

SUPREME COURT OF NIGERIA

5TH MARCH, 2012. SC. 13/2012

**CORAM:- M. MOHAMMED, C. M. CHUKWUMA-ENEH,
M. S. MUNTAKA-COOMASSIE, J. A. FABIYI,
B. RHODES-VIVOUR, JJSC**

1. SENATOR JOEL DANLAMI
IKENYA

2. HON. ISA ABU AJIYA APPELLANTS

3. ACTION CONGRESS OF
NIGERIA

AND

1. PEOPLES DEMOCRATIC PARTY

2. PHARMACIST DANBABA

DANFULANI SUNTAI

3. ALHAJI ABUBAKAR SANI RESPONDENTS

DANLADI

4. INDEPENDENT NATIONAL

ELECTORAL COMMISSION

& 1119 ORS

ELECTION PETITIONS - Appeals - National & State Assembly Elections Tribunal - Judgment - Deferment of reasons - 1999 Constitution s. 285(8) - Court of Appeal can defer reasons for its judgment - In appeals arising from the tribunal (H1)

ELECTION PETITIONS - Appeals - Governorship Election Tribunal - Judgment - Deferment of reasons - 1999 Constitution s. 285(8) - Supreme Court is solely empowered to defer reasons for its judgment - In appeals arising from the tribunal (H2)

ELECTION PETITIONS - Appeals - Rehearing - 1999 Constitution s.285(7) - Since 60 days provided in the Constitution has elapsed - Relief of rehearing cannot be granted (H3)

FACTS

Gubernatorial election was conducted in Taraba State by 4th respondent. 1st and 2nd appellants were candidates at the said elec-

tion, sponsored by 3rd appellant. On the other hand, 2nd and 3rd respondents were candidates of 1st respondent at the same election. At the end of the election, 4th respondent returned 2nd and 3rd respondents as the winner of the election. Not satisfied with the results of the election, appellants filed petition at the Governorship Election Petition Tribunal at Jalingo, Taraba State. After hearing the petition, the tribunal delivered its judgment on 10th November 2011 and dismissed the petition.

Dissatisfied, appellants appealed to the Court of Appeal, Yola Division. The court in its judgment delivered on 6th January 2012, dismissed the appeal and deferred reasons for same to a later date. Aggrieved further, appellants filed appeal at Supreme Court contending that the Court of Appeal is not empowered under section 285(8) of the Constitution of Federal Republic of Nigeria 1999 (as amended) to deliver its judgment and defer reasons for same. Appellants also urged the court to order a rehearing of the appeal before another panel of the Court of Appeal.

ISSUE FOR DETERMINATION

“Whether the Court of appeal by a construction of the Provision of Section 285(8) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) is competent to deliver judgment in respect of an appeal as to whether a Person has been validly elected to the office of a Governor or Deputy Governor of a State and give reasons later.”

HELD (Unanimously allowing the appeal per **Mohammed JSC**) ***Appeals - National & State Assembly Elections Tribunal - Judgment***

1. As for the appeals from decisions of Election Petition Tribunal in National and State Assembly elections which terminate at the Court of Appeal, the Court of Appeal can exercise the power prescribed under section 285(8) to deliver its judgment and reserve the reasons for the judgment to a later date. (p. 1146 A)

Appeals - Governorship Election Tribunal - Judgment

2. However, where the appeals are from decisions of an Election Petition Tribunal in Governorship Elections which do not terminate at the Court of Appeal and are liable to proceed to the Supreme

Court at the instance of an aggrieved party, the power under that sub-section (8) of section 285 of the Constitution is not available to the Court of Appeal. The power as far as appeals from decisions Election petition Tribunals in Governorship Elections coming to the Court of Appeal are concerned, only the Supreme Court can exercise the power to deliver its judgment in the appeal heard by it and reserve its reasons for the judgment to a later date. It is for this reason that this Court held that the effect of exercising this power by the Court of Appeal in an appeal which does not terminate at the Court of Appeal in this respect, rendered the judgment a nullity in the absence of the reasons for the judgment. (p. 1146 B)

