

SUPREME COURT OF NIGERIA

3RD FEBRUARY, 2012. SC. 476/2011

CORAM:- **W. S. N. ONNOGHEN, I. T. MUHAMMAD, O. O. ADEKEYE, B. RHODES-VIVOUR, M. U. PETER-ODILI, JJSC**

1. CHIEF DR. FELIX AMADI
 2. AFRICAN POLITICAL SYSTEM APPELLANTS
AND
 1. INDEPENDENT NATIONAL
ELECTORAL COMMISSION
 2. CHIBUIKE ROTIMI AMAECHI RESPONDENTS
 3. PEOPLES' DEMOCRATIC PARTY
-

APPEALS - Constitution - Right of appeal - Leave - Grounds of law
- Since the grounds in issue are of law - Leave is not required - Thus
the appeal is competently initiated (H1)

APPEALS - Election petitions - Failure to hear within time - Effect -
By 1999 Constitution s. 285(7) - Non compliance with the provision
- Renders the appeal a nullity (H2)

CONSTITUTIONAL LAW - Constitution - Limitation period - Effect
on right to fair hearing - 1999 Constitution s. 285(7) - Does not
deny the right - It provides time frame to exercise same (H3)

FACTS

Following the Governorship election conducted by 1st respondent into the Office of Governor of Rivers State on the 26th day of April, 2011, 2nd respondent was returned as winner of the said election, having pulled the highest number of votes cast at the election. 1st appellant was a candidate of 2nd appellant for the said election and complained that they were unlawfully excluded from the election by 1st respondent not including the name and logo of 2nd appellant in the ballot papers used for the election. Consequently, appellants filed a petition at the Governorship Election Petition Tribunal sitting at Port Harcourt, challenging the return of 2nd respondent. The grounds for the petition are, inter alia - that 1st appellant

was validly nominated by 2nd appellant as its candidate but unlawfully excluded by 1st respondent from contesting the election.

Appellants then sought for a number of reliefs to the effect that the election is null and void by reason of the unlawful exclusion of 1st appellant. At the conclusion of hearing, the tribunal dismissed the petition of appellants in a judgment delivered on the 7th day of October, 2011. Consequent upon the dismissal, appellants filed an appeal at the Court of Appeal, Port Harcourt Division on the 28th day of October, 2011. Upon the completion of the processes, the appeal was fixed for hearing on the 7th day of December, 2011, on which day the appeal was struck out in view of the provision of section 285(7) of the constitution of Federal Republic of Nigeria 1999. Aggrieved further, appellant appealed to Supreme Court. 1st respondent raised preliminary objection to the right of appellants to file the appeal.

ISSUES FOR DETERMINATION

“(i) whether the Court of Appeal was under a statutory obligation and duty to hear and determine the appellants’ appeal before it within the time prescribed by the constitution of the Federal republic of Nigeria, 1999 as amended.

(ii) if the answer to issue (1) above is in the affirmative, whether the failure of the Court of Appeal to hear and determine the appeal within the prescribed time and whether the absence of any fault on the part of the appellants such failure by the Court of Appeal does not amount to a denial of appellants’ right to fair hearing which entitles them to a remedy for an order remitting it to the lower court for hearing on the merits”.

HELD (Unanimously dismissing the appeal per **ONNOGHEN JSC) ***Right of appeal - Leave - Grounds of law*****

1. The question to be answered is whether from the ruling of the lower court on appeal and the grounds of appeal thereon - supra-appellants’ appeal is of right or with leave of the court first had and obtained? To answer the question we need to look at the law relating to the issue. These are Sections 233(2) (a)(b) and (c), and 233(2)(e)(3) of the 1999 Constitution as amended.

Section 233(2) (a - c) of the 1999 Constitution provided as follows:-

“(2) An appeal shall lie from decisions of the Court of Appeal

to the Supreme Court as of right in the following cases-

(a) where the grounds of appeal involves questions of law alone, decisions in any civil or criminal proceedings before the Court of Appeal.

(b) decisions in any civil or criminal proceedings on questions as to the interpretation or application of this constitution,

(c) decisions in any civil or criminal proceedings on questions as to whether any of the provisions of Chapter iv of the Constitution has been, is being or is likely to be, contravened in relation to any person. ”

From the above provisions, it is clear that a right of appeal inures to an appellant who appeals against the decision of the Court of Appeal on questions of law alone or where his complaint is that any of the provisions of chapter iv of the 1999 Constitution as amended (dealing with the fundamental rights) has been or is being threatened to be breached in relation to him or whether any person has been validly elected to the Office of Governor or Deputy Governor etc, and as relevant to the facts of this case. Can it be said, from the above provisions, that appellants’ appeal can only be competent if preceded by leave of court? I have reproduced the ruling of the lower court and the grounds of appeal against it earlier in the judgment and I am of the view that the appellants have the right to appeal to this court particularly as the grounds of appeal are of law; involve interpretation or application of the constitution and breach of appellants’ right to fair hearing as contained in Chapter iv of the 1999 Constitution as amended. Though the appeal cannot be said to be one that questions whether any person has been validly elected to the Office of Governor or Deputy Governor under the constitution it certainly involves the interpretation or application of the provisions of Section 285(7) of the 1999 Constitution as amended in so far as it deals with the issue of determination of election appeals within sixty (60) days of the judgment appealed against.

In short, it is my considered view that the appeal is competent as the same was filed as of right under the constitution. The preliminary objection of the 1st respondent is therefore overruled being misconceived and of no merit. (p. 546 F/547 D)

Election petition - Failure to hear within time - Effect

2. What then does Section 285(7) of the 1999 Constitution as amended provide? It enacts thus:-

“(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*”.

The above provision is very clear and unambiguous and therefore needs no interpretation. It simply means what it says; that an appeal against the decision of an election tribunal or Court of Appeal in an election matter must be heard and determined within sixty (60) days of the date of the delivery of the judgment in question. The above is a constitutional provision and the words employed in crafting same commands mandatory compliance. There is no room for the exercise of any discretion in relation to the allotted time. Everything needed to deliver the judgment must be done and the judgment delivered “within” sixty (60) days of the date of the delivery of the judgment on appeal. The provisions of Section 285 (7) *supra* therefore must be applied to the facts of any given case as it admits of no interpretation whatsoever.

In the instant case, both parties by which I mean the appellants and respondents - are agreed that the appeal in question had lapsed by one day as at 7th December, 2011 when same was listed for hearing. That means that as at that date, the appeal had ceased to exist in law and could therefore not have been heard - it was dead in the eyes of the law and constitution.

It is very important to note that appellants are not challenging the constitutionality of the provisions of Section 235(7) of the 1999 Constitution, as amended but its application by the lower court to their appeal. In the circumstance, it is clear that the provision in question is valid and subsisting and binds all and sundry in this nation.

To me, I hold the considered view that the instant appeal is an exercise in futility in the present circumstances and realities. The court is not being asked to declare the provisions of Section 285(7) unconstitutional which means it remains valid. As long as it remains the law appeals relevant to that provision must necessarily be heard and determined within sixty (60) days of the delivery of the judgment on appeal otherwise the appeal would lapse. (pp. 549 F/551 A)

Constitution - Limitation period

3. The question is whether the application of the provisions of Section 285(7) of the 1999 Constitution, as amended to the facts of this case, or any other case for that matter, can be said to amount to a denial of the right to fair hearing by the court? It is very clear that the provisions of Section 285(7) supra are in the mould of a statute of limitation but with a constitutional flavour. Does an application of a statute of limitation to a given factual situation rob the aggrieved party of the right to fair hearing? I do not think so neither has learned counsel for appellants cited any authority in support of that contention. This court has held that the provisions of Section 285(7) supra is like the rock of Gibraltar or Mount Zion which cannot be moved. The time provided therein is sacrosanct in the sense that it cannot be extended. Granted, for the purposes of argument only, that application of the provisions amounts to a denial of the right to fair hearing, which is not admitted by me, what would be the benefit to appellants in view of the fact that the sixty (60) days cannot be extended to accommodate the hearing of their appeal?

The provision does not say that the appeal would not lapse if the inability to hear and determine same was not caused by the appellant or was caused by the court, or by any person of whatever description. Section 285(7) supra is clearly intended by the legislature to limit time not to extend time and it would be inappropriate, and in fact illegal, to interpret same to attain the effect of extending the time therein allotted which is clearly the intention of the appellants in the instant appeal.

It is very important to note that the provisions of Section 285(7) supra do not deny an appellant the right to fair hearing, just like every statute of limitation. It merely gives all parties and the court a time frame within which parties are to exercise their right to fair hearing in a relevant appeal. If for whatever reason the appeal is not heard within the allotted time frame it cannot be said that an appellant affected thereby has been denied his right to fair hearing. The provision is of strict liability and since the court has not been called upon to declare same unconstitutional it remains the law and binding on all and sundry. (pp. 550 E/551 G)

NOTABLE POINTS OF INTEREST**ADEKEYE JSC***1. Concept of fair hearing in court*

B In answering that issue, it is imperative to examine what is denial of
fair hearing under the Constitution. The right to fair hearing under
Section 36 (1) of the 1999 Constitution as applicable in the determi-
nation of civil rights and obligation of citizens is a trial conducted
according to all legal rules formulated to ensure that justice is done to
C all parties. The court is expected to provide a conducive atmosphere
for parties to exercise their right to fair hearing. The right to fair hear-
ing is a question of opportunity of being heard. The appellants were
afforded the opportunity of being heard but this right was foreclosed
by the provision of Section 285 (7) of the 1999 constitution which
D provided for a period of 60 days for hearing and determination of
an appeal from the election petition tribunal to the Court of Appeal.
The appellants in other words, failed to use the opportunity of fair
hearing afforded them during the period of sixty days. It is the con-
tention of the appellants that since their appeal was not heard during
E the statutory period of sixty days through no fault of the parties, the
court ought to remit the matter back to the lower court. (p. 556 D)

2. Jurisdiction of courts is limited to statutes creating them

F It must be emphasized that although the courts have great powers
yet these powers are not unlimited. They are bound by some lines of
demarcation. Courts are creatures of statutes and the jurisdiction is
therefore conferred, limited and circumscribed by the statutes creat-
ing it. (p. 557 D)

