

SUPREME COURT OF NIGERIA
13TH JANUARY, 2012. SC. 139/2010
CORAM: - A. M. MUKHTAR, F. F. TABAI, I. T.
MUHAMMAD, S. GALADIMA, N. S. NGWUTA, JJSC

1. HON. BIMBO ADEPOJU
CHAIRMAN, IBARAPA EAST LOCAL
GOVERNMENT

2. HON. OGUNGBOLA YAKUBU
CHAIRMAN, ITESIWAJU LOCAL
GOVERNMENT

3. HON. KEHINDE OLAOSEBIKAN
CHAIRMAN, OLUYOLE LOCAL
GOVERNMENT

4. HON. OLABEDE RAFIU O.
CHAIRMAN, ATISBO LOCAL
GOVERNMENT

5. HON. ODEYEMI T. CHAIRMAN
IBADAN NORTH EAST LOCAL
GOVERNMENT

6. HON. JOSIAH OLUFEMI IDOWU
CHAIRMAN, IBADAN NORTH
WEST LOCAL GOVERNMENT

7. HON. SAHEED YUSUF
CHAIRMAN, ISEYIN LOCAL
GOVERNMENT

..... APPELLANTS

8. HON. SALAWU MUMINI ADENIYI
CHAIRMAN, OYO EAST
LOCAL GOVERNMENT

9. HON. MICHAEL AWOLOLA IDOWU
CHAIRMAN, IWAJOWA LOCAL
GOVERNMENT

10. HON. RABIU MUSE OLASUNKANMI
CHAIRMAN, ONA-ARA LOCAL
GOVERNMENT

AND

1. OLONA YINKA
CHAIRMAN, UNITED NIGERIA
PEOPLES PARTY, OYO STATE

2. PRINCE TUNDE TANDA
CHAIRMAN, REPUBLICAN PARTY
OF NIGERIA, OYO STATE
 3. HON. ARIWOOLA OLAFENWA
CHAIRMAN, NEW NIGERIA
PEOPLES PARTY, OYO STATE
 4. ELDER TUNDE AJAYI
CHAIRMAN, PEOPLES REDEMPTION
PARTY, OYO STATE
 5. ALHAJI YEMI OLASUPO
CHAIRMAN, ACTION FOR
DEMOCRACY, OYO STATE
 6. DR. S. S. OLALERE CHAIRMAN,
ACTION ALLIANCE PARTY, OYO STATE
 7. REV. DR. S. AWOPEGBA
CHAIRMAN, NATIONAL CONSCIENCE
PARTY, OYO STATE
 8. OTUNBA LADELE OMOTAYO RESPONDENTS
CHAIRMAN, MOVEMENT FOR
DEMOCRACY AND JUSTICE OYO STATE
 9. COMRADE ADEGBOYEGA A. ADELU
CHAIRMAN, ALL PROGRESSIVE GRAND
ALLIANCE, OYO STATE
 10. ARIYI ADESINA CHAIRMAN, NATIONAL DEMOCRATIC
PARTY, OYO STATE
 11. CHIEF DEJO AFOLABI CHAIRMAN,
PEOPLES DEMOCRATIC PARTY, OYO STATE
 12. BARRISTER F. A. MUSTAPHA
CHAIRMAN, N.D.P. OYO STATE
 13. HON. E. O. ADELOWO
CHAIRMAN DEMOCRATIC PEOPLES
ALLIANCE OYO STATE
- (For themselves and on behalf of all
members of the political parties mentioned)
14. OYO STATE INDEPENDENT
ELECTORAL COMMISSION (OYSIEC)
 15. INDEPENDENT NATIONAL
ELECTORAL COMMISSION (INEC)

16. COMMISSIONER OF POLICE OYO STATE

COURTS - Actions - Need to determine on merit - Court must jealously guard its jurisdiction - To hear and determine a case on the merits (H1)

APPEALS - Politics - Term of office - Reliefs claimed - Propriety of refusal - Appellants no longer have enforceable rights - As their tenure of office had ceased to exist on 24th May 2010 (H2)