ELECTION PETITIONS - Appeals - Rehearing

3. As for the relief of re-hearing of the appeal by a different panel of the Court of Appeal sought by the Appellants in this court, that relief cannot be granted because the 60 days under sub-section (7) of section 285 of the Constitution of the Federal Republic of Nigeria 1999 within which the Appellants' appeal must be heard and determined, had already lapsed as the judgment of the Election Petition Tribunal given rise to the appeal, was delivered since 10th November, 2011. It will therefore be a futile exercise in my view granting that relief. (p. 1147 B)

REPRESENTATION

D. B. Sunama, for the Appellants

E. A. Aremo with E. A. Nyaro, E. A. Ibrahim, E. I. Ibi and U. Ekemim, for the 1st Respondent

O. E. B. Offiong; SAN with Dr. G. O. A. Ogunyomi, J. Okezie and Mrs. Ada Ejike-Onyeama for 2nd and 3rd Respondents

S. T. Hon. SAN with Aberaton Wilcox, Abayomi Akamode, B. N. Chia, E. S. Njoka and Joshua Abogo for the 4th-1119 Respondents

CASES REFERRED TO

Emmanuel Agbanelo v. U.B.N. Ltd. (2000) 4 SCNJ 353

Babatunde v. P.A.S. & T.A. Ltd. (2007) All FWLR (Pt. 372) 1721

Ihezi v. Arinze (2007) 5 NWLR (pt. 1027) 241

Onyekwele v. Ugwu and Ors (2008) 15 NWLR (pt. 1111) 545

INEC v. Musa Yar'Adua (2002) 9-11 SCNJ pp. 1-6

Efy v. INEC (2011) 7 NWLR (pt. 1247) 423

Nikagbatse v. Opuye (2010) 14 NWLR (pt. 1213) 50

FCDA v. Koripamo-Agary (2010) 14 NWLR (pt. 1213) 364

Mcfoy v. U.A.C. Ltd. (1962) AC 150

B STATUTE REFERRED TO

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

LEAD JUDGMENT BY MOHAMMED JSC

C This appeal is against the judgment of the Court of Appeal
Yola Division delivered on 6th January, 2012 dismissing the Appel-
lants' appeal and affirming the judgment of the trial Election Petition
Tribunal. The 1st and 2nd Appellants were respectively the Gover-
D norship and Deputy Governorship candidates sponsored by the 3rd
Appellant, a political party, as its candidates in the general election
held into the office of the Governor of Taraba State on 26th April,
2011. The 2nd and 3rd Respondents on the other hand were the
Governorship and Deputy Governorship candidates sponsored by
E the 1st Respondent, a political party, in the election to the office of
the Governor of Taraba State. At the conclusion of the election, the
4th and 5th Respondents who conducted the election, returned the
2nd and 3rd Respondents as winners of the election and duly elected
F as Governor and Deputy Governor of Taraba State. Not satisfied
with the results of the election, the Appellants then filed their petition
at the Governorship Election Petition Tribunal at Jalingo, Taraba State
which heard the petition and at the end of the hearing, in its judg-
ment delivered on 10th November, 2011, dismissed the Appellants'
G petition. Aggrieved with the judgment of the Tribunal, the Appellants
then appealed to the Court of Appeal, Yola Division which after hear-
ing the appeal on 5th January, 2012, dismissed the appeal on 6th
January, 2012 in its judgment delivered by the Presiding Justice, Hon.
Justice Alagoa, JCA and agreed to by the other Justices Yakubu and
H John Mbaba JJCA as follows -

"By virtue of Section 285(8) of the Constitution of the Federal Republic of Nigeria 1999 as amended, I shall deliver my judgment in this appeal today to save it from lapsing and give my reasons later. The preliminary objections filed by the 1st Respondent on one hand

and the 2nd and 3rd Respondents on the other hand lack merit and are hereby dismissed. The main appeal of the Appellants lack merit and is hereby accordingly dismissed and the judgment of the Governorship Election Petition Tribunal Taraba State holden at Jalingo in Petition No. EPT/TR/G/01/2011 delivered on the 10th November, 2011 is hereby affirmed by me.” B