RHODES-VIVOUR*3. Reason for amending 1999 Constitution section 285*

Consequently in the 2003 and 2007 elections petitions, there was
no time limit for hearing election petitions. Counsel employed all
H types of tactics to delay the hearing of Petitions, all for one hidden
agenda or the other. A classical example is consolidated suits
Nos.SC.361/2011 and SC.362/2011 Ogboru & Ors v. Uduaghan
judgment delivered on 17/11/2011 by this court. This was a petition
that was filed immediately after the 2007 Gubernatorial Elections in

Delta State. The Petition was still being heard on appeal after the 2011 Gubernatorial Elections. A case where a Petition lasted more than four years for a four years gubernatorial term is scandalous, unthinkable and beggars belief. It became obvious that if nothing was done a respondent who apparently won an election would have finished his four year term and left office while the petition is still in court. If the petitioner eventually wins he would have nothing but a worthless victory; a victory that cannot be enforced. B

It was in the light of this real situation illustrated above that the legislature in its wisdom thought, and quite rightly too that something must be done to ensure that election petitions are heard and disposed of within a reasonable time. That explains why amendments were made to Section 285 of the constitution by the inclusion of subsections (5), (6), (7) and (8). C

The amendments provided for urgency in electoral matters. Extending time for the hearing of Election Petitions, appeals defeats the intention of the legislature. To extend time is a discretionary power which entails the judge acting within the Rules governing the matter in question. Provisions of the Constitution on time within which to do an act are mandatory and so a Judge has no jurisdiction to extend time. There is either compliance with the provision or non compliance. Failure to comply with Section 285 (7) of the Constitution renders the Petition dead and buried for all time. It can never be revived by any court in the land. D

I have explained the intention of the legislature for including subsections (5), (6), (8), particularly (7) in the Constitution. The Legislature seeks by the subsections to put an end to the never ending election petitions still in courts three, four years after they were filed. I am of the firm view that the legislature is justified having regard to the history of inordinate delays in the hearing of these cases. It is unacceptable for an election petition to still be heard by the courts several years after the election in question. (p. 560 F/561 G) E

REPRESENTATION

Aham Eke-Ejelam Esq. with B. O. B Udeire, Esq., for the Appellants
J. Elumeze for the 1st respondent.

L. O. Fagbemi, SAN with Dr. J. O. Olatoke, H. O Afolabi; A. O. Popoola, B. O. Onu; J. O. Nkota (Miss); S. C Michael and M. A. H

Adelodun, for 2nd respondent

Ighodalo Imadegbelo, SAN with Messrs N. O. O. Oke SAN; E. Kalu, S. Onu and H. T. Fajemite, for the 3rd respondent

CASES REFERRED TO

- B CCB Plc v. Eperi (2007) 3 NWLR (Pt. 1022)
- Ikaro v. Izunaso (2009) 4 NWLR (Pt. 1130) 45
- Ede v. Omeke (1992) 2 NWLR (Pt. 242) 428
- Aderonmu v. Olowu (2000) 4 NWLR (Pt. 652) 253
- C Bamgboye v. Unilorin (1999) 10 NWLR (pt. 622) 290
- Osun State Govt. v. Dalami Nig. Ltd. (2007) All FWLR (pt. 365) 438
- Chigbu v. Tonimas Nig. Ltd. (2006) 9 NWLR (pt. 984) 189
- Okafor v. AG Anambra State (1991) 6 NWLR (pt. 200) 659
- Saleh v. Monguno (2003) 1 NWLR (pt. 801) 221
- D Kotoye v. CBN (1989) 1 NWLR (pt. 98) 419
- Military Gov. of Imo State v. Nwauwa (1997) 2 NWLR (pt. 490) 675
- FRN. v. Osahon (2006) 5 NWLR (pt. 973) 301
- Savannah Bank Nig. v. Ajilo (1989) 1 NWLR (pt. 97) 305
- Onubu v. INEC (1989) 5 NWLR (pt. 94) 323
- E Egolum v. Obasanjo (1999) 5 SCNJ 92

STATUTE REFERRED TO

Constitution of the Federal Republic of Nigeria 1999 as amended, ss.

- F 6 (6), 36 (1), 233(2)(e)(3), 285(5)(6)(7)(8),

LEAD JUDGMENT BY ONNOGHEN JSC

- This is an appeal against the judgment of the Court of Appeal Holden at Port Harcourt, delivered on 7th December, 2011, in which
- G the court struck out appeal No.CA/PH/EPT/36/2011 for want of jurisdiction. Following the Governorship Election conducted by the 1st respondent into the Office of Governor of Rivers State, on the 26th day of April, 2011, the 2nd respondent was returned as winner of the said election, haven pulled the highest number of votes cast at
- H the election. The 1st appellant was a candidate of the 2nd appellant for the said election and complained that they were unlawfully excluded from the election by the 1st respondent not including the name and logo of the 2nd appellant in the ballot papers used for the said Rivers State Governorship Election, as a result of which appel-

lants filed petition no. EPT/GOV/3/2011 at the Governorship Election Tribunal sitting at Port Harcourt challenging the return of the 2nd respondent. The grounds for the petition are that:-

1. That the 1st respondent(sic, 1st appellant) was validly nominated by the 2nd appellant as its candidate but unlawfully excluded by the 1st respondent from contesting the 2011 Governorship Election in Rivers State held on the 26th April, 2011. B

2. That the 2nd appellant, a duly registered political party was unlawfully excluded from contesting the 2011 Governorship Election in Rivers State held on the 26th April, 2011. C

Appellants then claimed the following reliefs:-

a. A declaration that the 1st appellant was validly nominated and sponsored by the 2nd appellant but was unlawfully excluded by the 1st respondent from the Rivers State Governorship Election held on 26th April, 2011 D

b. A declaration that the Rivers State Governorship Election conducted on 26th April, 2011 is invalid, null and void by reason of the unlawful exclusion of the 1st and 2nd appellants from the said election by the 1st respondent.

c. A declaration that the 2nd respondent was not duly elected or returned and his declaration as winner of the said election for the Rivers State Governorship Election is void and should be accordingly nullified by reason of the unlawful exclusion of the 1st and 2nd appellants from the election for the governorship of Rivers State conducted by the 1st respondent on 26th April, 2011. E F

d. A declaration that a re-run or fresh Governorship Election be conducted by the 1st respondent in Rivers State with the names and symbols of the appellants respectively duly included in the ballot papers and all relevant electoral materials. G

e. An order nullifying the 2011 Rivers State Governorship Election held on 26th April, 2011 by reason of unlawful exclusion of the 1st and 2nd appellant's names, symbol and logo from the ballot papers and other electoral materials including the result sheet by the 1st respondent. H

f. An order cancelling, revoking and or withdrawing the certificate of returns issued by the 1st respondent in favour of the 2nd respondent.

g. An order restraining the 2nd respondent from being sworn

in or otherwise acting as the Governor of Rivers State and from performing any function as the Governor of Rivers State based on his purported return as the winner of the Governorship election of the 26th April, 2011 wherein the 1st and 2nd appellants were unlawfully excluded from the said 2011 election by the 1st respondent.

B At the conclusion of trial, the tribunal dismissed the petition of appellants in a judgment delivered on the 7th day of October, 2011. Consequent upon the dismissal, appellants filed appeal No.CA/PH/EPT/36/2011 at the Court of Appeal holden at Port Harcourt on the 28th day of October, 2011. Upon the completion of the processes, C the appeal was fixed for hearing on the 7th day of December, 2011, on which day, the appeal was struck out for haven lapsed resulting in the instant appeal.

The issues for determination, as identified by learned counsel D for appellants, AHAM EKE, EJELAM, ESQ in the appellants' brief filed on 20th December, 2011 are as follows:-

"(i) whether the Court of Appeal was under a statutory obligation and duty to hear and determine the appellants' appeal before it within the time prescribed by the constitution of the Federal republic E of Nigeria, 1999 as amended.

(ii) if the answer to issue (1) above is in the affirmative, whether the failure of the Court of Appeal to hear and determine the appeal within the prescribed time and whether the absence of any fault on F the part of the appellants such failure by the Court of Appeal does not amount to a denial of appellants' right to fair hearing which entitles them to a remedy for an order remitting it to the lower court for hearing on the merits".

On his part, learned counsel for the 1st respondent JERRY G ELUMEZE, Esq identified the following sole issue for determination in the brief filed on the 18th day of January, 2012:

"Whether the inability of the Court of Appeal to hear the appeal within sixty (60) days prescribed by Section 285(7) of the Constitution of the Federal Republic of Nigeria 1999 as amended H amounted to a denial of the appellants' right to fair hearing."

On the other hand, the sole issue formulated by learned senior counsel for 2nd respondent, L. O FAGBEMI, SAN is:

"Whether or not the Court of Appeal was right in striking out the appellants' appeal for affluxion of time".

Learned senior counsel for the 3rd respondent, I. IMADEGBELO, SAN, puts the issue as follows:-

“Whether or not the Court of Appeal has jurisdiction to entertain or determine an appeal in an election petition matter that has lapsed under Section 285(7) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).” B

From the facts of the case and the grounds of appeal raised in this appeal, it is my view that the single issue formulated by learned counsel for the 1st respondent and reproduced supra best represents the issue in contention in this appeal. It should be mentioned that learned counsel for the said 1st respondent has raised objection to the notice of appeal contending that the same is incompetent as the three grounds need leave of the court as they do not arise from nor relate to the decision appealed against. C

In arguing the objection learned counsel cited and relied on D Sections 233(2)(e) and (3) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) (hereafter referred to as the 1999 Constitution as amended) in submitting that not all decisions of the Court of Appeal in Governorship Election appeal are appealable to this court as of right; that appeals as of right are limited to decisions E on whether any person was validly elected to the Office of Governor; whether the terms of office of a Governor has ceased; whether any person has been validly erected to office of Governor, and whether the office of Governor has become vacant; that all other decisions F are appealable by leave of court under Section 233(3) of the 1999 Constitution, (as amended); that the order striking out the appeal did not determine any of the questions under section 233(2)(e) of the 1999 Constitution (as amended). It is the further submission of learned counsel that the implication of section 233(2)(e) is that matters G excluded in the list therein are not appealable as of right, including an order striking out an appeal; that appellants needed leave to appeal against the said order, which they failed to do. It is also the contention of learned counsel that the grounds of appeal do not disclose a complaint against the decision of the lower court, relying H on CCB Plc v. Eperi (2007) 3 NWLR (Pt.1022); Ikaro vs. Izunaso (2009) 4 NWLR (Pt.1130) 45 at 59; Ede v. Omeke (1992) 2 NWLR Pt.242 428 at 435; Aderonmu vs. Olowu 2000 4 NWLR Pt. 652) 253 at 265 -266, that the grounds of appeal do not attack the deci-

sion of the court but the court itself for not hearing the appeal before 7th December, 2011; that this court has jurisdiction to hear complaints against decisions of the lower court not to hear complaints against the conduct of the Court of Appeal; that the lower court is not in a position, not being a party to the appeal, to explain why the appeal was not heard within the stipulated time.

