

CO-Ok
SUPREME COURT OF NIGERIA
2ND MARCH, 2012. SC. 17/2012
CORAM: - W. S. N. ONNOGHEN, I. T. MUHAMMAD, O. O.
ADEKEYE, N. S. NGWUTA, M. U. PETER-ODILI, JJSC

PEOPLES DEMOCRATIC PARTY APPELLANT
AND

1. CHIEF ANAYO ROCHAS
OKOROCHA
2. ALL PROGRESSIVE GRAND
ALLIANCE
3. INDEPENDENT NATIONAL
ELECTORAL COMMISSION
4. RESIDENT ELECTORAL
COMMISSIONER, IMO STATE
5. STATE RETURNING OFFICER, IMO
STATE GOVERNORSHIP ELECTION
6. ELECTORAL OFFICER, OWERRI RESPONDENTS
WEST LOCAL GOVERNMENT AREA
7. ELECTORAL OFFICER, NGOR
OKPALA LOCAL GOVERNMENT AREA
8. ELECTORAL OFFICER, OHAJI/EGBEMA
LOCAL GOVERNMENT AREA
9. ELECTORAL OFFICER,
ORU-EAST LOCAL GOVERNMENT AREA
10. ELECTORAL OFFICER, OGUTA
LOCAL GOVERNMENT AREA
11. ELECTORAL OFFICER,
MBAITOLI LOCAL GOVERNMENT AREA

CONSTITUTIONAL LAW - Constitution - Interpretation - Words used
in s. 285(7)(8) are unambiguous - And ought to be given their ordi-
nary meaning (H1)

WORDS & PHRASES - Constitution - “The Court” - Meaning - The
phrase used in s. 285(8) refers to Court of Appeal - Hearing appeal
from States and National Assembly elections (H2)

APPEALS - Election petitions - Presidential & Governorship elections - Final court - Supreme Court is the final court of appeal - In respect of the elections (H3)

ELECTION PETITIONS - Appeals - Judgment - Reasons for - Given outside time - Fate - 1999 Constitution s. 285 (7) - The judgment is a nullity (H4)

APPEALS - Court of Appeal - Judgment - Deferment of reasons - Where the court is not sitting in final capacity - It cannot defer reasons for its decision (H5)

COURTS - Issues - Suo motu raising - Propriety - Court may raise issues - Provided that parties are given opportunity - Of being heard on the issues so raised (H6)

COURTS - Processes - Compliance with laws - Court is to ensure that process filed by parties - Comply with provisions of applicable laws (H7)

COURTS - Competence - Court must ensure its competence - And that of matters presented to it - For adjudication (H8)

FACTS

Petitioner/appellant filed this petition at the Imo State Governorship Election Petition Tribunal against the return of 1st respondent as the Governor of the State after the Governorship election conducted on 26th April 2011. Despite the fact that appellant's candidate polled the highest number of votes cast, the election was adjudged inconclusive by 3rd respondent due to incidence of violence that took place in four local government areas of the State. Accordingly, a supplementary election was scheduled on 6th May 2011 for the affected areas. Appellant and its candidate did not participate in the later election. Eventually, 3rd respondent declared 1st respondent the winner of the election. At the tribunal, appellant questioned the said declaration on the grounds inter alia, that the former election was conclusive and was won by its candidate.

Respondents duly contested the petition and appellant's peti-

tion was dismissed. Being dissatisfied, appellant appealed to the Court of Appeal, Owerri sitting in Abuja. The court also dismissed the appeal. Aggrieved further, appellant appealed to Supreme Court contesting the decision of the Court of Appeal. The court discovered that the trial tribunal delivered its judgment in the petition on 12th November 2011, whereas the Court of Appeal pronounced its judgment on 6th January 2012 but gave reasons for same on the 24th January 2012. This discovery prompted the court to invite counsel for the parties to address it on validity or otherwise of the judgment of Court of Appeal in view of the provisions of section 285 (7) and (8) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

HELD (Unanimously striking out the appeal per **NGWUTA JSC**)
Constitution - Interpretation

1. Section 285 (7) and (8) of the Constitution (supra) is hereunder reproduced:

“S.285 (7): An appeal from a decision of an election Tribunal or Court of Appeal in an election matter shall be heard and disposed of within 60 days from the date of the delivery of judgment of the Tribunal or Court of Appeal.

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

The language of the provisions reproduced above is clear and unambiguous and the words therein ought to be given their ordinary and plain grammatical meanings. (p. 1165 E)

Constitution - “The Court” - Meaning

2. In S.285 (8), “The Court” refers to the Court of Appeal an appellate Court. The court is the Court of Appeal hearing appeal arising from State Houses of Assembly and National Assembly elections. Such appeals are filed at the court referred to as the Court of Appeal. (p. 1165 H)

Election petitions - Presidential & Governorship elections

3. In appeals arising from the decisions of the Court of Appeal in election petitions arising from the Presidential and Governorship elec-

tion petitions the court in the final appeals is the Supreme Court.
(p. 1166 A)

Appeals - Judgment - Reasons for - Given outside time - Fate

4. In the final appeals, the Court may deliver its decision and give reasons for the decision at a later date. Be that as it may, the reasons for the judgment of the Court in the appeal must be given within the 60 days stipulated in S.285 (7) of the Constitution.

Now a decision and the reasons for it are one and the same thing. None is valid or can exist without the other. It follows that the court, in the final appeal, though empowered to deliver its decision and give reasons for it at later date, must give the reasons within the 60 days in S.285 (6) of the Constitution. In the case at hand, the trial Tribunal delivered its judgment on 12/11/2011 the lower Court delivered its judgment on 6/1/2012 but gave its reasons for the judgment on 24/1/2012. The reasons given outside the period of 60 days in S.285 (7) of the Constitution has a devastating effect on the judgment delivered within time on 6/1/2012. By the late delivery of the reasons for the judgment, the judgment rendered within time is rendered a nullity as the reasons for the judgment are inseparable from the judgment. At the expiration of the 60-day period within which it must deliver its judgment, the Court of Appeal became functus officio and so the respondents do not have to show that the reasons given outside the 60 days occasioned a miscarriage, unlike the situation under S. 294 (5) of the Constitution.

The defect in the appeal which prevents the Court from exercising its jurisdiction to hear and determine it is the fact that the reasons for the judgment were given outside the 60 days in S.285 (7) of the Constitution. Section 294 (5) of the Constitution (supra) invoked by learned Senior Counsel for the appellant is of no avail in this case. It is a general provision which is not applicable to election matters in which time is of essence and which are governed by the restrictive provisions in S.285 of the Constitution. (p. 1166 A/D/ 1168 D)

Court of Appeal - Judgment - Deferment of reasons

5. Where the Court of Appeal is not the Court hearing the final appeal, it is not competent to deliver its decision and give reasons for same later. This is because there is right of appeal and unless the

reason is given along with the judgment; the party aggrieved by the judgment may not have all the materials he needs to appeal within time. (p. 1166 B)

COURTS - Issues - Suo motu raising - Propriety

6. I am aware of such cases as John v. Black (1985) 4 NWLR (Pt. 90) 539 and Egbe v. Alhaji (1990) 1 NWLR (Pt.128) 546 to the effect that an appellate Court has no jurisdiction to give judgment outside the grounds of appeal and the oral argument of learned Counsel on both sides. As argued by the learned Silk for the appellant, the issue was not raised by any party but learned Counsel for the parties have been given the opportunity to be heard and were in fact heard on the issue raised suo motu by the Court. B
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It may raise an issue suo motu provided that if the issue so raised is one on which the matter will be disposed of, learned Counsel for the parties must be heard on it before decision is taken. (p. 1166 H/1167 F) D

COURTS - Processes - Compliance with laws

7. The Court hearing a matter, whether as a Court of first instance or an appellate Court has a duty to ensure that the processes by which a party seeks relief before it comply with the relevant provisions of the applicable law. E

A Court of record must jealously guard the judicial process from being ridiculed or scandalized and for the purpose of achieving a just, equitable and expeditious dispensation of justice. In the quest for justice, the Court can glean through its records and all processes transmitted to it in respect of the appeal to ensure compliance with the law and rules. F
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It would have been an act of disservice to the administration of justice if the Court had closed its eye to the defect in the judgment appealed against and proceed to determine the appeal on its merit. This would have been in conflict with other recent decisions of this Court on S.285 of the Constitution and the conflicting judgments would have made the law uncertain. (p. 1167 E/G) H

COURTS - Competence

8. It is the duty of the Court to ensure its own competence and the

competence of any matter brought to it for adjudication. One of the elements constituting the competence of a matter before a Court and ipso facto the competence of that Court to hear it is that *“the subject matter of the case is within its jurisdiction and there is no feature in the case which prevents the Court from exercising its jurisdiction.”* (p. 1168 C)

REPRESENTATION

Chief Wole Olanipekun, SAN, with Awa U. Kalu, SAN; Joe Agi, SAN; Chief Olusola Oke; Jerry Egemba; Chief C. Akaolisa; Olugbenga Adeyemi; Joshua Aloba; Ayo Adesanmi; Kenechukwu Azie; Aisha Ali (Mrs.); Samuel Abbah; Abdulmajid Onyiyangi and N. C. Nwachukwu (Miss), for Appellant

Chief Adeniyi Akintola, SAN; J. A. Owonikoko, SAN; Folasade Aofolaju; C. O. C. Emeka-Izima; Ngozi Nkem (Mrs.); Joyce O. Aigbokhaevbolo (Miss); Uju Nweke (Miss); Oluchi Maduka (Miss); Olumide Sonupe; Chief (Sir) E. C. Nwanedo; Alaeto Maxwell, U.; Kenneth Udeze; A. O. Amagwula; Ugochi M. Igboananwa; Kevin Emeka Okoro; Nnoaham Ethelbert; Ikeme Ifeyinwa; Uche Ilobi; Chris Onwudiegwu and F. Tyokase, for 1st and 2nd Respondents

Dr. Alex A. Izinyon, SAN; with Dr. Onyechi Ikpeazu, SAN; Hassan M. Liman, SAN; A. D. Auta; Y. D. Dangana; B. K. Abu; Hannatu Abdulrahman (Mrs.); Adeola Adedipe; E. Oshojafor; Fatima Bukar; O. Ibori (Miss); Alex Izinyon II; L. A. Ikhanoba; M. D. Okowa (Miss); Oziegbe Omo-Egharevba; J. A. Ayitogo and E. I. Henry for 3rd-11th Respondents

CASES REFERRED TO

Ifezue v. Mbadugha (1984) SCN LR 427
 Bello v. A-G Oyo State (1986) 5 NWLR (Pt.457) 828
 Agbiti v. The Nigerian Navy (2011) 206 LRCN 181
 Tariola v. Williams (1982) 7 SC 27
 Mobil v. FBIN (1977) 3 SC 53
 Ariori & Ors v. Elemo (1985) 1SC 13
 Ojokoloko & Ors v. Alamu & Ors (1987) 7 SC (Pt. 1) 124
 John v. Black (1985) 4 NWLR (Pt. 90) 539

Egbe v. Alhaji (1990) 1 NWLR (Pt. 128) 546
 Dingyadi v. INEC (No. 2) (2010) 18 NWLR (Pt. 1224) 154
 Madukolu v. Nkemdilim (1962) 2 SCNLR 341
 Oshodi v. Eyifunmi (2000) 7 SC (pt. 11) 154
 Rossek v. ACB Ltd. (1993) 8 NWLR (Pt. 312) 382
 Ifezue v. Mbadugha (1984) 1 SCNLR 427
 SLB Consortium Ltd. v. NNPC (2011) 9 NWLR (Pt. 1252) 317

B

STATUTES & RULES REFERRED TO

Constitution of Federal Republic of Nigeria 1999 (as amended), ss. 233(2), 285(6)(7)(8) and 294(5)
 Electoral Act 2010 (as amended), 26(1)(2) (3)(4) and 137(6)
 Supreme Court Rules (as amended), O. 8 rr. 4(5) 12(5)

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LEAD JUDGMENT BY NGWUTA JSC

D

The rescheduled Governorship election was conducted by the 3rd Respondent, the Independent National Electoral Commission (INEC) throughout the Federation on the 26th day of April 2011. The appellant, the Peoples Democratic Party (PDP) sponsored a candidate at the election in Imo State. The 1st Respondent was sponsored at the election by his party, the All Progressive Grand Alliance (APGA). From the appellant's point of view, election was conducted in all the Local Government Areas of the State except Ngor Okpala Local Government Area as well as some Wards and Polling Units in three other Local Government Areas.

