cause of action arose - And not the law in force at the time of instituting action or time of judgment (H3)

CONSTITUTIONAL LAW - Commencement date - 1999 Constitution as amended - Came into operation on 10th January 2011 - When the President assented to it (H4)

APPEALS - Meaning of - It is not a new action - But a complaint against the decision arising from the matter in dispute between the parties (H5)

FACTS

On the 6th day of February 2010, the governorship election of Anambra State was held at the conclusion of which 1st respondent - MR. Peter Obi, was returned elected and sworn into office as Governor of Anambra State. Appellant was not satisfied with the return of 1st respondent and consequently filed an election petition at the Anambra State Governorship Election Petition Tribunal, Holden at Awka, Anambra State. At the conclusion of the trial, the tribunal upheld the election and return of 1st and 2nd respondents as successful. The petition was thus dismissed. Being dissatisfied, appellant appealed to the Court of Appeal, Holden at Enugu in appeal No. CA/E/EPT/5/2010. The court also dismissed the appeal in her judgment on the 24th February 2011.

Aggrieved further, appellant rather than filing an appeal to Supreme Court (which now has jurisdiction on this matter following the provisions of the Constitution of the Federal Republic of Nigeria 1999 as amended), filed a motion on notice on 15th March 2011 at the Court of Appeal, Enugu Division praying the court to set aside its judgment of 24th February 2011 on grounds, inter alia, that the same is null and void. The application was dismissed by the court. Aggrieved, appellant has appealed to Supreme Court. 1st and 2nd respondents raised preliminary objections to the jurisdiction of Supreme Court to hear the appeal. They contend that the applicable law governing this action was the law in force when the cause of action arose i.e. the original 1999 Constitution of the Federal Republic of Nigeria. They further stated that the Constitution then does not confer jurisdiction on Supreme Court in the matter.

HELD (Unanimously declining jurisdiction and striking out the appeal per **ONNOGHEN JSC**)

Jurisdiction - Supreme Court

1. It is very clear and I state without fear of contradiction that whereas Section 246(3) of the original 1999 Constitution (supra) made the Court of Appeal the final court of appeal in relation to matters arising from governorship election petitions, Section 233 (2) (e)(iv) of the 1999 Constitution as amended (supra) grants a right of appeal to an aggrieved party in a governorship election matter to appeal against the decision of the Court of Appeal in relation thereto, which was

hitherto the court of final appeal as clearly provided in Section 246(3) of the original 1999 Constitution and reproduced earlier in this judgment, to the Supreme Court “under this constitution”.

I hold the view that the above provisions are clear and unambiguous and consequently do not call for any interpretation as they mean what they clearly state. (p. 2897 C)

“Under this Constitution” - Meaning

2. What, however, is the meaning or significance of phrase, “under this constitution” appearing in Section (2)(e)(iv) of the 1999 Constitution, as amended?

From the above, it is very clear and I hold the considered view that the phrase “under this constitution” supra means and can only mean the 1999 Constitution as amended particularly as that phrase did not exist under Section 233(2) of the original 1999 Constitution. (pp. 2897 F/2898 B)

Cause of action - Applicable law

3. The question as to which of the two dates constitutes or is the actual date of the commencement of the 1999 Constitution as amended will be treated anon. What matters now is the establishment of the fact that there are two distinct 1999 Constitutions of the Federal Republic of Nigeria applicable depending on when the cause of action arose as it is settled law that the applicable law to an action is the law existing or that existed at the time the cause of action arose not when the action was instituted or decision reached.

It is settled law that the applicable law is the law in existence at the time the cause of action arose and not the law in force at the time of instituting the action or time of judgment. Applying the principle of law stated supra to the facts of this case, it is clear and I hereby hold that the laws applicable to this case are the Electoral Act, 2006 and the relevant provisions of the 1999 Constitution before the amendment being the laws in existence when the cause of action arose in this case. The above being the case it is my further view that by operation of Section 246(3) of the original 1999 Constitution (by which I mean the 1999 Constitution as it existed prior to the amendments in 2011) the Court of Appeal is the final appellate court on governorship election petition matters, there being no right of appeal

in a party aggrieved of its decision, to the Supreme Court.

In the circumstance I hold the considered view that the Court of Appeal is right in its ruling of 14th June, 2011 dismissing the application of the appellant to set aside the decision of the lower court on appeal against the decision of the Anambra State Governorship Election Petition Tribunal dismissing the petition of the applicant, on the grounds that the application lacks merit and that the court is with no jurisdiction to sit on appeal over its own decision being a final court on the matter.

Consequently, I hold the view that the present appeal to the Supreme Court is misconceived, this court having no jurisdiction to hear and determine same and is accordingly struck out by me with costs which I assess and fixed at N100,000.00 against the appellant and in favour of each set of respondents Appeal struck out.

(pp. 2897 H/2899 H)

Commencement date - 1999 Constitution as amended

4. From the provisions of Section 58(i) of the 1999 Constitution, original and as amended, and Section 2(1) of the Interpretation Act, Cap, 123 of Laws of the Federation of Nigeria, 2004 both supra, it is clear and I hereby hold that the provisions of the 1999 Constitution as amended came into force/effect on the 10th day of January, 2011 when MR. PRESIDENT OF THE FEDERAL REPUBLIC OF NIGERIA signed same and not on any other date, whether stated on the body of the document or elsewhere as there is no evidence that the president withheld his assent to the bill as envisaged in subsection (5) of the said Section 58(i) of the 1999 Constitution as amended.

That apart, to hold that the commencement date of the 1999 Constitution as amended is the 29th day of November, 2010 which is a date prior to the signing of the bill into an Act would be very absurd and contrary to law, particularly the section of the constitution referred to supra and that of the Interpretation Act.

