

**SUPREME COURT OF NIGERIA**

27TH JANUARY, 2012. SC. 141/2011 (CONS.)

CORAM: - **D. MUSDAPHER CJN, M. MOHAMMED, W. S.  
N. ONNOGHEN, C. M. CHUKWUMA-ENEH, M. S.  
MUNTAKA-COOMASSIE, O. O. ADEKEYE,  
M. U. PETER-ODILI, JJSC**

1. BRIG. GEN. MOHAMMED  
BUBA MARWA

2. CONGRESS FOR PROGRESSIVE  
CHANGE - SC. 141/2011

AND

INDEPENDENT NATIONAL ..... APPELLANTS  
ELECTORAL COMMISSION  
- SC.266/2011, SC.267/2011,  
SC.282/2011, SC.356/2011,  
SC.357/2011

AND

1. ADMIRAL MURTALA NYAKO  
2. PEOPLES DEMOCRATIC  
PARTY - SC.141/2011  
3. INDEPENDENT NATIONAL  
ELECTORAL COMMISSION

AND

SENATOR LIYEL IMOKE - SC.266/2011

AND

1. CHIEF TIMIPRE SYLVA  
2. THE HON. ATTORNEY-GENERAL  
OF BAYELSA STATE  
3. MIENYOIBOFO FAFA ..... RESPONDENTS  
STEPHEN-GOW - SC.267/2011  
4. THE HON. ATTORNEY-GENERAL  
OF THE FEDERATION

5. PEOPLES DEMOCRATIC PARTY

AND

1. ALH. ALIYU MAGATAKARDA  
WAMMAKO - SC.282/2011

2. THE PEOPLES DEMOCRATIC PARTY

AND

1. ADMIRAL MURTALA NYAKO  
(GOVERNOR ADAMAWA STATE)

- SC.356/2011

2. PEOPLES DEMOCRATIC PARTY

AND

1. ALH. IBRAHIM IDRIS  
(GOVERNOR KOGI STATE)

- SC.357/2011

2. PEOPLES DEMOCRATIC PARTY

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ELECTIONS - Gubernatorial - Commencement of tenure - By 1999 constitution s. 180(2) - Four year tenure of the Governors started the date they took their 1st oaths of office - After a duly conducted election (H1)

ACTIONS - Nullification - Effect - Once an action or order is nullified by a court - Then the same is deemed void ab initio (H2)

COURTS - Actions - Nullification - Need to pronounce - Court is required to declare an act void - Otherwise it remains valid and binding (H3)

CONSTITUTIONAL LAW - Constitution - Interpretation - Objective - It is to discover the intention of the legislature - Which is usually deduced from the language used (H4)

CONSTITUTIONAL LAW - Interpretation - 1999 constitution s. 180 - Intendment - The provision intends that a governor of a State - Shall only have a tenure of four years from the date he took the oaths of office (H5)

ELECTIONS - Gubernatorial - Nullification - "Null & void" - Meaning - Where the acts of a governor whose election is nullified are saved - Court will describe the election as voidable (H6)

SUPREME COURT - Hierarchy of courts - Supreme Court is not bound by decisions of Court of Appeal - As it is the highest court in the land - Whose decisions are binding on all and sundry (H7)

ELECTIONS - Gubernatorial - Presumption of validity - An election is deemed valid until courts declare it a nullity - Yet the declaration does not affect the validity of oaths - And actions taken by a governor (H8)

CONSTITUTIONAL LAW - Constitution - Time fixed - Adherence - Such time cannot be extended beyond constitutional provisions - Hence tenure of governors cannot be calculated from dates of their second oaths - As that will lead to extension (H9)

### ***FACTS***

General election was conducted in Nigeria sometime in the year 2007. The election included gubernatorial election into the office of governor of the 36 States of the Federation. Following their electoral victories, each of the under-listed candidates were among the others duly installed as Governor of their respective States on the 29th day of May, 2007, after taking the Oaths of Allegiance and of Office:

- (i) Admiral Murtala Nyako of Adamawa State
- (ii) Mr. Timipre Sylva of Bayelsa State
- (iii) Mr. Liyel Imoke of Cross River State
- (iv) Alh. Ibrahim Idris of Kogi State
- (v) Alh. Aliyu Wammako of Sokoto State

Thereafter, their victory at the said election was challenged by other aggrieved candidates on various grounds ranging from unlawful disqualification, electoral malpractices to total absence of elections. The election petitions against their declaration as winners of the election went up to the Court of Appeal where the elections of the said five governors were nullified after they had each spent more than a year in office as Governors. Consequently, the court ordered the Independent National Electoral Commission (INEC) to conduct a re-run election in the affected States within ninety (90) days as required by the constitution. The re-run elections were duly conducted in the various States at various dates in 2008. The same set of candidates won the re-run elections, resulting in their taking another set of Oaths

of Allegiance and of Office. They were again sworn in as governors of their States on the 30/4/2008, 29/5/2008, 28/8/2008, 5/4/2008 and 28/5/2008, respectively.

The crux of this matter is whether the term of office of each of these Governors expired at the end of four years calculated from B 29th May 2007, or whether they are entitled to a tenure of four years calculated from the date of the second taking of the Oaths of Allegiance and of Office following the re-run elections of 2008. The affected governors commenced this action at the Federal high court, C Abuja to determine their tenure of office. The court held that their tenure commenced from the dates they took their second Oaths of Allegiance and of Office in 2008. Dissatisfied, INEC appealed to the Court of Appeal, Abuja. The court also held that the relevant point at D which the four year tenure of the Governors is to be calculated is the date they took their second Oaths of Allegiance and of Office in 2008. Consequently, the instant consolidated appeals before Supreme Court are against the above decision of the Court of Appeal. It should be noted that appellants in SC/141/2011, Brigadier-General Mohammed Buba Marwa and Congress for Progressive Change (CPC) E appealed as interested persons upon leave granted them on the 8th day of July, 2011. The appeal of the above appellants increased the number of appeals from the original five to the present consolidated six.

#### F **ISSUE FOR DETERMINATION**

Whether having regards to the provisions of the Constitution of the Federal Republic of Nigeria, 1999 (hereafter referred to as the 1999 Constitution), particularly Sections 180(1) and (2) and 182(1) (b) thereof the lower Court was right in holding that the tenure of G office of the 1st respondents commenced from the date they took their second Oaths of Allegiance and of Office in 2008 as against the 29th day of May, 2007, when they took their first oaths of Office and Allegiance.

#### H **HELD** (Unanimously allowing the appeal per **ONNOGHEN JSC**) ***ELECTIONS- Gubernatorial- Commencement of tenure***

1. When then does the tenure of four (4) years of the 1st respondents begin to run? Is it from the 29th day of May, 2007, when they took their first Oaths of Allegiance and Oaths of Office following their

“first election under this constitution” or the various dates when they took the said oaths following the re-run elections in 2008?

In this regard, only the Oaths of Allegiance and Office taken by a person chosen in the process of an election which complies with or was in accordance with the provisions of the constitution would be relevant for the purpose of computing the tenure of office of a governor under the provisions of Section 180(2). Oaths of Allegiance and of Office taken in respect of an election which was conducted or held not in accordance with the provisions of the constitution would not be oaths taken by a person first elected as governor under the constitution. In this context, the learned counsel for the 2nd respondent is right where he said that a valid election conducted in accordance with the provisions of the constitution and the Electoral Act, is a condition precedent to the validity of the Oaths of Allegiance and of the Office of a governor.

I hold the considered view that since the acts performed during the period prior to the nullification of the election remains valid and subsisting and the same person contested and won the re-run election thereby taking another set of oaths and since what was nullified was the election, the oaths they took on 29th May, 2007, remains valid and the starting point in calculating their four years tenure of office as governors of their respective states particularly as the 1999 Constitution does not envisage a tenure exceeding four years by the same person who took the first oaths following the election which kick started the tenure.

To accede to the argument of the respondents is to bring uncertainty into the clear provisions of Section 180(2) of the 1999 Constitution which will render the tenure of governors indefinite as what it will take an elected governor whose election is nullified to remain in office almost indefinitely or for life is to continue to win the re-run elections which would then be nullified to continue the cycle of impunity.

In consequence, I hold that the tenure of the 1st respondents began on the 29th day of May, 2007 and terminated on the 28th day of May, 2011 being four years allowed by the 1999 Constitution. (pp. 252 A/ 252 H/ 260H/ 263 D)

**ACTIONS - Nullification - Effect**

2. This brings me to the effect of the nullification of an election on the oaths taken by a person first elected as governor in the said election. I would start a consideration of the point, by saying that the law is now beyond argument that the effect of a nullification of a thing is to  
 B completely wipe out, obliterate, remove, undo, erase or render it ineffective, useless as if it had never been in the first place. In judicial and legal terms and context, the nullification of any action or order by a court is to render such action or order void from the very beginning,  
 C ab initio, as if it had never taken place, happened or made or issued as the case may be.

Once an action or order is nullified by a competent Court, then in law and all practical purposes to which it applies, the action had been erased, wiped out and had never, ever happened  
 D or taken place originally.

The above forms the basis on which the lower Court held that all the years enjoyed in office by the affected governors before the nullification of their first election are not to be taken into consideration in calculating the four year tenure constitutionally assigned  
 E them.

However, the judgment picked and chose which aspects of the illegal tenure resulting from the nullification of the election endures or remains valid and subsisting or legal in law and which aspects is/are to be treated as “completely wiped out, obliterate, remove, undo, erase  
 F or render it ineffective, useless as if it had neither been in the first place...” In consequence, the lower Court held that while the actions of the governors during the period prior to the nullification are valid and legal, the same period cannot be taken into account in calculating the tenure of office of the said governors following the nullification of their election.  
 G

The issue/question of nullity and its legal consequences/effectiveness is usually traced to LORD DENNING'S obiter dictum in the case of Mcfoy vs UAC (1961) 3 ALL E.R 1169 at 1172 where he  
 H stated thus:-

*“If an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the court declare it to be so. And*

*every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse.*" (p. 253 B)

### ***Actions - Nullification - Need to pronounce***

3. To say that the above principles are based on facts which are not material in this case is to state the very obvious. Secondly the court is in many cases/circumstances required to declare an act void before it becomes so, otherwise it remains valid and binding as is evident in our laws relating to elections where elections are presumed valid until declared null and void by the courts. In such a situation if you put something on the illegal act the period prior to the nullification it will surely stay put contrary to the general dictum on nullity as propounded by LORD DENNING supra. (p. 254 C)

### ***Constitution - Interpretation - Objective***

4. Over the years the Supreme Court has devised guidelines to the interpretation of not only statutes but most importantly our constitutional provisions, including the now famous twelve (12) point rule of constitutional interpretation propounded by OBASEKI, JSC in the case of Attorney-General of Bendel State vs Attorney-General of the Federation (1981) 10 SC. 1; (1981) 1 FNLR 179 as follows:-

"(1) Effect should be given to every word used in the constitution.

(2) A constitution nullifying a specific clause in the constitution shall not be tolerated, unless where absolutely necessary.

(3) A constitutional power should not be used to attain an unconstitutional result.

(4) The language of the constitution, where clear and unambiguous must be given its plain and evident meaning.

(5) The constitution of the Federal Republic of Nigeria is an organic scheme of government to be dealt with as an entirety hence a particular provision should not be severed from the rest of the constitution.

(6) That the language of the constitution does not change the changing-circumstances of a progressive society for which it was designed, it can yield new and further import of its meaning.

(7) A constitutional provision should not be construed in such

a way as to defeat its evident purpose.

(8) Under the constitution granting specific powers, a particular power must be granted before it can be exercised.

(9) Declaration by the National Assembly of its essential legislative functions is precluded by the constitution.

B            (10) Words are the common signs that men make use of to declare their intentions one to another, and when the words of a man express his intentions plainly, there is no need to have recourse to other means of interpretation of such words.

C            (11) The principles upon which the constitution was established rather than the direct operation or literal meaning of the words used should measure the purpose and scope of its provisions.

(12) Words of the constitution are, therefore, not to be read with “stultifying narrowness”.

D            It is settled law that the object of interpreting statute or the constitution is to discover the intention of the legislature, which intention is usually deduced from the language used.

The golden rule of interpretation of constitutional provisions is therefore that words of the constitution must, *prima*

E            *facie*, be given their ordinary meaning which means I must look closely at the words used in the provisions and assign them their ordinary meanings if the words are not ambiguous. I must also give the words a liberal interpretation as stated in *Nafiu Rabiu vs Kano State* (1980) 8 - 11 SC 130 at 149 (pp. 254 E/ 255 H)

F            ***CONSTITUTIONAL LAW - Interpretation***

5. From the language used in Section 180 of the 1999 Constitution, it is very clear that the constitution intended that a

G            governor of a State shall have a tenure of four years from the date he took the Oaths of Allegiance and of Office and nothing more, though he may spend less where he dies, resigns or is even impeached. In all, a governor has a maximum tenure of eight (8) years under the 1999 Constitution.

H            From the language of Section 180(2) of the 1999 Constitution “the tenure of a governor shall be four years from the date...” When the person first elected under this constitution takes the Oaths of Allegiance and of Office which took place on the 29th day of May, 2007.

I had earlier found and held that the provisions of Section 180 of the 1999 Constitution do not envisage a re-run election let alone a re-run election won by the same person who took the earlier Oaths of Allegiance and of Office.

I have also found and held that from the totality of the relevant provisions of the 1999 Constitution including Section 180(1)(2)&(3) and 182(1)(b), a person first elected as governor of a state shall vacate his office at the expiration of a period of four years commencing from the date he took the Oath of Allegiance and Oath of Office though he could be re-elected for another term of four years giving him a maxim two tenures of eight years. It is very clear from the relevant provisions that no person elected under the 1999 Constitution can remain in that office for a day longer than as provided otherwise the intention of the framers of the constitution would be defeated. (pp. 256 E/ 258 H)

### ***ELECTIONS - Gubernatorial - Nullification - "Null & void"***

6. The argument that following the nullification of their elections the said elections were in the eyes of the law non-existent as they are regarded not to have taken place as well as the subsequent oaths they took to enable them function in the office of Governors of their States is brilliant though it does not deny the fact that there was an election conducted and winners declared thereafter in accordance with existing laws and regulations; that the winners of that election subsequently took their Oaths of Allegiance and of Office as required by the constitution and did function in that office for about one year effectively exercising the executive powers of the state such as signing Bills into law including appropriation Bills; appointing commissioners and numerous Advisers, awarding contracts, etc.

The proponents of this contention agree that the acts performed by the affected governors remain valid and subsisting after the nullification of the elections but the oaths they took to function in that office went with the nullification of their election.

It is with the above in mind that I consider the wide nature of the decision of the lower Court as to the voidity of the elections that resulted in the swearing in of 29th May, 2007. Generally speaking, a void act is void and nothing can be put on it. However, when you consider the nature and consequences of an election which produced

a winner who was sworn in on the presumption that the election that produced him was regular and legally valid then when that election is set aside or nullified, the nullification is only limited to the election and does not affect acts done while the person occupied that office.

In effect, what it all means is that the election that was later nullified was only voidable, not void, because if it is to be taken literally as void ab initio as is being contended by some of the parties, it means the country would be plunged into chaos as all acts done by the governors must of necessity be null and void and of no effect

whatsoever. So, when we have a situation where the acts of the governor whose election is nullified are saved, then the only legal explanation or meaning to be attached to the use of the words “null and void” in describing the said election by the Court, is “voidable”, ab initio.

It is therefore my considered view that what the lower Court meant by saying that the elections were null and void is simply that they were voidable as a result of which they proceeded to annul same.

It therefore means that the consequences of the annulled election is different from a null and void proceeding or act which is usually described as being incurably bad and of no effect whatsoever. The nullity which allows the validity of the acts of the governors prior to the nullification of the election is therefore much closer to the concept of a voidable act which is usually legally valid until challenged

and subsequently set aside. I hold the considered view that to uphold the validity of the acts of the governors in office prior to the nullification of their election and reject the period they spent in office during which time they performed those acts in the determination of the period of their tenure is contrary to common sense and the clear intention of the framers of the constitution.

(pp. 259 E/ 260 C/ 261 H)

***Hierarchy of courts***

7. It is not in doubt that the lower Court was the final Court on governorship election petition matters and that its decision on such matters bind the election tribunals and Courts below it in the hierarchy of Courts. The above notwithstanding, this Court, the Supreme Court of Nigeria, is not bound by decisions of the lower Court in

matters, where that Court is the final Court of appeal as this court is the highest Court in the land whose decisions are binding on all and sundry. (p. 260 A)

### ***ELECTIONS - Gubernatorial - Presumption of validity***

8. On nullity of the elections as declared by the courts/tribunals, it is beyond dispute that by our laws there is a presumption that an election is valid until the courts/tribunals declare it a nullity. When the tribunal/courts so declare the election, the declaration does not affect the validity of the oaths the governor took so as to function in that office as required by the constitution neither would it affect the Bills he signed into law, contracts awarded, budgets etc (p. 261 G)

### ***Constitution - Time fixed - Adherence***

9. It is settled law that the time fixed by the constitution for the doing of anything cannot be extended. It is immutable, fixed like the rock of Gibraltar. It cannot be extended, elongated, expanded, or stretched beyond what it states. To calculate the tenure of office of the governors from the date of their second Oaths of Allegiance and of Office while ignoring the period from 29th May, 2007, when they took the first oaths is to extend the four years tenure constitutionally granted the governors to occupy and act in that office which would be unconstitutional. It is therefore clear and I hereby hold that the second Oaths of Allegiance and of Office taken in 2008, though necessary to enable them continue to function in that office, were clearly superfluous in the determination of the four years tenure under Section 180(2) of the 1999 Constitution. (p. 262 G)

### ***NOTABLE POINT OF INTEREST***

#### ***ADEKEYE JSC***

##### ***1. Supremacy of the constitution***

Before embarking on the interpretative role of this Court on the sections of the Constitution relevant to the question raised in this appeal, it is right and appropriate to highlight the nature of our Constitution. The supremacy of the Constitution of the Federal Republic of Nigeria 1999 is captioned by Sections one and three, part 1 of Chapter 1 under general provisions which state that -  
Section One

*“This constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria.”*

Section 3

B     *“If any other law is inconsistent with the provisions of this constitution this constitution shall prevail and that other law shall to that extent of the inconsistency be void.”*

C     This Court had given recognition to this supremacy and had expatiated on the Constitution through various judgments in its interpretative jurisdiction. The Constitution is described as the grundnorm and the fundamental law of the land. All other legislation in this country take their hierarchy from the provisions of the Constitution. It is not a mere common legal document. It is an organic instrument which confers powers and also creates rights and limitations. It regulates the affairs of the nation state and defines the powers of the different components of government as well as regulating the relationship between the citizens and the state. Once the powers, rights and limitations under the constitution are identified as having been created, their existence cannot be disputed in a court of law.

E     But the extent and implications may be sought to be interpreted and explained by the court. The provisions of the constitution take precedence over any law enacted by the National Assembly even though the National Assembly has power to amend the constitution itself. (p. 299 F)

F

**REPRESENTATION**

G     Chief Wole Olanipekun, SAN for appeals in SC/141/2011 with I. A Abedire SAN; O. Adeyemi; Dr. O. Olanipekun; O. Jimi-Bada; B. Araromi (Mrs); K. Azie; Aisha Ali (Miss); S. Abbah and A. Oniyangi, for the Appellants

H     Kanu Agabi SAN for 1st respondent in SC/141/2011 and SC/356/2011 with Messrs Ayo Akam; Otu Michael; A. N Eke; H Arome; K. S Kakaan; E. O Usungurua; G. Njar (Miss); C. Uzuegbunam (Miss); U. Owie; O. Morphy and P. Obi (Mrs.).

Chief Richard Akinjide SAN as Amicus Curiae with Chief (Mrs) Abimbola Akinjide SAN; Chief Bolaji Ayorinde SAN; F. Oshunwusi

(Mrs.); C. Uwandu.

Dr. O. Ajayi San as Amicus Curiae with Dr. K. U. K. Ekwueme; O. Balogun and K. Yusuf (Mrs.).

Chief A. S Awomolo SAN for 3rd respondent in SC/141/2011; SC/ 266/2011; SC/267/2011; SC/282/2011; SC/356/2011; SC/357/2011 with A. B Mahmoud SAN; Dr. O. Ikpeazu SAN; H. M. Liman SAN; I. K Bawa, Esq; A. Raji, Esq; B. Abdullahi; Marcus Abu; Aminu Sadauki; I. M Dikko, Esq; Funmi Quadri (Mrs); Ozoilesike Prisca (Miss); A. D Auta; Mary Ekpere (Miss); Fatimah Bukar (Miss); Iloegbunam Oge (Miss); Nwabueze Ifeyinwa (Miss); Tosin Oke (Miss); Mavis Ekwechi; Ben Osaka; Yewande Quadri (Miss); Ayotunde Ogunleye; Anulika Osuigwe (Miss); Tobechukwu Nweke; Rahims Aminu (Mrs); O. E Daniel.

Chief Olusola Oke for 1st respondent in SC.141/2011; SC.267/2011; SC.282/2011; SC.356/2011; SC/357/2011 with Olivia Agbajoh (Princess); A. A. Ibrahim; J. O Adesina (Mrs.); Olusola Oke; J. O. Mago; S. G Ikuesan; Mulikat Kilani (Miss).

L. O. Fagbemi SAN for 1st respondent in SC.357/2011 with P. A Akubo SAN; H. T Fajimite, Esq; A. Y. Kekendi, Esq; Dr. J. O Olatoke, Esq; H. O Afolabi, Esq; A. O Popoola, Esq; A. F Yusuf, Esq; B. A Oyun, Esq; S. Y Tsok, Esq; J. O Nkwota (Miss); C. A Ashaolu, Esq. Prof. I Sagay SAN as Amicus Curiae with Prof. P E Oshio.

Chief Ladi Rotimi-Williams SAN for 1st – 3rd respondents with M. B. Ganiyu, Esq; Uche v. Obi, Esq; A. O Olori-Aje, Esq; Honesty Eguridu, Esq; Ogbeide Kingsley Ukumhen, Esq; M. J. Numa, Esq.

Mrs. A. O Mbamali SAN for A-G Federation with Mrs. M. V. Agada; Mrs. O. V. Nwachukwu; Mrs. C. I Nebo; Mr. L. Aligbe; Mr. O. Amagwula; Mr. Maurice Asielue.

### **CASES REFERRED TO**

Labour Party vs INEC (2009) 6 NWLR (Pt. 1137) 315

Balonwu vs Gov of Anambra State (2009) 18 NWLR (Pt. 1172) 13

Mcfoy vs UAC (1961) 3 ALL E.R 1169

Bendel State vs A-G of the Federation (1981) 10 SC 1

Ishola v. Ajiboye (1994) 7 - 8 SC NJ (Pt.1) 1

Senate of the National Assembly vs Momoh (1983) 4 NCLR 269

Ugwu vs Ararume (2007) 12 NWLR (Pt. 1048) 367

B Arch. Bishop Okojie vs A-G Lagos State (1981) 2 NCLR 332

Inakoju vs Adeleke (2007) 4 NWLR (Pt. 1025) 423

Ladoja vs INEC (2007) 12 NWLR (Pt. 1025)

Olaniyi v. Aroyehun (1991) 5 NWLR 652

C A-G Federation v. ANPP (2003) 18 NWLR (Pt.851) 182

Adewunmi v. Government of Ekiti State (2002) 1 SCNJ (pt. 2-7) 32

Allen v. Sir Alfred McAlpine & Sons Ltd. (1968) 2 Q.B. 229

FRN v. Dariye (2011) 13 NWLR (Pt.1265) 521

D **STATUTES & RULES REFERRED TO**

Constitution of Federal Republic of Nigeria 1999, ss. 1, 3, 6, 105(1)135(1)(2), 180(1)(2)(3), 181(2)(a) (b), 182(1)(b), 185(1), 191(2)

Constitution of Federal Republic of Nigeria 1999 (as amended), s.