Not satisfied with this judgment of the court of Appeal, the Appellants are now on a further and final appeal to this court raising only one issue from the lone ground of appeal filed by them. The issue reads -

“Whether the Court of appeal by a construction of the Provision of Section 285(8) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) is competent to deliver judgment in respect of an appeal as to whether a Person has been validly elected to the office of a Governor or Deputy Governor of a State and give D reasons later.” C

Learned Appellants’ Counsel after quoting the provisions of Sections 285(8) and 233(1) and (2)(e)(i) of the 1999 constitution of the Federal Republic of Nigeria (as amended), had argued that since the appeal from the decision of the Governorship Election petition Tribunal to the Court of Appeal does not make the Court of Appeal the final Court of Appeal in the appeal which the Constitution allows to proceed and finally end at the Supreme Court, the Court of Appeal does not have the power or competence to deliver judgment under Section 285 (8) of the Constitution and reserve reasons for the judgment to a later date as was done by the Court of Appeal in the present case; that the reasons for the decision ought to form the basis of the Appellants right of appeal in grounds of appeal challenging the reasons for the decision; that the very clear provisions of Section 285(8) of the constitution does not give the court of Appeal, a penultimate appellate Court to give its decision and reserve its reasons therefore to an indefinite date as was done by the Court of Appeal in the instant case and that this had rendered the decision of the Court of Appeal of 6th January, 2012, a nullity, concluded the learned Counsel who urged this Court to set aside the decision of the Court of Appeal of 6th January, 2012 and order a fresh hearing of the Appellants’ appeal before another panel of the Court of Appeal. E F G H

For the 1st Respondent, the issue identified in its brief of argu-

ment is -

“Whether the judgment delivered by the lower Tribunal on 6th January, 2012 has not effectively and effectually determined the Appellants’ appeal on its merit as to afford(sic) an aggrieved party to appeal against is not withstanding this inadvertence reference to Section 285(8) of the 1999 Constitution of Nigeria.”

The stand of the 1st Respondent therefore on this issue is that the judgment of the Court of Appeal of 6th January, 2011, is quite in order. However, with regard to the relief of re-hearing of the appeal by another panel of the Court of Appeal sought by the Appellants, learned Counsel to the 1st Respondent relying on the provisions of Section 285(7) of the Constitution of Nigeria 1999, said having regard to the fact that the decision of the trial Election Petition Tribunal was given on 10th November, 2011, the 60 days allowed for the hearing and determination of the Appellants’ appeal, have lapsed already to make any order for fresh hearing of the appeal impossible. However, learned Counsel is of the view that failure of the Court of Appeal to give reasons for its judgment, does not make that decision invalid particularly when the facts are not in dispute as was stated in Emmanuel Agbanelo v. U.B.N. Ltd. (2000) 4 S.C.N.J. 353 at 353 - 364.

The 2nd and 3rd Respondents in their joint brief of argument also adopted the issue as framed in the Appellants’ brief of argument before coming to the conclusion that by virtue of the provisions of Section 285(8) of the constitution of the Federal Republic of Nigeria, 1999 (as amended), the court of Appeal is qualified to give its decision and reserve giving reasons to a later date in the final appeal from the Governorship Election Tribunal of Taraba State. However in his final submission, learned senior counsel for 2nd and 3rd Respondents referred to the recent decisions of this court in A.N.P.P. v. Alhaji Mohammed Goni & Ors., unreported decision of this court delivered in suits No. SC.1/2012 and SC.2/2012 consolidated delivered on 17th February, 2012; Action Alliance (A.C.) v. INEC & Ors., unreported judgment of this court in suit No. SC.23/2012 delivered on 14th February, 2012 and the case of Mallam Abubakar Abubakar & ors. V. Saidu Usman Nasamu & Ors. unreported judgment of this court in suits No. SC.14/2012; SC.14A/2012; SC.14B/2012 and SC.14C/2012 delivered on 24th February, 2012 and submitted that