Secondly, such a holding would mean that the 1999 Constitution is made to apply retrospectively by implication which is equally frowned upon by law. (p. 2899 A)

APPEALS - Meaning of

5. Turning now to the main issue under consideration, it is settled law

that an appeal is not a new action but a continuation of the dispute/matter which is the subject of the appeal. It is a complaint against a decision arising from the matter in dispute between the parties. In this case, it is not in dispute that the cause of action arose from the governorship election of Anambra State conducted on the 6th day of February, 2010 under the Electoral Act 2006; that the cause of action was ventilated by appellant at the Anambra State Governorship Election Petition Tribunal which rendered its decision thereon on 27th day of June, 2010 resulting in an appeal to the Court of Appeal filed on 14th August, 2010 which appeal was dismissed by that court on 24th February, 2011. (p. 2899 E)

NOTABLE POINT OF INTEREST

ADEKEYE JSC

1. Supremacy of the Constitution

The Constitution is the supreme law of the land; therefore the provisions are superior to every provision embodied in any Act or law and are binding on all persons and authorities in Nigeria. The failure to follow any of the provisions renders the steps taken unconstitutional, null and void. Such Act must be set aside by the court. The appellant had filed an appeal in this court contrary to the provision of Section 285 (7) of the Constitution. This court has a duty to set it aside. (p. 2908 A)

REPRESENTATION

Mike Okoye Esq. for the Appellants

Dr. O. Ikpeazu, SAN for the 1st and 3rd respondents with him are Messrs P. Ozoilesike; T. Nweke; I. Nwabueze; O. Iloegbunam.

Ben Osaka, Esq for 2nd respondent with him is Lynda Ikpeazu and M. Ekwechi.

Chief (Mrs.) V. O. Awomolo for the 4th - 6th respondents.

CASES REFERRED TO

Adediran v. Interland Transport Ltd. (1991) 9 NWLR (pt.214) 155

INEC v. Musa (2003) 3 NWLR (pt.805) 72

A. G Abia State v. A. G Federation (2002) 5 NWLR (pt.763) 264

Adisa v. Oyiwola (2000) 10 NWLR (pt.674) 116

A. G Ondo State v. A.G. Federation (2002) 9 NWLR (pt.772) 222

- Osakue vs F.C.E. Asaba (2010) 10 NWLR (Pt. 1201) 1
Adigun vs Ayorinde (1993) 8 NWLR (Pt. 313) 516
A-G Federation vs Sode (1990) 1 NWLR (Pt.128) 500
Uwaifo vs A-G Bendel State (1982) 7 SC 124
Dosunmu vs A-G Lagos (1989) 3 NWLR (Pt.111) 552
B Uttih vs Onovivwe (1991) 1 NWLR (Pt. 166) 166
Okonkwo vs Ngige (2007) 12 NWLR (Pt. 1047) 191
Emodi vs Igbeke (2011) 9 NWLR (Pt.1251) 24
Madukolu v. Nkemdilim (1952) 2 SCNLR pg. 341
C Anambra State v. A.G Federation (1993) 6 NWLR (pt.302) 692

STATUTES REFERRED TO

- Constitution of Federal Republic of Nigeria 1999, ss. 58(1), 177(c), 246(i) (3), 320
D Constitution of Federal Republic of Nigeria 1999 as amended, ss. (2)(e)(iv), 233 (2)(e)(iv), 285(7)
Interpretation Act Cap. 123 LFN 2004, s. 2(1)

LEAD JUDGMENT BY ONNOGHEN JSC

- E On the 17th day of November, 2011 this court heard this appeal at the conclusion of which the court delivered an on the bench judgment in which the appeal was struck out for want of jurisdiction with a promise to give reasons for the judgment today, the 16th day of December, 2011.

- F Below are the reasons for the decision earlier delivered.
This is an appeal against the ruling of the Court of Appeal, Holden at Enugu in appeal no. CA/E/EPT/5/2010 delivered on the 14th day of June, 2011 in which the court refused to set aside its judgment delivered on 24th February, 2011 affirming the decision of the Anambra State Governorship and Legislative Houses Election Tribunal on petition no. EPT/G/AN/1/2010.

- G On the 6th day of February, 2010 the governorship election of Anambra State was held at the conclusion of which the 1st respondent MR. PETER OBI, was returned elected and sworn into office as Governor of Anambra State. Appellant was not satisfied with the return of 1st respondent and consequently filed an election petition at the Anambra State Governorship Election Petition Tribunal, Holden at Awka, Anambra State. At the conclusion of the trial,

the tribunal upheld the election and return of the 1st and 2nd respondents and dismissed the petition.

Being dissatisfied with that decision, appellant appealed against same to the Court of Appeal, Holden at Enugu in appeal No. CA/E/EPT/5/2010 which appeal was found to be without merit and consequently dismissed in the judgment of the court delivered on 24th February, 2011. Appellant filed no appeal to the Supreme Court against the decision of the Court of Appeal rendered on 24th February, 2011, granted that this court has the jurisdiction to entertain same following the amendment to the constitution of the Federal Republic of Nigeria, 1999 (herein after referred to as the 1999 Constitution, as amended) as now contended by learned counsel for the appellant. Instead of an appeal, appellant filed a motion on notice at the Court of Appeal on the 15th day of March, 2011 praying the court to set aside its judgment of 24th February, 2011 on grounds, inter alia, that the same is null and void which application was dismissed by the court in its ruling of 14th June, 2011. The instant appeal is against that decision.

The relief being sought by the appellant in this appeal is an order setting aside the decision of the tribunal and the Court of Appeal on the issue of qualification of the 1st respondent to contest the said election of 6th February, 2011 and substitute the decision of the Court of Appeal with an order declaring that the 1st respondent was not qualified for election to the office of Governor of Anambra State and that Mr. Mike Okoye, who incidentally is the counsel for appellant, is the rightful Governor and consequently an order directing that he (Mr. Mike Okoye) be sworn in forthwith as Governor of Anambra State.