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Appellant claimed that its candidate scored 310,106 votes against the 305,263 scored by the 1st Respondent, the candidate of the 2nd Respondent. According to the appellant, rather than declare its candidate as the winner of the election, the 5th Respondent cancelled the election on 27th April 2011 and the 3rd Respondent scheduled a supplementary election for the 6th May 2011 in Ngor Okpala, Oguta, Ohaji/Egbema and Mbaitoli Local Government Areas and Orji Ward 1 of Owerri North Local Government Area of the State.

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On the other hand, the Respondents claim that as a result of widespread thuggery and violence and the slim margin between the candidate of the appellant, Chief Ikedi Godson Ohakim and the 1st Respondent, Chief Anayo Rochas Okorocha vis-a-vis the number of registered voters who had not voted in the four Local Government

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Areas of Ngor Okpala, Oguta, Mbaitoli and Ohaji/Egbema and one ward, i.e. Orji Ward 1 in Owerri North Local Government Area of the State, a supplementary election was scheduled for the affected four Local Government Areas and Orji Ward 1 in Owerri North LGA.

B The appellant and its candidate did not participate in the supplementary election. The 3rd-11th Respondents returned the 1st Respondent as having scored a majority of lawful votes cast at the election and declared him duly elected Governor of Imo State.

C In its petition before that Governorship Election Petition Tribunal constituted for Imo state, the appellant challenged the return of the 1st Respondent as elected Governor of Imo State on the following grounds:

“(1) The election of 26th April 2011 was conclusive and was won by its candidate Chief Ohakim.

D *(2) The supplementary election of 6th May 2011 was not necessary, and*

(3) The election of 6th May, 2011 was conducted in breach of S.178 (2) of the constitution of the Federal Republic of Nigeria 1999 (as amended).”

E The Respondents contested the petition. The appellant’s petition was dismissed. The appellant appealed to the Court of Appeal Owerri sitting at Abuja. The lower Court dismissed the appeal with N50,000.00 costs in favour of the 1st and 2nd Respondents. Aggrieved by the judgment of the Court below, the appellant appealed F to this Court on 17 grounds from which the following three issues were distilled for determination in the appellant’s brief of argument:

G *“1. Considering the facts and circumstances of this case vis-a-vis the relevant constitutional and statutory provisions, whether or not the lower Court was, not in grave error in holding that the 3rd - 11th Respondents properly cancelled the Governorship election in the affected Local Governments on 26th April 2011 and/or purported to have postponed same to 6th May, 2011 (Grounds 1, 2, 7, 8, 9, 11 and 14).*

H *2. Having regard to the clear and unambiguous constitutional and statutory provisions relating to the time limit for the holding of a Governorship election particularly section 178(2) of the Constitution and Section 25(8) of the Electoral Act 2010, whether the lower court was not in serious error in affirming the supplementary election held*

by the 3rd Respondent in the disputed Local Governments on 6th May 2011 (Grounds 3, 4, 5, 6, 13 and 16).

3. Juxtaposing the pleadings of parties with the admissible evidence led, whether the lower Court did not arrive at a wrong conclusion and decision in dismissing the appeal before it. (Grounds 10, 12, 15 and 17)”

In their joint brief of argument, the 1st and 2nd Respondents filed a notice of preliminary objection to the hearing of the appeal and argued same in the brief. They formulated the following two issues for determination:

“1. Whether the lower Court correctly construed the relevant provisions of the constitution of the Federal Republic of Nigeria 1999 (as amended), the Electoral Act and INEC Guidelines in affirming the decision of the trial Tribunal that the election of 26th April, 2011 were inconclusive, and that the supplementary election held on 6th May 2011 to conclude the Imo State Gubernatorial election was not unconstitutional, or in breach of relevant provisions of the Electoral Act. (Grounds 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 13, 14 and 16)

2. Whether the lower Court arrived at the wrong conclusion and decision in dismissing the appeal before it.” (Grounds 10, 12, 15 and 17)

In their own joint brief, the 3rd-11th Respondents framed the following two issues for determination:

“(1) whether in view of available facts with respect to the nature of the election of Governorship of Imo State conducted on the 26th April, 2011, the Court of Appeal was right in holding that the 3rd-11th Respondents rightly declared the said election as inconclusive. (Distilled from Grounds 1, 2, 7, 8, 9, 10, 11, 12, 14, 15 and 16)

(ii) Whether the Court of Appeal was right in affirming that the supplementary election of 6th May, 2011 was held in compliance with the provisions of the constitution of the Federal Republic of Nigeria 1999 (as amended), the Electoral Act 2010 (as amended) and other enabling laws.” (Distilled from Grounds 3, 4, 5, 6, 13 and 17).

Learned Senior Counsel leading for the appellant, filed replies to the 1st and 2nd and 3rd-11th Respondents’ briefs of argument. In his reply to the 1st and 2nd Respondents’ brief, learned Senior Counsel also responded to the argument on preliminary objection raised by the 1st and 2nd Respondent. Learned Senior Counsel for the parties

adopted, and relied on, their respective briefs of argument at the hearing of the appeal.

At the conference on this appeal on 22/2/2012, it was discovered that the trial Tribunal delivered its judgment in the appellant's petition on 12th November, 2011. The lower Court pronounced its judgment in the appeal against the judgment of the trial Tribunal on 6th January, 2012 but gave its reasons for the judgment on the 24th day of January, 2012, some 73 days from the date the trial Tribunal delivered its judgment.

For obvious reason, learned lead Counsel for the parties were invited to address, on the validity *vel non* of the judgment against which this appeal was filed in view of the provisions of S.285 (7) and (8) of the Constitution of the Federal Republic of Nigeria 1999 (as altered). As expected, learned Senior Counsel for the parties, each with his, promptly responded. Chief Olanipekun of the Inner Bar who is lead Counsel for the appellant in his argument reminded the Court that none of the parties raised the issue which the Court required learned Counsel to address, adding that the Court is not competent to resolve an issue not submitted to it by either party. He argued that the judgment of the Court in the appeal No. SC.14/2012 *Abubakar & Anor v. Saidu Nasamu & Anor* delivered on 24/2/2012 is not applicable to this appeal. He relied on *Cardoso V. Daniel* (1986) 7 SC 491. He argued that a judgment of a Court is valid until it is set aside by a Court of competent jurisdiction. He referred to S.294 (5) of the Constitution and *Ifezue v. Mbadugha* (1984) SCN LR 427. Learned Senior Counsel argued that the appellant will be denied justice if the appeal is not determined on the merit. He referred to *Bello v. A-G Oyo State* (1986) 5 NWLR (Pt.457) 828 and relied on the latin maxim: *ubi jus ibi remedium*. He referred to the enrolled order of the lower Court at pages 1347-1347 of the record. He urged the Court to hear and determine the appeal on the merit.

Learned Senior Counsel leading for the 1st and 2nd Respondents, Chief Akintola, SAN referred to S.285 (7) and (8) of the Constitution (*supra*) and said that the issue raised by the Court is an issue of jurisdiction. He referred to S.233 (2) paragraph E of the Constitution and contended that the lower Court is not the final Court in Governorship election appeals. Learned Counsel referred to the record and said that the judgment of the lower Court was delivered

on 6/1/2012 and reasons for the judgment was given on 24/1/2012. He referred to Ord. 8 r. 12 (5) of the Supreme Court Rules for the power of the Court to raise an issue suo motu provided parties are given the opportunity to address the Court on the issue as was done in this case. He urged the Court to strike out the appeal.

Learned lead Counsel for 3rd-11th Respondents, Dr. Izinyon, SAN said the issue raised by the Court is jurisdictional and argued that the Court is competent to raise the issue even though it was not raised by either party. He referred to SSD Construction v. NNPC (2011) 9 NWLR (Pt. 1252) page 317 at 332 and 335. He contended that the lower Court had jurisdiction on 6/1/2012 when it pronounced its judgment but had no jurisdiction on 24/1/2012 when it gave its reasons for the judgment. He urged the Court to strike out the appeal and relied on the judgment of the Court delivered on 24/2/2017 in appeal No. SC.14/2012 Consolidated. He referred to Ord. 8 r. 4 (5) of the Supreme Court Rules (as amended).

In reply, learned Senior Counsel for the appellant, Chief Olanipekun, SAN said that the lower Court had jurisdiction when it delivered its judgment on 6/1/2012 and that the reasons for the judgment given on 24/1/2012 did not affect the validity of the judgment.

Section 285 (7) and (8) of the Constitution (supra) is hereunder reproduced:

“S.285 (7): An appeal from a decision of an election Tribunal or Court of Appeal in an election matter shall be heard and disposed of within 60 days from the date of the delivery of judgment of the Tribunal or Court of Appeal.

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

The language of the provisions reproduced above is clear and unambiguous and the words therein ought to be given their ordinary and plain grammatical meanings. See Agbiti v. The Nigerian Navy (2011) 206 LRCN 181 at 230f; Tariola v. Williams (1982) 7 SC p. 27; Mobil v. FBIN (1977) 3 SC p.53. S.285 (7) is clear and needs no elucidation.

In S.285 (8), “The Court” refers to the Court of Appeal an appellate Court. The court is the Court of Appeal hearing appeal arising from State Houses of Assembly and National

Assembly elections. Such appeals are filed at the court referred to as the Court of Appeal. In appeals arising from the decisions of the Court of Appeal in election petitions arising from the Presidential and Governorship election petitions the court in the final appeals is the Supreme Court. In the final
 B **appeals, the Court may deliver its decision and give reasons for the decision at a later date. Be that as it may, the reasons for the judgment of the Court in the appeal must be given within the 60 days stipulated in S.285 (7) of the Constitution.**

C **Where the Court of Appeal is not the Court hearing the final appeal, it is not competent to deliver its decision and give reasons for same later. This is because there is right of appeal and unless the reason is given along with the judgment; the party aggrieved by the judgment may not have all**
 D **the materials he needs to appeal within time.**

Now a decision and the reasons for it are one and the same thing. None is valid or can exist without the other. It follows that the court, in the final appeal, though empowered to deliver its decision and give reasons for it at later date,
 E **must give the reasons within the 60 days in S.285 (6) of the Constitution. In the case at hand, the trial Tribunal delivered its judgment on 12/11/2011 the lower Court delivered its judgment on 6/1/2012 but gave its reasons for the judgment on 24/1/2012. The reasons given outside the period of 60 days in**
 F **S.285 (7) of the Constitution has a devastating effect on the judgment delivered within time on 6/1/2012. By the late delivery of the reasons for the judgment, the judgment rendered within time is rendered a nullity as the reasons for the judgment are inseparable from the judgment. At the expiration of**
 G **the 60-day period within which it must deliver its judgment, the Court of Appeal became functus officio and so the respondents do not have to show that the reasons given outside the 60 days occasioned a miscarriage, unlike the situation under**
 H **S. 294 (5) of the Constitution. See Ariori & Ors v. Elemo (1985) 1SC 13; Ojokoloko & Ors v. Alamu & Ors (1987) 7 SC (Pt. 1) 124.**

I am aware of such cases as John v. Black (1985) 4 NWLR (Pt. 90) 539 and Egbe v. Alhaji (1990) 1 NWLR (Pt.128) 546 to the effect that an appellate Court has no jurisdiction to

give judgment outside the grounds of appeal and the oral argument of learned Counsel on both sides. As argued by the learned Silk for the appellant, the issue was not raised by any party but learned Counsel for the parties have been given the opportunity to be heard and were in fact heard on the issue raised suo motu by the Court.