E 177, 178, 180 (2A)

Electoral Act 2010, 140(1)(2), 143(1)

Supreme Court Act, s. 22

Supreme Court Rules, O. 8 r. 12

F **BOOK REFERRED TO**

Constitutional Government in the United States, New York 1908 pg. 192

G **LEAD JUDGMENT BY ONNOGHEN JSC**

The consolidated appeals arose from the decision of the Court of Appeal, Holden at Abuja, delivered on the 15th day of April, 2011, in which the Court dismissed the consolidated appeal nos. CA/A/113/2011; CA/A/117/2011; CA/A/118/2011; CA/A/119/2011 and H CA/A/128/2011 and affirmed the decision of the Federal High Court Holden at Abuja, delivered on 23rd February, 2011.

The facts relevant to the appeals are a fall out of the general election conducted in Nigeria in 2007. The elections included governorship election into the office of governor of the 36 (thirty-six) States

of the Federation. The victory of some of the State governors was challenged by other candidates on various grounds ranging from unlawful disqualification, electoral malpractices, to total absence of elections, which, however produced winners.

The following were among the successful governorship candidates whose electoral victories were challenged successfully by their rival candidates:

- (i) Admiral Murtala Nyako of Adamawa State.
- (ii) Mr. Timipre Sylva of Bayelsa State.
- (iii) Mr. Liyel Imoke of Cross River State.
- (iv) Alh. Aliyu Wammako of Sokoto State.
- (v) Alh. Ibrahim Idris of Kogi State.

Meanwhile and following their electoral victories each of the above candidates were duly installed as Governor of their respective States on the 29th day of May, 2007, after taking the Oaths of Allegiance and of Office.

The election petitions against their declaration as winners of the elections went on up to the Court of Appeal where the elections of the five governors, *supra*, were nullified after they had each spent more than a year in the office as Governors. The Independent National Electoral Commission (INEC) was ordered to conduct a re-run election in all these States within ninety (90) days as required by law.

The re-run elections were duly conducted in the various States at various dates in 2008, which the candidates again won resulting in their taking another set of Oaths of Allegiance and Office and were installed as Governors on the following various dates:-

- (a) Admiral M. Nyako of Adamawa State - 30/4/2008,
- (b) Timipre Sylva of Bayelsa State - 29/5/2008,
- (c) Ibrahim Idris of Kogi State - 5/4/2008,
- (d) Aliyu Wammako of Sokoto State - 28/5/2008, and
- (e) Mr. Liyel Imoke of Cross Rivers State - 28/8/2008

The question arising from the above stated events revolves around the two (2) sets of Oaths of Allegiance and of Office and installation in office of Governor and is simply put: Whether the term of office of each of these Governors expired at the end of four (4) years calculated from 29th May, 2007, or whether they are entitled to a tenure of four (4) years calculated from the date of the second

taking of the Oaths of Allegiance and of Office following the re-run elections of 2008.

The lower Courts held that the relevant point at which the four (4) year tenure of the Governors is to be calculated is the date they took their second Oaths of Allegiance and of Office in 2008.

B The instant consolidated appeals are against the above decision of the lower Courts.

C It should be noted that the appellants in SC/141/2011, Brigadier-General Mohammed Buba Marwa and Congress for Progressive Change (CPC) appealed as interested persons upon leave granted them on the 8th day of July, 2011. The appeal of the above appellants increased the number of appeals from the original five (5) to the present consolidated six (6).

D Having gone through the various briefs of argument including those filed by the Amicus Curiae, the main issue for determination in the appeals remain the following:-

E Whether having regards to the provisions of the Constitution of the Federal Republic of Nigeria, 1999 (hereafter referred to as the 1999 Constitution), particularly Sections 180(1) and (2) and 182(1) (b) thereof the lower Court was right in holding that the tenure of office of the 1st respondents commenced from the date they took their second Oaths of Allegiance and of Office in 2008 as against the 29th day of May, 2007, when they took their first oaths of Office and Allegiance.

F There is however, a sub-issue which is whether Section 180 (2A) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) is applicable to the facts of this case.

G To assist the Court in resolving the issue and due to the national importance the Court attaches to the issue in question, the Court invited the following learned Senior Advocates of Nigeria (SAN) to file briefs and also appear and present their arguments, as amicus curiae. They are CHIEF RICHARD AKINJIDE, SAN; OLUKONYINSOLA AJAYI, SAN AND PROF. ITSE SAGAY, SAN.

H It is important to note that the Peoples Democratic Party (PDP) which is the 2nd respondent in SC/141/2011; SC/282/2011; SC/356/2011 and SC/357/2011 and 5th respondent in SC/267/2011 filed and argued preliminary objections against the said appeals in its respective brief of argument.

The 1st respondent in SC/357/2011 – Alh. Ibrahim Idris - also objected to the appeal. The grounds of objection by PDP in the various appeals are very similar being as follows:-

1. The subject matter of the appeal has become mere academic issue.
2. The appeal itself is unconstitutional. B
3. Issue 3 formulated for determination and ground 7 upon which it was based did not arise from the judgment of the lower Court.

It is the contention of the 2nd respondent that the appeals had become academic and as such this Court has no jurisdiction to hear and determine same; that the gravamen of the case is whether or not elections to the Governorship seats of the states concerned should be conducted in April, 2011, since their tenure are said to have expired by 29th May, 2011; that courts are to determine live C  
issues. D

It should be noted that the main issue for determination from the trial Court to this Court remains when does the four year tenure granted by the Constitution to state governors particularly the 1st respondents in the appeals start to run: Is it from the 29th day of E  
May, 2007, when they took their first Oaths of Allegiance and Office following the 2007 general elections which they were declared winners or the dates in 2008, when they took their second Oaths of Allegiance and of Office following their winning the re-run election F  
ordered by the Courts as a result of the nullification of their earlier election.

The above issue is of great constitutional importance and does not deserve to be trivialized. It remains alive and to say that it has become spent or hypothesized or academic is to say the least, a grave G  
misconception.

In short, I have carefully considered the argument of counsel for both parties on the preliminary objection and have come to the irresistible conclusion that they have no merit whatsoever. The issue in contention being of great constitutional importance in our democracy ought to be considered and resolved on the merit, not to be truncated by technical arguments not supported by the facts and H  
circumstances of the case. The objection is really an attempt to waste the precious time of this Court and is consequently overruled as lack-

ing in merit.

In arguing the appeal, learned Senior Counsel for the appellants in SC/141/2011, Chief Wole Olanipekun, SAN relied on the briefs of argument filed in the appeal and submitted that within the ambit of Section 180(2) of the 1999 Constitution, the spirit and tenure of the constitution is that except when the nation is at war, no elected governor shall spend more than eight (8) years of two (2) terms cumulative tenure. Referring to the case of Labour Party vs INEC (2009) 6 NWLR (Pt. 1137) 315 at 339, learned Senior Counsel submitted that the issue of second oath is subsidiary and not relevant as the same parties who contested the first election also participated in the re-run as no primaries would be conducted before the re-run.

On the sub-issue of the effect of the amendment to the 1999 Constitution on tenure of governors, learned Senior Counsel submitted that the amendment was to cure a mischief caused by politicians in interpreting the constitution; that the constitution does not make reference to Oath taking which means that oath taking is not important; that the interpretation placed on the relevant sections of the 1999 Constitution by the lower Courts is very dangerous as the same is based on oath taking, which is secondary and urges the court to allow the appeal.

Kanu Agabi, Esq, SAN for the 1st respondent in SC/141/2011 submitted that a governor whose election has been annulled is not an elected governor as the operative word in the relevant section of the constitution is “elected”; that there is no second oath and that the reference to a second oath is a contrivance by the appellants. It is the contention of learned Senior Advocate of Nigeria that once an election is annulled, the oath goes with it as the oath comes after the election and not the other way round; that prior to the amendment the time spent in office by a governor following invalid election did not count but after the amendment that time now counts; that the annulment of the election does not affect the legality of the actions of the governor prior to the annulment and urged the Court to dismiss the appeal.

On his part, Chief Olusola Oke for the 2nd respondent submitted that all parties are agreed that the starting point in determining the tenure of office of a governor is taking of the oath of office

and as such the actions taken by a governor whose election was annulled is not relevant in determining his tenure; that by the provisions of Section 185(1) of the 1999 Constitution oath taking is a condition precedent to the commencement of governors' tenure of office; that the tenure of four (4) years cannot be predicated on two elections - one valid and the other invalid; that the tenure started from the oath taken following the re-run election of 2008. B

On the sub-issue, learned Counsel submitted that both the 2007 and 2008 elections took place before the amendment to the 1999 Constitution in 2010 and that since the Act is not retrospective the amendment does not apply to the case and urged the Court to dismiss the appeal. C

Chief Richard Akinjide SAN as Amicus Curiae, submitted that the earlier oaths cannot be the starting point in the calculation of the four (4) years term of office but the later oaths taken in 2008 following a re-run election and that sub-section 2A of Section 180 of the 1999 Constitution as amended does not apply as it has no retrospective effect and urged the court to determine the appeal accordingly. D

On his part Ajayi, SAN, also as amicus curiae, referred to Sections 180(1) and (2) and submitted that the constitution focuses on a date, not on oath of office; that on 29th May, 2007, the 1st respondent took the Oaths of Allegiance and Office; that the constitution does not talk of nullification of an election or oath. Referring to the case of Balonwu vs Governor of Anambra State (2009) 18 NWLR (Pt. 1172) 13 at 43, learned Counsel submitted that the second oath is superfluous. E F

On the sub-issue learned senior counsel submitted that the amended provisions of the 1999 Constitution are irrelevant to the appeal. In the alternative, learned Senior Counsel submitted that the governor has no vested rights as he is a trustee of the people of the state; that the cause of action arose in September, 2010 and the amendment came into force in July, 2010 and that the alteration did not change the law but merely clarified the law. G

On his part, Prof. Sagay, SAN, the third amicus curiae, submitted that where the actions of a governor remains valid after nullification it means the election was voidable, not null and void; that an election cannot be said to be void ab initio since it is a Court order that creates a nullity; that we have de facto and de jure governments H

depending on how the government came into being; that a governor whose election is annulled is a de facto governor as recognized in the Balonwu's case, that the period between when the governor is elected into office and the nullification constitutes valid stewardship.

B It is the further contention of the learned Senior Counsel that tenure elongation is an aberration arising from the long time taken to dispose off election petition matters which the respondents now intend to make a permanent feature of our constitution and urged the Court to hold that no tenure can exceed four (4) years regardless of a re-run election.

C The above summary is a complete reflection of the arguments put forward by all the parties to the appeals depending on which side of the divide they fall and it will serve no useful purpose to continue to reproduce them per appeal. Suffice it, however to say D that learned Senior Counsel for the 1st respondent in SC/266/2011, PAUL EROKORO, SAN, submitted that the four (4) years under Section 180 of the 1999 Constitution must be one period of four (4) years joined end to end - an unbroken period, and that the oath must be taken by a governor whether elected in a general election or E in a re-run.

What does the law say or provide?

Section 180(1)(2)&(3) of the 1999 Constitution deal with the tenure of office of governors and relevant to the issue under consideration. F They provide as follows:-

"180 (1) Subject to the provisions of the constitution a person shall hold the office of Governor of a State until.

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

or

G (b) He dies whilst holding such office; or  
(c) The date when his resignation from office takes effect; or  
(d) He otherwise ceases to hold office in accordance with the provisions of this constitution.

H (2) Subject to the provisions of subsection (1) of this section, the governor shall vacate his office at the expiration of a period of four (4) years commencing from the date when:-

(a) in the case of a person first elected as governor under this constitution, he took the Oath of Allegiance and Oath of Office, and

(b) the person last elected to that office took the Oath of Alle-

giance and Oath of Office or would, but for his death, have taken that oaths.

(3) If the Federation is at war in which the territory of Nigeria is physically involved and the President considers it is not practicable to hold elections, the National Assembly may by resolution extend the period of four (4) years mentioned in subsection (2) of this section from time to time, but no such extension shall exceed a period of six (6) months at any one time”.

The above provisions are similar to those relating to the Office of President under Sections 135(1) and (2) of the 1999 Constitution.

However, section 180(2) of the 1999 Constitution simply provides that subject to the provisions of Section 180(1) of the 1999 Constitution the tenure of a Governor of a State shall be for four (4) years calculated from the date:

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

(b) The person last elected to that office took the Oath of Allegiance and Oath of Office or would have done so but for his death.

It is clear from the provisions that in the case of commencement of tenure of a person first elected, it starts with the taking of the Oath of Allegiance and Oath of Office, in this case, the 29th day of May, 2007 when the 1st respondents took their first Oaths of Allegiance and Oaths of Office. It is also important to note that the provisions of paragraph (a) of Section 180(2) is clearly an alternative to paragraph (b) of Section 180(2) irrespective of the use of the word “and” which, in reality is disjunctive and means “or” in the context in which it appears, and that both Sections 180(1) and (2) are subject to the whole of the 1999 Constitution.

The most important thing to note having regards to the provisions dealing with tenure of office of governors reproduced supra is that looking closely at the provisions of Section 180(2) (a), there is no room for the same person elected governor being elected again following a re-run election. A person elected following a re-run election cannot be said to have been “first elected as governor under this constitution” except he was not the winner of the earlier or first election. The present problem arose from the fact that the very persons

who won the “first” election also participated and won the re-run elections.

***When then does the tenure of four (4) years of the 1st respondents begin to run? Is it from the 29th day of May, 2007, when they took their first Oaths of Allegiance and Oaths of Office following their “first election under this constitution” or the various dates when they took the said oaths following the re-run elections in 2008?***

The main ratio of the lower Court in respect of the issues in this appeal are as stated by that Court at pages 711 -713 of the record, where the Court stated thus:-

*“The salient point that should be noted in the provisions of the subsection is that a person must have first been chosen as governor in the process of an election which complies with and satisfies the provisions of the constitution before the provisions would be applicable to the tenure provided therein.”*

Consequently, the provisions would not apply to a person chosen by the process of an election which was not conducted or held in compliance or accordance with the provisions of the constitution. The constitutional provisions cannot be said to contemplate or envisage application to any election which did not comply with or was conducted or held not in accordance with the relevant provisions of the constitution. Put in another way, if it is not within the purview of the provisions that the election to which they were applicable would be one or the process of which was not conducted in obedience to the relevant provisions of the constitution. Election conducted and held in compliance or accordance with the provisions of the constitution is therefore the foundation, the basis and the platform upon which the application of the provisions of the subsection can be premised. Being the grundnorm, it would be preposterous to suggest that its provisions would envisage that they are applications to any other type of election other than the one conducted or held in compliance with its provisions.

***In this regard, only the Oaths of Allegiance and Office taken by a person chosen in the process of an election which complies with or was in accordance with the provisions of the constitution would be relevant for the purpose of computing the tenure of office of a governor under the provisions of Sec-***

*tion 180(2). Oaths of Allegiance and of Office taken in respect of an election which was conducted or held not in accordance with the provisions of the constitution would not be oaths taken by a person first elected as governor under the constitution. In this context, the learned counsel for the 2nd respondent is right where he said that a valid election conducted in accordance with the provisions of the constitution and the Electoral Act, is a condition precedent to the validity of the Oaths of Allegiance and of the Office of a governor.*

*This brings me to the effect of the nullification of an election on the oaths taken by a person first elected as governor in the said election. I would start a consideration of the point, by saying that the law is now beyond argument that the effect of a nullification of a thing is to completely wipe out, obliterate, remove, undo, erase or render it ineffective, useless as if it had never been in the first place. In judicial and legal terms and context, the nullification of any action or order by a court is to render such action or order void from the very beginning, ab initio, as if it had never taken place, happened or made or issued as the case may be.*

*Once an action or order is nullified by a competent Court, then in law and all practical purposes to which it applies, the action had been erased, wiped out and had never, ever happened or taken place originally.*

*The above forms the basis on which the lower Court held that all the years enjoyed in office by the affected governors before the nullification of their first election are not to be taken into consideration in calculating the four year tenure constitutionally assigned them. However, the judgment picked and chose which aspects of the illegal tenure resulting from the nullification of the election endures or remains valid and subsisting or legal in law and which aspects is/are to be treated as “completely wiped out, obliterate, remove, undo, erase or render it ineffective, useless as if it had neither been in the first place...” In consequence, the lower Court held that while the actions of the governors during the period prior to the nullification are valid and legal, the same period cannot be taken into account in calculating the tenure of office of the said gov-*

**ernors following the nullification of their election.**

**The issue/question of nullity and its legal consequences/effectiveness is usually traced to LORD DENNING’S obiter dictum in the case of Mcfoy vs UAC (1961) 3 ALL E.R 1169 at 1172 where he stated thus:-**

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

**C To say that the above principles are based on facts which are not material in this case is to state the very obvious.**  
**D Secondly the court is in many cases/circumstances required to declare an act void before it becomes so, otherwise it remains valid and binding as is evident in our laws relating to elections where elections are presumed valid until declared null and void by the courts. In such a situation if you put something on the illegal act the period prior to the nullification it will surely stay put contrary to the general dictum on nullity as propounded by LORD DENNING supra.**

**E Over the years the Supreme Court has devised guidelines to the interpretation of not only statutes but most importantly our constitutional provisions, including the now famous twelve (12) point rule of constitutional interpretation propounded by OBASEKI, JSC in the case of Attorney-General of Bendel State vs Attorney-General of the Federation (1981) 10 SC. 1; (1981) 1 FNLR 179 as follows:-**

**G “(1) Effect should be given to every word used in the constitution.**

**H (2) A constitution nullifying a specific clause in the constitution shall not be tolerated, unless where absolutely necessary.**

**(3) A constitutional power should not be used to attain an unconstitutional result.**

**(4) The language of the constitution, where clear and unambiguous must be given its plain and evident meaning.**

**(5) The constitution of the Federal Republic of Nigeria is an organic scheme of government to be dealt with as an entirety hence a particular provision should not be severed from the rest of the constitution.**

**(6) That the language of the constitution does not change the changing-circumstances of a progressive society for which it was designed, it can yield new and further import of its meaning.**

**(7) A constitutional provision should not be construed in such a way as to defeat its evident purpose.**

**(8) Under the constitution granting specific powers, a particular power must be granted before it can be exercised.**

**(9) Declaration by the National Assembly of its essential legislative functions is precluded by the constitution.**

**(10) Words are the common signs that men make use of to declare their intentions one to another, and when the words of a man express his intentions plainly, there is no need to have recourse to other means of interpretation of such words.**

**(11) The principles upon which the constitution was established rather than the direct operation or literal meaning of the words used should measure the purpose and scope of its provisions.**

**(12) Words of the constitution are, therefore, not to be read with “stultifying narrowness”.**

However, in *Ishola v. Ajiboye* (1994) 7 - 8 SC NJ (Pt.1) 1 at 35. OGUNDARE, JSC after adopting the twelve (12) point rule *supra* gave his own four (4) point rule as follows:-

1. Constitutional language is to be given a reasonable construction, and absurd consequences are to be avoided;

2. Constitutional provisions dealing with the same subject matter are to be construed together;

3. Seemingly conflicting parts are to be harmonized, if possible, so that effect can be given to all parts of the constitution.

4. The position of an article or clause in the constitution influences its construction.

**It is settled law that the object of interpreting statute or the constitution is to discover the intention of the legisla-**

**ture, which intention is usually deduced from the language used.**

**The golden rule of interpretation of constitutional provisions is therefore that words of the constitution must, prima facie, be given their ordinary meaning which means I must look closely at the words used in the provisions and assign them their ordinary meanings if the words are not ambiguous. I must also give the words a liberal interpretation as stated in *Nafiu Rabi* vs *Kano State* (1980) 8 - 11 SC 130 at 149; Senate of the National Assembly vs Momoh (1983) 4 NCLR 269 at 236.**

In *Rabi* vs *Kano State* supra at 149, SIR UDO UDOMA, JSC stated, inter alia thus:-

*“My Lords, it is my view that the approach of this Court to the construction of the constitution should be, and so it has been, one of liberalism probably a variation on the theme of the general maxim ut re magis valeat quam pereat. I do not conceive it to be the duty of this Court so to construe any of the provisions of the constitution as to defeat the obvious ends the constitution was designed to serve where another construction equally in accord and consistent with the words sense of such provisions will serve to enforce and protect such ends”.*

**From the language used in Section 180 of the 1999 Constitution, it is very clear that the constitution intended that a governor of a state shall have a tenure of four years from the date he took the Oaths of Allegiance and of Office and nothing more, though he may spend less where he dies, resigns or is even impeached. In all, a governor has a maximum tenure of eight (8) years under the 1999 Constitution.**

**From the language of Section 180(2) of the 1999 Constitution “the tenure of a governor shall be four years from the date...” When the person first elected under this constitution takes the Oaths of Allegiance and of Office which took place on the 29th day of May, 2007.**

It has been argued that the tenure of four years envisaged in the 1999 Constitution is a single unbroken tenure but that submission loses sight of the glaring fact that the provisions of Section 180(2) supra does not expect or envisage an indefinite occupier of the office of governor of a state that is why the tenure is very definite: four years.

In *Ugwu vs Ararume* (2007) 12 NWLR (Pt. 1048) 367 at 498 this Court stated thus:-

*“A statute, it is always said, is “the will of the legislature” and any document which is presented to it as a statute is an authentic expression of the legislative will. The function of the Court is to interpret that document according to the intent of those who made it. Thus, the Court declares the intention of the legislature”.* B

I am also guided by the principles of interpretation of the provisions of the constitution which enjoins the Court to interpret the constitution as a whole taking into consideration, related sections as stated in *A. T Ltd. vs A. D. H Ltd.* (2007) 15 NWLR (Pt. 1056) 1 18 C at 166 - 167 thus:

*“It is settled law that when a court is faced with the interpretation of a constitutional provision, the entire provision must be read together as a whole so as to determine the object of that provision. Secondly, it is settled principle of law that where a Court is faced with alternatives in the course of interpreting the constitution or statute, the alternative construction that is consistent with smooth running of the system shall prevail as held in *Tukur vs Government of Gongola State* (1989) 4 NWLR (Pt.117) 517 at 579; I must remember that this Court has said it several times that the provisions of the constitution ought to be read and interpreted as a whole in that related sections must be construed together....* D E

*Finally, I must approach from the view point that since the decision of this Court in *Rabiu vs Ogun State* (1981) 2 NCLR 293. This Court has opted for the principle of construction often expressed in the maxim: *ut res magis valeat quam pereat*. This means that even if alternative construction are equally open, I shall opt for that alternative which is to be consistent with the constitution read as a whole G as set out to regulate, and so the alternative which will disrupt the smooth development of the system is to be rejected.”*

I am, in addition, persuaded by the principles of interpretation stated by the then Federal Court of Appeal in *Arch. Bishop Okojie vs A-G Lagos State* (1981) 2 NCLR 332 at 340 - 350 and which I H hereby adopt as mine:

*“When interpreting the constitution the Court must bear in mind that it is dealing with an instrument which controls and regulates the powers and functions of government, controls the rights*

*and obligations of the citizen and controls the peace and order of the society upon which the constitution is supposed to operate.*

*While in an ordinary statute the normal rule is that the terms used must be given the meaning they bore at the passing of the statute (see Trustees of Clyde Navigation vs Laird 8 App. Cases 673)*

*B a constitution is intended to be permanent and must be interpreted by looking at the past and according to present conditions in order to fulfil the object and true intent of the constitution. A constitution must therefore be interpreted and applied liberally. A constitution must C always be considered in such a way that it protects what it sets out to protect or guides what it set out to guide. By its very nature and by necessity a constitution document must be interpreted broadly in order not to defeat the clear intention of its framers."*

Guided by the above principles and many others not stated D herein, can it be said that Section 180(2) supra admits of no unbroken tenure of four years? In the case of Inakoju vs Adeleke (2007) 4 NWLR (Pt. 1025) 423, this Court held that the impeachment and removal from office of Governor Ladoja of Oyo State was unconstitutional, null and void. Prior to that decision Ladoja was out of office E by way of impeachment for almost a year. He subsequently instituted an action in which he sought to, regain the lost period of his four years tenure as guaranteed under Section 180(2) supra, in the case of Ladoja vs INEC (2007) 12 NWLR (Pt. 1025) but this Court F held that his tenure cannot be extended to accommodate the period of time he lost through the impeachment. Governor Ladoja's tenure was broken by the impeachment saga in Oyo State; but he was asked to continue his tenure from when he returned to office.

