

SUPREME COURT OF NIGERIA
17TH FEBRUARY, 2012. SC. 1/2012 (CONS)
CORAM:- **W. S. N. ONNOGHEN, I. T. MUHAMMAD,**
O. O. ADEKEYE, B. RHODES-VIVOUR,
M. U. PETER-ODILI, JJSC

1. ALL NIGERIAN PEOPLES PARTY
2. ALHAJI KASHIM SHETTIMA APPELLANTS
3. ALHAJI ZANNA UMAR MUSTAPHA
- AND
1. ALHAJI MOHAMMED GONI
2. PEOPLES DEMOCRATIC PARTY
3. ALHAJI KASHIM SHETTIMA
4. ALHAJI ZANNA UMAR MUSTAPHA
5. INDEPENDENT NATIONAL
ELECTORAL COMMISSION
6. ALHAJI MOHAMMED GONI RESPONDENTS
7. PEOPLES' DEMOCRATIC PARTY
8. ALL NIGERIA PEOPLES PARTY
9. INDEPENDENT NATIONAL
ELECTORAL COMMISSION

CONSTITUTIONAL LAW - Interpretation - 1999 Constitution s. 285(6) - Principle - Court must give effect to ordinary meaning of the words used therein (H1)

ELECTION PETITIONS - Tribunal - Jurisdiction - 1999 Constitution s. 285(6) - Non compliance with - Effect - Jurisdiction of tribunal lapses - And same cannot be conferred by court order (H2)

JURISDICTION - Source - Basis - Jurisdiction is a creation of statutes - And same is neither inherent in appellate court - Nor can it be conferred by court order (H3)

CONSTITUTIONAL LAW - Constitution - Time fixed - Adherence - Such time cannot be extended beyond constitutional provisions - And non compliance robs court of jurisdiction over an action (H4)

APPEALS - Election petitions - Judgment - Validity of - Decision given by the tribunal on 10/08/11 is valid - Since there is no successful appeal against same (H5)

FACTS

Independent National Electoral Commission declared and returned 2nd and 3rd appellants (3rd and 4th respondents) as the winners of gubernatorial election held in Borno State on 26th April 2011. 1st and 2nd petitioner/respondents being dissatisfied, filed this petition at the State Governorship Election Petition Tribunal. In its ruling on 10th August 2011, the tribunal held that ex-parte application filed by 1st and 2nd respondents was not the proper procedure for the issuance of pre-hearing notice. The application was thus struck out. Dissatisfied, 1st and 2nd respondents appealed to the Court of Appeal, Jos division. Nevertheless, the tribunal invited the parties to address it on the issue as to whether there was anything left of the petition, having regards to its ruling. Consequently, appellants filed application seeking for a dismissal of the petition on the ground that it had been abandoned. 1st and 2nd respondents equally filed application for extension of time within which to apply for pre-hearing notice. The tribunal reserved its ruling on 20th September 2011.

Meanwhile on the 19th September 2011, in the appeal against the ruling of the tribunal, the said Court of Appeal ordered the tribunal not to deliver its reserved ruling. As a result of the action of the court, appeal nos. SC/332/2011, SC/333/2011 and SC/352/2011 were severally filed at Supreme Court. The court consolidated the appeals, dismissed appeal no. SC/352/2011 and ordered that the trial tribunal should continue with the proceedings. Consequently, the tribunal gave rulings on the various applications pending before it. Application by 1st and 2nd respondents was dismissed. The petition was equally dismissed following the application filed by appellants. Aggrieved, 1st and 2nd respondents filed appeal at the Court of Appeal Jos. Appellants raised preliminary objection to the appeal on the grounds that same has become an academic exercise. The appeal was allowed and the court ordered the trial tribunal to re-hear the petition. The preliminary objection was overruled. Aggrieved, appellants appealed to Supreme Court.

ISSUES FOR DETERMINATION

“Whether the court below was not wrong having regards to the mandatory provisions of Section 285(6) of the Constitution of the Federal Republic of Nigeria, 2011 (sic) as amended to have ordered that a new election tribunal be constituted to hear the petition of the 1st and 2nd respondents on its merit, after the mandatory one hundred and eighty (180) days prescribed by the constitution for the hearing and determination of the petition from the date it was filed had lapsed by effluxion of time”.

Whether the lower court has the vires/jurisdiction to base its decision on the ruling of the trial tribunal of 10th August 2011 in coming to the conclusion to allow the appeal against the decision of the trial tribunal of 12th November 2011.

HELD (Unanimously allowing the appeal per **ONNOGHEN JSC**)
CONSTITUTIONAL LAW - Interpretation

1. Section 285(6) which Provides as follows:-

“(6) An election tribunal shall deliver its judgment in writing within one hundred and eighty (180) days from the date of the filing of the petition”.

The above provision is very clear and unambiguous and therefore needs no construction or interpretation. The law is settled that in a situation as this the duty of the court is simply to apply the provision as it exists; that is to give the words their plain and ordinary meaning. (p. 715 G)

ELECTION PETITIONS - Tribunal - Jurisdiction

2. The question is not whether the lower court has jurisdiction to hear and determine an appeal and give order which the justice of the case demands but whether the court can legally order a retrial of an election petition which, by the admission of the 1st and 2nd respondents had lapsed. What would be the effect of such an order? Is it not a clear case of an exercise in futility?

In the instant case the jurisdiction of the Election Petition Tribunal and that of the Court of Appeal to hear and determine appeals from the said tribunals is statutory and constitutional, see Section 246(1)(b) & (c) and Section 285(1) & (2) supra of the 1999 Constitution. However, the jurisdiction so conferred on the lower court to hear appeals from the relevant tribunals is circumscribed in relation to the

time/period within which the said appeals must be heard and determined vide the provisions of Section 285(7) of the 1999 Constitution supra. With regards to the election tribunal the time within which the jurisdiction so conferred on it is to be exercised/carried out is provided for in Section 285(6) of the 1999 Constitution which en-
 B acts thus:-

“(6) An election tribunal shall deliver its judgment in writing within one hundred and eighty (180) days from the date of the filing of the petition”.

C It follows that where a tribunal fails to comply with the above provisions the jurisdiction to continue to entertain the petition lapses or becomes spent and cannot be extended by any court order how-
 D soever well intention, neither can a court order create and confer jurisdiction on any court/tribunal on any matter where jurisdiction has not been conferred either by statute or the constitution. It is my
 E considered opinion that by the lower court ordering a retrial by a tribunal which had ceased to have jurisdiction in the matter it at-
 F tempts to create jurisdiction in the said tribunal by operation of a court order which is not only very erroneous but unacceptable.

E In any event, at the time the complaint against the ruling of 10th August, 2011 was being raised before the lower court, that court had lost jurisdiction to entertain same by effluxion of time, by virtue of the provisions of Section 285(7) of the 1999 Constitution, as
 F amended. Granted without conceding that the lower court could entertain a complaint against the decision of the tribunal of 10th August, 2011 in an appeal against the decision of the same tribunal
 G rendered on 12th November, 2011 and in the process set aside the said decision of 10th August, 2011 as it did, it would still be an exer-
 H cise in futility as the time constitutionally allotted for hearing and determining the petition by the tribunal had long expired by operation of Section 285(6) of the 1999 Constitution. The result is therefore obviously of no legal benefit for the 1st and 2nd respondents. The lower court was therefore in error in delving into the matter in the
 H circumstances of this case. (pp. 716 E/717 C/719 H)

JURISDICTION - Source - Basis

3. I am compelled by circumstances beyond my control to state, without fear of contradiction as same has been settled by a long line of

authorities, that jurisdiction is a creation of statute or the constitution. Jurisdiction is therefore not inherent in an appellate court neither can it be conferred on a court by order of court. (p. 716 G)

Constitution - Time fixed - Adherence

4. It has been held by this court in a number of cases including consolidated appeal Nos. SC/141/2011; SC/266/2011; SC/267/2011; SC/282/2011; SC/356/2011 and SC/357/2011: Brig. Gen. Mohammed Buba Marwa & Ors vs Adm. Murtala Nyako & Ors delivered on 27th January, 2012 that the time fixed by the constitution is like the rock of Gibraltar or Mount Zion which cannot be moved; that the time cannot be extended or expanded or elongated or in any way enlarged; that if what is to be done is not done within the time so fixed, it lapses as the court is thereby robbed of the jurisdiction to continue to entertain the matter. B
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It is my considered view that the provisions of Section 285(6) supra is like a statute of limitation which takes away the right of action from a party leaving him with an unenforceable cause of action. The law may be harsh but it is the law and must be obeyed to the letter more so when it is a constitutional provision. (pp. 718 A/H) E

Election petitions - Judgment

5. On the issue as to whether the lower court was in error in relying on the ruling of the trial tribunal delivered on 10th August, 2011 in coming to conclusion to allow the appeal of the 1st and 2nd respondents when there was no valid appeal extant against the said ruling, it is not disputed that the decision of the trial tribunal on 10th August, 2011 struck out the application of 1st and 2nd respondents, then petitioners before the tribunal for issuance of pre-hearing notice, on the ground that the application was made ex-parte rather than by motion on notice; that the decision resulted in appeal No. CA/J/EP/GOV/151/2011 before the lower court which appeals was held by this court in the consolidated appeal Nos. SC/332/2011; SC/333/2011 and SC/352/2011 in the judgment delivered on the 31st day of October, 2011 to have lapsed by effluxion of time, by virtue of the provision of Section 285(7) of the 1999 Constitution thereby leaving that decision by the tribunal extant/valid/subsisting. It does not matter if the decision is in law erroneous. Once there is no suc- F
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cessful appeal against same, it remains a valid decision. (p. 719 B)

NOTABLE POINT OF INTEREST

ONNOGHEN JSC

1. Reason for amendment of 1999 Constitution s. 285

- B It should be constantly kept in mind that prior to the provisions of Section 285(6) of the 1999 Constitution, as amended; there was no time limit for the hearing and determination of an election petition by the election tribunals or the appeals arising therefrom. That situation resulted in undue delay in the hearing and determination of election matters. The amendment to the original Section 285 of the 1999 Constitution by allotting time within which to hear and determine election petition and appeals arising therefrom is designed to ensure expeditious hearing and conclusion of election matters in this country. If the decision of the lower court, in the circumstance of this case and the law, is allowed to stand as urged by the respondents it would reintroduce the earlier mischief which the amendment sought to correct. It will mean that the instant election petition can go on for another one hundred and eighty (180) days or more after the expiration of the original one hundred and eighty (180) days assigned by the constitution. (p. 718 E)