B

I do not accept the argument of learned Senior Counsel for the appellant that the reasons given on 24/1/2012 do not adversely affect the judgment delivered on 6/1/2012. Learned Counsel for the appellant relied on the latin maxim: ubi jus ibi remedium. Yes, where there is a right the law provides a remedy. What is the appellant's right and what is his remedy in this case? In my view, his right is his constitutional right to appeal against the judgment of the lower Court. His remedy is the exercise of that right. The exercise of that right does not guarantee the success of the appeal or even the hearing and determination of the appeal on the merit. The appeal cannot be heard if it is incompetent.

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Learned Senior Counsel for the Appellant questioned the competence of this Court to raise the issue of non-compliance with the provision of S. 285 (7) and (8) of the Constitution. Both learned Senior Counsel for the 1st and 2nd set of Respondents argued that the issue raised is a constitutional matter and the Court is competent to raise it provided parties are given the opportunity to be heard.

E

The Court hearing a matter, whether as a Court of first instance or an appellate Court has a duty to ensure that the processes by which a party seeks relief before it comply with the relevant provisions of the applicable law. It may raise an issue suo motu provided that if the issue so raised is one on which the matter will be disposed of, learned Counsel for the parties must be heard on it before decision is taken.

F

G

A Court of record must jealously guard the judicial process from being ridiculed or scandalized and for the purpose of achieving a just, equitable and expeditious dispensation of justice. See *Dingyadi v. INEC* (No. 2) (2010) 18 NWLR (Pt. 1224) p.154. **In the quest for justice, the Court can glean through its records and all processes transmitted to it in respect of the appeal to ensure compliance with the law and rules.**

H

It would have been an act of disservice to the adminis-

tration of justice if the Court had closed its eye to the defect in the judgment appealed against and proceed to determine the appeal on its merit. This would have been in conflict with other recent decisions of this Court on S.285 of the Constitution and the conflicting judgments would have made the law uncertain. See SC.141/2011; SC.766/11; SC.267/11; SC.282/2011; SC.356/2011 and SC.35.../2011 (Consolidated) in which judgment was given on 27/1/2012 and SC.14/2012; SC.14A/2012; SC.14B/2012 and SC.14C/2012 (Consolidated) which judgment was delivered on 24/2/2012.

It is the duty of the Court to ensure its own competence and the competence of any matter brought to it for adjudication. One of the elements constituting the competence of a matter before a Court and ipso facto the competence of that Court to hear it is that “the subject matter of the case is within its jurisdiction and there is no feature in the case which prevents the Court from exercising its jurisdiction.” See *Agbati v. the Nigerian Navy* (supra); *Madukolu v. Nkemdilim* (1962) 2 SCNLR 341 at 348. **The defect in the appeal which prevents the Court from exercising its jurisdiction to hear and determine it is the fact that the reasons for the judgment were given outside the 60 days in S.285 (7) of the Constitution. Section 294 (5) of the Constitution (supra) invoked by learned Senior Counsel for the appellant is of no avail in this case. It is a general provision which is not applicable to election matters in which time is of essence and which are governed by the restrictive provisions in S.285 of the Constitution.**

The judgment is a nullity and I so declare. Consequently, the appeal against it is struck out. For the avoidance of doubt and to forestall a rush to the Court for interpretation of, or consequential order arising from, the judgment or both, I hasten to add that the judgment of the Election Petition Tribunal in Imo State delivered on 12th November, 2011 is subsisting. Parties to bear their costs.

ONNOGHEN JSC

I have had the benefit of reading in draft the lead judgment of my learned brother NGWUTA, JSC just delivered.

I agree with his reasoning and conclusion that the judgment of the lower court having been given outside the time allowed in Section 285(7) of the 1999 constitution, as amended, it is liable to be struck out for being incompetent. I therefore order accordingly and consequently strike out the appeal and abide by all the consequential orders made in the said lead judgment including the order on costs. B

It is further ordered that the judgment of the tribunal delivered on the 12th day of November, 2011 is hereby restored and affirmed by me. Appeal struck out.

C

MUHAMMAD JSC

This appeal emanated from the Court of Appeal, Owerri Division (court below) holden at Abuja which affirmed the judgment of the Governorship Election petition of Imo State (the tribunal) holden at Owerri by dismissing the appeal before it. The tribunal, in its decision of 12th day of November, 2011, dismissed the petition of the petitioner and appellant herein, for lacking in merit. That is why the appellant appealed further to this court.

The background facts as contained in the printed record of appeal placed before this court and, according to petitioner's version, are that: the governorship election for the office of the Governor of Imo state took place on the 26th day of April, 2011. In the said governorship election, eighteen (18) political parties fielded and sponsored candidates for the said election. There was a supplementary election on 6th of May, 2011 and on the 7th of May, 2011; the 3rd to 5th respondents officially declared the result of the said elections with the 1st respondent returned as the winner, having scored the majority number of votes.

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Aggrieved with the result of the elections, the petitioner filed its petition before the tribunal on the following grounds:

a) *“that the 1st respondent was not duly elected by the majority of lawful votes cast at the election.*

b) *it was the Petitioner's candidate Chief Ikedi Godson Ohakim that scored majority of the lawful votes cast at the said election held on 26th April, 2011 and at the supplementary election held on 6th May, 2011, if valid (which is not conceded) and ought to be returned by the 3rd to 5th respondents as the winner of the said election.*

H

c) that the purported supplementary election held on the 6th May, 2011 was invalid being in breach of the provisions and principles of the Electoral Act 2010 (as amended) and also contrary to the provisions of the 1999 Constitution of the Federal Republic of Nigeria (as amended). ”

B Facts stated by the petitioner in support of the above grounds are as provided in paragraph 14 of the petitioner. They are as follows:

a) *“Imo State has three Senatorial Districts, 27 Local Government Areas of the State on the 26th April, 2011.*

C *b) Election was supposed to hold in all the Local Government Areas of the state on the 26th April, 2011.*

D *c) section 178(4) of the 1999 Constitution (as amended) and section 25(1) and (8) of the Electoral Act 2010 (as amended) provide that elections to the office of the Governor of a state SHALL be held not earlier than 150 days and not later than 30 days before the expiration of the tenure of the last holder of the office.*

E *d) The 30 days envisaged by the Electoral Act 2010 (as amended) as it relates to Imo state was on the 26th day of April, 2011. The last holder of the office of Governor of Imo State, Chief Ikedi Godson Ohakim will complete his tenure on 28th May, 2011, having been sworn into said office on 29th May, 2007 pursuant to section 180 (2) of the 1999 Constitution (as amended).*

F *e) The petitioner states that at the close of the Imo governorship election of the 26th April, 2011, the scores of the two candidates as garnered, entered in all the polling units, wards, and finally collated at the Local Government where election did not take place on the 26th day of April, 2011 are as set out in Table ‘A’ hereunder.”*

G The petitioner tabulated in Table ‘A’ votes respectively scored by it and the 2nd respondent in the election of 26th April, 2011, as well as the number of Polling Units in five Local Government Areas where election did not take place on 26th April, 2011 totaling 243 polling units - Table ‘B’. By Table ‘A’, the total votes scored by the
H petitioner’s candidate in 26 out of 27 Local Government Areas of the state, except Ngor-Okpalla Local Government where election did not hold is 310,106, while the first respondent scored 305,263 votes. The petitioner pleaded that her candidate scored the majority of lawful votes cast at the election and ought to have been returned.

And that rather than do that, the 3rd - 5th respondents declared the election inconclusive without giving cogent or verifiable reasons. The petitioner contended that the cancellation of the results in Mbaitoli, Ohaji/Egbema and Oguta Local Government Areas by the 3rd - 5th respondents after results were announced at the polling units and ward collation centers was unlawful and ultra vires and contrary to the provision of the Electoral Act, 2010 (as amended). B

The petitioner rejected what she called the 'purported supplementary election' of 6th May, 2011 on the grounds that:-

a) *"The petitioner protested the conduct of the election through a letter forwarded to the 3rd respondent.* C

b) *A suit challenging the holding of the election filed by the 2nd respondent and anor, was pending at the Federal High Court, Abuja which ought to have automatically suspended the conduct of the election pursuant to section 26(1)(4) and (5) of the Electoral Act.* D

c) *The election took place less than 30 days to the expiration of the tenure of the last holder of the office of Governor of Imo State.*

d) *The election of 6th May, 2011 was contrary to the provisions and principles of the Electoral Act, Manual for Election Officials and the Constitution of the Federal Republic of Nigeria and therefore null and void."* E

The petitioner pleaded that election took place in Oguta Local Government Area on 26th April, 2011 except in 40 polling units and in Ohaji/Egbema Local Government Area except in 29 polling units. F With respect to Mbaitoli Local Government, the petitioner pleaded that election took place in all the polling units and results entered in Forms EC8A and EC8B but that the result was cancelled at the Local Government collation in Form EC8C without stating any reason for the action. That copies of the cancelled Form EC8C were given to the petitioner's agent and agents of other political parties at their insistence after the Local Government Collation officer ran a line across the Form EC8C. G

The petitioner contended that only the result of the election H held on 26th April, 2011 are lawful, valid, constitutional and recognizable by law, which election was won by her candidate who polled the majority of lawful votes and secured the required spread. The petitioner prayed the tribunal as follows:

B “a) That it may be determined, and thus declared, that the results of the purported supplementary elections of 6th May, 2011 announced on the 7th May, 2011 and on the basis of which the 1st respondent was declared and returned as the winner of the governorship election in Imo State, is unlawful, null and void same having been conducted 24 days before the expiration of the tenure of the last holder of the office contrary to the express provisions and principles of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and the Electoral Act 2010 (as amended) as well as the manual for Election officials 2011.

C b) That it may be determined and thus declared that the Purported supplementary election of 6th May, 2011 ought not to have been conducted by the 3rd to 5th respondents when the suit No. FHC/A/CS/464/2011 - All Progressive Grand Alliance & Anor V. INEC D filed by the 1st and 2nd respondents on 3rd May, 2011 challenging the propriety of the decision to conduct the said purported supplementary election has not been determined by the court.

E c) That it may be determined and thus ordered that the results votes purportedly cast at the supplementary elections of 6th May, 2011 be cancelled, nullified and invalidated.

F d) That it may be determined and thus declared that by the results of the 26th April, 2011 governorship election in Imo State collated after the said election the petitioner’s candidate scored the majority of lawful votes cast at the said election and ought to be returned as the winner of the said election.

e) A declaration that the petitioner’s candidate having scored the majority of lawful votes cast at the 26th April, 2011 Governorship election in Imo is the winner of the said election.

G f) That it may be determined and thus declared that the non-inclusion of the votes cast in the elections held on 26th April, 2011 in Oguta Local Government Area, Ohaji/Egbema L.G.A. and Mbaitoli Local Government Area in the computation of the final results declared by the 3rd respondent on 7th May, 2011 is unlawful, unconstitutional, null and void, and if son(sic) included and computed in the final results the petitioner and its candidate would have emerged the winner thereof in accordance with the 1999 Constitution of the Federal Republic of Nigeria and the Electoral Act 2010 (as amended).

g) An order withdrawing the Certificate of Return issued to the

1st respondent by the 3rd respondent as he was wrongfully returned as the winner of the said election.

h) An order directing the 3rd respondent to issue Certificate of Return to the petitioner's candidate, Chief Ikedi Godson Ohakim as lawful winner of the 26th April, 2011 governorship election in Imo State."