It is the case of the respondents that since their elections in G 2007, where nullified it meant that in law the said election never took place and as such the Oaths of Allegiance and of Office they took on 29th May, 2007, became non-existent and that the Oaths of Allegiance and of Office which is valid and relevant to the determination of the four years tenure is that which they took at various dates in H 2008.

***I had earlier found and held that the provisions of Section 180 of the 1999 Constitution do not envisage a re-run election let alone a re-run election won by the same person who took the earlier Oaths of Allegiance and of Office.***

***I have also found and held that from the totality of the relevant provisions of the 1999 Constitution including Section 180(1)(2)&(3) and 182(1)(b), a person first elected as governor of a state shall vacate his office at the expiration of a period of four years commencing from the date he took the Oath of Allegiance and Oath of Office though he could be re-elected for another term of four years giving him a maxim two tenures of eight years. It is very clear from the relevant provisions that no person elected under the 1999 Constitution can remain in that office for a day longer than as provided otherwise the intention of the framers of the constitution would be defeated.***

If the interpretation favoured by the respondents is adopted and the four years tenure is to be calculated from the second oaths taken in 2008, while in fact and law the 1st respondents took Oaths of Allegiance and of Office on 29th May, 2007 and remained and functioned in office as governors of their various states would their period not exceed the constitutionally provided tenure of four years? The answer is clearly in the positive hence the argument on the principles of null and void acts. In assigning four years to the tenure of State Governors - and the President too - did the 1999 Constitution envisage a nullified election affecting the four years tenure assigned by it. I think not.

***The argument that following the nullification of their elections the said elections were in the eyes of the law non-existent as they are regarded not to have taken place as well as the subsequent oaths they took to enable them function in the office of Governors of their States is brilliant though it does not deny the fact that there was an election conducted and winners declared thereafter in accordance with existing laws and regulations; that the winners of that election subsequently took their Oaths of Allegiance and of Office as required by the constitution and did function in that office for about one year effectively exercising the executive powers of the state such as signing Bills into law including appropriation Bills; appointing commissioners and numerous Advisers, awarding contracts, etc.***

***The proponents of this contention agree that the acts***

*performed by the affected governors remain valid and subsisting after the nullification of the elections but the oaths they took to function in that office went with the nullification of their election.*

*It is not in doubt that the lower Court was the final Court on governorship election petition matters and that its decision on such matters bind the election tribunals and Courts below it in the hierarchy of Courts. The above notwithstanding, this Court, the Supreme Court of Nigeria, is not bound by decisions of the lower Court in matters, where that Court is the final Court of appeal as this court is the highest Court in the land whose decisions are binding on all and sundry.*

*It is with the above in mind that I consider the wide nature of the decision of the lower Court as to the voidity of the elections that resulted in the swearing in of 29th May, 2007. Generally speaking, a void act is void and nothing can be put on it. However, when you consider the nature and consequences of an election which produced a winner who was sworn in on the presumption that the election that produced him was regular and legally valid then when that election is set aside or nullified, the nullification is only limited to the election and does not affect acts done while the person occupied that office. In effect, what it all means is that the election that was later nullified was only voidable, not void, because if it is to be taken literally as void ab initio as is being contended by some of the parties, it means the country would be plunged into chaos as all acts done by the governors must of necessity be null and void and of no effect whatsoever. So, when we have a situation where the acts of the governor whose election is nullified are saved, then the only legal explanation or meaning to be attached to the use of the words "null and void" in describing the said election by the Court, is "voidable", ab initio.*

*It is therefore my considered view that what the lower Court meant by saying that the elections were null and void is simply that they were voidable as a result of which they proceeded to annul same.*

*I hold the considered view that since the acts performed*

**during the period prior to the nullification of the election remains valid and subsisting and the same person contested and won the re-run election thereby taking another set of oaths and since what was nullified was the election, the oaths they took on 29th May, 2007, remains valid and the starting point in calculating their four years tenure of office as governors of their respective states particularly as the 1999 Constitution does not envisage a tenure exceeding four years by the same person who took the first oaths following the election which kick started the tenure.**

**To accede to the argument of the respondents is to bring uncertainty into the clear provisions of Section 180(2) of the 1999 Constitution which will render the tenure of governors indefinite as what it will take an elected governor whose election is nullified to remain in office almost indefinitely or for life is to continue to win the re-run elections which would then be nullified to continue the cycle of impunity.**

From what I have been saying so far, it is clear that I am of the view that the provisions of Section 180(2A) of the 1999 Constitution as amended is not relevant to the determination of the issue under consideration as the intention of the framers of the constitution of assigning four years tenure to the governors is clear from the language used in Sections 180(1)(2) & (3) and 182(1)(b) of the 1999 Constitution. At best the said Section 180(2A) can be described as a classification of what is, by the deployment of the tools of constitutional interpretation, obvious and attainable as demonstrated in this judgment. The 1999 Constitution has no room for self succession for a cumulative tenure exceeding eight years.

**On nullity of the elections as declared by the courts/tribunals, it is beyond dispute that by our laws there is a presumption that an election is valid until the courts/tribunals declare it a nullity. When the tribunal/courts so declare the election, the declaration does not affect the validity of the oaths the governor took so as to function in that office as required by the constitution neither would it affect the Bills he signed into law, contracts awarded, budgets etc.** See *Balonwu vs Governor Anambra State* (2009) 18 NWLR (Pt.1172) 13 at 49.

**It therefore means that the consequences of the an-**

**nulled election is different from a null and void proceeding or act which is usually described as being incurably bad and of no effect whatsoever. The nullity which allows the validity of the acts of the governors prior to the nullification of the election is therefore much closer to the concept of a voidable act**  
 B **which is usually legally valid until challenged and subsequently set aside. I hold the considered view that to uphold the validity of the acts of the governors in office prior to the nullification of their election and reject the period they spent in office**  
 C **during which time they performed those acts in the determination of the period of their tenure is contrary to common sense and the clear intention of the framers of the constitution.**

The fact that there was an election in 2007 as a result of  
 D which the 1st respondents (Governors) took their Oaths of Allegiance and of Office are facts which cannot be wished away, just as the acts they performed while occupying the seat. The said governors may not have been de jure governors following the nullification of their elections, which is not supported by the acceptance of their acts in  
 E that office as legal and binding on all and sundry, they were certainly governors de facto during the period they operated ostensibly in accordance with the provisions of the Constitution and Electoral Act and as such the period they so operated has to be taken into consid-  
 F eration in determining the terminal date of their tenure following, what I may call, their second missionary journey vide a re-run election particularly as the constitution unequivocally grants a tenure of four years to a person elected governor of a state calculated from the date he took the Oaths of Allegiance and of Office which was the  
 G 29th day of May, 2007.

**It is settled law that the time fixed by the constitution for the doing of anything cannot be extended. It is immutable, fixed like the rock of Gibraltar. It cannot be extended, elongated, expanded, or stretched beyond what it states. To cal-**  
 H **culate the tenure of office of the governors from the date of their second Oaths of Allegiance and of Office while ignoring the period from 29th May, 2007, when they took the first oaths is to extend the four years tenure constitutionally granted the governors to occupy and act in that office which would be**

***unconstitutional. It is therefore clear and I hereby hold that the second Oaths of Allegiance and of Office taken in 2008, though necessary to enable them continue to function in that office, were clearly superfluous in the determination of the four years tenure under Section 180(2) of the 1999 Constitution.***

In conclusion, I resolve the issue against the respondents. I however take this opportunity to thank the legal luminaries who accepted the invitation of this court to act as Amicus Curiae and avail the court of their views which have, in no small way, helped to resolve the thorny constitutional issue which had heated up the polity for quite some time now. I allow the appeals which have been demonstrated to be meritorious and set aside the judgments of the lower courts and in their place, it is hereby ordered that suit Nos: FHC/ABJ/CS/246/2010; FHC/ABJ/CS/648/2010; FHC/ABJ/CS/650/2010; FHC/ABJ/CS/651/2010 and FHC/ABJ/CS/665/2010; be and are hereby dismissed.

***In consequence, I hold that the tenure of the 1st respondents began on the 29th day of May, 2007 and terminated on the 28th day of May, 2011 being four years allowed by the 1999 Constitution.*** Appeal Nos. SC/141/2011, SC/266/2011, SC/267/2011, SC/282/2011, SC/356/2011 and SC/357/2011 are hereby allowed.

It is further ordered that parties bear their costs. Appeals allowed.

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### **MUSDAPHER CJN**

Gubernatorial Elections were held in Adamawa, Bayelsa, Cross-River, Kogi, Sokoto and other States of the Federal Republic of Nigeria on the 14/4/2007. In these mentioned States, Admiral Murtala Nyako, Chief Timipre Sylva, Senator Liyel Imoke, Alhaji Ibrahim Idris and Alhaji Aliyu Wammako were respectively returned as the duly elected candidates. They each subscribed to the Oaths of allegiance and oaths of office and each began to execute the office of the governor of the respective States aforesaid. But their electoral victories were eventually successfully challenged at the Governorship and Legislative Houses tribunals established in each of the States aforesaid.

At divers dates, the Court of Appeal confirmed the annulment of their victories and as the final court, ordered a fresh or re-run elections. The fresh elections were held at different dates and the afore-said persons were also declared the successful candidates and were returned as the elected governors. They, for the second time, took  
 B the Oaths of allegiance and Oaths of offices at diverse dates.

On the 1/9/2010, the National Electoral Commission caused to be published in National daily newspapers, that it would conduct gubernatorial elections in all the States of the Federation including  
 C the aforementioned States in January 2011. That was why the governors of Adamawa, Bayelsa, Cross River, Kogi and Sokoto States commenced personal actions by originating summons in the Federal High court Abuja, seeking among other prayers, declarations that their various tenures in office as elected governors of the affected  
 D States would only expire after 4 years calculated from the time they assumed office after the re run or fresh elections and not 4 years as calculated by the Electoral Body from the time they first assumed office on the 29/5/2007.

On the 13/10/2010, the five matters were consolidated. After  
 E dealing with a number of preliminary issues, the trial court heard the matter and on the 23/11/2011 delivered its judgment in favour of the various plaintiffs' governors. It held that the period of four years should be calculated from the period the respective governors took the oaths a second time. The Independent National Electoral  
 F Commission (hereinafter referred to as INEC) felt unhappy with the decision and filed five notices of appeal against the decisions. It was with the agreement of the parties that the five appeals were also consolidated since the subject matter in all the appeals "are substantially  
 G the same". At the end of the day, the court of Appeal dismissed all the appeals by INEC and affirmed the decisions of the trial court. Still INEC remains unsatisfied and further appealed to this court by filing five notices of appeal.

It was with the leave of this Court, that Congress for progres-  
 H sive Change and Brigadier-General Muhammad Buba Marwa, (as interested parties) also appealed to this court against the decision in respect of Adamawa State- (That is suit SC.141/2011). Thus, there are now six appeals before this Court.

Because of the national and constitutional importance of the

issues to be decided in these appeals, this court invited as amicus curiae the following learned senior Advocates to file briefs and also to appear and present their submissions in court. They are (1) Chief Richard Akinjide SAN, Olukonyisola Ajayi SAN and Prof. Itse Sagay SAN.

Having gone through the various briefs of arguments field by the parties including those filed by the amicus curiae, the crucial and core issue arising for the determination of the appeals is in my view the following:-

Whether having regards to the provisions of the Constitution of the Federal Republic of Nigeria, 1999, particularly sections 180(1) and (2) and 182 (1) (b) the lower Court was right in holding that the tenure of office of the governors commenced from the date they took the second Oaths in 2008 as against the 29/5/2007 when they took the first Oaths. To put it another way:-

Whether in calculating the 4 year tenure of an affected governor, the period ought to be reckoned from 29/5/2007 when the affected governor first took the Oaths and commenced executing the office of the governor or ought to be reckoned from the date the affected governor recommenced executing the office of the governor after the rerun elections?

There is also a sub-issue that is to say whether section 180 2A of the 1999 Constitution as amended is applicable to the facts of this case.

The determination of these issues will answer the fundamental questions submitted in all the appeals recited above, I shall therefore confine myself to the consideration of these all important questions without minding myself to other issues bordering on technicalities and objections on unimportant matters. The issues in contention are issues of great public interest which deal with the application and the interpretation of the constitution which must be dealt with on their merits and not on the technicalities.

I have read before now, the judgment of my lord Onnoghen JSC in this matter with which I entirely agree, I only want to chip in my views on the matter if only for the sake of emphasis.

Now section 180(1) (2) and (3) of the constitution deal with the tenure of the office of governors and relevant to the issue under discussion. It is provided thus:-

*“180(1) Subject to the provisions of this Constitution, a person shall hold the office of a governor of a state until -*

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

*or*

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

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

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

*(2) Subject to the provisions of sub-section (1) of this section, the governor shall vacate office at the expiration of a period of four (4) years commencing from the date when:-*

*C (a) in the case of a person first elected as governor under this Constitution, he took the Oath of allegiance and Oath of office, and*

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

*(3) if the Federation is at war in which the territory of Nigeria is physically involved and the president considers it not practicable to hold elections, the National Assembly may by resolution extend the period of four (4) years mentioned in subsection (2) of this section from time to time, but no such extension shall exceed a period of six (6) months at any one time.”*

*F Now, the question that falls for my resolution is when does the four year tenure begin to run, was it from the 29/5/2007 when the affected governors were “first elected as governors” or on the diverse dates when they took the second Oaths after the fresh elections? The decisions of the lower court seems to suggest that the nullification of the elections also nullifies the oaths and rendered void any action taken by the affected persons as governor, and all actions for all practical purposes had been erased, wiped out and had never, even happened or taken place originally.*

*H This is the reason why the lower courts held that the months enjoyed by the affected governors executing the gubernatorial offices before the nullification of the elections that brought them to the office were rendered as if it never took place. Could it be true that all the actions taken by an affected governor were null and void as per lord Denning’s statement in MCFOY vs. UAC (1961) 3 ALL ER 1169 at 1172. I shall return to this later.*

In interpreting a constitution a judge extracts the legal meaning along the range of the text's various semantic meanings. One should not give the constitution a meaning that its express or implied language cannot sustain. The implied language is a language written in invisible ink, between the lines and derived from the entire structure of the constitution. See LAWRENCE H. TRIBE, AMERICAN CONSTITUTIONAL LAW 3rd Ed. 2000. A Constitution is a unique legal document; it enshrines special kind of norms and stands at the top of the normative pyramid. B

In the case of HUNTER VS. SOUTHAM INC. (1984) 2 S.C.R. 145 at 146. Chief Justice Dickson of the Supreme Court of Canada noted: C

The task of expounding a constitution is crucially different from that of construing a statute. A statute defines present rights and obligations ... a constitution by contrast is drafted with an eye to the future. Its function is to provide a continuing frame work for the legitimate exercise of governmental power, ... it must therefore, be capable of growth and development over time to meet new social, political and historical realities often un-imagined by its framers. The judiciary is the guardian of the constitution and must in interpreting its provisions, bear these considerations in mind. See also the case of ATTORNEY-GENERAL OF BENDEL STATE VS. THE ATTORNEY-GENERAL OF THE FEDERATION. (1981) 10 SC 1, and ISHOLA VS. AJIBOYE (1994) 7 - 8 SCNJ (Pt.1) 1. D E

Every legal document including the constitution has a purpose without which it is meaningless. This purpose, or ratio legit, is made up of the objectives, the goals, the interests, the values, the policy and the function that by law it is designed to actualize. It is the duty of the judge to give the meaning of the words that best realizes its purpose and intent and intendment. F G

It is clear, in my view, that by section 180 of the Constitution, the intention is that a governor shall have a tenure of 4 years from the date he took the oath of allegiance and oath of office and no more, in all a governor shall have a maximum of eight years. The tenure of four years can only be reckoned from "*when the person is first elected*" under the constitution, and takes the Oaths from the date when the person "*is first elected*" and commenced to act as governor, see section 180 (2). It has been stressed and argued that H

the period of 4 years should be a single and unbroken term, but clearly this overlooks the definitive period of 4 years and the intendment of section 180(2) which does not extend to any term of over 4 years.

B The five governors herein commenced to operate as govern-  
D nors on the 29/5/2007. They exercised full powers as governors under the Constitution; the judgment of the lower court merely annulled their elections as governors, but said nothing about their actions as governors. In the case of BALONWU VS. GOVERNOR OF  
C ANAMBRA STATE (2010) 37 WRN 12, this court held that all acts of a governor whose election were nullified remained valid. This included the issuance of a proclamation for the first session of the House of Assembly and that the tenure of the members remained 4 years from the date of their first sitting, as provided by section 105 of the  
D Constitution M. Mohammed JSC stated.

In dealing with these provisions of constitution in his judgment delivered on 17/9/2007, the learned trial judge Nweke, J. has this to say at page 235 - 238 of the record:

E *“The constitution of Nigeria authorized the National Assem-  
F bly to regulate election in Nigeria. See section 184 of the Constitu-  
tion. The National Assembly enacted the Electoral Act, 2002 and  
Electoral Act, 2006. In section 138 and 149 therein respectively it  
was enacted that where the tribunal or court as the case may be,  
G determines that a returned as elected was not validly elected, the  
person elected should remain in office pending the determination of  
his appeal, These provisions are not inconsistent with section 105 (3)  
of the constitution on ... my view is that if a person is asked to remain  
in office by law while his fate is determined by the Electoral Tribunal,  
H the law can not turn round to nullify his action while he held forth as  
the defacto office holder.*

*Having dealt with section 105 (3), I shall now touch on section 105 (1) of the constitution which regulates the sitting and the dissolution of the House of Assembly. It is that subsection that is mandatory that the house of Assembly shall stand dissolved at the expiration of a period of 4 years commencing from the date of the first sitting of the House. The plaintiffs had their first sitting on the 9/6/2003. So their tenure expired by effluxion of time. The plaintiffs do not have any right to go back to the House of Assembly of Anambra*

*State under any guise.”*

This court in the judgment under reference agreed with the statement of the law by the learned trial Judge and as affirmed by the Court of Appeal. The learned Justice of this Court concluded.

*“...being a serving governor of the State who issued the same immediately after his being sworn in as governor of Anambra State. B The fact that he had to vacate office at the end of the Court proceedings challenging his election in accordance with the provisions of the Constitution and the Electoral Act cannot invalidate any powers or duties exercised or performed by him while in office. This is in line C with the provisions of section 138 of the Electoral Act 2002 which allows the governor to remain in office and perform the functions of the office pending the determination of his appeal against the decision of the Election Tribunal by the Court of Appeal. The fact that this period lasted for over 35 months is of no moment having been D effectively covered by the law”*

Therefore the obiter dicta of Denning Mcfoy’s case supra cannot apply since the action of a governor while sitting pending an appeal cannot be termed illegal or null and void. Akin to this is the recognition of a government as “*DE JURE*” or “*DE FACTO*”. It is now E established that a de facto authority in a territory under its control are virtually identical with those of a de jure authority. See LUTHER VS. SAGOR (1921) 1 K. B. 456, BANCO DE BILBAO vs. SANCHA (1938) 2 KB 176.

In the instant case, the key to determining the tenure is time. F That is 4 years, no more, it could be less. The Constitution goes to a great length to set a commencement time by use of words, rather than as in the case of United States of America a specific date and indeed time. It is this that section 180 seeks to do, and it is that intention that must be given to it. It is also to be appreciated that in the G interpretation of the Constitution, the court should always bear in mind the whole Constitution and by the consideration of all the related sections. See for example A.T. LTD VS. A.D.H. LTD (2007) 15 NWLR (Pt 1056) 118 at 166. Guided by the above propositions, it is H clear to me that section 180 (2) of the Constitution does not admit an interpretation of unbroken four years. In the case, LADOJA VS. INEC (2007) 12 NWLR (Pt 1047) 119 at 167. This Court held that the tenure of a governor cannot be extended to accommodate the

period of time he lost through impeachment. In the case of OBI VS. INEC (2007) 11 NWLR (Pt.1046) 565 at 670. OGUNTADE JSC stated.

*“Section 180 (2) above is to be read subject to the provisions of section 180 (1) which itself is to be read subject to other provisions of the Constitution. There is no doubt that the intendment of the constitution is to grant a tenure of 4 years to all elective offices under the Constitution. However, a few occurrences may prematurely terminate the tenure. These include death while in office of an office holder, resignation ...”*

See also MUSA VS. INEC & others (2002) 11 NWLR (pt.777) 223 at 291. To interpret section 180 (2) differently will obviously create a brazen bizarre situation not envisaged by the Constitution. If I may briefly explain supposing like Dr. Chris Ngige a person elected as governor holds office for 3 years before the election is nullified, he contests the re run election and wins it and resumes office for another 2 years, when the electoral tribunals again nullified the election and again ordered a fresh election which he wins again, it would mean that the person would have spent 3, 2, plus another 4 years thus making it 9 or to take it a step further it may mean he could continue ad infinitum. Clearly this is not the situation the constitution has intended. It has only created a tenure of 4 years and no more. It must not be forgotten that the person who won both elections is the same person, there was no handing over from any predecessor to a successor, whatever has caused the election to be annulled, a party shall not be allowed to profit from an illegality i.e. having an extension of time of a term of office by the use of the second set of oaths. That since there was no change in the party that won the election, then the term of office ought to be seen as a continuation of the annulled election. In consequence I resolve the core issue in favour of the appellants.

On the subsidiary issue of the applicability of the new section 180(2A) to the facts of this case, having regards to what I have stated in the interpretation of section 180 (2), I do not see the need for me to discuss it. Suffice it for me to state that I allow the appeals of all the appellants in these matters and set aside the decisions of the lower courts. I hold that the tenure of all the affected governors in these six matters commenced on 29/5/2007 and terminated on the 28/5/2011.

The 5 governors are accordingly ordered to vacate office forthwith. Appeals are accordingly allowed and I make no order as to costs. Before I part with this judgment, I have to thank all counsel who not only filed briefs in these appeals, but also appeared and made oral submission before this court. My special thanks go to Amicus Curiae namely, Chief Richard Akinjide SAN, Chief Olukonyisola Ajayi SAN, B and Professor Itse Sagay SAN for their appearances in court and for their all embracing written briefs and oral submissions which have greatly assisted the court in reaching its decisions.

C

### **MOHAMMED JSC**

I have had the preview of the judgment of my learned brother, Onnoghen, JSC, which he has just delivered in the leading appeal number SC.141/2011 and other subsidiary appeals numbers SC.266/2011; SC.267/2011; SC.282/2011; SC.356/2011 and SC.357/2011 arising from the same decisions of the trial Federal High Court Abuja given on 29th February, 2011 and the Court of Appeal Abuja delivered on 15th March, 2011. I completely agree with the reasons ably advanced to arrive at the inevitable conclusion that the main appeal No. SC.141/2011 and sister appeals numbers SC.266/2011; SC.267/2011; SC.282/2011; SC.356/2011 and SC.357/2011 are meritorious and therefore ought to succeed.

APPEAL NO. SC.141/2011

E

In this appeal, the 1st Respondent was elected Governor of Adamawa State in the April, 2007 general election and was sworn in on 29th May, 2007. His election was successfully challenged before the Election Petition Tribunal which nullified the election and the decision of the Tribunal was affirmed on appeal by the Court of Appeal on 26th February, 2008, which Court consequently ordered a re-run election. The 1st Respondent again emerged a winner in the re-run election and was again sworn in as the Governor of Adamawa State on 30th April, 2008. The 3<sup>rd</sup> Respondent in exercise of its powers under the Constitution, commenced preparations for the conduct of general elections again in April, 2011, by giving notice to that effect. On seeing the Notice, the 1st Respondent took out an Originating Summons at the Federal High Court, Abuja against the remaining Respondents asking for the determination of his right in re-

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spect of his tenure, contending that his tenure shall not expire until 30th April, 2012. Following the success of the 1st Respondent in the Federal High Court and the Court of Appeal, the 3rd Respondent complied with the order of the Courts that the tenure of the 1st Respondent shall not expire until 30th April, 2012.