In the appellant brief of argument filed on 3rd August, 2011 and adopted in argument, learned counsel for appellant, Mike Okoye, Esq formulated the following issues for determination.

1. Whether from the circumstances of this case the Court of Appeal is the final court.
2. Whether from the circumstances of this case the Court of Appeal is bound to consider the application as a whole.
3. Whether from the circumstances of this case the appellant had made out a case justifying the setting aside of the judgment of the Court of Appeal dated February 24, 2011, and,

4. Whether the Court of Appeal was right not to have held that the appellant established a prima facie case that the 1st respondent, Mr. Peter Obi was not qualified and that Mike Okoye, Esq, is the rightful Governor, based on the authority of Amaechi vs Omehia (supra).

B On the other hand, learned senior counsel for the 1st and 3rd respondents, DR. ONYECHE IKPEAZU, SAN formulated three issues for determination by way of an alternative to a preliminary objection. The issues are as follows:

C 1. Was the Court of Appeal correct when it held that as the appeal was heard before the amendment of the constitution, the court of Appeal was the final court with respect to the appeal arising from the decision of an Election Petition Tribunal in an election petition for the office of Governor of a state?

D 2. Was the Court of Appeal correct when it discountenanced Grounds 1 to 3 of the application, the appellant having abandoned them?

3. Was the court of Appeal correct when it dismissed the appellant's applicant?

E The objection of the 1st and 2nd respondents to the competence of the appeal are argued in their brief filed on 30th September, 2011 and there are as follows:

F 1. By Section 246(i) and (3) of the Constitution of the Federal Republic of Nigeria, 1999, the applicable law at the time the case of action arose the appellant has no right of appeal from the decision of the Court of Appeal in the Governorship Election Petition, to the Supreme Court of Nigeria.

2. By Section 233 of the Constitution of the Federal Republic of Nigeria 1999, the appellant has no right to appeal as of right to the Supreme Court of Nigeria and has not sought leave.

G 3. Assuming but without conceding that appellant has a right to appeal to the Supreme Court of Nigeria in this matter, Grounds 3 and 4 of the Grounds of Appeal are grounds of mixed law and fact for which leave of either the Court of Appeal or of the Supreme Court is required-

H 4. The relief sought does not arise from the application and the relief sought in the appeal which gave rise to the further appeal to the Supreme Court of Nigeria, and contradicts the prayers in the petition.

5. Ground 4 of the Grounds of Appeal does not arise from the

decision appealed against.

I should state, in passing that learned counsel for the 2nd respondent in the brief of argument filed on 30th September, 2011 formulated three issues for determination which are very similar to the issues already reproduced. He also objects to the jurisdiction of this court to hear and determine the appeal. The same thing goes for learned counsel for the 4th - 6th respondents. B

When the appeal came up for hearing on the 14th day of November, 2011 counsel for all the parties were called upon, by the court, to address the court on the issue as to whether or not the court has jurisdiction to entertain the appeal having regards to the facts and circumstances of the case. The matter was partly heard that day and adjourned, at the instance of counsel for the appellant, to the 17th day of November, 2011 for continuation. C

In answer to the above issue, learned counsel for appellant D stated that by virtue of the Federal Republic of Nigeria Official Gazette vol. 98, Government Notice No. 7, the Constitution of the Federal Republic of Nigeria (second Alteration) Act No. 2, 2010, the 1999 Constitution was further amended with the commencement date of the amendment being stated therein as the 29th day of November, 2010; that Section 233 of the 1999 Constitution and Section 24 of the First Alteration Act, were substituted with a provision conferring jurisdiction on the Supreme Court to hear and determine appeals on matters on the issue as to whether any person has been validly elected to the office of Governor or Deputy Governor under the constitution; that the case of the appellant is that Mr. Peter Obi was not validly elected to the office of Governor of Anambra State since he was not qualified under Section 177(c) of the 1999 Constitution; learned counsel then submitted that since the amendment came into force on 29th November, 2010, this court became vested with jurisdiction to entertain appeals on governorship election from the Court of Appeal. E F G

It is the further submission of learned counsel that the only issue relevant to the competence of the court to hear the appeal is, according to counsel, whether the appeal of the appellant was filed before or after the 29th day of November, 2010; that since the appeal was filed on 28th June, 2011 the court has jurisdiction to hear same; that both the 2010 governorship election which is the subject H

matter of the appeal and the 2011 governorship elections were conducted under the same 1999 Constitution, and urged the court to hold that it has jurisdiction to hear the matter and overrule the preliminary objections.

Learned senior counsel for the 1st and 3rd respondents, DR. **B IKPEAZU, SAN** stated that it is not in dispute that the judgment of the Court of Appeal was delivered on 24th February, 2011 after the alteration of the 1999 Constitution had come into effect and that the ruling giving rise to the appeal was delivered on 14th June, 2011.

C Learned senior counsel then referred to Section 246(i) and (3) of the pre-amended 1999 Constitution and submitted that the decisions of the Court of Appeal in respect of appeals arising from election petitions are final; that the election which resulted in the appeal, took place on 6th February, 2010 under the 2006 Electoral Act and the original 1999 Constitution and that the resultant appeal from the decision of the election tribunal that decided the petition was filed under the Electoral Act, 2006 and the original 1999 Constitution. It is the further submission of learned senior counsel that the relevant law applicable in respect of a cause of action is the law in force at the time the cause of action arose and that with respect to the jurisdiction of the court, it is the applicable law in existence at the time the action was instituted and heard, relying on *Osakue vs F.C.E Asaba* (2010) 10 NWLR (Pt. 1201) 1 at 43; *Adigun vs Ayorinde* (1993) 8 NWLR (Pt. 313) 516 at 536; *A-G Federation vs Sode* (1990) 1 NWLR (Pt.128) 500 at 534; *Uwaifo vs A-G Bendel State* (1982) 7 SC 124; *Dosunmu vs A-G Lagos* (1989) 3 NWLR (Pt.111) 552; that appeals to which the alteration to the 1999 Constitution can apply are those arising from or conducted under the altered 1999 Constitution; that the effective date of the alteration is 10th January, 2011 while the decision appealed against was rendered by the tribunal on 13th December, 2010 and urged the court to apply its decision in *Okonkwo vs Ngige* (2007) 12 NWLR (Pt. 1047) 191 at 208; *Emodi vs Igbeke* (2011) 9 NWLR (Pt.1251) 24 at 35 to hold that the court has no **H** jurisdiction in the matter.

