

SUPREME COURT OF NIGERIA

24TH FEBRUARY, 2012. SC. 14/2012 (CONS.)

CORAM: - W. S. N. ONNOGHEN, I. T. MUHAMMAD, O. O. ADEKEYE, N. S. NGWUTA, M. U. PETER-ODILI, JJSC

1. MALLAM ABUBAKAR

ABUBAKAR

2. GARBA KAMBA RABIU APPELLANTS

3. CONGRESS FOR PROGRESSIVE

CHANGE - SC.14/2012, SC.14A/2012,

SC.14B/2012, SC.14C/2012

AND

1. SAIDU USMAN NASAMU

2. IBRAHIM KHALIL ALIYU

3. PEOPLES DEMOCRATIC PARTY

4. INDEPENDENT NATIONAL RESPONDENTS

ELECTORAL COMMISSION

5. INSPECTOR GENERAL OF POLICE

6. COMMISSIONER OF POLICE

KEBBI STATE - SC.14/2012,

SC.14A/2012, SC.14B/2012, SC.14C/2012

ELECTION PETITIONS - Jurisdiction - Supreme Court - By 1999 constitution s. 233(2)(e)(iv) as amended - Decisions of Court of Appeal on who is validly elected as Governor - Is now appealable (H1)

ELECTION PETITIONS - Jurisdiction - Court of Appeal - By 1999 constitution s. 246(3) - Appeals arising from National and State House of Assembly election petition tribunal - Terminates at Court of Appeal (H2)

ELECTION PETITIONS - Appeals - Judgments - Deferment of reasons - By 1999 constitution s. 285(7)(8) - Where the appeals are final - Court of Appeal and Supreme Court may give decisions - And reserve the reasons to later date (H3)

CONSTITUTIONAL LAW - Constitution - Interpretation - Principles - Where words used in constitutional provisions are unambiguous -

Same must be given their ordinary meaning - In order not to defeat the intention of the lawmakers (H4)

WORDS & PHRASES - Statutes - “Shall” and “within” - Meaning - The words mean that the applicable provision - Is mandatory as it admits of no discretion (H5)

CONSTITUTIONAL LAW - Time - Stipulated in the Constitution - Cannot be extended by court - In purported exercise of discretion (H6)

WORDS & PHRASES - Decision of a court - Meaning - By 1999 Constitution s. 285(7) - The phrase means decision and the reasons for same - Which must be given within the assigned sixty days (H7)

WORDS & PHRASES - Constitution - “The court” - Meaning - By 1999 Constitution s. 285(8) - It refers to Court of Appeal and Supreme Court - Depending on the facts of the case (H8)

WORDS & PHRASES - Constitution - “Final appeals” - Meaning - The phrase does not relate to final decisions of election tribunal - It relates to the final court - Beyond which there is no further appeal (H9)

WORDS & PHRASES - Constitution - “All final appeals” - Meaning - It means all appeals - After which there is no further appeal to a higher court or tribunal (H10)

CONSTITUTIONAL LAW - Election petitions - Applicable law - Specific provisions of 1999 Constitution s. 285 on election matters - Must prevail over s. 294 being a general provision (H11)

FACTS

1st and 2nd appellants were sponsored by 3rd appellant i.e. Congress for Progressive Change while 1st and 2nd respondents were the candidates of 3rd respondent i.e. Peoples Democratic Party (PDP) in Governorship election held in Kebbi State and other States of Nigeria on the 26th April 2011. 4th respondent (INEC) is the body

constitutionally assigned the role of conducting elections in the country. At the conclusion of the election, 4th respondent declared 1st and 2nd respondents winners of the election into the Office of Governor and Deputy Governor of Kebbi State, respectively. Appellants were not satisfied with the outcome of the election. Consequently, they (as petitioners) challenged same via this election petition filed at the Kebbi State Governorship election tribunal. They contend that the election was not conducted in compliance with the provisions of the Electoral Act 2010 (as amended) and the Election Manual. Respondents' contention (as defendants) is that the election was conducted in substantial compliance with the Electoral Act and Election Manual and that all relevant forms were used in strict compliance with the laws and regulations. At the conclusion of trial, the tribunal held that 4th respondent failed to establish proper conduct of the election vide actual or proper distribution of ballot papers and ballot boxes and other sensitive electoral materials which failure was fatal to the conduct of the election. It further held that the hand written entries on plain sheets of paper - exhibits Kebbi State ten (10) and Kebbi State Eleven (11) in place of the prescribed statutory forms is of no evidential value as the statutory forms are key to proper conduct of credible election. The tribunal consequently nullified the election and ordered a proper election to be conducted.

Dissatisfied, all respondents filed separate appeals at the Court of Appeal, Sokoto Division. Appellants filed cross appeal. The appeals were consolidated and heard accordingly. The judgment was adjourned to 29th December 2011. On the said 29th December 2011, the court allowed the appeals of 1st and 2nd respondents against the judgment of the Kebbi State Governorship election tribunal and dismissed the cross appeal of appellants. No reason(s) for the above decision was given until 23rd January, 2012. Besides, the reason was neither given within the fourteen (14) days allowed appellants to file their notice of appeal nor within the sixty (60) days allowed the lower court to hear and determine appeals from election tribunal as provided under section 285(7) of 1999 constitution of Federal Republic of Nigeria (as amended). Aggrieved, appellants filed appeal no: SC/14/2011 against the decision of the Court of Appeal allowing the appeal of 1st and 2nd respondents. Additionally, appeal no: SC/14A/2012 is against the decision of the court allowing the appeal of 2nd

set of respondents. Again, appeal no: SC/14B/2012 is against the decision of the court allowing the appeal of 3rd set of respondents; while appeal no: SC/14C/2012 is against the decision of the court dismissing appellants' cross appeal.

ISSUES FOR DETERMINATION

B 1. Whether in view of the provisions of Sections 285(7) & (8) and 294(1) of the Constitution of the Federal Republic of Nigeria, 1999 as amended, the judgment of the lower court delivered on the 29th day of December, 2011 in respected of which the reasons for the decision was given on the 23rd day of January, 2012, is a nullity.

C 2. Whether or having regards to the totality of the pleadings and evidence on record, the lower court was right in setting aside the judgment of the tribunal which nullified the decision of the 1st and 2nd respondents and ordered fresh election and whether the said D court was right in dismissing the cross appeal.

HELD (Unanimously allowing appeals nos: SC/14/2012, SC/14A/2012, SC/14B/2012 and striking out appeal no: SC/14C/2012 per ***ONNOGHEN JSC***)

E ***Jurisdiction - Supreme Court***

1. Prior to the amendment to the 1999 Constitution the Court of Appeal was the last bus stop in appeals against decisions of the election tribunals in relation to Governorship, National Assembly and State House of Assembly elections. However, by the provisions of F Section 233 (2) (e) (iv) of the 1999 Constitution, as amended, decisions of the Court of Appeal on any question as to whether any person has been validly elected to the Office of Governor or Deputy Governor of a State under the constitution is now appealable to the G Supreme Court. Therefore this court, the Supreme Court of Nigeria, is now the final Court of Appeal (bus stop) in appeals on decisions as to whether any person is validly elected governor or deputy governor of a state, under the constitution. (p. 497 B)

H ***Jurisdiction - Court of Appeal***

2. However, decisions of the Court of Appeal in respect of appeals arising from the National and State Houses of Assembly election petitions continue to terminate at the Court of Appeal by virtue of the provisions of Section 246 (3) of the 1999 Constitution, as amended,

which enacts thus:-

“The decisions of the Court of Appeal in respect of appeals arising from the National and State Houses of Assembly election petitions shall be final”. (p. 497 D)

Judgments - Deferment of reasons - Propriety

3. The question is, what do subsections (7) and (8) of Section 285 of the 1999 Constitution, as amended, mean in relation to the facts of this case and the issue under consideration. It is very clear that the two sub-sections apply to both the Court of Appeal and the Supreme Court in the exercise of the appellate jurisdiction conferred on them by the constitution in relation to election matters. From subsection (7) supra, the duty is imposed on both the Court of Appeal and the Supreme Court to hear and dispose of appeals arising from the decisions of an election tribunal or Court of Appeal within sixty (60) days of the delivery of the said judgment.

In exercising or performing the above duty, the Court of Appeal and the Supreme Court may, where the appeals are final appeals adopt the practice of first giving their decision and reserving the reasons for the said decisions to a later date.

What subsection 8 of Section 285 of the 1999 Constitution, as amended is saying in relation to the facts of this case is simply that an appeal, where the Court of Appeal is the final Court of Appeal, such as in appeals relating to National and State Houses of Assembly election petition matters, the Court of Appeal, like the Supreme Court, may adopt the practice of giving its decision but deferring the reasons for the said decision to a later date not exceeding the time constitutionally allotted the court to hear and dispose of or determine/decide the matter. The decision and the reasons for the decision both constitute the judgment of the court and must go hand in hand, and must come within the time allotted in the constitution for both to be valid and subsisting. (p. 498 B/501 G)

Constitution - Interpretation - Principles

4. 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 in the statute or constitution. Therefore where words used in the constitutional provisions are

clear and unambiguous they must be given their ordinary plain meaning so as to avoid reading into the provisions meanings not intended by the lawmakers. The above clearly means that where the words used in the provision are clear and unambiguous, the question of interpretation becomes a non issue as there is nothing to be interpreted or constructed as the court is duty bound to assign the words used in the provision their ordinary plain meanings.

In my judgment, the words deployed by the legislature in Section 285(7) and (8) of the 1999 Constitution are very simple and straight forward and unambiguous and therefore admit of no special construction or interpretation. They simply mean what they plainly stated. Subsection (7) of Section 285 means simply that it is obligatory on the Court of Appeal or the Supreme Court to hear and determine an appeal arising from an election petition matter within sixty (60) days from the date of the delivery of judgment by the election tribunal or Court of Appeal. The provision makes no distinction between an interlocutory decision of the tribunal and the final decision of the tribunal or Court of Appeal. (p. 498 H)

“Shall” and “within” - Meaning

5. Also to be noted is the use of the words “shall” and “within” in the said subsection which means that the provision is mandatory as it admits of no discretion whatsoever. The word “within” means a decision rendered by the affected court outside the assigned sixty (60) days is null and void. (p. 499 E)

Time - Stipulated in the Constitution

6. It is settled law that the time fixed by the constitution, which is the fundamental or supreme law of the land, cannot be altered, extended, expanded, elongated etc by any court in the purported exercise of a discretion to that effect. (p. 499 F)

Decision of a court - Meaning

7. When Section 285(7) of the 1999 Constitution (as amended) talks of a decision of a court it means the decision and the reasons for that decision. A decision is arrived at through a demonstrable process of reasoning based on the facts proven in evidence and the applicable law. It follows therefore that a decision without the reasons for same

is in law, no decision at all. Therefore, when Section 285(7) of the said 1999 Constitution assigned sixty (60) days within which an appeal must be heard and disposed of (concluded) decided/determined, it clearly means that both the decision/judgment/determination etc of the court and the reasons for same must be given by the court concerned within the assigned sixty (60) days or less but not more. (p. 499 G) B

“The court” - Meaning

8. Turning now to Section 285(8) of the said 1999 Constitution, the words “the court” used in the opening of the subsection refers, in my judgment to both the Court of Appeal and the Supreme Court depending on the facts of the case. The Court of Appeal when it sits as the final Court of Appeal such as in appeals arising from the decisions of election tribunals in relation to National and State Houses of Assembly elections, and the Supreme Court when it sits to determine appeals arising from the decisions of the Court of Appeal in relation to governorship election petition matters. (p. 500 B) C
D

“Final appeals” - Meaning

9. The expression “final appeals” therefore do not relate to final decisions of the election tribunals as canvassed by the respondents’ in contradistinction with their decisions on interlocutory matters. The words relate to the final court beyond which there is no further appeal; the last chance/bus-stop. (p. 500 D) E
F

“All final appeals” - Meaning

10. What does the expression or phrase “all final appeals” as used in Section 285(8) of the 1999 Constitution, as amended mean? The expression is not defined in the constitution neither has it been interpreted by this court before now. To get to the meaning of the expression, it is necessary to know what the words “final” and “appeal” mean. G

“Final” as defined by Webster’s New Twentieth Century Dictionary Unabridged Second Edition at page 686 - 687 includes:

1. *Pertaining to the end or conclusion; last; ultimate; as the final issue...*

2. *Conclusive, decisive; determinative; as a final judgment...*

that which is the termination; the last”.