B Aggrieved by the decision of the Court of Appeal, the 1st and 2nd Appellants sought and were granted leave by this Court to appeal against the decision of the Court of Appeal. The Appellants filed their Notice and grounds of appeal and subsequently filed their  
C Appellants' brief of argument, the Appellants' Reply briefs in response to the 1st and 2nd Respondents' separate Respondents briefs of argument while the 3rd Respondent in the appeal, INEC, decided to change side by joining the camp of the Appellants in a separate appeal No. SC.356/2011. From the grounds of appeal filed by the Appellants, the following 3 issues were distilled for the determination of  
D the appeal. The issues are -

*"i. Having regard to the clear wordings of Section 14(2), 178(1)(2), 180(1)(2) of the Constitution of Federal Republic of Nigeria, 1999, read together with other relevant provisions of the said  
E Constitution, as well as various canons of interpretation embedded in several decisions of the Supreme Court, whether the lower Court was not in grave error in the interpretation it particularly Placed on Section 180(2) of the Constitution in arriving at its decision to affirm  
F the judgment of the trial Court - Grounds 1, 2, 4, 5, 6 and 8.*

*ii. Assuming without conceding that the lower Court was right in its interpretation of Section 180(2) of Constitution, whether it did not fall into grave error in its failure to properly interpret and apply the provisions of the new Section 180(2)(2A) of the Constitution -  
G Ground 3.*

*iii. Considering the clear provision of Section 180(2) of the Constitution vis-a-vis the 1st Respondent's claims at the trial High Court, whether the lower Court did not fall into grave error in affirming the declaratory reliefs granted by the trial High Court - ground  
H 7."*

At the hearing of this appeal on 9th December, 2011, having regard to the issues identified in the two Respondents briefs of argument and the three briefs filed by the three learned Senior Counsel invited to the hearing as amicus curiae, it was agreed that only two

issues arise for the determination of the appeal. They are;

1. Whether the nullification of the election of the 1st Respondent by the Court of Appeal also nullified the oaths of allegiance and office taken by the 1st Respondent on 29th May, 2007.

2. Whether the amendment to the 1999 Constitution in Section 180(2A) in 2010 is relevant in the determination of the tenure of office of the 1st Respondent. B

In his submission, learned Senior Counsel for the Appellants strongly argued that having regard to Section 180(2) of the Constitution, the spirit and tenure of the Constitution is that no elected Governor can spend more than four years per term or eight years of cumulative period of two terms. Counsel asserted that the tenure of the 1st Respondent actually commenced from 29th May, 2007, when he took his first oaths as the issue of the 2nd oaths is of no moment being irrelevant. C D

On the effect of the new amendment in Section 180(2A), of the 1999 Constitution, learned Senior Counsel said the amendment was made to correct or cure mischief and therefore urged this Court to allow the appeal in order to correct the interpretation of the Constitution by the two Courts below. E

For the 1st Respondent however, his learned Senior Counsel insisted that the nullification of the election of the 1st Respondent had the legal effect of wiping out the period from 29th May, 2007, until the conduct of the valid election which saw the 1st Respondent to the office again after taking the oaths on 30th April, 2008. He urged the Court to dismiss the appeal and affirm the judgments of the two Courts below. F

Learned Counsel to the 2nd Respondent was also of the strong view that the point of reference in the determination of tenure of the Governor, the 1st Respondent are the oaths of allegiance and office which by the provisions of section 185(1) of the 1999 Constitution, is a condition precedent to becoming a Governor. Learned Counsel observed that a tenure of office for a Governor cannot be predicated on two elections and that Section 180(2) of the Constitution is very clear, hardly requiring further interpretation and therefore urged this Court to dismiss the appeal. G H

The 3rd Respondent did not file a brief in this appeal but with the leave of this Court sought and granted on the day the ap-

peal was heard, learned senior Counsel was allowed to proffer oral submission. Learned Senior Counsel explained that in a sister appeal No. SC.356/2011 between the same parties, the 3rd Respondent in this appeal is the Appellant and in fact had filed the Appellant's brief of argument on 12th October, 2011, which he adopted and relied upon for the present appeal which he urged this Court to allow. He stressed that Section 180 of the constitution read together with other Sections of the constitution is quite plain that the tenure for a state Governor is 4 years as the oaths of office was not annulled in the judgment of the Election Tribunal; that since the amendment to section 180(2A) of the Constitution made in 2010 did not affect the right of a serving Governor, the amendment is not relevant to the present case and therefore urged the Court to allow the appeal. Taking into consideration of the constitutional importance of the issues arising for determination in this case, the Court had invited three prominent members of the Bar as Amicus Curiae to assist the Court in arriving at its decision. All the three learned senior counsel filed their comprehensive briefs of argument containing their views or the interpretation of the constitutional provision particularly in Section 180 of the Constitution and the effect of the judgments of the Election Tribunal and the Court of Appeal nullifying the election of the 1st Respondent as Governor of Adamawa state on 26th February, 2008. In his submission, learned Senior Counsel Chief Richard Akinjide, was of the view that the nullification of the election had the effect of wiping out the oaths of office taken by the 1st Respondent on 29th May, 2007 to make his actual tenure to begin with the oaths taken on 30th April, 2008, after emerging the winner of the re-run election. However Professor Olukonyinsola Ajayi and Professor Itse Sagay, Learned Senior Counsel took a contrary or different stand. The two learned academics were of the strong views that the Sections 180(1) and 130(2) of the Constitution must be read together as the appeal has raised a matter of Constitutional importance. It was argued by the learned Professors that since the Constitution does not talk of nullification of election while the Electoral Act does not talk of nullification of oaths of office, it is wrong for the Court to read into the Constitution or the Electoral Act provisions which are not there, stressing that the nullification of the election has no effect whatsoever on the validity of the oaths taken on assumption of office on 29th

May, 2007. These two learned Amicus Curiae were unanimous in asking this Court to allow this appeal as the tenure of the 1st Respondent truly and legally commenced on 29th May, 2007 and not on 30th April, 2008.

In resolving the two issues for determination in this appeal, my first point of call shall be the second issue or issue number 2 which is whether the 1st Respondent as Governor of Adamawa State is covered by the effect of the amendment of Section 180(2) of the Constitution by the introduction of Subsection 180(2A) which Provides -

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

As far as the law is concerned, this issue can be resolved by the application of the presumption against retrospective legislation, unless it is expressly provided for. In *Olaniyi v. Aroyehun* (1991) 5 N.W.L.R. 652 at 691 Nnaemeka-Agu JSC, (of blessed memory) stated the law particularly with regard to the interpretation and application of the provisions of the constitution as follows -

*“First the Constitution was not made to have retrospective effect. A Constitution like other statutes, operates prospectively and not retrospectively unless it is expressly provided to be otherwise. Such a legislation affects only rights which come into existence after it has been passed. See on this Smith v. Callander (1901) A. C. 297; also Re Snowdon Colliery Co. Ltd. (1925) 94 L. J. Ch. 305. Secondly, it is a fundamental principle of our law that rights of parties in an issue in litigation are decided on the basis of the substantive or organic law in force at the time of the act in question.”*

In the circumstances of this case therefore where the amendment to the Constitution came into force on 16th July, 2011, the Court below was right in finding that the provisions in the amended Section 180(2A) of the Constitution, was not application to the present case. The issue is accordingly resolved against the Appellants.

Returning to the 1st and in fact the main issue for determination in this appeal, it is whether having regard to the provisions of the Constitution of the Federal Republic of Nigeria 1999, particularly in Sections 180(1) and (2) and 182(1)(b), the lower Court was right in

holding that the tenure of office of the 1st Respondent commenced from the date he took his second oath of allegiance and oath of office on 30th April, 2008 as opposed to the date of 29th May, 2007, when he took his first oath of allegiance and oath of office. In other words whether it is the correct statement of the law as held by the trial Court and affirmed by the Court of Appeal that the nullification of the election of the 1st Respondent by the Election Tribunal which was affirmed by the Court of Appeal had the effect of also nullifying the oath of allegiance and the oath of office subscribed by the 1st Respondent on 29th May, 2007.

On the issue of the effect of the nullification of an election on the concept of nullity in law as had been pronounced upon by Courts, the learned trial Judge in his judgment cited and relied on a number of cases including *Adefulu v. Okulaja* (1996) 9 NWLR (Pt. 475) 668 at 672; *Labour Party v. INEC* (2009) 5 NWLR (Pt. 1137) 315 at 321; *Progressive Peoples Alliance (PPA) & Anor. v. INEC & 3 ORS.* (2010) 12 N.W.L.R. (Pt. 1207) 70 at 94; *Obi v. INEC* (2007) 11 N.W.L.R. (Pt. 1046) 565; *Attorney-General Anambra State v. A-G of the Federation* (2007) 12 N.W.L.R. (Pt. 1046) 1 and *Ladoja v. INEC & 2 ORS.* (2007) (Pt. 1047) 119 and after citing the provisions of Section 180(2) of the 1999 Constitution, came to the following conclusion -

*“Now having regard to the earlier cases I have cited on the legal implication of nullification of an election, coupled with the decision of the Supreme Court in the case of Obi v. INEC (Supra) I am left in no doubt that the nullification of the election of the Plaintiffs by the Court of Appeal has the legal effect of nullifying the oath of allegiance and oath of office which they all took on 29th May, 2007. This is based on the well known principle of law that when an act is declared a nullity, it becomes void ab-initio and nothing legal can be founded on it. Ex Nibilo Nihil fit, i.e. from nothing, nothing comes. Put another way you cannot put something on nothing and expect the thing to stand. It will collapse. This principle of law was re-echoed by the Supreme Court in the case of Sken Consult (Nig.) Ltd. v. Ukey (1981) N.S.C.C. P. 1 at 18 and 19 per the statement of Idigbe JSC and Kayode Eso JSC respectively.”*

This statement of the law on the effect of the nullification of an election by the trial Federal High Court was endorsed and af-

firm on appeal by the Court of Appeal. What the two Courts below failed to address however, is the fact that none of the cases cited and relied upon by the Courts, was directly on the point in issue that the effect of nullifying of an election is also to nullify the oath of allegiance and oath of office of any Governor elected under the nullified election. B

It is quite clear from the pronouncement of the two Courts below on the effect of the nullification of the election of the 1st Respondent as the Governor of Adamawa State, those Courts relied heavily on the well known and highly quoted orbiter dictum of Lord Denning in the case *Mcfoy v. U.A.C.* (1963) 3, W. L. R. 1409 at 1410 where the learned Lord said - C

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

It is quite plain from the above orbiter dictum that the context within which Lord Denning described an act which is void or a nullity and the effect thereof, was in relation with proceedings of Court which are void or a nullity for absence of the required jurisdiction to embark upon adjudication. Certainly that statement of law based on facts not material to the case then at hand, is not applicable to the present case having regard to the facts on the ground and the applicable law namely the Constitution of the Federal Republic of Nigeria 1999 and the Electoral Act 2010 (as amended). What the Election Tribunal and the Court of Appeal nullified was the election of the 1st Respondent and no more. E F G

Definitely, the nullification of the oath of allegiance and the oath of office taken by the 1st Respondent on 29th May, 2007, cannot be read into the judgment of the Election Tribunal or the Court of Appeal. In any case, the period between 29th May, 2007, the date of the first oaths taken by the 1st Respondent and the date of 26th February, 2008 when the Court of Appeal affirmed the nullification of his election to the office of the Governor of Adamawa State' had been clearly saved by law in the provisions of Section 143(1) of the H

Electoral Act 2010, which states-

*“143(1) If the Election Tribunal or the Court, as the case may be determines that a candidate returned as elected was not validly elected, then if notice of appeal against that decision is given within 21 days from the date of the decision, the candidate returned as elected shall, notwithstanding the contrary decision of the Election Tribunal or Court, remain in office Pending the determination of the appeal.”*

It is not in dispute that the 1st Respondent whose election was nullified by the Election Tribunal and affirmed by the Court of Appeal, by the application of the law in section 143(1) of the Electoral Act, 2010, effectively remained in office from 29th May, 2007, up to 26th February, 2008 when his election was stamped nullified. That period having been clearly saved from any possible effect of the nullification of the election, leaves all acts of the 1st Respondent performed within that period including of course the oath of allegiance and the oath of office subscribed by the 1st Respondent on 29th May, 2007, quite intact under the law.

Having regard to the clear position of the law in this respect, I am of the firm view that the two Courts below have no reason whatsoever under the law in finding in their concurrent judgments that the nullification of the election of the 1st Respondent also had the effect of nullifying the oath of allegiance and the oath of office of the Governor of Adamawa state he took on assumption of office on 29th May, 2007.

With the conclusion I have arrived at regarding the effect of the nullification of election on the oath of allegiance and oath of office taken by the 1st Respondent on 29th May, 2007, I find it quite unnecessary to embark on any exercise of interpreting the provisions of the 1999 constitution in section 180(1) and 180(2) which are quite plain and by which the tenure of office of the 1st Respondent as Governor of Adamawa state actually commenced on 29th May, 2007, when he was sworn in to assume office. His tenure of office under the constitution therefore effectively came to an end on 29th May, 2011 and not on 30th April, 2008 as erroneously held by the two Courts below.

It is for the above reasons and more comprehensive reasons given in the leading judgment of my learned brother, Onnoghen,

JSC, which I have had the privilege of reading before today and with which I am in complete agreement, that I also find merit in this appeal. Accordingly I also allow the appeal, set aside the concurrent judgments of the Federal High Court and the Court of Appeal. In place of the judgments of the Courts below now set aside, an order dismissing the claims of the plaintiff/1st respondent in the originating summons filed at the trial Court is hereby made. Consequently, with this outcome of the appeal, the 1st Respondent is ordered to vacate office immediately. I abide by other consequential orders contained in the lead judgment in relation to the sister appeals numbers SC.266/2011; SC.267/2011; SC.282/2011; SC.356/2011; and SC.357/2011; respectively including the order on costs.

### **CHUKWUMA-ENEH JSC**

These actions are of great national and constitutional importance and have been instituted against the background of apparent uncertainty of the tenure of the governors of the five (5) States of the Federation of Nigeria that is to say of Adamawa, Bayelsa, Cross River, Kogi and Sokoto of the Federal Republic of Nigeria following the rerun of their respective elections of various dates. These Governors namely Admiral Murtala Nyako of Adamawa State, Mr. Timipre Sylva of Bayelsa State, Mr. Liyel Imoke of Cross River State, Alhaji Ibrahim Idris of Kogi State and Alhaji Aliyu Wammako of Sokoto State upon the conduct of the 2007 general election have been returned as duly elected governors of their respective States. In compliance with the relevant provisions of the Constitution each of them has sworn to the Oaths of allegiance and of office on 29/5/2007 and assumed the executive functions of the governor of their respective States since that date. That notwithstanding, their respective elections have been successfully challenged and fresh elections ordered; the fresh elections have been conducted in each of the said five States. Each one of them has again won his election and again, has gone through the ceremonial formalities of taking the Oaths of allegiance and of office a second time. These are some, of the crucial facts of these matters. Further facts and circumstances surrounding these cases have been elaborately set out in the leading judgment of my learned brother Onnoghen JSC. I see no need traversing through these facts copi-

ously set out in that segment of his judgment all over again for this short contribution. I adopt them for this contribution and I proceed therefrom to deal with the issues properly raised in this matter for resolution save to add that the said issues raised for determination are as of such national and constitutional importance for the growth  
 B of our nascent democratic institutions in this country that this court in its usual tradition has invited *amicus curiae* namely Chief Richard Akinjide SAN, Olukonyisola Ajayi, SAN and Prof. Sagay SAN to assist the court with their briefs of argument on the issues raised for deter-  
 C mination in these matters. Each of them has responded and filed a brilliant brief of argument that has lived up to the court's expectations. The Court is greatly indebted to them for their various insightful views on these matters which in no small measure have assisted the court in expounding the instant constitutional provisions in the  
 D storms eye impartially. See *Allen v. Sir Alfred Me Alpine & Sons Ltd.* (1968) 2 QB 229 at 266 F-G on the duty placed on an *amicus curiae*.

However, the totality of the issues in this matter is bottomed on the fundamental Issue raised for resolution to wit: whether in view  
 E of the clear provisions of Section 180 the lower courts have rightly held that the tenure of office of the governors commenced from the date each one of them has taken the second oaths of allegiance and of office in 2008 vis-a-vis the first oaths of allegiance and of office that is the first swearing in on 29/5/2007. And a sub-issue of whether  
 F Section 180 (2A) of the Constitution of the Federal Republic of Nigeria (as amended) is applicable to the facts of this case.

The main question has to be seen in the context of the publications by Independent National Electoral Commission (INEC) of  
 G the impending fresh elections with regard to the governorship positions in all the thirty-six states of the Federation. In other words, implying that the tenure of each and every one of the governors of the 36 States of the Federation of Nigeria has to expire by effluxion of time on the same date that is 29/5/2008 (i.e. on a single four-year  
 H term) calculating the start off time from their first oaths in office irrespective that the instant five of them as named above have again to be sworn in respectively a second time as the governors of their respective States at various dates after the re-run of their respective elections.

It has to be noted that there is a consensus that a four-year term to a cumulative maximum of eight years certain has been provided in the Constitution as the tenure for governors as per Section 180 of the Constitution commencing from the swearing in. The five governors' position in these matters on this question is that their respective terms in office for four-year certain started to run from the second swearing in on various dates after their re-run elections implying that the period of their tenure has started to run from the dates after the second swearing in, in as much as their first oaths of allegiance and of office have been annulled with the nullification of their respective elections resulting in the re-run elections. They have relied on the decision of this court in *Obi v. INEC (2007) AFWLR (pt.378) 1180* for so contending. It is not disputed that the period each one of them has already spent in office to now by any calculation is over four years. It is against this background that one has to examine and discuss the singular issues raised as herein-before stated.

In opposing these surmises, it has been submitted that the tenure of the five governors have since expired that is to say, computing the period of their four-year term as said earlier from the date of their first oaths of allegiance and of office (i.e. 29/5/2005) which they have now contended has been nullified as well as their respective elections.

Let me take the opportunity to say that Obi's case (cited above) heavily relied on by the governors and the instant matters, to say the least are not founded on similar facts and circumstances as to make Obi's case applicable on all fours to the instant cases. In Obi's case the question resolved by this court on the critical issue raised in the case is as to the date when his (Governor Obi) term of office will end as per the Constitution and upon the nullification of Dr. Ngige's election which is not the case here as to whether the tenure of the five governors commenced after the nullification of their respective first elections and on successfully winning of their re-run elections. It could have been a different ball game if new persons not being any of the named governors had emerged as winners in the re-run elections as governors then and only then could the principles in Obi's case become relevant and applicable. It is important to bear this point in mind as the facts of that case are inapplicable to the facts of these matters. Whatever is outside the said ratio decidendi of that case is

obita. Therefore, Obi's case cannot properly form the basis for supporting the view that the 'instant governors' first oaths of 29/5/2011 cannot be the reference point from which to compute their four-year term. As I see it what is before us here is the issue of tenure of the governors as against in Obi's case as to whether Obi's four-year term  
 B will start to run from the date Dr. Ngige has been sworn in for the residue of his term that is to say, when will his term of office end.

At this stage I make the point that the instant Constitution is the grundnorm and the supreme law of this country. See *Anka v. Lokoja* (2001) 4 NWLR (Pt.702) 178 and *Ifegwu v FR.N.* (2001) 13  
 C NWLR (Pt.729) 103. In espousing its supremacy it has provided in Section 1(1) to (3) of the Constitution that its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria. It has also made provisions for supervising as per  
 D by checks and balances of all the democratic institutions of government under it including the Executive, the Legislature and the Judiciary i.e. democratic institution created by it. See *Governor of Lagos State v. Ojukwu* (1986) 1 NWLR (Pt.18) 621; (1986) 17 NSCC (Pt.1) 304. One crucial provision is that any law inconsistent with it is void  
 E to the extent of its inconsistency. Constitutions as the instant constitution are organic and dynamic and are framed to govern and control the rights and obligations of the citizens of a country for now and for the future. The courts are the guardian of the Constitution, so have  
 F to have the constitutional object/plan in mind when interpreting its provisions to give it purposive effect. Arising from the instant Constitution it is also appropriate to make the point that succession to the office of Governor as provided in the Constitution is only through a credible election conducted in compliance with the provisions of the  
 G Constitution and the Electoral Act. And clearly the tenure of office of the Governors as prescribed under the Constitution is for four years certain for a single term and eight years maximum for two terms certain. Against the foregoing premises as well as the facts of these matters which have been alluded to for positioning the subject-matter  
 H of these cases an observation as to the principles of interpretation has to be made earliest in that in examining the provisions of the Constitution as with Statutes, it is crucial to adopt a more sensible and reasonable construction so that where there are two possible constructions of a provision or enactment as in this matter the more

reasonable and sensible construction of it should prevail as preferred and avoid incongruous results and absurd situations. To achieve that purpose the court has further to adopt the basic approach of liberal interpretation as enunciated in such cases as *Rabiu v. The State* (1980) 8-11 SC.130 by giving the words used in the Constitution their simple literary and natural meaning in other words as an aid to achieving a broad or liberal construction as against a narrow interpretation and where the context dictates as used in their popular senses and so get to the true meaning of the words as intended by the framers of the Constitution; in this way get to the true intendment of the Constitution which is the most primary goal of constitutional interpretation. Where the meaning of the provision as per the words used is clear, however, there is no need resorting to any other methods of interpretation than to go ahead to interpret the provisions literally. Even more so, the court has to approach this task by further examining the whole enactment i.e. the provisions/enactment in the storm's eye and every part of it vis-a-vis the other constitutional provisions so as to arrive at a consistent constitutional structure or plan and so to attain true intendment/purpose of the provision/enactment as per the constitution. The same principle is discernible and so applicable in considering the said provisions under scrutiny against other provisions of the Constitution dealing with similar subject matters in one way or the other as in this case on the tenure of governors vis-a-vis the tenure of the President, and members of the National Assembly, and Houses of Assembly to achieve a more consistent construction as per their tenure in office. In sum, the court's task in construing the instant provisions, as I conjure it, is captured by the court appreciating the general object that the provisions/enactment is to serve and so give the words used in the provision their natural and literal meaning in order to get to the object of the enactment and thus attain the intendment of the Constitution. See *Rabiu v. The State* (supra). In that way the enactment of the Constitution being construed is expounded according to the enactment's manifest or expressed intention via the words used in the enactment. See *Attorney-General for Canada v. Hallel & Carey Ltd.* (1952) AC 427 at 447.

It is against the backdrop of the foregoing parameters that I go ahead to examine the provisions of Section 180 and 182(1)(b) of the Constitution which are set out as follows:-

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

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

*or*

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

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

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

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

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

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

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

*182(1) No person shall be qualified for election to the office of Governor of a State if-*

*F (a) Subject to the provisions of section 28 of this Constitution, he has voluntarily acquired the citizenship of a country other than Nigeria or, except in such cases as may be prescribed by the National Assembly, he has made a declaration of allegiance to such other country; or*

*G (b) He has been elected to such office at any two previous elections.”*

*H* The words used in the above provisions are clear and as they are clearly unambiguous have to be literally interpreted. By a combined reading of the provisions of Section 180 and 182(1)(b) it is my considered view that the provisions have emphasized and delimited the term/period of the Governor’s tenure to be four years certain and not exceeding a cumulative maximum of two terms certain of eight years of four-year single term starting from the date of the first swearing in - in this case - 29/5/2008. It is also clear therefore that

after eight years the governor must vacate his office as his tenure has automatically ceased. The commencement of his term of office is from the date he has sworn the Oaths of allegiance and of office after firstly amongst other things completing the business of his assets declaration. To put to rest the contention as to the eight-year term i.e. the cumulative maximum and when it starts off i.e. it will otherwise B end; vis-a-vis the date of his first Oaths of allegiance and of office. I refer to the cases of Ladoja V. INEC (2007) 12 NWLR (Pt.1047) 615 and Obi v. INEC (2007) AFWLR (Pt.378) 1180. It is evident that computing a single term of four years which has commenced on 29/ C 5/2007 terminates on the 28/5/2011; thus the construction is cogent with the words used in the said provisions and clearly within the ambit of the intendment of the Constitution.