Learned counsel for the 2nd respondent, **BEN OSAKA, ESQ** aligned himself with the submission of learned senior counsel for the 1st and 3rd respondents *supra*, and urged the court to strike out the appeal for lack of jurisdiction.

Chief (Mrs.) V. O. Awomolo for the 4th, 5th and 6th respondents also adopted the argument of learned senior counsel for the 1st and 3rd respondents as well as that of the counsel for 2nd respondent and urged the court to hold that the applicable law as at 6th February, 2010 is the Electoral Act, 2006 and the 1999 Constitution before the alteration and that the final Court of Appeal on the matter is the Court of Appeal, not this court and urged the court to so hold. B

From the record, the following facts are not disputed:- that on the 6th day of February, 2010 the 4th respondent, INEC conducted an election into the office of Governor of Anambra State in which the appellant, a political party sponsored Mr. Nicholas C Ukachukwu as its governorship candidate while Mr. Mike Okoye was his running mate for the office of deputy governor. The 1st respondent, Mr. Peter Obi was the governorship candidate for the said election sponsored by the All Progressive Grand Alliance (APGA) while D the 2nd respondent was his running mate for the office of deputy governor.

The election was conducted under the Electoral Act, 2006 and the original 1999 Constitution i.e. prior to the amendments/alterations. At the conclusion of the election process the 1st respondent, E who scored the highest number of valid votes cast at the election and satisfied the constitutional requirements, was declared duly elected and returned as Governor of Anambra State. The appellant was aggrieved by the declaration and return of 1st respondent as winner of F that election and consequently filed an election petition challenging the said election and return at the Anambra State Governorship Election Petition Tribunal, Holden at Awka which upheld the election and return of the 1st respondent and dismissed the petition resulting in an appeal to the court of Appeal which was dismissed on 24th day of G February, 2011; that rather than file an appeal to the Supreme Court, granted that such a right of appeal exists in the appellant, appellant filed a motion on the 15th day of March, 2011 in the Court of Appeal H praying that court to set aside its judgment of 24th February, 2011 on the ground that the same is null and void which application was dismissed in a ruling delivered on 14th June, 2011. The instant appeal filed on 28th June, 2011 is against the ruling of 14th June, 2011.

Meanwhile and during the pendency of the appeal in the Court

of Appeal against the decision of the tribunal, the President of the Federal Republic of Nigeria signed the Act amending the 1999 Constitution on 10th February, 2011 into law under which amendment/alteration, Section 246(3) of the 1999 Constitution was amended to now confer jurisdiction on the Supreme Court to hear and determine appeals from decisions of the Court of Appeal in governorship elections, which appellant now contends governs its case and as such confer jurisdiction on this court to hear its appeal against the ruling of the lower court.

Funny enough though the appeal is said to be against the ruling of the lower court refusing to set aside its earlier decision, the prayers of the appellant before this court are far reaching as they are seeking an order of this court setting aside the decisions of the tribunal and the Court of Appeal with a further order declaring that the 1st respondent was not qualified for the election in issue and that Mr. Mike Okoye is the rightful Governor to be sworn in forthwith!!!

It is not in dispute that at the time the election of 6th February, 2010 was conducted, both the Electoral Act, 2006 and the 1999 Constitution (before the amendments) were the laws in force and governed the process and proceedings arising therefrom. This is in accord with common sense as a law yet to be in existence cannot have effect on rights and/liabilities existing prior to its creation/commencement.

It is the contention of the respondents that the law governing the cause of action at the time the petition was filed, determined and the appeal thereon is Section 246(3) of the original 1999 Constitution.

On the other hand, appellant's position is that following the 2nd amendments to the 1999 Constitution which counsel for appellant contends came into effect on 2nd November, 2011, the applicable law is Section 233 (2)(e)(iv) of the 1999 Constitution as amended/ altered.

The question is, which of the two contending posits is the true state of the law? To answer the question we have to look at the law both statutory/constitutional and case law relevant to the issue under consideration. We begin with the constitutional provisions relied upon by the contending parties: The first is Section 264(3) of the original 1999 Constitution.

It provides inter alia, as follows:-

“(3) The decisions of the Court of Appeal arising from election petitions shall be final”.

On the other hand, Section 233 (2) (e)(iv) of the 1999 Constitution as amended provide as follows:

“(2) An appeal shall lie from the decisions of the Court of Appeal to the Supreme Court as of right in the following cases:-

(e) Decisions on any question...

(iv) Whether any person has been validly elected to the office of Governor or Deputy Governor under this constitution”.

It is very clear and I state without fear of contradiction that whereas Section 246(3) of the original 1999 Constitution (supra) made the Court of Appeal the final court of appeal in relation to matters arising from governorship election petitions, Section 233 (2) (e)(iv) of the 1999 Constitution as amended (supra) grants a right of appeal to an aggrieved party in a governorship election matter to appeal against the decision of the Court of Appeal in relation thereto, which was hitherto the court of final appeal as clearly provided in Section 246(3) of the original 1999 Constitution and reproduced earlier in this judgment, to the Supreme Court “under this constitution”.