REPRESENTATION

- F Dr. Alex A. Izinyon, SAN for the appellant in SC/1/2012 and 3rd respondent in SC/2/2012 with Messrs R. A Lawal-Rabana, SAN and B. K Abu, Esq; K. S. Lawan, Esq; Kizito Orji, Esq; Hannatu Abdulrahman (Mrs.); F. O Izinyon, Esq; Wale Odeleye, Esq; B. S. Zanna, Esq; A. H Goni, Esq; L. O Afagbemi, Esq; K. Usman (Mrs);
- G Otonwen Ibori (Ms); Leo Ikhanoba, Esq.
- Yusuf Ali, SAN for appellants in SC/2/2012 and 3rd and 4th respondents in SC/1/2012 with Messrs Adebayo Adenipekun, SAN and A. K Adeyi, Esq; I. M Chul, Esq; Usman Tatama, Esq; Boye Sobanjo, Esq; A. M Kura, Esq; Mas'ud Alabelewe, Esq; K. K. Elekija, Esq; S. A Oke,
- H Esq; Wahab Ismail, Esq; Alex Akoja, Esq; Kehinde Ogunwumiju, Esq; B. Karumi, Esq; O. Olori-Aje, Esq; O. Babakebe, Esq; T. E. Akintade (Miss); K. O Lawal, Esq, Gboyega Oyemole, Esq.
- Tayo Oyetibo, SAN for 1st and 2nd respondents in both appeals with Messrs Dr. Joseph Nwobike, SAN and I. A Kaigama, Esq; M. Oru,

Esq; M. Barkaa, Esq; A. S Akingbade, Esq; O. I. Arasi, Esq; U. M Jawur, Esq and O. Adisa, Esq.

Paul Erokoro, Esq, SAN for the 5th respondent in SC/1/2012 and 4th respondent in SC/2/2012 with Messrs Chief Chukwuma Ekomaru, SAN and Uzoegbu Nelson, Esq; Canice Nkpe, Esq; Ajara Michael, Esq; Kingsley Odey, Esq; Patrick Abanga, Esq; Omosun Barbara (Miss) and Chinenye Ajaegbu, Esq. B

CASES REFERRED TO

Odeneye vs Efunuga (1990) 1 NWLR (Pt. 164) 618 C
 PDP vs INEC (1999) 11 NWLR (Pt. 626) 200
 Fawehinmi vs IGP (2002) 7 NWLR (Pt. 606) 678
 Sumonu vs Oladokun (1996) 8 NWLR (Pt. 467) 387
 A-G Fed. vs. Abia State (2002) 6 NWLR (Pt. 264) 365
 Onochie vs Odogwu (2006) 6 NWLR (Pt. 975) 65 D
 Aqua Ltd. v. Ondo State Sports Council (1988) 4 NWLR (Pt.91) 622
 Awolowo v. Shagari (1979) 6-9 SC 51
 A-G Bendel State v. A-G Federation (1982) 3 NCLR 2
 Bronik Motors v. Wema Bank (1983) 1 SCNLR 296
 Tukur v. Govt. of Gongola State (1989) 4 NWLR (pt.117) 517 E
 Tariola v. Williams (1982) 7 SC 27
 Mobil v. F.B.I.R. (1977) 3 SC 53
 Kosile v Folarin (1989) 3 NWLR (Pt. 107) 1

STATUTES & RULES REFERRED TO

Electoral Act 2010 (as amended), para. 18(4) and (5) of the 1st schedule, s. 134(2)
 Constitution of Federal Republic of Nigeria 1999 (as amended), ss. 6(1), 233(2)(e)(i)(3), 235, 246, 285(1)(2)(5b)(d)(6)(7), G
 Court of Appeal Act, s. 15
 Court of Appeal Rules 2011, O. 4 r. 9

LEAD JUDGMENT BY ONNOGHEN JSC

This is a consolidated appeal against the judgment of the Court H of Appeal, holden at Jos, in appeal NO. CA/J/EPT/GOV/227/2011 delivered on the 23rd day of December, 2011 in which the court allowed the appeal of the 1st and 2nd respondents and ordered that the election petition filed by the said respondents be tried on the

merit by an Election Tribunal to be constituted by the appropriate authority.

On the 26th day of April, 2011 elections were held into the office of State governors in Nigeria including Borno state in which the 1st respondent was the governorship candidate of the 2nd respondent for the Office of Governor of Borno State. The appellant in SC/1/2011, ALL NIGERIA PEOPLES PARTY (ANPP), a registered political party who is also 3rd respondent in SC/2/2011 sponsored the 1st and 2nd appellants in SC/2/2011 as Governor and Deputy Governor in the aforesaid election.

At the end of the election, the 4th respondent in both appeals (INEC) declared appellants in SC/2/2011 as the winners of the said election, having scored the majority of lawful votes cast at the election and satisfied other constitutional and/or statutory requirements. 1st and 2nd respondents in both appeals were dissatisfied with the result of the election and consequently filed an election petition at the Governorship Election Tribunal which was set up for Borno State. The petition was filed on 17th May, 2011 and was assigned No. BO/EPT/GOV/1/2011. In the course of the proceedings 1st and 2nd respondents filed a motion ex-parte for the issuance of pre-hearing notice which was opposed by appellants on the 2nd day of August, 2011 and the ruling thereon was adjourned to 10th August, 2011. The tribunal ruled that an ex-parte application was not a proper procedure for the issuance of a pre-hearing notice and struck out the application. The 1st and 2nd respondents were not satisfied with that ruling and consequently appealed against same in appeal No. CA/J/EPT/GOV/55/2011. Later in the proceedings parties were invited by the tribunal to address it on the issue as to whether there was anything left of the petition having regards to its ruling of 10th August, 2011 as a result of which invitation appellants and other respondents in the petition filed applications in which they sought for the dismissal of the petition on the ground that it had been abandoned pursuant to the provisions of paragraph 18(4) and (5) of the 1st schedule to the Electoral Act, 2010, as amended. The 1st and 2nd respondents, as petitioners in the petition, also filed an application for an order extending time within which to apply for pre-hearing notice. All the applications were taken together and the ruling adjourned to 20th September, 2011. Meanwhile, the appeal against the ruling of 10th

August, 2011 was fixed for hearing on 21st September, 2011 which date was later brought forward to 19th September, 2011 on which date the Court of Appeal ordered the trial tribunal not to deliver its ruling fixed for 20th September, 2011.

The order of the Court of Appeal of 19th September, 2011 arresting the judgment of the tribunal scheduled for 20th September, 2011 resulted in appeals to this court in appeal Nos. SC/332/2011 and SC/333/2011 which eventually resulted in the appeal by 1st and 2nd respondents being adjourned sine die by the lower court to await the outcome of appeal Nos. SC/332/2011 and SC/333/2011. The order was made on 26th September, 2011 resulting in an appeal NO. SC/352/2011 by the 1st and 2nd respondents herein. Appeal Nos. SC/332/2011, SC/333/2011 and SC/352/2011 were later consolidated by this court at the conclusion of which hearing the court allowed the appeals of the appellants and that of the 3rd respondents and ordered that the trial tribunal should continue with the proceedings. Appeals No. SC/352/2011 was dismissed by this court in the consolidated judgment delivered on the 31st day of October, 2011.

As a result of the above judgment, the trial tribunal gave its rulings on the various applications then pending before it on the 12th day of November, 2011. The application by the 1st and 2nd respondents to file pre-hearing notice out of time was dismissed and there is no appeal against that ruling. The petition was dismissed following the applications of the appellants and the 3rd and 4th respondents on the ground that it had been abandoned which resulted in an appeal filed on 17th November, 2011 by the 1st and 2nd respondents which was allowed by the lower court on 23rd December, 2011. There was a preliminary objection raised by the appellants against the appeal of the 1st and 2nd respondents at the lower court on two main grounds: namely on the ground that the appeal was incompetent and that it had become an academic exercise which objections were overruled. The issues for determination in these appeals are as follows:-

In SC/1/2012, learned counsel for the appellant, Dr. Alex A. Izinyon, SAN, in the appellant brief filed on 10th January, 2012 identified four issues viz:-

“(1) Whether the learned justices (sic) of the Court of Appeal

were right in law when they held that the appellants entire Notice of Preliminary Objection was not meritorious consequently dismissed same.

(2) Whether having regards to Section 285(5)(b) (sic) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) the learned justices of the Court of Appeal were right in law to have remitted the 1st and 2nd respondents' petition to another panel to be reconstituted...

(3) Whether considering the circumstances surrounding the 1st and 2nd respondent's petition and the Supreme Court of Nigeria decision in the consolidated appeal Nos. SC/332/2011; SC/333/2011 and SC/352/2011, the learned justices of the Court of Appeal were right in law when they held that the tribunal was in error in dismissing the 1st and 2nd respondents' petition as having been abandoned by relying on its previous ruling of 10th August, 2011.

(4) Whether the judgment of the learned justices of the Court of Appeal delivered on 23rd December, 2011 is not a nullity by virtue of Section 233(2)(e)(i); section 235 and section 285(5)(d) (sic) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). “

On his part, Yusuf Ali, SAN for appellants in SC/2/2012 identified the following issues for determination in the brief of argument filed on 6th January, 2012.

i. Whether the court below was not wrong in overruling the various objections raised to the competence of the Grounds of Appeal contained in the Notice of Appeal filed by the 1st and 2nd respondents herein before the court below.

ii. Whether the court below was not wrong in relying on the ruling of the trial tribunal of 10th August, 2011 to come to the conclusion of allowing the 1st and 2nd respondents' appeal when there was no valid appeal extant against the said ruling of 10th August, 2011 and the appeal the subject matter of the Court of Appeal's decision was based purely on the ruling of the trial tribunal on the 12th November, 2011 which dismissed the petition of the 1st and 2nd respondents as an abandoned petition under the provision of the Electoral Act, 2010 as amended.

iii. Whether the court below was not wrong having regard to the mandatory provisions of section 285(5) of the Constitution of

the Federal Republic of Nigeria, 2011 (sic) as amended to have ordered that a new election tribunal be constituted to hear the petition of the 1st and 2nd respondents on the merit, after the mandatory one hundred and eighty (180) days prescribed by the constitution for the hearing and determination of the petition from the date it was filed had lapsed, by effluxion of time. B

iv. Whether the court below was not wrong by overruling the objection of the appellants on the ground that the appeal of the 1st and 2nd respondents before the court below was hypothetical and academic having regard to the provisions of the Constitution and decided authorities on this point”. C

It is very clear that the four issues identified for determination in both appeals are very much the same in substance. Learned senior counsel for the 1st and 2nd respondents in both appeals raised two preliminary objections to the grounds of appeal in which he urged the court to strike out all the grounds of appeal and consequently dismiss the appeal on the grounds that:- D

“(a) the leading judgment of the Court of Appeal delivered by M. A. Owoade, JCA is not contained in the record of appeal,

(b) what is contained in the record of appeal at pages 2942 - 2943 is the note of the Court of Appeal as to the delivery of the judgment of the court on 23rd of December, 2011, E

(c) all the four grounds of appeal contained in the notice of appeal do not flow from the note of judgment.” F

In respect of the 2nd preliminary objection which appears to be in the alternative, learned senior counsel urged the court to strike out grounds 2, 3, 4 and 5 on the grounds that:-

“(a) Grounds 2 and 3 of the notice of appeal raise questions of mixed law and fact. G

(b) By Section 233(3) of the 1999 Constitution, leave of the Court of Appeal or this court is required to file and argue a ground of appeal raising a question of mixed law and fact.