the relief of re-hearing sought by the Appellants in this appeal, cannot be granted as the period of 60 days within which the appeal ought to be heard and determined, had already lapsed. On the authority of the last unreported decision of this Court in *Abubakar & Ors. v. Nasamu & Ors.* delivered on 24th February, 2012, learned senior Counsel for 2nd and 3rd Respondents finally submitted that since the decision of the Court of Appeal of 6th January, 2012 in this appeal is a nullity, the decision of the Governorship Tribunal of 10th November, 2011, remains valid and ought to be restored and affirmed by this Court. B

Learned senior Counsel for the 4th - 23rd Respondents in their Respondents' brief of argument is also of the view that the only issue for determination is whether the court of Appeal was right in exercising the powers under Section 285(8) of the constitution of the Federal Republic of Nigeria, 1999 (as amended) to dismiss the Appellants' appeal and reserve the reasons for judgment to a later date. On this issue learned senior counsel is of the view that the Court of Appeal was right in exercising the powers under Section 285(8) of the constitution to dismiss the Appellants' appeal and reserve its reason to a later date if the case of *Babatunde v. P.A.S. & T.A. Ltd.* (2007) All F.W.L.R. (Pt.372) 1721 at 1752C is taken into consideration. C

The question now is whether the Court of Appeal can be accommodated under section 285(8) of the Constitution of the Federal Republic of Nigeria 1999 after hearing an appeal from the decision of Governorship Election Petition Tribunal, to deliver its judgment in the appeal and give its reasons for the judgment on a later date. That Section 285(8) of the constitution states- F

"(8) The Court, in all final appeals from Election Tribunal or Court may adopt the Practice of first giving its decision and reserving the reasons therefore to a later date." G

The interpretation of this very clear sub-section of Section 285 of the constitution had been put to rest in the decision of this Court in the consolidated appeals in an unreported decision of this court in appeals numbers SC.14/2012; SC.14A/2012; SC.14B/2012 and SC.14C/2012 *Abubakar & Ors. v. Nasamu & Ors.*, delivered on 24th February, 2012 in relation to the powers of the court of Appeal and this Court to deliver judgment in appeals arising from decisions of H

Election Petition Tribunals. ***As for the appeals from decisions of Election Petition Tribunal in National and State Assembly elections which terminate at the Court of Appeal, the Court of Appeal can exercise the power prescribed under section 285(8) to deliver its judgment and reserve the reasons for the judgment to a later date.***

However, where the appeals are from decisions of an Election Petition Tribunal in Governorship Elections which do not terminate at the Court of Appeal and are liable to proceed to the Supreme Court at the instance of an aggrieved party, the power under that sub-section (8) of section 285 of the Constitution is not available to the Court of Appeal. The power as far as appeals from decisions Election petition Tribunals in Governorship Elections coming to the Court of Appeal are concerned, only the Supreme Court can exercise the power to deliver its judgment in the appeal heard by it and reserve its reasons for the judgment to a later date. It is for this reason that this Court held that the effect of exercising this power by the Court of Appeal in an appeal which does not terminate at the Court of Appeal in this respect, rendered the judgment a nullity in the absence of the reasons for the judgment.

Applying the decision in Abubakar & ors. v. Nasamu & ors to the present case where the Court of Appeal after hearing the Appellants' appeal arising from Governorship election delivered its judgment dismissing the appeal on 6th January, 2012 and reserved its reasons indefinitely, the result is obvious. This action on the part of the Court of Appeal rendered its judgment a nullity in the absence of the reasons for the judgment resulting in leaving intact the judgment of the trial Election Petition Tribunal delivered on 10th November, 2011 affirming the election and return of the 2nd and 3rd Respondents as the Governor and Deputy Governor respectively of Taraba State in the election to the office of the Governor of Taraba State conducted by the 4th and 6th Respondents on 26th April, 2011. In other words the judgment of the Court of Appeal delivered on 6th January, 2012 without reasons for the judgment is indeed a nullity in the absence of the reasons for the judgment to provide the necessary materials from which the Appellants may raise the grounds of appeal

challenging the decision of that court in exercising their constitutional right of appeal. This is because the judgment of the court and reasons for the judgment, are inseparable partners in law as it is the judgment and the reasons therefore that constitute a valid judgment of the Court.

