

**SUPREME COURT OF NIGERIA**  
2ND MARCH, 2012. SC. 18/2012  
**CORAM: - W. S. N. ONNOGHEN, I. T. MUHAMMAD, O. O.**  
**ADEKEYE, S. N. NGWUTA, M. U. PETER-ODILI, JJSC**

1. CHIEF GREAT OVEDJE OGBORU  
2. DEMOCRATIC PEOPLES PARTY ..... APPELLANTS  
AND  
1. DR. EMMANUEL EWETAN  
UDUAGHAN  
2. PEOPLES DEMOCRATIC PARTY ..... RESPONDENTS  
3. INDEPENDENT NATIONAL  
ELECTORAL COMMISSION

---

APPEALS - Ground - Format - Complaint on - Propriety - MILAD Benue State v. Ulegede - Such complaint is mere technicality - Where it is not based on contents of the grounds (H1)

APPEALS - Notices of appeal - Multiple filing - Justification - Appellant can file multiple notices of appeal - More so when rules of court do not prohibit same (H2)

WORDS & PHRASES - Constitution - “Decision” - Definition - Decision means determination of court or tribunal - Which includes judgment or recommendation (H3)

WORDS & PHRASES - Court - “Judgment” - Definition - Judgment is the official and authentic decision of court - Upon rights of parties in an action (H4)

CRIMINAL PROCEDURE - “Judgment” - Meaning - Judgment refers to conviction and sentence - Pronounced upon finding of guilt (H5)

JUDGMENTS - Valid judgment - Ingredients - Judgment should set out and review action presented by parties - In relation to applicable laws - As well as gives reasons for conclusions reached (H6)

**1352** Ogboru v. Uduaghan (2012) 3 KLR (pt. 309) 1351; (2012)

COURTS - Judgments - Reasons - Need for - Court must give reasons for its decision - In order not to give room to arbitrariness (H7)

ELECTION PETITIONS - Appeals - Right of appeal - 1999 Constitution s. 246(c) - Aggrieved person can appeal against - Decision of governorship election tribunal (H8)

ELECTION PETITIONS - Courts - Appeals - Final judgment - Meaning - Such judgment disposes of rights of parties - And puts an end to the action (H9)

ELECTION PETITIONS - Appeals - National Assembly election tribunal - Appeals arising from the tribunal - Terminates at Court of Appeal (H10)

ELECTION PETITIONS - Governorship election tribunal - Court of Appeal - Judgment - Reasons for - 1999 Constitution s. 285(7) - Mandates the court to deliver its judgment with reasons - Within 60 days (H11)

### ***FACTS***

1st appellant and 1<sup>st</sup> respondent were candidates that contested the Governorship election in Delta State on 26<sup>th</sup> April 2011. After the election, 3<sup>rd</sup> respondent declared 1<sup>st</sup> respondent as the winner of the election. Appellants were dissatisfied. Hence, they filed petition at the State's Governorship Election Petition Tribunal, holden at Asaba. Appellants pleaded only a ground of the petition, which is section 138(1) (c) of Electoral Act 2010 (as amended). However, in their pleadings, appellants pleaded series of criminal allegations and few paragraphs on noncompliance with the provision of the Electoral Act and the manual of the election. The main relief sought by appellants was for a declaration that 1st appellant should be returned as duly elected Governor of the State, having polled the highest number of votes cast at the election.

Respondents objected on the lack of cause of action and lack of jurisdiction of the Tribunal to entertain the petition. In its judgment on 11<sup>th</sup> November 2011, the Tribunal upheld the election of 1<sup>st</sup> respondent and dismissed the petition. Being dissatisfied, appellants

appealed to the Court of Appeal, Benin City. Respondents equally filed notices of cross-appeal. The court dismissed the appeal on 6<sup>th</sup> January 2012, while it gave reasons for same on 27<sup>th</sup> January 2012. Aggrieved further, appellants filed two notices of appeal at Supreme Court. Each respondent filed a Notice of Preliminary Objection against the competence of appellants' two Notices of Appeal, competence of appellants' brief and that the court below lacked jurisdiction to deliver reasons for its decision after sixty (60) days contrary to 1999 Constitution section 285(7).