(c) The appellants have neither sought nor obtained leave of the Court of Appeal of this court to file and argue the condemned grounds. H

(d) In the premises, this court has no jurisdiction to entertain the grounds.”

Learned senior counsel for the appellant in SC/2/2012 filed a

reply brief on 24/1/2012 in which he pointed out that a supplementary record of appeal was filed in which the omitted lead judgment of the lower court was brought before this court by the lower court and urged the court to take judicial notice of same. It should be noted that at the oral hearing of the appeal on the 24th day of January, 2012 learned senior counsel for the 1st and 2nd respondents/objectors did not dispute the fact that he had been duly served with the said supplementary record. That being the case coupled with the fact that the supplementary record containing the said lead judgment is before this court, I consider it a waste of time to comment any further on the first objection as the same has legally ceased to be in contention. It is accordingly dismissed.

On the second objection, in relation to SC/1/2012, it is important to note that it does not attack ground 1 of the Grounds of Appeal neither did learned senior counsel proffer argument in relation respect of the second objection but attacked grounds 2 and 3 only. What this means is that grounds 1, 4 and 5 of the Grounds of Appeal are valid and therefore can sustain the appeal - granted that grounds 2 and 3 are defective for want of leave to appeal.

However, from a cursory look at the grounds of appeal, it is very clear that they are purely of law as they call for application of law to the facts as established in the case. In any event, the main-issue that calls for determination in the appeals and which will be decided anon is:

"Whether the court below was not wrong having regards to the mandatory provisions of Section 285(6) of the Constitution of the Federal Republic of Nigeria, 2011 (sic) as amended to have ordered that a new election tribunal be constituted to hear the petition of the 1st and 2nd respondents on its merit, after the mandatory one hundred and eighty (180) days prescribed by the constitution for the hearing and determination of the petition from the date it was filed had lapsed by effluxion of time".

There is however a sub-issue which is –

Whether the lower court has the vires/jurisdiction to base its decision on the ruling of the trial tribunal of 10th August 2011 in coming to the conclusion to allow the appeal against the decision of the trial tribunal of 12th November 2011.

The issues being as above, there are clearly issues of law as

there is no dispute on the relevant facts. In short, the objection is clearly misconceived and is consequently overruled.

In arguing the main issue, learned senior counsel for the appellant in SC/2/2012, Yusuf Ali, SAN stated that it is not disputed that the petition was filed at the tribunal on 17th May, 2011 and by the provisions of Section 285(5) of the 1999 Constitution it ought to have been heard and determined within one hundred and eighty (180) days of its filing; that the time the lower court made the order remitting the case to another tribunal for hearing de novo on 23rd December, 2011, a period of two hundred and twenty-one (221) days had lapsed between the filing of the petition and the date the retrial was ordered; that the lower court was in error in overruling the preliminary objection of the appellant on the provisions of Section 285(6) of the 1999 Constitution as it affects the appeal then pending before it; that the provisions of Section 285(6) of the 1999 Constitution, as amended are mandatory and clear and unambiguous and ought to be given effect - relying on *Okenwa vs Military Governor of Imo State* (1997) 6 NWLR (Pt. 507) 136 at 157; *Odeneye vs Efunuga* (1990) 1 NWLR (Pt. 164) 618 at 624; *PDP vs INEC* (1999) 11 NWLR (Pt. 626) 200; *Shettima vs Goni* (unreported) delivered on 31st October, 2011; that the lower court cannot rely on any provisions of its Rules to extend time constitutionally prescribed and urged the court to resolve the issue in favour of the appellant and allow the appeal. In respect of SC/1/2012 the issues relevant to Issue 3 in SC/2/2012 are Issues 2 and 4 which are as follows:-

“(2) Whether having regards to Section 285(6) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and Section 134(2) of the Electoral Act, 2010 (as amended) the learned justices of the Court of Appeal were right in law to have remitted the 1st and 2nd respondent petition to another panel to be reconstituted...”

“(4) Whether the judgment of the learned justices of the Court of Appeal delivered on 23rd December, 2011 is not a nullity by virtue of Section 233(2)(e)(i); Section 235 and Section 285(6) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)...”

In arguing the issues, learned senior counsel for the appellant submitted that the lower court was in error when it allowed the appeal of the 1st and 2nd respondents and remitted the matter to the

tribunal to be heard by another panel contrary to the provisions of Section 285(6) of the 1999 Constitution as amended and Section 134(2) of the Electoral Act, 2010 as amended; that where the provisions of an Act are clear and unambiguous they must be given their plain and ordinary meaning, relying on *Fawehinmi vs IGP* (2002) 7 NWLR (Pt. 606) at 678; *Sumonu vs Oladokun* (1996) 8 NWLR (Pt.467) 387 at 419; *A-G Fed. Vs. Abia State* (2002) 6 NWLR (Pt.264) 365; that the relevant operative words in the relevant sections are “*shall*”, “*within*” and “*from the date of the filing of the petition*”; that the use of the word “*shall*” in a statute connotes mandatory observance of the provisions considered, relying *Onochie vs Odogwu* (2006) 6 NWLR (Pt. 975) 65 at 89 and that they mean simply that an election petition must be heard and determined within one hundred and eighty (180) days of the filing of the petition; that the petition filed on 17th May, 2011 lapsed on 13th November, 2011 being one hundred and eighty (180) days of the filing of the petition; that since the petition lapsed by 13th November, 2011, it was wrong for the lower court to have remitted same to an election tribunal to be constituted for hearing *de novo*; that to agree with the lower court means a petition will go on and on following each appeal and an order of retrial which is contrary to the intention of the law makers and the express provisions of the law and constitution and urged the court to allow the appeal.

In his reaction to the argument on the issue, learned senior counsel for the 1st and 2nd respondents, Tayo Oyetibo, SAN conceded that one hundred and eighty (180) days had lapsed after the filing of the petition as at the date the order of retrial was made by the lower court but argued that the said effluxion of time does not remove the jurisdiction of the lower court to entertain the appeal and give orders as the justice of the case demands. It is the contention of learned senior counsel that the correct interpretation of the provisions of Section 285(6) of the 1999 Constitution, (as amended) when read along with Section 246 of the said constitution which confers jurisdiction on the lower court to entertain appeal from the decisions of the Governorship Election Tribunal, it is clear that the court is not to interpret the said Section 285(6) of the 1999 Constitution, as amended, to stultify the provisions of the said Section 246 of the said Constitution; that the interpretation urged by the appellants will lead

to absurdity as the same would rob the lower court of the jurisdiction vested in it by Section 246 of the 1999 Constitution, relying on *Idehen vs Idehen* (1991) 6 NWLR (Pt.198) 382 at 418; *Savannah Bank Nig. Ltd vs Ajilo* (1989) 1 NWLR (Pt. 97) 305 at 326: that if an election tribunal delivers its judgment in an election matter within one hundred and eighty (180) days, Section 285(6) has achieved its objective as a result of which Section 246 of the Constitution comes into operation; that on the operation of the said Section 246 of the Constitution, the Court of Appeal is entitled to exercise all the judicial powers of the Federation as vested in it by Section 6(1) of the Constitution, which powers include the power to order a retrial pursuant to Section 15 of the Court of Appeal Act, and Order 4 Rule 9 of the Court of Appeal Rules, 2011; that in acting under Section 6(1) and 246 of the Constitution, the Court of Appeal is not to be inhibited by the provisions of Section 285(6) of the Constitution because Section 246 is not superfluous; that the decisions of this court in *PDP vs CPC* and *Shettima vs Goni* cited and relied upon by the appellant are not relevant to this case as they deal with interlocutory appeals whereas Section 285(6) of the Constitution as argued by respondents is in respect of a final decision of the tribunal and urged the court to resolve the issue against the appellants and dismiss the appeals.

I must point out from the onset that the above submission of learned senior counsel is based completely on a situation where the election tribunal concluded hearing and delivered its decision within one hundred and eighty (180) days as provided by the Constitution. It does not address the issue as to if the tribunal failed to do so within the time allotted, whether there will be need to have resort to the provisions of Section 246 of the 1999 Constitution as amended. The Section of the 1999 Constitution as amended relevant to the determination of the substantive issue before this court is

Section 285(6) which Provides as follows:-

“(6) An election tribunal shall deliver its judgment in writing within one hundred and eighty (180) days from the date of the filing of the petition”.

The above provision is very clear and unambiguous and therefore needs no construction or interpretation. The law is settled that in a situation as this the duty of the court is simply to apply the provision as it exists; that is to give the words

their plain and ordinary meaning.

The above being the law, it follows that an election tribunal, in an election petition matter, must deliver its decision/judgment/ruling/order in writing within one hundred and eighty (180) days from the date the petition was filed. It means the judgment cannot be given a day or more or even an hour after the one hundred and eighty (180) days from the date the petition was filed. In the instant case, the 1st and 2nd respondents do not dispute the cardinal fact that as at the time the lower court ordered a retrial of the election petition, the one hundred and eighty (180) days allowed for the hearing and determination of the petition had lapsed. At page 26 paragraph 7.1 of the 1st, and 2nd respondents' brief of argument deemed filed on 24/1/2012, learned senior counsel for the said respondents had these to say; inter alia:-

"The 1st and 2nd respondents do not disputes (sic) the fact that one hundred and eighty (180) days had lapsed after the filing of their petition at the time the court below heard their appeal..." but went on to pose a question as to whether

"...that fact without more remove the jurisdiction of the court to entertain the appeal and give orders which the justices of the case demand?"