Learned counsel then urged the court to uphold the preliminary objection and strike out the appeal for being incompetent. In the reply brief filed on 24th January, 2012 learned counsel for the appellants submitted that under Section 233(e)(a) and (b) of the 1999 Constitution, (as amended), appellants have a right of appeal where the grounds of appeal involve allegations or complaints of breach of Chapter iv of the 1999 Constitution; that the provisions of Section 233(e) do not derogate from nor limit or exclude Section 233(a-b) of the 1999 Constitution; that the objection is misconceived and should be overruled.

I have carefully gone through the submissions of both counsels for the respective parties as well as the record of proceedings. It is not in dispute that the decision of the lower court on appeal and reached on 7th December, 2011, is contained in a single sentence as follows:-

“The appeal has lapsed, it is accordingly struck out”. - see page 863 of the record.

The grounds of appeal against the above decision are in the notice of appeal filed on 15th December, 2011 and complain thus:-

“GROUND ONE

The lower court erred in law by not giving the appellants fair hearing when it failed to hear and determine the appeal filed by the appellants within the time prescribed by law.

PARTICULARS OF ERROR

(i) By virtue of Section 285(7) of the 1999 Constitution of Nigeria as amended, any appeal from a decision of an Election Tribunal or Court of Appeal in an election matter shall be heard and disposed of within sixty (60) days from the date of delivery of judgment of the Tribunal or Court of Appeal.

(ii) The Election Tribunal in the instant case delivered its judgment on the 7th day of October, 2011 against the appellants.

(iii) The appellants herein on the 28th day of October, 2011

filed their Notice of Appeal to the Court of Appeal against the decision of the Election tribunal.

(iv) The appellants subsequently filed their appellants' Brief of Argument within ten (10) days of being served with the Appeal of Records as prescribed by the Election tribunal and Court Practice Directions, 2011. B

(v) The 1st and 3rd respondents filed their respondent's briefs on 2nd day of December, 2011 and served some on the appellants' counsel.

(vi) The 2nd respondent did not file any respondent's brief. C

(vii) The sixty (60) days of the appeal was the 5th day of December, 2011 calculating from the date of judgment of the Election tribunal (7th October, 2011).

(viii) The schedule and fixing of the appeal for hearing on the 7th of December, 2011, by the Court of Appeal which was a day D after the expiration of the sixty (60) days stipulated by the law for hearing and determination of such appeals and striking out of the appeal same day (7th December, 2011) is a manifest denial of the appellants' right to fair hearing.

(ix) The Court of Appeal had on obligatory judicial duty to ensure that the appeal was heard and determined within the sixty (60) days stipulated by law particularly when it had the liberty to give its decision and reserve the reasons therefore to a later date as permissible to it under Section 285(8) of the Constitution of the Federal Republic of Nigeria as amended. E F

GROUND TWO

The lower court erred in law by not exercising its judicial power in accordance with the law when it fixed the appeal for hearing on, a day after its statutory life span of sixty (60) days had extinguished G thereby denying the appellants their rights to fair hearing.

PARTICULARS OF ERRORS

(i) The appellants filed their appellants' brief within the ten (10) days as prescribed by the Election Tribunal and Court Practice Direction, 2011. H

(ii) The duty of fixture and scheduling of hearing of appeals is within the discretion of the lower court which must be exercised and discharged judicially and judiciously with a view to deteriorating(?) The appeal which breached the constitutional right of the appellants

to fair hearing in accordance with the law.

(iii) *The lower court is quite aware that being an Election Petition, it is obligatory in law for it to be heard and determined within the sixty (60) days prescribed by the constitution but it rather allowed the time to lapse and fixed some for hearing a day thereafter.*

B **GROUND THREE**

The lower court erred in law by not determining the appellants' appeal on merit but rather allowed the appeal to be caught up by effluxion of time and thereby occasioned a breach of appellants' right to fair hearing and constitutional right to appeal.

C **PARTICULARS OF ERROR**

(i) *The lower court failed to fix the appeal on or before the 6th day of December, 2011 being the sixty (60) days for hearing and determining such on appeal which judgment being appealed against was delivered on the 7th day of October, 2011.*

(ii) *The appeal was fixed in the cause list for hearing on the 7th day of December, 2011, a day after the appeal had lapsed.*

(iii) *The lower court on the said 7th day of December, 2011 when the appeal come up for hearing, agreed that the appeal lapsed on the 6th day of December, 2011 and proceeded to strike it out.*

(iv) *The fixture of the appeal on the day after it lapsed is a manifest denial and breach of the appellants' right to fair hearing as enshrined in the constitution of the Federal Republic of Nigeria 1999 as amended."*

The question to be answered is whether from the ruling of the lower court on appeal and the grounds of appeal thereon - supra-appellants' appeal is of right or with leave of the court first had and obtained? To answer the question we need to look at the law relating to the issue. These are Sections 233(2) (a)(b) and (c), and 233(2)(e)(3) of the 1999 Constitution as amended.

Section 233(2) (a - c) of the 1999 Constitution provided as follows:-

H ***"(2) An appeal shall lie from decisions of the Court of Appeal to the Supreme Court as of right in the following cases-***
(a) where the grounds of appeal involves questions of law alone, decisions in any civil or criminal proceedings before the Court of Appeal.

(b) decisions in any civil or criminal proceedings on questions as to the interpretation or application of this constitution,

(c) decisions in any civil or criminal proceedings on questions as to whether any of the provisions of Chapter iv of the Constitution has been, is being or is likely to be, contravened in relation to any person.” ^B

In addition to the above, Section 233 (2)(e) provided thus:

“decisions on any question:

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

Finally Section 233 (3) provides that:

“Subject to the provisions of subsection (2) of this section, an appeal shall lie from the decisions of the Court of Appeal to the Supreme Court with the leave of the Court of Appeal or the Supreme Court”. ^D

From the above provisions, it is clear that a right of appeal inures to an appellant who appeals against the decision of the Court of Appeal on questions of law alone or where this complaint is that any of the provisions of chapter iv of the 1999 Constitution as amended (dealing with the fundamental rights) has been or is being threatened to be breached in relation to him or whether any person has been validly elected to the Office of Governor or Deputy Governor etc, and as relevant to the facts of this case. Can it be said, from the above provisions, that appellants’ appeal can only be competent if preceded by leave of court? I have reproduced the ruling of the lower court and the grounds of appeal against it earlier in the judgment and I am of the view that the appellants have the right to appeal to this court particularly as the grounds of appeal are of law; involve interpretation or application of the constitution and breach of appellants’ right to fair hearing as contained in Chapter iv of the 1999 Constitution as amended. Though the appeal cannot be said to be one that questions whether any person has been validly elected to the Office of Governor or Deputy Governor under the constitution it certainly involves the interpretation or application of the provisions of Section 285(7) of the 1999 Constitution as amended ^E
^F
^G
^H

in so far as it deals with the issue of determination of election appeals within sixty (60) days of the judgment appealed against.

In short, it is my considered view that the appeal is competent as the same was filed as of right under the constitution.

The preliminary objection of the 1st respondent is therefore overruled being misconceived and of no merit.

Turning now to the appeal, it is the submission of learned counsel for appellants that by the provisions of Section 285(7) and (8) of the 1999 Constitution, as amended, an appeal from the decision of an election tribunal shall be heard and disposed off within sixty (60) days from the date of the delivery of the judgment of the tribunal; that where a party's case is not heard, it means his right to fair hearing has been breached, relying on *Mains Ventures vs. Petroplast Ind. Ltd* (2000) 4 NWLR (Pt.651) 151 at 167; that appellants did all that was required of them to have appeal heard within the sixty (60) days and that the lower court had between the 2nd and 6th December, 2011 within which to hear and determine the appeal - a period of four (4) days but failed to do so, thereby breaching the fundamental right of appellants to fair hearing; that appellants were denied opportunity to be heard and that the right to be heard cannot be waived nor taken away by statute, relying on *Bamgboye vs Unilorin* (1999) 10 NWLR (pt. 622) 290 at 355.

Finally, counsel urged the court to remit the case to the lower court to be heard and determined by another panel. On his part, learned counsel for the 1st respondent submitted that the lower court did not fail to hear the appeal on 7th December, 2011 but was deprived of the jurisdiction to do so by the provisions of Section 285(7) of the 1999 Constitution as amended; that it was not the court that denied appellants the right to fair hearing, if any but Section 285(7) of the 1999 Constitution as amended and that appellants must first impugn the provisions of the said Section 285(7) before they can successfully contest their inability to be heard by the lower court; that the appeal haven lapsed cannot be resurrected by order of this court that it be heard by another panel of the court below and urged the court to dismiss the appeal.

On his part, learned senior counsel for the 2nd appellant referred to the provisions of section 285(7) of the 1999 constitution, as

a mended and stated that it is not in dispute that the sixty (60) days allowed an appeal to be heard and determined had lapsed as at the time the appeal was struck out; that the above provision being in the nature of a statute of limitation, the fact that appellants had no hand/fault in the delay is immaterial, relying on SC/272/2011 and SC/276/2011, appeals between Peoples Democratic Party (PDP) vs. Congress for Progressive Change (CPC) and 41 Ors delivered on 31st October, 2011; that the issue of breach of the right of fair hearing does not arise this case; that appellants were responsible for the delay that resulted the appeal being statute barred that between the filing of the Notice of Appeal and appellants' brief, appellant took almost fifty-one (51) days out of the sixty (60) days allotted for the hearing and determination of the appeal and urged the court to dismiss the appeal.

On his part, learned senior counsel for the 3rd respondent submitted that after the expiration of sixty (60) days the jurisdiction of the Court of Appeal is extinguished and the only appropriate order is one striking out the appeal as made by the lower court and urged the court to dismiss the appeal.

The main issue in the instant appeal centres on the effect of the provisions of Section 285(7) of the 1999 Constitution (as amended) on an appeal not determined within sixty (60) days particularly when the fault or inability to hear and determine same is not traceable to the appellant. The sub-issue is whether if such an appeal is struck out for haven lapsed the right of fair hearing of the appellant is thereby breached.