In their reply to the petition, the 1st and 2nd respondents averred that the 1st respondent was duly elected by the majority of lawful votes cast at the election of 26th April, 2011 and at the supplementary election of 6th May, 2011. They averred that the supplementary election held on 6th May, 2011 was valid, being in accordance with the provision and principle of the Electoral Act, especially section 26(1)(2) (3) and (4) as well as the Constitution of the Federal Republic of Nigeria, That in order to avoid serious breach of the peace election did not hold in Ngor-Okpalla, Mbaitoli, Ohaji/Egbema and Oguta Local Government Areas as well as Orji Ward of Owerri North L.G.A, on 26th April, 2011. The 1st and 2nd respondents pleaded that the Governorship election of 26th April, 2011 was inconclusive thereby necessitating the supplementary election of 6th May, 2011.

They averred that there was no cancellation of results in Mbaitoli, Ohaji/Egbema and Oguta Local Government Areas, by the 3rd - 5th respondents. The 1st and 2nd respondents contended that having failed to challenge the decision of the 3rd - 5th respondents to hold a supplementary election on 6th May, 2011, before a competent court, and having participated in the said election of 6th May, 2011, the petitioner cannot now challenge that decision before this tribunal.

It is also the pleading of the 1st and 2nd respondents that since the Federal High court in suit No. FHC/A/CS/464/2011 has given its ruling in favour of the 3rd respondent to hold a supplementary election which ruling binds the whole world, this tribunal has no jurisdiction to make pronouncement on the issue again.

With respect to Oguta Local Government Area, the 1st and 2nd respondents averred that election did not take place at all in that Local Government either on 26th April, 2011 or on 6th May, 2011 in order to avert serious breach of the peace. After reiterating that the election of 6th May, 2011 was lawful and Constitutional, the 1st

and 2nd respondents urged the tribunal to dismiss the petition in its entirety. This reply was accompanied by a list of 52 witnesses and their written depositions. Written depositions of additional witnesses were also filed by the first and second respondents with the leave of the tribunal.

B The 3rd - 11th respondents (INEC and her staff) also filed a reply contesting both the competence and substance of the petition. They averred that the grounds of the petition are incompetent and/or incapable of being sustained by the facts pleaded in the petition.

C That the petitioner having not participated in the supplementary election of 6th May, 2011, does not have the power to present this petition, just as she cannot found an election petition on the inconclusive election of 26th April, 2011 by virtue of section 137[6] of the Electoral Act and section 285(5) of the Constitution. This set of respondents pleaded that the supplementary election of 26th April, 2011 was a legitimate election and was lawfully conducted in compliance with the Electoral Act, 2010 (as amended). They averred that it was the 1st respondent, who scored the majority of lawful votes cast at both the election of 26th April, 2011, and in the supplementary election held on 6th May, 2011. They further pleaded that the election of 26th April, 2011 was held and result collated only in 23 out of the 27 Local Government Areas of Imo State. That due to reported widespread acts of violence and thuggery in the four Local Government Areas of Mbaitoli, Oguta, Ngor-Okpalla and Ohaji/Egbema plus Orji Ward 1 in Owerri North Local Government Area, the 5th respondent had to declare the election in those areas inconclusive as no results from those areas were collated by the 5th respondent, leading to the conduct of supplementary election on 6th May, 2011.

G Responding to entry No. 19 in Table 'A' of the petition, the 3rd-11th respondents averred that the correct result for Oru West Local Government Area is that the 1st respondent scored 14, 213 votes and not 12,739 as stated therein. They pleaded that entries numbers 6, 20 and 21 in Table 'A' of the petition are false and incorrect as elections in the non-submission of summary of results for those L.G.A by the respective collation officers following widespread violence and thuggery in those areas. They contended that the petitioner's candidate did not win the majority of lawful votes cast both in the election of 26th April, 2011 and in the supplementary election of 6th

May ,2011, and therefore did not qualify to be declared the winner of the election and/or returned. The 3rd - 11th respondents pleaded the summary of the results in Forms ECBC for all the Local Government Areas of the state, except Oguta L.G.A, where election did not hold, as well as the Forms EC8D and EC8E in respect of the election, and urged the tribunal to dismiss the petition. B

In its reply to the response of the 1st and 2nd respondents, the petitioner reiterated that there is no provision in the Constitution (as amended) or in the Electoral Act, 2010, for a supplementary election less than 30 days before the expiration of term of office of the last holder of the office. She maintained that section 26 (1), (2), (3) C and (4) of the Electoral Act is inapplicable in the circumstance in that election took place in Mbaitolu, Ohaji/Egbema and Oguta Local Government Areas with the exception of a few polling units on 26th April, 2011. She averred that in view of suit No. FHC/A/CS/464/ D 2011, the 3rd respondent ought to have suspended its decision to conduct the supplementary election on 6th May, 2011.

The petitioner pleaded that there was no report of violence or serious breach of peace as nobody has been charged to court. Further that the 3rd respondent did not give any cogent or verifiable E reason for not making a declaration after the election of 26th April, 2011. Further, the petitioner filed a reply to the responses of the 3rd - 11th respondents in which she contended that there was no provision for supplementary election either in the Electoral Act or the F Constitution, She averred that allegation of non submission of summary of results by officers of the 3rd respondent is false as no Collation Officer has been arrested or prosecuted by the 3rd - 11th respondents, and that the 1st respondent admitted in suit No. FHC/A/ CS/464/2011 and in National Dailies that the election of 26/4/2011 G was peaceful and devoid of violence. The petitioner joined issues with the entire reply of the 3rd - 11th respondents.

After the close of pleadings and pre-hearing session, the tribunal took a comprehensive look at the evidence laid, before it, evaluated the evidence and came to the conclusion that the petition lacks H merit and was dismissed in its entirety.

At the court below, the issues formulated by the parties were carefully considered and the court below found no merit in the appeal, it dismissed the appeal and affirmed the judgment of the tribu-

nal.

By its amended Notice of Appeal which was deemed filed on the hearing date of this appeal (16/2/12), the appellants set out its grounds of appeal. Issues for determination were formulated by each of the learned senior counsel for the respective parties. Learned senior counsel for the 1st and 2nd respondents filed a Preliminary Objection which he argued in his brief of argument. Reply briefs were filed to the issues raised by each set of the respondents.

At our conference held on Wednesday the 22nd of February, 2012, we discovered that we needed to draw the attention of the parties that the judgment of the court below was delivered on the 6th of January, 2012. Reasons for the judgment were delivered on the 24th day of January, 2012. The provision of section 285(7) and (8) of the Constitution, 1999 (as amended) require the court below to hear and dispose of the appeal within 60 days from the date of the delivery of judgment of the tribunal and that the court in all final appeals from an election tribunal may adopt the practice of first giving its decision and reserving the reasons therefore to a later date.

None of the parties addressed us on that, on the hearing date or in their respective briefs. We considered it pertinent to invite the parties to appear and address us on that issue. Learned Senior counsel for the respective parties did, indeed, come. They did address us on the issue raised. Chief Olanipekun, SAN, for the appellant appreciated the opportunity given to them to address the court on that issue. He submitted that none of the grounds of appeal contained in the Amended Notice of Appeal, nor any of the issues submitted for determination by the appellant has raised anything on the validity of the judgment of the court below vis-a-vis section 285(7) and (8) of the Constitution as amended. In other words, the judicial powers of this court has not been invited to the validity of the judgment of the court below. This case, he maintained further, is distinguishable from the judgment just delivered on appeal No.SC.14/2012; *Malam Abubakar v. Nasamu*. The learned SAN referred this court to its earlier decisions on the issue of delivering judgments but deferring giving of reasons for the judgments to later dates. He cited the case of *Emenike Uwaba v. INEC & ORS*, SC.431/2011 delivered on 6th of December, 2011(unreported); *Cardoso v. Daniel* (1986) 2 SC 491 at 497 - 499. The learned SAN argued further that election matters

are sui generis and the court will not dare go to treat issues not raised by parties as doing so, in this case will mean eclipsing the appellant's Constitutional right of access to court. Submitted further for the appellant is that the issue raised suo motu by this court is not jurisdictional. The learned SAN relied as well, on the Latin maxim of UBI IUS IBI REMEDIUM, as there must be a remedy where right exists. B The learned SAN made several citations including the cases of Oshodi v. Eyifunmi (2000) 7 SC (pt.11) 154, Rossek v. ACB Ltd. (1993) 8 NWLR (Pt.312) 382 at 434 - 435. E-C. He finally cited the case of Ifezue v. Mbadugha (1984) 1 SCNLR 427 where the issue of section 258 of 1979 Constitution (now S. 294(5)) of the 1999 Constitution C was considered by this court. The learned SAN urged this court to distinguish the present appeal from the one on the judgment just delivered in the morning of Friday 24th February, 2012 in SC.14/2012 Abubakar v. Nasamu (unreported). D

In his submission, Chief Akintola, SAN, on behalf of the 1st and 2nd respondents, appreciated the invitation to address the court on what he called as novel issue of the Constitution. The lower court, he said failed to appreciate S.285 (7) and (8) of the Constitution as amended which clearly established the jurisdiction and limitation of the lower court. The learned SAN submitted further that this is a E jurisdictional matter in every material particular. Section 233(2) (e) of the Constitution, he said, gave advance notice to the lower court that it is not the final court on governorship election. Section 285(8) F of the Constitution (as amended) is clear that it is in a final appeal that a court can give judgment viva-voce and give reasons later and final appeals used in the subsection relate to appeals to Supreme Court only as it is governorship election. The Court of Appeal can G only do that on cases of National and State Assemblies election appeals to it where it is the final court. He cited the case of Felix Amadi & Anor v. INEC & ORS, appeal No. SC.276/2011, delivered on 3/2/2012 (unreported). The learned SAN concluded that this court has power under Order R 8 12 (5) of this court's Rules to raise suo motu, any issue whether covered by the grounds of Appeal or not and that H a matter of jurisdiction can be raised suo motu by the court and this court has rightly done so in this appeal. He urged this court to rely on the judgment in appeal No. SC.14/2012 delivered in the morning of 24/02/2012.

Dr. Izinyon, SAN, for the 3rd - 11th respondents appreciates the invitation to them by this court for an address on the issue raised in relation to section 285(7) and (8) of the Constitution as amended. He observed that all the parties have been invited and that once that has been done, the issue to be addressed is fully and rightly before the court and none of the parties is double crossed. The learned SAN submitted that the issue raised by the Court is jurisdictional and substantial. He made reference to the case of SLB Consortium Ltd. v. NNPC (2011) 9 NWLR (Pt.1252) 317 at 332 G-A 335. The issue for address has just been decided today 24/2/12 in Appeal No. SC.14/2012, Abubakar v. Nasamu (unreported). The present section 285(7) and (8) seek to remove the mischief (of delay in litigation) created by previous enactments on same subject matter. He submitted further that as judgment and reasons thereof were not delivered within the 60 days stipulated by the Constitution, the court below lacked jurisdiction as at 24th January, 2012 to deliver same. He urged this court to strike out the appeal. In answer to points of law raised by the respondents, Chief Olanipekun, SAN, submitted that Order 12(5) of this court's Rules does not apply to the present appeal, and that as at 6/1/12 when judgment was delivered by the court below, that was the judgment and the court below had jurisdiction.