FACTS

Appellants are Local government chairmen in Oyo State. They seek for a restoration of their tenure of offices which incidentally had elapsed on the 24th May 2010. 1st to 13th respondents are chairmen of various political parties mentioned. This appeal is against the two rulings of the Court of Appeal, Ibadan Division. On the 9th March 2010, the said Court of Appeal granted 1st - 13th respondents' motion for stay of proceedings pending the determination of motion for stay of proceedings at the Supreme Court. The motion for stay of proceedings was struck out by Supreme Court on 4th May 2010. Also on the 15th July 2010, the court (i.e. Court of Appeal) granted 1st-13th respondents' application to strike out the appeal on the ground that it had become merely academic.

Arguing the appeal before the Supreme Court, appellants through their counsel stated that lapse of time would not prevent the hearing and determination of a case that raises substantial issues of law when it was initiated. They placed reliance on the case of *Amaechi v. INEC* (2008) 5 NWLR (pt. 1080) 227. Counsel pointed out that on the 9th March 2010, appellants still had two and a half months to the 24th of May 2010 when their terms of office expired. It was further argued that but for the stay granted, the court would have been able to determine the appeal before the 24th May, 2010. It was counsel's further argument that there was no pending appeal and that even if there was an appeal pending, court ought not to have granted a stay of proceedings. 1st to 13th respondents filed notice of preliminary objection. They argued through their counsel that since the motion for stay of proceedings at the Supreme Court has been

struck out, the ruling of 9th of March 2010 was no longer subsisting for any appeal. The appeal, they argued, has become merely academic. They argued that the tenure of offices of appellants have expired on the 24th May 2010. As such, the case of Amaechi v. INEC (supra) is distinguishable from the case of appellants.

B ISSUES FOR DETERMINATION

“(i) Whether the lower court was right in striking out the Appellants’ appeal without considering the merits of the appeal on the ground that the appeal had become academic and there was no live issue left in it.

C (ii) Whether the lower court was right in law in holding that the term of office of the Appellants expired on 24th May, 2010.

D (iii) Whether the lower court was right in failing to hold that the various applications of the Respondents were designed to prevent the early hearing and determination of the appeal.”

HELD (Unanimously dismissing the appeal per **TABAI JSC**)

Actions - Need to determine on merit

1. The principle re-emphasized in these cases is that the court must at all times jealously guard its jurisdiction to hear a case to its conclusion and determine, on the merits, the rights and obligations of the contending parties by either granting or refusing the reliefs claimed; that it should avoid the temptation of terminating a case at the instance of a defendant on the allegation that by reason of some intervening circumstances during the pendency of the case, the court no longer has jurisdiction. And this is particularly so where the rights and obligations sought to be enforced are still available. (p. 50 B)

G APPEALS - Politics - Term of office - Reliefs claimed

2. In the instant appeal under consideration, however, the rights and obligations sought to be enforced are no longer available, the three year term of office of the Appellants as Chairmen of their various Local Government Councils having expired. The fact that the three year term of office of the Appellants as Chairmen of their various Local Government Councils has been unequivocally alluded to and even asserted by the Appellants themselves.

It is clear from the foregoing acknowledgments by the Appellants themselves that their three year terms of office as Chairmen of their

various Local Government Councils ended on the 24th of May, 2010. Therefore on the 18th of June, 2010 when the motion to strike out or dismiss the appeal was filed at the Court below, the Appellants no longer had any term of office to which the reliefs claimed could be tied. This makes the essential distinction between this case on the one hand and the cases of AMAECHI V. INEC (supra) and ADEOGUN V. FASHOGBON (supra) on the other hand. B

In the instant case, the Appellants' terms of office as Chairmen of their various Local Government Councils ceased to exist at the end of 24th May, 2010 and as at the 18th of June, 2010 when the application to strike out or dismiss the claim was filed there were no longer enforceable rights and obligations. In such circumstances granting all or any of the declaratory and injunctive reliefs would be an exercise in futility. (pp. 50 D/51 B/52 A) C