What then does Section 285(7) of the 1999 Constitution as amended provide? It enacts thus:-

“(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”.

The above provision is very clear and unambiguous and therefore needs no interpretation. It simply means what it says; that an appeal against the decision of an election tribunal or Court of Appeal in an election matter must be heard and determined within sixty (60) days of the date of the delivery of the judgment in question. The above is a constitutional provi-

sion and the words employed in crafting same commands mandatory compliance. There is no room for the exercise of any discretion in relation to the allotted time. Everything needed to deliver the judgment must be done and the judgment delivered “within” sixty (60) days of the date of the delivery of the judgment on appeal. The provisions of Section 285 (7) supra therefore must be applied to the facts of any given case as it admits of no interpretation whatsoever.

In the instant case, both parties by which I mean the appellants and respondents - are agreed that the appeal in question had lapsed by one day as at 7th December, 2011 when same was listed for hearing. That means that as at that date, the appeal had ceased to exist in law and could therefore not have been heard - it was dead in the eyes of the law and constitution.

It is very important to note that appellants are not challenging the constitutionality of the provisions of Section 235(7) of the 1999 Constitution, as amended but its application by the lower court to their appeal. In the circumstance, it is clear that the provision in question is valid and subsisting and binds all and sundry in this nation.

The question is whether the application of the provisions of Section 285(7) of the 1999 Constitution, as amended to the facts of this case, or any other case for that matter, can be said to amount to a denial of the right to fair hearing by the court? It is very clear that the provisions of Section 285(7) supra are in the mould of a statute of limitation but with a constitutional flavour. Does an application of a statute of limitation to a given factual situation rob the aggrieved party of the right to fair hearing? I do not think so neither has learned counsel for appellants cited any authority in support of that contention. This court has held that the provisions of Section 285(7) supra is like the rock of Gibraltar or Mount Zion which cannot be moved. The time provided therein is sacrosanct in the sense that it cannot be extended. Granted, for the purposes of argument only, that application of the provisions amounts to a denial of the right to fair hearing, which is not admitted by me, what would be the benefit to appellants in

view of the fact that the sixty (60) days cannot be extended to accommodate the hearing of their appeal?

To me, I hold the considered view that the instant appeal is an exercise in futility in the present circumstances and realities. The court is not being asked to declare the provisions of Section 285(7) unconstitutional which means it remains valid. As long as it remains the law appeals relevant to that provision must necessarily be heard and determined within sixty (60) days of the delivery of the judgment on appeal otherwise the appeal would lapse.

The provision does not say that the appeal would not lapse if the inability to hear and determine same was not caused by the appellant or was caused by the court, or by any person of whatever description. Section 285(7) supra is clearly intended by the legislature to limit time not to extend time and it would be inappropriate, and in fact illegal, to interpret same to attain the effect of extending the time therein allotted which is clearly the intention of the appellants in the instant appeal.

See the judgments of the court in the consolidated appeal Nos. SC/332/2011; SC/333/2011 and SC/352/2011 Alh. Kasim Shettima & Ors vs Alh. Mohammed Goni & Ors delivered on the 31st day of October, 2011 and another consolidated appeal Nos. SC/272/2011 and SC/276/2011 between Peoples Democratic Party (PDP) vs Congress for Progressive Change (CPC) & Ors also delivered on 31st October, 2011 and the most recent one delivered on 27th January, 2012 in the consolidated appeal Nos. SC/141/2011; SC/266/2011; SC/267/2011; SC/282/2011; SC/356/2011 and SC/357/2011 Brig. General Mohammed B. Marwa & Anr. vs Adm. Murtala Nyako & Ors.

It is very important to note that the provisions of Section 285(7) supra do not deny an appellant the right to fair hearing, just like every statute of limitation. It merely gives all parties and the court a time frame within which parties are to exercise their right to fair hearing in a relevant appeal. If for whatever reason the appeal is not heard within the allotted time frame it cannot be said that an appellant affected thereby has been denied his right to fair hearing. The provision is of strict liability and since the court has not been called upon to

declare same unconstitutional it remains the law and binding on all and sundry.

By the way, what is the attitude of appellants to the expeditious hearing of the appeal at the lower court? It is not disputed that the appeal was to be heard and determined within sixty (60) days from the date of the delivery of the judgment by the Election Tribunal. So everyone involved in the matter - appellants, respondent and the court must beat the sixty (60) days dead line. The judgment of the tribunal was delivered on 7th October, 2011 and appellants had twenty-one (21) days within which to file their appeal which they did on 28th October, 2011 which was the very last day of the twenty-one (21) days allowed for the filing of the appeal. That apart, appellants did not file their appellant brief until the 25th day of November, 2011 which was ten (10) days to the end of the sixty (60) days from the date of judgment on appeal. It is therefore very clear that appellants were very tardy in prosecuting the appeal having regard to the time constraint involved.

In conclusion, I find no merit in this appeal which is accordingly dismissed by me. I affirm the ruling/judgment of the lower court delivered on the 7th day of December, 2011 in appeal No. CAPH/EPT/36/2011. I, however, order that parties bear their respective costs. Appeal dismissed.

F

MUHAMMAD JSC

My learned brother, Onnoghen, JSC, afforded me the opportunity to read in draft, the judgment just delivered. I am in agreement with my learned brother that the appeal lacks merit and should be dismissed. I too hereby dismiss the appeal. I abide by all orders made in the lead judgment.

ADEKEYE JSC

H I was opported to read in draft the judgment just delivered by my learned brother, W. S. N. Onnoghen JSC. I entirely agree with his reasoning and conclusion. My learned brother had reviewed the background facts of this appeal in the lead judgment. The appeal is in my view within a narrow limit.

In the appellants' brief filed on 30/12/2011, two issues were raised for the determination of this appeal as follows -

“(i) Whether the Court of Appeal was under a statutory obligation and duty to hear and determine the appellants’ appeal before it within the time prescribed by the Constitution of the Federal Republic of Nigeria 1999 as amended.” B

“(ii) If the answer to issue (i) above is in the affirmative, whether the failure of the Court of Appeal to hear and determine the appeal within the prescribed time and whether in the absence of any fault on the part of the appellant, such failure by the Court of Appeal does not amount to a denial of appellants’ right to fair hearing which entitles them to a remedy for an order remitting it to the lower court for hearing on the merits.” C

My learned brother in his lead judgment adopted and relied on the sole issue raised for determination in the 1st respondent's D brief which reads:

“Whether the inability of the Court of Appeal to hear the appeal within the 60 days prescribed by section 285 (7) of the Constitution of the Federal Republic of Nigeria 1999 as amended amounted to a denial of the appellants’ right to fair hearing.” E

The 1st respondent raised preliminary objection that the notice of appeal is incompetent and liable to be struck out as all the three grounds of appeal are incompetent. The learned counsel Mr. Elumeze predicated the preliminary objection on grounds as follows F

(1) Leave of court is required to appeal against the order of the Court of Appeal striking out the appeal but leave of court was not obtained by the appellants.

(2) The grounds do not arise from, relate to or attack the decision appealed against. G

I agree with my learned brother that this appeal does not require leave of court to file the notice and grounds of appeal. The subject matter of the appeal relates to Section 285 (7) and (8) of the 1999 Constitution as amended and Section 36 (1) of the 1999 Constitution. Both are issues of law as interpretation of Section 285 (7) under the 1999 Constitution (as amended) raises a question of law, while the legal question raised in Section 36(1) of the 1999 Constitution is as to whether the appellants’ right to fair hearing under the H

provisions of chapter IV of the 1999 constitution has been contravened. By virtue of section 233 (e) (a) & (b) of the 1999 constitution, as amended the two grounds guarantee an appellants appeal as of right to the Supreme Court. The provisions of Section 233 (2) (e) of the 1999 Constitution are not meant to limit or exclude the provisions of Section 233 (2) (a-d) of the Constitution. I agree with my learned brother that the preliminary objection is frivolous and deserves to be overruled. It is consequently struck out.

The germane complaint of the appellants in brief is that the Election Tribunal delivered its judgment against the respondents on the 7th day of October 2011. The appellants filed their notice of appeal to the Court of Appeal on the 25th day of October 2011 within the 21 days prescribed by law. On the 25th of November 2011, the appellants filed the appellants, brief within the 10 days of being served with the Record. He got a phone call from a staff of the Court of Appeal Registry that the appeal has been fixed for the 7th of December 2011 for hearing around 5.30 pm on the 6th of December. Parties were in court on that day and the appeal was listed for hearing. When the appeal was called for hearing, the court made an order to the effect that - The appeal has lapsed, it is accordingly struck out.

As on that date the appeal had lapsed by one day. The appellants argued that the parties filed their appeal and their processes within the time prescribed by the Constitution. The Court of Appeal had four clear days between the 2nd and 6th December 2011 to hear and determine the appellants' appeal. In view of the tight schedule of the court, it could have invoked Section 285 (8) of the amended Constitution to hear the appeal and give its decision within the period prescribed by law and reserve the reasons to a later date. The appeal could have been heard pursuant to Paragraph 17 of the Practice Directions in the absence of the parties since counsel have filed their briefs. The court chose not to discharge its statutory duty within the 60 days prescribed by the Constitution. In this appeal, appellants adopted the stance of blaming the court rather than looking inwards. As rightly observed by the appellants in their brief, the Court of Appeal had a tight schedule during that period. The appellants admitted also that notice of the date of hearing of the appeal was communicated to him at 5.30 pm on the 6th of December 2011 by a staff of

the Registry of the Court of Appeal. Having filed his appeal leaving only four days for the court to hear and determine the matter, he ought to have done everything within his power to collect a date for hearing and not wait until same had to be communicated to him on the telephone by a staff of the Registry of the Court of Appeal. The learned counsel had himself to blame for exhausting all the period required for filing the appeal. He did not have to exhaust the entire 21 days prescribed by law in filing his notice of appeal. The 7th of December 2011 fixed for his appeal might have been done in error - he could have rectified it through his vigilance in checking up the date of hearing at the Registry from time to time. Equity aids the vigilant and not the indolent. Under this dispensation, what is the fate of an appeal which had lapsed? B

Section 285 (7) of the 1999 Constitution as amended stipulates that - C

“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.” D

Any appeal not heard and disposed of within the stipulated 60 days shall lapse and be struck out. The foregoing provision of the Constitution is a limitation law. The purport and essence of a limitation law is that where a statute of limitation prescribes a period within which an action should be brought, legal proceedings cannot be properly or validly instituted after the expiration of the prescribed period. An action instituted after the expiration of the prescribed period is said to be statute-barred. The essence is that a legal right to enforce an action is not a perpetual right, but a right generally limited by statute. Therefore a cause of action is statute barred if legal proceedings cannot be commenced in respect of same because the period laid down by the Limitation Law had elapsed. The conspicuous effect of a Limitation Law is that legal proceedings cannot be properly or validly instituted after the expiration of the prescribed period. E

Secondly, the court is divested of its jurisdiction in the matter as it is no longer a live issue - it is dead in substance and in form. There are recent unreported decisions of this court in support of the foregoing as follows - Consolidated appeals SC.332/2011; SC.333/2011 and SC.852/2011 Alhaji Karim Shettima v. Alhaji Goni & Ors F

delivered on 31/10/2011. Consolidated appeals SC.272/2011; SC.276/2011 P.D.P. v. Congress for Progressive Change delivered on 31/10/2011. Consolidated appeals SC.141/2011 Brigadier-General Buba Marwa & 1 or v. Admiral Murtala Nyako & 3 ors. and other appeals delivered on 27/1/2012, Osun State Government v. Dalami Nigeria Ltd. (2007) All FWLR (pt.365) pg.438, Chigbu v. Tonimas (Nig.) Ltd. (2006) 9 NWLR (pt.984) pg.189.