Again, having construed the instant provisions against similar provisions in the Constitution dealing specifically with the tenure of D other elected persons in public offices as for example under Section 105 of the Constitution that is to say dealing with the tenure of the members of the State Houses of Assembly vis-a-vis the governors there can be no doubt to my mind that the foregoing construction of these provisions are clearly consistent with the true intendment of the E Constitution; also I have no doubt that they have prescribed a maximum period of eight years of four years single tenure for the governors as per their manifest and expressed intention. The provisions of Section 180 vis-a-vis Section 105 of the Constitution have showed a F consistent constitutional plan of prescribing a four-year tenure for these elected persons although with different ceilings - four years certain for the members of the House of Assembly with no ceiling as to the number of terms they could serve as members of the House; as G for the governors a maximum term of eight years certain of four years single term. For these findings I have referred and relied on Balonwu's case.

By analogy I refer to the findings of this court in Balonwu's case; construing Section 105 of the Constitution this court has held H that the starting point of the four-year tenure as prescribed by the Constitution for the lawmakers of the Houses of Assembly is to be computed from the first sitting of the House and it determines automatically at the expiry of four years certain and not four years from the date of the Governor's proclamation or taking of any oaths of

office. Thus supporting the view which I have expressed herein of a constitutional plan or object of the framers of the Constitution for prescribing a four-year single term to a maximum of eight years certain for governors and for the lawmakers a four-year certain which is to determine automatically at the expiry of four years, although, I  
 B may repeat for the lawmakers there is no ceiling to the number of terms they could serve as members.

Thus the Constitution has de-emphasized, in fact, has demystified the significance of oaths of allegiance and of office and  
 C the incidences of proclamation in computing the period of the terms for elected persons. In this regard my constructions of the provisions of Section 105 being plain and unambiguous are in accord with the intendment of the Constitution pronounced by this court in Balonwu v. Governor of Anambra State (2009) 18 NWLR (Pt.1172) 13. In  
 D my view Balonwu's case, the principles of interpretation expounded in Balonwu's case are applicable mutatis mutandis to these cases.

That the tenure of governors is a four-year single term is further confirmed by this court in the case of Ladoja v. INEC (2007) 12 NWLR (Pt.1047) 115 where this court considered the poser as to  
 E whether the tenure of office of a Governor of a State can be extended to compensate for the period out of office due to his unlawful impeachment; this court took the view that neither the Supreme Court nor any other court has the power to extend the period of four years  
 F clearly prescribed for a governor beyond the terminal date measured from the date of his oath of office without doing violence to the Constitution and that the court can only interpret the Constitution but cannot re-write it. The fact that the period of Governor Ladoja's four-year tenure has been truncated by art(sic) unlawful act of impeachment  
 G has been of no moment. This has been the case of Dariye the former Governor of Plateau State. See F.R.N. v. Dariye (2011) 12 NWLR (pt.1265) 521.

The significance of having reached these conclusions is that the court has no jurisdiction to extend by judicial fiat the tenure of  
 H Governors (and even then the members of the House of Assembly) beyond the time upon which their tenure is specified to determine as expressly provided by the Constitution notwithstanding as has, been urged - forcefully on the court by the governors on the proposition that as regards an "*incumbent*" governor who has contested a re-run

election upon the nullification of his election his term of office has to start to run from the first oaths of allegiance and of office, in this case as sworn on 25/5/2007. And so it follows that unless a person be he a “governor” or a person seeking an elective office has been duly elected as provided by the Constitution and relevant Electoral Act the person cannot assume any elective office as governor. B

And that by the provisions of Sections 180 and 182 (1)(b) it is clearly provided that at the expiration of four years for a single term to a maximum of eight years certain that is for two terms, the governor ceases to hold office in accordance with the Constitution. C So that once the tenure starts off from the date the Governor has been sworn in as in this case on 29/5/2008 the term cannot be abridged or brought to an abrupt end other than as prescribed by law and the Constitution including where the governor dies whilst holding office, or he resigns from office or by any form of permanent D incapacity or impeachment under Section 188 and 189 of the Constitution or he vacates office after the expiry of the first term of four years or automatically on completing the eight years cumulative maximum period in office; otherwise the governor exhausts his four-year E tenure for the first term and indeed to the maximum of eight years in office without any interruption although subject to his re-election for the second term.

It is my view that where an incumbent governor (as any of the instant five governors) has won his re-run election restricted to the persons who took part in the earlier election that the nullification of his election resulting in the re-run election does not affect computing his tenure of a single term of four years to a maximum term of eight years certain in office from his first swearing in as in this case on 21/5/2007. F G

Clearly from the circumstances surrounding the re-run elections although not part of the Constitution and particularly, the provision of the Constitution for the appointment of the Speaker of the relevant State House of Assembly to act as governor until the election of a governor to fill the vacancy are consistent with the intention of the Constitution to avoid a legal vacuum in the office of governorship and that the business of government being continuous must go on. H

It also follows from my reasoning above that the findings on

the question of nullification of the elections of the five governors severally by the two lower courts to the effect that it has wiped out their oaths of allegiance and of office sworn on 29/5/2007 as well as the period the governors have so occupied that position qua “*governor*” before their respective re-run elections have been rendered impotent as having been made in error as baseless. I therefore reject respectfully the submission that the Oaths and the period of their respective tenure prior to the nullification of their elections are wiped out with their elections; even as it is submitted that their “*executive acts*” carried out or done before the nullification remain valid. This interpretation is illogical and as I have reasoned herein tends to produce incongruous results. It is as absurd as it is unreasonable and cannot be the intendment of the Constitution as exemplified by the cases of Balonwu, Ladoja and Dariye. It cannot be right to proffer that while all the executive acts of the governor are too numerous to set out here are construed as valid that their elections simpliciter and the oaths of office are invalid being null and void and have been wiped out. To hold to this view of the incidences of the said nullification of their elections in this context is like one speaking from both sides of his mouth at the same time. It is stretching the incidences of the nullification of their elections beyond breaking point just as the above distinction between what is valid or invalid is artificial absurd and tending to produce incongruous results not within the intendment of the Constitution and is therefore unacceptable. If I may repeat the provisions of Section 180 as expounded above have provided for a maximum of eight years for a governor and in this case the term starts from the oath taken on 29/5/2008. The incumbent governors have overstayed their first term of four years without having been re-elected to continue in that office.

If I may repeat the Constitution has simply de-emphasized the important ceremonies of swearing in of governors. So that the period the governors have spent before the nullification of their elections has to be reckoned with in the computation of their terms in office as governors and I so hold. Let me add that it is discernible from the tenor of the instant provisions that the framers of the Constitution are concerned more with prescribing the length of the tenure against the backdrop of the start off or the precise date the period of their tenure in office as governors has commenced and from

which to compute the expiry date of their tenure that is to say with their tenure simpliciter. Besides the act of swearing in the governors separates the date of their successful elections to that office, that date is not relevant for the computation of their terms in office following the nullification of their elections. I do not in the circumstances consider it necessary therefore to examine any further its implications apart from the observations as situated above. B

In sum, therefore, I hold that the provisions of Section 180(1) and (2) clearly stipulate a four-year tenure commencing from the first oaths of allegiance and of office and subject to that a Governor has a cumulative maximum of eight years in office to serve in that capacity. By the language of these provisions, there is no room to suppose that the eight-year period is to be affected by the incidences of the nullification of their elections. Their tenure if I may repeat as governors' remain completely unaffected by these incidences of the nullification of their election (as is contended by the governors) and stand to be computed from the various dates of their first swearing in. And so I do not see discussing the incidences of the nullification of their elections as helpful in resolving the issues raised here on these matters. I have therefore decided not to give the incidences of nullifying their election any undue attention. C D E

Coming to the sub-issue, the task before this court has to be considered and rationalized on the backdrop of the provisions of Section 180(2A). In that regard I refer to the provisions of Section 180(2A) as set out above which in my view have been enacted to clarify the position of the tenure of office of governors and in a way but without deciding the same other persons occupying elective offices. This court is quite aware that the provision not having been in existence at the time of the election or re-run elections vis-a-vis the subject matter of the enactment it is inapplicable to this case. Even then it is not retrospective; however this court cannot ignore it completely as the provision has provided for where a re-run election has taken place as in this case and the person who earlier on has won in the election (which in this case are the 5 (five) governors) and has been sworn in as governor has again won on the re-run election - the foregoing has in a way covered the crucial scenarios in this matter. As provided in Section 180(2A) the period spent in office before the date of the election has been annulled shall be reckoned with in com- F G H

puting the four-year term of governors. The said subsection is not retroactive as I said above but as a constitutional provision coming in the wake of these matters and at this critical point in time when the court as the apex court has been called upon to interpret section 180 of the Constitution vis-a-vis the issues raised for determination before the court. It (the court) will be failing in its duty if not even too timorous of the court to ignore any reference to the said provision in this judgment vis-a-vis its implication in clarifying the present constitutional impasse that is before the court for resolution particularly so where it would not cause violence to the intended object of the Constitutional plan/object and it accords with the purposive approach to interpreting constitutions. And so having these considerations in mind I have no qualms in holding upon that backdrop that the time spent in office by each of the five governors before the date their respective elections were annulled shall be taken into account in computing the term spent in office. And I so hold. For purposes of further clarification, on the combined reading of subsections 180(1), (2) and (2A) together each of the five governors has exceeded his four-year term. I say no more on that question.

For all this and the more and fuller reasons contained in the lead judgment ably put by my learned brother Onnoghen JSC with which I agree I allow each of the five appeals as per suits to wit: SC.141/2011, SC.266/2011, SC.267/2011, SC.282/2011 and SC.357/2011 and also abide by the orders contained in the lead judgment.

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### **ADEKEYE JSC**

I was privileged to read in draft, the judgment just delivered by my learned brother, W.S.N. Onnoghen, JSC. I agree with his reasoning and conclusion. The appeals - SC.141/2011; SC.266/2011; SC.267/2011; SC.282/2011; SC.356/2011 and SC.357/2011 raised a vital constitutional question on which this court must express its opinion as the final Court.

The appeals emanated from the decision of the Court of Appeal, Abuja, delivered on the 15th day of April, 2011. By that decision, the lower Court dismissed the consolidated appeals Nos. CA/A/113/2011; CA/A/117/2011; CA/A/118/2011; CA/A/119/2011; and

CA/A/128/2011; and affirmed the decision of the Federal High Court, Abuja, delivered on the 23rd of February 2011. The decisions of the two lower Courts affected the tenure of office of the under mentioned governors -

- a. Admiral M. Nyako of Adamawa State
- b. Timipre Sylva of Bayelsa State
- c. Ibrahim Idris of Kogi State
- d. Aliyu Wammako of Sokoto State
- e. Senator Liyel Imoke of Cross River State

B

by pronouncing that the relevant point at which the four year tenure of the Governors is to be calculated, is the date they took their second Oaths of Allegiance and of Office in 2008.

C

The appellants in the appeal SC.141/2011 Brigadier-General Mohammed Buba Marwa and Congress for Progressive Change (CPC) came into these appeals as interested persons upon the leave granted them by this Court on the 8th of July, 2011.

D

The background facts of the case are that the 1st respondents in the consolidated appeals won the governorship election in their various States in the general elections conducted in all the thirty-six States of the Federation on the 14th of April, 2007. Their electoral victories at the polls were short-lived as same were successfully challenged before the election tribunals. The Independent National Electoral Commission (INEC) was ordered to conduct fresh elections or re-run elections in all these States within ninety days as required by law. During the period, the Speaker of the House of Assembly of each State was sworn in as Governor according to the Constitutional provision. The re-run elections were held in the affected States at various dates in 2008. The 1st respondents won these re-run elections. They took another Oath of Allegiance and Office and were installed as Governors on various dates in 2008 as follows -

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F

G

- a. Admiral M. Nyako of Adamawa state on 30/4/2008
- b. Timipre Sylva of Bayelsa State on 29/5/2009
- c. Ibrahim Idris of Kogi State on 5/4/2008
- d. Aliyu Wammako of Sokoto State on 28/5/2008
- e. Senator Liyel Imoke of cross River state on 28/8/2008.

H

These governors declined to vacate office when their term of four years expired calculated from the 29th of May, 2007. They based the calculation of their tenure of office on their second Oath of Alle-

giance and Oath of Office taken after the re-run elections in 2008/2009.

B The crucial constitutional question for determination arose from the events of the two elections and the two oaths of office and allegiance administered on these governors. In view of the fact that the issues raised for determination in each of the appeals are identical, this Court decided to hear and determine appeal SC.141/2011 on its merits. The decision in the appeal shall be applicable to the other five appeals.

C The 1st respondent, Admiral Murtala Nyako was elected Governor of Adamawa State on 14th April, 2007 and took his oath of office on the 29th of May, 2007. The election was later nullified by the Court of Appeal and a rerun was ordered by the Court of Appeal. The 1st respondent won the re-run election and was again sworn D in as Governor on the 30th of April, 2008. The 3rd respondent, Independent National Electoral Commission on 1/9/2010 commenced preparation to conduct general elections in Adamawa State and fixed the date for April, 2011. The 1st respondent won the primary of his party the 2nd respondent, Peoples Democratic Party to contest for E the governorship seat in Adamawa State. Likewise, the 1st appellant Brigadier-General Buba Marwa was sponsored by his party, Congress for Progressive Change and cleared by the 3rd respondent, INEC to contest the election as candidate of the 2nd appellant, Congress for Progressive Change.

F The 1st respondent took an originating summons in the Federal High Court, Abuja, asking for the determination of his tenure and contending that his tenure shall not expire until the 30th of April 2012; as by virtue of Section 180 (2) (a) of the 1999 Constitution his G four year tenure commenced on the 30th of April, 2008, when he took oath of office and oath of allegiance. He prayed for an order of injunction to restrain the 3rd respondent from conducting any governorship election in Adamawa State as planned. The Federal High Court in the judgment delivered on the 23rd of February, 2011, H upheld the contention of the 1st and 2nd respondents that the tenure of the 1st respondent commenced from the date he was sworn in after the fresh election on the 28th of April 2008 to terminate on the 28th of April, 2012. The appellants had no authority to contest for the office of the Governor of Adamawa State in 2011. The 3rd re-

spondent appealed to the Court of Appeal. The application to be joined by the appellants was refused. On the 15th of April 2011, the Court of Appeal dismissed the appeal of the 3rd respondent and affirmed the judgment of the trial Court. INEC had to put the Governorship election in Adamawa State in abeyance until April, 2012. At the hearing of the appeal on 28/11/11, the appellants adopted and relied on the appellants' joint brief filed on 14/7/2011. B

Three issues were settled for hearing and determination by this Court. In the 1st respondent's brief filed on 21/9/11, five issues were settled for determination.

In the 2nd respondent's brief of argument filed on 5/10/11, three issues were distilled for determination. C

The 3rd respondent did not file any brief in this appeal but adopted and relied on the two issues formulated by the appellant in a sister appeal SC.256/2011. The brief was filed on 12/10/11. D

The 2nd respondent filed Notice of Preliminary Objection which was argued in the Brief filed on 5/10/11. The grounds of the objection are that:

(a) The subject-matter of the appeal has become a mere academic issue. E

(b) The appeal itself is unconstitutional.

(c) Issue 3 formulated for determination and ground 7 upon which it was based did not arise from the judgment of the lower Court.

The 2nd respondent relied on the case of *A-G Federation v. ANPP* (2003) 18 NWLR (Pt.851) pg. 182 to hold that anybody seeking in 2011 a pronouncement of this Court to the effect that the tenure of the 1st respondent lapsed in May, 2011 is an invidious invitation to engage in mere expression of opinion, moot debate and academics which the Courts are precluded from engaging in as it would amount to an exercise in futility and a waste of precious judicial time, energy and resources. F

The 1st respondent in the appeal SC.357/2011 Alhaji Ibrahim Idris objected to the appeal on the basis that the appellant, INEC lacks the competence and capacity to maintain the appeal being a neutral and independent body by virtue of the law establishing it. H

I hold like my brother in the lead judgment that the preliminary objection is misconceived. The germane issue involved in this

appeal and the crucial question to be resolved by this Court in its constitutional role as the apex Court, is complex and of constitutional importance particularly at this stage of our nascent democracy. It is my contention that the issue raised by this appeal is of vital constitutional importance in the running of a democratic system of government. It is a perplexity not envisaged by the framers of the constitution. This can only be resolved through interpretation by the court. This court shall be failing in its constitutional role if it allows this poser to be swept under the carpet under the guise of an academic or hypothetical question. Any issue predicated on the interpretation of the serious constitution question can never be hypothesis or academic. The art of governance itself is an evolution - it will continue to improve or grow through experience. The objection is therefore frivolous and accordingly over ruled.

*"From the events of the two elections of 2007 and the re-run of 2008, the two oaths administered to the governors affected in the consolidated appeals and particularly in the appeal SC.141/2011 under consideration is whether the term of office of the governor expired at the end of the four years calculated from the 29th of May, 2007, or he is entitled to another tenure of four years calculated from the date of taking the second oath of allegiance and oath of office following the re-run election of 2008."*

(b) The sub-issue is whether Section 180 (2A) of the Constitution of the Federal Republic of Nigeria as amended, is applicable to the facts of this case.

The Federal High Court and the Court of Appeal, Abuja, are of the view that the relevant point at which the four year tenure of the Governor is to be calculated is the date the Governors took their second oath of allegiance and oath of office in 2008.

The summary of the judgment of the two lower courts are as follows-

(1) Under Section 185 (1) of the 1999 Constitution of the Federal Republic of Nigeria election is a condition precedent to the taking of oath of allegiance and oath of office before beginning to perform the functions of the office of the governor.

(2) Oaths based on an election determined to be unknown to law by reason of being a nullity cannot be the baseline to calculate or reckon the four years terms of office for a governor for the pur-

pose of Section 180 (2) of the Constitution.

(1) When an election is declared a nullity everything premised on the nullified election is in the eye of the law deemed not to have existed.

(2) The amendment to Section 180 (2) of the 1999 Constitution which came into effect on 16th day of July, 2011 as contained in Gazette No. 50 Vol. 7 cannot retrospectively be applied to affect actions or vested rights prior to its commencement.

Chief Olanipekun, learned Senior Counsel for the appellants-Brigadier General Mohammed Buba Marwa and Congress for Progressive Change submitted based on paragraph 4.01 of the appellant's brief filed on 14/7/2011 that this appeal is of constitutional importance. According to Section 180 (2) of the Constitution except the Nation is at war, no elected Governor shall spend more than four years per term and 8 years cumulatively. Issue of oath is subsidiary and of no moment. The amendment to the Constitution refers to a re-run election and the previous term shall be read together with the new term. The mischief here was not intended by the Constitution but imported into it. The amended Constitution does not refer to oath taking. The interpretation of the two lower Courts is a very dangerous trend which will become a judicial albatross. The issue of the 2nd oath is a secondary issue. The tenure of Governors cannot be in perpetuity. The Court is urged to allow the appeal. The learned Senior Counsel cited cases from the list of additional authorities. *Manbury v. Madison* 31 US 515 (1832) *Labour Party v. INEC* (2009) 6 NWLR (pt.1137) pg. 315 at pg. 334.

Chief Agabi, learned Senior Counsel for the 1st respondent - Admiral Murtala Nyako (retired) submitted that a Governor whose election was annulled is not an elected Governor. There is no 2nd oath where an election is annulled - everything goes with it including the oath. Prior to an annulment, the term spent in the office by the Governor following a revoked election does not count. The annulment of the election of the Governor does not affect the validity of the steps taken by the Governor. The decision of the two lower Courts followed the doctrine of stare decisis. This Court is urged to dismiss this appeal.

Chief Olusola Oke, learned Counsel for the 2nd respondent submitted that the oath of office must be the point of reference. All

the steps taken by the Governor whose election has been annulled are not relevant factors to determine his tenure. Under Section 181 (2) (a) & (b), oath is a condition precedent to becoming a Governor. When an election is annulled, the oath goes with it. There is no Governor without an oath. Oath and election are like Siamese twins. By virtue of Section 185 (1) an oath of office cannot precede elections. A term of four years cannot be predicated on two elections; one valid and the other invalid. Section 180 refers to one election only. The mischief created by multiple elections has not been cured by the amendment to that section in the new constitution. Oath is mandatory. You cannot revalidate an election that is not valid through any mathematical calculation of the tenure. No provision to make the new amendment retrospective. The Court must not interpret to provoke absurdity. This Court is urged to dismiss the appeal and affirm the concurrent judgment of the two lower Courts. The learned Counsel cited cases like *Ladoja v. INEC* (2007) 3 NSCQ pg. 247 *Adewunmi v. Government of Ekiti State* (2002) 1 SCNJ (pt. 2-7) pg. 32; (2007) 12 NWLR (Pt. 1047) pg. 119.

Chief Awomolo, learned Senior Counsel for the 3rd respondent - INEC who did not file any brief for this appeal, adopted the brief of the appellant in a sister case SC.356/2011. The appellant's brief was filed on 12/10/11. He emphasized two points on the Constitution and the computation of tenure prior to the amendment to Section 180 (2). The determination of the tenure fixed as four years while reference to the oath of office is not the key issue. What was annulled in the judgment was the election; reference was not made to the annulment of the oath of office. The intendment of Section 180 is to limit the term of tenure to four years. Section 180 (2) (2) (a) as amended, is meant to give real meaning to Section 180. The Court is urged to allow the appeal.

In view of the constitutional importance of the legal question raised in this appeal, to the development of the democratic governance of this country, three learned Senior Advocates were invited to appear and present their views as *amicus curiae* by this Court. As a Court appointed *amicus curiae*, Chief Richard Akinjide SAN in his 18 page brief dated the 28th of November 2011 reminded himself of the duty placed on him by law as stated by Lord Salmon (as he then was) in the case of *Allen v. Sir Alfred McAlpine & Sons Ltd.* (1968) 2

Q.B. 229 at 266 which was to help the Court by expounding the law impartially. On pages 3-4 of 18 of the brief Chief Akinjide identified the two issues for determination as -

(a) Whether the calculation of the four year tenure of the 1st respondent as the Governor of Adamawa State ought to be reckoned from May 29, 2007, when the 1st respondent originally took his oath of office and oath of allegiance on the strength of the April 14, 2007, governorship election which was nullified by the Election Tribunal and affirmed by the Court of Appeal, or ought to be reckoned from April 30, 2008, when the 1st respondent took his oath of office and oath of allegiance on the strength of the April 25th, 2007 fresh election ordered by the Court of Appeal.

Put another way;

Which is the extant oath of office and oath of allegiance - that of May 29, 2007 or that of April 30, 2008.

(b) Is section 180 subsection (2) (a) of the Constitution of the Federal Republic of Nigeria introduced by Section 18 of the Constitution of the Federal Republic of Nigeria (First Alteration) Act 2010 applicable to the term of office of the 1st respondent.

Chief Akinjide submitted the views that the oath of allegiance and oath of office taken by the 1st respondent on May 29, 2007, based on the nullified election cannot be a valid reference point for the calculation of the four year term of office. His four year tenure started to run in law, following the April 30, 2008, oath of allegiance and oath of office taken pursuant to the re-run election as ordered by the Court of Appeal. Sub-section (2) (2) (a) of Section 180 of the Constitution as amended, is totally inapplicable to this case. Subsection 2 (2) (a) of Section 180 of the Constitution as amended has no retrospective application and is only applicable to the tenure of offices in respect of elections conducted post July 16, 2010. The learned Senior Counsel referred to cases - *Global Excellence Communication Limited v. Duke* (2007) 16 NWLR (Pt.1059) 22, *A-G Lagos State v. Eko Hotels Ltd & Anor* (2006) 18 NWLR (Pt.101 1) pg. 378, *A-G Bendel State v. A-G Federation* (1981) 10 SC pg. 1, *Peter Obi v. INEC* (2007) 11 NWLR (Pt.1046) pg.565, *FRN v. Dariye* (2011) 13 NWLR (Pt.1265) pg.521, *Ladoja v. INEC* (2007) 12 NWLR (Pt.1047) pg.119, *Ehirim v. I.S.I.E.C.* (2008) 15 NWLR (Pt.1111) pg.443, *Lakanmi v. A-G (West) & ors* (1970) 6 NSCC pg.143.