The question is not whether the lower court has jurisdiction to hear and determine an appeal and give order which the justice of the case demands but whether the court can legally order a retrial of an election petition which, by the admission of the 1st and 2nd respondents had lapsed. What would be the effect of such an order? Is it not a clear case of an exercise in futility?

I am compelled by circumstances beyond my control to state, without fear of contradiction as same has been settled by a long line of authorities, that jurisdiction is a creation of statute or the constitution. Jurisdiction is therefore not inherent in an appellate court neither can it be conferred on a court by order of court.

Section 285(1) & (2) of the 1999 Constitution established and conferred jurisdiction on election tribunals in the following terms:

"(1) There shall be established for each state of the Federation and the Federal Capital Territory, one or more election tribunals to

be known as the National and State Houses of Assembly Election Tribunals which shall, to the exclusion of any court or tribunal, have original jurisdiction to hear and determine petitions as to whether:

(a) any person has been validly elected as a member of the National Assembly; or

(b) any person has been validly elected as a member of the House of Assembly of a state.

(2) There shall be established in each state of the Federation an election tribunal to be known as the Governorship Election Tribunal which shall to the exclusion of any court or tribunal, have original jurisdiction to hear and determine petitions as to whether any person has been validly elected to the office of Governor or Deputy Governor of a state."

In the instant case the jurisdiction of the Election Petition Tribunal and that of the Court of Appeal to hear and determine appeals from the said tribunals is statutory and constitutional, see Section 246(1)(b) & (c) and Section 285(1) & (2) supra of the 1999 Constitution. However, the jurisdiction so conferred on the lower court to hear appeals from the relevant tribunals is circumscribed in relation to the time/period within which the said appeals must be heard and determined vide the provisions of Section 285(7) of the 1999 Constitution supra. With regards to the election tribunal the time within which the jurisdiction so conferred on it is to be exercised/ carried out is provided for in Section 285(6) of the 1999 Constitution which enacts thus:-

"(6) An election tribunal shall deliver its judgment in writing within one hundred and eighty (180) days from the date of the filing of the petition"

It follows that where a tribunal fails to comply with the above provisions the jurisdiction to continue to entertain the petition lapses or becomes spent and cannot be extended by any court order howsoever well intentioned, neither can a court order create and confer jurisdiction on any court/tribunal on any matter where jurisdiction has not been conferred either by statute or the constitution. It is my considered opinion that by the lower court ordering a retrial by a tribunal which had ceased to have jurisdiction in the matter it attempts to create

jurisdiction in the said tribunal by operation of a court order which is not only very erroneous but unacceptable.

It has been held by this court in a number of cases including consolidated appeal Nos. SC/141/2011; SC/266/2011; SC/267/2011; SC/282/2011; SC/356/2011 and SC/357/2011: Brig. Gen Mohammed Buba Marwa & Ors vs Adm. Murtala Nyako & Ors delivered on 27th January, 2012 that the time fixed by the constitution is like the rock of Gibraltar or Mount Zion which cannot be moved; that the time cannot be extended or expanded or elongated or in any way enlarged; that if what is to be done is not done within the time so fixed, it lapses as the court is thereby robbed of the jurisdiction to continue to entertain the matter.

It is very worrisome that despite the decisions of this court, since October, 2011 on the time fixed in the constitution some of the justices of the lower court still appear not to have got the message. From where will the election tribunal get the jurisdiction to entertain the retrial after the expiration of the one hundred and eighty (180) days assigned in the constitution, without extending the time so allotted? Do the courts have the vires to extend the time assigned by the constitution? The answer is obviously in the negative.

It should be constantly kept in mind that prior to the provisions of Section 285(6) of the 1999 Constitution, as amended; there was no time limit for the hearing and determination of an election petition by the election tribunals or the appeals arising therefrom. That situation resulted in undue delay in the hearing and determination of election matters. The amendment to the original Section 285 of the 1999 Constitution by allotting time within which to hear and determine election petition and appeals arising therefrom is designed to ensure expeditious hearing and conclusion of election matters in this country. If the decision of the lower court, in the circumstance of this case and the law, is allowed to stand as urged by the respondents it would reintroduce the earlier mischief which the amendment sought to correct. It will mean that the instant election petition can go on for another one hundred and eighty (180) days or more after the expiration of the original one hundred and eighty (180) days assigned by the constitution.

It is my considered view that the provisions of Section

285(6) *supra* is like a statute of limitation which takes away the right of action from a party leaving him with an unenforceable cause of action. The law may be harsh but it is the law and must be obeyed to the letter more so when it is a constitutional provision.

On the issue as to whether the lower court was in error in relying on the ruling of the trial tribunal delivered on 10th August, 2011 in coming to conclusion to allow the appeal of the 1st and 2nd respondents when there was no valid appeal extant against the said ruling, it is not disputed that the decision of the trial tribunal on 10th August, 2011 struck out the application of 1st and 2nd respondents, then petitioners before the tribunal for issuance of pre-hearing notice, on the ground that the application was made ex-parte rather than by motion on notice; that the decision resulted in appeal No. CA/J/EP/GOV/151/2011 before the lower court which appeals was held by this court in the consolidated appeal Nos. SC/332/2011; SC/333/2011 and SC/352/2011 in the judgment delivered on the 31st day of October, 2011 to have lapsed by effluxion of time, by virtue of the provision of Section 285(7) of the 1999 Constitution thereby leaving that decision by the tribunal extant/valid/subsisting. It does not matter if the decision is in law erroneous. Once there is no successful appeal against same, it remains a valid decision.

I have carefully gone through the record and cannot see where and how the tribunal relied on its earlier decision of 10th August, 2011 in coming to its decision of 12th November, 2011 in dismissing the petition of the 1st and 2nd respondents for abandonment as submitted by learned senior counsel for the 1st and 2nd respondents. Even if the tribunal did that, it will not be wrong as the decision of 10th August, 2011 had not been set aside by an appellate court of competent jurisdiction. The decision of 10th August, 2011 therefore remained binding on the parties and the tribunal that rendered it.

In any event, at the time the complaint against the ruling of 10th August, 2011 was being raised before the lower court, that court had lost jurisdiction to entertain same by effluxion of time, by virtue of the provisions of Section 285(7) of the 1999 Constitution, as amended. Granted without conceding

that the lower court could entertain a complaint against the decision of the tribunal of 10th August, 2011 in an appeal against the decision of the same tribunal rendered on 12th November, 2011 and in the process set aside the said decision of 10th August, 2011 as it did, it would still be an exercise in futility as the time constitutionally allotted for hearing and determining the petition by the tribunal had long expired by operation of Section 285(6) of the 1999 Constitution. The result is therefore obviously of no legal benefit for the 1st and 2nd respondents. The lower court was therefore in error in delving into the matter in the circumstances of this case.

In conclusion, I find merit in the appeals which are hereby allowed. The decision of the lower court delivered on the 23rd day of December, 2011 which set aside the decision of the Borno State Governorship Election Petition Tribunal delivered on 12th November, 2011 is hereby set aside. In its place it is hereby ordered that the said decision/judgment/ruling of the said tribunal delivered on 12th November, 2011 dismissing the 1st and 2nd respondents' election petition be and is hereby restored and affirmed.

Appeal Nos. SC/1/2012 and SC/2/2012 are hereby allowed. It is further ordered that parties bear their costs. Appeals allowed.

MUHAMMAD JSC

I have had the opportunity of reading the leading judgment just delivered by my learned brother, Onnoghen, JSC. I am in agreement with him that the appeals have merit and should be allowed. I too, hereby allow the appeals. I abide by consequential orders made therein.

ADEKEYE JSC

I was privileged to read in draft the judgment just delivered by my learned brother, W.S.N. Onnoghen, JSC. The background facts of the case in the two consolidated appeals - SC.1/2012 and SC.2/2012 and the issues formulated for determination were aptly stated by my learned brother in the lead judgment. I agree with my learned brother on the preliminary objections raised by the learned counsel

for the 1st and 2nd respondents that one of them is now overtaken by events in view of the supplementary record filed. The valid grounds of appeal in SC.1/2012 are grounds of law which do not require the leave of this court to appeal on them. The germane and common issue raised by the parties in the consolidated appeals is issue 3 in appeal SC.2/2012 and Issues 2 and 4 in appeal SC.1/2012. I shall prefer to adopt Issues 2 and 4 in the appeal - SC.1/2012 for a clearer picture of the issues. The issues read -

2. Whether having regards to Section 285(6) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and Section 134(2) of the Electoral Act 2010 (as amended), the learned justices of the Court of Appeal were right in law to have remitted the 1st and 2nd respondents' petition to another panel to be reconstituted.

4. Whether the judgment of the learned justices of the Court of Appeal delivered on 23rd December 2011 is not a nullity by virtue of Section 233(2)(e)(iv) and Section 285(6) of the Constitution of the Federal Republic of Nigeria, 1999 as amended.

I shall restate the relevant sections of the Constitution and the Electoral Act 2011 (as amended).

Section 285(6) reads:-

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

Section 134(2) of the Electoral Act 2010 (as amended) reads:

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

Before I examine the duty of court of the lower court in the interpretation of these Statutes, I shall consider the submission of counsel on each side of the divide in these appeals. Mr. Yusuf Ali, learned senior counsel for the appellant in his submission stressed the fact that the petition was filed at the tribunal on 17/5/2011. The lower court made an order for the hearing of the petition before another tribunal on 23/2/2011. That was a period of 221 days to the date the petition was filed. Section 285(6) of the 1999 Constitution (as amended) stipulates 180 days for the hearing and determination of a petition before a tribunal. He submitted that the lower court was in error to have overruled the preliminary objection on the application of Section 285(6) as the wordings of the provision was clear and

mandatory. The Court of Appeal cannot rely on the provision of its rule to extend time defined by a constitutional provision. The court cannot amend the Constitution or command the impossible.

All the counsel in this appeal conceded the fact that the 180 days provided by the Constitution for the hearing and determination of the appeal had expired as the petition was filed on 17/5/2011 and it lapsed on 13/11/2011. Mr. Oyetibo SAN contended that effluxion of time does not prevent the court from making orders for retrial in the interest of justice. Section 285(6) must not be interpreted in a manner to whittle down Section 246 of the Constitution. The tribunal will discreetly be converted into a final court by doing that. The court must adopt a harmonious interpretation and put Sections 246 and 285 side by side to give the Court of Appeal the power to order a retrial in exceptional cases. He urged the court to dismiss the appeal.