I hold the view that the above provisions are clear and unambiguous and consequently do not call for any interpretation as they mean what they clearly state.

What, however, is the meaning or significance of phrase, “under this constitution” appearing in Section (2)(e)(iv) of the 1999 Constitution, as amended?

Historically speaking, there are two 1999 Constitutions of the Federal Republic of Nigeria. The first one came into force, by the provisions of Section 320, on the 29th day of May, 1999, and; Secondly, the 1999 Constitution as amended, which appellant contends came into force on 29th November, 2010 as stated in the enabling Act, but respondents contend it came into force on 10th January, 2011 when Mr. President signed the document.

The question as to which of the two dates constitutes or is the actual date of the commencement of the 1999 Constitution as amended will be treated anon. What matters now is the

establishment of the fact that there are two distinct 1999 Constitutions of the Federal Republic of Nigeria applicable depending on when the cause of action arose as it is settled law that the applicable law to an action is the law existing or that existed at the time the cause of action arose not when the
B ***action was instituted or decision reached.***

From the above, it is very clear and I hold the considered view that the phrase “under this constitution” supra means and can only mean the 1999 Constitution as amended particularly as that phrase did not exist under Section 233(2)
C ***of the original 1999 Constitution.***

The above question haven been answered, the next is when did the 1999 Constitution, as amended, come into force/operation? The answer to that question is the pivot of the resolution of the issue
D of the relevant law/constitutional provision applicable to the facts and circumstances of this case.

Both parties agree that the 1999 Constitution as amended was signed by Mr. President on the 10th day of January, 2011 which date can be verified from the document in question.

E Now, Section 2 of the Interpretation Act Cap. 123 Laws of the Federal Republic of Nigeria, 2004 provides as follows:-

“(i) An Act is passed when the President assents to the Bill for the Act whether or not the Act then comes into force.

F (ii) Where no other provision is made as to the time when a particular enactment is to come into force, it shall, subject to the following subsection, come into force-

(a) In the case of an enactment contained in an Act of the National Assembly, on the day when the Act is passed;

G (b) In any other case, the day when the enactment is made.

(iii) Where an enactment is expressed to come into force on a particular day, it shall be construed as coming into force immediately on the expiration of the previous day”.

H In addition to the above, Section 58(1) of the 1999 Constitution, both original and as amended, provide as follows.-

“(i) the power of the National Assembly to make laws shall be exercised by bills passed by both the Senate and the House of Representatives and, except as otherwise provided by subsection (5) of this section, assented to by the President”.

From the provisions of Section 58(i) of the 1999 Constitution, original and as amended, and Section 2(1) of the Interpretation Act, Cap, 123 of Laws of the Federation of Nigeria, 2004 both supra, it is clear and I hereby hold that the provisions of the 1999 Constitution as amended came into force/effect on the 10th day of January, 2011 when MR. PRESIDENT OF THE FEDERAL REPUBLIC OF NIGERIA signed same and not on any other date, whether stated on the body of the document or elsewhere as there is no evidence that the president withheld his assent to the bill as envisaged in subsection (5) of the said Section 58(i) of the 1999 Constitution as amended.

That apart, to hold that the commencement date of the 1999 Constitution as amended is the 29th day of November, 2010 which is a date prior to the signing of the bill into an Act would be very absurd and contrary to law, particularly the section of the constitution referred to supra and that of the Interpretation Act.

Secondly, such a holding would mean that the 1999 Constitution is made to apply retrospectively by implication which is equally frowned upon by law. - See Utthi vs Onovivwe (1991) 1 NWLR (Pt. 166) 166.

Turning now to the main issue under consideration, it is settled law that an appeal is not a new action but a continuation of the dispute/matter which is the subject of the appeal. It is a complaint against a decision arising from the matter in dispute between the parties. In this case, it is not in dispute that the cause of action arose from the governorship election of Anambra State conducted on the 6th day of February, 2010 under the Electoral Act 2006; that the cause of action was ventilated by appellant at the Anambra State Governorship Election Petition Tribunal which rendered its decision thereon on 27th day of June, 2010 resulting in an appeal to the Court of Appeal filed on 14th August, 2010 which appeal was dismissed by that court on 24th February, 2011.

It is settled law that the applicable law is the law in existence at the time the cause of action arose and not the law in force at the time of instituting the action or time of judg-

ment. See *Alao vs Akano* (1988) 1 NWLR (Pt.71) 431 at 443, *Uwaifo vs A-G Bendel State* (1982) NSCC 221 at 225 - 226, *Adesanoye vs Adewole* (2006) 14 NWLR (Pt. 1000) 242 at 267; *Osakwe vs. F.C.E. Asaba* (2010) 10 NWLR (Pt.1201) 1 at 43; *Adigun vs Ayinde* (1993) 8 NWLR (Pt. 313) 516 at 536, etc.

B Applying the principle of law stated supra to the facts of this case, it is clear and I hereby hold that the laws applicable to this case are the Electoral Act, 2006 and the relevant provisions of the 1999 Constitution before the amendment being the laws in existence when the cause of action arose in this case. The above being the case it is my further view that by operation of Section 246(3) of the original 1999 Constitution (by which I mean the 1999 Constitution as it existed prior to the amendments in 2011) the Court of Appeal is the final appellate court on governorship election petition matters, there being no right of appeal in a party aggrieved of its decision, to the Supreme Court.

In the circumstance I hold the considered view that the Court of Appeal is right in its ruling of 14th June, 2011 dismissing the application of the appellant to set aside the decision of the lower court on appeal against the decision of the Anambra State Governorship Election Petition Tribunal dismissing the petition of the applicant, on the grounds that the application lacks merit and that the court is with no jurisdiction to sit on appeal over its own decision being a final court on the matter.