Mr. Koyinsola Ajayi SAN as amicus curiae in his brief filed on 9/11/11; the learned Senior Counsel proffered vehement argument and submission before coming to the conclusion that -

(a) By the combined provisions of Section 180 (1) and 182 (1) (b) of the Constitution of the Federal Republic of Nigeria, a person can hold the office of governor of a state only for four years per term and that a governor has maximum period of 8 years in office.

(b) The nullification of the elections of the 1st respondent and the other beneficiaries of the decision of the lower Court did not result in the nullity of the oaths of allegiance and oaths of office taken by them as governors of their respective states.

(c) The relevant period of computation of the tenure of the 1st respondent is 29th May, 2007, i.e. the date he took the first oath of allegiance and oath of office as the governor of Adamawa State and not when he took his second oath of allegiance and oath of office in 2008.

(d) The period the 1st respondent spent in office as the Governor of Adamawa State prior to the nullification of the election that brought him to office should be reckoned with in the computation of his term of office.

The possibility of remaining in office in perpetuity is without doubt not within the contemplation of Section 180 (2) (a) of the Constitution of the Federal Republic of Nigeria. The Constitution focused on a date and not on the oath of office. The oath of office must not be the yardstick for judging the commencement of tenure of a Governor. He cited the case of Balonwu v. A-G Anambra State (2000) 18 NWLR (Pt.1172) pg.13 at 43.

The 2nd oath taken by the 1st respondent is superfluous. The amendment to the Constitution is irrelevant to this appeal. He urged the Court to determine the appeal in favour of the appellants.

Professor Itse Sagay, SAN in his brief filed on 13/10/2011 aired his opinion that Section 180 (2) of the Constitution does not envisage a situation in which a person can physically occupy the position of a Governor for more than four years in a single tenure.

2. An election is only nullified effectively from the date of judicial pronouncement. The decision of a Court in an annulled election is constitutive of that nullity and therefore cannot have a retrospective effect on the tenure and actions taken by the governor be-

fore the nullification order.

3. It follows that both the pre-nullification tenure and acts flowing from it are recognizable by law as valid legal effect of the annulled election.

This means that the period spent in office as governor by the person concerned must count as part of his tenure. B

4. The court ought not to lend its weight to an immoral or illegal act neither will it allow a person to benefit from his own wrong or a wrong in his favour.

5. Opening the constitutional gate to an indefinite tenure in office by governors is not only contrary to the provisions of the constitution and public policy but will lead to gross abuse in the Nigerian type of society. C

The learned Senior Counsel explained that what is challenged is self succession of one enjoying benefits of office. Tenure elongation is an aberration which must not be encouraged. D

The legal question raised in this appeal is straightforward and within narrow limit. This Court is saddled with the responsibility of interpreting sections of the Constitution relevant to the tenure of Governors particularly Sections 178, 180, 185 and Section 180 subsections (2) (2) (a) of the 1999 Constitution as amended. In this constitutional role of interpretation vested by Section 6 of the 1999 Constitution - this Court is not expected to expand the law as that is the legitimate duty of the legislature but to expound the law. The interpretation exercise is not that affecting an ordinary Statute but that of our constitution. E F

Before embarking on the interpretative role of this Court on the sections of the Constitution relevant to the question raised in this appeal, it is right and appropriate to highlight the nature of our Constitution. The supremacy of the Constitution of the Federal Republic of Nigeria 1999 is captioned by Sections one and three, part 1 of Chapter 1 under general provisions which state that - G  
Section One

*"This constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria."* H

Section 3

*"If any other law is inconsistent with the provisions of this*

*constitution this constitution shall prevail and that other law shall to that extent of the inconsistency be void."*

This Court had given recognition to this supremacy and had expatiated on the Constitution through various judgments in its interpretative jurisdiction. The Constitution is described as the grundnorm and the fundamental law of the land. All other legislation in this country take their hierarchy from the provisions of the Constitution. It is not a mere common legal document. It is an organic instrument which confers powers and also creates rights and limitations. It regulates the affairs of the nation state and defines the powers of the different components of government as well as regulating the relationship between the citizens and the state. Once the powers, rights and limitations under the constitution are identified as having been created, their existence cannot be disputed in a court of law.

But the extent and implications may be sought to be interpreted and explained by the court. The provisions of the constitution take precedence over any law enacted by the National Assembly even though the National Assembly has power to amend the constitution itself. A-G Ondo State v. A-G Federation (2002) 1 NWLR (Pt.772) pg.222, A-G Abia State v. A-G Federation (2002) 6 NWLR (Pt.763) pg. 204, Abacha v. Fawehinmi (2000) 4 SC (pt.11) pg.1. Balonwu v. Gov. Anambra State (2009) 18 NWLR (Pt.1172) pg.13.

Having explained the nature and functions of the Constitution, I shall now proceed to examine the interpretation to be placed on the provisions. Under the Constitution this court has no power to make laws, therefore its primary responsibility in the area of interpretation is basically - to identify the purpose which the framers of the Constitution sought to achieve. On finding that purpose, a meaning which is in accord with that purpose must be given to the words of the Statute. The Courts must never in interpreting the provision of the Constitution give a contrary meaning to that which was intended by the legislature. This rule of interpretation is now referred to as the purposive approach. By way of emphasis, the objective of the purposive approach is to give effect to the legislative purpose of the enactment by interpretation of the words to accord with such purpose. The words in a Constitution must bear their ordinary grammatical meaning when the intention of the maker of the Constitution is clear and can be captured at a glance of the language. After all, the

law of statutory interpretation is clear that Courts invoke their interpretative jurisdiction to vindicate the intention of the law makers. The Courts cannot plant their judicial mind or thoughts in place of the intention of the lawmakers. *A-G Lagos State v. Eko Hotels Ltd. & Anor* (2006) 18 NWLR (Pt.1011) pg.378.

In the case of *A-G Federation v. Abubakar* (2007) All FWLR B (Pt.375) pg.405 this Court held on pg.548 paragraphs C-E that: -

*"It has now come to stay like the rock of Gibraltar that judges in the exercise of their interpretative jurisdiction must only interpret the words of a Statute or even Constitutional provision according to their literal meaning and the sentences therein according to their grammatical meaning (literal egis). The courts are supposed to find out the intention of the legislature while interpreting the provisions of the law passed by them. But there is no magical wand in the supposed directive; it is that intention as expressed in the words used".* C D

The Supreme Court laid down the twelve golden rules in the case of *A-G Bendel State v. A-G Fed.* (1982) 3 NCLA 1. This Court has to adopt the broad and liberal approach to the interpretation of the Constitution. Where the words used are clear and unambiguous, they ought to be given their ordinary meaning as there is nothing else to be construed or interpreted. *A-G Bendel State v. A-G Federation* (1982) 2 NCWR pg.1, *Awolowo v. Shagari* (1979) 6-9 SC pg.51, *Salami v. Chairman L.E.D.B* (1989) 5 NWLR (Pt.123) pg.539, *Egolum v. Obasanjo* (1999) 5 SCNJ pg.92. E

Furthermore in interpreting these sections of the Constitution, they must be read against the background of other sections of the Constitution in order to achieve a consistent and harmonious whole. The principle of whole statute construction is important in the interpretation of a document as the Constitution so as to give effect to it. *Okogie v. A-G Federation* (1981) 2 NCLR 337, *Anyah v. A-G Borno State* (1984) 5 NCLR pg.225, *A-G Bendel State v. A-G Federation* (1982) 3 NCLR 1. F G

I shall now re-state the relevant sections and provisions of the constitution relating to the office and tenure of a governor. H  
Section 176 (1) and (2) state that -

176 (1) *"There shall be for each state of the federation a governor."*

176 (2) *"The governor of a state shall be the chief executive of that*

state.”

Section 177 makes provision for the qualification of a person to be elected into the office of a governor of a state.

Section 178 makes provision for the process of the election of a governor by the Independent National Electoral Commission.

B Section 180 which provides for the tenure of a governor stipulates that - Section 180 (1) “Subject to the provisions of this constitution a person shall hold the office of governor of a state until -

(a) When his successor in office takes the oath of that office

C or

(b) He dies whilst holding such office, or

(c) The date when his resignation from office takes effect or

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

D Section 180 (2)

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

(a) *In the case of a person first elected as governor under this constitution, he took the oath of allegiance and oath of office.*

E

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

F Section 180 (3)

*“If the Federation is at war in which the territory of Nigeria is physically involved and the president considers that it is not practicable to hold elections, the National Assembly may by resolution extend the period of four years mentioned in sub section (2) of this section from time to time, but no such extension shall exceed a period of six months at any one time.”*

G

Section 185 (1) stipulates that -

*“A person elected to the office of the governor of a state shall not begin to perform the functions of that office until he had declared his assets and liabilities as prescribed in this constitution and has subsequently taken and subscribed the oath of allegiance and oath of office prescribed in the seventh schedule to this constitution.”*

H

Section 182 states the disqualification to the office of Governor of a State. Section 182 (1) (b) states that -

*“No person shall be qualified for election to the office of governor of a state if:*

*b. He has been elected to such office at any two previous elections.”*

In my view the words used in the foregoing provisions of the constitution are clear and unambiguous and giving them the liberal and purposive approach the following under mentioned purposes can be ascertained -

(1) There shall be a governor for each state who shall be the Chief Executive of that state.

(2) The person aspiring to be a governor must go through the process of election.

(3) After being elected as a governor he shall hold the office of the governor of his state until (a) his successor in office takes the oath of that office, or

b. He dies whilst holding the office of governor;

c. He resigned from office;

d. He has any form of permanent incapacity or impeachment under Sections 188 and 189 of the Constitution.

(4) Subject to the foregoing a governor shall vacate his office at the expiration of a period of four years.

(5) A person cannot hold office of governor beyond a maximum period of eight years except where the federation is at war.

The primary focus of Section 180 (2) is on tenure and the issue of taking of oath of allegiance and oath of office is secondary. The issue of tenure of office was considered by this Court in the case of Balonwu v. Governor of Anambra State (2009) 18 NWLR (Pt.1172) pg.13, where this Court held that the provision of Section 105 of the 1999 Constitution is quite plain and clear. The sections mean exactly what it says, that is, a house of assembly shall stand dissolved at the expiration of a period of four years commencing from the date of the first sitting of the house. Proclamation for the holding of the first session is not a condition precedent to the date of the first sitting of the House under Section 105 (1) of the Constitution. In the instant case, the words used in Section 180 (2) though subject to the intervening causes in Section 180 (1) like resignation, death, permanent incapacity and impeachment, the governor shall vacate his office at the expiration of a period of four years commencing from the date when

a. In the case of a person first elected as governor under the constitution he took the oath of allegiance and oath of office.

b. The person last elected to that office took the oath of allegiance and of office or would but for his death have taken such oath.

A Governor must be elected into office under a democratic system of government. He would be ushered into office after declaring his asset. The starting point of his 4 year tenure is the administration of the oath of office and oath of allegiance under the 7th Schedule of the Constitution by virtue of Section 185 (1) and (2) of the Constitution and the declaration of his asset.

The focus of the Constitution is the election of the Governor and his four year or maximum of eight year term of office after the election. The oath of allegiance and oath of office have nothing to do with the election of the Governor. It is a ceremony to usher in his four year term of office. I also take judicial notice of the fact that oaths under the 7th Schedule of the 1999 Constitution are administered to all public officers like the president, vice president, governors, deputy governors, ministers, commissioners, judicial officers, special advisers etc. They are mere ceremonies or formalities and therefore secondary to the tenure or functions of the office of any public office holder. It is a misconception to hold that the oath taking and the election of a governor are inseparable. Black's Law Dictionary Ninth Edition page 1176 defines oath of allegiance as -

*"An oath by which one promises to maintain fidelity to a particular sovereign or government."*

*"Oath of office as oath taken by a person about to enter into the duties of public office, by which the person promises to perform the duties of that office in good faith."*

I agree with the submission that an oath is a solemn declaration accompanied by a swearing to God evidenced by the very last statement of the oath - "So help me God" as contained in the 7th Schedule to the Constitution. The 1st respondent made the declaration before the Chief Judge of his state. The oaths referred to in Section 180 (2) (a) envisages a situation where the same person continues after taking the first oath even after a re-run.

Section 180 (2) (b) applies to a situation where there is a change of baton and an entirely different person assumes the office of Governor. The section expects the 1st respondent who is a person first

electd as Governor under the Constitution to keep to the oath of allegiance and oath of office sworn to when he was first elected Governor of the state on May 29, 2007 even after the re-run. The second oaths administered to him on the 30th of April, 2008 after winning the re-run election are superfluous. It was just a mere formality and fun fare to commence his tenure of office. It was not meant to enforce a new term of four years. B

An election means the process of choosing by popular votes a candidate for political office in a democratic system of government. Ojukwu v. Obasanjo (2004) 12 NWLR (Pt.886) pg.169, Buhari v. Obasanjo (2005) 2 NWLR (Pt.910) pg.241. C

The victory of the 1st respondent at the 14th April, 2007 Governorship election as nullified by the Court of Appeal in 2008 and a re-run election by INEC was ordered. The 1st respondent won the re-run election and took another oath of allegiance and oath of office to commence his tenure of office on the 30th of April, 2008. His claim was that the nullification of his 14th of April, 2007 election had wiped off the time he had spent in the government house prior to the 30th April, 2008, though his executive acts for the period are legal, valid and subsisting. The two lower Courts agreed with him that he is actually entitled to another era of four years commencing from the 30th of April 2008. I entirely disagree with this reasoning and I hold that the lower Courts misapplied Obi v. INEC (2007) All FWLR (Pt.378) pg.1116. The effect of nullification of an election was considered in the case of Labour Party v. INEC (2009) 1 NWLR (Pt.1137) pg.315 where this court observed that - E

*“A nullified election is a voided election leaving a complete void. In effect a nullified election is completely void. Thus once an election is declared null and void, the law regards whatever was purportedly done in the name or guise of an election as not having taken place at all. In the eyes of the law the election is void ab initio and fresh election is conducted as if the earlier one did not take place at all. The re-run election ordered was in essence a fresh election.”* F

Ochiko v. Govt. of Ebonyi State (2004) 13 NWLR (Pt.891) pg. 87 H  
Okafor v. A-G Anambra State (No.1) (1991) 6 NWLR (Pt.200) pg.659,  
Nasiru v. Bindawa (2006) 1 NWLR (Pt.961) pg.336.

From the foregoing premises, the respondents in their submission made heavy weather of the pronouncement of Lord Denning

in the case of Mcfoy v. U.A.C. (1961) 3 All ER 1169 at pg. 1172 as regard null and void acts that -

*‘You cannot put something on nothing and expect it to stay there, it will collapse.’*

B The judgment described what is a nullified election and the effect simpliciter.

C First and foremost the provisions of Sections 180 (1) & (2) (a) & (b) are silent on nullification of an election. Nullification is provided for in Section 149 (1) and (2) of the Electoral Act 2006 now 140 (1) and (2) of the Electoral Act 2010. An election is only nullified with effect from the date of the judicial pronouncement. The order of Court in an annulled election has no retrospective effect on the tenure and actions taken by the governor before the nullification order. Therefore, both the pre-nullification tenure and acts flowing D from it are recognizable by law as the valid legal effect of the annulled election. The period spent in office as governor by the person concerned must count as part of his tenure.

E The analogy drawn by this Court in the case of Balonwu v. Gov. Anambra State (2009) 18 NWLR (Pt.1172) pg. 13 at pgs. 48-49 parag. H-D on nullification of election and tenure of office is very apt in this situation.

F *“This Court pronounced in respect of validity of the acts done by a person whose election was nullified by Section 149 (1) and (2) of the Electoral Act 2006 that a person returned as elected and whose election is nullified by a tribunal or court shall remain in office despite the nullification pending the determination of his appeal. But where an appeal is not filed, the person shall continue in office for a period of 21 days from the date of the decision being the time allowed for the person within which to exercise his right of appeal against the decision nullifying the election. The provision does say that the person involved should not function or perform any function relating to the office. He is allowed by law to continue the office until the expiration of the time allowed.*

H *The intention of the legislature is to ensure continuity of governmental action in order to avoid a vacuum. Thus a situation is created where a person whose election or return has been declared by a competent tribunal or court to be null and void being allowed by law to continue and function in the office to which he had been*

*elected pending either the determination of his appeal or the expiration of the time within which he is to have exercised his right to appeal. It follows therefore that whatever acts done by the person so affected is valid in law; the nullification of his election or return notwithstanding. Applying the same reasoning to acts done by the person prior to the nullification, it becomes very clear that such acts are valid, legal and enforceable. If the intention of the legislature was to render them equally null and void, it would have said so in uncertain terms."*

Neither the electoral law nor the constitution can tolerate or envisage a legal vacuum in the office of a governor. An order of nullification of the election of a governor is always accompanied with an order directing the Speaker of the House to act in a representative capacity until the vacancy of the governor is filled after the re-run election.

Moreover, the Constitution does not make provision for a re-run election neither does it envisage that a person whose election was nullified following an allegation of election malpractices will be re-elected after a fresh or re-run election. These are the root causes of the perplexities we are now faced with. The governor may not have been de jure governor for the period prior to the nullified election, in as much as his executive acts during the period are accepted to be valid and legal, he becomes de facto governor for that period.

The reasoning that the oaths and tenure of office prior to the nullification of an election are wiped off when an election is nullified while the executive acts and the benefits of office enjoyed by him remain valid and subsisting is not only a bundle of contradiction but also highly unreasonable. The Constitution dictates that a person cannot hold the office of a governor beyond a term of four years or an accumulative maximum period of eight years except where the country is at war, The Electoral Act does not envisage nullification of oaths of allegiance and office.

The interpretation adopted by the two lower Courts glaringly contradict the provisions of the Constitution as was affirmed in the case of *Obi v. INEC* (2007) All FWLR (Pt.378) pg.1116 that a person elected into the office of a Governor will occupy such office for a period of four years. In the case of *A-G Federation v. ANPP* (2009) 15 NWLR (Pt.844) Pg.600 at Pg.696 the Court affirmed that

the primary purpose of Section 182(1) (b) therefore, is to limit the total tenure of a governor to 8 years or 4 years per term. The Court has a duty when faced with the interpretation of the constitution to read the entire provisions together as a whole -for the proper conduct of our affairs so that the democratic governance would run smoothly and without legal hiccups. It is settled law that where the law prescribes a mode for doing a thing, only that method and no other must be adopted and followed. C.B (Nig.) Plc v. A-G Anambra State (1992) 1 NWLR (Pt.261) Pg.528.

In the case of Ladoja v. INEC (2007) 12 NWLR (Pt.1047) Pg.115

*“When the issue before the Court was whether the tenure of office of a Governor of a state can be extended to compensate for the period out of office due to unlawful impeachment; this court took the bold stand that neither the Supreme Court nor any other Court has power to extend the period of four years prescribed for a Governor of a state beyond the terminal date calculated from the date he took the oath of office, as to do otherwise will occasion much violence to the constitution. This Court can only interpret the Constitution but cannot re-write it. The Court cannot perform a duty which the Constitution has not vested in the Court.”*

The argument that the four years tenure of a governor must be an unbroken period of four years, as a term of four years cannot be predicated on two elections one valid and the other invalid is unacceptable. The Constitution itself does not support an interpretation of unbroken term of four years, or a term in perpetuity.

In sum, I believe that to give effect to the interpretation of the two lower Courts would create a term of office beyond the contemplation of the Constitution to the 1st respondent and the governors in all the consolidated appeals. I declare that the relevant period for the computation of the tenure of the 1st respondent is 29th May, 2007 which is the date he took his first oath of allegiance and oath of office as the Governor of Adamawa State and not when he took his second oath of allegiance and oath of office in 2008. The period spent in office as the Governor of Adamawa State prior to the nullification of the election that brought him to office should be reckoned with in the computation of his tenure of office. The sub-issue is whether Section 180 (2) (2) (a) of the 1999 Constitution of the Federal Re-

public of Nigeria as amended is applicable to the facts of this case.

The power of the National Assembly prescribed in Section 9 (1) of the Constitution is not doubted. It provides that -

*“The National Assembly may, subject to the provisions of this section alter any of the provisions of this Constitution.”*

The amendment to the Constitution by 1st and 2nd Alteration Act 2010 inserts the new Section 180 (2)(2)(a) which reads -

*“In the determination of the four years tenure where a re-run election has taken place and the person earlier sworn in wins the re-run election, the time spent in office before the date the election was annulled shall be taken into account.”*

The appellants submitted that the amendment was necessary so as to find out the legislative will in Section 180 (2) of the Constitution. By virtue of Section 180 (2) of the Constitution, the framers did not expect an indefinite occupier of the seat of governor of a state. In view of the misinterpretation placed on Section 180 (2) and taking of oath of allegiance and oath of office taken a first or second time which has nothing to do with the constitutional provision of four years, the lawmakers decided to make their intentions clear. The appellants however agreed that without the amendments, the lower Court should have discovered the mischief which the lawmakers wanted to avoid, give a purposeful and beneficial interpretation to Section 180 (2).

Without the amendment, the Court should not have been in any difficulty in ascertaining the intention of the lawmakers ab initio. What the lower court did was to perpetuate the mischief being avoided by the lawmakers. The appellants submitted further that any amendment made to the Constitution to avoid ambiguity, the constitution being a living organism operates instantly and spontaneously in the view of the supremacy of the Constitution. I wish to state that amendments to clear ambiguities in the law are inevitable and I am guided in this view by Series 14 of Akinjide & Co. (Barristers, Solicitors and Arbitrators) lectures on Separation of Powers under the constitution of the Federal Republic of Nigeria that: -

*“Our Founding fathers could not anticipate all the perplexities of our future. Nor constitutional questions be decided in perpetuity.”*

*“The Constitution was intended to endure for ages to come*

*and consequently be adopted to various crises of human affairs*” James Marshall, Chief Justice in the case *McCulloch v. Maryland*, 4 Wheaton 316, 415 (1819).

Woodrow Wilson in his book on Constitutional Government in the United States New York 1908 at pg.192 highlights that -

B *“The meaning of a constitutional provision is to be determined not by the original intentions of those who draw the Paper but by the exigencies and the new aspects of life itself.”*

In the case of *Seaford Courts Estate Ltd. V. Asher* (1949) 2

C K. B 481 at pages 498-499; Lord Denning LJ said that -

*“Whenever a statute comes up for consideration, it must be Remembered that it is not within human powers to foresee the manifold sets of facts which may arise, and, even if it were, it is not possible to provide for them in terms free from ambiguity ... a Judge must set D to work on the constructive task of finding the intention of parliament and he must do this not only from the language of the statutes, but also from a consideration of the social conditions which give rise to it and of the mischief which it was passed to remedy and then he must supplement the written words so as to give force of life to the E intention of the legislature.”*

I must declare that in our interpretative capacity this Court does not require the amendment/alteration to Section 180 (2) of the Constitution to identify and declare the intention of the legislation as embodied in Section 180 (1) and 180 (2) (a) (b). Section 180 (2) F (2) (a) of the 1999 Constitution has no effect on our stand in this constitutional poser. The amendment of July, 2010 is not meant to be retrospective - as the events in these appeals occurred in 2007 and 2008 respectively. The amendment has not changed the law but G is merely a clarification to the existing provision. The perplexities which reared its head in our democratic system of government emanated from election malpractices with the resultant effect of nullification of elections. While the beneficiaries of the so called malpractices resurfaced to continue in office after their re-run elections. The constitution H has no provision for nullification of election or this bizarre situation of perpetuity in office. The tenure of office of the 1st respondent as Governor of Adamawa State commenced from the 29th of May, 2007, when he took his first oaths and terminated on the 29th of May, 2011.