There is no doubt about it that the courts have a statutory obligation to hear and determine election matters within the time prescribed by Section 285(6) and (7) of the 1999 Constitution as amended. In the case of the tribunal, a petition must be heard and determined within 180 days. Outside the 180 days, the Court of Appeal is not cloaked with statutory power to extend the period meant for the hearing of a petition for any reason either in the interest of justice or in exceptional cases. Once any petition comes before the tribunal outside the 180 days, the court is divested of jurisdiction to hear it. The Court of Appeal in its appellate jurisdiction has no power to order the retrial of a petition which had lapsed by effluxion of time. There is no statutory provision for such a step. Court of Appeal cannot invoke its rules of court to extend time in election matters covered by Section 285 subsections (6) (7) of the Constitution.

There is no provision in the Electoral Act particularly the Schedule to the Act or in practice Direction for extending any time stipulated by constitutional Provision.

The jurisdiction of the court is derived from the Constitution or Statutes creating the court. In its interpretative jurisdiction, a court must abide by certain rules and principles as follows -

1. The intention of the legislature should be sought.

2. The intention of the legislature is to be ascertained from the words of the statute alone and not from other sources.

3. The words used are to be given their ordinary and unambiguous meaning that is the legislature is to be presumed not to have put a special meaning on the words.

4. It is not the court's province to pronounce on the wisdom or otherwise of the statute but only to determine its meaning.

5. The court must not import into legislation words that were not used by the legislature and which will give a different meaning to the text of the statute as enacted by the legislature. B

6. The court must not bring to bear on the provisions of a statute its prejudice as to what the law should be or the reasonableness or unreasonableness but rather should interpret the law from the clear words used by the legislature. C

7. The court must not amend a legislation to achieve a particular object or result - the court is to expound the law and not to expand it. D

8. The courts should adhere to the purposes of a provision where the history of the legislation indicates to the court the object of the legislature in enacting the provision.

Aqua Ltd. v. Ondo State Sports Council (1988) 4 NWLR (Pt.91) pg. 622; *Fawehinmi v. I.G.P* (2000) 7 NWLR (Pt.665) pg.481; *Awolowo v. Shagari* (1979) 6-9 SC 51; *A-G Bendel State v. A-G Federation* (1982) 3 NCLR pg.2; *Bronik Motors v. Wema Bank* (1983) 1 SCNLR pg.296; *Tukur v. Govt. of Gongola State* (1989) 4 NWLR (pt.117) pg.517. The Court of Appeal cannot abdicate its role as the custodian and interpreter of the Constitution by amending Section 285(6) of the Constitution to achieve a particular result not intended by the legislature - by extending the time for hearing a petition in the interest of justice or as an exceptional case. In adopting the purposive rule of interpretation, it is apparent that the history behind amending the Constitution to include section 285 subsections (5), (6), (7) and (8) is to encourage speedy dispensation of election matters so that those voted to power can assume public offices timeously and render service to the nation rather than being inhibited by protracted hearing of election petitions. E F G H

The Court of Appeal must not be encouraged to import into this section of the Constitution words that were not used by the legislature so as to defeat the purpose of the amendment to Section 285 of the Constitution. Once a matter has lapsed by operation of a limi-

tation law - the right of action becomes extinct, while the court has nothing left to adjudicate upon. I dare say that the order of retrial made by the Court of Appeal was an order made in vain as the petition was no longer alive. The judgment delivered on the 23rd of December 2011 was a nullity.

B With fuller reasons given in the lead judgment of my learned brother W.S.N. Onnoghen JSC, I agree that the appeals are meritorious and thereby allowed. The decision of the lower court, delivered on 23/12/2011 is hereby set aside and the decision of the Election tribunal delivered on 12/11/2011 is restored and affirmed. No order
C as to costs.

RHODES-VIVOUR JSC

D The facts in this consolidated appeal have been well set out by my learned brother, Onnoghen, JSC. There would in the circumstances be no need for me restating them all over again. This appeal arose from Gubernatorial Elections held in Borno State on the 26th of April, 2011. The Independent National Electoral Commission declared the ANPP candidate the winner of the elections. The PDP candidate lost. He filed a Petition on the 17th of May, 2011. The Election Petition Tribunal holden in Jos dismissed the Petition on the 12th of November, 2011 without a hearing on the merits. On appeal, the
E Court of Appeal allowed the appeal on the 23rd of December, 2011
F and ordered another Election Tribunal to hear the PDP's petition on the merits.

This appeal concerns the interpretation of Section 285(6) of the constitution.

G Section 285(6) of the constitution reads:

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

In SC.476/2011 Chief (Dr. F. Amadi & Anor v. INEC & 2 ors judgment delivered by this court on the 3rd of February 2012 said
H that:

“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."

When the court has to interpret provisions of the Constitution or statute, the first thing the judge should do is to find out the intention of the Legislature. This is fundamental as provisions of the Constitution are now amended, or new sections included on a regular basis. The judge would have no difficulty in finding out the intention of the Legislature if he asks himself and answers the following questions. B

1. What do the words mean?
2. What gave use to the provision?
3. What is the mischief which the provision was passed to remedy? C

I shall address the three questions seriatim. Where the words used are clear and unambiguous they must be given their plain and ordinary meaning. See *Odeneye v. Efunnuga* 1990 1 NWLR pt.164 p.618, *Okenwa v. Military Governor of Imo State* 1977 6 NWLR pt. 507 p. 136, *Tariola v. Williams* 1982 7 SC p. 27, *Mobil v. F.B.I.R.* 1977 3 SC p. 53. The operative words are "*from the date of filing the petition.*" By these words employed in section 285(6) of the constitution an Election petition Tribunal has 180 days to hear and deliver its judgment and the period of 180 days is calculated from the date the petition is filed in court. E

In SC.476/2011, I explained what gave rise to the provision, as follows: Suits Nos. SC.361/2011 and SC.362/2011 *Ogboru and Ors. v. Uduaghan*, judgment delivered on the 17th of November, 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. I observed that a case where a petition lasted more than four years for a four years gubernatorial term is scandalous, unthinkable and beggars belief. 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. F H

Indeed several similar cases were seen in the courts. The legislature decided, and quite rightly too that something had to be done and what they did was to draft into the constitution a time within which election cases are heard and determined. Time is now of the

essence in the hearing of election petition cases. See subsections 5, 6, 7 and 8 of section 285 of the Constitution. The judge should consider the state of the law before section 285(6) of the constitution, the defect which the said provision seeks to prevent and the remedy adopted by the legislature. That is to say, what is the real reason for
 B section 285(6) of the constitution? The judge is to interpret by giving the words their ordinary meaning once the words used are clear, but if not clear incline towards an interpretation that would enhance the remedy within the clear intention of the legislature. Section 285(6) of
 C the constitution, is to ensure that Election petitions are heard with dispatch. Where under the constitution the time within which Election Petition cases shall be heard is reduced to words for the purposes of the Constitution it is the construction of these words and nothing else that must determine the issue of whether the Election Tribunal
 D acted constitutionally. That is to say within the 180 days provided.

Any limitation of time within which the Tribunal can hear and determine Election Petitions must be found in the words used by the Legislature and the time stated is mandatory. Provisions of the Constitution can only be altered by the legislature. Not by the courts.
 E Time within which to hear and determine election petitions is explicitly provided and recognized in the Constitution and so the words used must be interpreted according to simple English usage and not to interpretations that the words used do not import. It is the words
 F used in the constitution that are to be interpreted and applied and the words used can never be swept aside by extraneous principles or some other consideration. The petition was filed on the 17th of May, 2011. 180 days provided by subsection (6) of Section 285 of the constitution ran out on the 12th of November, 2011. As at the 23rd
 G of December, 2011 when the Court of Appeal made the order remitting the petition to another Tribunal for a re-trial a period of two hundred and twenty one days (221 days) had elapsed between the period of the filing of the petition and the date of ordering a re-trial. 180 days provided by section 285(6) of the constitution is not limited
 H to trials but also to de novo trials that may be ordered by an appeal court. For the avoidance of any lingering doubt, once an election petition is not concluded within 180 days from the date the petition was filed by the petitioner as provided by section 285(6) of the constitution an election Tribunal no longer has jurisdiction to hear the

petition, and this applies to re-hearings. 180 days shall at all times be calculated from the date the petition was filed.

For this, and the more detailed reasoning given by Onnoghen, JSC I would allow the appeal and restore the judgment of the Borno State Governorship Election Petition Tribunal delivered on the 12th of November, 2011. B

PETER-ODILI JSC

I agree with the judgment delivered by my learned brother Onnoghen JSC and a few remarks would show my support. C

These consolidated appeals are in SC.1/2012 an appeal from an interlocutory decision of the court below, while the second, SC.2/2012 is an appeal against a final judgment of the Court of Appeal. The 1st and 2nd respondents instituted the petition No.30/EPG/GOV/1/11 in the Borno State Governorship Election Tribunal holding at Maiduguri challenging the return of the 1st respondent as Governor of Borno State in the Governorship Election held in that State on the 26th April 2011. After the close of pleading, the 1st and 2nd respondents filed a motion ex-parte pursuant to paragraphs 18(1) and (2) and 47(1) and (2) of the 1st Schedule to the Electoral Act 2010 (as amended) and Order 28 Rule 8 of the Federal High Court (Civil Procedure) Rules 2009 seeking the following orders: E

a. An Order of this Honourable Tribunal granting leave to the petitioners/applicants to bring this application and for same to be heard and determined prior to the pre-hearing session. F

b. An Order of this Honourable Tribunal directing the secretary of the Honourable Tribunal to issue the requisite pre-hearing Notice and Pre-hearing Information Sheet (Forms TF007 and TF008) G to the parties.

AND FOR SUCH FURTHER or other orders as this honourable court may deem fit to make in the circumstance.

The application was filed on 29th June 2011 whilst pleadings between the parties closed on 25th June, 2011. So the motion was filed within 4 days after the close of pleadings. The motion was not listed for hearing by the Tribunal until 2nd August, 2011. H

When the matter came up for hearing on 2nd August, 2011, the petitioners' counsel moved the motion and the Tribunal called

his attention to the provisions of paragraph 47(2) of the 1st Schedule to the Electoral Act 2010 (as amended) and then asked him to address the tribunal on the point.