**HELD** (Unanimously striking out the appeal per **MUHAMMAD JSC**)

***APPEALS - Ground - Format - Complaint on - Propriety***

1. It appears clear to me that the main points raised in the preliminary objections by the 1st and 2nd respondents appear to be on same subject matter, that is, the competence of some of the grounds/particulars of the grounds of appeal and some issues formulated by the appellant. I have had a look at the grounds of appeal and the issues attacked. I have gone through the submissions made in the matter and come to the conclusion that the attack on the grounds and their particulars was largely based on the format and not the substance of the appeal. I think I must be guided on this issue by what this court stated in the case of the **MILITARY ADMINISTRATOR OF BENUE STATE VS. ULEGEDE** (2001) 17 NWLR (Part 741) 193 at page 212 - 213, per Ayoola, JSC, that:

*"Where the parties to an appeal and the court are not misled by the contents of a ground of appeal, complaint about its form becomes a technicality which does not occasion a miscarriage of justice and is inconsequential."*

On the issues for determination, it is the law and practice that where the complaint is not that the issues do not flow from the grounds of appeal or that the issues proliferate, an appellate court accepts them to be valid and will tolerate its ill-drafting in order to ensure that justice is done to the parties. I accordingly overrule the preliminary objections of the 1st and 2nd respondents. (pp. 1360 G/1361 H)

***Notices of appeal - Multiple filing - Justification***

2. On the multiplicity of Notices of Appeal, I go along the submission

made by learned SAN for the appellants in his replies to the preliminary objections (particularly to that of the 1st respondent) that in the absence of the elements of an abuse of process the combination of the notices aforesaid is not an abuse of process. I find support in several decisions of this court that an appellant can file two [multiple] notices of appeal, more so, when our court Rules do not prohibit that.

On the hearing date of this appeal, learned senior counsel for the appellant moved his application, which was granted for the consolidation of the two notices of appeal. This is all with a view to allowing the appellant to exercise his constitutional right of appeal, which is the only way, in our adversarial system, wherein the appellant, as required by the constitution and our Rules of court, is obligated to file a Notice or notices of appeal. I think that is a right legal step taken by the appellant in order to save his appeal. (p. 1361 C)

### ***Constitution - "Decision" - Definition***

3. The 1999 Constitution [as amended] has dropped the definition given to the word "*decision*" by the former Constitution. The Electoral Act 2010 [as amended] however, has re-enacted the definition given to the word by the 1999 Constitution and it states:

*"Decision, means in relation to court or tribunal, any determination of that court or tribunal and includes a judgment, decree, conviction, sentence, order or recommendation"*

The above meaning, in my view, is so elastic to cover interlocutory and final decisions. (p. 1365 G)

### ***Court - "Judgment" - Definition***

4. And without being unnecessarily pedantic, a judgment, as defined ordinarily, refers to the official and authentic decision of a court of law upon the respective rights and claims of the parties to an action or suit therein, litigated and submitted for the court's determination. In the case law, however, a judgment is that binding, authentic, official, judicial determination of the court in respect of the claim and action or suit before it. (p. 1366 A)

### ***CRIMINAL PROCEDURE - "Judgment" - Meaning***

5. In the Criminal Procedure Code [CPC], judgment is referred to as

the entire reasoning culminating in the finding of guilt, the conviction and pronouncement of the punishment which is the sentence. It is not merely the conclusion of the trial judge. (p. 1366 D)

***JUDGMENTS - Valid judgment - Ingredients***

6. It has been repeatedly pronounced in several decided authorities B that a judgment which is good is that one which:

[a] sets out the nature of the action before the court and the issue[s] in controversy;

[b] reviews the cases presented by the parties;

[c] considers the relevant laws raised and applicable to the C case

[d] gives reasons for arriving at those conclusions. (p. 1366 E)

***COURTS - Judgments - Reasons - Need for***

7. It has been stated in ABACHA V. FAWEHINMI [2002] FWLR [part D 4] 568 that, the substance of judgment of a court is embodied in its RATIO DECIDENDI or ration [s] in the case, that is, the reason or reasons for the decision [s] as against mere passing remarks. There is therefore, the need for a court particularly one whose decision is E subject to appeal, to always give reasons why it exercises its discretion in a particular way, if only because every such exercise of its discretion is subject to review.

It is thus, a general requirement even for a tribunal charged with the F performance of judicial functions. This becomes more important where appeals lie from its decision to a higher court or tribunal. Even without the likelihood of appeal, it makes for open and even-handed justice for reasons to be given. To decide without giving reasons leaves G room for arbitrariness and leaves the parties to grope in the darkness as to how the decision of the tribunal/court is arrived at. If judgments were to be delivered without supporting reasons, it will be an invitation to arbitrariness, a rule merely tossing the coin and likely to result in judicial anarchy. (p. 1366 H)

***ELECTION PETITIONS - Appeals - Right of appeal***

8. Section 246[c] of the Constitution 1999 [as amended] has conferred the right of appeal on an aggrieved person from the decision of the Governorship Tribunal on any question as to whether:

H

[i]...