While the word “appeal” is defined by the said dictionary at page 88 to include the following:

“1. In law, the removal of a case from a lower to a higher court for hearing, or the right to, or a request for, such action...”

B When the meanings of the two words are combined, what the expression means, becomes very obvious. In my judgment the expression means all appeals after which there is no further appeal to a higher court or tribunal, or decisions by a final Court of Appeal, or the last bus stop in the appeal route after which everything or appeal
C terminates/is at end.

It should be noted that the expression as used in Section 285(8) of the 1999 Constitution as amended is tied to “the court” which has to take the requisite action in relation to “all final appeals”.

D (p. 500 E)

Election petitions - Applicable law

11. The question that necessarily follows is whether the provisions of Section 294(5) of the 1999 Constitution supra applies to the facts of
E this case or to courts exercising jurisdiction under Section 285 of the 1999 Constitution, as amended? I think not.

Section 285 of the 1999 Constitution, as amended is a specific provision which deals with election petition matters which has long
F been held to be sui generis. On the other hand, Section 294 is a general provision dealing with civil proceedings and judgments thereon generally.

It is settled law that in the circumstance of this case, the specific provisions in relation to election matters must prevail or apply to the
G judgment in question and not the general provision in Section 294 which applies to civil proceedings in general. The said Section 294 has no relationship with election petition matters as against the provisions of Section 285 of the said 1999 Constitution, as amended.

H Apart from the said Section 285, the other relevant section of the 1999 Constitution relating to election petition proceedings/matters is Section 246(1)(b)(3). It is therefore my view that Section 294(5) applies in relation to the provisions of Section 294(1) only, both of the 1999 Constitution, as amended.

I therefore resolve the issue in favour of the appellants.
(p. 502 F)

NOTABLE POINTS OF INTEREST

ONNOGHEN JSC

1. Need to avoid proliferation of appeals

I wish to observe that the court has recently been bombarded with proliferation of appeals by dissatisfied litigants arising from a single decision of the lower court in circumstances where a single appeal would be more than sufficient to dispose of the issue(s) in controversy between the parties and thereby save the time, energy and costs involved in litigation. Rather than have a single appeal, and where appropriate a cross appeal, we now have the practice of virtually all respondents, whose defence to the petition are not radically different, now filing separate appeals against the decision of the lower court and ending up formulating the same issues for determination. As a consequence of the current trend, you now see two or more, sometimes six appeals, being consolidated to be dealt with accordingly. It may be profitable to the legal practitioners involved to have proliferation of appeals as same may enhance their Bill of Charges, but the development does not add anything to the development of the law apart from being a waste of time and resources. It also adds to the stressful situation the appellate courts are now exposed to in the determination of appeals arising from election petitions which is now subject to limitation of time. Is it not a wise saying that repetition does not improve an argument? (p. 494 D)

2. Judges to ensure quick dispensation of election petitions

The instant appeal was heard on Thursday, 16th February, 2012 and judgment adjourned to today, Friday 24th February, 2012 about a week, even though the sixty (60) days would be Tuesday, 28th February, 2012. The judiciary has no option but to try to work within the time frame provided by the law and/or constitution so as to move our democracy forward. Many attempts would be made to frustrate the aims and objectives of the legislature in providing the time frame within which election matters must be heard and disposed of but it is our duty to resist the attempts by putting in our best in the circumstances. To achieve the aim, we need not write lengthy judgments

nor consider irrelevant issues. We need to consider the main issues in the case and resolve same in as short a judgment as possible. The real judgment in an election matter is, I strongly believe, that of the people expressed through the ballot box.

The National Assembly may, however, in the circumstances of this case and those of similar nature, consider amending the constitution by providing a similar provision to Section 294(5) of the 1999 Constitution, as amended, in Section 285 of the said constitution. (p. 503 F)

C ADEKEYE JSC

3. Meaning of nullity in law

A nullity in law is a void act, an act which has no legal consequence. A proceeding which has been declared a nullity is void and without legal effect or consequence whatsoever. It does not confer any legal right whatsoever, or it does not impose any obligation or liability on anyone. In the instant appeals once the two judgments from which they emanated were nullified by operation of law - there is nothing left before this court upon which the appeals could be based. (p. 515 G)

4. Meaning of Appeal

An appeal is generally regarded as a continuation of an original suit rather than an inception of a new action. An appeal should be a complaint against the valid decision of a trial court. In the absence of such a decision, there cannot possibly be an appeal against what has not been decided against a party. In other words, an appeal does not lie against an incompetent decision. When the subject-matter of these appeals in hand is no longer subsisting at the lower court, the appellate court lacks jurisdiction to determine that which is non-existent. A judgment given without jurisdiction is no longer alive and no appeal can lie and be heard on it. (p. 516 G)

H REPRESENTATION

Kola Awodein, SAN with Messrs Roland Otaru, SAN; Eghenero Ideh; Oladipo Tolani; Sam Kangbo; Austin Ehabo; Chim Okereke; Chibuike Ezeokwora; Chukwuebuka W. Udeh; Kemi Balogun; Chika Nwagu, for the Appellants

Yusuf Ali, SAN with D. D. Dodo, SAN; Y. C. Maikyau, SAN; N. A. Dangiri, Esq; K. K Eleja, Esq; Dr. B. A. Omipidan, Esq; S. O. Q. Giwa, Esq.; A. D. Zubairu, Esq; S. A. Eigege, Esq; K. O. Lawal, Esq; A. W Raji, Esq; Yunusa Umaru, Esq and Abisola Olanipekun, for the 1st and 2nd respondents B

Dr. Chief Amaechi Nwaiwu, SAN with Chief Afolabi Fashanu, SAN; S. A. Oke, Esq; Abiodun Dada, Esq; Y. L. Akanbi, Esq; S. A Abdullahi, Esq; S. O. Maikenti, Esq; Nneka Bon-Nwakanma (Mrs.); G. O. Diugwu, Esq; Alex Akoja, Esq and Onyedim Chinyere (Mrs.), for the 3rd respondent C

Chief (Mrs.) O. Awomolo with R. O Balogun, Esq; Permata Wadzani Obed, Esq; Akinyosoye Arosanyin, Esq and Ayotunde Ogunleye, D Esq., for the 4th respondent

M. I. Pama Esq. with J. U. Ajii and A. Bagudu, for the 5th and 6th respondents E

CASES REFERRED TO

- Abubakar v. Yar'Adua (2008) 4 NWLR (pt. 1078) 465
- Larmie v. D.P.M.S. Ltd. (2005) 18 NWLR (pt. 958) 438
- Sommer v. Fed. Housing Authority (1992) 1 NWLR (pt. 219) 548 F
- Governor of Kwara State v. Lafiagi (2005) 5 NWLR (pt. 917) 139
- Zoboley Intern. Ltd. v. Omogbehin (2005) 17 NWLR (pt. 953) 200
- Unity Bank v. Bouari (2008) 7 NWLR (pt.1086) 372
- Rotimi v. Macgregor (1994) 11 SC 133
- Ajao v. Alao (1986) 5 NWLR (pt.45) 802 G
- Azore v. Lemonu (1994) 7 NWLR (pt. 356) 284
- Udene v. Ugwu (1997) 3 NWLR (pt. 491) 57
- Saleh v. Monguno (2003) 1 NWLR (pt. 801) 221
- Ajayi v. Military Admin. Ondo State (1997) 5 NWLR (pt. 504) 237
- Akinuoye v. MILAD Ondo State (1997) 1 NWLR (pt. 483) 564 H
- Okafor v. A-G Anambra State (1991) 6 NWLR (pt. 200) 659
- Dawodu v. Ohegundudu (1986) 4 NWLR (pt. 33) 104

STATUTES REFERRED TO

Constitution of the Federal Republic of Nigeria 1999 as amended, ss. 233(2)(e)(iv), 246 (3), 285(7)(8) and 294(1)

BOOK REFERRED TO

B Webster's New 20th Century Dictionary Unabridged 2nd Ed. Pgs. 88, 686 - 687

LEAD JUDGMENT BY ONNOGHEN JSC

C The consolidated appeals arose from the decision of the Court of Appeal, Holden at Sokoto in appeal no. CA/S/EPT/GOV/31/2011 delivered on the 29th day of December, 2011 in which the court allowed the appeals of the 1st and 2nd respondents against the Judgment of the Kebbi State Governorship election tribunal and dismissed D the cross appeal of the appellants. The lower court did not give the reasons for the decision along with the decision, neither was the reason given within the fourteen (14) days allowed appellants to file their notice of appeal nor within the sixty (60) days allowed the lower court to hear and determine appeals from election tribunal.

E The judgment in the appeal was said to have been given on 29th December, 2011 while the reasons for the judgment was given on 23rd January, 2012. Appeal no. SC/14/2012 is therefore against the judgment in respect of the appeal brought before the lower court by the present 1st and 2nd respondents i.e. SAIDU USMAN NASAMU F and IBRAHIM KHALIL ALIYU the Governorship and Deputy Governorship candidates of the Peoples Democratic Party (PDP) in the Kebbi State Governorship election held on 20th April, 2011. The facts of the case are straight forward and include the following:-

G On the 26th day of April, 2011 Governorship election into the Office of Governors of various states in Nigeria including Kebbi State, were held. At the election, 1st and 2nd appellants were sponsored by 3rd appellant - Congress for Progressive Change while 1st and 2nd respondents were the candidates of 3rd respondent, Peoples Democratic Party (PDP). H

The 4th respondent is the body constitutionally assigned the role of conducting national elections by which I(sic) except election into offices in local government councils.

At the conclusion of the election, the 4th respondent declared

the 1st and 2nd respondents winners of the election into the Office of Governor and Deputy Governor of Kebbi State, having scored the majority of lawful votes cast at the election and fulfilled all other constitutional requirements.

Appellants were not satisfied with that result and challenged same at the tribunal on 18th May, 2011 vide an election petition, contending that the election was not conducted in compliance with the provisions of the Electoral Act and the Election Manual in that there was no due election. The respondents' contention is that the election was conducted in substantial compliance with the Electoral Act and Election Manual and that all relevant forms were used in strict compliance with the laws and regulations.

At the conclusion of trial, the tribunal held that 4th respondent failed to establish proper conduct of the election vide actual or proper distribution of ballot papers and ballot boxes and other sensitive electoral materials which failure was fatal to the conduct of the election; that the hand written entries on plain sheets of paper - exhibits Kebbi State ten (10) and Kebbi State Eleven (11) in place of the prescribed statutory forms is of no evidential value as the statutory forms are key to proper conduct of creditable election. The tribunal consequently nullified the election and ordered a proper election to be conducted.

The decision resulted in all the respondents appealing separately against same while appellants cross appeal which appeals were consolidated by order of court made on 28th December, 2011 and heard accordingly. The judgment was adjourned to 29th December, 2011. The judgment is in the following terms -

"1st set of appeal succeed, and is allowed. 2nd set of appeal succeed and is allowed. 3rd set of appeal is succeed (sic) and is allowed. Cross appeal lacks merit and is dismissed. The judgment and order of the tribunal delivered on 13th November, 2011 in petition No. EPT/KR/GOV/1/2011 is set aside".

No reason(s) for the above decision was given until 23rd January, 2012. Appeal no. SC/14/2011 is therefore against the decision of the lower court allowing the appeal of the 1st set of appellants i.e. 1st and 2nd respondents herein. The issues for determination in SC/14/2011 are, as stated in the amended appellants' brief deemed filed on 7th February, 2012, as follows:-

"1. Whether the judgment of the Court of Appeal delivered

on the 29th days of December, 2011 is nullity, the Court of Appeal having not advanced or provided reasons for same at the time the judgment was delivered.