REPRESENTATION

Oluwole Aina with Ayodele Akinsanya, for the Appellants

M. O. Adebayo (Hon. Attorney-General, Ministry of Justice Oyo State), for the 14th Respondents

Soji Oluwolaye & L. A. Ganiyu for the 1st -13th Respondents
15th - 16th Respondents (not in court, not represented) E

CASES REFERRED TO

Amaechi v. INEC (2008) 5 NWLR (pt. 1080) 227

Amaechi v. INEC (2007) 18 NWLR (pt. 1065) 42

Adeogun v. Fashogbon (2008) 17 NWLR (pt. 1115) 149

Okulate v. Awosanya (2000) 2 NWLR (pt. 646) 530

Dabo v. Abdullahi (2005) 7 NWLR (pt. 923) 181

Ugenaja v. Akitoye-Sowemimo (2008) 16 NWLR (pt. 1113) 278

Okotie-Eboh v. Manager (2004) 18 NWLR (pt. 904) 242

Julius Berger (Nig.) Ltd. v. Femi (1993) 5 NWLR (part 295) 612

David West v. Oduwole (2003) FWLR (pt. 40) 146

Plateau State v. A. G. Federation & Anor (2006) 1 SCN 130

Iloabuchi v. Ebigbo (2000) 8 NWLR (pt. 668) 197

Okobia v. Ajanya (1998) 7 NWLR (pt. 554) 348

Umana v. Attah (2004) 7 NWLR (pt. 871) 63

Akinfolarin v. Akinola (1994) 3 NWLR (pt. 335) 659

Adeyemi v. Opeyuri (1976) 9 - 10 SC 31

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LEAD JUDGMENT BY TABAI JSC

This is an appeal against two rulings of the Court of Appeal Ibadan dated the 9th March, 2010 and 15th July, 2010 respectively. In the ruling of the 9th March, 2010, the Court of Appeal granted the 1st - 13th Respondents' motion for stay of proceedings pending the determination of an appeal which they claimed was pending before this Court. While in the ruling of the 15th July, 2010, the court below granted the 1st- 13th Respondents' application to strike out the appeal on the ground that it had become merely academic.

The parties have, through their counsel filed and exchanged their briefs of arguments. The Appellants' brief filed on the 11th October, 2010 was settled by Chief Akin Olujinmi SAN. He also prepared the Appellants' Reply brief filed on the 6th January, 2011. The brief of the 1st - 13th Respondents was prepared by H. O. Afolabi Esq. It was filed on the 10th December, 2010. That of the 14th Respondent was prepared by L. A. Ganiyu and same was filed on the 9th May, 2011.

In the Appellants' Brief, the following four issues for determination were presented:-

"(i) Whether the lower court was right in striking out the Appellants' appeal without considering the merits of the appeal on the ground that the appeal had become academic and there was no live issue left in it.

(ii) Whether the lower court was right in law in holding that the term of office of the Appellants expired on 24th May, 2010

(iii) Whether the lower court was right in failing to hold that the various applications of the Respondents were designed to prevent the early hearing and determination of the appeal"

(iv) Whether the lower court was right in granting the 1st - 13th Respondents' application for stay of proceedings notwithstanding that there was no appeal filed to the Supreme Court to predicate the application for stay of proceedings.

The Respondents also adopted the foregoing as the issues that call for determination in this appeal.

With respect to issues (i), (ii) and (iii), the substance of the arguments of Chief Akin Olujinmi SAN in the Appellants' Brief is as follows:-

It was learned senior counsel's submission that lapse of time would not prevent the hearing and determination of a case that raises substantial issues of law when it was initiated. Once a person aggrieved by the action of another comes to court to seek redress, the court has a duty to jealously guard its jurisdiction and determine the case to its finality, he argued. In support of this submission, counsel relied on AMAECHI V. INEC (2008) 5 NWLR (part 1080) 227 at 323 -324 and 367 - 368 and ADEOGUN V. FASHOGBON (2008) 17 NWLR (part 1115) 149 at 168 and 174. According to learned senior counsel, pre-election and election cases are time-sensitive and argued that the many applications persisted in by the Respondents were designed to frustrate the hearing of this case and were therefore abuses of the court process. Learned senior counsel argued that the case and the appeal before the lower court was not one for extension of tenure but rather one for the restoration of the appellants to their term. Learned senior counsel argued that although defacto time may run, but de jure time cannot run until the issues in contention in a case have been adjudicated upon: C