As for the relief of re-hearing of the appeal by a different panel of the Court of Appeal sought by the Appellants in this court, that relief cannot be granted because the 60 days under sub-section (7) of section 285 of the Constitution of the Federal Republic of Nigeria 1999 within which the Appellants' appeal must be heard and determined, had already lapsed as the judgment of the Election Petition Tribunal given rise to the appeal, was delivered since 10th November, 2011. It will therefore be a futile exercise in my view granting that relief.

In the result this appeal, succeeds and it is hereby allowed. The decision of the Court of Appeal given in the Appellant' appeal on 6th January, 2012 dismissing the Appellants appeal, is hereby declared a nullity for having been given without reasons for the decision. Consequently, the judgment of the trial Election Petition Tribunal in petition No., EPT/TR/G/01/2011 delivered on 10th November, 2011 affirming the election and return of the 2nd and 3rd Respondents as the Governor and Deputy Governor respectively of Taraba State of Nigeria, is hereby further affirmed. I am not making any order on costs.

CHUKWUMA-ENEH JSC

I have read before now in the draft the judgment of my learned brother Mohammed, JSC just delivered with which I agree. All the issues have been satisfactorily treated that I adopt the judgment as mine and I endorse all the orders in the lead judgment.

MUNTAKA-COOMASSIE JSC

The Governorship Election Petition Tribunal Taraba State of Nigeria its judgment, on 10/1/2011, in which it dismissed the petition, filed by the appellants in this case against the return of the 2nd and 3rd respondents as the duly elected Governor and Deputy Gov-

ernor of Taraba State respectively.

Dissatisfied with the judgment of the Governorship election petition Tribunal hereinafter called the trial Tribunal, the petitioner appealed to the Court of Appeal Yola Division. On the 5th of January 2012, the appeal was heard, and on the 6th January, 2012, the Court of Appeal delivered its judgment. The same lower court relied on Section 285 (8) of the Constitution of the Federal Republic of Nigeria as amended gave its decision and reserved the reasons for the judgment to a later date. It is against this judgment of the lower court that the appellants have appealed to this court.

The appellants' counsel filed one ground of an appeal specifically challenging the jurisdiction or the power to the lower court to give its judgment and reserved the reasons for a later date when it is not the final court in respect of the Governorship Election Petition, and not being the Supreme Court of Nigeria.

This is the only issue for determination before this court. The appellants contended in their joint brief of argument that the lower court not being the final court in respect of the Governorship Election Petition has no power to invoke the provisions of Section 285 (8) to give its decision and reserved the reasons to a later date, and such the judgment delivered on the 6/1/2012 is a nullity.

The learned counsel for the 1st respondent did not, *strictu sensu*, disagree with the contention of the appellants counsel on the interpretation of Section 285 (8) of the 1999 constitution as amended but contended that the judgment delivered by the lower court is a decision within the provisions of Section 318 (1) of the Constitution as amended and as such it has effectively and effectually determined the appellants appeal. Learned Senior Counsel submitted that failure to give reasons for the judgment in view of the limitations of time imposed by Section 285 (7) of the 1999 Constitution (as amended), cases of *Ihezi V. Arinze* (2007) 5 NWLR (pt.1027) 241 at 251., *Onyekwele V. Ugwu and Ors* (2008) 15 NWLR (pt. 1111) 545 at 558, *Agbanelo V. UBN Ltd.* (2000) 4 SCNJ 353 at 362 were cited. The Learned Senior counsel particularly referred to this Court's decision in *INEC V. Musa Yar'Adua* (2002) 9 - 11 SCNJ p. 1 - 6, where this Court gave its judgment without giving reasons for the decision. Learned Senior Counsel for the 2nd, 3rd and 4th - 1119th respondents submitted forcefully that the "final" referred to in Section 285

(8) of the Constitution as amended referred to the final judgment of the Tribunal.