I think in order to cut a long journey short, it is my humble belief that birds of same feathers must not only fly together but must be seen flying together. Although, the issue for address raised by this court suo motu has not been captured by any of the parties, particularly by the appellants in their Amended Notices of Appeal, it is beyond dispute that section 285(7) and (8) are enactments of the Constitution. Each and every one of us over here has sworn to uphold the Constitution. Where a party, either by accident or design, decides or neglects to invoke the provisions of the Constitution, it is the bounden duty/responsibility of this court and indeed any other court established by the same Constitution to bring the issue to light, and, bring same to the notice of the parties to the action/appeal and then afford each of them an opportunity to be heard on same. This is what exactly this court has done. There is no doubt as to the authorities cited by the learned SANs for the respective parties. It must however be noted that some of these cases were cited out of context and out of fashion, Time and circumstances differ. The previous enact-

ments i.e. of the Constitution of 1979, etc did not address specifically, the time limitation within which an election tribunal or the court as defined therein, was mandated to deliver its decision. Section 294 of the Constitution is general and applies only to civil/criminal matters. Election matters do not fall within the purview of that section as election matters are specific and are sui generis. The main objective of section 285 of the Constitution is to remedy or remove the mischief (which is delay in election matters) which hitherto created a cogwheel in the steady progress of election matters in litigation. I think it is a very good innovation which is all out to remove question of any delay whether caused by the deliberate act of the parties or by the nonchallance of all other bodies, authorities, including the courts of law, legal representatives (counsel) for the parties etc, I therefore find it difficult to fault this vibrant and revolutionary section of the Constitution. Like my learned brother Ngwuta, JSC, I must hold and apply this provision to its letter.

For the well reasoned judgment of my learned brother Ngwuta, JSC, with which I agree, I hereby strike out this appeal as having been caught up by the provision of section 285(7) and (8) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). I abide by other orders including one on costs.

ADEKEYE JSC

I was privileged to read before now the judgment just delivered by my learned brother N.S. Ngwuta JSC. The appellant before this court presented a petition at the governorship Election Petition Tribunal Imo State sitting at Owerri complaining about the conduct of the governorship election of Imo State held on the 26th April 2011. The two issues formulated for determination in the Petition No. EPT/IM/Gov/04/2011 before the tribunal were -

1. Whether the supplementary election of the 6th of May 2011 was held in compliance with the provisions of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and the Electoral Act 2010 (as amended).

2. Whether the petitioner's candidate scored the majority of lawful votes at the election of 26th April 2011 and/or the supplementary election of 6th May 2011.

The tribunal in the judgment delivered on the 12th of November 2011 held that the petition lacked merit and same was accordingly dismissed. Being dissatisfied with the decision of the lower tribunal, the appellant filed a notice of appeal which had twenty-four grounds to the Court of Appeal. Two issues were also settled for determination. In the decision of the 6th of January 2012, the Court of Appeal dismissed the preliminary objection and the appeal and reserved the reasons to a later date. The court gave its reasons in the follow up judgment delivered on the 24th of January 2012. The appellant lodged a further appeal in this court against that judgment. Briefs were filed and exchanged. At the hearing of the appeal on the 16th of February 2012, parties adopted their respective briefs and judgment was reserved to the 2nd of March 2012. On gleaning through the records of appeal in preparation for the Panel Conference fixed for 21/2/2012, the court discovered that this appeal had lapsed and consequently this court lacked the jurisdiction to adjudicate on it. Hearing Notices were issued to learned senior counsel in the appeal to invite them to address the court on this crucial issue. The court re-convened on the 24th of February, 2012 for address of learned senior counsel. Chief Olanipekun learned senior counsel for the appellants, submitted emphatically that the Amended Notice and grounds of appeal and issues for determination of the appellants did not invite this court to exercise its judicial power to adjudicate on any issue relating to Section 285 (7) and 285 (8) of the 1999 Constitution (as amended) to set aside this appeal on the ground of nullity. This appeal is quite distinguishable from the previous judgments of this court like SC.14/2012 Abubakar v. Nasamu delivered on 24/2/12 and Emenike Owanta v. INEC SC.431/2011 delivered on 6/12/11. The learned senior counsel referred to the case of Cardoso v. Daniel (1986) 2 NWLR (pt.20) pg.1 at the various pages which reflected the pronouncements of the Justices of the Supreme Court JJSC Coker, Aniagolu, Karibi-Whyte and Oputa. He submitted that appeal No.SC.14/2012 Abdullahi & anor v. Usman Nasamu & ors delivered on 24/2/12 is not applicable to this appeal.

Where an issue has not been specifically submitted to court for determination, it is not jurisdictional. Where a party has a right of appeal, there must be a remedy ubi jus ibi Remedium. The court must lay emphasis on doing substantial justice in a particular case.

The appeal was determined on 6/1/12. There is an enrolment of order of court in respect of the appeal at page 1346-7 Vol. 6 of the Record of Appeal.

The learned senior counsel submitted that a judgment of a court is valid until set aside by a court of competent jurisdiction. The judgment of the lower court delivered on 6/1/12 is valid. He cited the case of *Ifezue v. Madugha* (1984) SCNLR pg.427. The appellant will be denied justice if the appeal is not determined on the merit. He urged the court to hear and determine the appeal on merit. B

The learned senior counsel referred to cases like *Oshodi v. Eyifunmi* (2000) 13 NWLR (pt. 684) pg. 298, *Rossek v. A.C.B. Ltd.* (1993) 8 NWLR (pt.312) pg.382 at pg.434-435, *Unity Bank Plc & Anor v. Bonani* (2008) 7 NWLR (pt.1036) pg.372 at pg.401, *Bello v. A-G Oyo State* (1986) 5NWLR (pt. 5). C

Order 8 Rule 12 (5) must be read from order 8 Rule 12 (1). Chief Akintola, learned senior counsel for the 1st and 2nd respondents submitted that Section 285 subsections 7 and 8 raise jurisdictional issue in all its ramifications. The section identifies the power of the lower court and the limitation. By virtue of Section 233 (2) (e) of the 1999 Constitution (as amended), the Court of Appeal is not the final court in a governorship election. It is only in final appeals that a court can give judgment and reserve reasons to a later date. Final appeals in governorship matters relate to the Supreme Court only end in the senatorial petitions to the Court of Appeal. The learned senior counsel cited the case *Felix Amadi v. INEC & ors.* SC.476/2011 delivered on 3/2/12. A court has the power to raise a constitutional issue suo motu by virtue of Rule 12 (5) of Supreme Court Rules but parties must be invited to address the court on it. A constitutional provision must be enforced strictly. D
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Dr. Izinyon, learned senior counsel submitted that when all counsel in a matter are invited to address the court on an issue, by so doing, it has become an issue in that matter. The issue raised by court is jurisdictional, substantial and also constitutional. The learned senior counsel made reference to the judgment of this court in *SLB Consortium v. NNPC* (2011) 9 NWLR (pt.1252) pg.317 at 332 and 335 and in the judgment SC.14.ABC/2012 in which the court clearly interpreted Section 285 of the Constitution (as amended). Any interpretation placed on that section must reflect the mischief which the H

legislature intends to eradicate. The use of the, in the subsections is as a modifier or a qualifier. The court has jurisdiction to hear and dispose of an appeal within 60 days - any steps in the appeal taken outside the 60 days is done without jurisdiction. Justice is done according to law.

B Contrary to the submission of the learned senior counsel for the appellant, any legal question relating to the interpretation of the Constitution on the issue of the creation or establishment of Election Tribunals and their jurisdiction is jurisdictional in nature. The Constitution which set up the election tribunals cloak the tribunals with their powers and jurisdiction of adjudication.

C The jurisdiction of any court or tribunal is confined, limited and circumscribed by the statute creating it. Jurisdiction is visualized as the very basis on which any court or tribunal tries a case. It is the D lifeline of all trials. Any trial without jurisdiction is a nullity. The question of jurisdiction being radically fundamental, it can be raised at any stage of a proceeding

A question of jurisdiction must be properly raised before the court may rightly entertain it. In that wise, it can be raised at any E stage of a case, both at the trial and on appeal by any of the parties, it can even be raised orally. The court can raise it by itself suo motu where the question involves a substantial point of law, substantive and procedural and no further evidence needs be adduced which would affect the decision. The court will invite the parties for an address and points taken to prevent an obvious miscarriage of justice. F The Supreme Court followed this step on the 24th of February 2012 when it invited the learned senior counsel for the parties to address it on substantial point of law, as it was apparent that this court may lack G jurisdiction on this appeal after all.

Petrojessica Enterprises Ltd. v. Leventis Technical Co. Ltd. (1992) 5 NWLR (pt.244) pg.675, Madukolu v. Nkemdilim (1962) 2 SCNLR 341, Oloriode v. Oyebi (1984) 1 SCNLR pg.390, Ezemo v. Oyakhire (1985) 1 NWLR (pt.2) pg.195, Odiase v. Agho (1972) 1 All NLR H (pt.1) pg.1790, Sofekun v. Akinyemi (1980) 5-7 SC1. Oshatoba v. Olujtan (2000) 5 NWLR (pt.655) pg.159.

A court must have both jurisdiction and competence to be properly seised of a cause or matter. Jurisdiction in that sense means the legal capacity, power or authority vested in it by the constitution

or statute creating the court.

In this appeal, the trial tribunal delivered its judgment in the appellant's petition on the 12th of November 2011. The lower court delivered its decision against the judgment of the trial tribunal on 6th January 2012 and deferred its reasons for the judgment to the 27th of January 2012. The lower court delivered its reasons for the judgment on the 24th of January 2012, 73 days from the date the trial tribunal delivered its judgment. B

There is no doubt about it that a judgment of a court is valid until set aside by a court of competent jurisdiction. The contention of the respondents was that there was no valid judgment of the Court of Appeal to set aside the judgment of the trial tribunal. The judgment of the trial tribunal delivered on 12th November 2011 is still valid and subsisting. C

It is convenient at this stage to reproduce the provisions of D section 285 (7) and (8) of the 1999 Constitution (as amended).

Section 285 (7)

"An appeal from a decision of an election tribunal or court of appeal in an election matter shall be heard and disposed of within 60 days from the date of the delivery of judgment of the tribunal or court of appeal." E

Section 285 (8)

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

The words used in the foregoing provisions of the constitution are clear and unambiguous. Where the words of the constitution are clear, plain and unambiguous, there is no need to give them any other meaning than their ordinary, natural and grammatical construction would permit, unless that would lead to absurdity or some repugnancy or inconsistency with the rest of the constitution. In such a situation, a court of law is without jurisdiction or power to import into the meaning thereof what it does not say. Nothing is to be added or taken from the statute unless there are adequate grounds to justify the inference that the legislation intended something which it omitted to express. The provisions of Section 285 (7) and 285 (8) of the 1999 constitution are clear and unambiguous, they must be given their plain and ordinary meaning. *Awolowo v. Shagari* (1979) 6-9 H

SC pg.51.

Fawehinmi v. I.G.P. (2000) 7 NWLR (pt.665) pg.481, A-G Bendel State v. A-G Federation (1982) 3 NCLR 1, Bronik Motors Ltd. v. Wema Bank Ltd. (1983) 6SC pg.158, Egolum v. Obasanjo (1999) 5 SCNJ pg.92. The two subsections are meant to be read together. Any discretion judge has in the implementation of Section 285 subsections (7) and (8) must be exercised within the time frame of sixty days. The words all final appeals in Section 285 (8) relate to senatorial elections in the case of the Court of Appeal and Presidential and Governorship appeals for the Supreme Court. The Court of Appeal cannot adopt Section 285 (8) in respect of appeals in the governorship elections being an intermediate court and not taking steps timeously may affect the right of appeal of any party aggrieved. Though the decision of the court below of 6/1/12 was delivered within time, there were no reasons given for the conclusion. A complete judgment must set out the nature of the action before the court, the issue in controversy, review the cases for the parties, consider the relevant laws raised and applicable, make specific findings of fact and conclusion and give reasons for arriving at the decision. A judgment and the reasons for same go together. There is no valid judgment without reasons for same. Under Section 285 (7) the judgment and the reasons must be delivered within the 60 days an appeal is supposed to be heard and disposed of. The reasons of the Court of Appeal lapsed by 13 days hence they were given without jurisdiction. Any judgment however well written if given without jurisdiction is no judgment at all. An action or anything done after the expiration of the prescribed period is a nullity.