With respect to issue (iv) on the lower court's grant of stay of proceedings on the 9th March, 2010, learned senior counsel pointed out that on the 9th March, 2010 the Appellants still had two and a half months to the 24th of May, 2010 when their term expired. It was further argued that but for the stay granted, the lower court would have been able to determine the appeal before the 24th May, 2010. It was counsel's further argument that there was no pending appeal and that even if there was an appeal pending, the court below ought not to have granted a stay of proceedings. Finally, it was urged that the appeal be allowed. E

On behalf of the 1st -13th Respondents H. O. Afolabi filed a Notice of Preliminary Objection which is argued in paragraphs 2.00 to paragraph 2.09 of their brief of argument. It was counsel's submission that issue (iv) is incompetent since ground (iv) of the grounds of appeal upon which it is predicated is incompetent. Learned counsel argued that the ruling of the 9th March, 2010 appealed against granted a stay of proceedings pending the determination of the motion for stay of proceedings at the Supreme Court. Learned counsel argued that since the motion for stay of proceedings at the Supreme Court has been struck out (see page 636 of the record), the ruling of F

the 9th of March, 2010 was no longer subsisting for any appeal. The appeal, he argued, has become merely academic. Reliance was placed on *OKULATE V. AWOSANYA* (2000) 2 NWLR (pt. 646) 530 at 550 - 551, and *DABO V. ABDULLAHI* (2005) 7 NWLR (part 923) 181 at 205.

B It was further submitted that since the decision of the 9th of
March, 2010 was an interlocutory one, an appeal against it must be
within 14 days of the decision as required under Section 27 (2) (a) of
the Supreme Court Act. For it to be rightly incorporated into the
C main appeal, the Appellants ought to have sought and obtained an
order for extension of time to appeal, counsel argued. In the absence
of such an order for extension of time, ground four of the grounds of
appeal and issue (iv) based thereon are incompetent, learned counsel
submitted. It was further argued that the decision whether or not
D to grant stay of proceedings is a discretionary one based on facts and
is therefore a decision of mixed law and facts and that an appeal
against such a decision must be with the leave of either the court
below or this Court. It was counsel's submission therefore that in the
absence of such leave, the appeal is incompetent. Reliance was placed
E on *UGENAJA V. AKITOYE-SOWEMIMO* (2008) 16 NWLR (part
1113) 278 at 294.

On issues (i), (ii) and (iii) learned counsel argued that the term
of office of the Appellants lapsed on the 24th of May, 2010 and
referred to the Notice of Appeal at pages 331 - 336A of the record
F and paragraph 7 of the Appellant's counter affidavit at pages 627-
630 of the record wherein the Appellants themselves conceded that
their term of office lapsed on the 24th of May, 2010. Learned counsel
argued therefore that the lower court was right when it held in its
G decision on the 15th of July, 2010 that there was no longer any live
issue. He argued that both *AMAECHI V. INEC* (supra) and
ADEOGUN V. FASHOGBON (supra) were distinguishable from the
instant case since in both cases since the term of office of the con-
tenders was still available. Reliance was placed on *OKOTIE-BOH V.*
H *MANAGER* (2004) 18 NWLR (part 904) 242 at 284 - 285, and
COMPTROLLER N.P.S. V. ADEKANYE (No. 3) (2002) 15 NWLR
(part 790) 362 at 374. In conclusion, counsel urged that the appeal
be dismissed.