2. *Whether the Court of Appeal had jurisdiction to give, advance or proffer reasons for the judgment delivered on the 29th day of December, 2011, on 23rd day of January, 2012 having not disposed of the appellant's appeal within a period of sixty (60) days from the date of delivery of the judgment of the tribunal.*

3. *Whether the lower court not being a final Court of Appeal in respect of governorship elections has jurisdiction to give or reserve the reasons for its judgment to a later date.*

4. *Whether having regards to the circumstances of this case, including the totality of evidence and states of pleadings, the lower court were right in setting aside the judgment of the tribunal which nullified the election of the 1st and 2nd respondents and ordered fresh elections."*

Appeal no. SC/14A/2012 is against the decision of the lower court allowing the appeal of the 2nd set of appellants whose issues for determination has been identified as follows:-

"1. *Whether the judgment of the Court of Appeal delivered on the 29th day of December, 2011 is a nullity, the Court of Appeal having not advanced or provided reasons for same at the time the judgment was delivered.*

2. *Whether the Court of Appeal had jurisdiction to give, advance or proffer reasons for the judgment delivered on the 29th day of December, 2011, on 23rd day of January, 2012 having not disposed of the appellant's appeal within a period of sixty (60) days from the date of delivery of the judgment of the tribunal.*

3. *Whether the lower court not being a final Court of Appeal in respect of governorship elections has jurisdiction to give or reserve the reasons for it judgment to a later date.*

4. *Whether the lower court was right when it held that the tribunal ought not to have considered appellants alternative relief.*

Appeal no. SC/14B/2012 is against the decision of the lower court allowing the appeal of the 3rd set of appellants which the issues for determination of both are as follows:-

"1. *Whether the judgment of the Court of Appeal delivered on the 29th day of December, 2011 is a nullity, the Court of Appeal*

having not advanced or provided reasons for same at the time the judgment was delivered.

2. *Whether the Court of Appeal had jurisdiction to give, advance or proffer reasons for the judgment delivered on the 29th day of December, 2011, on 23rd day of January, 2012 having not disposed of the appellant's appeal within a period of sixty (60) days from the date of delivery of the judgment of the tribunal.* B

3. *Whether the lower court not being a final Court of Appeal in respect of governorship elections has jurisdiction to give or reserve the reason for its judgment to a later date.*

4. *Whether having regard to the circumstances of this case, including the totality of evidence and state of pleadings, the lower court were right in setting aside the judgment of the tribunal which nullified the election of the 1st and 2nd respondents and ordered fresh elections".* C

Finally, the issues for determination in SC/14C/2012, which is an appeal against the decision of the lower court dismissing appellants' cross appeal are stated as follows:-

"1. *Whether the judgment of the Court of Appeal delivered on the 29th day of December, 2011 is not a nullity, the Court of Appeal having not advanced or provided reasons for same at the time the judgment was delivered.* E

2. *Whether the Court of Appeal had jurisdiction to give advance or proffer reasons for the judgment delivered on the 29th day of December, 2011, on 23rd January, 2012 having not disposed of the appellants' appeal within a period of sixty (60) days from the date of the delivery of the judgment of the tribunal...* F

3. *Whether the lower court not being a final Court of Appeal in respect of governorship elections has jurisdiction to give or reserve the reasons for its judgment to a later date....* G

4. *Whether the lower court was right in affirming the tribunal's finding on the probative value of the Report of Inspection of electoral materials and evidence of PW.46...*

5. *Whether the lower court was right in not holding that the tribunal ought to have granted the main reliefs sought in the petition and declare that the 1st appellant and not the 1st cross-respondent was duly elected by majority of lawful votes cast in the governorship election for Kebbi State held on the 27th day of April, 2011..."* H

It can be observed that Issues 1 to 3 in the four appeals are the same while Issue 4 in the four appeals and 5 in SC/14C/2012 are issues formulated essentially by way of alternatives to Issues 1 - 3.

In other words if a resolution of Issues 1 to 3 is in favour of the appellants there will be no need to proceed to determine Issues 4 and 5 as the earlier determination would be sufficient to disposed of the appeals. In reality Issues 4 and 5 deal with the merits of the decision on appeal while Issues 1 to 3 deal with the competence/ jurisdiction of the lower court to deliver the judgment in the circumstances of the case. If the lower court is found to have been incompetent or to lack the vires, jurisdiction to decide the appeal as and when it did then the decision is a nullity same haven been rendered without jurisdiction and there will be no legal need to proceed to decide whether the said decision of the lower court was correct in law and/or facts. That is all that I have been trying to say.

Secondly, I wish to observe that the court has recently been bombarded with proliferation of appeals by dissatisfied litigants arising from a single decision of the lower court in circumstances where a single appeal would be more than sufficient to dispose of the issue(s) in controversy between the parties and thereby save the time, energy and costs involved in litigation. Rather than have a single appeal, and where appropriate a cross appeal, we now have the practice of virtually all respondents, whose defence to the petition are not radically different, now filing separate appeals against the decision of the lower court and ending up formulating the same issues for determination. As a consequence of the current trend, you now see two or more, sometimes six appeals, being consolidated to be dealt with accordingly. It may be profitable to the legal practitioners involved to have proliferation of appeals as same may enhance their Bill of Charges, but the development does not add anything to the development of the law apart from being a waste of time and resources. It also adds to the stressful situation the appellate courts are now exposed to in the determination of appeals arising from election petitions which is now subject to limitation of time. Is it not a wise saying that repetition does not improve an argument?

Looking closely, however, at the issues formulated in the various appeals and having regards to the decision of the lower court, only two issues are needed to determine the appeals, one each on

the competence/jurisdiction, of the lower court and the merit of the decision appealed against. The issues may be formulated thus:-

1. Whether in view of the provisions of Sections 285(7) & (8) and 294(1) of the Constitution of the Federal Republic of Nigeria, 1999 as amended, the judgment of the lower court delivered on the 29th day of December, 2011 in respected of which the reasons for the decision was given on the 23rd day of January, 2012, is a nullity. B

2. Whether or having regards to the totality of the pleadings and evidence on record, the lower court was right in setting aside the judgment of the tribunal which nullified the decision of the 1st and 2nd respondents and ordered fresh election and whether the said court was right in dismissing the cross appeal. C

I intend to deal with the consolidated appeals in line with the two issues formulated above in the understanding that Issue no.2 will only be gone into if Issue no. 1 is resolved against the appellants - D that is an alternative, to Issue no. 1. To confirm the fact that there are really two main issues for consideration learned senior counsel for appellants Kola Awodein, SAN leading other Senior Advocates of Nigeria, argued Issues 1 - 3 together in the amended appellants briefs.

It is the submission of learned senior counsel that the lower court relied on the provisions of Section 285(8) of the Constitution of the Federal Republic of Nigeria, 1999 as amended (hereinafter referred to as the 1999 Constitution as amended) to deliver a judgment on 29th December, 2011 without giving reasons for same which learned senior counsel contends is unconstitutional and consequently a nullity particularly as the lower court is not the final Court of Appeal in a governorship election petition matters; that only the Supreme Court to which appeals against decisions of the lower court on governorship election petition matters now terminate can exercise the powers conferred by Section 285(8) of the 1999 Constitution as amended; that the judgment of the lower court rendered on 29th December, 2011 is invalid as the same was given without reasons and that the court had no jurisdiction when it sat and delivered the reasons for the decision on 23rd January, 2012 as the sixty (60) days granted the court under Section 285(7) of the 1999 Constitution, as amended, to hear and determine the appeal had lapsed by that date, and urged the court to resolve the issue against the respondents and make a consequential order that the ninety (90) days ordered by the tribu E F G H

nal within which a fresh election should be held, haven lapsed in the process of the exercise of rights of appeal, this court should order same to be held within ninety (90) days of the decision of this court.

The contention of the respondents in relation to the issue under consideration is that the lower court is constitutionally empowered to give a decision of judgment in an appeal against a final decision in an election petition and reserve the reasons for a later date, as provided under Section 285(8) of the 1999 Constitution, as amended, that the lower court heard and disposed of the appeal on 29th December, 2011 which was within the sixty (60) days allotted to a judgment of the tribunal delivered on 13th November, 2011; that interpreting the provisions of Section 285(8) of the 1999 Constitution as amended, the operative words are “the court in all final appeals” and the “final appeals” “must be read and understood within the context of an appeal against the final decision of an election tribunal in contrast to an interlocutory appeal”; that the decision of the tribunal appealed against was a final decision delivered on 13th November, 2011 as a result of which Section 285(8) of the 1999 Constitution is applicable to the lower court; that to adopt the interpretation of the appellants is to import into the provision what is not there as the legislature did not expressly limit the provision to the final court to which appeals lie from the decision of an election tribunal.

It is also the contention of the respondents that the provisions of Section 285 (7) of the said 1999 Constitution were also complied with by the decision of 29th December, 2011 as what lower court did on 23rd January, 2012 was to give reasons for the decision for disposing of the appeal on 29th December, 2011; that the emphasis in Section 285(8) of the 1999 Constitution is on “final appeals” as against the court entertaining the appeals; that if the law makers had intended to limit the time within which the reasons for the decision were to be given, they would have stated so expressly and specifically; that appellants did not suffer any miscarriage of justice neither were they prejudiced by the procedure adopted in delivering the judgment as prescribed in Section 285(8) of the 1999 Constitution. The court is urged to resolve the issue against appellants and dismiss the appeals.

It is not in dispute that the judgment of the lower court setting aside the decision of the tribunal delivered on 13th November, 2011

was rendered by the lower court on the 29th day of December, 2011 and that the reasons for the said decision of 29th December, 2011 was given by that court on the 23rd day of January, 2012. From the above facts, it is clear that between the 13th day of November, 2011 and 23rd day of January, 2012 is about seventy-one (71) days.

Prior to the amendment to the 1999 Constitution the Court of Appeal was the last bus stop in appeals against decisions of the election tribunals in relation to Governorship, National Assembly and State House of Assembly elections. However, by the provisions of Section 233 (2) (e) (iv) of the 1999 Constitution, as amended, decisions of the Court of Appeal on any question as to whether any person has been validly elected to the Office of Governor or Deputy Governor of a State under the constitution is now appealable to the Supreme Court. Therefore this court, the Supreme Court of Nigeria, is now the final Court of Appeal (bus stop) in appeals on decisions as to whether any person is validly elected governor or deputy governor of a state, under the constitution.

However, decisions of the Court of Appeal in respect of appeals arising from the National and State Houses of Assembly election petitions continue to terminate at the Court of Appeal by virtue of the provisions of Section 246 (3) of the 1999 Constitution, as amended, which enacts thus:-

“The decisions of the Court of Appeal in respect of appeals arising from the National and State Houses of Assembly election petitions shall be final”.

So in relation to appeals on election matter, it is clear and I hereby hold that there are two courts constitutionally clothed with final jurisdiction to hear and determine same. These are:-

(1) The Court of Appeal in relation to National and State Houses of Assembly election petitions, and,

(2) The Supreme Court of Nigeria in respect of decisions of the Court of Appeal on the question as to whether any person has been validly elected to the Office of Governor or Deputy Governor under the constitution.

The other relevant and crucial provisions of the constitution to the determination of the issue under consideration are Sections 285(7) and 285(8) of the 1999 Constitution, as amended. They provide as

follows:- 285(7)

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

B 285 (8)

“The court, in all final appeals from an election tribunal or court may adopt the practice of first giving its decision and reserving the reasons therefore to a later date”.

C ***The question is, what do subsections (7) and (8) of Section 285 of the 1999 Constitution, as amended, mean in relation to the facts of this case and the issue under consideration. It is very clear that the two sub-sections apply to both the Court of Appeal and the Supreme Court in the exercise of***
D ***the appellate jurisdiction conferred on them by the constitution in relation to election matters. From sub-section (7) supra, the duty is imposed on both the Court of Appeal and the Supreme Court to hear and dispose of appeals arising from the decisions of an election tribunal or Court of Appeal within***
E ***sixty (60) days of the delivery of the said judgment.***

In exercising or performing the above duty, the Court of Appeal and the Supreme Court may, where the appeals are final appeals adopt the practice of first giving their decision and reserving the reasons for the said decisions to a later date.

F The contention between the parties in the appeals has to do with the expression “hear and disposed of within sixty (60) days” and” all final appeals...” Whereas appellants contend that both the decision and reasons for the said decisions must be given by the Court
G of Appeal within sixty (60) days of the date of delivery of the judgment by the tribunal and that the Court of Appeal can only adopt the practice of giving judgment and deferring the reasons to a later date where it is a final Court of Appeal - as in the case of National and State Houses of Assembly election petitions the respondents argue
H that the power of the Court of Appeal under subsection (8) of Section 285 is not so limited but extends to all appeals against final decisions of the election tribunals in contradistinction to the decisions rendered by those tribunals in interlocutory matters.