With due respect, the words in Section 285 of the 1999 Constitution is (clear and unambiguous and do not require any further interpretation, it refers to the final Court of the land in respect of the Governorship Election petition, which unarguably is this Court and not the Court of appeal, thus the invocation of that Section 285 (8) of the Constitution, is an error. It is, in my view, only this court that can correctly and rightly too, gives its decision within the provisions of Section 285 (8) of the 1999 constitution and not the Court of appeal in respect of the Governorship Election petition.

It is on this ground that I hold that the judgment of the lower Court delivered on the 6/1/2012 is a nullity. However, the appellants have asked this Court to make an order remitting the appeal for hearing before a new and different panel of the lower court.

The question is can this Court rightly make this order in view of the provision of Section 285 (7) of the 1999 constitution (as amended). Learned counsel to the 1st Respondent Emmanuel Aremo, Esq., submitted that the judgment of the trial Tribunal was delivered on the 10/11/2011, the sixty (60) days provided for the determination of the appeal before the lower Court expired on the 9th January, 2012. Hence by virtue of the provisions of Section 285 (7) the lower court has lost its jurisdiction to hear or rehear the appeal. He relied on the judgment of this court delivered on 31/10/2011, in *People's Democratic Party (PD.P) v. Congress for Progressive Change (CPC) SC.272/2011* and *All Nigeria peoples party (ANPP) v. Alhaji Mohammed Goni & Ors SC.1/2012* delivered on 17/2/2012 (unreported) and contended that to make an order of remittal would amount to an extension of time provided in section 285 (7) of the 1999 constitution (as amended). Also in view of the fact, that the lower court has been divested of its jurisdiction to hear the appeal by reason of effluxion of time as provided in section 285 (7) of the said constitution any such order of remittal would amount to exercise in futility.

My lords, section 285 (7) of the 1999 constitution of Nigeria as amended provides as follows:

“An appeal from decisions of an Election Tribunal or Court of Appeal in an election matter shall be heard and disposed off within

60 days from the date of the delivery of judgment of the Tribunal or Court of Appeal”.

It is not in dispute at all that the trial Tribunal delivered its judgment on 10/11/2011, thus the 60 days prescribed for the lower Court to hear and determine the appeal has been divested of its jurisdiction to hear and determine an appeal arising from the judgment of the Trial Tribunal. It follows therefore that this court cannot make any order remitting the appeal to the lower court for hearing de novo. Any such order would not only be null and void, but also unconstitutional. It is for this reason that I respectfully agree with the learned counsel to the 1st respondent E. A. Aremo Esq. that the reliefs sought by the appellant are not only hypothetical but academic in nature, and no court, including this court has jurisdiction to determine a hypothetical and academic issues. I am fortified by the decisions in *Efy V. INEC (2011) 7 NWLR (pt.1247) 423 at 451*, *Nikagbatse v. Opuye (2010) 14 NWLR (pt.1213) 50 at 102*, and *FCDA v. Koripamo-Agary (2010) 14 NWLR (pt.1213) 364 at 393*.

In conclusion I hold that since an order for remittance could not be made by this court, the judgment of the Tribunal delivered on 10/11/2011 remains valid and subsisting. In effect, the return of the 2nd and 3rd respondents as the duly elected Governor and Deputy Governor of Taraba State respectively is hereby affirmed.

I have read in advance the all encompassing lead judgment of my noble lord Mahmud Mohammed JSC just delivered and I entirely agree with his reasons and conclusion that *“this appeal succeeds and it is hereby allowed. The decision of the Court of appeal given in the Appellants’ appeal on 6th January, 2012 dismissing the Appellants appeal, is hereby declared a nullity. Consequently, the judgment of the trial election Petition Tribunal in petition No. EPT/TR/G/01/2011 delivered on 10th November, 2011 affirming the election and return of the 2nd and 3rd respondents as the Governor and Deputy Governor respectively of Taraba State of Nigeria, is hereby further affirmed”*. I too make no order as to costs.