The Court of Appeal was under a statutory obligation and duty to hear and determine the appellants' appeal before it within the time prescribed by the 1999 Constitution as amended. Once an appeal before it comes outside that time, the court is devoid of jurisdiction to hear it. The next leg of the legal question raised by the appellant is whether the failure of the Court of Appeal to hear and determine the appeal within the prescribed time in the absence of any fault on the part of the appellants does not amount to a denial of the appellants' right to fair hearing which entitles them to a remedy for an order to remit the matter back to the lower court for hearing on the merits.

In answering that issue, it is imperative to examine what is denial of fair hearing under the Constitution. The right to fair hearing under Section 36 (1) of the 1999 Constitution as applicable in the determination of civil rights and obligation of citizens is a trial conducted according to all legal rules formulated to ensure that justice is done to all parties. The court is expected to provide a conducive atmosphere for parties to exercise their right to fair hearing. The right to fair hearing is a question of opportunity of being heard. Okafor v. AG Anambra State (1991) 6 NWLR (pt.200) pg.659, Saleh v. Monguno (2003) 1 NWLR (pt.801) pg.221, Kotoye v. CBN (1989) 1 NWLR (pt.98) pg.419, Military Gov. of Imo State v. Nwauwa (1997) 2 NWLR (pt.490) pg.675. The appellants were afforded the opportunity of being heard but this right was foreclosed by the provision of Section 285 (7) of the 1999 constitution which provided for a period of 60 days for hearing and determination of an appeal from the election petition tribunal to the Court of Appeal. The appellants in other words, failed to use the opportunity of fair hearing afforded them during the period of sixty days. It is the contention of the appellants that since their appeal was not heard during the statutory period of sixty days through no fault of the parties, the court ought to

remit the matter back to the lower court.

The constitutional role of the superior court under the constitution is to interpret the law and not to usurp the role of the legislature in law making. A *judex* is to expound the law and not to expand the law. Section 6 (6) of the 1999 Constitution. There is no provision in the Constitution particularly in Section 285 of the Constitution which stipulates that an appeal not timeously heard shall be remitted to the tribunal for hearing; on the merit. It is trite that where the limitation of time is imposed in a statute, decree or edict, unless the said statute, decree or edict makes provisions for extension of time, the courts cannot extend the time. It is *ultra vires* the power of the Court of Appeal to remit the case back to the lower tribunal for hearing on the merit - no court can perform a duty not vested in the court by the Constitution. Moreover the task of the court is to decide what the law is and not what it ought to be. *Ladoja v. INEC* (2007) 12 NWLR (pt.104) pg. 115

It must be emphasized that although the courts have great powers yet these powers are not unlimited. They are bound by some lines of demarcation. Courts are creatures of statutes and the jurisdiction is therefore conferred, limited and circumscribed by the statutes creating it. *African Newspapers of Nigeria v. Federal Republic of Nigeria* (1985) 2 NWLR (pt.6) pg.137.

One of the cardinal principles of interpretation of a statute is to ascertain and give effect to the object of a statute. A statute should not be given a construction that will defeat its purposes. Where the provisions of the constitution are clear and unambiguous, there is no need to give them any other meaning than their ordinary natural and grammatical construction would permit. A court of law is without jurisdiction to import into the meaning thereof what it does not intend. *FRN. v. Osahon* (2006) 5 NWLR (pt.973) pg.301, *Savannah Bank (Nig.) v. Ajilo* (1989) 1 NWLR (pt.97) pg.305, *Onubu v. INEC* (1989) 5 NWLR (pt.94) pg.323, *AG Bendel State v. AG Federation* (1982) 3 NCLR pg.1, *Awolowo v. Shagari* (1979) 6-9 SC pg.51, *Egolum v. Obasanjo* (1999) 5 SCNJ pg.92.

The provision of Section 285 (7) of the 1999 Constitution as amended is clear and unambiguous, it ought to be given its plain and ordinary meaning that an appeal must be heard and determined within 60 days from the date of judgment. In the case of *Adisa v.*

Oyinwola (2000) 10 NWLR (pt.674) pg.116 at pg.217, this court held -

“Where the language is plain and admits of but one meaning, the task of interpretation can hardly be said to arise. Where therefore by the use of clear and unequivocal language capable of only one meaning anything is enacted by the legislature, it must be enforced however harsh or absurd or contrary to common sense the result may be.”

With fuller reasons given in the lead judgment of my learned brother, Onnoghen JSC, I also dismiss this appeal for lacking in merit. I abide the consequential orders made in the lead judgment.

RHODES-VIVOUR JSC

The central issue in this appeal invokes this courts interpretative jurisdiction. In issue is the correct interpretation of Section 285 (7) of the Constitution. This court had interpreted the provision before.

In suit Nos. SC/332/2011, SC/333/2011 and SC/352/2011, consolidated suits between Alhaji Kashim Shettima & Ors v. Alhaji Mohammed Goni & 4 Ors delivered on the 31st of October, 2011 my learned brother Onnoghen JSC had this to say:

“To my mind, the words used in section 285(7) of the 1999 Constitution are very clear and unambiguous and therefore as settled by law, do not need any interpretation. The words have to be deployed in their plain and ordinary meanings as the court is not permitted to read into any piece of legislation words and/meanings not contained therein or stretch the meanings to include matters/not in the contemplation of the framers/drafters of the constitution or statute”

His Lordship continued:

“The above being the case, it is clear and I hereby hold that by the provisions of section 285 (7) of the 1999 constitution an appeal from a decision of an election tribunal or court either in an interlocutory proceeding or final decision must be heard by an appellate court and disposed of within (60) days from the date of the delivery of Judgment/decision/order decree/conviction sentence or recommendation of the tribunal or court.”

Also in suit Nos. SC/272/2011 and SC.276/2011 consolidated suits between Peoples Democratic Party (PDP) v. Congress for Progressive Change (CPC) & 4 Ors delivered on 31st October, 2011.

My learned brother Ngwuta JSC said that:

“Section 285 (7) of the constitution is a statute of limitation with regard to the hearing and disposal of appeal in election matters. Any action brought outside a statutory limited period is time barred...” B

The Constitution is the Supreme Law. The Grundnorm. It states in clear terms the basic rights of the people, their expectations, and obligations of Government. It spells out how the people would be governed, and sets up institutions for good government. Judges would do well to study it and keep themselves abreast of frequent amendments made to it. C

In interpreting provisions of the constitution judges are to adopt a liberal approach and ensure that they do not defeat what the provision says in the guise of interpretation. See *Rabiu v. The State* 1980 8 - 11 SC. P.130. In interpreting provisions of the constitution Judges should give effect to every word in the Section to be interpreted, and where the words used are clear and unambiguous they must be given their plain, ordinary meaning, and so a provision should on no account be interpreted or construed to defeat its evident purpose. E
Section 285(7) reads:

“(7) An appeal from a decision or 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.” F

The words above are simple English words used daily. There is no need to seek for the meaning of any of the words in a dictionary. Section 285 (7) simply means that an appeal from the decision of Election Tribunal must be heard and determined within 60 days after the judgment is delivered. 60 days starts to run from the date Election Petition Tribunal delivered its judgment. In this matter, the Election petition Tribunal delivered judgment on the 7th of October 2011. An appeal was filed on the 29th of October 2011 and fixed for hearing on the 7th of December 2011. On the date fixed for hearing the mandatory 60 days given for the hearing of the appeal by section 285(7) had run out. The appeal was struck out for effluxion of time. If an appeal is not heard and determined within 60 days the Appeal H

Court no longer has jurisdiction to hear the appeal. The Court of Appeal was correct to strike out the appeal.

A point worth mentioning is why was limitation periods for hearing Election matters drafted into the constitution. It is important I address this point because in 1999 when this constitution came into force Section 285, titled “Election Tribunals had only four subsections, now it has eight subsections. For ease of understanding, I shall now reproduce these subsections:

“(5) *An election petition shall be filed within 21 days after the date of the declaration of result of the elections;*

“(6) *An Election Tribunal shall deliver its judgment in writing within 180 days from the date of the filing of the petition.*

“(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.*

“(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.”*

In *Unongo v. Aku & ors* 1983 14 NSCC p.563, section 129 (3) and S.140 (2) of the then Electoral Act set the time limit of 30 days within which the court must complete the trial of a petition. This court held inter alia that the said provisions make it unconstitutional for litigants to put across their cases.

Consequently in the 2003 and 2007 elections petitions, there was no time limit for hearing election petitions. Counsel employed all types of tactics to delay the hearing of Petitions, all for one hidden agenda or the other. A classical example is consolidated suits Nos.SC.361/2011 and SC.362/2011 *Ogboru & Ors v. Uduaghan* judgment delivered on 17/11/2011 by this court. This was a petition that was filed immediately after the 2007 Gubernatorial Elections in Delta State. The Petition was still being heard on appeal after the 2011 Gubernatorial Elections. A case where a Petition lasted more than four years for a four years gubernatorial term is scandalous, unthinkable and beggars belief. It became obvious that if nothing was done a respondent who apparently won an election would have finished his four year term and left office while the petition is still in court. If the petitioner eventually wins he would have nothing but a

worthless victory; a victory that cannot be enforced.