Consequently, I hold the view that the present appeal to the Supreme Court is misconceived, this court having no jurisdiction to hear and determine same and is accordingly struck out by me with costs which I assess and fixed at N100,000.00 against the appellant and in favour of each set of respondents Appeal struck out.

H

MUSDAPHER CJN

On the 17th of November, 2011 this court heard this appeal and struck it out on the grounds of lack of jurisdiction and indicated that we will give our reasons at a later date. I have now seen the

reasons for judgment just delivered by Onnoghen, JSC and I entirely agree with him. I, with respect, adopt his reasoning as mine. I adopt the order for costs proposed in the aforesaid reasons for judgment.

FABIYI JSC

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I completely agree with the reasons ably advanced by my learned brother Onnoghen, JSC. I only wish to chip in a few words of mine in support. The election in respect of this matter was conducted on 06-02-2010 under the provisions of the 1999 Constitution of the Federal Republic of Nigeria before its amendment. The law that governs a case is the law at the time when the cause of action arose and not the law when the court is seized of the matter. See: *Mustapha v. Gov. Lagos State* (1987) 2 NWLR (Pt.58) 539 at 591. C

Section 246 (3) of the 1999 Constitution as at the time the D cause arose says the Court of Appeal is the final court in respect of Governorship matters. In a line of authorities, this court has affirmed the position. See: *Awuse v. Odili* (2003) 18 NWLR (Pt.851) 116; *Emordi v. Igbeke* (2011) All FWLR (Pt.580) 1262 at 1271.

The appellant attempted to take cover by alluding to the provision of the African Charter. I should say it without equivocation that same cannot be employed to imbue this court with jurisdiction where it is excluded by the provisions of the applicable Section 246 (3) of the 1999 Constitution before its amendment. E

Without any hesitation, I hold that this court has no jurisdiction F to entertain the appeal. I agree that the appeal, having been found to be incompetent, deserves to be struck out. I order accordingly. I endorse the order on costs made in the lead reasons for judgment.

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ADEKEYE JSC

This court commenced hearing in the appeal SC.280/2011 filed by Hope Democratic Party [HDP] against Mr. Peter Obi, Governor of Anambra State on the 14th of November, 2011. Hearing was however completed on the 17th of November, 2011 and judgment was delivered immediately after conclusion of address of counsel. The court adjourned reasons for judgment to the 16th of December, 2011. H

I shall now proceed to give reasons for the earlier decision of this court. The appellant appealed to this court against the decision of the Court of Appeal, Enugu Division in appeal no. CA/E/EPT/5/2010 Hope Democratic Party v. Peter-Obi & Ors. as contained in the Ruling of the Election Petition Appeal Tribunal delivered on the 14th June, 2011. The background facts of the case *brevi manu* are that in the Governorship Election conducted in Anambra State on the 6th of February, 2010 by the 4th Respondent, Independent National Electoral Commission [INEC], the appellant, Hope Democratic Party sponsored Hon. Nicholas Ukachukwu for the Office of Governor and Mr. Mike Okoye as Deputy Governor respectively. There were twenty-one other contestants from the various parties for the office. At the conclusion of voting exercise, the 1st respondent, Mr. Peter Obi was declared duly elected candidate and was returned as the Governor of Anambra State. The appellant filed an election petition against the result of the election. The Tribunal in its considered judgment found that the 1st respondent was duly elected by all the lawful votes cast at the election. The appellant's petition was accordingly dismissed. The appellant being aggrieved by that decision appealed to the Court of Appeal. The Court of Appeal upheld the decision of the Tribunal to the effect that based on all the lawful votes cast at the election. The 1st respondent satisfied the requirements of Section 172 (2) (b) of the Constitution of Nigeria 1999. The appellant filed a motion on the 15th of March, 2011 praying the lower court to set aside this judgment and set down the appeal for re-hearing and determination and gave grounds to hold that the judgment was null and void. The Court of Appeal dismissed the application as lacking in merit. The appeal in hand is against that decision of the Court of Appeal. At the hearing of the appeal on the 14th of November, 2011, the court called upon Mr. Okoye who appeared in person to address it on "Whether the court has jurisdiction to entertain the appeal which is against the decision of the Court of Appeal in a governorship Election before the Amendment to the 1999 Constitution on the 10th of January, 2011." As Section 246 (3) of the original 1999 Constitution stipulates that the Court of Appeal shall be the final court for Election Matters.

The appeal was adjourned to the 17th November, 2011 to allow all counsel to properly address the court on the legal point raised. At the sitting of the 17th of November, 2011 all counsel ad-

addressed the court on the fundamental issues of jurisdiction raised by this court as follows -

(1) Whether this court has jurisdiction to entertain this appeal as the subject matter of the appeal emanated from an election which was conducted before the amendment to the 1999 and the hearing in election petitions terminate at the Court of Appeal by virtue of Section 246 (3) of the 1999 Constitution before the amendment? B

(2) Whether in view of Section 285 (7) of the 1999 Constitution there is any live issue in the appeal having expired due to effluxion of time? C

In his submission, Mr. Okoye made all efforts to convince the court that the amendment to the 1999 Constitution came into force on the 29th of November, 2010. He relied on the Federal Republic of Nigeria Official Gazette Vol. 98, Government Notice No. 7 Constitution of the Federal Republic of Nigeria Second Alteration Act No. 2 D of 2010. Further that by virtue of Section 233 of the 1999 Constitution and Section 24 of the First Alteration Act, the Supreme Court is now conferred with jurisdiction to hear and determine appeals on matters as to whether any person has been validly elected to the Office of Governor or Deputy Governor under the Constitution. The contention of the appellant was that the 1st respondent was not validly elected to the Office of the Governor of Anambra State by virtue of Section 177 (c) of the Constitution. On the second point, the appellant agreed that relying on Section 285 (7) of the Constitution as amended the sixty days required for hearing of appeals had lapsed E but this section does not apply to this appeal. This court must distinguish the appeal from the appeals in ordinary election petition matters in the interest of justice. F

The learned senior counsel for the 1st respondent, Dr. Ikpeazu, G SAN relied on the two decisions of this court delivered earlier on in the day in appeals SC. 361./2011 and SC. 362/2011 Chief Great O. Ogboru & 7 or v. Dr. Emmanuel E. Uduaghan & 2 ors where this court declined jurisdiction over appeals in respect of elections which took place prior to the amendment to the 1999 Constitution. He H urged the court to adopt the same reasoning to dismiss the appeal for lack of jurisdiction. He further submitted that the date of commencement of the amendment to the Constitution was the 10th of January, 2011 when the President of Nigeria signed the Bill into Law.