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FABIYI JSC

I have had a preview of the judgment just delivered by my learned brother Mahmud Mohammed, JSC. I completely agree with

the reasons therein advanced as well as the conclusion inescapably reached at the end.

I only desire to chip in a few words of my own. The facts have been carefully stated in the lead judgment. I do not wish to restate same for the sake of brevity.

The issue herein principally relates to the propriety or otherwise of the invocation by the Court of Appeal of the provision of Section 285 (8) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) when it delivered a judgment in which it dismissed the appeal before it on Friday, 6th January, 2012 without advancing reasons and promised to give same on a later date. The 60 days allowed it by law to act in the right direction was due to expire on Monday, 9th January, 2012. The lone issue formulated on behalf of the appellants reads as follows:-

“Whether the Court of Appeal by a construction of the provision of section 285(8) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) is competent to deliver judgment in respect of an appeal as to whether a person has been validly elected to the office of Governor or Deputy Governor of a State and give reasons later.”

Right away, it is apt to reproduce Section 235(8) of the Constitution for a clear appreciation of same. It reads as follows:-

“285(8) The court, in all final appeals from an election tribunal or court may adopt the practice of first giving its decision and reserving the reasons therefore to later date.”

It is of moment to note it here that section 233(1) and (2) (e) (iv) of the Constitution (as amended) stipulates that an appeal against the decision of the Court of Appeal as to whether any person has been validly elected to the office of Governor or Deputy Governor under the Constitution lies to the Supreme Court. In this respect, the decision of the Court of Appeal is no longer final as it has become an intermediate court. But section 246 (3) of the Constitution (as amended) provides for instances when appeal to the Court of Appeal is final. It provides that ‘the decisions of the Court of Appeal in respect of appeals arising from National/State House of Assembly election petitions shall be final.

With an adequate bird’s eye view, it is clear in the provision of section 285(8) that the Supreme Court in the final appeals from the

Court of Appeal in respect of the gubernatorial election matters may adopt the practice of first giving its decision and reserving the reasons therefore to a later date. While the Court of Appeal in all final appeals from Election Tribunals in respect of National/State House of Assembly matters may also adopt the practice of giving its decision and reserving the reasons therefore to a later date. As an intermediate court, the Court of Appeal cannot adopt the practice in respect of gubernatorial matters as it is not in any way imbued with such power by the Constitution of the Federal Republic of Nigeria 1999 (as amended) - the ground norm.

With the above in view, the vital question at this point is - was the Court of Appeal imbued with the vires and power to enter its judgment without reasons on 6th January, 2012 and defer such reasons to a later date outside the mandatory sixty (60) days given it by section 285(7) of the Constitution? To my mind, the answer is in the negative. It is an emphatic No. This is fully supported by the recent unreported decision of this court in SC.14/2012; SC.14A/2012; SC.14B/2012 an SC.14C/2012-Mallam Abubakar Abubakar & Ors. V. Saidu Usman Nasamu & Ors. delivered on 24th February, 2012.

It has been shown that that the Court of Appeal was not imbued with competence to do what it did on 6th January, 2012 when it entered its judgment and deferred giving its reasons to a later date outside the 60 days mandated to do same. Such action taken without competence was a futile exercise. It is in law a nullity. See: *Mcfoy v. U.A.C. Ltd.* (1962) AC 150 at page 160.

The Election Tribunal delivered its own judgment on 10th November, 2011. The relief that this court should order a re-hearing before another Panel of the Court of Appeal cannot be granted since the 60 days given for the determination of the appeal by the Court of Appeal have since lapsed.

For the above reasons and more especially the detailed reasons advanced in the lead judgment, I also feel that the appeal should be allowed. The judgment of the Court of Appeal is declared a nullity. The effect is that the judgment of the trial Election Tribunal remains intact and inviolate. I abide by all other consequential orders therein contained; that relating to costs inclusive.