It was in the light of this real situation illustrated above that the legislature in its wisdom thought, and quite rightly too that something must be done to ensure that election petitions are heard and disposed of within a reasonable time. That explains why amendments were made to Section 285 of the constitution by the inclusion of subsections (5), (6), (7) and (8). B

The amendments provided for urgency in electoral matters. Extending time for the hearing of Election Petitions, appeals defeats the intention of the legislature. To extend time is a discretionary power which entails the judge acting within the Rules governing the matter in question. Provisions of the Constitution on time within which to do an act are mandatory and so a Judge has no jurisdiction to extend time. There is either compliance with the provision or non compliance. Failure to comply with Section 285 (7) of the Constitution renders the Petition dead and buried for all time. It can never be revived by any court in the land. C

Finally, on whether applying section 285(7) deprives the appellant fair hearing. Fair hearing demands that a party must be heard before the case against him is determined. See *F.C.S.C. v. Laoye* 1989 2 NWLR (Pt.106) p.652 E

The question is whether section 285 (7) of the constitution denies the appellant a hearing. Section 285 (7) of the constitution shows that there must now be utmost urgency in the hearing of electoral matters. So where the appellant fails to ensure that his petition is heard with dispatch he is not denied fair hearing. The tribunal gave judgment on 7/10/2011. The appellant filed his appeal on 28/10/11 and his brief on 25/11/2011, leaving the Appeal Court with barely ten days to hear the appeal. A close examination of the dates above reveals that learned counsel for the appellants did not handle the petition with diligence. He appears to have in the circumstances denied himself fair hearing. F

I have explained the intention of the legislature for including subsections (5), (6), (8), particularly (7) in the Constitution. The Legislature seeks by the subsections to put an end to the never ending election petitions still in courts three, four years after they were filed. I am of the firm view that the legislature is justified having regard to the history of inordinate delays in the hearing of these cases. It is H

unacceptable for an election petition to still be heard by the courts several years after the election in question.

For the reasons given above and more particularly those given by Onnoghen, JSC I too would dismiss the appeal and make the orders he proposes.

B

PETER-ODILI JSC

The 1st respondent returned the 2nd respondents the winner of the Governorship election of Rivers State, conducted by the 1st respondent on 26th of April, 2011 and declared the 2nd respondent as having scored the majority of the lawful votes cast at the said election.

The appellants were aggrieved on the basis that they were unlawfully excluded as candidates and a political party respectively by the 1st respondent's failure to include the name and logo of the 2nd petitioner in the ballot papers used for the Rivers State Government Election held on 26th April, 2011. Consequently on 18th of May, 2011, the appellants presented their petition before the Governorship Election Tribunal sitting at Port Harcourt challenging the return of the 2nd respondent, on the following grounds:

(i) That the 1st appellant was validly nominated by the 2nd appellant as its candidate but unlawfully excluded by the 1st respondent from contesting the 2011 Governorship Election in Rivers State held on the 26th April, 2011.

(ii) That the 2nd appellant a duly registered political party was unlawfully excluded from contesting the 2011 Governorship Election in Rivers State held on the 26th April, 2011.

The appellant pursuant to their petition filed on the 18th of May, 2011, prayed the tribunal for the following reliefs, namely:

(i) A declaration that the 1st appellant was validly nominated and sponsored by the 2nd appellant but was unlawfully excluded by the 1st respondent from the Rivers State Governorship Election held on 26th April, 2011.

(ii) A declaration that the Rivers State Governorship Election conducted on 26th April, 2011 is invalid, null and void by reasons of the unlawful exclusion of the 1st and 2nd appellant from the said election by the 1st respondent.

H

(iii) A declaration that the 2nd respondent was not duly elected or returned and his declaration as winner of the said election for the Rivers State Governorship Election is void and should be accordingly nullified by reason of the unlawful exclusion of the 1st and 2nd petitioners from the election for the Governorship of Rivers State conducted by the 1st respondent on 26th April, 2011. B

(iv) A declaration that a re-run or fresh Governorship Election be conducted by the 1st respondent in Rivers State with the names and symbols of the appellant respectively duly included on the ballot papers and all relevant electoral materials. C

(v) An order nullifying the 2011 Rivers State Governorship Election held on 26th April, 2011 by reason of unlawful exclusion of the 1st and 2nd appellants' names, symbols and logo from the ballot papers and other electoral materials including the result sheet by the 1st respondent. D

(vi) An order cancelling, revoking and or withdrawing the Certificate of Returns issued by the 1st respondent in favour of the 2nd respondent.

(vii) An order restraining the 2nd respondent from being sworn in or otherwise acting as the Governor of Rivers State and from performing any function as the Governor of Rivers based on his purported return as the winner of the Governorship Election of the 26th April, 2011 wherein the 1st and 2nd appellants were unlawfully excluded from the said election by the 1st respondent. E

The 1st, 2nd and 3rd respondents filed their respective replies to the petition upon being served the appellants' petition. Appellants also responded to the replies by filing a reply to each of the respondent's reply. After taking evidence of the parties and some witnesses and addresses of counsel to the respective parties, the Election Tribunal on the 7th day of October, 2011 delivered judgment against the appellants. The appellants appealed to the Court of Appeal within the 21 days prescribed by the law. F

On the 25th of November, 2011 appellants filed their brief and the respondents responded. On the 7th December, 2011, the appeal was in the Cause List for hearing all counsel in the matter appeared before the Court of Appeal which court stated that the appeal had lapsed and struck it out. It is against that order of striking out that the appellants have appealed to this court. H

On the 24/1/12 date of hearing, Mr. Eke-Ejelam for the appellants adopted their brief filed on 30/12/11 and the reply brief of 24/1/12. In the appellants' brief were couched two issues for determination viz:

(i) Whether the Court of Appeal was under a statutory obligation and duty to hear and determine the appellants' appeal before it within the time prescribed by the Constitution of the Federal Republic of Nigeria 1999 as amended.

(ii) If the answer to issue (1) above is in the affirmative, whether the failure of the Court of Appeal to hear and determine the appeal within the prescribed time and whether in the absence of any fault on the part of the appellant such failure by the Court of Appeal does not amount to a denial of appellants' right to fair hearing which entitled them to a remedy for on order remitting it to the lower court for hearing on the merits.

The 1st respondent through learned counsel on their behalf, Mr. J. Elumeze adopted their brief filed on 18/1/12 in which was embedded their preliminary objection on the competence of the appeal. They formulated one issue for determination as follows:

"Whether the inability of the Court of Appeal to hear the appeal within the 60 days prescribed by Section 285(7) of the Constitution of the Federal Republic of Nigeria 1999 as amended amounted to a denial of the appellants' right to fair hearing."

Prince Lateef Fagbemi SAN on behalf of the 2nd respondent adopted his brief of argument filed on 17/1/12 in which was formulated a sole issue being:

"Whether or not the Court of Appeal was right in striking out the appellants' appeal for effluxion of time,"

For the 3rd respondent, learned counsel on their behalf of Mr. Ighodalo Imadegbelo SAN adopted their brief of argument filed on 16/1/12 in which was crafted a sole issue as follows:

Whether or not the Court of Appeal has jurisdiction to entertain or determine an appeal in an election petition matter that has lapsed under Section 285(7) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

The preliminary objection of the 1st respondent has to be considered first.

PRELIMINARY OBJECTION

Learned counsel for the 1st respondent contended that the jurisdiction of the Supreme Court to hear an appeal from the decision of the Court of Appeal in respect of a Governorship Election is provided by Section 233(2) (e) of the constitution of the Federal Republic of Nigeria 1999 as amended. Also Section 233(3) provides for leave of the Court of Appeal or the Supreme Court to appeal. That by virtue of that subsection (2) (e) not all decisions of the Court of Appeal in a Governorship Election appeal are appealable to this court as of right. That the exceptions have been so provided in that subsection (2) (e) of Section 233 of the Constitution as amended. He said the appeal had lapsed and should be struck out. He stated the exceptions where appeals lie as of right are thus:

(i) Any person has been validly elected as a member of the National Assembly or of a House of Assembly of a state under this constitution.

(ii) Any person has been validly elected to the Office of Governor, or

(iii) The term of Office of any person has ceased or the seat any such person has become vacant.

He referred to the interpretation of Section 246(1)(b) by the Court of Appeal in *Okon v Bob* (2004) 1 NWLR (Pt.854) 378 at 395 C- F; *Amgbare v Sylva* (2007) 18 NWLR (Pt.1065) 1 at 19 B- F. Mr. Elumeze of counsel for the 1st respondent submitted that there is nothing in the records of this court to show that the appellants applied or obtained leave of the Court of Appeal or of this court before filing their notice of appeal on 16/12/2011. That this renders incompetent the Notice of Appeal and it should be struck out. The second ground of the objection is that the ground of appeal has not disclosed a complaint, since the order of the court below is that the appeal had lapsed and accordingly struck out. He cited *C.C.B. Plc v Ekperi* (2007) 3 NWLR (Pt. 1022); *Ikoro v Izunaso* (2009) 4 NWLR (Pt.1130) 45 at 59; *Ede v Orueke* (1992) 2 NWLR (Pt. 242) 428 at 435; *Aderonmu v Olowu* (2000) 4 NWLR (Pt. 652) 253 at 265 - 266.

Learned counsel for the 1st respondent further submitted that this court has jurisdiction to hear appeals against the decision of the Court of Appeal but has no jurisdiction to hear complaints against the conduct of the Court of Appeal or to make declaratory orders

against the Court of Appeal. That it is strange and unsavoury that the appellants who have premised their complaint on denial of fair hearing can in a roundabout way seeking in this appeal to prosecute complaints against the Court of Appeal which is not a party to the appeal and has no opportunity of being heard as to why the appeal was not
B determined within the prescribed time.

Flowing from the appellants' reply brief filed on 24/1/12, Mr. Eke- Ejelam stated in reply to the preliminary objection of the 1st respondent that the law is settled that any proceedings conducted without fair hearing is a nullity no matter how well conducted it might
C have been. He cited *Orugbo v Una* (2002) 10 NWLR (Pt.792) 175.