In his response, counsel to the petitioner urged the tribunal to read the provisions of paragraph 47(2) in conjunction with paragraph 18(2)(b) of the 1st Schedule to the Electoral Act 2010. That the language of paragraph 18(2) of the Rules did not give any room to the tribunal to exercise any discretion once the application for issuance of pre-hearing session notice is made. Learned counsel said in the alternative that if the tribunal was of the view that the application ex-parte ought to have been on notice, then the tribunal should direct that the respondents be served with the motion. The tribunal then adjourned the proceedings to 10th August 2011 for its ruling and on that date refused the prayers and struck out the motion on the ground that the application should have been made by motion on notice. The tribunal adjourned the proceedings to 15th August, 2011 on what was left of the petition. Being dissatisfied with the order striking out the application, the petitioners appealed to the Court of Appeal by a Notice of Appeal dated 12th August, 2011 containing six grounds of appeal. The 3rd and 4th respondents filed various motions seeking the dismissal of the petition for being an abandoned petition. The tribunal ruled that it would abide the decision of the Court of Appeal and this order was appealed against by the appellants herein and the 3rd and 4th respondents. On a further appeal to this court, the Court of Appeal adjourned sine die pending the appeals at this court. This court then ruled and ordered the parties to return to the tribunal and continue with the proceedings.

The tribunal re-convened on the 12th November, 2011 and delivered its ruling wherein it dismissed the petitioner's petition on the ground that the petition was deemed abandoned. The 1st and 2nd respondents herein appealed against that decision and on the 23rd December, 2011 the Court of Appeal allowed the appeal, dismissed the Notice of Preliminary Objections of the appellants' and remitted the petition to be heard de novo by a different panel. It is against that decision that the appellant has appealed to this court.

APPEAL NO. SC.2/2012

The brief facts under this appeal number are really a follow up of the appeal in SC.1/2012, in that the appellants raised an objection

to the competence of 1st and 2nd respondents' appeal on 2 main grounds of incompetence of the Notice of Appeal and the academic nature of the same, having regard to the facts and circumstances. The parties argued the stand points in their respective briefs of arguments in the court below and that court resolved the objection against the appellants herein hence this appeal. B

The Appeal SC.1/2012 would be taken first.

On the 24/1/12 date of hearing learned counsel for the appellant, Dr. Alex Izinyon SAN adopted their brief filed on 10/1/2012 in which were formulated four issues for determination viz: C

1. Whether the learned Justices of the Court of Appeal were right in law when they held that the appellants' entire Notice of Preliminary Objection was not meritorious and consequently dismissed same.

2. Whether having regard to section 285(5) (b) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and Section 134(2) of the Electoral Act, 2010 (as amended) the learned Justices of the Court of Appeal were right in Law to have remitted the 1st and 2nd respondent's petition to another panel to be reconstituted. D E

3. Whether considering the circumstances surrounding the 1st and 2nd respondents' petition and the Supreme Court of Nigeria decision in the consolidated appeal Nos. SC.332/2011; SC.333/2011; and SC.352/2011, the learned justices of the Court of Appeal were right in law when they held that the tribunal was in error in dismissing the 1st and 2nd respondents' petition as having been abandoned by relying on its previous ruling of 10th August, 2011. F

4. Whether the judgment of the learned Justices of the Court of Appeal delivered on 23rd December, 2011 is not a nullity by virtue of Section 233(2) (e)(i), Section 235 and Section 285(5)(d) of the Constitution of the Federal Republic of Nigeria 1999 (as amended). G

In a respondents' brief of the 1st and 2nd respondents settled by Tayo Oyetibo SAN which was filed on 23/1/2012, and deemed filed on 24/1/2012, the respondents raised and argued a preliminary objection. The grounds upon which the objection was raised are as follows: H

(a) The leading judgment of the Court of Appeal delivered by M. A. Owoade JCA is not contained in the record of appeal.

(b) What is contained in the record of appeal at pages 2942 - 2943 is the note of the Court of Appeal as to the delivery of the judgment of the court on 23rd December, 2011.

(c) All the 4 grounds of appeal contained in the notice of appeal do not flow from the note of judgment.

B Arguing the preliminary objection, learned counsel for the 1st and 2nd respondents, Mr. Oyetibo SAN contended that a ground of appeal must originate from the judgment of the court below. That any ground not referable to the judgment complained of, as contained in the record of appeal is incompetent. That the judgment C being appealed against is not before this court. He cited *Kosile v Folarin* (1989) 3 NWLR (Pt. 107) 1 at 8. Mr. Oyetibo SAN of counsel contended that ground 2 complained of an error in law but the particulars 1 and 2 thereof deal with issues of fact which had to be re- D viewed and evaluated by this court, with a view to determining the question as to whether the petition lapsed by effluxion of time on 12th November, 2011. That this is not a question of law but one of fact which can only be garnered from the record. He referred to *Ifediora v Ume* (1988) 2 NWLR (Pt. 74) 5; *Nwadike v Ibekwe* (1987) E 4 NWLR (Pt. 67) 718; *Metal Construction Limited v Migliore* (1990) 1 NWLR (Pt. 126) 299; *Ogbechie v Onochie* (1986) 2 NWLR (Pt. 23) 484 (SC). Learned counsel for the 1st and 2nd respondents contended that it is well settled that a ground of appeal must arise F from the decision appealed from. That the issue of the motion for extension of time within which to apply for the issuance of pre-hearing notice which was heard by the tribunal on the 14th September, 2011 was not before the Court of Appeal and so cannot competently form the basis of a ground of appeal to this court. He cited G *Olufemi Babalola & Ors v The State* (1989) 4 NWLR (Pt. 115) 264.

Mr. Oyetibo SAN concluded by saying that Ground 5 of the Notice of Appeal offends Order 8 Rule 2 (2) of the Supreme Court Rules as it neither alleges an error in law or a misdirection. That apart from the omnibus ground of appeal, a ground of appeal must either H allege a misdirection or an error in law in order to be competent. He cited *Nwadike v Ibekwe* (supra); *Tilbury Construction Co Ltd v Oguniyi* (1988) 2 NWLR (Pt. 74) 64 at 70. He urged the court to strike out grounds 2, 3, 4, and 5 of the notice of appeal and issue 2, 3, and 4 distilled from.

Dr. Izinyon SAN for the appellant based on their reply brief filed on 24/1/12 responded to the preliminary objection of the 1st and 2nd respondent and said the first ground thereof had been overtaken by the said lead judgment of Owoade JCA having been filed on 23/1/12 and deemed filed on 24/1/12 as a supplementary record. That argument that there was no record of the judgment can no longer be touted as a point. Going further learned senior counsel said Ground 2 is of law and not mixed law and facts since what is in dispute is the application of law on undisputed facts as to whether 180 days allowed by Section 285(5)(6) of the Constitution of Nigeria 1999 has been spent and therefore nothing to remit to another tribunal for re-trial. Also that counsel for 1st and 2nd respondent erred in talking of the expiration of the appeal on 12th November, 2011 but not 17th November as the date the petition expired. He referred to *Ogbuchie v Onochie* (1986) 2 NWLR (Pt. 23) 488 at 491. He stated on that it is not correct as 1st and 2nd respondents are contending that issues 2, 3, 4, did not arise from proper grounds of appeal or that the grounds of appeal are different from the judgment of the court below. Also that grounds 5 is a ground of law bordering on nullity since it flows directly from the judgment of the court below who gave judgment adjourned its reasoning to another date not being the final appeal court in Governorship matter and therefore cannot do so. That the objectors have not shown that they have been misled by the grounds or the particulars in the said objection. That the objection should be dismissed so that parties can ventilate their grievances, which should not be sacrificed on the altar of technicality.

For a fact this preliminary objection and the grounds of arguments thereof have been clearly shown to be exercises of an academic and intellectual nature not sufficient for the substantive appeal to be scuttled at this point. The lead judgment of the court below is before this court and so it cannot be properly argued that there was no judgment to be appealed from. Also the other areas that provoked this objection lack substance and it is easy to see that the objection and grounds thereof just would not fly and so are hereby dismissed.

APPEAL:

The 1st and 2nd respondents had couched four issues for determination in their brief of argument and these are as follows:

1. Whether the court below was wrong in overruling the various objections raised to the competence of the ground of appeal contained in the notice of appeal filed by the 1st and 2nd respondents in the court below.

B 2. Whether the court below was right in law in allowing the appeal of the 1st and 2nd respondents against the decision of the tribunal which dismissed their petition on the ground of abandonment under paragraph 18(4) and (5) of the first schedule to the Electoral Act 2010 (as amended).

C 3. Whether on a proper interpretation of Section 285(6) of the 1999 Constitution (as amended), the provisions thereof can operate to bar the Court of Appeal from making an order for the retrial of a petition after allowing an appeal against the decision of the tribunal which dismissed the petition.

D 4. Whether by virtue of the provisions of Section 285(8) of the 1999 Constitution as amended by Section 9 of the Constitution of the Federal Republic of Nigeria (2nd Alteration) Act 2010, it is competent for the Court of Appeal to adopt in a final appeal the practice of first giving its decision and reserving its reasons thereof till a later date.

It seems the appellant's issues as crafted would be utilized and issues 1 and 2 taken together being related.

ISSUE 1

F Whether the learned Justices of the Court of Appeal were right in law when they held that the appellant's entire notice of preliminary objection was not meritorious and consequently dismissed same.

ISSUE 2

G Whether having regard to Section 285(5)(b) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and Section 143(2) of the Electoral Act, 2010 (as amended) the learned justices of the Court of Appeal were right in law to have remitted the 1st and 2nd respondent's petition to another panel to be reconstituted.