The arguments of L. A. Ganiyu in the 14th Respondent's brief

of arguments runs substantially as follows. He adopted the arguments of the 1st - 13th Respondents on the preliminary objection. With respect to the first issue, learned counsel referred to Section 25 (3) of the Local Government System Law of Oyo State 2001 and the fact that the Appellants took their Oath of Allegiance and Oath of Office on the 25th May, 2007 and submitted that the Appellants' three year term of office ended on the 24th May, 2010 due to effluxion of time. It was his submission therefore that there was no longer any live issue for determination; that the issues which called for determination in the case have become merely academic. Learned counsel referred to JULIUS BERGER (NIG) LTD V. V-FEMI (1993) 5 NWLR (part 295) 612 at 616; DAVID WEST V. ODUWOLE (2003) FWLR (part 40) 146 at 154 - 155; PLATEAU STATE V. A. G. FEDERATION & ANOR (2006) 1 SCN 130 at 186. In the circumstances, counsel argued, the case was rightly struck out.

The arguments of learned counsel on the 2nd issue are, in substance, to the same effect as those on the first issue. It was his contention that the three year term which the action sought to protect ended on the 24th May, 2010 and that by the 25th May, 2010 the action had abated and was liable to be struck out.

Learned counsel argued that the clear literal interpretation as to the tenure of office of the Appellants must be given and that the result of such an interpretation must necessarily end in the striking out of the appeal.

With respect to the 3rd and 4th issues, learned counsel argued, the Court below having come to the conclusion that the action had abated due to effluxion of time it was no longer necessary to take other pending applications. On the 4th issue, learned counsel adopted the argument of the 1st - 13th Respondents in their brief.

In the Appellants' Reply Brief learned senior counsel argued that learned counsel for the Respondents misconceived the force and purpose of ground (iv) of the grounds of appeal and the issue predicated thereupon. It was his submission that the success of that ground and the issue would lead to this court's decision that the court below was wrong in not hearing and determining the substantive appeal on the merits.

It was senior counsel's contention that the delay was occasioned by the Respondents and same could not therefore operate to oust

the court's jurisdiction. It was his further submission that the principles in AMAECHI V. INEC (supra), ADEOGUN V. FASHOGBON (supra) and ODEDO V. INEC (part 1117) 554 applied to this case.

Still on the preliminary objection, learned senior counsel submitted that the law does not require leave to raise and question an interlocutory decision in an appeal. He relied on ILOABUCHI V. EBIGBO (2000) 8 NWLR (part 668) 197 at 218; OKOBIA V. AJANYA (1998) 7 NWLR (part 554) 348 and UMANA V. ATTAH (2004) 7 NWLR (part 871) 63 at 86. On the contention by the Respondents that ground 4 of the grounds of appeal is one of mixed law and facts for which leave ought to have been sought and obtained, learned senior counsel submitted that where a ground of appeal alleges a misunderstanding of the law or mis-application of the law to established facts, it is a ground of law. It was also his contention that where the appeal questions the lower court's evaluation before the application of the law it is a ground of mixed law and facts. It was his submission therefore that since the ground only complains of mis-application of the law to facts not in dispute it is a ground of law for which therefore no leave is required. It was urged therefore that the preliminary objection be overruled.

On the merits of the appeal, learned senior counsel reiterated the principles in AMAECHI V. INEC and ODEDO V. INEC and argued that if the appeal succeeds it would only amount to reinstating the Appellants as chairmen of their various Local Government Councils entitling them to their arrears of salaries.

I have considered the arguments of counsel for the parties. Let me deliberate first on the preliminary objection. In its ruling on the 9th of March, 2010, the Court below granted stay of its proceedings pending the determination of an application for stay of proceeding then pending at the Supreme Court. In its concluding paragraph, the court reasoned and concluded thus:

"There is no doubt that if this application is refused and the hearing of the appeal proceeds, the decision of the Supreme Court on the application for stay of proceedings would be rendered nugatory. Thus, much as we sympathize with the anxiety of the respondents in the present circumstances, having had notice of an application for stay of proceedings before the Supreme Court which has been set down for hearing, prudence and respect for the hierarchy

of our courts dictates that the proceedings before this Court should be stayed pending the determination of the application before the Supreme Court. The proceedings before this Court are accordingly stayed pending the determination of the application now before the Supreme Court."