Also canvassed for the appellants is that Section 233(e) a & b of the Constitution as amended guarantees an appellant appealing to the Supreme Court as of right where the ground of appeal involves:
D

(a) Questions of law alone;

(b) Whether any of the provisions of Chapter IV of the Constitution has been, is being or likely to be contravened in relation to any person. That the 1st respondent's counsel had limited the rights of
E the appellant by confirming those rights to Section 233(3) alone forgetting that all parts of Section 233 of the Constitution ought to be read together to get at the intendment of the legislature. Also that it is clear that Section 233(e) does not relate to election petitions and
F appeals 233(e) (ii) - (vi) have no bearing on election petitions. That it cannot be constructed that the proceedings under Section 233(2) (e) are sui generis. He cited *Okulate v Awosanya* (2000) 2 NWLR (Pt. 646) 530 at 555; *Adesanya v President of the Federal Republic of Nigeria* (1991) 2 NCLR 358. He went on to say that where grounds
G as in this case relate to denial of for hearing, it is an infraction of Chapter IV of the Constitution of the Republic of Nigeria, 1999 as amended and any application thereto is of right and no leave is required. That this appeal is based on grounds of law and so the objection should be dismissed.

H The 1st respondent had raised the preliminary objection viz:

1. That the notice of appeal is incompetent and liable to be struck out as all the three grounds of appeal are incompetent.

The grounds upon the preliminary objection are predicated as follows:

i. Leave of court is required to appeal against the order of the Court of Appeal striking out the appeal, but leave of court was not obtained by the appellants.

ii. The grounds of appeal do not arise from, relate or attack the decision appealed against.

I would reproduce the necessary constitutional provisions. See ^B Section 233(2) (e) of the Constitution of the Federal Republic of Nigeria 1999 as amended which stipulates that:

An appeal shall lie from decisions of the Court of Appeal to the Supreme Court as of right in the following cases:

(e) decisions on any question ^C

(i) Whether any person has been elected to the Office of the President and Vice-President, Governor and Deputy Governor under this Constitution.

(ii) Whether the term of Office of President and Vice-President, ^D Governor and Deputy Governor has ceased.

(iii) Whether the Office of President and Vice-President, Governor or Deputy Governor has become vacant; and

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

(v) Whether the term of Office of a Governor or Deputy Governor has ceased.

“Subject to the provisions of subsection (2) of this section, an appeal shall lie from the decisions of the Court of Appeal to the ^F Supreme Court with the leave of the Court of Appeal or the Supreme Court.”

This preliminary objection is a blowing of hot air. The appeal clearly is an issue of question of law simpliciter and as such that kind of appeal which needs no leave to appeal. If learned counsel for the ^G 1st respondent had read through all the subsections of Section 233(e) (i) - (vi) of the Constitution, he would have found that this appeal is adequately provided for and protected being one of law which had no necessity for leave of court before initiation. I would refer to the cases of *Okulate v. Awosanya* (2000) 2 NWLR (Pt.646) 530 at 555; *Adesanya v. President of the Federal Republic of Nigeria* (1991) 2 NCLR 358. Clearly there has been a misconception and a wasting of the time of court by this preliminary objection which I do not hesitate in dismissing as it lacks merit. I shall therefore proceed with the ap- ^H

peal proper.

APPEAL:

The Issues as distilled for the Appellant are adequately covered in the various sole issues of each of the Respondents and so the answer to one settles the other. Learned counsel for the Appellant referring to Section 285 (7) & (8) of the Constitution as amended and the Election Tribunal and Court Practice Directions 2011 issued by the President of the Court of Appeal stated that where the provisions of the statute are clear and unambiguous the court is bound by the plain words contained therein. That from the clear provisions of Section 285 (7) & (8) of the Constitution as amended an appeal from the decision of an Election Tribunal shall be heard and disposed of within 60 days from the date of the delivery of the judgment of the Tribunal. He cited *Okumagba v Egbe* (1965) 1 All NLR 62; *African Newspapers v. FRN* (1985) 2 NWLR (Pt.6) 137; *AG. Federation v Guardian Newspaper* (1999) 9 NWLR (Pt.618) 187 at 238; *Nadeyo v Ogunnaya* (1977) 1 SC11; *National Bank of Nigeria v. Shoyoye* (1977) 5 SC 181; *Adisa v Oyinwola* (2000) 10 NWLR (Pt. 674) 116 at 119; *Adediran v Interland Transport Ltd* (1991) 9 NWLR (Pt.214) 155; *Abacha v Fawehinmi* (2000) 6 NWLR (Pt.600) 228 at 315 - 316.

For the Appellant was further canvassed that for the court to be said to have heard and determined a matter means that the court should hear evidence if any, take addresses if any, consider the evidence in the light of the applicable law and come to a determination whether or not the appeal has merit. He cited *Ogwuegbu v. Agomuo* (1999) 7 NWLR (Pt 609) 144 at 179. That 'hearing' in a court of justice connotes hearing to which test of fairness as enshrined in the Constitution can be applied. That if there is no hearing of a party's case through no fault of his, then that is tantamount to no fair hearing. He referred to *Mains Ventures Ltd v. Petroplast Ind. Ltd* (2000) 4 NWLR (pt. 651) 151 at 167.

Mr. Eke-Ejelam stated on that from the Records, it is not in doubt that the Appellants filed their Appeal to the Court of Appeal within the 21 days prescribed by the Constitution. They also filed the Appellant's Brief within 10 days upon being served with the Record and Respondents filed their Briefs within the time prescribed by law. That the Court of Appeal had between the 2nd and the 6th of De-

cember, 2011 (four clear days) to hear and determine the Appellants' Appeal. That the Court below had the opportunity under Section 285 (8) of the Amended Constitution of hearing the appeal and giving its decision within the time prescribed by law and give reasons later. That Court also had the option of relying on paragraph 17 of the Practice Direction to hear the appeal in the absence of the parties and/or counsel since briefs had been filed rather than choose not to discharge the duty statutorily placed on it by the Constitution to hear and determine the appeal within 60 days and thereby occasioned serious injustice to the Appellants. He referred to *Emesim v Nwachukwu* (1999) 6 NWLR (pt.605) 158 at 168; *Willoughby v International Merchant Bank Ltd.* (1987) 1 NWLR (Pt.48) 105; *Edun v Odan Community* (1980) 9 - 11 SC 10. That where a party has done all that is required of an action, he cannot be held responsible for every other failure attributable to official ineptitude. He cited *Alawode v Semoh* (1959) SC NLR 91; *Ogbunyinya v Okudo* (No.2) (1990) 4 NWLR (Pt.146) 551. That an appellant who has fulfilled his part of the procedural requirements has no bother where the Judge or the Court fails to comply with the law as prescribed. He cited *Sande v Abdullahi* (1989) 4 NWLR (Pt. 116) 387.

Learned counsel for the Appellant said a party as in this case cannot be said to have been given his right of fair hearing when his arguments have been shut out from consideration. He referred to *Kunbi v Opawole* (2000) 2 NWLR (pt.644) 277 - 288; *Bamgboye v Unilorin* (1999) 10 NWLR (Pt. 622) 290 at 355; *PDP v INEC* (1999) 11 NWLR (Pt.626) 206. Mr. Jerry Elumeze, learned counsel for the 1st Respondent said the issue to be determined by the Court is whether from all the circumstances of the appeal the Court of Appeal denied the Appellant the opportunity to be heard. That the inability of the Court of Appeal to hear the appeal was due to lack of diligence and vigilance on the part of the Appellants who took their time filing the notice of appeal, delayed in filing their brief, did not give notice of waiver of their right to file a reply brief and also did not apply for the appeal to be set down for hearing within the prescribed time. That the breach of Section 285 (7) of the Constitution of the Federal Republic of Nigeria 1999 as amended by the appellant brought about the consequence of the appeal lapsing. That even in civil proceedings where there is no time limit within which to determine the proceed-

ings, there is a penalty for indolent prosecution of cases. He cited INEC v. Musa (2003) 3 NWLR (Pt.806); Ejeka v State (2003) 7 NWLR (Pt.819).

B For the 1st Respondent was further contended that a party who did not fulfill the conditions precedent for the Court to hear him cannot turn around and complain of a denial of fair hearing and that is what obtained in the case at hand. He referred to Orakul Resources Ltd v. N. C. C. (2007) 16 NWLR (Pt.1060) 270. He stated on that the appeal became ripe for hearing on 7/12/2011. That the principle of fair hearing required that the Court of Appeal gave the appellants and respondents equal opportunity to file their briefs including the reply brief. That the Court of Appeal scheduling the hearing of the appeal on the day the filing of briefs expired did not deny the Appellants their right to fair hearing, but in fact afforded all the parties equal opportunity to be heard. He cited Banna v Telepower (Nig.) Ltd (2006) 15 NWLR (Pt.1001) 198 at 216. Mr. Elumeze said the Appellant took their time in filing some of their processes including their Reply Brief which helped in taking valuable time, they could not afford in view of the Constitutional stipulation in Section 285 (7) of the 60 days to have the appeal heard and determined. That the function of the Courts is to interpret and enforce the provisions of the statute and not to make or amend it. He referred to Calabar Co-operative Ltd v. Ekpo (2008) 1-2 SC 229 at 259 - 260.

F That even if there is merit in the complaint of the Appellants which there is none that the Court of Appeal was at fault in the Appellant's appeal lapsing does not change the fact that the appeal had lapsed. That when an appeal has lapsed under Section 285 (7) there is no remedy as to extend or re-open the prescribed 60 days and so there cannot be an order to remit the appeal for re-hearing.

H Prince Lateef Fagbemi SAN for the 2nd Respondent submitted that it is settled law that in interpreting a constitutional provision, the court should adopt a broad approach to the process. Also that the principle is settled that where the words of the constitution or statute are plain, clear and unambiguous, they must be given their natural ordinary meanings as there is nothing in effect to be interpreted, the words must be given their plain/natural meanings as there is nothing to interpret. He said it is also settled law that the provisions of the constitution of the Federal Republic of Nigeria are supreme

and have binding force on all authorities and persons throughout the Federal Republic of Nigeria and that any other law which is inconsistent with its provisions is void to the extent of the inconsistency as the constitution must prevail over such Act/Law. That Section 285 (7) of the Constitution 1999 as amended are clear, unambiguous, simple and straightforward. He cited certain recent decisions of this court that are yet to be reported namely: SC.332/2011; SC.333/2011 and SC.252/2011 consolidated suits between Alhaji Kashim Shettima & Ors v Alhaji Kashim Shettima & Ors v. Alhaji Mohammed Goni & 4 Ors delivered on 31st October, 2011 per Walter Onnoghen JSC. Also in appeals number SC.272/2011 and SC.276/2011 consolidated appeals between Peoples Democratic Party (PDP) v Congress for Progressive Change (CPC) & 4 ors delivered on 31st October, 2011 per Onnoghen JSC. Prince Fagbemi SAN of counsel for 2nd Respondent said even if this court sympathises or has sentiments for the Appellants there is nothing that can be done for them since sentiments and sympathy has no place in judicial consideration. He cited Mohammed Idrisu v. Modupe Obafemi (2004) 11 NWLR (Pt.884) 396 at 400. That the issue should be resolved in favour of the 2nd Respondent and against the Appellants and dismiss the appeal.