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 in the statute or constitution. Therefore where words used in the constitutional provisions are clear and unambiguous they must be given their ordinary plain meaning so as to avoid reading into the provisions meanings not intended by the lawmakers. The above clearly means that where the words used in the provision are clear and unambiguous, the question of interpretation becomes a non issue as there is nothing to be interpreted or constructed as the court is duty bound to assign the words used in the provision their ordinary plain meanings.

In my judgment, the words deployed by the legislature in Section 285(7) and (8) of the 1999 Constitution are very simple and straight forward and unambiguous and therefore admit of no special construction or interpretation. They simply mean what they plainly stated. Subsection (7) of Section 285 means simply that it is obligatory on the Court of Appeal or the Supreme Court to hear and determine an appeal arising from an election petition matter within sixty (60) days from the date of the delivery of judgment by the election tribunal or Court of Appeal. The provision makes no distinction between an interlocutory decision of the tribunal and the final decision of the tribunal or Court of Appeal. Also to be noted is the use of the words "shall" and "within" in the said subsection which means that the provision is mandatory as it admits of no discretion whatsoever. The word "within" means a decision rendered by the affected court outside the assigned sixty (60) days is null and void. It is settled law that the time fixed by the constitution, which is the fundamental or supreme law of the land, cannot be altered, extended, expanded, elongated etc by any court in the purported exercise of a discretion to that effect.

When Section 285(7) of the 1999 Constitution (as amended) talks of a decision of a court it means the decision and the reasons for that decision. A decision is arrived at through a demonstrable process of reasoning based on the facts proven in evidence and the applicable law. It follows therefore that a decision without the reasons for same is in law, no decision at all. Therefore when Section 285(7) of the

said 1999 Constitution assigned sixty (60) days within which an appeal must be heard and disposed of (concluded) decided/determined, it clearly means that both the decision/judgment/determination etc of the court and the reasons for same must be given by the court concerned within the assigned sixty (60) days or less but not more.

Turning now to Section 285(8) of the said 1999 Constitution, the words “the court” used in the opening of the subsection refers, in my judgment to both the Court of Appeal and the Supreme Court depending on the facts of the case. The Court of Appeal when it sits as the final Court of Appeal such as in appeals arising from the decisions of election tribunals in relation to National and State Houses of Assembly elections, and the Supreme Court when it sits to determine appeals arising from the decisions of the Court of Appeal in relation to governorship election petition matters. The expression “final appeals” therefore do not relate to final decisions of the election tribunals as canvassed by the respondents’ in contradistinction with their decisions on interlocutory matters. The words relate to the final court beyond which there is no further appeal; the last chance/bus-stop.

What does the expression or phrase “all final appeals” as used in Section 285(8) of the 1999 Constitution, as amended mean? The expression is not defined in the constitution neither has it been interpreted by this court before now. To get to the meaning of the expression, it is necessary to know what the words “final” and “appeal” mean.

“Final” as defined by Webster’s New Twentieth Century Dictionary Unabridged Second Edition at page 686 - 687 includes:

- 1. Pertaining to the end or conclusion; last; ultimate; as the final issue...***
- 2. Conclusive, decisive; determinative; as a final judgment... that which is the termination; the last”.***

While the word “appeal” is defined by the said dictionary at page 88 to include the following:

- “1. In law, the removal of a case from a lower to a higher court for hearing, or the right to, or a request for, such ac-***

tion...”

When the meanings of the two words are combined, what the expression means, becomes very obvious. In my judgment the expression means all appeals after which there is no further appeal to a higher court or tribunal, or decisions by a final Court of Appeal, or the last bus stop in the appeal route after which everything or appeal terminates/is at end. B

It should be noted that the expression as used in Section 285(8) of the 1999 Constitution as amended is tied to “the court” which has to take the requisite action in relation to “all final appeals”. C

It should be noted also that it is an already long time practice of the Supreme Court, in the exercise of its jurisdiction, to adopt the practice of giving judgment while reserving the reasons for the judgment to a later date. The practice is therefore not novel to the Supreme Court though the same cannot be said of the Court of Appeal. For the Court of Appeal, it a novel practice, hence the apparent confusion. D

However, over the years that the practice had been adopted and practised in the Supreme Court, I state without fear of contradiction that there is no record of any decision/judgment of the court rendered in the circumstances envisaged in Section 285(8) of the 1999 Constitution in which the reasons for same were given outside the normal ninety (90) days from the conclusion of evidence and final addresses as provided under Section 294(1) of the 1999 Constitution, as amended, neither is there any record of the reason for a decision of this court being given more than sixty (60) days from the date of the decision of the Court of Appeal in election matters so far. There is therefore no precedent in support of the contention of the respondents on this issue. E F G

What subsection 8 of Section 285 of the 1999 Constitution, as amended is saying in relation to the facts of this case is simply that an appeal, where the Court of Appeal is the final Court of Appeal, such as in appeals relating to National and State Houses of Assembly election petition matters, the Court of Appeal, like the Supreme Court, may adopt the practice of giving its decision but deferring the reasons for the said decision to a later date not exceeding the time constitution- H

ally allotted the court to hear and dispose of or determine/decide the matter. The decision and the reasons for the decision both constitute the judgment of the court and must go hand in hand, and must come within the time allotted in the constitution for both to be valid and subsisting.

B In the instant case, the Court of Appeal is not the final Court of Appeal in governorship election petition matters and therefore has no power under Section 285(8) of the 1999 Constitution to give a decision and defer the reasons to a later date let alone to a date outside the sixty (60) days constitutionally assigned for the hearing and disposal of the matter.

C However, does the rendering of the decision outside the sixty (60) days necessarily result in the decision being a nullity? Our attention has been drawn to the provisions of Section 294(5) of the 1999 Constitution which provides as follows:-

D “(5) the decision of a court shall not be set aside or treated as a nullity solely on the ground of non-compliance with the provisions of subsection (1) of this section unless the court exercising jurisdiction by way of appeal or review of that decision is satisfied that the party

E complaining has suffered a miscarriage of justice by reason thereof”.

Subsection (1) of Section 294 of the 1999 Constitution, as amended, like Section 285(7) of the said Constitution allots time within which the judgment of a court must be delivered, which, in that case is ninety (90) days, while in Section 285 (7) it is sixty (60) days.

F ***The question that necessarily follows is whether the provisions of Section 294(5) of the 1999 Constitution supra applies to the facts of this case or to courts exercising jurisdiction under Section 285 of the 1999 Constitution, as amended?***

G ***I think not. Section 285 of the 1999 Constitution, as amended is a specific provision which deals with election petition matters which has long been held to be sui generis. On the other hand, Section 294 is a general provision dealing with civil proceedings and judgments thereon generally.***

H ***It is settled law that in the circumstance of this case, the specific provisions in relation to election matters must prevail or apply to the judgment in question and not the general provision in Section 294 which applies to civil proceedings in general. The said Section 294 has no relationship with elec-***

tion petition matters as against the provisions of Section 285 of the said 1999 Constitution, as amended.

Apart from the said Section 285, the other relevant section of the 1999 Constitution relating to election petition proceedings/matters is Section 246(1)(b)(3). It is therefore my view that Section 294(5) applies in relation to the provisions of Section 294(1) only, both of the 1999 Constitution, as amended.

I therefore resolve the issue in favour of the appellants.

The above being the case, it is clear that the second issue has been rendered irrelevant as there is no need for the court to go into a consideration of the merits of the judgment, which has just been found to be a nullity as such a consideration would amount to an exercise in futility. The said issue is consequently discountenanced by me. It should be pointed out that by the 28th day of December, 2011 when the appeal was heard, the lower court still had up to the 12th day of January, 2012 to deliver the judgment since the judgment of the tribunal was delivered on the 13th day of November, 2011. The lower court, however, decided to give judgment the following day, 29th December, 2011 and deferred the reasons for the decision to a later date. The lower court therefore had about two weeks from 28th December, 2011 to 12th January, 2012 to deliver judgment with reasons, which would have brought it within the sixty (60) days stipulated in Section 285(7) of the 1999 Constitution, as amended.

The instant appeal was heard on Thursday, 16th February, 2012 and judgment adjourned to today, Friday 24th February, 2012 about a week, even though the sixty (60) days would be Tuesday, 28th February, 2012. The judiciary has no option but to try to work within the time frame provided by the law and/or constitution so as to move our democracy forward. Many attempts would be made to frustrate the aims and objectives of the legislature in providing the time frame within which election matters must be heard and disposed of but it is our duty to resist the attempts by putting in our best in the circumstances. To achieve the aim, we need not write lengthy judgments nor consider irrelevant issues. We need to consider the main issues in the case and resolve same in as short a judgment as possible. The real judgment in an election matter is, I strongly be-

lieve, that of the people expressed through the ballot box.

The National Assembly may, however, in the circumstances of this case and those of similar nature, consider amending the constitution by providing a similar provision to Section 294(5) of the 1999 Constitution, as amended, in Section 285 of the said constitution.

B In conclusion, I find merit in the appeals and hold that appeal nos. SC/14/2012; SC/14A/2012; SC/14B/2012 be and are hereby allowed for being meritorious, while appeal no. SC/14C/2012 arising from the decision on the cross appeal is struck out, as the judgment on which it is based has been struck out. The judgment of the Court of Appeal in appeals no. CA/EPT/GOV/31/2011 delivered on 29th December, 2011 and 23rd January, 2012 is hereby set aside and in its place the judgment of the Kebbi State Governorship Election Petition Tribunal in petition no. EPT/KB/GOV/1/2011 delivered on the D 13th day of November, 2011 is hereby restored and affirmed, subject to the variation that the ninety (90) days within which INEC is to conduct a fresh election to the office of Governor of Kebbi State shall commence to run from today, being the date of this judgment.

E It is further ordered that parties bear their costs of the appeals. Appeals allowed, as stated supra.

MUHAMMAD JSC

F I read in advance the leading judgment on the consolidated appeals by my learned brother, Onnoghen, JSC. I agree with him that appeals Nos. SC.14/2012; SC.14A/2012; and SC.14B/2012 be allowed. I hereby allow same. I strike out appeal No. SC.14C/2012 which is on the cross appeal. Accordingly, thereby set aside the judgment of the court below while I affirm and restore the judgment of the Kebbi State Governorship Election Petition Tribunal in petition No. EPT/KB/GOV/1/2011 delivered on 13th of November, 2011. I abide by consequential orders made in the lead judgment.

H

ADEKEYE JSC

I read in advance the judgment of my learned brother W.S.N. Onnoghen JSC just delivered. I agree with the conclusion reached by him. I only want to add a few words of my own. My learned

brother had given a resume of the background facts of the case and the issues raised for determination in the four consolidated appeals - SC.14/2012, SC.14A/2012, SC.14B/2012 and SC.14C/2012 now before this court. Before delving into the merits of the appeals, this court has a duty to construe whether within the provision of Section 285 subsection (8) of the 1999 Constitution (as amended) there is a valid judgment of the Court of Appeal Sokoto as the Election Appeal Tribunal before this court forming part of the record of appeal transmitted to this court. The Election Appeal Tribunal Sokoto delivered a judgment against the judgment of the Governorship Election Tribunal Kebbi State. The Court of Appeal in the final analysis allowed the appeals against the judgment of the election tribunal and dismissed the cross-appeal of the appellants. The lead judgment of the Election Appeal Tribunal Sokoto delivered on the 29th of December 2011 reads -

"1st set of appeal succeed and is allowed. 2nd set of appeal succeeds and is allowed, 3rd set of appeal succeeds and is allowed, 4 cross-appeal (sic) lacks merit and is dismissed - the judgment and order of the tribunal delivered on 13th November 2011 in petition No. EPT/KB/GOV/1/2011 is set aside. Pages 9329-9330 of the record of proceedings. All the other four justices who were members of the panel concurred."

The issues identified by the appellants for the determination in these appeals predicated on the foregoing judgment given without reasons are -

1. Whether the judgment of the Court of Appeal delivered on the 29th day of December, 2011 is on nullity, the Court of Appeal having not advanced or provided reasons for same at the time the judgment was delivered.
2. Whether the Court of Appeal had jurisdiction to give advance or proffer reasons for the judgment delivered on the 29th day of December 2011 on 23rd day of January, 2012 having disposed of the appellants appeal within a period of 60 days from the date of delivery of the judgment of the tribunal.
3. Whether the lower court not being a final Court of Appeal in respect of governorship elections has jurisdiction to give or reserve the reasons for its judgment to a later date.