Where the limitation of time is imposed in a constitution or statute unless they make provision for extension of time, the courts cannot extend time. The judgment of the lower court delivered on 6/1/12 and the reasons given on 24/1/12 are both nullified. They are void and without legal effect or consequence. They do not confer any legal right or obligation.

Consequently, there is no valid appeal before this court emanating from the judgments of the lower court. A judgment given without jurisdiction is no longer alive and no appeal can lie or be heard on it. Section 285 (7) is a limitation law. An action instituted after the expiration of the prescribed period is said to be statute-barred. A

legal right to enforce an action or to exercise the right of appeal is not a perpetual right but a right limited by statute. Unless the right is exercised within the period prescribed, it cannot properly or validly be instituted thereafter.

This court had the advantage to interpret Section 285 (7) and (8) of the 1999 Constitution (as amended) in its recent decisions like SC.14/2012; SC.14A/2012; SC.14B/2012 and SC.14C/2012 Abubakar v. Nasamu (unreported consolidated appeals delivered on 24/2/2012). SC.476/2011 Felix Amadi v. INEC (unreported decision of this court delivered on 3/2/2012.)

This court cannot overlook this defect in the judgment appealed against and proceed to determine the appeal on its merit.

Jurisdiction is a matter of substantive law, No litigant can confer jurisdiction on the court where the constitution or statute or any provision of the common law says that the court does not have jurisdiction. The court cannot also assume jurisdiction in the interest of justice. A court cannot give itself jurisdiction by misconstruing a statute. *African Newspapers of Nigeria v. Federal Republic of Nigeria* (1985) 2 NWLR (pt.6) pg.137. This court cannot invoke section 294 (5) of the 1999 constitution to save these provisions of section 285 (7) and (g) of the 1999 Constitution (as amended) as absence of jurisdiction is irreparable in law.

With fuller reasons given by my learned brother N.S. Ngwuta JSC in the lead judgment, I agree that the judgment of the lower court is a nullity. The only subsisting judgment is that of the trial tribunal. I adopt the consequential orders as mine.

PETER-ODILI JSC

This appeal is against the judgment of the Appeal, Owerri Judicial Division, sitting at Abuja dated 6th January, 2012 whereat the Court of Appeal summarily dismissed appellant's appeal before it. Against the said judgment, appellant filed a Notice of Appeal dated 16th January, 2012 containing 12 grounds of appeal. Earlier appellant had filed a notice of appeal dated 9th January, 2012 containing 10 grounds of appeal. The full reasons for the judgment of Court of Appeal were given on 24th January, 2012, on receipt of which reasons appellant amended its notice and grounds of appeal with an

additional five grounds.

The appeal raised fundamental, constitutional and jurisdictional issues, relating to amongst others the powers and vires of the 3rd - 11th respondents to cancel and/or postpone an election which had already been conducted and in respect of which results had been
B duly entered in the appropriate electoral forms.

A background of the facts which culminated in this appeal before the Supreme Court would be stated below as follows:

STATEMENT OF FACTS

C It seems to me necessary to present the facts as stated by the appellant thus: Appellant, as petitioner before the trial tribunal filed a petition against the return of the 1st respondent as the Governor of Imo State in the Governorship Election conducted on 26th April, 2011. It also challenged the cancellation of the election of 26th April,
D 2011 in the disputed Local Government Areas, as well as the challenge to the validity of the conduct of the supplementary election of 26th May, 2011. The two sets of respondents, that is, the 1st and 2nd respondents on one hand, and the 3rd - 11th respondents on the other hand filed their respective replies to the petition. Petitioner/
E appellant in return, filed a reply to each of the replies, and pleadings of course. See pages 1 - 190 of the additional records or the reply of the 1st-2nd respondent; pages 144 - 176 of volume 1 of the record for the reply of the 3rd-11th respondent, pages 144-176 of volume
F 1 for the reply of the appellant to the reply of the 3rd - 11 respondents.

Imo State has three senatorial Districts, 27 Local Government Areas, 305 Wards and 3,523 Polling Units. The Governorship election was fixed for and held on the 26th April, 2011. On the said date,
G election held in all the Local Government Areas except one Ngor Okpala Local Government Area. Election did not also take place in some wards and polling units in three other Local Government Areas. The total number of polling units in which election did not take place in the 27 Local Government Areas was 243. The details are
H contained in Table B pleaded in the petition. At the close of the election on the 26th day of April, 2011, the results from the 26 Local Government Areas where election held showed that candidate of the appellant scored 310, 106 votes while the 1st and 2nd respondents scored 305, 263 votes. Indeed, the figures for the appellant's candi-

dates were/is higher based on recalculation of figures in tendered Forms EC8Bs respectively as can be seen on pages 890, 912-919, 997-999, 1000-1007 variously numbered and marked as Exhibits. The appellant's candidate thus, won the election by scoring the majority of lawful votes cast. He also scored 25% of the votes cast in 22 of the Local Government Areas in the state. B

Rather than declare the candidate of the appellant as the winner of the election, the 5th respondent on 27/4/2011 chose to cancel the election. The 3rd respondent fixed what it called supplementary election for 6th May, 2011 in Ngor Okpala, Oguta, Ohaji/Egbema and Mbaitolu Local Government Areas of the State and Orji Ward of Owerri North Local Government Area. Following this decision which was announced by the 3rd respondent on the 29th April, 2011, the 1st and 2nd respondents on the 3rd May, 2011 sued the 3rd respondent before the Federal High Court, Abuja Division in suit No. FHC/ A/CS/464/2011, claiming several reliefs. C D

The 3rd respondent nevertheless went ahead and conducted the purported supplementary election in Ngor Okopala, Ohaji/Egbema and Mbaitolu Local Government Areas and in Orji ward of Owerri North Local Government Area. No elections took place in Oguta Local Government on the 6th May, 2011. In the purported supplementary elections of the 6th May, 2011, the 3rd respondent did not hold election in the 8 polling units in Oru East Local Government Area and in the 18 polling units in Owerri west Local Government/ area where no election held on the 26th April, 2011. However, much later on 17th September, 2011, the 3rd respondent held a re-run election in the said 18 polling units in respect of the House of Assembly election held also on the same 26th April, 2011. On the basis of the results generated from Mbaitolu, Ngor Okpala and Ohaji/Egbema Local Governments from the election held on the 26th April, 2011 in the other 23 Local Government Areas, the 3rd respondent declared the 1st respondent the winner of the said election. Simply put, appellant's petition questioned the said declaration on three grounds. First, the election of the 26th April, 2011 was conclusive and was won by the candidate of the appellant. Secondly, that there was absolutely no necessity for the election of the 6th May, 2011 and thirdly that the election of 6th May, 2011 was unconstitutional having been conducted in breach of Section 178(2) of the Constitution (the con- E F G H

stitution) and Section 25(8) of the Electoral Act, 2010 (the Electoral Act).

At the lower court, the 3rd - 11th respondents, whose action and/or inaction was/were and still are being primarily challenged made some interesting submissions and/or admissions which, ordinarily would have resolved the entire matter in favour of the appellant, had the lower court painstakingly weighed and considered the said submissions qua admissions. In paragraphs 4.18 and 4.19 of their brief appearing on pages 1297 - 1298 of the record, it was submitted, amongst others, that:

(i) Election in the four local governments was canceled by the 3rd - 11th respondents.

(ii) Upon cancellation, the respondents rescheduled supplementary election for 6th May, 2011.

(iii) The said election was cancelled because it was marred by serious incidence (sic) of thuggery and violence.

(iv) It was further cancelled as a result of the narrow margin of 4,842 votes against an outstanding number of more than 45,133 registered voters who had not voted.

(v) Pursuant to (iv) supra, 3rd respondent could not declare the person reading at the election of 26th April, 2011 as the winner.

Upon application by the appellant, the 3rd - 11th respondent duly issued to it certified true copies of the results, declarations and entries of votes in the appropriate and designated statutory forms for the said local governments, showing that election was held, votes counted and duly recorded as can be seen in Exhibit ZA2 - W14 series which are, the various forms EX8As, EC8Bs in respect of different units and wards of the affected local governments. 1st and 2nd respondents, immediately the 3rd- 11th respondents announced that they would hold the supplementary election on 6th May, 2011 approached Federal High Court in Suit No. FHC/A/CS/464/2011, challenging the constitutionality and legality of the said act and contending that the said respondents have no power to so do, bearing in mind the clear wordings of Section 178(2) of the constitution.

Neither of the two lower courts considered the fact that INEC usurped the jurisdiction vested by the constitution and the Electoral Act in the election tribunal/court by unilaterally cancelling the results of the election in the affected local governments in the way and man-

ner it did.

In Suit No.FHC/OW/CS/137/2011 instituted against the 3rd respondent at the Federal High Court, Owerri by a PDP candidate affected by the illegal cancellation of the House of Assembly Election in Oguta Local Government contemporaneously held with that of the Governorship Election on 26th April, 2011, whereat the same voters registers and voters cards etc. were used, INEC admitted on oath that elections were duly held in 7 out of 11 wards of the local government and results duly collated. B

The version of the facts as put forward by the respondents are stated hereunder: C

STATEMENT OF FACTS

The appellant herein was the appellant at the court of Appeal and the petitioner at the lower tribunal, against the declaration of the 1st and 2nd respondents as the winners of the election into the office of the Governor of Imo State held on 26th April, 2011, which was inconclusive due to widespread violence, but was concluded on 6th May, 2011 with supplementary elections in 4 (four) Local Government Areas of Mbaitolu, Ngor Okpala, Ohaji/Egbema and Oguta Local Government Areas of Imo State. D
E

However, election did not take place in Oguta Local Government on the 6th of May, 2011 due to incidence of violence which had earlier prevented election from being held on 26th April, 2011 in the Local Government, as well as the aforementioned 4 (four) Local Government Areas, during the 26th April, 2011 Governorship elections in Imo State. F

The said election petition was dated 26th May, 2011 but was filed on 27th May, 2011 and same is contained on pages 1 - 143 of Vol. 1 of the record. The 3rd - 11th respondents filed their reply to the petition on 15th June, 2011 and same is contained on pages 144 - 176 of Vol. 1 of the record while the 1st and 2nd respondents filed their reply to the petition on 30th June, 2011 and same is contained on pages 30 - 189 of the volume called "additional record." G

In compliance with the Electoral Act, 2010 (as amended), the petitioner/appellant filed reply to both the 3rd - 11th respondents, reply and 1st and 2nd respondent's reply on 20th June, 2011 and 12th July, 2011 respectively. H

Pre-hearing session in the petition was closed on 5th Septem-

ber, 2011 the Honourable Tribunal issued a Pre-hearing Session report which guided the subsequent course of the proceedings in the petition. In the said report, the tribunal formulated two issues for determination, to wit:

(i) Whether the supplementary election of 6th May, 2011 was held in compliance with, the provisions of the constitution of the Federal Republic of Nigeria, 1999 (as amended) and the Electoral Act, 2010 (as amended).

(ii) Whether the petitioner's candidate scored the majority of lawful votes at the election of 26th April, 2011, and/or the supplementary election of 6th May, 2011.

The petitioner opened its case on 20th September, 2011 and in the course of trying to prove its petition, called a total of 33 witnesses and tendered from the bar, results in forms EC8A, ES8B and EC8C which according to it were given to its agents at the polling units. Wards and Local Government Levels by officers of the 3rd respondent. The petitioner also tendered some Certified True Copies of Forms EC8A EC8B, EC8C, EC8D, EC8E as well as other documents like processes in suit No. FHC/ABJ/CS/464/2011, Newspaper Publications, Video Tapes, Compact Discs and Letters.

The petitioner in its pleadings and evidence adduced at the hearing of the petition established that it did not participate in the supplementary election of May, 2011. This fact was admitted by the 3rd-11th respondents whose duty it is to conduct election and declare results.