H Learned counsel for the appellant submitted that the validity or otherwise of the mode adopted by the 1st and 2nd respondent herein for the issuance of Pre-hearing Notice and Pre-hearing Information sheet was never an issue for determination in the Tribunal's ruling of 12th November, 2011 which was borne out of the tribu-

nal's ruling on that day. He said assuming without conceding that the tribunal gave the ruling based on its earlier ruling of 10th August, 2011 as its decision that the petition is deemed abandoned, that cannot affect the decision because the ruling is correct as the tribunal based its judgment on paragraph 18(4) & (5) of the 1st Schedule of the Electoral Act 2010 (as amended). That it is settled law that the reason for a decision cannot affect the case that is valid in law. He cited *Ndulue v Ibezim* (2002) 12 NWLR (Pt. 780) 139 at 168; *Ukejianya v Uchendu* (1950) 13 WACA 45; *Ayeni v Sowemimo* (1982) 5 SC 60. B

Dr. Izinyon stated on that the 1st and 2nd respondents had appealed to the Court of Appeal, Jos challenging the said decision of the tribunal made on 10th August, 2011 striking out their said application for the issuance of Pre-hearing Notice and Pre-hearing Information Sheet which said appeal is No. CA/J/EP/GOV/151/2011 and on getting to this court in an consolidated appeal were Nos. SC.332/2011; SC.333/2011 and SC.352/2011, this court held that the said appeal No. CA/EP/GOV/151/2011 had lapsed by effluxion of time. That those issues can no longer be re-litigated under any guise therefore. He said that by virtue of Section 285(7) of the Constitution of 1999 (as amended) which is a limitation law, no right of action can arise from an appeal which had lapsed on account of that law. He referred to *Yare v Nunku* (1995) 5 NWLR (Pt. 394) 129 at 148; *Eboigbe v NNPC* (1994) 5 NWLR (pt.345) 649 at 659; *P. N. Udoh Trading Co. Ltd v Abere* (2001) 11 NWLR (Pt.723) 114 at 130. That this court should adopt the mischief rule of interpretation in the circumstances by suppressing remedy within the intent of the statute. He cited *Ugwu v Ararume* (2007) 12 NWLR (Pt. 1048) 367. C D E F

Learned counsel for the appellant said that the particulars of error in grounds 1 and 2 of 1st and 2nd respondent's grounds of appeal in the court below show that they relate to the decision of the tribunal of 10th August, 2011 striking out the 1st and 2nd respondent's application for the issuance of Pre-hearing Notice and Pre-hearing Information Sheet. That ground 3 of the 1st and 2nd respondents' Notice of Appeal in the court below relate to the decision of the tribunal of 10th August, 2011. He said the particulars of error in grounds 1, 2 and 3 of 1st and 2nd respondents' Notice of Appeal in the court below should have been struck out which would have led G H

to the Notice of Appeal itself being struck out. He referred to the cases of Honika Sawmill (Nig.) Ltd v Hoff (1994) 2 NWLR (Pt. 326) 252; Ezeomo v N.N.B Plc (2006) 14 NWLR (Pt.1000) 624 at 641 - 642; Anamco v First Trust Marina Ltd (2000) 1 NWLR (Pt.640) 309.

Learned senior counsel for the appellant further contended
 B that Ground 4 of the 1st and 2nd respondents' Notice of Appeal in
 the court below did not arise from the decision of the tribunal and so
 should be struck out. He cited Ogbe v Asade (2009) 18 NWLR (Pt.
 1172) 106 at 126; Oloruntoba-Oju v Abdul-Raheem (2009) 13
 C NWLR (pt.1157) 83. He stated on that the notice of appeal was not
 signed by any of the legal practitioners' listed in the Notice of Appeal
 of the 1st and 2nd respondents in the court below and in the circum-
 stance the Notice of Appeal the court below should be struck out. He
 cited Ogundele v Agiri (2009) 18 NWLR (Pt. 1173) 219 at 246 -
 D 247; Okafor v. Nweke (2007) 10 NWLR (Pt. 1043) 521. Dr. Izinyon
 SAN said that by virtue of Section 285(5)(b) of the 1999 Constitu-
 tion (as amended) and Section 134(2) of the Electoral Act, 2010 (as
 amended), the court below acted wrongly in law when in allowing
 the 1st and 2nd respondents' appeal before it remitted the said 1st
 E and 2nd respondents' petition to another panel to be reconstituted.
 That those provisions aforementioned are clear and devoid of any
 ambiguity and mandatory. He referred to Fawehinmi v IGP (2007) 7
 NWLR (Pt. 767) 606; Sumonu v Oladokun (1996) 8 NWLR (Pt.
 467) 387 at 419; A.G. Fed. v. Abia State (2002) 6 NWLR (Pt.763)
 F 264; Onochie v Odogwu (2006) 6 NWLR (Pt. 975) 65 at 89. It was
 canvassed for the appellant that by employing the words "*shall*"
 "*within*" and "*from the date of the filing of the petition*" in Section
 285(5)(b) of the 1999 Constitution (as amended) and Section 134(2)
 G of the Electoral Act, 2010 (as amended) the Constitution and the
 Electoral Act are firm, emphatic and unyielding that an election peti-
 tion must be determined within 180 days from the date of filing of
 the petition. That failure of a tribunal to deliver judgment in an elec-
 tion petition within 180 days from the date of filing of the petition
 H vitiates the petition which must be struck out. He cited A.G. Ondo
 State v. A. G. Federation (2002) 9 NWLR (Pt.722) 222; Uwagba v
 F.R.N. (2009) 15 NWLR (pt. 1163) 91 at 114; A. G. Federation v
 Abubakar (2007) 10 NWLR (Pt.1041) 1 at 92; Mbachu v A.I.R.B.D.A.
 (2006) 14 NWLR (pt.1000) 691 at 712; Buhari v Yusuf (2003) 14

NWLR (Pt.841) 446 at 498 - 499.

Learned counsel for the 1st and 2nd respondents, Mr. Oyetibo SAN submitted that it is a gross misconception on the part of the appellants to say or even suggest that the 1st and 2nd respondents were complaining against the decision of the tribunal given on 10th August, 2011 in their complaint that the tribunal was wrong in treating the petitioners' petition as an abandoned petition. That a careful study of the decision of the tribunal by which it dismissed the petition on 12th November will show that the tribunal reiterated or restated or reaffirmed its position that the petitioners' ex parte motion dated 29th June, 2011 for issuance of pre-hearing notices were initiated by due process. B C

On the matter of signature of the Notice of appeal, learned senior counsel said the objection was misconceived because of the twelve names thereon, the first name being that of Chief Joe-Kyari Gadzama SAN who ascribed his signature above his name and did not need to further indicate that the signature thereon was his. That all the law required is that the Notice of Appeal is signed either by appellant or his legal representative and in this case, the appellant's counsel signed and that is enough pursuant to Order 6 Rule 10(2) of the Court of Appeal Rules 2011; INEC v. Osunbor (2009) 4 NWLR (Pt. 1132) 609. D E

Mr. Oyetibo SAN went on to state that the decision of 12th November, 2011 was perverse because the tribunal relied on its earlier decision of 10th August, 2011 which did not represent the correct state of law as at 12th November, 2011 on the issue of pre-hearing notices. That the tribunal ought not to have continued in its perversity by relying on its decision of 10th August, 2011 in view of the decision of this court in Mallam Abubakar Abubakar v Nasamu SC.350/11; Paragraph 18(2) of the 1st Schedule to the Electoral Act, 2010; Achineku v Ishagba (1988) 4 NWLR (Pt. 89) 411. F G

For the 1st and 2nd respondents was contended that the law is now settled that no interlocutory judgment or order from which there has been no appeal shall operate so as to bar or prejudice the court from giving such decision upon the appeal as may seem just. He cited Order 4 Rule 5 of the Court of Appeal rules 2011; Iweka v S.C.O.A. (Nig) Ltd (2000) 7 NWLR (Pt. 664) 325. H

Having stated the submissions on Issues 1 and 2, it seems to

me that an answer to those issues might be taken as effective answer to issues 3 and 4 and therefore it is best to bring in those arguments too so as to effectually determine the main dispute before court.

ISSUES 3 & 4

Whether considering the circumstances surrounding the 1st and 2nd respondents' petition and the Supreme Court of Nigeria decision in the consolidated appeal Nos. SC.332/11; SC.333/11 and SC.352/11, the learned justices of the Court of Appeal were right in law when they held that the tribunal was in error in dismissing the 1st and 2nd respondents' petition as having been abandoned by relying on its previous ruling of 10th August, 2011.

Whether the judgment of the learned Justices of the Court of Appeal delivered on 23rd December, 2011 is not a nullity by virtue of Section 233(2)(e)(i), Section 235 and Section 285(5)(d) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

Learned counsel for the appellant, Dr. Izinyon submitted that the court below acted wrongly in law when it held that the tribunal was in error in dismissing the 1st and 2nd respondents' petition as having been abandoned by relying on its previous ruling of 10th August, 2011 considering the circumstances surrounding the 1st and 2nd respondents' petition and the Supreme Court decision in the consolidated appeal Nos: SC.332/2011, SC.333/2011 and SC.352/2011. That the ruling of the tribunal on 12th November, 2011 subject matter of this appeal did not determine the issue of validity or otherwise of the mode adopted by the 1st and 2nd respondents in applying for the issuance of Pre-Hearing Notice and Pre-Information Sheet as that was not an issue before it in the said ruling. That assuming without conceding that the tribunal's said order of 10th August, 2011 was wrong in law, it is submitted that same having not been set aside, is still very valid and subsisting in law and must be obeyed in law. He cited *Akinfolarin v Akinola* (1994) 3 NWLR (Pt. 335) 659 at 677 - 679 (SC). Dr. Izinyon SAN of counsel said that the tribunal's reference on said order of 10th August, 2011 in its ruling of 12th November, 2011 within obedience of a subsisting order of court which had not been set aside and so the tribunal cannot be said to have acted in error of law. Rather it is the Court of Appeal that was wrong in law in declaring that the tribunal acted in error. For the appellant was further contended that the judgment of the Court of Appeal is a

nullity as it was a judgment that court delivered and adjourned to give its reasons later since it was not the final court. He cited Sections 233(2)(e) (i), Section 235 and 285(5) (d) of the 1999 Constitution as amended. He stated that this court cannot remit the matter back to the Court of Appeal to be heard de novo because the appeal had lapsed by effluxion of time and this court should dismiss the petition. B

Mr. Oyetibo SAN said for the respondents 1st and 2nd that they were not disputing the fact that 180 days had elapsed after the filing of their petition at the time the court below heard the appeal. He said that was not enough without more to remove the jurisdiction of the court to entertain the appeal and give orders which the justice of the case demanded. That he was saying so because it is settled that the provisions of the Constitution including Section 285(6) should not be read in isolation but must be read harmoniously with Section 246 of the same constitution as amended. He cited: *Orubu v NEC* (1988) 5 NWLR (P.94) 323; *Adewumi v A.G. Equity State* (2002) 2 NWLR (Pt. 751) 474 at 522, *Idehen v Idehen* (1991) 6 NWLR (Pt. 198) 382 at 418; *Savannah Bank Nig. Ltd v Ajilo* (1989) 1 NWLR (Pt. 97) 305 at 326. That Section 246 of the Constitution cannot be limited in the attainment of its objectives by Section 285(6) of the Constitution. Learned senior counsel for 1st and 2nd respondents said the appellant pushed forward a wrong interpretation of Section 285(8) of the Constitution as amended by Section 9 of the Constitution 2nd Alteration Act 2010. That the “*final appeals*” does not refer to the court with the final jurisdiction in the determination of an election petition rather it refers to the nature of the decision. He referred to *Akinsanya v U.B.A. Ltd* (1986) 4 NWLR (Pt.35) 273 at 290 - 290. He urged the court to allow the appeal. The position taken by the appellants, through learned counsel on their behalf is that the judgment of the learned Justices of the Court of Appeal delivered on 23rd December, 2011 is a nullity on account of Sections 233(2)(e)(i), 235 and 285(5)(d) of the Constitution of the Federation 1999. Mr. Oyetibo, learned senior counsel for the 1st and 2nd respondents taking a contrary view stating that the remittance for retrial by the Election Tribunal was in order. Of necessity therefore is to go to those cited Constitutional provisions for guidance. Section 285(5)(d) of the Constitution as amended stipulates as follows: C
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“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”

Those provisions have been couched in very simple, plain and unambiguous words and therefore needing no aid and or assistance in the interpretation thereof. The plain and ordinary meaning is that the practice of giving a decision and keeping the reasons for a future date is not limitless rather it is reserved for when the appeal court is the final bus-stop not when there is another stop which would be the final as in this instance where the Court of Appeal was just a point through which the appeal would get to the Supreme Court, the final port of call. For a certainty therefore when the Court of Appeal made its decision and adjourned the reasons for the decision for a later date, it had no vires to do so. I refer to *Fawehinmi v IGP* (2002) 7 NWLR (Pt. 767) 606; *Sumonu v Oladokun* (1996) 8 NWLR (Pt. 467) 387 at 419. For a clearer view I would quote Section 233(2)(e) (i) of the 1999 Constitution (as amended) thus:

“an appeal shall lie from decision of the Court of Appeal to the Supreme Court as of right in the following cases.... decision on any question -

(i) Whether any person has been validly elected to the office of President, Vice-President, Governor or Deputy Governor under the constitution.”