[ii] any person has been validly elected to the office of a Governor or Deputy Governor. (p. 1367 E)

***Courts - Appeals - Final judgment - Meaning***

- B 9. Now, the slight problem that has been posed as per my observation by sub-paragraph 8 of section 285 of the Constitution is the phrase, “*in all final appeals*”. Final appeals from the tribunal to the Court of Appeal to my understanding, can be equated to a final decision as against interlocutory. Several decided authorities have distinguished a final judgment to be one which puts an end to the action declaring that that plaintiff has or has not entitled himself to the remedy he sued for, so that nothing remains to be done except to execute the judgment. It has disposed of the rights of the parties thereto. That is the final bus stop for that court as far as that case, issue, or matter is concerned. Nothing further can be done as there is no avenue for appeal. (p. 1368 F)

***ELECTION PETITIONS - Appeals***

- E 10. This set of cases affects matters on the election to State/National Assemblies. In this respect therefore, it is my humble view that all final appeals on such matters terminate at the Court of Appeal. (p. 1369 A)

F ***Governorship election tribunal - Court of Appeal - Judgment***

- G 11. Thus, a Court of Appeal sitting on appeal on a Governorship election from an Election tribunal, which now serves as an intermediate court [and not final], can only give its decision within time stipulated, along with reasons thereof. It has no power to defer giving reasons to a later date as both the judgment and its reason thereof have to be delivered at once within the stipulated time frame.

- H In the instant appeal which hearing is being objected, it is clear that the trial tribunal delivered its judgment on the 11th of November, 2011. The Court of Appeal delivered its judgment with its reasoning on the 27th of January, 2012. A simple arithmetic will land us to find that there is from the 11th of November, 2011, to 27th of January, 2012, a period of about 72 days.

The provision of section 285 [7] stipulates that:

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

The appeal to the Court of Appeal emanated from the decision of the tribunal which was delivered on 11th November, 2011. The expiry date of 60 days from the day that decision was delivered [11/11/2011] would be the 10th day of January, 2012, within which both the judgment and reasons thereof must be delivered. There is no way one can separate decision/judgment from the reasons justifying the decision/judgment.

Therefore, as the reasons for the judgment of the court below were delivered on the 27th of January, 2012, outside the 60 days limited by the Constitution, there is no valid judgment worthy of pursuing on appeal. Accordingly, I declare the judgment of the court below delivered on the 6th of January, 2012, including its reasoning delivered on the 27th of January, 2012 as null and void. It amounts to a nullity. (p. 1369 A)

### **REPRESENTATION**

O. M. Sagay [SAN], with Dr. J. A. Nwobike (SAN), N. I. Ichekor, Prof. J. N. Mbadugha, R. Emukpoeruo, Uzo Onwukwe, T. S. Awhaha, V. O. Odjemu, C. S. Jokpogho, C. Oniyere and Ikhide Ehiguelua for the appellants, for the Appellant.

Chief Wole Olanipekun (SAN), with Alex Izinyon (SAN) and Ken Mozie (SAN) for the 1st respondent.

A. Adenipekun (SAN), with J. Ikomi Esq., and Ayo Azala for the 2nd respondent.

Onyechi Ikpeazu (SAN), with H. M. Liman, A. Raji, Chidi Muolokwu and F. Ekpenyong for the 3rd respondent.

### **CASES REFERRED TO**

MILAD Benue State vs. Ulegede (2001) 17 NWLR (Part 741) 193

Abba-Tukur vs. Government of Gongola State (1988) All NLR 42

Agbenelo vs. UBN Nig. Ltd (2007) 7 NWLR (pt. 666) 534

Saraki vs. Kotoye (1992) 9 NWLR (Pt. 264) 165

NDIC vs. Federal Mortgage Bank of Nig (1997) 2 NWLR (pt. 490)