In the old dispensation, the governorship election terminated at the Court of Appeal. The applicable law to this case is the Constitution before the amendment. The election to the office of Governor in Anambra State was held 6th February, 2010 while the matter was filed in court also in February 2010. The time restriction for hearing
 B of the appeals was done for a purpose-it is a constitutional issue.

Mr. Osaka learned counsel for the 2nd respondent adopted the submission of the 1st respondent to hold that the matter in this appeal occurred before the amendment to the Constitution and it is
 C caught up by the provisions of the original Constitution. The provision of Section 285 (7) is clear and unambiguous and the court must so hold. He urged the court to strike out this appeal.

Mrs. Awomolo learned counsel for the 4th-5th respondents associated herself with the submission of the learned senior counsel
 D for the 1st respondent. She submitted in addition that the applicable law is the law before the amendment to the Constitution as the election took place in February 2010. The final court under the original Constitution is the Court of Appeal. Section 285 (7) has settled this matter effectively. Since this court has no jurisdiction to entertain this
 E appeal, the only way is to strike it out.

I have carefully considered the submission of the learned counsel for the parties in this appeal. The two legal points raised by this court and which one of them coincided with the issue embodied in the Notice of Preliminary Objection of the 1st respondent are clearly
 F on the issue of the jurisdiction of this court to entertain the appeal filed by the appellant. On the 17th of November, 2011, the court promptly gave its attention to these issues. It is trite law that where in the proceedings of a case the issue of jurisdiction is raised and chal-
 G langed, the court must first and foremost decide on whether it has jurisdiction before proceeding to decide the case on the merits. The importance of the issue of jurisdiction had been over-emphasized in numerous decisions of this court. It is an accepted view that jurisdiction forms the foundation of adjudication. A court must first of all be
 H competent, that is, have jurisdiction before it can proceed to adjudication. A defect in competence is extrinsic to adjudication.

In the appeal in hand the jurisdiction of the court to entertain it is determined by the supreme law of the land-the Constitution. The relevant provisions are Sections 246 (1) and (3) of the 1999 Consti-

tution - the original version and Section 285 (7) of the same Constitution as amended. The appellant however is of the impression that the amended version which date of commencement is put at the 29th of November, 2010; Section 233 (2) (c) (iv) and Section 24 is the applicable law to the subject matter of the appeal.

I am duty bound to highlight the contents of the foregoing provisions of the Constitution. B

Sections 246 (1) and (3) state that-

“An appeal to the Court of Appeal shall lie as of right from-
The decisions of the Court of Appeal in respect of appeal arising from election petitions shall be final.” C

Section 285 (7) of the 1999 Constitution as amended reads-
“An appeal from a decision of an election tribunal or Court of Appeal in an election matter shall be heard and disposed off within 60 days from the date of the delivery of judgment of the tribunal or Court of Appeal.” D

Section 233(2)(e) (iv) of the 1999 Constitution as amended reads-

“An appeal shall be from the decisions of the Court of Appeal to the Supreme Court as of right in the following cases: - E

(e) Decisions on any question

(iv) Whether the office of Governor or Deputy Governor has become vacant”

The crucial factor for determination now is the issue of the commencement date of the amendment to the Constitution. That is the determining factor as regards whether this court has jurisdiction to entertain the subject matter of this appeal. I have a duty to restate that the complaint of the appellant in this petition filed at the Election Petition Tribunal was against the declaration by INEC, the 4th respondent in this appeal that the 1st respondent was the duly elected candidate and his return as the Governor of Anambra State after the Governorship election held on 6th February, 2010. The appellant challenged the return of the 1st respondent as being in gross violation of Section 179 (2) (b) of the Constitution as the 1st respondent did not obtain one quarter of all the votes in each of at least two third of all the Local Government Areas in Anambra State. Further that the 1st respondent was at the time of the election not qualified to contest the election. F
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This appeal emanated from the challenge of the appellant to the return of the 1st respondent as the legally qualified candidate to occupy the Office of the Governor of Anambra State.

There follows to be answered the question of the relevant and applicable law to invoke in the circumstance of this case. Is it the
B Constitution of the Federal Republic of Nigeria Second Alteration Act
No. 2 of 2010 now in the Federal Republic of Nigeria Official Gazette
Vol. 98 Government Notice No.7 with the commencement date as
29th of November or the Amended Constitution of the Federal Re-
C public of Nigeria which came into force on the 10th of January when
it received the assent by the President of the Federal Republic of
Nigeria as submitted by counsel. On the issue of the date of passing
and commencement of an Act, the Interpretation Act has clarified
the position.

D Section 2 of the Interpretation Act Cap 123 Laws of the Fed-
eration of Nigeria vol. 8 2004 provides on the passing and com-
mencement of an Act that: -

(1) An Act is passed when the President assents to the Bill for
the Act whether or not the Act then comes into force.

E (2) When no other provision is made as to the time when a
particular enactment is to come into force it shall subject to the fol-
lowing subsection come into force -

(a) In the case of an enactment contained in an Act of the
F National Assembly on the day when the Act is passed.

(b) In any other case, on the day when the enactment is made.