On Tuesday the 4th day of May 2010, the Supreme Court ruled on the application in the following terms:-

"Application filed on 7th January, 2010 is hereby struck out. N30,000.00 costs to the 1st - 15th Respondents."

The contention of the Respondents is that by reason of the above ruling of the Supreme Court the ground of Appeal No. (iv) and issue No. (iv) emanating therefrom have become merely academic. There is force in this argument. The stay of proceeding was granted pending the determination by the Supreme Court of the application for stay of proceedings. In other words, the stay of proceedings granted at the court below was only meant to subsist until the Supreme Court's decision on the application then pending before it. Following the decision of the Supreme Court on the 4th of May, 2010 striking out the application for stay of proceedings, the stay of proceeding granted by the court below on the 9th of March, 2010 ended and the Appellants were from the 4th of May, 2010 free to prosecute their appeal to its logical conclusion. The notice of this appeal was dated and filed on the 27th of July, 2010. On the said 27th of July, 2010 therefore, the stay of proceedings no longer existed and its propriety or legality was no longer available for questioning in this appeal. A fortiori, it no longer serves any useful purpose for this court to deliberate upon and answer the question of whether the lower court was right in granting the 1st-13th Respondents' application for stay of proceedings. On this ground alone, the preliminary objection is sustained. The fourth ground of appeal and the fourth issue derived therefrom are accordingly struck out.

With respect to the 1st, 2nd and 3rd issues for determination, the question is whether the principles in AMAECHI V. INEC (supra) ADEOGUN V. FASHOGBON (supra) and ODEDO V. INEC (supra) applied to this case.

As regards AMAECHI V. INEC (supra) the following are the salient facts. Sometime in December, 2006 Rt. Hon. Chibuike Amaechi contested the PDP primary election for Rivers State to nominate the

PDP candidate for the governorship election scheduled for April 2007. He contested against seven other candidates and won overwhelmingly. Out of the total of 6,575 votes he scored 6,527 votes. The 2nd Respondent, Celestine Omehia never took part in the said primary election.

B Pursuant thereto the PDP forwarded Chibuike Amaechi's name to INEC as its candidate on the 14th December, 2006.

Soon thereafter there was evidence that the PDP wanted to substitute Chibuike Amaechi's name with that of the 2nd Respondent, Celestine Omehia. On or about the 26th January, 2007 Chibuike C Amaechi initiated an action at the Federal High Court wherein he sought a number declaratory and injunctive reliefs to ensure that he remained the PDP's candidate and to prevent the planned substitution. Despite this action which was being diligently prosecuted, the D substitution was made. The governorship election was conducted and the PDP emerged the winner and the 2nd Respondent, Celestine Omehia, was sworn in as the Governor of River State. The case went through the High Court to the Court of Appeal and the Supreme Court. In its final judgment on the 25th October, 2007, the Supreme E Court allowed the appeal of Chibuike Amaechi set aside the substitution and declared in effect that in the eyes of the law it was the Appellant, Chibuike Amaechi, that was the PDP candidate at the election and he was thus immediately sworn in as the governor of Rivers State. F

The crucial point of the decision in AMAECHI V. INEC as it related to this appeal is that as at the 25th of October, 2007 when the Supreme Court gave its judgment, the four year term of office of Governor of Rivers State was still subsisting, the 2nd Respondent G having utilized only about 5 months of the four year term. From the 29th May, 2007 when the four year term started to run there was still subsisting not less than three years and seven months of the term. Having held that in the eyes of the law Chibuike Amaechi was the candidate of the PDP and in view of the fact that not less than three H years and seven months of the Governor's four year term was still subsisting, the court made the consequential order which resulted in Amaechi as the Governor of Rivers State. In the peculiar circumstances of the case the order was what the justice of the case deserved.