For the 3rd Respondent, Mr. Imadegbelo SAN aligned with the 2nd Respondent's arguments. He followed the path earlier taken by the 1st and 2nd Respondents to the effect that courts including the instant one cannot make laws or amend laws made by the legislature. He cited Global Excellence Communication Ltd v Duke (2007) 16 NWLR (Pt.1059) 22 at 47 - 48; A.G. Lagos State v Eko Hotels Ltd (2006) 18 NWLR (Pt. 1011) 378 at 458; A.G. Bendel State v. A.G. of Federation & Ors (1981) 10 SC 1 at 372. He stated on that by virtue of Section 285 (7) of the Constitution 1999 as amended this appeal must be heard and determined within 60 days from the date of judgment at the Tribunal on or before the 6th day of December, 2011 by the Court of Appeal. He cited numerous judicial authorities. He said all the complaints of the Appellants of breach of fair hearing are misconceived and this appeal should be struck out.

The above is a summary of the submissions of counsel from their various view points to buttress their stance on behalf of their clients. The area of contest between the parties particularly with Appellant on one side with the Respondents on the other side is narrow.

That point is whether the appeal is still alive or has died by effluxion of time with Section 285 (7) as the base. The Appellant's counsel is of the view that it is not only Section 285 of the Constitution that is for consideration but also the Election Tribunal and Court Practice Directions, 2011.

B For the Respondents, the matter is based on the Constitutional provision under Section 285 (7) and nothing else holds sway. That section provides as follows:-
Section 285 (7):-

C *"An appeal from a decision of an electoral 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."*

D The Appellant took the angle that the Court of Appeal chose not to discharge the statutory duty placed on it by the Constitution to hear and determine the appeal within 60 days since all the Briefs were in. That the court could have heard the appeal in the absence of the parties, the Briefs having been properly filed. That what transpired therefore was a miscarriage of justice.

E The 1st Respondent tackled the stance of the Appellants by holding the view that the Appellants had set themselves up by their own tardiness and indolence and therefore could not run away from the consequences of Section 285 (7) of the Constitution as amended.

F I would therefore go into the overview of what the Appellants did within the time frame and these are:-

1. The Governorship Election Tribunal gave judgment on 7/10/2011.

2. Appellants lodged their notice of appeal on 28/10/2011.

G 3. Appellants filed their briefs on 25/11/2011.

4. Respondents filed their Respondents Brief on 2/12/2011.

5. Appeal was slated for hearing on 7/12/2011.

6. By the 6/12/2011 the appeal had expired Pursuant to Section 285 (7) of the Constitution.

H 7. The Court of Appeal therefore on 7/12/2011, date of hearing in the presence of the parties had no choice than to state that the appeal had expired by effluxion of time, computed from 7/10/2011 when judgment of the Trial Tribunal was given by the Court of Appeal which was 61 days in totality.

The Appellants are crying foul, that they were not heard when the Court of Appeal ordered “the appeal has lapsed it is accordingly struck out”. The Appellant said their right to fair hearing was denied them in the way the Court below handled the matter.

I have set out what the Appellants did and on the particular dates so that the interpretation of the Constitutional provision would not be made in vacuo but in context and bearing in mind the canons of interpretation. It is now trite that it is not the duty of the Judiciary to make law or to amend the laws made by the legislature and as in the case at hand where the provisions of Section 285 (7) of the Constitution as amended and as under reference have been couched in very clear language devoid of any ambiguity. Therefore the construction of the words cannot be subordinated to any other law as the Appellants’ counsel is pushing the Election Tribunal Practice Direction to be applied giving another option to the parties and the Court. Furthermore the interpretation of the provision aforesaid has to be made without recourse to anything else except the intention of the law makers which has been plainly displayed in the very simple words of that provision and mandatorily stated. I place reliance on *Global Excellence Communication Ltd v. Duke* (2007) 16 NWLR (Pt.1059:) 22 at 47 -48; *A.G. Lagos State v Eko Hotels Ltd* (2006) 18 NWLR (Pt.1011) 378 at 458; *Federal Republic of Nigeria v Osahon* (2006) 5 NWLR (Pt 973) 361 at 415; *Adisa v Oyinwola* (2000) 10 NWLR (Pt.674) 116.

In this case, the Appellants who had 60 days to lodge their appeal and within the said 60 days have the appeal heard and determined, chose to file their appeal 21 days from date of judgment thereby eating into the limited time of 60 days. Thereafter the same Appellants luxuriantly took another set of 21 days to file their Brief. After the respondents promptly filed their Briefs, Appellants did nothing else but await the Court without filing anything to urge the hand of the court, only forgetting the mandatory provisions of the Constitution which brooks no extension of the period.

This court has resolved in clear terms what the position is with regard to the application of Section 285 (7) of the 1999 Constitution (as amended). I refer to Suit numbers SC.332/2011; SC.333/2011 and SC/352/2011 Consolidated appeals between *Alhaji Kashim Shettima & ors v. Alhaji Mohammed Goni & 4 Ors* delivered on 31st

October, 2011 by this court in which my learned brother, Onnoghen JSC stated the position of the Supreme Court and I would quote:-

“To my mind, the words used in Section 285 (7) of the 1999 Constitution are very clear and unambiguous and therefore are settled by law, do not need any interpretation. The words have to be deployed in their plain and ordinary meaning as the court is not permitted to read into any piece of legislation words and/meanings not contained there or stretch the meanings to include matters/not in the contemplation of the framers/drafters of the constitution or statutes.”

His lordship continued at pages 40-41 of the judgment thus:

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

Also in suits numbers SC.272/2011 and SC.276/2011 consolidated cases between PEOPLES DEMOCRATIC PARTY (PDP) AND CONGRESS FOR PROGRESSIVE CHANGE (CPC & 4 ORS delivered on 31st October, 2011). The Supreme Court held per Onnoghen JSC thus:

“It is settled law that in interpreting a constitutional provision, the court should adopt a broad approach to the process. Also settled is the principle that where the words of the constitution or statute are plain, clear and unambiguous, they must be given their natural ordinary meanings as there is nothing, in effect to be interpreted. In that case the words must be given their plain/natural meanings, as there is nothing to interpret.

It is also settled law that the provisions of the constitution of the Federal Republic of Nigeria are supreme and have binding force on all authorities and persons throughout the Federal Republic of Nigeria and that any other law which is inconsistent with its provisions is void to the extent of the inconsistency as the constitution must prevail over such Act/law.

I have read over and over the provisions of Section 285 (7) of the 1999 Constitution (as amended) and have found the words used

therein to be clear, unambiguous and simple and straight forward.

I therefore hold that the words used herein are not subject to any interpretation at all, they are to be given their natural meanings, that the natural meanings of the words are that appeals from a decision of an election tribunal or the Court of Appeal in an election matter shall be heard and determined within sixty (60) days from the date the judgment/decision appealed against was delivered by the tribunal or Court of Appeal.” B

The mandatoriness of the provision of Section 285 (7) of the 1999 Constitution in using the word “shall” was also applied by this court in PEOPLES DEMOCRATIC PARTY (PDP) V CONGRESS FOR PROGRESSIVE CHANGE (CPC) (supra) thus: C

“It is clear that by the use of the word “shall” in Section 285 (7) of the 1999 Constitution the framers of the constitution meant to make and did make the provision mandatory as it admits of no discretion whatsoever. It means that the sixty (60) allotted in Section 285 (7) of 1999 Constitution (as amended) cannot be extended even for one second as the decision of the appellate court must be rendered “within” sixty (60) days of the delivery of the judgment on appeal”. D

The Supreme Court in the above matter have also held that the intention of the drafters of Section 285 (7) of the Constitution is to eliminate delays associated with election matter and appeals. The Supreme Court at page 16 of the case of PDP V CPC (supra) held thus: E

“The intention of the drafters of the constitution being to stop the practice of unnecessary delays in election matters; it is our duty to ensure compliance with the law by doing what is needed within the time frame. It may be difficult in fact but it is a sacrifice we all must make in the interest of our democracy until our politicians learn to accept the verdict of the people as expressed through the ballot box”. F

It is our humble submission, furthermore, that the provision of Section 285 (7) of the Constitution is a statute of limitation and the fact that the appellant had no fault in the delay is immaterial when the limitation period has expired. G

The Supreme Court held in suits number SC.272/2011 and SC.276/2011, consolidated suits between PEOPLES DEMOCRATIC PARTY (PDP) AND CONGRESS FOR PROGRESSIVE CHANGE & H

41 ORS delivered on the 31st of October, 2011 per Nwali Sylvester Ngwuta, JSC thus:

“Section 285 (7) of the Constitution (as amended) is a statute of limitation with regard to the hearing and disposal of appeal in election matters. Any action brought outside a statutory limited period is time-barred. See Egbe v. Adefarasin (1985) 1 NWLR {Pt.3} 549; Agboola v. Saibu (1991) NWLR (Pt.175) 566.

Much as I agree and sympathise with the appellants, that they are not in any way responsible for the delay in the matter, I am unable to subscribe to the view that Section 285 (7) of the Constitution of 1999 (as amended) which is intended to limit time should be interpreted to expand time. That will be contrary to the intendment of the sub-section”.

In the case just referred to and quoted above where the Appellants were not at fault, the situation or strength of material of Section 285 (7) was not changed or whittled down much less this instance where the Appellants clearly were tardy and not up and doing. In fact it is not difficult to agree with Prince Fagbemi SAN for 2nd Respondent that the Appellants were indolent. There is nothing anyone can do to remedy a situation that is incurably bad as the Appellant’s case, caught as it were in the grip of Section 285 (7) of the Constitution without room for anything else but to say it as it is that the appeal had died before it got here and that is the end of the matter.

From the above and the better articulated reasoning of my learned brother, W. S. N. Onnoghen JSC, I have no difficulty in declining jurisdiction and to strike out this appeal which I do so now.

Appeal is struck out. I make no order as to costs.

H