The appellants argued and submitted that the court gave a

judgment without reasons on the 29th of December 2011 and another follow up judgment with reasons on the 23rd of January, 2012. The second judgment was delivered 71 days after the Governorship Election Tribunal Kebbi State gave its judgment.

B The lower court in the reasons given in the judgment delivered on the 23rd January 2012 said as follows -

C *“On the 28/12/2011 we heard these three appeals and the Cross-appeal. Then on 29/12/2011 we delivered judgment in all the appeals and cross-appeals which were earlier consolidated on the application of the parties and allowed the three appeals and dismissed the cross-appeal. However due to exigencies of work and time constraint, we could not give the reasons for the judgment in the three appeals and cross-appeal in keeping with the provision of Section 285 of the Constitution of the Federal Republic of Nigeria 1999 as amended. Below are the detailed reasons of the judgment in the three sets of appeals and cross-appeal.”*

E By virtue of the provision of Section 258 (8) of the 1999 Constitution, the judgment given by the court on 29/12/11 without reasons was a nullity as it was unconstitutional and without vires. The appellants further submitted that the only court empowered to give a decision or judgment on an appeal and reserve judgment to a later date is the court at which appeals (both interlocutory and main appeals) on an election petition terminates. In the instant three appeals from a governorship election matter and which terminates at the Supreme Court - it is therefore the only court to which Section 285 (B) of the Constitution as amended applies. The lower court's judgment given on the 29th day of December 2011 without reasons for the said judgment is invalid, unconstitutional, null and void and of no effect whatsoever.

H The judgment of the tribunal nullifying the election of the 2nd and 3rd respondents and ordering INEC (the 1st respondent) to conduct a fresh election which was purportedly set aside by the lower court's unconstitutional judgment of 29/12/2011 still stands and remain subsisting and the court is urged to be so hold.

The appellants held that no court has the inherent power to decide any matter *brevi manu*. Such a power can only be exercised by the court when it is statutorily or constitutionally empowered. By virtue of Section 285 (7) of the 1999 Constitution as amended, the

Court of Appeal must hear and dispose of the appeals by the 12th of January, 2012 being the 60th day of entertaining the appeal. The decision given outside that date constitutes a nullity. The word shall used in Section 285 (7) of the 1999 Constitution as amended requires a mandatory compliance. The lower court was functus officio as at the 23rd day of January, 2012. This appeal was entered before this court on the 18th of January, 2012, since that day the Court of Appeal ceased to have any jurisdiction over the appeal. In effect the Court of Appeal had no jurisdiction to sit over the appeal on the 23rd of January, 2012 when it delivered reasons for the judgment. On the overall, the two judgments of the lower court that was delivered on the 29th of December 2011 without reasons and that delivered on the 23rd of January, 2012 without jurisdiction are both null and void. The court is urged to answer Issues 1, 2 and 3 in the negative.

The 1st and 2nd respondents craved the indulgence of this court to adopt Issues 4 and 5 formulated by the appellants with slight modification to their Issues 2 and 3 and to formulate one additional issue as issue one.

The issues read as follows:-

1. Whether having regards to the provisions of Section 285 (7) and (8) of the Constitution as amended, the judgment of the court below delivered on 29th December 2011 in respect of which the reasons for the said decision was given on the 23rd day of January, 2012 was a nullity.

2. Whether the court below was right in affirming the Tribunal's findings on the non-probative value of the Report of Physical Inspection of electoral materials and evidence of PW46.

3. Whether the court below was right in not holding that the Tribunal ought to have granted ... sought in the petition and declare that the 1st appellant and not the 1st respondent was duly elected by majority of lawful votes cast in the governorship election for Kebbi State held on 27th April 2011.

In their reply to the submission of the appellants on this issue, the 1st and 2nd respondents disagreed that by virtue of section 285 (8) of the 1999 Constitution as amended, the only court empowered to give a decision and reserve reasons to a later date is the court at which the appeal terminates. The 1st and 2nd respondents sub-

mitted that this cannot be the position of the law. The Election Tribunal delivered its judgment on the 13th of November 2011. Under section 285 (7) of the Constitution as amended, an appeal from a decision of the governorship election petition tribunal Kebbi State shall be heard and disposed off within 60 days from the date of delivery of the judgment of the tribunal. The period of 60 days lapsed on the 12th of January, 2012. It is not in dispute that the court below delivered a judgment on the 29th of December 2012. By virtue of the provisions of section 285 (8) of the Constitution, the lower court gave reasons for the judgment on the 23rd of January, 2012. By the judgment delivered on the 29th of December, 2011, the lower court had complied with the provisions of section 285 (7) by hearing and disposing of the appeal within the 60 days prescribed by the Constitution. By virtue of section 285 (8) the court in all final appeals from an election tribunal or court may adopt the practice of first giving its decision and reserving the reasons therefore to a later date. The operative words and the expression “final appeals” must be read and understood within the context of an appeal against the final decision of an election tribunal in contrast to an interlocutory appeal. The decision of the tribunal appealed against the Court of Appeal was the final decision of the tribunal delivered on the 13th of November 2011. The appeal against the final decisions of the Election Petition coming to the Court of Appeal are covered by the words all final appeals on which they can first give their decision and reserve the reasons to a later date. The adoption of the procedure is subject to the exigencies of the moment. In this case the court below explained that reasons for the judgment delivered on 29th of December 2011 could not be given immediately “due to exigencies of work and time constraint.”

The 1st and 2nd respondents supported the foregoing with the interlocutory appeal from the Election Petition Tribunal Kebbi which terminated in this court and was determined on the 9th of November, 2011 in Appeal SC.350/2011 Mallam Abubakar Abubakar v. Saidu Usman Nasamu & 5 Ors (unreported). The court had given a decision on the issues raised and canvassed in the appeal and thereby had disposed off the appeal in the sense used in the Constitution. All that the court did was to give reasons for the judgment delivered on the 29th of December 2011 on the 23rd of Janu-

ary, 2011. The insertion of Section 285 (8) immediately after Section 285 (7) is to enable the courts in all final appeals from an election Tribunal to be able to cope with the volume of election petition appeals and at the same time determine the appeals expeditiously. The Constitution did not give specific time for writing reasons. The appellants failed to tell this court of the miscarriage of justice or any prejudice suffered by them by the adoption of the procedure prescribed by section 285 (8) of the Constitution as amended. The appellants are now calling on this court to nullify the judgment of the court below on grounds of technicalities during an era of doing substantial justice. The respondents referred to the case of Abubakar v. Yar'Adua (2008) 4 NWLR (pt.1078) pg.465. B
C

The 1st respondent in appeal SC. 14A/2012; the Peoples Democratic Party raised three issues for determination as follows -

1. Whether having regards to the provisions of section 285 (7) (8) and 294 (1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) the judgment of the lower court delivered on the 29th December 2011 in respect of which the reasons for the lower court's decision was given on the 23rd of January, 2012 was a nullity. D
E

2. Whether the lower court was right when it held that the tribunal ought not to have considered appellants alternative relief.

3. Whether having regard to the circumstances of this case, including the totality of evidence and state of pleadings, the lower court was right in setting aside the judgment of the Tribunal which nullified the election of the 1st and 2nd respondents and ordered fresh elections. F

On Issue One, the 1st respondent in SC.14A/2012 raised the same legal argument and submission as the 1st and 2nd respondents in the four consolidated appeals and concluded that the judgment delivered by the lower court was valid and did not contravene any of the provisions of the Constitution of the Federal Republic of Nigeria 1999 as amended more particularly section 285 (7) and (8) and Section 294 (1). G
H

The 1st respondent/4th respondent in the appeals SC.14/2012; SC.14A/SC. 14C/2012, INEC, raised an objection to the competence of the brief of argument filed on the 1st of February 2012. The grounds of the objection is that the Notice of Appeal filed by the

appellants is incompetent and the sole ground of appeal offends Order 8 Rule 2 (2) and (4) of the Supreme Court Rules 1999. The 1st respondent prayed that the Notice of Appeal dated 6th January, 2012 and filed on the 9th January, 2012 be struck out and also the amended notice of appeal and the amended brief filed on 21st January, 2012 be struck out as same is incompetent, null and void and an abuse of court process. The appellants amended the Notice of Appeal and same was filed on 1/2/2012 containing eight grounds of appeal. The 1st respondent did not raise any objection to them.

The 1st respondent distilled two issues for determination as follows -

1. Whether the decision of the Court of Appeal was a nullity having regards to Section 285 (8) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

2. Whether having regards to the circumstances of this case including the totality of evidence and state of pleadings, the lower court is right in setting aside the judgment of the Tribunal which nullified the election of the 1st and 2nd respondents and ordered fresh elections.

The 1st/4th respondent submitted on issue one that the judgment delivered by the Court of Appeal Sokoto; the Election Appeal Tribunal on the 29th of December 2011 disposed off the appeal, while the court gave reasons for allowing the appeal on the 23rd of January, 2012. The lower court acted within the meaning of Section 285 (8) of the 1999 Constitution as amended. The intention of the law makers in promulgating Section 258 (8) of the 1999 Constitution as altered is to recognise and identify the court as a transitional court in appeals relating to Governorship appeals, whether interlocutory or final decision. The Supreme Court is the final court in all decisions relating to Governorship matters whether on interlocutory or final decisions which arose from the Election Tribunals, so both the Court of Appeal and the Supreme Court have powers exercisable under the Constitution as altered.

The 1st/4th respondents submitted that the words appeals from an Election Tribunal in the provisions of Section 285 (8) is referring to the Court of Appeal dealing with the decisions from Election Tribunals whether final or interlocutory appeals. The words used do not require technical Rules of interpretation. The judgment delivered on

the 29th of December 2011 sufficiently satisfied the requirement of the Constitution. The right of appeal related to the judgment while the reasons given are merely the details and not the judgment. The entire Section 285 (7) and (8) must be read together and not in isolation. Cases cited in support of the foregoing submission are *Larmie v. D.P.M.S. Ltd.* (2005) 18 NWLR (pt.958) pg.438, *Sommer v. Federal Housing Authority* (1992) 1 NWLR (pt.219) pg.548, *Governor of Kwara State v. Lafiagi* (2005) 5 NWLR (pt.917) pg.139, *Zoboley International Ltd. v. Omogbehin* (2005) 17 NWLR (pt.953) pg.200, *Brigadier-General Buba Marwa & 1 Or. v. Admiral Murtala Nyako & 3 Ors* SC.141/2011 (unreported) decision of this court delivered on 27/1/2012. B
C

The 5th and 6th respondents in the consolidated appeals settled three issues for determination as follows -

1. Whether the Court of Appeal has the power to deliver the judgment in an election petition appeal and reserve reasons for the said judgment to a later date. D

2. If issue (1) above is answered in the affirmative whether the lower court has the power to give reasons for its judgment on the 23rd the January 2012 as it did? E

3. Whether the lower court having found no evidence in support of the appellant's petition before the tribunal it was not right to have set aside the decision of the said Tribunal.

The 5th and 6th respondents argued and submitted on issue one that it is not disputed that the lower court heard the three sets of appeals and the cross-appeal on the 28th of December 2011 and delivered its judgment on the 29th of December 2011 and reserved its reasons for the judgment. It gave the reasons on the 23rd of January, 2012. By virtue of Section 285 (7) of the 1999 Constitution the court must give its judgment within 60 days of the decision of the tribunal but it also has the power to reserve reasons for the judgment to a later date by virtue of Section 285 (8). Both the lower court and the Supreme Court have concurrent powers to give judgment and reserve reasons to a later date. The 5th and 6th respondents further submitted that the judgment of the lower court was delivered on 29th December 2012 within the time stipulated by Section 285 (7) of the Constitution. F
G
H

The rights of the parties to the appeal were undoubtedly de-

terminated on the said date; 29th December 2011. The appellants filed their notice of appeal on the 10th of January, 2012 also within time. The reasons given by the court on the 23rd January 2012 dated back to the 29th December, 2011 when the judgment was delivered. The court reserved its reasons in these appeals based on its constitutional powers. The 5th and 6th respondents cited cases to buttress their submission. *Unity Bank v. Bouari* (2008) 7 NWLR (pt.1086) pg.372, *Rotimi v. Macgregor* (1994) 11 SC pg.133.