The petitioner pleaded in Paragraph 14e, Table A of its petition, the alleged scores of its candidate and the 1st respondent generated at the election of 26th April, 2011, in all the local Government Areas of the State, except Ngor-Okpala L.G.A. It further claimed that its candidate scored 310,106 votes while the 1st respondent 305,263 votes, which was disputed by the two, sets of respondent, namely 1st & 2nd respondents and 3rd - 11th respondents. They tendered Exhibit "AE" which is form EC8C which was neither challenged nor disputed by the petitioner/appellant.

In joining issues with the petitioner on those averments, the 1st & 2nd respondents pleaded in paragraph 18 of their reply to the petition that *"the results as set in Table A in paragraph 14e of the petition is not correct, and shall dispute the figures set out therein at*

the hearing of this petition.”The 3rd-11th respondents also joined issues with the petitioner on the said averment by stating in paragraph 11 (a) of their reply to the petition: *“Table A in the petition is substantially correct except for items 6, 19, 20 and 27 therein which are false and incorrect”*.

The entries in 6, 19, 20 & 21 relate to Mbaitolu, Oru West, Oguta and Ohaji/Egbema Local Government Areas respectively. The two sets of respondents, having joined issues with the petitioner on its claims in respect of the above Local Government Areas, it behoves on the petitioner to call witnesses from those disputed L.G.A and tender documents from there to prove the scores it claimed to have obtained from those local government areas. In fact, it was the 1st and 2nd respondents that tendered the correct results of the elections in the affected Local Government Areas of Imo State through the 3rd - 11th respondents’ witness (DW4) and the said results were marked as Exhibits WD; YD; ZD and AE at pages 1036 - 1339 of vol. 1 of the Record.

However, rather than showing where and when election took place in those disputed Local Government Areas, the petitioner’s witnesses confirmed substantially that no election took place in the affected local government areas due to variety of violent reasons. For instance, in Ohaji/Egbema Local Government Areas, the petitioner pleaded that it polled the majority of the votes by scoring 28,799 votes while APGA scored only 6,008 votes. In proof of this claim, the petitioner called 9 (nine) witnesses i.e. PW 10 - PW17. However, PW10 - PW17 testified to the effect that did not hold in the Units and Wards represented by each of them, as a result of what the witnesses referred to as disruption by the other party agents. For specific individual testimonies of each of PW 10 - P17, pages 66 - 81 and 83 of Vol. 1 of the record which the said pages 944 - 945 of Vol. 1 of the records and Exhibits RC1 - RC17 as well as those witnesses on oath and pages 1088 - 1089 of the records.

Again, in Oguta Local Government Area, the petitioner claimed that it was only in 40 polling units that election did not hold on 26th April, 2011. The 3rd - 11th respondent admitted that election did not hold in those 40 polling units but further contended that in the remaining polling units, election was marred by violence and other vices, so the results were cancelled, as it was considered not to have

taken place in accordance with the law. The 1st & 2nd respondents however, denied the holding of election in any polling unit of Oguta Local Government Area either on 26th April, 2011 or 6th May, 2011.

In proving its claim that election held in the remaining polling units of Oguta Local Government Area except the 40, the petitioner
 B called 6(six) witnesses who testified as PW 26 -PW 31. Unfortunately for the petitioner, all the 6 (six) witnesses testified both in their evidence-in - chief and under cross examination that no election took place in their polling units and wards either on 26th April, 2011 or
 C PW 26 - PW 31, See page 972 - 978 and pages 84 -96 of the Vol. 1 of the Record where the witnesses adopted their statements on oath as well as pages 1086 -1087 of the Records. Also, PW 9 on this same Local Government stated thus:

D "I have seen Exhibits YA - YA6. I agree that no agent signed. No agent signed where there were no elections. Figures have however been recorded. I have also seen Exhibits Y8 and Y10. They were also not signed by any agent. I have also seen Exhibits WA, WA2, WA4 and WA6. They were also not signed by any party agent..."

E In respect of Oru West, Local Government (Entry No.19 in Table a in the Petition), the petitioner pleaded that the 2nd respondent scored 12, 739 votes in Oru West Local Government Area in the election of 26th April, 2011. While the 1st and 2nd respondents disputed the figures in paragraph 18 of their reply to the petition as
 F stated above, the 3rd - 11th respondent, charged with the duty of conducting elections and declaring results specifically pleaded that the 2nd respondent scored 14, 313 votes and not 12,739 votes.

However, the petitioner failed to discharge the burden of proof
 G placed on it by refusing to give evidence and tendering no document touching on the said assertion which was disputed. Only the 1st and 2nd respondents tendered Exhibits AE covering all the Local Governments in Imo State through DW4 as shown at pages 1038 -1039 of Vol. 1 of the Records. In respect of Mbaitolu Local Government
 H Area, the petitioner pleaded that election there concluded on 26th April, 2011, but that the Local Government Collation Officer refused to summarise the result, rather he ran his pen across the Form EC8C. In proof of this averment, petitioner's counsel tendered from the Bar, Exhibits A - Z2, comprising of polling Units, Wards and Local

Government results in Forms EC8A, EC8B, & EC8C.

While the petitioner tendered a total of 195 duplication original copies of form EC8A, 12 duplicate original copies of Form EC8B and 1 (one) duplicate original copy of Form EC8C in evidence, only 4 (four) copies of form EC8A were identified by PW 6, PW&, PW8, PW 32. The petitioner failed to call any witness, especially those polling agents whom it claimed received the remaining 191 copies of Form EC8A. For the 12 copies of form EC8B, only 3 (three) were identified by PW 3, PW4 & PW5 in respect of Ezinihite, Umunwoha/ Umuagwu and Ubomiri Wards.

No witness testified in respect of 9 (nine) of the 12 copies of Form EC8B, meaning that no witness was called in respect of 9 of the 12 wards in Mbaitolu Local Government Area, constituting 3/4 of all the Wards in the Local Government. See page 945 of Vol. 1 of the Records which clearly depicted the unreliability of the documents so tendered by PW9. The said documents constituted less than 1/4 of the wards in the Local Governments. PW3 in his statement on oath stated that he was a ward collation agent and not a polling agent at any unit. He also stated in paragraph 7 of his statement on oath that he entered the scores of the candidates by himself and signed the form EC8B. He neither identified any result nor tendered one as Exhibits. PW4 too whose statement on oath is page 42 of vol. 1 of the records was also a ward Agent and not a polling agent. He merely adopted his statement on oath without identifying any result or tendered any as Exhibits. PW5 was also not a polling agent as shown at page 48 of Vol. 1 of the records.

The petitioner simply dumped all the documents it tendered on the tribunal without calling witness who should link the documents to the case of the petitioner and explain the purport of those documents, so that the respondents could have the opportunity of cross examining them.

In respect of the issue concerning the validity of the supplementary election of 6th May 2011, the facts relevant in this appear are as follows:

(a) The tenure of the last Governor of Imo state, Chief Ikedi Godson expired on 28th May, 2011 having been sworn in on 29th May, 2007.

(b) In compliance -with the provisions of S.178(1) & (2) of the

1999 constitution of the Federal Republic of Nigeria and S.26(1) - (5) of the Electoral Act, 2011 (as amended), the 3rd respondent appointed the 26th day of April, 2011 for the holding of an election into the office of Governor of Imo State.

(c) The said election held as scheduled in 23 of the 27 Local Government Areas of Imo State.

(d) Violence and other electoral vices disrupted elections in Mbaitolu, Ngor-Okpara, Ohaji/Egbema and - Oguta Local Government Areas, as well as Orji Ward 1, in Owerri North Local Government Area on the said 26th April, 2011.

(e) Imminent violence and thuggery could not allow for the proper holding of any election in accordance with the law in Oguta Local Government Area on the said 26th April, 2011.

(f) Consequently, the 5th respondent, considering the voting strength of the said Local Government Areas and Wards where election could not take place as a result of violence and other electoral vices' and considering the difference between scores of the two (2) leading candidates, decided not to disenfranchise the electorates from the four (4) affected Local Government Areas.

(g) The said election of 26th April, 2011 was therefore declared inconclusive, no return was made and supplementary election was rescheduled to take place on 6th May, 2011 as if same took place on 26th April, 2011 in line with s. 26 (2) of the (as amended), Electoral Act, 2011 by the 3rd respondent.

The above decision of the 3rd respondent was not challenged in any court of competent jurisdiction by the petitioner or any person acting on its behalf until the supplementary election was conducted on 6th May, 2011.

(i) on 6th May, 2011, all the political parties that contested the 26th April, 2011 election also presented their candidates and party agents at the polling centers for the said election, even though the petitioner' in this petition denied participating in the said supplementary election.

(j) After the conclusion of voting exercise in Mbaitolu, Ohaji/Egbema and Ngor Okpla Local Government Areas as well as Orji ward in Owerri North Local Government Area, at the rescheduled supplementary election of 6th May, 2011, in which acts of violence still did not allow for the holding of election in Oguta Local Govern-

ment Area, the 3rd - 5th respondents declared the 1st respondent winner of the entire election having polled the majority of lawful votes and met the required spread and consequently returned him elected.

(k) It was this declaration and return of the 1st respondent as the elected Governor of Imo State by the 3rd respondent on 7th May, 2011 that prompted the appellant herein, B as the petitioner to challenge the validity of the supplementary election of 6th May, 2011 at the lower tribunal leading to the appeal to the court of Appeal.

The petitioner/appellant on 14th November, 2011, filed a C Notice of Appeal against the judgment of the lower tribunal wherein it raised 24 grounds from which 2 issues were distilled in its brief of argument dated 29th November, 2011, which was deemed properly filed and served on 7th December, 2011. The 2 issues as raised by the appellant were basically the same 2 issues formulated by the lower D Tribunal in the Pre-Hearing Session Report of 7th September, 2011.

The 1st and 2nd respondents filed their brief of argument on 9th December 2011, wherein they adopted the two issues raised by the appellant. The 3rd - 11th respondent also adopted the two issues raised by appellant. Upon receipt of the briefs of arguments from the E 2 sets of respondents' the appellant filed its reply to the 1st and 2nd respondents brief of argument on 7th December, 2011 and 3rd - 11th respondents brief of argument on 23rd December, 2011.

On the 16th day of February, 2012 date of hearing, Chief F Olanipekun Wole senior Advocate for the appellant adopted their brief filed on 27/1/12 and a reply brief to the 1st and 2nd respondents brief filed on the 7/2/12. Also adopted by him was a reply brief to 3rd - 11th respondents brief filed on 9/2/2012. In the appellants, brief were formulated three issues for determina- G tion viz:

1. Considering the facts and circumstances of this case, vis-a-vis the relevant constitutional and statutory provisions whether or not the lower court was not in grave error in holding that the 3rd - 11th respondents properly cancelled the Governorship election in the affected local governments on 26th April, 2011 and/ or purported to have postponed same to 6th May, 2011 H

2. Having regard to the clear and unambiguous constitutional provisions relating to time limit for the holding of a Governorship

particularly erection, section 178(2) of the constitution and section 2s(g) of the Electoral Act, 2010 whether the lower court was not in serious error in affirming the supplementary election held by the 3rd respondent in the disputed local governments on 6th May, 2011.

3. Juxtaposing the pleadings of parties with the admissible evidence led, whether the lower court did not arrive at a wrong conclusion and decision in dismissing the appeal before it.

Chief Adeniyi Akintola SAN on behalf of the 1st and 2nd respondents adopted their brief filed on 3/2/12. In it were argued the preliminary objection of the 1st and 2nd respondent which learned counsel said it did not succeed, the court should utilize the two issues distilled by them for consideration of the appeal. These issues are as stated hereunder:

1. Whether the lower court correctly construed the relevant provisions of the constitution of the Federal Republic of Nigeria, 1999 (as amended). The Electoral Act and INEC Guidelines in affirming the decision of the trial tribunal that the election of 26th April, 2011 were inconclusive, and that the supplementary election held on 6th May, 2011 to conclude the Imo State gubernatorial election was not unconstitutional or in breach of relevant provisions of the Electoral Act.