(3) Where an enactment is expressed to come into force on a
particular day, it shall be construed as coming into force immediately
on the expiration of the previous day.

G While Section 58 (1) of the 1999 Constitution stipulates how
Federal legislative power shall be exercised. The Section stipulates
that -

“The power of the National Assembly to make laws shall be
exercised by bills passed by both the Senate and the House of Rep-
H resentatives and except as otherwise provided by subsection (5) of
this section assented to by the President.”

It is however note worthy that according to available docu-
ments, three Alteration Acts 2010 were passed by the National As-
sembly. The Constitution of the Federal Republic of Nigeria (First

Alteration Act) 2010 put the date of the commencement and assents by the President as the 10th of January, 2011. The 2nd Alteration Act with the date of commencement as the 29th of November, 2010. There is the Constitution of the Federal Republic of Nigeria (Third Alteration Act) 2010 which puts the date of commencement as the 4th day of March though it was supposed to be signed on the 7th day of March, 2011. With the community reading of Section 2 subsection (1) and 2 (a) of the Interpretation Act and Section 58 (1) of the 1999 Constitution, I am of the opinion that the amendment to the Constitution came into force on the 10th of January, 2010 in view of the consent of the President.

I have to stress the point that a court will have the necessary competence to hear and determine a matter if the same is within its jurisdiction and there is no feature in the case which prevents the court from exercising its jurisdiction. *Madukolu v. Nkemdilim* (1952) 2 SCNLR pg. 341, *Anambra State v. A.G Federation* (1993) 6 NWLR (pt.302) pg. 692. The relevant law applicable in respect of action is the law in force at the time the cause of action arose. In this particular instance, the evidence revealed that twenty-one (21) candidates contested the gubernatorial election held in Anambra State on 5th February, 2010. At the end of the contest, the 1st respondent was declared the duly elected candidate and was returned as the Governor of Anambra State. The appellant was dissatisfied with the result of the election; he immediately filed an election petition before the Election Petition Tribunal Awka in February 2010. The cause of action in this appeal occurred on the 6th of February when the appellant lost to the 1st respondent in the gubernatorial contest. The relevant laws governing the hearing of election appeals are Sections 285 and Section 246 of the 1999 Constitution. Section 246 (3) made the Court of Appeal the final court for the hearing of election and election related matters. The appellant relied on the judgments of the Court of Appeal delivered on the 24th of February, 2011 and the 14th of June 2011 to hold that this court has jurisdiction. I regard this as a misconception as he has practically overlooked the fact of the cause of action which was the governorship election of the 6th of February, 2010. This event occurred before the amendment to the 1999 Constitution which was on 10th of January, 2011. The other legal point raised is that this appeal is no longer a live issue in view of the provi-

sions of Section 285 (7) of the 1999 Constitution as amended. Having resolved that this court has no jurisdiction to entertain this appeal on the first issue, it shall no longer be necessary to delve into this second issue.

The Constitution is the supreme law of the land; therefore the provisions are superior to every provision embodied in any Act or law and are binding on all persons and authorities in Nigeria. The failure to follow any of the provisions renders the steps taken unconstitutional, null and void. Such Act must be set aside by the court. The appellant had filed an appeal in this court contrary to the provision of Section 285 (7) of the Constitution. This court has a duty to set it aside. *Adediran v. Interland Transport Ltd.* (1991) 9 NWLR (pt.214) pg. 155, *INEC v. Musa* (2003) 3 NWLR (pt.805) pg. 72, *A.G Abia State v. A.G Federation* (2002) 5 NWLR (pt.763) pg. 264, *Adisa v. Oyiwola* (2000) 10 NWLR (pt.674) pg. 116, *A.G Ondo State v. A.G. Federation* (2002) 9 NWLR (pt.772) pg. 222.

In sum, this appeal is frivolous, unconstitutional and being outside the jurisdiction of this court, it is accordingly struck out. I shall be failing in my duty as a judicial officer if I do not re-echo that the Supreme Court is meant for serious business of litigation, it is not a place to indulge in fantasy.

PETER-ODILI JSC

Appellant's counsel is calling on this court to assume jurisdiction and sit on appeal over the judgment of the Court of Appeal in an appeal from the trial tribunal over the Governorship Election held in Anambra on the 6th February 2010 on the ground that the amendment of 10th January, 2010 of the 1999 Constitution avails their case.

Learned counsel on the other side representing the respective respondents disagree saying the appeal is a dead issue as the matter is governed by provisions of the constitution of 1999 before amendment and the final court within that provision had delivered the final judgment and so the jurisdiction does not exist for this court to entertain what appellant is positing.

Having heard from counsel either way, the appeal and even these arguments are purely academic which is not within the scope of

duty of the court. When the Court of Appeal gave its judgment on 24th February, 2011 dismissing the appeal from the trial tribunal it did so with finality and the subsequent application by the appellant for that court to re-hear the appeal was rightly in my view not correct that court being *functus officio*.

This appeal here, with the appellant seeking to tempt the court into taking a garment not meant for it at the time the cause of action arose is to say the least most irritating. The governing legal provision is section 246(3) of the constitution 1999 before amendment which gave the final authority to the Court of Appeal on an appeal from the trial tribunal on a governorship election dispute.

In respect to the provisions of section 285 of the constitution there is no omission which would need be filled by this court in an attempt to make a distinction on whether the matter coming from the trial tribunal or when the Court of Appeal is sitting in an original jurisdiction. The provisions of section 285(7) of the constitution are clear and no ambiguity exists therein, as it has established from the simple meaning that appeals for which the 60 days duration would apply is whether from trial tribunal to the Court of Appeal or from the Court of Appeal to this court either in original jurisdiction or appellate.

In the final analysis, this court lacks jurisdiction and I make no hesitation in striking out this appeal, for the reasons above and the fuller reasons of the chief Justice who delivered the lead judgment.

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