The question now is whether the attitude of this court would have been different if the governor's four year term had expired at the time of its judgment. I do not think so. There would certainly have been other intervening circumstances and the court would probably not have ordered Chibuike Amaechi's inauguration as Governor of Rivers State. I hold, in the circumstances that the principle in AMAECHI V. INEC (2008) 5 NWLR (part 1080) 227 do not apply in this, case. I wish to point out that the case between AMAECHI and INEC which is more apposite to the issue in contention in this case is RT. HON. CHIBUIKE ROTIMI AMAECHI V. INEC (2007) 18 NWLR (part 1065) 42. The brief facts are that while the appeal and cross-appeals were pending at the Court of Appeal, the PDP purportedly expelled Hon. Rotimi Amaechi and some others from the party. Following this purported expulsion, two motions were filed. Each prayed for order striking out or dismissing the appeal for the court's lack of jurisdiction. The grounds of the applications were stated to be that:-

"1. The appeal is now incompetent by reason of the expulsion of the appellant/respondent from the Peoples Democratic Party (PDP) thereby making the outcome of the suit a mere academic exercise.

2. By reason of the expulsion of the appellant/respondent from the Peoples Democratic Party, he has lost locus standi to prosecute this appeal."

In its ruling, the Court of Appeal granted the motions, holding that it no longer had the jurisdiction to hear and determine the appeal and cross-appeals. They were accordingly struck out.

The Plaintiff/Appellant was dissatisfied with the ruling and came on appeal to this Court. By its unanimous decision, this Court allowed the appeal. In my little contribution at page 48 of the report I had this to say:-

"The Court of Appeal erred in law when it declined jurisdiction to hear and determine the appeals pending thereat. A Court which hitherto has the jurisdiction to hear and determine a matter cannot, by the precipitate action of the defendant lose that jurisdiction simply because the defendant wants it so. After all, it is settled law that it is the plaintiff's claim in a matter that determines the jurisdiction of the court SEE AKINFOLARIN V. AKINNOLA (1994) 3 NWLR (part 335) 659; ADEYEMI V. OPEYURI (1976) 9 - 10 SC 31 at 51. The 3rd Defendant/Respondent therefore cannot, by its expulsion of the Plain-

tiff/Appellant prevent the court from hearing and determining the complaints against it. I hold that the Court of Appeal has the jurisdiction to hear the appeals."

The above principle was applied in CHIEF ALBERT ABIODUN ADEOGUN & ANOR V. HON. JOHN OLAWOLE FASHOGBON & BORS (supra).

The principle re-emphasized in these cases is that the court must at all times jealously guard its jurisdiction to hear a case to its conclusion and determine, on the merits, the rights and obligations of the contending parties by either granting or refusing the reliefs claimed; that it should avoid the temptation of terminating a case at the instance of a defendant on the allegation that by reason of some intervening circumstances during the pendency of the case, the court no longer has jurisdiction. And this is particularly so where the rights and obligations sought to be enforced are still available.

In the instant appeal under consideration, however, the rights and obligations sought to be enforced are no longer available, the three year term of office of the Appellants as Chairmen of their various Local Government Councils having expired. The fact that the three year term of office of the Appellants as Chairmen of their various Local Government Councils has been unequivocally alluded to and even asserted by the Appellants themselves. In ground 2 and particular (iv) of their Notice of Appeal against the ruling of the learned trial judge P. O. Ige J. delivered on the 11th December, 2007 they stated:

"(iv) The tenure of office, of the Applicants commenced on the 25/5/2007 and will end 24/5/2010." (See page 334 of the record).

Again, the Appellants filed an application at the court below dated the 4th of August, 2009 for the appeal to be set down for hearing in default of the Respondents' Brief. In paragraphs 6 and 7 thereof the 1st Appellant Hon. Bimbo Adepoju deposed as follows:-

"6. That the tenure of office of the Applicants is for 3 years certain.

7. Unless the appeal is disposed of quickly, the tenure of office of the Applicants/Appellants will come to an end by effluxion of time." (See page 499 of the record).

Further still in paragraphs 7 and 15 of a counter-affidavit de-

posed to on the 15th January, 2010 by the selfsame Hon. Bimbo Adepoju at page 528 of the record he averred:

“7. That our term began to run from 25th May, 2007 and to end on 24th of May, 2010.”