Since issue One in the briefs all the parties in the four consolidated appeals is jurisdictional in nature, it is mandatory to first and foremost resolve it one way or the other before proceeding to considering other issue in these appeals on the merits. The reason being that jurisdiction is a radical and crucial question of competence. Once there is a defect in competence, it is fatal and the proceedings are a nullity. *Ajao v. Alao* (1986) 5 NWLR (pt.45) pg.802, *Azore v. Lemonu* (1994) 7 NWLR (pt.356) pg.284, *Udene v. Ugwu* (1997) 3 NWLR (pt.491) pg.57, *Saleh v. Monguno* (2003) 1 NWLR (pt.801) pg.221.

The pith and substance of the submission of the appellants on this issue are that -

1. The judgment of the lower court delivered on the 29th of December 2011 in respect of the appeals from the decision of the Kebbi State Governorship election, though within the time stipulated for disposal of the appeals the court failed to advance reasons for the judgment. The failure of the lower court occasioned a miscarriage of justice.

2. The court gave reasons for the judgment on the 23rd day of January, 2012 when the statutory sixty days for the hearing and determination of the appeals had elapsed and the Court of Appeal no longer had jurisdiction to adjudicate on the appeals.

3. The period of sixty days within which the Court of Appeal ought to give reasons for its judgment from the date of the judgment of the tribunal expired on about the 12th of January, 2012. The Tribunal gave its final judgment in the petition on the 13th day of November, 2011.

The lower court not being a final court in the Governorship Election Petition as provided under Section 285 (7) and (8) of the 1999 Constitution as amended does not possess the power and vires to deliver a judgment without reasons. The sum total of the argu-

ments and submission of counsel on this issue in these consolidated appeals invites this court to interpret the provisions of Section 285 (5), (6), (7) and (8) of the 1999 Constitution as amended.

By inserting Section 285 into the 1999 Constitution, the legislature made provision for the establishment of election Tribunals which shall have original jurisdiction to the exclusion of any court or tribunal to hear and determine election petitions emanating from National Assembly Elections. Similar tribunals were established in each State of the Federation to hear and determine governorship and legislative houses election petitions. The section gave the composition for the National Assembly, Governorship and Legislative Houses Tribunals and the quorum and stopped there. By the Constitution of the Federal Republic of Nigeria First and 2nd Alteration Act 2010, the scope of the original Section 285 of the Constitution was extended to include subsections 5 to 8.

I shall now re-state these relevant subsections seriatim.

Section 285 (5)

“An election petition shall be filed within 21 days after the date of declaration of the result of the election.”

Section 285 (6)

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

Section 285 (7)

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

Section 285 (8)

“The court in all final appeals from election tribunal may adopt the practice of first giving its decision and reserving the reasons thereafter to a later date.”

The foregoing constitutional pronouncement have created a time frame for the hearing and disposing of an election petition of any cadre in the category of courts at the first instance and at appellate level. The appellate courts in all final appeals from election trial may adopt the practice of first giving their decision and reserving the reasons thereafter to a later date. I am strengthened in this belief by the provision of Section 134 (4) of the Electoral Act which gives this

privilege to the Court of Appeal. Section 134 (4) of the Electoral Act reads:-

“The court in all appeals from election tribunals may adopt the practice of first giving its decision and reserving reasons thereto for the decision to a later date.”

B This provision is limited to election matters in which the Court of Appeal is the final court by virtue of Section 246 (3) of the Constitution in which the Court of Appeal is the final court. It does not apply to governorship elections under the amendment to the 1999 Constitution.

C The court under the Electoral Act makes reference to the Court of Appeal. This does not undermine the provision of Section 285 (7) which directed that –

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

The operative word in this section is shall which when used in a statute or constitution is a word of command. It means that in invoking Section 285 (7) “the appeal must be compulsorily heard and disposed within 60 days from the date of the delivery of judgment of the tribunal or Court of Appeal.” The word disposed of connotes determine. Furthermore where a statute of limitation prescribes a period within which an action should be brought legal proceedings cannot be properly and validly instituted after the expiration of the prescribed period. Thus an action or anything done after the expiration of the prescribed period is a nullity.

G In the instant appeals, the Court of Appeal gave its decision on the 29th of December 2011 and reserved the reasons to a later date. The lower court decided as follows -

“Judgment of the court prepared and delivered by Amiru Sanusi OFR JCA agreed by H. Mukhtar JCA, A.D. Yahaya JCA, T.T. Tur JCA. 1st set of appeal succeeds and is allowed. 2nd set of appeal succeeds and is allowed, 3rd set of appeal succeeds and is allowed. 4 cross-appeal lacks merit and is dismissed. The judgment and order of the tribunal delivered on 13th November 2011 in Petition No. EPT/KB/Gov/1/2011 is set aside.”

I have to emphasize that any discretion any judge has in the

implementation of Section 285 (7) (8) must be exercised within the confines of the sixty days stipulated therein. The reasons for the decision must be delivered within the 60 days. I believe that the time constraint under that section does not envisage writing lengthy and verbose reasons due to the pressure of election petitions filed during this period. B

The Court of Appeal delivered its reasons for judgment on the 23rd of January, 2012. At that point in time by simple arithmetical calculation the period of 60 days stipulated for the hearing of the appeal had expired and lapsed on the 12th January, 2012. The period between the date of delivery of the Kebbi State Governorship Election Petition Tribunal on the 13th of November 2011 and 23rd of January, 2012 when the reasons for judgment was delivered was 71 days. C

The two judgments delivered by the Court of Appeal became D invalid. The decision delivered on the 29th of December 2011 is not valid in that a good judgment should set out the nature of the action before the court and the issue in controversy, review the cases for parties, consider the relevant laws raised and applicable to the case, make specific findings of fact and conclusion and give reasons for arriving at those decisions. There is no valid judgment without giving reasons for the judgment. E

The Court of Appeal delivered its reasons on the 23rd of January 2012 after the statutory period. The reasons lapsed by 11 days hence they were given without jurisdiction. Any judgment however well written if given without jurisdiction is no judgment at all. Ajayi v. MILAD F Ondo State (1997) 5 NWLR (pt.504) pg.237.

Where the limitation of time is imposed in a Constitution, Statute, Decree or Edict unless they make provision for extension of time, G the courts cannot extend the time. Akinnuoye v. Military Administrator Ondo State (1997) 1 NWLR (pt.483) pg.564.

A nullity in law is a void act, an act which has no legal consequence. A proceeding which has been declared a nullity is void and without legal effect or consequence whatsoever. It does not confer H any legal right whatsoever, or it does not impose any obligation or liability on anyone. In the instant appeals once the two judgments from which they emanated were nullified by operation of law - there is nothing left before this court upon which the appeals could be

based. *Okafor v. A-G Anambra State* (1991) 6 NWLR (pt.200) pg.659, *Dawodu v. Ohegundudu* (1986) 4 NWLR (pt.33) pg.104.

I cannot at this stage but call to mind the interpretation of clear and unambiguous words in the Constitutional provisions. Where the words of the Constitution are clear, plain and unambiguous, there is no need to give them any other meaning than their ordinary, natural and grammatical construction would permit, unless that would lead to absurdity or some repugnancy or inconsistency with the rest of the Constitution. In such a situation, a court of law is without jurisdiction or power to import into the meaning thereof what it does not say. Nothing is to be added or taken from the Statute unless there are adequate grounds to justify the inference that the legislation intended something which it omitted to express. In the instant appeals since the community reading of Section 285 (7) and (8) of the 1999 Constitution (as amended) are clear and unambiguous they ought to be given their plain and ordinary meaning. *Ifezue v. Mbadugba* (1984) 1 SCNLR pg.427, *Shell Petroleum Development Co. (Nig.) Ltd. v. Federal Board of Internal Revenue* (1996) 8 NWLR (pt.466) pg.256. *National Bank of Nigeria Ltd. v. Wade & Co. (Nig.) Ltd.* (1996) 8 NWLR (pt.465) pg.150, *Bronik Motors Ltd. v. Wema Bank Ltd.* (1983) 6 SC pg.158, *Abioye v. Yakubu* (1991) 5 NWLR (pt.190) pg.130, *Board of Customs and Excise v. Barau* (1982) 10 SC pg.48.

I resolve the issue in favour of the appellants.

I shall now consider the position of the four appeals before this court SC.14/2012; SC.14A/2012; SC.14B/2012 and SC.1 4C/2012. Unfortunately, the decision of the Court of Appeal delivered on the 29th of December 2011 gave the 1st and 2nd respondents in the main appeals before the court a hollow victory.

An appeal is generally regarded as a continuation of an original suit rather than an inception of a new action. An appeal should be a complaint against the valid decision of a trial court. In the absence of such a decision, there cannot possibly be an appeal against what has not been decided against a party. In other words, an appeal does not lie against an incompetent decision. When the subject-matter of these appeals in hand is no longer subsisting at the lower court, the appellate court lacks jurisdiction to determine that which is non-existent. A judgment given without jurisdiction is no longer alive and no appeal can lie and be heard on it. *Oredoyin v. Arowolo* (1989) 4

NWLR (pt.114) pg.172 SC, Babalola v. State (1959) 4 NWLR (pt.115) pg.264, Jumbo v. Bryanko International Ltd. (1995) 6 NWLR (pt.403) pg.545, Ngige v. Obi (2006) 14 NWLR (pt.999) pg.1.

The second issue becomes irrelevant in the circumstance of this case.

The judgments of the Court of Appeal delivered on 29th December 2011 and 23rd January 2012 are hereby set aside and the judgment of Kebbi State Governorship Election Petition Tribunal; EPT/KB/Gov/1/2011 delivered on 13th November 2011 is hereby restored and affirmed. The 90 days within which INEC is to conduct a fresh election to the office of Governor of Kebbi State shall commence to run from today.

With fuller reasons given by my learned brother W.S.N. Onnoghen JSC in the lead judgment, I also allow the appeals; SC.14/2012; SC.14A/2012; SC.14B/2012 and dismiss the cross-appeal SC.14C/2012. I abide the consequential orders including the order as to costs.

PETER-ODILI JSC

This is an appeal against the final decision of the Court of Appeal which arose from a final decision of the Governorship Election petition Tribunal for Kebbi State. The appellants in this Court were the petitioners at the Tribunal and won thereat whereas the Respondents before this court were respondents at the Tribunal, who lost thereat and went to the Court of Appeal as Appellants. On the Court below finding favourably for the appellants now respondents, this appeal has been initiated by the now appellants who were petitioners at the tribunal.

The facts of this matter briefly would be stated hereunder for an understanding of the background. They are as follows:-

On the 26th April 2011, the 4th respondent, Independent National Electoral Commission (hereinafter called INEC) (the 4th respondent herein) organized and conducted general election to offices of Governor in 30 States of the Federal Republic of Nigeria including Kebbi State.

At the conclusion of the election, Alhaji Saidu Usman Nasamu and Ibrahim Khalil Aliyu, won the overall majority of the lawful votes

and in two thirds of the local government council areas in Kebbi State. They were declared and returned as Governor and Deputy Governor of Kebbi State by the 4th Respondent (INEC). The scored 559,424 votes while the Appellants were credited with 326,482 votes. The 1st and 2nd Appellants were Governorship and Deputy Governorship candidates sponsored by the 3rd Appellants (CPC) at the election. Being dissatisfied with the result of the election, they filed a petition at the Election Tribunal. In their amended petition the Appellants alleged that the 1st and 2nd Respondents were not duly elected by the majority of lawful votes cast at the election. In the alternative they also alleged that the election was invalid by reason of non compliance with the provision of the Electoral Act 2010 (as amended).

At the conclusion of pleadings, the petitioners called 64 witnesses, while the 1st, 2nd and 3rd Respondents called 15 witnesses, the 4th Respondent did not call any witness but tendered documents and relied on evidence extracted under cross-examination of witnesses.

On the 13th day of November 2011, the Election Tribunal in its final judgment said:

“based on our findings of non compliance with the provisions of the Electoral Act 2010 (as amended) by the 4th Respondent, this Honourable Tribunal has no option but to grant the alternative prayer or relief sought by the petitioner in their petition that the election for the office of Governor of Kebbi State held on the 26-4-2011 was vitiated by substantial non compliance with the mandatory statutory requirement of the Electoral Act 2010 (as amended) and the INEC Manual for Election official which substantially Affected the validity of the said election that name of The candidates in the said election can be validity returned as having (sic) won the said election.”

All the Respondents appealed to the Court of Appeal in three (3) sets of appeals. All of which were allowed on their merits, set aside the judgment of the Tribunal and dismissed the petition as unproved at the tribunal. The Cross Appeal of the Appellants was dismissed as unmeritorious.