2. Whether the lower court arrived at a wrong conclusion and decision in dismissing before it.

Dr. Alex Izinyon SAN on behalf of the 3rd - 11 adopted respondents their brief settled by Hassan M. Liman SAN. In the brief were couched two issues for determination which are as follows:

1. Whether in view of available facts with respect to the nature of the election of governorship of Imo state conducted on the 26th April, 2011, the Court of Appeal was right in holding that the 3rd - 11th respondent rightly declared the said election as inconclusive.

2. Whether the court of Appeal was right in affirming that the supplementary election of 6th May, 2011 was held in compliance with the provisions of the constitution of the Federal Republic of Nigeria 1999 (as amended), the Electoral Act 2010 (as amended) and other enabling laws.

Arguments on the preliminary objection were made and countered by learned counsel for the appellant. The appeal proper was argued by counsel from their side of the divide and along the lines of

their respective briefs of arguments and the appeal was adjourned for judgment to be delivered on the 2/3/12. However in the course of the consideration of the submissions of counsel, it was discovered by the justices that an area which was not canvassed either in the preliminary objection or the appeal had reared its head from the record. It was so crucial and fundamental that it could not be ignored. That aspect being whether or not there was a live appeal before this court taking the provisions of section 285(7) and (8) in view. It became imperative that being an issue raised suo motu by the court, it would not be safe to go forth with it without giving a chance to counsel to address the court on the point' This is to enable the court reach its decision from an informed knowledge proceeding from a deeper insight than would otherwise exist. B C

On the 24th day of February therefore the court was empanelled hear from to learned counsel who had been given notice to appear and address upon this new situation. D

Learned counsel for the appellants, Chief Wole Olanipekun SAN submitted that they filed a Notice of Appeal with 20 grounds none of which had any nexus or otherwise with the validity of the judgment of the court of Appeal in relation to section 285(7) and (g) of the constitution' That this means that the judicial power of this court had not been invoked to nullify the judgment of the lower court on the basis of being a nullity' That as at the time of the hearing of the appeal, this case is distinct and distinguished from the judgment just delivered that morning in SC.14/12, SC.14A/12, SC.14B/12, and SC.14C/12 in Mallam Abubakar v. Usman Nasamu & Anor. He referred to the case of Emenike Uwanta v. INEC & Ors in SC.431/11 delivered by this court on 6th December, 2011. For the appellants was further contended that the matter of whether the court of Appeal can deliver a judgment and give reasons later and in this instance beyond 60 days is not an issue before this court having not been raised by either the appellant or the respondents and so the issue cannot be used here and now to vitiate the judgment of the court of Appeal. He cited Cardoso v. Daniel (1986) 2 NWLR (Pt.20) 1. He stated on that whether or not the judgment of the court of Appeal was a nullity is not before this court. That election matters are sui generis that is why the supreme court would not go outside what was before it especially where as in this matter the constitutional rights E F G H

of the appellant to be heard has to be respected and this is not an issue of jurisdiction. He cited: *Oshodin v. Eyifunmi* (200) 13 NELR (Pt.684) 298; *Ibrahim v. Ojomo* (2004) 4 NELR (Pt.862) 89 at 104; *Unity Bank Plc. & Anor v. Bouari* (2008) 2 - 3 SC (Pt.II) 1 at 40 - 41 (2008) 7 NWLR (Pt.1086) 372 at 401; *Babatunde v. Olatunji* (2000) B 2 NWLR (Pt.646) 557 at 5678; *Oba Aladegbemi v. Oba Fasendade* (1988) 3 NWLR (Pt.81) 129; *Rossek v. A.C.B. Ltd* (1993) 8 NWLR (Pt.312) 382 at 434 – 435. Chief Olanipekun SAN said there I the need to apply Section 294(5) of the Constitution. He cited *Ifezue v. Mbadugha* (1994) I SCNL 427, *Bello v. A. G. Oyo State* (1986) 5 C NWLR (Pt.45) 828.

Responding, chief Adeniyi Akintola SAN said section 285(7) and (8) of the constitution as amended have clearly established the jurisdictional powers of the court of Appeal and the limitation thereto.

D That this matter is jurisdictional in every material particular and that section 233(2) (e) of the constitution gave an advance notice to the court of Appeal that it is not the final court in governorship appeals. That it is clear that it is oily in a final appeal that a court can give judgment viva voce and give reasons later. That section 285(7) and E (8) are for final appeals to the supreme court as the court of Appeal is not the final court in governorship election disputes, That in this instance the reasons were given 74 days after the judgment of the tribunal instead of 60 days to deliver judgment. He referred to the case of *Felix Amadi v. INEC & 2 Ors* delivered by this court on 3rd F February 2012 which underscore the statute of limitation status of section 285(7) and (8). Chief Akintola SAN of counsel went on to state that order 8 Rule 12(5), Rules of court this court can raise any issue suo motu but give the parties right to be heard on the new issue G raised by court. That the cases cited by appellant's counsel are not applicable.

Chief Izinyon SAN for the 3rd - 11th respondents said the issue raised suo motu by this court and which it has called upon counsel to address it on is jurisdictional. He cited *SLB Consortium v. NNPC* (2011) 9 NWLR (Pt.1252) 317 at 332 -335. That the judgment of this court in SC.14/12 consolidated delivered this morning has settled the matter effectively. That section 285(7) had used the word “disposed” within 60 days then it means concluded with finality. He referred to the authorities in the List of Authorities filed; sec-

tions 233(2)(2)(i) and 235 of the Constitution. That the judgment of the Court of appeal should be struck out.

Replying on point of law, Chief Olanipekun SAN said Order 8 Rule 12(5) Rule Rules of the supreme court cited by chief Akintola SAN for 1st & 2nd respondent rerate to amendment of processes etc and not on the raising of regal points suo motu by court. That the Rule cited by chief Akintola was inapplicable. B

He concluded by saying that if the court below had jurisdiction at 6/1/12 then as that jurisdiction was not ousted when it judgment albeit without reasons. C

The fact of the matter here and now is that the area of the question to be answered is indeed very narrow. That has to do with the validity or otherwise of the judgment of the court of Appeal which is before this court on appeal. Briefly stated, the judgment was delivered on 6th January, 2012 dismissing the appeal against the trial tribunal's judgment without reasons which were slated for later and on the 24th of January, 2012 the reasons were delivered. Computing the period from the material dates being date of the judgment of the tribunal to the date of the delivery of the reasons for judgment would come to a period of 74 days. The pertinent question at follows as a matter of course is if the 60 days allowed between the same period have been complied with and if not, what would be the effect on the validity of that judgment which is now on appeal before this court. E

To clear this cobweb I shall refer to section 246 constitution of the 1999 as amended which provides as follows: F

"246(1) An appeal to the Court of Appeal shall lie as of right from -

(b) decisions of the National and state Houses of Assembly Election Tribunals; and

(c) decisions of the Governorship Election Tribunals, on any question as to whether -

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

(ii) any person has been validly elected to the office of a Governor or Deputy Governor." H

The provision above stated the process of appears from the

Tribunal to the court of Appeal and in respect to the matter in hand, unlike where the appeal is on the seats for the state Assemblies or National Assembly where the court of Appeal is the final destination, the instant appeal is still in transition to the Supreme court. See s.285 (8) of the constitution. This translates to the court of Appeal being an intermediate station on route to the port of disembarkation.

The above position had been provided in the earlier provision under section 233(1) of the constitution as amended. I shall quote as follows:

“Section 233(1): The Supreme court shall have jurisdiction, to the exclusion of any other court of law in Nigeria, to hear and determine appeals from the Court of Appeal

(2) An appeal shall lie from decisions of the court of Appeal to the supreme court as of right in the following cases.

(e) decisions on any question -

(iv) whether any person has been validly elected to the office of the Governor or Deputy Governor under this Constitution.”

Then comes into play the provisions of Section 285(7) of the Constitution which stipulates thus:

“285(7): An appeal from a decision Election of an 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 of court of Appeal”

The key words are “shall” and “disposed of, which denote a mandatory scenario brooking of no discretion. It is then underscored by the use of the word “disposed of”. Utilising the definition from Blacks Law Dictionary 6th Edition page 433, the meaning is “To exercise finally”. The oxford Advance Dictionary in its own version of

“Disposed of” describes the words to be “To get rid of something you can no longer keep” chambers 21st century Dictionary’s view at page 385 is, “To get rid of”. From these dictionary meanings it is glaringly clear that what is to be disposed has in a way hit the rock and can go nowhere else. That is to say the legal dispute or process has reached

its final destination and is at the grande finale. The implication of all this is that the court of Appeal in this instance is not that forum for the grande finale and so Section 285 (7) of the constitution for purposes of a governorship election petition is not available to it and it does not have the luxury and I shall say the discretion to deliver its judg-

ment and set a future date for its reasons. Therefore when the court of Appeal delivered on 6th January 2012 without the accompanying reasons it did so without the necessary vires and the full effect is that there was no judgment. This court has said so very recently and does not hesitate emphasizing it here and now. See SC.14/12012, SC.14A/2012, SC.14B/2012, SC.14C/2012 - Mallam Abubakar Abubakar & Ors v. People Democratic Party (PDP) & Ors. which judgment was delivered on the 24/2/12. B

What I have said above is also covered by Section 285(8) of the Constitution of the Federal Republic of Nigeria 1999 as amended which stipulates thus:- C

“285 (8): The court in all final appears from an Election Tribunal or court may adopt first the practice of giving its decision and reserving the reasons therefore to a later date”.

It was suggested by Chief Wole Olanipekun that there is need D for the application of Section 294 (1) and (5) of the constitution 1999 as amended’ which would have the effect of sustaining the validity or life of the appeal. That section and relevant subsections provide as follows:-

“294 (1) Every court established constitution under this shall deliver its decision in writing not later than ninety days after the conclusion of evidence and final addresses and furnish all parties to the cause or matter determined with duly authenticated copies of the decision within seven days of the deliver thereof. E

(5) The decision of a court shall not be set aside or treated as a nullity solely on the ground of non-compliance with the provisions of subsection (1) of this section, unless the court exercising jurisdiction by way of appeal or review of that decision is satisfied that the party complaining has suffered a miscarriage of justice by reason thereof.” F

The argument of learned senior Advocate is a pill too difficult to swallow as Section 294 of the constitution is a provision of general application and alien in a specialized area as an erection dispute which provisions of the constitution and I dare say the Electoral Act have not left anything to chance as to time being of essence and every fact of the dispute including appeals from one court to the other fitted into a compartment made for it leaving no space for any extras as Section 294 of the Constitution is. H

As if that constraint was not fight enough, which there is the added glue is the fact that the court of Appeal in governorship disputes as the one at hand is not the final court. Therefore there is no light at the end of the tunnel with which section 294 may be brought into the present discourse.

- B These are constitutional provisions which this court is not entitled to rewrite, amend, add to or subtract from. They are what they are and stated in such plain, unambiguous and clear language have to be given effect to however harsh or unsavory the result may be.
- C This is because the legislature has written its intention clearly in print and having not given room to any guess work as to what they really wanted done, compliance to those words is the guiding light.

D Situating the above to the matter on ground, it can be seen that there has not been a judgment as known to law rather it is purported judgment which has not qualified for the real thing and there is no basis for going into an appeal that does not exist. That being the case this appeal is struck out since it is an appeal against nothing. The judgment of the Trial Tribunal being the survivor remains subsisting and the orders thereby remain valid.

- E From the foregoing and the fuller reasons of my learned brother, Nwali Sylvester Ngwuta JSC I strike out this appeal. I abide consequential orders made in the lead judgment.

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