To give the necessary emphasis to the powers of the Supreme Court, Section 235 of the 1999 Constitution provides as follows:

“Without prejudice to the powers of the President or of the Governor of a State with respect to prerogative of mercy, no appeal shall lie to anybody or person from any determination of the Supreme Court.”

The above provisions have been crafted in plain language, easy to read, understand and digest and so when the learned Justices of the Court of Appeal made their decision and remitted the case to the Election Tribunal for re-trial by another panel without giving the reasons for the judgment, they made those orders illegally and without jurisdiction since there was really no judgment upon which those orders could be made. In addition, there is no dispute that since the so called judgment of the Court of Appeal was a nullity, that court's assertion that the tribunal was in error in dismissing the 1st and 2nd respondents' petition has no value. Therefore the issues are resolved

in favour of the respondents 1st and 2nd. The appeal is allowed and the decision or judgment of the Court of Appeal set aside while the decision of the Trial Tribunal is restored.

APPEAL SC.2/2012

Mr. Yusuf O. Ali SAN adopted the Appellants' brief filed on 6/1/12 in which was couched four issues for determination which are as follows:-

1. Whether the Court below was not wrong in overruling the various objections raised to the competence of the Grounds of Appeal contained in the Notice of Appeal filed by the 1st and 2nd Respondents herein before the Court below.

2. Whether the Court below was not wrong in relying on the ruling of the trial Tribunal of 10th August, 2011 to come to the conclusion of allowing the 1st and 2nd Respondents' appeal when there was no valid appeal extant against the said ruling of 10th August, 2011 and the appeal the subject matter of the Court of Appeal's decision was based purely on the ruling of the trial Tribunal on the 12th November, 2011 which dismissed the petition of the 1st and 2nd Respondents as an abandoned petition under the provision of the Electoral Act, 2010 as amended.

3. Whether the Court below was not wrong having regard to the mandatory provisions of Section 285(b) of the Constitution of the Federal Republic of Nigeria, 2011 as amended to have ordered that a new election tribunal be constituted to hear the petition of the 1st and 2nd Respondents on its merit, after the mandatory 180 days prescribed by the Constitution for the hearing and determination of the petition from the date it was filed had lapsed by effluxion of time.

4. Whether the Court below was not wrong by overruling the objection of the Appellants on the ground that the appeal of the 1st and 2nd Respondents before the Court below was hypothetical and academic having regard to the provisions of the Constitution and decided authorities on this point.

The 1st and 2nd Respondents in a Brief of Argument settled by Tayo Oyetibo SAN and adopted by the same learned counsel had 3 issues distilled therein for determination viz:-

1. Whether the Court below was wrong in overruling the various objections raised to the competence of the grounds of appeal contained in the notice of appeal filed by the 1st and 2nd Respond-

ents in the Court below.

2. Whether the Court below was right in law in allowing the appeal of the 1st and 2nd Respondents against the decision of the tribunal which dismissed their petition on the ground of abandonment under paragraph 18(4) and (5) of the first Schedule to the Electoral Act 2010 (as amended).

3. Whether on a proper interpretation of section 285(6) of the 1999 Constitution (as amended), the provisions thereof can operate to bar the Court of Appeal from making an order for retrial of a petition after allowing an appeal against the decision of the tribunal which dismissed the petition.

ISSUE 1:

This issue addresses the correctness or otherwise of the Court below overruling the objections raised to the competence of the Grounds of Appeal contained in the Notice of Appeal filed by the 1st and 2nd Respondents herein before the Court below.

On the above, learned counsel for the Appellants, Mr. Yusuf Ali SAN submitted that the Court of Appeal was in palpable error in overruling the objection when on the face of the grounds of Appeal and their particulars, the issue of incompetence of same is glaring. He cited *Amuda v. Adelodun* (1994) 8 NWLR (Pt.360) 23 at 32. That from the decision of the trial tribunal delivered on the 12th of November, 2011, the particulars of each of the four grounds are either complaints against the decision of the trial tribunal delivered on 10th August, 2011 or complaints that do not arise from the decision appealed against. He referred to *F.H.A. v. Kalejaiye (Nig.) Ltd.* (2010) 1 NWLR (Pt. 1226) 147.

On Issue No.2, which has to do with whether or not the Court of Appeal relied on tribunal's ruling of 10th August, 2011 or that of 12th November, 2011 also of the tribunal. Learned counsel for the Appellant, Mr. Yusuf Ali SAN said that from the record, the tribunal was dealing with the motion on abandonment of the petition and did not re-open its earlier ruling of 10th August, 2011. That the decision to dismiss the petition of the 1st and 2nd Respondents were predicated solely on the correct interpretation of paragraph 18(4) & (5) of the 1st Schedule to the Electoral Act, 2010 as amended. That the allusion to the ruling of 10th August, 2011 by the trial in their ruling of 12th November, 2011 was for emphasis and underscore the point

that since the said application was struck out by the Tribunal, it means that in the eyes of the law that application was never brought. He cited *Labour Party v INEC* (2009) 1 - 2 SC (Pt. 2) 43; *Peenock Investment Ltd v Hotel Presidential Ltd* (1982) NSCC Vol.13 P477; *Babatunde v. Olatunji* (2000) 2 NWLR (pt. 646) 557 at 568.

Mr. Oyetibo SAN for the 1st and 2nd Respondents submitted that the decision of 12th November, 2011 was perverse because the tribunal relied on its earlier decision of 10th August, 2011 which did not represent the correct state of the law as at 12th November, 2011 on the issuance of pre-hearing notices. He cited the decision of this Court in *Mallam Abubakar Abubakar v Nasamu SC/350/11* of 9th November, 2011. That the Tribunal had no business in relying on a null and void order of its own and so the decision arrived therefrom was made without jurisdiction. He cited *S.M. Timitimi & 6 Ors v Chief Amabebe* 14 WACA 374; *Adegoke Motors Ltd v Adesanya* (1989) 3 D NWLR (Pt. 109) 250; *Ude v Agu* (1961) 1 SCNLR 98 at 102. For the Respondents 1st and 2nd was canvassed that a careful study of the decision of the Tribunal by which it dismissed the Petition on 12th November will show, or restate or reaffirm its position that the Petitioner's Ex-parte Motion dated 29th June, 2011 for the issuance of pre-hearing notices were not initiated by due process.

It seems clear that to answer these questions above raised in line with the relevant submission, it would be better to bring in Issues 3 and 4 as they seem all inter connected.

ISSUES 3 & 4:

These issues have to do with whether the Court below was not wrong in ordering that the petition be tried *de novo* in view of the provisions of Section 285 (6) of the Constitution and whether in making that order it was not really for the Tribunal to go into an academic hypothetical case.

Mr. Ali, Senior Advocate said the provisions of section 285(6) of the Constitution which prescribed 180 days of trial are clear, lucid and unambiguous and must be given effect accordingly. He cited *Okenwa v Military Governor of Imo State* (1997) 6 NWLR (Pt.507) H 136 at 157; *Odeneye v Efunuga* (1990) 1 NWLR (Pt. 164) 64; *PDP v INEC* (1999) 11 NWLR (Pt. 626) 200; *Shettima v Goni* (Unreported) delivered on 31st October 2011; *Aya & Anor v Henshaw & anor* (1972) All NLR 460 at 465.

Mr. Oyetibo SAN for the Respondents 1st and 2nd said this Court's decisions in *PDP v CPC* and *Shettima v Goni* (supra) relied upon by the Appellants are inapplicable as they dealt with interlocutory appeals, whereas the time construction of Section 285(6) of the Constitution being put forward here is in respect of a final decision of the tribunal. Dr. Izinyon SAN in adopted Brief of Argument settled on their behalf, for the 3rd Respondent which was filed on 17/1/12 adopted the submissions of the Appellants urging that this Court find for the Appellants.

From the earlier appeal SC.1/2012 and what had happened to the judgment of the Court of Appeal which was really a non-judgment, there is need to have a glimpse on the powers of the Tribunal in view of Section 285(6) of the Constitution of the Federal Republic of Nigeria 1999 as amended. It is as follows:-

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

With that provision in view, the facts are that the petition was filed at the Registry of the Tribunal on the 17th May, 2011 and even by the time the Court of Appeal made its erroneous order on 23rd day of December, 2011, a period of 221 days had elapsed between the date of filing and the date of the order of re-trial. It goes without saying that assuming the Court of Appeal judgment was valid the order was not possible to execute since by effluxion of time, the Petition was already dead. The Tribunal was correct therefore when it so pronounced that the Petition had died and there was nothing to do except to strike it out which they rightly did. This Court has in recent time followed that path in the cases: *PDP v CPC & 42 Ors* (Unreported) Appeal NO. SC.272/2011 delivered on 31st October, 2011; *Shettima & Anor v Goni & Ors* (unreported) Appeals No. SC.332/2011, SC.333/2011 and SC.352/2011 (consolidated Appeals) delivered on 10th day of October, 2011.

From the foregoing and the better articulated with fuller reasons of my learned brother W.S.N. Onnoghen JSC in the lead judgment allow the appeal. I abide the consequential orders in the lead judgment.