Consequently, with the outcome of these appeals the 1st respondent in Suit No. SC.141/2011 is ordered to vacate office immediately while the Speaker of the Adamawa State House of Assembly shall be sworn in as Acting Governor of Adamawa State in line with Section 191 (2) of the 1999 Constitution. The Independent National Electoral Commission shall conduct an election within three months to fill the vacancy in the office of the Governor of Adamawa State now created. B

With fuller reasons given in the lead judgment of my learned brother, W.S.N. Onnoghen, JSC I also resolve the two issues in favour of the appellants and accordingly allow the appeal as meritorious. The judgments of the two lower Courts are accordingly set aside. C  
 APPEAL NO - SC.266/2011

BETWEEN:

INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC) D  
 APPELLANT

AND

SENATOR LIYEL IMOKE RESPONDENT

This appeal is one in the series of appeals consolidated by the order of this Court. Dr. O. Ikpeazu learned Senior Counsel for the appellant adopted and relied on the appellant's brief filed on 2/9/2011; and distilled a sole issue for determination. E

The learned Senior Counsel, Paul Erokoro appearing for the 1st respondent Senator Liyel Imoke adopted and relied on the respondent's brief filed on 16/11/11 and raised one issue for determination. The background facts of the case are that the respondent, Senator Liyel Imoke won the governorship election in Cross River State on the 14th of April, 2007. He took his oath of allegiance and oath of office on the 29th of May, 2007. The election was challenged before the election petition tribunal which dismissed the petition. The matter went on appeal where the Court of Appeal nullified the election and ordered a re-run. The respondent won the re-run election. He took another oath of allegiance and oath of office on the 28th of August, 2008. The appellant, INEC acting on the amendment to Section 180 of the 1999 Constitution, announced its intention to conduct an election in January, 2011 into the office of the Governor of Cross River State. The respondent commenced an action by originating summons filed on the 22nd day of September 2010. An or- F  
G  
H

der nullifying the defendant's decision to conduct an election into the position of governor of Cross River State on the 28th of January, 2011.

The suits in respect of the tenures of four other serving governors also before the Federal High Court were consolidated. These  
B governors were for Adamawa, Bayelsa, Kogi and Sokoto States. The Federal High Court found for them. The matter went to the Court of Appeal as Appeal CA/A/113/2011. The appeal was consolidated with five other appeals namely; CA/A/117/2011 INEC v. Adm. Murtala  
C Nyako; CA/A/119/2011 INEC v. Chief Timipre Sylva & 4 ors; CA/A/115/2011 INEC v. Alhaji Idris & anor; CA/A/118/2011 INEC v. Alhaji Magatakarda Wammako & anor and CA/A/128/2011 Attorney-General of the Federation v INEC & ors. The Court of Appeal dismissed the appeals of the appellants. Being aggrieved by the decision of the  
D Court of Appeal, the appellant, INEC appealed to this Court.

As at the time this appeal came to this Court, the two lower Courts had held that the respondent's tenure as governor of Cross River State, which commenced on the 28th of August, 2008 the date he took his oath of office following the re-run will end on the 28th of  
E August, 2012. The appellant INEC is however contending that the four year tenure of the respondent started on the 29th of May, 2007 after he took his first oaths.

The learned Senior Counsel for the appellant argued and  
F came to the conclusion that the Court of Appeal was wrong in holding that the nullification of the election of the respondent by the Court of Appeal effectively nullified the oath of office previously taken by him. The Court of Appeal was wrong when it held that the period during which the respondent occupied the office of governor of a  
G State following his initial swearing-in should not be contemplated in computing the period of four years the respondent is constitutionally required to occupy the office of governor.

The argument of the learned Counsel for the respondent was that the Court of Appeal's nullification on the 14th of July, 2008  
H of the governorship election in Cross River State won by the respondent on the 14th of April, 2007 rendered null and void not only the said election but also the oath of office taken on the 29th of May, 2007 by the respondent.

Section 180 (2) (a) of the Constitution as amended in 2010

does not apply retroactively to shorten or otherwise affect the tenure of the respondent as governor of Cross River State, when the respondent was elected and sworn in before the amendment. The Court must adopt an interpretation that is most beneficial and clear the absurdity. The interpretation is not for the future as the amendment has taken care of that. The appeal is to be dismissed. The legal points raised in this appeal are identical to that considered in the appeal SC.141/2011. B

I adopt and rely on the reasoning and findings of this Court in that appeal and make them applicable to the appeal in hand. The issues are resolved in favour of the appellant. The appeal is accordingly allowed while the decisions of the two lower courts are hereby set aside. C

APPEAL NO - SC.267/2011

BETWEEN:

INDEPENDENT NATIONAL ELECTORAL COMMISSION [INEC] - APPELLANT D

AND

CHIEF TIMIPRE SYLVA & ORS - RESPONDENTS

The appellant in this appeal - the Independent National Electoral Commission (INEC) appealed against the decision of the Court of Appeal, Abuja, delivered in Appeal No. CA/A/119/2011. This appeal is part of the consolidated appeals which affected the tenure of the governors of Adamawa State, Cross River State, Kogi State, Sokoto State and between the Attorney-General of the Federation v. INEC. F The judgment was delivered on the 15th of April, 2011. On the 17th of September, 2010, the 1st respondent as serving governor of Bayelsa State commenced action in Court against Independent National Electoral Commission to forestall the conduct of an election in the state in view of his second swearing in on 29th May, 2008 which extended his tenure of office to May, 2012. The nullification of the 2007 governorship election in Bayelsa State had equally nullified his first swearing in on the 29th of May, 2007 and his tenure from 2007 to 29th of May, 2008 is unauthorized and unrecognized by law. The Federal High Court found in his favour and the Court of Appeal affirmed the judgment. G H

In the brief of the appellant filed on 2/9/2011, one single issue was formulated for hearing and determination of this Court.

The respondent filed his brief on 10/10/2011 whereon he formulated three issues for determination of this Court.

The appellant's learned Senior Counsel argued and submitted that the Court of Appeal misapplied the decision of the Supreme Court in the case *Peter Obi v. INEC & ors* (2007) 11 NWLR (Pt.1046) pg.565 in holding that the 1st respondent's tenure of four years shall not include the period he served as governor before his initial election was set aside. The Court of Appeal was wrong in holding that the nullification of the election of the 1st respondent by the Court of Appeal effectively nullified the oath of office previously taken by him.

Chief Williams learned Senior Counsel for the respondent emphasized that the issue involved in the election of Bayelsa is not that of a re-run but that there was no election and any oath taken based on a fallacious election is invalid. INEC failed to conduct an election in Bayelsa State.

You can only become a governor through a valid election. The tenure of office of the respondent can only be calculated based on a valid election.

The amendment to the constitution cannot affect parties who had submitted their dispute to the jurisdiction of court before the amendment. He referred to the case of *Isaac Obiwan v. C.B.N.* (2010) FWLR (Pt.575) pg.208 at 214. He urged the Court to dismiss the appeal.

Mrs. Mbamali learned Senior Counsel for the Attorney-General 4th respondent, referred to the brief filed on 28/11/2011 with four issues formulated for determination. She adopted and relied on the brief and associated herself with the submission of Chief Akinjide as *Amicus Curiae* that the tenure of the respondent commenced from when he took his second oath. The amendment to the constitution does not apply to this case.

The learned Counsel for the 5th respondent, Olusola Oke adopted and relied on the brief filed on 12/10/2011. He urged the Court to dismiss this appeal as the Court has power to nullify an election and such nullification goes back to the root of the election. A void election cannot be merged with a valid one to make up the four year term.

The core issues formulated for determination about the nullification of the initial election and the four year tenure of the respondent

ent were exhaustively considered in the appeal SC.141/2011 Brigadier-General Mohammed Buba Marwa & 1 or v. Admiral Murtala Nyako & ors. I adopt and rely on the reasoning, findings and decision of this Court in that appeal and make them applicable to this instant appeal.

The issue is resolved in favour of the appellant. The appeal is allowed while the decisions of the two lower Courts are hereby set aside.

APPEAL NO - SC.282/2011

BETWEEN:

INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC) - APPELLANT

AND

ALHAJI ALIYU MAGATAKARDA WAMMAKO AND ANOR. - RESPONDENTS

This appeal is against the decision of the Court of Appeal, Abuja, delivered on the 7th of April, 2011, wherein the learned Justices dismissed the appeal of the appellant from the judgment of the Federal High Court, Abuja, which upheld the originating summons of the 1st respondent and granted all the reliefs sought. It was one of the consolidated appeals at the Court of Appeal namely CA/A/118/2011; CA/A/117/2011; CA/A/113/2011; CA/A/115/2011 and CA/A/128/2011. The 1st respondent contested and won the governorship election in Sokoto State conducted on 14/4/2007.

He took the oaths of allegiance and office on the 29th of May, 2007. The election was however nullified by the Court of Appeal, Kaduna, and ordered a re-run which was conducted on 24/5/2008. The 1st respondent contested and won the re-run election. He was sworn in a second time as the governor of Sokoto State on 28/5/2008. The Independent National Electoral Commission attempted to conduct a governorship election in the State in April, 2011. The 1st respondent challenged the move at the Federal High Court by seeking reliefs that his tenure of office shall commence from the date the 1st respondent took his 2nd oath of office and by implication restrained the appellant from conducting any governorship election in the state until (the general elections of) 2012. The two lower Courts granted the reliefs.

Dissatisfied with the decision of the Court of Appeal, the ap-

pellant appealed to this Court. In the appellant's brief filed on 30/9/2011, the appellant distilled three issues for determination.

The learned Senior Counsel for the 1st respondent adopted and relied on the brief filed on 28/11/2011 wherein two issues were settled for hearing and determination.

B The learned Counsel for the 2nd respondent, Chief Olusola Oke adopted and relied on the 2nd respondent's brief filed on 25/11/2011 wherein two issues were settled for hearing and determination.

C Mr. H.M. Liman SAN submitted that the appeal be allowed in its entirety by resolving all the three issues covering the grounds of appeal in favour of the appellant and hold that the tenure of the 1st respondent shall end on the 29th of May, 2011.

D Mr. S.I. Ameh learned Senior Counsel for the 1st respondent associated himself with the submission of Chief Richard Akinjide, SAN to hold that the four year tenure of the 1st respondent will end on the 28th of May, 2012.

E This Court is also to hold that the amendment to Section 180 of the Constitution 1999 on the principle of *lex prospectit non respicit* cannot operate retroactively to deprive the 1st respondent of any part of his four year tenure which is to end on the 28th of May 2012.

F Chief Olusola Oke counsel for the 2nd respondent urged this Court to dismiss the appeal in its entirety for lacking in merit as in calculating the four year term of office of the 1st respondent, time can only start running from 28th May, 2008, when he subscribed to oath of office and oath of allegiance predicated on a valid election. The amendment to Section 180 of the 1999 Constitution which came to force in July, 2010 is not retrospective and therefore inapplicable to the situation of the 1st respondent who acquired the vested right before the amendment.

H The legal questions raised in this appeal were considered in the consolidated appeal SC.141/2011. It will amount to mere repetition to reconsider the same issue in the instant appeal, I adopt the reasoning, findings and conclusion in SC.141/2011 and make them applicable here. This appeal is accordingly allowed while the judgments of the two lower Courts are set aside.

APPEAL NO - SC.356/2011

BETWEEN:

INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC) -  
APPELLANT

AND

ADMIRAL MURTALA NYAKO & ORS - RESPONDENTS

The constitutional issues in respect of the tenure of the 1st respondent were exhaustively considered in the appeal SC.141/2011. The appellants in the appeal were Brigadier-General Buba Marwa and Congress for Progressive Change while Admiral Murtala Nyako was the 1st respondent. I abide the decision in the appeal and the consequential orders made therein.

APPEAL NO - SC.357/2011

BETWEEN:

INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC) -  
APPELLANT

AND

ALHAJI IBRAHIM IDRIS (Governor Kogi State) - RESPONDENT

This appeal emanated from the judgment of the Court of Appeal, which affirmed the judgment of the Federal High Court on the constitutional interpretation of the tenure of office of the 1st respondent - Alhaji Idris the Governor of Kogi State. The judgment was delivered on the 15th of April 2011. It was a consolidated appeal involving the issue of the tenure of office of five serving governors who resisted conducting of governorship elections in their state in April, 2011. The appeal by the 1st respondent was registered as CA/A/115/2011. The 1st respondent won the gubernatorial election held in his state on the 14th of April 2007 and was sworn in as Governor on the 29th of May, 2007. The election was challenged before the Tribunal and was nullified on the 10th of October, 2007 and a fresh election was ordered. The decision was affirmed by the Court of Appeal, Abuja. A fresh election was conducted by the appellant on the 29th of March, 2008, which the 1st respondent won. He was sworn in as governor of Kogi State on the 5th of April, 2008. The appellant took the necessary steps towards conducting a governorship election in Kogi State in April, 2011. The 1st respondent proceeded to the Federal Court by way of original summons for a declaration as to when his tenure in office would expire in view of the nullification of the initial election held on the 14th of April, 2007 and

the second oaths sworn to by him on the 5th of April, 2008. The Federal High Court found in his favour that his term of four years commenced from the time of the oath sworn to on the 5th of April, 2008 to terminate on the 5th of April, 2012. The Court of Appeal, Abuja in the judgment delivered on the 15th of April, 2011 affirmed  
 B the decision of the Federal High Court. This prompted an appeal to this Court. The two issues settled for determination were as identified to those in SC.141/2011.

Mr. Mahmoud relied on the appellant's brief filed on 21/11/2011 and the reply briefs filed on 25/11/2011 and 28/11/2011 respectively to urge this Court to allow the appeal.  
 C

Mr. Lateef Fagbemi learned Senior Counsel for the 1st respondent relied on the brief filed on 3/11/2011 and associated himself with the submission of Chief Richard Akinjide, SAN and the other respondents to urge this Court to dismiss the appeal.  
 D

Chief Olusola Oke learned Counsel for the 2nd respondent adopted and relied on the 2nd respondent's brief filed on 18/11/2011 to urge this court to dismiss the appeal. He submitted that an amendment to Section 180 (2) of the 1999 Constitution is not a clarification but an alteration. The right of action accrued when the alteration was not made.  
 E

The constitutional issues raised in this appeal being one of the consolidated appeals are identical to those already fully considered in Appeal SC.141/2011.  
 F

I adopt the submission, reasoning and findings in appeal SC.141/2011 and make them applicable to the instant appeal. The appeal is allowed and the judgments of the two lower Courts are set aside. I associate myself with my learned brothers in expressing my gratitude to all the amicus curiae, the learned Senior Counsel and the learned Counsel who appeared in this matter for their industry in producing the array of brilliant and illuminating briefs. Our constitution is a living organism and those of us who are the custodian and also saddled with the responsibility of interpretation must continue  
 G relentlessly to chart the proper course.  
 H

In the final analysis, in unison with my learned brother, W.S.N. Onnoghen JSC, in the lead judgment, this Court allows all the appeals in the six consolidated appeals and set aside the concurrent judgments of the Federal High Court and the Court of Appeal.

I abide by other consequential orders contained in the lead judgment in relation to the other consolidated appeals Numbers SC.266/2011; SC.267/2011; SC.282/2001; SC.356/2011 and SC.357/2011 respectively, including the order on costs.

B

### **PETER-ODILI JSC**

I agree with the judgment just delivered by my learned brother, Walter Samuel Nkanu Onnoghen JSC and to underscore my support, I shall make some remarks. As shown in the titles above, these are consolidated appeals, but this Court using SC.141/2011 as point of contact heard all the contending parties on the 29th day of November, 2011. C

On the 8th July, 2011, this Court granted leave to the Appellants in SC.141/2011 to appeal as interested parties against the judgment of the Court of Appeal, Abuja Division dated 15th March, 2011 whereby that court affirmed the judgment of the Federal High Court, Abuja per Bello J. dated 29th February, 2011, which effect was the elongation of the tenure of office of the various 1st Respondents from the date of the oath of office taken upon the re-run of the 2007 elections which had been nullified by the various Appeal Court Divisions to which appeals from the Election Tribunals relevant to them operated. D E

The questions arising from the situations that arose on account of the interpretation of the Constitution Section 180 (2) of the 1999 Constitution which was in operation at the time of the 2007 election and the subsequent re-run at various dates relating to the various 1st Respondents or Governors viz: F

- (1) Admiral Murtala Nyako of Adamawa State; G
- (2) Alhaji Aliyu Magatakarda Wammako of Sokoto State;
- (3) Senator Liyel Imoke of Cross-River State;
- (4) Chief Timipre Sylva of Bayelsa State;
- (5) Alhaji Ibrahim Idris of Kogi State.

These issues for determination are as formulated under SC.141/2011 and they are as follows:- H

- i. Having regard to the clear wordings of Section 14(2), 178 (1) (2), 180 (1) (2) of the Constitution of Federal Republic of Nigeria, 1999, read together with other relevant provisions of the said

Constitution, as well as various canons of interpretation embedded in several decisions of the Supreme Court, whether the Lower Court was not in grave error in the interpretation it particularly placed on Section 180 (2) of the Constitution in arriving at the decision to affirm the judgment of trial High Court - Grounds 1, 2, 4, 5, 6 and 8.

B ii. Assuming without conceding that the Lower Court was right in its interpretation of Section 180(2) of the Constitution, whether it did not fall into grave error in its failure to properly interpret and apply the provisions of the new Section 180 (2) (2A) of the Constitution - Ground 3.

C iii. Considering the clear provision of Section 180 (2) of the Constitution vis-a-vis the 1st Respondent's claims at the trial High Court, whether the Lower Court did not fall into grave error in affirming the declarative reliefs granted by trial High Court-Ground 7.

D In view of the seriousness with which this Court viewed the questions raised in this appeals, the Court requested the impute of some amicus curiae namely, Chief Richard Akinjide SAN, Chief Olukonyisola Ajayi SAN and Prof. Itse Sagay SAN who filed briefs according to their views on the matter. Chief Wole Olanipekun SAN, E learned counsel for the Appellants in SC.141/2011 adopted their Brief filed on 14/7/2011 and contended that the duty of the court is to interpret the law and not make or give the law. That in interpreting statute especially the Constitution, the Court has the primary responsibility of expressing the purpose which the framers of the Constitu- F tion sought to achieve which principle of interpretation is known as the purposive approach. He cited *Global Excellence Communication Ltd v Duke* (2009) 7 SC (Pt. 2) 162 at 175- 176 and the United States of America case of *United States v Classic* 313 US 299; Also, G the case of *Nafiu Rabi'u v Kano State*. (1980) 8-11 130 at 148.

Chief Olanipekun SAN further stated that in interpreting the Court ought to do so within the context in which the words are used and an inquiry into the purpose the enactment was/is to serve. That on finding that purpose, a meaning which is in accord with that purpose must be given to the words of the statute. That in so doing the Courts cannot in interpreting statutes give a meaning contrary to that which was intended by the legislature. He referred to *A.G. Lagos State v. Hotels Ltd & Anor* (2006) 18 NWLR (pt. 1011) 378 at 458; *A.G. Federation v. Abubakar* (2007) All FWLR (pt.375) 405 at 547.

For the Appellant in SC.141/2011 was canvassed that the Court of Appeal erred in the narrow interpretation of Section 180 (2) of the Constitution anchoring mistakenly on the case of *Obi v INEC* (2007) All FWLR (Pt.378) 116. That the Court ought to have adopted a liberal and purposive approach by considering the entire statute or Constitution and thereby ascertain the general object meant to be attained and secured by the Constitutional provisions giving effect to that intendment. He referred to *Rufus Femi Amokeodo v I.G.P.* (1999) 7 SCNJ 297; *Egolum v. Obasanjo* (1999) 5 SCNJ 92; *Olaniyan v. Oyewole* (2009) 5 NWLR (Pt.1079) 114 at 138, Section 1 (2); Section 178, Sections 180, 181 & 182 of the constitution. B C

The learned Chief went on to state for the Appellant in SC.141/2011 that the following purposes/objectives can be distilled from the combined effect of the afore-mentioned provisions of the Constitution namely:- D

1. No person shall take control of a state of the Federation except as provided for by the constitution.

2. A person elected to the office of Governor of a state of the Federation shall hold such office for a period of four years except for reason of his death, resignation, incapacity or impeachment. E

3. The constitution does not envisage a vacuum in the office of Governor of a State.

4. A person cannot hold the office of governor beyond a maximum period of eight years except where the Federation is at war. F

He stated that the interpretation adopted by the Lower Court is inconsistent and brazenly in conflict with the smooth working of the system which the Constitution read as a whole, set out to regulate. He drew the Court's attention to the amendment of the Constitution by the 1st and 2nd Alteration Act, 2010 particularly the amendment to section 180 (2) by the insertion of the new Section 180 (2) (2A) which Clarified what happens as in the instant situation where a Governor after an annulled election and a re-run should on successful election in the re-run of the 4 years tenure before the annulment and subsequent re-run. He cited *Shotekun v. Akinyemi & ors* (1980) 5 - 7 SC 1. G H

He concluded by saying that the office of Governor of Adamawa State is a public office, created by the Constitution having

a specific life span for a particular occupier and if the interpretation given by the Lower Court is allowed in spite of the Constitutional provisions then the life span would be indeterminate and could run for life. Also, that a party cannot be allowed to benefit from his own wrongdoing, that is to say, after an annulled election based on some wrong and a re-run is done, the party gets an elongated tenure thereafter and that the Court should not lend its assistance to an immoral or illegal act. He cited *Adu v. Makanjuola* (1994) 10 WACA 168; *A.P. Ltd v. Owodunni* (1991) 8 NWLR (Pt.210) 391.

That since the acts performed by the 3rd Respondent pursuant to his first election are valid then the period during which the acts were performed must be deemed valid and taken into account in computing the tenure of the 3rd Respondent. He cited *Balonwu v. Ikpeazu* (2005) 13 NWLR (Pt. 942) 479 at 526.

That the amendment to Section 180 of the Constitution by Section 180 (2) (2A) was intended to forestall further errors being made by Courts in the interpretation when the tenure of the office of Governor after a re-run is at play. He cited *Adesanya v. President of the Federal Republic of Nigeria* (1981) 12 NSCC 148.

That the taking of the oath of allegiance and oath of office is secondary in the computation of the maximum period of eight years prescribed in Section 182(1) (b).

Chief Richard Akinjide SAN as amicus curiae invited by this Court adopted his Brief of Argument and argued that the resolution of the issues in this appeal rests mainly on the proper interpretation of the relevant provision of the constitution of the Federal Republic of Nigeria particularly Section 180 (2) (a) of the 1999 constitution and the newly brought in amendment in subsection 2A of section 180 of the 1999 Constitution (as amended). He said Section 18 of the Constitution (First Alteration) Act 2010 introduced a new subsection into Section 180 of the 1999 Constitution which now has specially provided for the calculation of the four year tenure following a re-run where the person first sworn in wins the re-run. He stated that the new subsection 2A of Section 180 therefore has been introduced to deal with a situation which was not dealt with by the Constitution before the alteration. That in the absence of a special provision, the general provision which was the old provision applied. That the effect is that anyone within the ambit of the old Constitutional provi-

sion would take his bearing of the tenure from the date of the oaths of Allegiance and office.