The appellants amended Notice of Appeal dated 31st January 2012 and filed 1st February 2012 contained 10 GROUNDS OF APPEAL.

On the 16/2/12 date of hearing, Mr. Awodein SAN, learned counsel for the Appellants applied for a consolidation and the hearing of all the three appeals and the cross-appeal, which application was granted with the numbering being SC.14/2012, SC.14A/2012, SC.14B/2012 and SC.14C/2012.

Learned Senior Counsel adopted the Appellants Amended Brief filed on 1/2/12 and a Reply Brief on 15/2/12 in SC.14/12. He also adopted the Appellants Amended Brief on 1/2/12 and deemed filed on 7/2/12 with a Reply Brief filed on 15/2/12 in SC.14A/12.

In respect to Appellants' Amended Brief filed on 1/2/12 and a Reply Brief filed on 1/2/12 and a Reply Brief filed on 13/2/12 in SC.14/14B/12, Mr. Awodein also adopted.

In SC. 14C/12 the Appellant's counsel adopted their Amended Brief filed on 2/2/12 and deemed filed on 7/2/12.

SC.14/2012

In the Appellants Amended Brief filed on 1/2/12, the Appellants identified four issues for determination, viz:-

1. Whether the judgment of the Court of Appeal delivered on the 29th day of December, 2011 is a nullity, the Court of Appeal having not advanced or provided reasons for same at the time the judgment was delivered.

2. Whether the Court of Appeal had jurisdiction to advance or proffer reasons for the judgment delivered on the 29th day of December, 2011, or 23rd day of January, 2012 having not disposed of the Appellants' appeal within a period of 60 days from the date of delivery of the judgment of the Tribunal.

3. Whether the Lower court not being a final court of appeal in respect of governorship elections has jurisdiction to give or reserve the reasons for its judgment to a later date.

4. Whether having regard to the circumstances of this case, including the totality of evidence and state of pleadings, the Lower Court was right in setting aside the Judgment of the Tribunal which nullified the election of the 1st and 2nd Respondent and ordered fresh elections.

For the 1st and 2nd Respondents was filed a Brief on 13/2/12 which Mallam Yusuf Ali SAN on their behalf adopted. In the Brief were couched two issues for determination as follows:-

2. Whether having regards to the provisions of Section 285

(7), 8 and 294 (1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) the Judgment of the Lower Court delivered on the 29th December, 2011 in respect of which the reasons for the Lower court's decision was given on the 23rd of January, 2012 was a nullity.

B For the 4th Respondent was filed a Brief of Argument on the 7/2/12 in which were formulated two issues for determination, viz:-

1. Whether the decision of the Court of Appeal was a nullity having regards to sections 285 (8) of the constitution of the Federal Republic of Nigeria 1999 (as altered).

C 2. Whether having regard to the circumstances of this case, including the totality of evidence and State of pleadings, the Lower Court was right in setting aside the judgment of the tribunal which nullified the election of the 1st and 2nd Respondent and ordered D fresh election.

Mr. Awodein SAN, learned counsel for the Appellants contended that when the Court of Appeal delivered its judgment on 13th November, 2011 setting aside the decision of the Election petition Tribunal adjourning for reasons without setting a date therefore E only to give the reasons on the 23rd of January, 2012, 71 days after the day the judgment was given at the tribunal. He said the Lower Court acted contrary to Section 285 (8) of the Constitution 1999 (as amended) as the Court of Appeal being not the final destination in F an election petition over governorship election disputes was not empowered to deliver judgment and adjourned for reasons later. That the implication of this is that the judgment of the Tribunal in which was ordered fresh elections subsists.

For the Appellants was further submitted that the Lower Court G assuming it was empowered to deliver judgment and adjourn for reasons later, must give those reasons within the time frame of 60 days allowed for the hearing and determination of the appeal and so giving those reasons beyond the 60 days prescribed rendered the judgment a nullity pursuant to Section 285 (7) of the Constitution.

H He cited *Inakoju v. Adeleke* (2007) 1 NWLR (pt. 1025) 1.

That the Court of Appeal lacked the necessary vires and had become functus officio when it proffered the reasons for the judgment. He referred to *Ogueze v. Ojiako* (1962) 1 SC NLR 112; *Madukolu v Nkemdilim* (1962) 4 All NLR 587; *Sken Consult Nig.*

Ltd. v. Ukey (1981) 1 SC 6; Mcfoy v. UAC (1954) AC.

Yusuf Ali SAN responding for the 1st and 2nd Respondents submitted that the Lower Court had power under Section 285 (8) of the Constitution to give its decision and reserve the reasons therefore to a later date. That by the 29th of December 2011, the lower court had heard and disposed of the appeal within the period of 60 days prescribed by the Constitution. That by the time the Court of Appeal gave its reasons for its decision on 23rd January, 2012 it was not functus officio. For the 1st and 2nd Respondents was contended that the expression “all final appeals” as stated in Section 285 (8) means final decision of the Appeal Court not necessarily that it is the final decision of the final Court bringing to the very end the contest over the particular election. That a liberal interpretation of the Constitutional provisions in relation to this appeal was called for. He cited A.G. Bendel State v A.G. Federation (1981) 10 SC 1; Ishola v Ajiboye (1994) 7 - 8 SCNJ (Pt.1) 1; Nafiu Rabi v Kano State (1980) 8 - 11 SC 130 at 149.

Chief (Mrs.) Awomolo, learned counsel for the 4th Respondent submitted that when the judgment of the Court of Appeal was pronounced on 29th December 2011, the appeal was disposed of and all the parties knew the verdict of the Court on their rights. That all the Court below did on the 23rd January, 2012 was to give its reasoning for allowing the appeal and that was within the meaning of Section 285 (8) of the Constitution of the Federal Republic of Nigeria 1999 as altered. That the provision of Section 285 (8) of the Constitution as altered is to make lawful and legal the practice in the Court of Appeal of giving its decisions and reserving the reason till a later date to ensure expeditious disposal of election matters. That the whole of Section 285 of the Constitution as altered should be read together and not one subsection read in isolation as suggested by the Appellants.

In reply on points of law, Mr. Awodein SAN for the Appellants stated that whilst the first alteration to the Constitution allowed for the Lower Court to adopt the practice of giving a decision and reserving reason or reasons to a later date, the provision and the enactment in the later alteration to the Constitution published as Government Notice NO.7 put the legislative intentions beyond doubt and that is to the effect that it is only a Court sitting on final appeals that is

constitutional allowed to give a decision and reserve its reasons to a later date. That the contention of the Respondents to the effect that the Court of Appeal is empowered to act the way it did has no basis in law since on appeal to the Apex Court, this court would be denied of the views or reasons upon which the Court of Appeal arrived at its decision one way or the other.

The short form of the submissions above is that the Appellants on Sections 285 (8) and (7) contend that the Court of Appeal had no power to deliver a judgment and adjourn for reasons on a later date not disclosed and on the 23rd January 2012 delivered those reasons beyond the 60 days allowed to hear and determine appeals in election matters. Also that it had no power whatsoever to deliver a judgment without the reasons in tow at the same time.

The standpoint of the respondents is that the Court below was well empowered not only to deliver a judgment and put off the reasons for later but can also do so within an undefined time - frame thus the matter of not delivering the reasons within the 60 days did not negatively affect the validity of the judgment. This position of the Respondents are also anchored on the same Section 185 (7) and (8) of the 1999 Constitution as amended.

Therefore called to question by these two contrary views is the interpretation of those Constitutional section and subsections. In the first alteration or amendment sequel to the Constitution of the Federal Republic of Nigeria (First Alteration) Act, 2010 Act NO. 1, which provides as follows:

*“Section 285 of the Principal Act is altered -
(8) The Court in all appeals from election tribunal may adopt the practice of first giving its decision and reserving the reasons therefore to a later date”.*

A second Alteration of that same Section 285 took effect on the 6th day of January, 2011 under the Constitution of the Federal Republic of Nigeria (Second Alteration) Act, 2010: ACT NO. 2. That Second Alteration provides under Section 9 thereof as follows:-

*“Section 29 of the First Alteration Act and Section 285 of the Constitution are substituted as for the following new Sections:-
285 (7): “An appeal from a decision of an election tribunal or Court of Appeal in an election matter shall be heard and disposed of within 60 days from the date of the delivery of Judgment of the tribunal or*

Court of Appeal".

285 (8):

"The Court, in all Final Appeals from an election tribunal or court may adopt the practice of first giving its decision and reserving the reasons thereof to a later date".

My understanding is that the two subsections (7) & (8) under Section 285 of the Constitution (as amended) must be read together. That is to say that the Court of Appeal in its appellate jurisdiction on an appeal from an election tribunal in a judgment in the main appeal whether or not interlocutory is not at liberty to deliver its decision and push forward the delivery of the reasons for its decision later. Even if the appellate court is the final port of call it is not an open ended cheque as the reasons must be delivered within the 60 days allowed for the hearing and disposing of the appeal. If that is not done, then the judgment would not qualify to be so called a judgment of court as the ingredients of a valid judgment would be absent. This court had in Polycap Ojogbue & Anor v. Ajie Nnubia & 4 ors (1976) 6 SC (Reprint) 127 put the position as it really is and that is:-

"It is true that at the end of the day, the learned trial judge gave the judgment in favour of the defendants but is equally true that throughout the judgment he had made no clear findings in which he had unequivocally upheld, is against the claims of the plaintiffs, the contentions of the defendants on any of the major issues. The learned trial judge never expressly or impliedly disbelieved the Plaintiffs and/or their witnesses and although he had expressed some questions on the probative values of some pieces of oral evidence it is easy to see that some issues of his views on the lack of documentary evidence to support the issues they purported to prove (or disprove) are quite open to justifiable attack. The result is that we cannot see the basis on the plaintiffs' case was dismissed nor what is worse, the grounds on which the learned trial judge had proceeded to "enter judgment for the Defendants". A judgment of the Court must demonstrate in full a dispassionate consideration of the issues properly raised and heard and must reflect the results of such an exercise. We are unable to say that the Judgment in this case as it stands did this and we cannot allow it to stand".

Using the radar above and in the context of what is before us

now, it is not an over kill to say that in the case above cited, that is Polycarp Ojogbue V. Ajie Nubia (supra) this Court took such a strong view and conclusion, in a situation where the court below therein did something even though not up to standard, much less the situation on ground where nothing was done at the purported judgment except to say the 1st and 2nd Respondents won and the judgment of the Election Tribunal set aside and reasons to be given later and no more. This later scenario clearly left everyone blindfolded and uncertain in which territory everyone was. It is all the more bizarre when seen in the light of the Appellants needing to appeal and the question that naturally arises is upon what or with what are they setting their appeal on.

Again cannot be ignored is that section 285 (7) of the constitution as amended stated in no uncertain terms and mandatorily too stipulated that such an appeal shall be heard and disposed of within 60 days from the date of delivery of judgment of the tribunal or the Court of Appeal. It goes without saying in the natural flow of events that the reasons for such a judgment where the Court of Appeal or this one is the final destination must be within those 60 days not a day after. See Inakoju v. Adeleke (2007) 1 NWLR (pt. 1025) 1. Therefore when the court below gave its reasons 71 days after the judgment of the trial Tribunal, it did so illegally and unconstitutionally and had no vires or jurisdiction to do so as the Court of Appeal was by the time of its purported reasons functus officio assuming it was the final court which it is not in this matter under review. The final conclusion is that the Court of Appeal heard the appeal and did not make a decision thereby leaving the only subsisting judgment to be that of the trial Tribunal.

From all I have said above and the fuller reasons in the lead judgment I allow the appeal and set aside the invalid judgment of the Court of Appeal, leaving alive and well the decision the judgment of the Election Tribunal sitting in Kebbi State.

SC.14A.2012:

Mr. Kola Awodein adopted the Appellants' Amended Brief filed on 1/2/12. The issues for determination as identified by the Appellants are:-

1. *"Whether the judgment of the Court of Appeal delivered on the 29th day of December, 2011 is a nullity, the Court of Appeal*

having not advanced or provided reasons for same at the time the judgment was delivered.”