RHODES-VIVOUR JSC

I read in draft form the leading judgment prepared and delivered by my learned brother, Mohammed, JSC. I agree with his Lordships reasoning and conclusions. The 1999 Constitution came into force on the 29th day of May 1999. At that time section 285 had only four subsections, i.e. (1), (2), (3) and (4). Recent amendments included Subsections (5), (6), (7) and (8). They read: B

(5) An election petition shall be filed within 21 days after the date of the declaration of results of the elections.

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

(7) An appeal from a decision of an Election Tribunal or Court of Appeal in an election matter shall be heard and disposed of within 60 days from the date of the delivery of judgment of the Tribunal or Court of Appeal. D

(8) The court, in all final appeals from an Election Tribunal or Court may adopt the practice of first giving its decision and reserving the reasons therefore to a later date.

This appeal is easily resolved on the interpretation of subsections (7) and (8) of Section 285 of the Constitution. The Court of Appeal dismissed the appeal from the Election Tribunal on the 6th day of January, 2012. In dismissing the appeal the Court of Appeal said: E

“By virtue of Section 285 (8) of the Constitution of the Federal Republic of Nigeria 1999 as amended, I shall deliver my judgment in this appeal to save it from lapsing and give my reasons later. The preliminary objections filed by the 1st Respondent on one hand and the 2nd and 3rd respondents on the other hand lack merit and are hereby dismissed. The main appeal of the appellants lack merit and it is hereby according dismissed and the judgment of the Governorship Election Petition Tribunal Taraba State held in Petition No. EPT/TR/G/01/2011 delivered on the 10th November, 2011 it hereby affirmed by me.” F

The interpretation of subsection (8) of Section 285 of the Constitution is that when an appeal is final the court that hears such an appeal may give its decision and give reasons for the decision on a later date. An appeal to the Court of Appeal arising from the National and State Houses of Assembly election petitions is final. That H

means that the decision of the Court of Appeal in respect of appeal arising from the National and State Houses of Assembly election petitions is final. See section 246 (3) of the Constitution. The decision of the Supreme Court in respect of appeals arising from gubernatorial elections petitions is final. The clear intention of the legislature is that only when the Court of Appeal is hearing National and State Houses of Assembly election appeals can it rely on subsection (8) of section 285 of the Constitution. It now becomes clear that the Court of Appeal is the penultimate court in gubernatorial appeals. It cannot under any circumstances deliver its judgment on a gubernatorial matter as provided in subsection (8) of section 285 of the Constitution. See the following decisions of the court. ANPP Alhaji Mohammed Goni & ors. suit nos. SC.1/2012 and SC.2/2012 delivered on 17/2/12, Action Alliance (AC) V. INEC & ors SC.25/2012 delivered on 14/2/12, Mallam Abubakar Abubakar & ors v. Saidu Usman Nasamu & ors Suits Nos. SC.14/2012, SC.14A/2012, SC.14B/2012 and SC.14C/2012 delivered on 24/2/12. The judgment of the Court of Appeal delivered on the 6th of January, 2012 is a nullity. I now turn to the issue of whether this court can order a re-hearing of the appeal. Subsection (7) of section 285 of the Constitution states that:

(7) An appeal from a decision of an Election Tribunal or Court of Appeal in an election matter shall be heard and disposed of within 60 days from the date of the delivery of judgment of the Tribunal or Court of Appeal.

60 days starts to run from the date judgment were delivered. The Election Petition Tribunal delivered its judgment on the 10th of November, 2011. The Court of Appeal had 60 days from the 10th of November 2011 to hear the appeal and deliver its judgment. Ordering a retrial would be wrong, since the Court of Appeal no longer has jurisdiction to hear the appeal. Jurisdiction of the Court of Appeal to hear the appeal ended on or about the 11th of January, 2012. It's now March. The appeal succeeds. The election of the 2nd and 3rd respondents as the Governor and Deputy Governor of Taraba State of Nigeria, affirmed by the Election Petition Tribunal in its judgment delivered on the 10th of November 2011 it hereby further confirmed.