“15. That the Appellant’s term is fast running out with less than four months to go” B

It is clear from the foregoing acknowledgments by the Appellants themselves that their three year terms of office as Chairmen of their various Local Government Councils ended on the 24th of May, 2010. Therefore on the 18th of June, 2010 when the motion to strike out or dismiss the appeal was filed at the Court below, the Appellants no longer had any term of office to which the reliefs claimed could be tied. This makes the essential distinction between this case on the one hand and the cases of AMAECHI V. INEC (supra) and ADEOGUN V. FASHOGBON (supra) on the other hand. C D

Perhaps the case which is most appropriate to the facts and circumstances of the instant case is *BADEJO V. FEDERAL MINISTRY OF EDUCATION* (1996) 8 NWLR (part 464) 15. Therein the Plaintiff/Appellant initiated an action which sought an order to compel the defendant to permit her to be interviewed for admission into one of the Federal Government Colleges. As at the 20th of October, 1988 when the application for the mandatory injunction was being heard the interview for the successful candidates had already been held on the 8th of October, 1988. In the premise the application was dismissed. The dismissal was confirmed by the Court of Appeal and the Supreme Court. In its judgment, this Court per Kutigi JSC (as he then was) had this stay at pages 40 - 41 of the record:- E F

“Certainly if the declaration and the orders sought by the appellant were all founded and based on the appellant’s eligibility to be called for interview on the 8/10/88 for admission into Secondary 1 in Federal Government Colleges in 1989, the Court of Appeal must be right when on the 8th January, 1990, some 15 months after the interviews, it was held that the subject matter of the appeal had been overtaken by events and that there was nothing left for the High Court to try and therefore struck out the suit in its entirety ... It will in my view be subversive for a court of law to claim to determine disputes where none existed or had ceased to exist.” G H

In the instant case, the Appellants' terms of office as Chairmen of their various Local Government Councils ceased to exist at the end of 24th May, 2010 and as at the 18th of June, 2010 when the application to strike out or dismiss the claim was filed there were no longer enforceable rights and obligations. In such circumstances granting all or any of the declaratory and injunctive reliefs would be an exercise in futility.

In the light of the foregoing considerations, I do not see anything wrong with the decision of the Court below. The result is that the appeal lacks merit and same is accordingly dismissed by me.

I make no orders as to costs.

MUKHTAR JSC

I have read in advance the lead judgment delivered by my learned brother Tabai JSC. I am in full agreement that the appeal lacks merit and deserves to be dismissed. I also dismiss it, and abide by the consequential orders made in the lead judgment.

MUHAMMAD JSC

I had the privilege of reading in draft the lead judgment of my learned brother, Tabai, JSC. I agree with his reasoning and conclusion.

Based on the fuller reasons in the lead judgment, I also dismiss the appeal for want of merit. I abide by all orders made in the lead judgment including order as to costs.

NGWUTA JSC

I had the privilege of reading in draft the lead judgment of my learned brother, Tabai, JSC.

The lower Court was right to have adjourned the case pending the determination of the motion before the Supreme Court. It would not have been prudent to deny the application in the circumstance.

The order staying proceedings was spent on 24th May, 2010 when the Supreme Court delivered its ruling. That order could not

survive the ruling pending when it was granted.

As at 27th July, 2010 when the notice of appeal was filed, the propriety vel non of the order staying proceedings pending the determination of the motion before the Supreme Court was no longer a live issue in the appeal as the force of the order terminated with the delivery of the ruling by the Supreme Court on 4/5/2010. B

The decision in *Amaechi v. INEC* (2008) 5 NWLR (Pt. 1080) 227 at 323-324 and 367-368 does not help the appellants. In *Amaechi's* case, the subject matter was still in existence at the time the Supreme Court delivered judgment in the appeal. On the contrary, the appellants by several proceedings filed, conceded that their term of office ran from 25/5/2007 to 24/5/2010. The basis of their reliefs disappeared on 24/5/2010. C

In the circumstances, to allow the appeal is to create a new term of three years for the appellants in place of their lost term of three years. This is not possible under the law. D

Based on the above and the fuller reasons in the lead judgment, I also dismiss the appeal for want of merit. I make no order for costs. E

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