2. *“Whether the Court of Appeal had jurisdiction to give, advance or proffer reasons for the judgment delivered on the 29th day of December, 2011, on 23rd day of January, 2012 having not disposed of the Appellants, appeal within a period of 60 days from the date of delivery of the judgment of the tribunal”.* ^B

3. *“Whether the Lower court not being a final Court of Appeal in respect of governorship elections has jurisdiction to give or reserve the reasons for its judgment to a later date”.*

4. *“Whether the Lower court was right when it held that the Tribunal ought not to have considered Appellants’ alternative relief”.* ^C

5. *“Whether having regard to the circumstances of this case, including the totality of evidence and state of pleadings, the Lower court was right in setting aside the Judgment of the Tribunal which nullified the election of the 1st and 2nd Respondents and ordered fresh elections.”* ^D

Mr. Awodein SAN for the Appellants stated that the Lower Court’s purported reliance on section 285 (8) of the Constitution 1999 (As amended) to deliver a judgment on the 29/12/11 without reasons and in doing so the Court of Appeal acted unconstitutionally and so that judgment lacked validity. ^E

In the alternative learned counsel for the Appellants said the Lower Court had no jurisdiction when it sat on the 23rd January 2012 to deliver the reasons for its decision/judgment given earlier on the 29th November 2011 since the period of 60 days allowed for the hearing and determination of the appeal had expired in keeping with Section 285 (7) of the Constitution as amended. ^F

That a Court has no inherent power to decide any matter without reason and so the decision of 29th November, 2011 constitutes a nullity in that it does not constitute a dispassionate consideration of the issues properly raised and heard and the result of such an exercise. That it is the law that a judgment that fails to meet this standard is not a judgment properly so called and must be set aside. He cited Polycap Ojoebue & Anor v Ajie Nnubia & 4 Ors (1972) 6 SC (Re-print) 127. ^G

That this court makes a consequential order within which the 1st Respondent (INEC) would conduct a fresh election, the 90 days ^H

the Tribunal had granted at its judgment having elapsed.

The 1st Respondent having its Brief adopted by Dr. Amaechi Nwaiwu SAN on its behalf in which were framed three issues, viz:-
ISSUE No.1:

Whether having regards to the provisions of Sections 285 (7),
B (8) and 294 (1) of the Constitution of the Federal Republic of Nigeria
1999 (as amended), the judgment of the Lower Court delivered on
the 29th December, 2011 in respect of which the reasons for the
Lower Court's decision were given on the 23rd of January, 2012,
C was a nullity? 1st respondent however adopted the Appellant's Issues
No. 4 and 5 as our Issues No. 2 and 3 respectively; to wit:
ISSUE No. 2:

*"Whether the Lower Court was right when it held that the
tribunal ought not to have considered Appellants' alternative relief"*
D (Ground 5).
ISSUE No. 3:

*"Whether having regard to the circumstances of this case, in-
cluding the totality of evidence and state of pleadings, the Lower
Court was right in setting aside the judgment of the Tribunal which
E nullified the election of the 1st and 2nd Respondents and ordered
fresh elections."* (Grounds 1, 6, 7, 9 and 10).

Dr. Nwaiwu, Senior Counsel said the Lower Court had the
power under Section 285 (8) of the Constitution to give its decision,
F reserve the reasons for later and having delivered its judgment within
the 60 days, the reasons coming thereafter changed nothing. That
there was no fresh determination by the Lower Court on the 23rd of
January, 2012 when the reasons were given.

Also that the insertion of section 285(8) immediately after sec-
G tion 285 (7) which prescribed the time limit for appeals to be heard
and disposed of within 60 days is to enable the courts in all final
appeals from an election Tribunal be able to cope with the volume of
election petition appeals and at the same time determine the appeals
expeditiously.

H Further canvassed for the 1st Respondent is that the word "fi-
nal appeals" is to distinguish the appeal to the final decision before
that court as distinct from an interlocutory Ruling or decision. Again,
not meaning the final destination as in this instance, the Supreme
Court exclusively. He cited *Alor v. Ngene (2007)* 17 NWLR

(Pt.1062)163.

That the Appellant did not suffer any miscarriage of justice in the delay in delivering the reasons for the judgment and so the call of Appellant to have the judgment nullified is merely an invitation to sacrifice justice on the altar of technicalities. He cited *Abubakar v. Yar' Adua* (2008) 36 NASOLR 231 at 512. B

Chief Mrs. Awomolo learned counsel for the 4th Respondent in her arguments toed the line of the 1st Respondent and so it is not necessary to have them repeated.

For the 5th and 6th Respondents, The Inspector General of Police and the Commissioner of Police Kebbi State respectively, learned counsel on their behalf, adopted their Brief settled by Abubakar Abdullahi Esq. filed on 9/2/12. They went along the view point of the Appellants stating that the Court of Appeal lacked the power to deliver its decision and give reasons later not to talk of even delivering D judgment and having the reasons stated beyond the 60 days allowed for the appeal to be heard and determined.

This appeal is allowed as the non-judgment of the Court of Appeal has to be and is declared null and void leaving the judgment of the trial Tribunal, the only valid and subsisting decision. E
SC.14b/2012

Mr. Awodein learned counsel for the appellants adopted their brief as amended and filed on 1/2/12. The issues for determination as identified by the appellants are:

"1. Whether the judgment of the Court of Appeal delivered F on the 29th day of December, 2011 is a nullity, the Court of Appeal having not advanced or provided reasons for same at the time the judgment was delivered.

2. Whether the Court of Appeal had jurisdiction to give, ad- G vance or proffer reasons for the judgment delivered on the 29th day of December, 2011, on 23rd day of January, 2012 having not disposed of the appellant's appeal within a period of 60 days from the date of delivery of the judgment of the tribunal.

3. Whether the lower court not being a final Court of Appeal H in respect of governorship elections has jurisdiction to give or reserve the reasons for its judgment to a later date.

4. Whether having regard to the circumstances of this case, including the totality of evidence and state of pleadings, the lower

court was right in setting aside the judgment of the tribunal which nullified the election of the 1st and 2nd respondent and ordered fresh elections.”

Learned senior counsel, Kola Awodein submitted that the Court of Appeal’s judgment given on 29th day of December, 2011 without
 B reason for the said judgment and which judgment of the Tribunal nullifying the 1st respondent’s election is invalid, unconstitutional, null and void and of no effect whatsoever. That in the alternative the lower court had no jurisdiction to have sat as it did on the 23rd of
 C January, 2012 to deliver reasons for its decision/judgment given earlier on the 29th December 2011 as that court had 60 days to hear and dispose of the appeal. He said the word “shall” used in Section 285(7) of the constitution (as amended) requires a mandatory compliance and failure of compliance vitiated the judgment. He cited
 D *Inakoju v. Adeleke (2007) 1 NWLR (pt. 1025) 1*.

That even the judgment of 29th December, 2011 is a nullity since it did not meet with the standard of a judgment properly so called and so must be set aside. He referred to *Polycarp Ojogbue & Anor. V. Ajie Nnubia & 4 Ors (1972) 6 SC (Reprint) 127*.

E Responding on behalf of the 1st respondent (INEC) Chief (Mrs.) Awomolo on its behalf submitted that the decision or judgment of the Court of Appeal was valid and constitutional and not null or void, properly covered by Section 285 of the Constitution.

F For the 5th and 6th respondents was contended that Section 285 (8) of the Constitution has not created any time limit within which the court may give its reasons and as the appellants have not suffered any miscarriage of justice or prejudice the judgment and reasons were in order. That the reasons given on the 23rd January
 G 2012 dates back to the 29th December, 2011 when the judgment was delivered. He referred to *Unity Bank v. Bouari (2008) 7 NWLR (Pt. 1086) 372*; *Rotimi v. Macgregor (1994) 11 SC 133*.

H From the consideration of SC.14/2012 it can be seen without doubt that the question of the validity of the documents called judgment of the Court of Appeal and its later reasons have been answered and that is that there was no judgment and the court below acted in futility. Again, this appeal is allowed and the so called judgment of the Court of Appeal set aside while the judgment of the Election Tribunal remains the only subsisting judgment and orders.

SC/14C/2012

In an appellant's amended brief filed on 2/2/12, there were formulated five issues for determination, viz:

1. Whether the judgment of the Court of Appeal delivered on the 29th day of December, 2011 is nullity, the Court of Appeal having not advanced or provided reasons for same at the time the judgment was delivered. B

2. Whether the Court of Appeal had jurisdiction to give, advance or proffer reasons for the judgment delivered on the 29th day of December, 2011 on 23rd day of January, 2011 having not disposed of the appellant's appeal within a period of 60 days from the delivery of the judgment of the Tribunal. C

3. Whether the lower court not being a final Court of Appeal in respect of governorship election had jurisdiction to give or reserve the reasons for its judgment to a later date. D

4. Whether the lower court was right in affirming the tribunal's finding on the probative value of the report of inspection of electoral materials and evidence of PW46.

5. Whether the lower court was right in not holding that the Tribunal ought to have granted the main relief sought in the petition and declare that the 1st appellant and not the 1st cross-respondent was duly elected by majority of lawful votes cast in the Governorship Election for Kebbi State held on the 27th April, 2011. E

Mallam Yusuf Ali, SAN adopted the brief of 1st and 2nd respondent in which were formulated three issues for determination as follows: F

ISSUE ONE

"Whether having regards to the provisions of Sections 285(7) and (8) of the Constitution of the Federal Republic of Nigeria 1999 (as amended), the judgment of the court below delivered on 29th December, 2011 in respect of which the reasons for the said decision was given on the 23rd day of January, 2012, was a nullity? (Distilled from grounds 2, 3, and 4 of the amended Notice of appeal)" G

ISSUE TWO

"Whether the court below was right in affirming the Tribunal's findings on the non-probative value of the report of physical inspection of electoral materials and evidence of PW46".

(Distilled from grounds 5 and 6 of the amended notice of appeal)

H

ISSUE THREE

“Whether the court below was right in not holding that the Tribunal ought to have granted the main reliefs sought in the petition and declare that the 1st appellant and not the 1st respondent was duly elected by majority of lawful votes cast in the governorship election for Kebbi State held on 27th April, 2011.” (Distilled from grounds 7, 8, 9, and 10 of the amended notice of appeal)

ARGUMENT OF THE ISSUES

ISSUE ONE

The pit of this issue is whether the lower court in the instant case is constitutionally empowered to give a decision or judgment in an appeal against a decision in the election petition and reserve the reasons for a later date. The appellants have contended strenuously that by virtue of Section 285(3) of the Constitution of the Federal Republic of Nigeria the lower court is not empowered.

Chief (Mrs.) V. O. Awomolo of counsel for the 4th respondent adopted their brief of argument filed on 7/2/12. In that brief were couched three issues for determination viz:

1. Whether by virtue of Section 285(8) of the Constitution of the Federal Republic of Nigeria 1999 as amended, the Court of Appeal is empowered to give its decision and reserve the reasons therefore to a later date.

2. Whether the lower court was right in affirming the tribunal’s finding on the none-probative value of the report of inspection of electoral materials and evidence of PW46.

3. Whether the lower court was right in not holding that the tribunal ought to have granted the main reliefs sought in the petition and declare that the 1st appellant and not the 1st cross-respondent was duly elected by majority of lawful votes cast in the governorship election for Kebbi State held on the 27th day of April, 2011.

The 5th and 6th respondent raised similar issues in their brief filed on 9/2/12 and adopted on their behalf by learned counsel, Abubakar Abdullahi Esq.

In the arguments in the cross-appeal at the Court of Appeal which is an appeal here, the 1st appellant while asking this court to set aside the judgment of the Court of Appeal given without reason is asking this court to have him declared as the winner of the governorship election in view of the findings of the Election Tribunal nullifying

the declaration as winner of the 1st respondent.

The respondent disagrees with this position contending that the judgment of the Court of Appeal was valid and the reasons covered by the necessary constitutional provisions.

This appeal against the cross-appeal by the 1st appealed against by the appellants herein, I dare say is difficult to entertain since what is being proposed as I can see, is an appeal from the election tribunal to the Supreme Court. That in my view is a hard nut without an appropriate implement to break it. This is because the purported judgment of the Court of Appeal having been set aside, there is no anchor upon which this court can properly enter into the merits of what was done at the trial tribunal in the nature of an appeal or review. That being the case and the fuller reasons in the lead judgment as delivered by my learned brother, W.S.N. Onnoghen JSC, I strike out this appeal I abide the consequential orders in the lead judgment. Parties to bear own costs.

E

F

G

H