Chief Akinjide said the purposive rule of interpretation did not apply in this instance since the provisions before amendment were clear and unambiguous. He cited Federal Republic of Nigeria v Dariye Joshua (2011) 13 NWLR (Pt. 1265) 521 at 548. B

Chief Akinjide SAN said subsection 2A of Section 180 of the Constitution (as amended) did not apply to these appeals otherwise it would mean giving a retrospective effect to the amendment and be akin to a legislative judgment. He referred to Lakanmi v A.G. Western Region (1970) 6 NSCC 143. That if the National Assembly intended subsection 2A of Section 180 of the Constitution (as amended) to have retrospective effect, the National Assembly would have specifically stated so. Also, that the Court will strictly construe against the maker any law which has the tendency to take away or abridge the Constitutional right of individuals. He cited Peenok Investment Ltd v Hotel Presidential Ltd (1982) 13 NSCC 477. C D

Prof. Itse Sagay SAN agreed with Chief Olanipekun for the Appellant adopted his Brief of Argument of 13/10/11 and stated that the very idea of amendment of Section 180 (2) to eliminate tenure elongation is clear evidence that the legislature wanted to put beyond doubt a situation which was already implied in the Section. That the amendment corrected a mischief which by proper judicial application of the Mischief Rule of Statutory interpretation would have made the Constitutional amendment unnecessary. E F

He stated on that the Governor whose election is nullified is governor in law and fact until removed by judicial declaration. That it is the judicial declaration that nullifies his election and stay in office but does not and cannot nullify the period he had already spent as governor and so that period he had spent in that office are part of the computation of time within the 4 year period allowed by the Constitution. G

Mr. Olukonyinsola Ajayi SAN as amicus curiae adopted his brief of argument properly filed on 9/11/2011 and went along the path trod by Prof. Itse Sagay SAN and learned Counsel for the Appellant in SC/141/2011, Chief Olanipekun SAN. He opined that this Court has always recognized the desirability of viewing our Constitution as a living document to be applied to unceasing changing envi- H

ronment in which the Nigerian populace would live. That the framers of our Constitution had in mind the concept of a living Constitution with broad and flexible terms such as will make it a dynamic document, cannot be interpreted especially Sections 180 (1) & (2) and 182 (1) (b) thereof to create room for self succession in perpetuity or  
 B for a governor to be in office beyond 8 years, re-election inclusive. He cited *Nafiu Rabi v. The State* (1981) 2 NCLR 293 at 326.

That if the calculation of the tenure is taken from the date of the second oath taking, the implication would be that the state pre-  
 C sided over by the governor had no Governor for the period that governor sat and governed the people and state. Also, that all acts of the said governor within the period before the annulment was null and void.

Mr. Ajayi said the broad fallout such an eventuality would  
 D produce are serious constitutional crises and clearly contravene the provision of section 176 (1) of the constitution. He said an order of nullification does not obliterate the historical fact of existence or occurrence of the thing nullified.

Responding, Mr. Kanu Agabi SAN, after adopting his Brief of  
 E Argument for the 1st Respondent, Admiral Murtala Nyako, Governor of Adamawa state contended that the effect of the nullification of the April, 2007 election was that the oath of office and oath of allegiance taken on 29th May, 2007 were rendered null and void and  
 F the 1st Respondent in law is deemed not to have held office as Governor of Adamawa state prior to the 30th day of April, 2008. He relied on *Peter Obi v. INEC* (2007) 11 NWLR (Pt.1046) 565 at 684; *Labour Party v. INEC* (2009) 6 NWLR (Pt.1137) 315 at 337; *Ayisa v. Akanji* (1975) 7 NWLR (Pt.405) 129 at 142.

Mr. Agabi SAN said the oaths of office and allegiance are not  
 G mere formalities to be dispensed with, since a valid election cannot be placed on the same footing as an invalid one. That in interpreting the old law, section 180 (2) (a) constitution before amendment which is applicable for our purpose that it is the duty of the Court to declare  
 H it as it is and concern itself with the consequences of applying the law as it is. He cited *I.G.P v. ANPP* (2007) 18 NWLR (Pt.1066) 457 at 496 - 497; *Adesanoye v. Adewole II* (2007) 27 NSCQR 783 at 798; *SPDC (Nig.) Ltd v. Tiebo VII* (2005) 9 NWLR (Pt.931) 439.

Mr. Agabi said that retrospective effect cannot be given to the

amendment in the light of the clear provision as to the date of its commencement which is 16th July, 2010, while the second oath was taken on 28th April, 2008. That the amendment does not and cannot apply to the 1st Respondent in the absence of any express words making the legislation retrospective. He referred to *Ibrahim v Barde* (1996) 9 NWLR (Pt.474) 513 at 577. That no legislation should be given retrospective effect when that is not categorically so specified. That laws are usually prospective and nothing has happened to change that in this respect. He cited *A.G. Federation v. ANPP* (2003) 15 NWLR (Pt. 844), *Olaniyi v Aroyehun* (1991) 5 NWLR 194.

For the 2nd Respondent, Peoples Democratic party was canvassed by Chief Olusola Oke that this appeal is no longer alive since by reason of the judgment of the Lower Courts, the tenure of the 1st Respondent did not end on 29th May, 2011 and so this appeal is academic. He cited *Air via Ltd v oriental Airlines Ltd* (2004) All FWLR (Pt.212) 1568 at 1584; *A.G. Anambra State V A.G. Federation* (2005) 9 NWLR (Pt. 931) 572 at 507.

That since election could not lawfully be conducted in April, 2011 in Adamawa State this Court cannot be lawfully invited to make a decree to the effect that election should have held in April, 2011 and then direct that election be held after the said date contrary to the provisions of Section 178 (1) of the Constitution.

Chief Olusola Oke going along the same line of thinking as the 1st Respondent said Section 180 (2) of the old Constitution applicable contemplated a situation whereby a governor could spend more than 4 years in a tenure that was slated for 4 years. That the circumstances in which an elected Governor may spend less than 4 years as listed are exhaustive in the constitution being by death, resignation, impeachment or permanent incapacity due to infirmity of body or mind. That where the law prescribes a mode for doing a thing, only that method and no other must be adopted and followed. That the computation which appellant is urging this court would short change the 1st Respondent and his political party by at least three months in a circumstance not provided for in the Constitution. That when the nullification took place an oath of allegiance and oath of office were administered on the Speaker to hold fort as acting Governor, that it cannot be contemplated that the Governor would share his tenure with the speaker in the three months ordered.

In SC.282/2011, Mr. Liman SAN learned Counsel for the Appellant, Independent National Electoral Commission adopted their brief filed on 28/9.11 and contended that the Court of Appeal was wrong when it held that when the election of the 1st Respondent, Alhaji Aliyu Magatakarda Wammako, Governor of Sokoto State was nullified on 11/04/2008 the Court of Appeal also nullified all actions derivable from the said election inclusive of the oaths of allegiance and oath of office taken on the 29/05/2007. That those actions taken were valid. He cited *Balonwu v Governor of Anambra State* (2008) 16 NWLR (Pt.1113) 236 at 266; *Ladoja v INEC* (2007) All FWLR (Pt. 377) 934.

That the Court below did not take into account the full import of Section 180 (2A). That there is a distinction between nullity of an election and validity of actions done pursuant to a nullified election.

That in considering the period the 1st Respondent spent in office that computation is inclusive of the period expended in office from 29th May, 2007. He stated that the said Section 180 (1) (a) and 2 (a) of the Constitution of the federal Republic of Nigeria 1999 contemplates the period of four years for a Governor of a State from the period of when he was first sworn into office. That the Court below wrongly applied *Obi v. INEC* (supra) and to be applicable the facts of the two cases must be either the same or at least similar before the decision in one can be used. He referred to *Jibril v Military Administrator Kwara State* (2007) 3 NWLR (Pt. 1021) 357; *Chief Gani Fawehinmi v. NBA* (NO.2) (1989) 2 NWLR (Pt. 105) 588 at 650.

The Brief of Argument of the 1st Respondent, Alhaji Aliyu Magatakarda Wammako, Governor of Sokoto State settled by S. I. Ameh SAN was filed on 28/11/2011 was adopted by learned Counsel. He contended that this Court is loath to interfere with the concurrent findings and judgments of the two Courts below. That this Court only deviates where the findings and judgments are shown to be perverse or there is substantial error apparent on the record which is not the case in this instance. He cited *Akibu v. Oduntan* (2002) 13 NWLR (Pt. 685) 446 at 473, *Odeniji v Akinpelu & ors* (1998) 7 NWLR (Pt. 559) 174 at 184 - 185; *Okolie Echi & Ors v Joseph Nnamani* (2000) 8 NWLR (Pt. 667) 1 at 12, 18.

That the 1st Respondent's term of office as stipulated in Section 180 (2) (a) of the Constitution of the Federal Republic of Nigeria, 1999 (which was the law in force when the cause of action arose) in four years from the 28th of May, 2008, when he took a fresh oath of allegiance and office as Governor of Sokoto State. He stated on that our juris- prudence has always regarded a void act as a complete nullity and that is the finding of the trial Court and the Court of Appeal which this court should give effect to. He referred to *Mcfoy v. United African Co. Ltd* (1961) 3 WLR 1409 at 1410; *Adejumo v. Ayantegbe* (1989) 3 NWLR (Pt. 110) 427; *Ayisa v Akanji* (1995) 7 NWLR (Pt.406) 129; *Adefulu v Okulaja* (1995) 9 NWLR (Pt. 475) 688; *Labour party v. INEC* (2009) 6 NWLR 315 (SC).

Learned Counsel for the 1st Respondent submitted in conclusion that statutes including the constitution will not be construed in such a way as to deprive a citizen of rights already vested in him under the law. That the Court should resolve the issue in favour of the 1st Respondent and hold that the amendments to section 180 of the constitution of 1999 cannot operate retroactively to deprive the 1st respondent of any part of his 4 year tenure which is to end on the 28th of May, 2012.

Chief Olusola Oke, learned Counsel for the 2nd Respondent, Peoples Democratic Party, the 2nd Respondent had the Brief of argument settled by him filed on 25/11/2011. He adopted the same at the hearing and argued along the same lines as his earlier submissions in SC/141/2011 and that is to the effect that:-

1. The appeal has become academic after 29th of May, 2011 sequel to Section 178 (2) of the Constitution.

2. The Appellant is not constitutionally empowered to conduct election after the expiration of the tenure of the last occupier of the office of the Governor of Sokoto State. It must do so not earlier than 50 days or less than 30 days to the expiration of the tenure.

3. Oaths of Allegiance and office under Section 180 of the Constitution can only be said to be valid if predicated on a valid election. Consequently, oaths of allegiance and oaths of office predicated on nullified elections are in themselves null, void and incapable of activating court's cognizance.

4. In calculating the 4 year term of office of the 1st Respondent, time can only start running from the 28th May, 2008, when he

subscribed to the oath of office and oath of allegiance predicated on a valid election.

5. The amendment to section 180 of the 1999 Constitution which came into force in July, 2010 is not retrospective and therefore inapplicable to the situation of the 1st Respondent who acquire  
B his vested right before the amendment.

In respect to SC.266/2011, Dr. Onyechi Ikpeazu SAN for the Appellant, Independent National Electoral Commission adopted the Brief of Argument filed on 5/9/2011. He submitted that from the  
C plain meaning of the words used in Section 180 (2) (b) of the Constitution, it is clear that the Governor of a State and in this instance, Senator Liyel Imoke shall spend a total period of four (4) years in office in one term or dispensation and it need not be continuous as otherwise that term would have been inserted in the Constitution.  
D That it is trite that a constitutional provision will be construed in a manner that will not be illegal or defeat the obvious ends the Constitution was designed to serve. He cited *Musa v. INEC & Ors* (2002) 11 NWLR (Pt. 777) 223 at 291.

Mr. Paul Erokoro SAN for the Respondent, Senator Liyel  
E Imoke disagreed with the views of Dr. Ikpeazu SAN above contending that “a period of four years” as specified in Section 180 of the Constitution means one, single, continuous period of four consecutive years”. That if the Constitution had not intended a single continuous, unbroken 4 year tenure it would have said so, expressly with  
F words such as “cumulative periods not exceeding four years” or “an aggregated period of four years” and so on. He said any other construction would produce absurdity.

Mr. Erokoro SAN went on to say that the four years would  
G commence from the 28th of August 2008, the date the Respondent took his oath of office following the re-run election and count forwards not backwards until the 4 years come to an end. He said with the amendment to Section 180 of the Constitution no governor can now spend more than 4 years in total in that office.

H In SC.267/2011, Dr. Ikpeazu SAN for the Appellant adopted their Brief of Argument filed on 2/9/2011 and talked along the same lines as earlier in SC 282/2011. He submitted that the Court of Appeal was wrong when they held that the period during which the 1st Respondent, Chief Timipre Sylva, Governor of Bayelsa State Occu-

pieced the office of Governor following his initial swearing-in should not be contemplated in computing the period of four years the 1st Respondent is constitutionally required to occupy the office of Governor. That Court below misapplied the decision of this Court in *Peter Obi v INEC & Ors* (2007) 11 NWLR (Pt. 106) 565. Also that the nullification of the election did not nullify either the Oath of Office previously taken by Governor or the acts in that period. B

For the 1st Respondent, Chief Timipre Sylva, learned Counsel, Chief Ladi Williams SAN adopting their Brief filed on 10/10/11 submitted that when the election was nullified and a fresh one ordered and held, which is again won by the incumbent Governor and is followed by a second swearing in, the nullification of the first election has the effect of nullifying the first swearing-in which ceases to exist and to serve as a base line for calculating the four year period and is replaced for this purpose by the second swearing in. That the election is the mandate and basis for a swearing-in and its nullification also necessarily nullifies the swearing-in. He said no legally valid swearing-in can be based on an election declared null and void by the Court. C D

Chief Williams said when an event or act is said to be a nullity, it means that it is deemed in law never to have taken place and therefore to have no existence at all, it amounts to nothing. He referred to *Sanusi v Daniel* (1956) 1 FSC 93 at 95; *Mcfoy v United Africa Ltd* (1961) 3 WLR 1409; *Adejumo v. Ayantegbe* (1989) 3 NWLR (Pt. 110) 417 at 451. E F

For the 4th Respondent, the Attorney-General of the Federation Mrs. A.O. Mbamali SAN adopted her Brief filed on 28/11/11. She submitted that the provisions of the constitution must be taken as a whole to get the true meaning and intent of Section 180 (2) (a) of the Constitution. That the election is a condition precedent to the taking of the oath of allegiance and oath of office. That the 1st Respondent's tenure commenced on 29th May, 2008, when he took the oath of office and therefore the new four year term must run its course. She cited several judicial authorities. G H

Learned Counsel for the Attorney-General of the Federation further contended that if the amendment to Section 180 of the Constitution was intended to have a retrospective effect it would have clearly expressed in the alteration.

Chief Olusola Oke for the Peoples Democratic party, 5th Respondent adopting his Brief of 14/10/11 went along his earlier submissions and it is not necessary to repeat them.

In SC.356/2011, Chief Awomolo SAN asked A. B. Mahmoud SAN to argue for the Appellant, Independent National Electoral Commission adopted the Brief of Argument filed on 12/10/11. He argued along the same lines as other counsel for INEC in the other appeals, submitting that the appeal is about the rights of the governed and claims of the governors to more privileges. That the issues would be resolved in the manner to ensure that those rights of the governed are promoted and protected as intended by the constitution and that the Court of Appeal was wrong in its interpretation of the relevant sections of the Constitution in relation to the tenure of the Governor affected.

In SC.357/2011, Chief Awomolo SAN stepped aside for Mr. A. B. Mahmoud SAN to argue along their Brief of Argument filed on 12/10/11 sustained the views that the tenure of the Governor of Kogi State had exhausted on the attainment of 4 years inclusive of the period before the annulment and even while the speaker acted. Prince Lateef Fagbemi SAN for the 1st Respondent, Ibrahim Idris, Governor of Kogi State after adopting his Brief of argument contended that INEC lacked the locus standi to prosecute this appeal since it has no personal interest at stake as an “unbiased, impartial and neutral body” set up to conduct elections.

The above are summaries of the submissions of counsel for the Appellants, Respondents and amicus curiae in the various appeals even though SC.141/2011 has been made the reference point and the substance of the judgment therein would be the decision in the other appeals as the circumstances are the same even though different dates apply to each of the Governors.

As to whether or not the appeals are live since learned counsel for the Peoples Democratic Party, PDP had opined that in view of section 178 (1) & (2) of the constitution, the appeals are spent as the INEC can no longer conduct the various elections. That section provides as follows:-

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

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

That is the Constitutional provision stated above and assuming that what Chief Olusola Oke contends is the correct position of things this court cannot fold its hands and simply give up leaving such a huge gully without filling it up. Section 22 of the Supreme Court Act and order 8 Rule 12 of the Supreme Court Rules have adequately empowered and emboldened this court in the face of an obvious illegality and un-constitutionality to cure the defect or infirmity. Taking into consideration the Ruling of this court delivered on 8th July, 2011 in SC.141/2011 where the Appellant now 1st Respondent was granted leave to appeal the decision of the Court holding that the issues involved are matters of constitutional and jurisdictional importance. Also, that there is prima facie arguable appeal to justify the granting of the application.

It is with that in mind that it is too soon thereafter that ruling for this court to be persuaded that the appeal is academic and hypothetical. That posture would not tie with what is on ground, and I go along with the opinion of chief Olanipekun that the 1st respondent ought not to tow the line of trying to scuttle the appeal in spite of the earlier decision. I place reliance on *Military Administrator of Benue State & Ors v. Olegede & Anor* (2001) 8 NSCQR 110; *Dim v. Enemuoh* (2009) 10 NWLR (Pt.1149) 353 at 389 - 392.

Also section 178 (2) of the constitution is not absolute and must be read within the context of reality and the powers of this Court when there is need for the intervention of the Court to set things right where there is obviously a breach or infraction. That would be taking things into the realm of absurdity which this Court would not allow. See *Ngigine v. Nwude* (1999) 11 NWLR (Pt.26) 314; *Kwari v. Rago* (2000) FWLR (Pt. 22) 1129.

On the notion that to debar the Governors fresh tenure dates from date of the second oaths would be in keeping with section 180 of the constitution of the 1999 constitution before amendment otherwise as chief Richard Akinjide SAN posits that would be akin to giving retroactivity to the new amendment which is not allowable. It is needful to have recourse to the relevant constitutional provisions

quoted fully for clarity and they are:-

Section 1 (2):

*“The Federal Republic of Nigeria shall not be governed, nor shall any person or group of persons take control of the government of Nigeria or any part thereof, except in accordance with the provisions of the Constitution.”*

Section 180 (1) provides that:

*“Subject to the provisions of this constitution, a person shall hold the office of Governor of a State until -*

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

*or*

*(b) He dies whilst holding such office, or*

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

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

Section 180 (2) provides that:

*“subject to the provisions of subsection (1) of*

*This section, the governor shall vacate his office at the expiration of a period of four years commencing from the date when:-*

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

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

Section 180 (3) provides that:

*“If the Federation is at war in which the territory of Nigeria is physically involved and the president considers that it is not practicable to hold elections, the National Assembly may by resolution extend the period of four years mentioned in subsection (2) of this section from time to time, but no such extension shall exceed a period of six months at any one time.”*

Section 181 (1) provides that:

*“If a person duly elected as Governor dies before taking and subscribing the oath of Allegiance and oath of office, or is unable for any reason whatsoever to be sworn in, the person elected with him as Deputy Governor shall nominate a new Deputy Governor who shall be appointed by the Governor with the approval of a simple*

*majority of the House of Assembly of the State.”*

Section 181(2) provides that:

*“Where the persons duly elected as Governor and Deputy Governor of a State die or are for reason unable to assume office before the inauguration of the House of Assembly, the Independent National Electoral commission shall immediately conduct an election for a Governor and Deputy Governor of the state”.*

Section 182 (1) (b) provides that:

*“No person shall be qualified for election to the office of Governor of a State if-  
(b) he has been elected to such office at any two previous elections.”*

It seems to me now trite that the only way to get at the true intendment of the framers of the constitution especially with section 180 thereof is that related provisions must be read along. Differently put is the application of liberalism so as not to defeat the ends the constitution was designed to serve. To achieve that is the approach now adopted by the courts of a purposive approach which situates the duty of Court to interpret a specific section or provision within the background or context of the environment in which the legislation has been enacted. Once the intention of the lawmakers are discerned as much as it is possible so to do and viewed in the mirror of what propelled the particular law to be made, then the construction that is consistent with smooth running of the system shall take pride of place and be given effect to. See the following authorities viz:-  
A.G. Lagos State v Eko Hotels Ltd. & Anor (2006) 18 NWLR (Pt. 1011) 379 at 458; Braithwaite v. GDM (1998) 7 NWLR (Pt. 558) 307 at 325; Nafiu Rabi v Kano State (1980) 8 - 11 SC130 at 148; A.G Federation v Abubakar (2007) All FWLR (Pt. 375) 405 at 547.

However, apart from what I have said above, the matter of retroactivity of the Constitution as amended does not come into play as what I see is the appropriate interpretation of Section 180 (2) (a) of the Old Constitution applicable at the time the cause of action arose.

Therefore, in my view the amendment bringing into operation section 180 (2) (2A) does not apply and so the question whether or not, though promulgated after the cause of action had arisen, it would apply to the case in hand is not for our purpose now, rather what is at play is the proper interpretation of the Old Constitutional

provision that is Section 180 (2) aforesaid which is really the governing legislation.

As a follow up is the question whether the nullification of an election is tantamount to a nullification of the oath of allegiance and oath of office and the implication of that with acts carried out in the course of the duties of the Governor subsequently annulled and who participated in a re-run or a fresh election. While learned counsel for the various Governors and the counsel for the PDP and the Federal Attorney General contend that the nullification affected the oaths of office and left valid those acts of the Governors at the material time like awards of contracts, proclaiming the State Assemblies into being and numerous other functions. Counsel for Appellants viz Chief Wole Olanipekun Mr. Ajayi SAN and Itse Sagay SAN disagree and submit that only the elections were nullified, all other acts including the oaths remained valid.

I would go with the latter view as the doctrine of *de facto* envisages that acts permitted *de facto* by the officers within the scope of their assumed official authority in the interest of the public or third persons and not for their own benefit and generally are valid and binding as if they were the acts of officers *de jure*. This is to forestall unnecessary confusion, anarchy and chaos and the society not knowing where they stand in what various capacities like those sworn into office like judges by these assumed officers. An analogy that comes to mind is where a Decree *nisi* or absolute is pronounced on a marriage. The question that arises would be, if the products of the assumed valid marriage could be annulled from existence? Since the answer is obviously in the negative, by the same token acts of those who saw themselves as Governors sat and performed functions as such those functions and acts are valid whatever has happened to their status thereafter. See *Agidingbi v. Agidingbi* (1996) 6 SCBJ 105; *Sanyina v. African International Bank Plc* (2001) 4 NWLR (Pt. 703) 353.

From the above would naturally arise the question, what the tenure of these Governors would be in view of Section 180 (1) & (2) (a) of the constitution before amendment. While the contenders against the tenure being computed from the time of the second oath taking fearing a possible tenure in perpetuity if the second oath taking is assumed to be the starting point of computation, the propo-

nents namely Mr. Kanu Agabi SAN, Paul Erokoro SAN, prince Lateef Fagbemi SAN, Chief Awomolo SAN, etc, push strongly the point that the operating constitutional provision before amendment had granted a tenure from time of second or subsequent oath after any re-run.

In answering this poser it is necessary to reiterate that section 180 (1) & (2) (a) of the constitution before amendment cannot be read in isolation but has to be read in conjunction with the provision stating clearly, in plain language and unequivocally that no one should occupy more than 8 years as Governor with a 4 year tenure at each instance. That being the case the matter of when a new tenure would begin cannot be taken to be from subsequent oath taking. Rather, after the re-run the officer cannot exceed the unexpired term existing at the time of the nullification not minding the period the position in acting capacity is occupied by the speaker. That seems the only reasonable, cogent and realistic way to interpret the constitution. Going along with the proponents of tenure elongation would lead to absurdity and possible uncertainty in the polity and the resultant effect is best left in the imagination. A nation cannot be operating in a scenario of uncertainty and the instability which would occur.

In effect the courts below utilized the principles of *Peter Obi v INEC* (supra) out of context. I would rather commend the authority of *Ladoja v INEC* (supra) as more suitable for this instance.

In conclusion and taking along the fuller reasons in the lead judgment as delivered by W.S.N. Onnoghen JSC, the tenures of the various Governors of Adamawa, Sokoto, Cross-River, Bayelsa, Kogi came to an end on 28th May, 2011.

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

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