746

- Osafire vs. Odi (1990) 3 NWLR (pt. 137) 130  
Oredoyin vs. Arowolo (1989) 4 NWLR (pt. 117) 595  
Ejelikwu vs. State (1993) 7 NWLR (pt. 307) 562  
Imogheme vs. Aloewe (1995) 7 NWLR (pt. 409) 581  
Sanusi vs. Ameyogun (1992) 4 NWLR (pt. 237) 527  
B Abacha vs. Fawehinmi (2002) FWLR (pt. 4) 568  
Ekwunife vs. Wayne West Africa Ltd (1989) 5 NWLR (pt. 122) 425  
Williams vs. Voluntary Funds Society (1982) 1-2 SC 145  
A-G Lagos State vs. Dosumu (1989) 3 NWLR (pt. 111) 552  
C Obmiami Brick & Stone Nig. Ltd. vs. A.C.B (1992) NWLR (Pt. 229) 260

### **STATUTES REFERRED TO**

- Constitution of Federal Republic of Nigeria 1999 (as amended), ss.  
D 232, 233, 246(c), 283(8), 285(7)(8) and 294(2)  
Supreme Court Act, s. 26

### **LEAD JUDGMENT BY MUHAMMAD JSC**

- This is an appeal against the decision of the Court of Appeal,  
E Benin, Court below delivered on 5th January, 2012, wherein the court below dismissed the appeal of the Appellants. The reason for the judgment of the court below is in the supplementary record before this court.

- F The Appellants filed two Notices of Appeals, one dated 6th of January, 2012 and the other one dated 18th January, 2012. Both Notices of Appeals were argued by the Appellants in their briefs of argument.

- G The appellants' main reason for the appeal was because the court below delivered its judgment on 5th January, 2012 and reserved its reason to a later date, which was subsequently delivered on the 27th day of January, 2012.

- H The background facts of the appeal as contained in the printed record of appeal are that the 1st appellant was the candidate of the 2nd appellant in the 26th April, 2011 Gubernatorial Election in Delta State. He lost the election in which the 1st respondent, who contested the same election into the same office under the 2nd respondent, was declared by the 3rd respondent as the person who scored the majority of lawful votes, declared as validly elected and returned



as Governor of Delta State.

The Appellants were dissatisfied with the decision especially the return of the 1st respondent as Governor. On 18th May, 2011, they filed a petition in the Registry of the Governorship Election Tribunal, holden at Asaba, Delta State [the tribunal] in which they prayed that the 1st respondent allegedly having not scored the majority of lawful votes in the Governorship Election of 26th April, 2011, in Delta State, was not validly elected and ought not to have been declared and returned as Governor. B

The Appellants pleaded only a ground of the petition, which is section 138(1) (c) that is “*that the Respondent was not duly elected by majority of lawful votes cast at the election*”. However, in the pleading, the Appellants pleaded series of criminal allegations and a few paragraphs on alleged non-compliance with the provision of the Electoral Act and the manual of the election. C D

The main reliefs of the appellants were for a declaration that the 1st appellant ought to have been returned and should be returned as duly elected Governor of Delta State, having polled the highest number of votes cast at the election and not less than one quarter of all the votes in each of at least two thirds of all the Local Government Area in Delta State, where election were duly conducted. E The implication of this is that the 1st appellant did not score one quarter of all votes cast in each of at least two thirds of all the Local Government Areas in Delta state as required by section 179 of the Constitution, on the face of the pleadings, the petition ought not to succeed by the appellants. F

The Respondents took objections on the lack of cause of action and the lack of jurisdiction by the Tribunal to entertain the petition. Issues were joined in the respective pleadings of all the parties. G The respondents who denied the allegations of the appellants and maintained that elections into the Governor’s seat of Delta State were validly held in all the areas against which the appellants directed their petition. All the parties have called their witnesses either in proof of the averments in the petition or in rebuttal of same. Documents were also variously tendered and admitted in evidence as Exhibits. H After parties have closed their respective cases, written addresses were filed, exchanged and adopted on 2nd of November, 2011.

In its judgment, the Tribunal found that the appellants were

unable to prove criminal allegations, even by their own admission as required by law. However, relying on the doctrine of severance of pleadings, the Tribunal found that the appellants proved lack of due process in some units in Delta State and nullified those units, but still held after deductions of nullified votes, that the 1st respondent scored  
B majority of lawful votes.

The appellants appealed to the court below against the judgment, while the three respondents also filed Notices of Cross Appeals. Briefs of argument were filed by all the parties after consideration of which the court below gave its judgment, dismissing the appeal and allowing the cross-Appeals. On 27th January, 2012, the  
C court below gave its reason for the judgment.

Each of the respondents filed a Notice of Preliminary Objection against the competence of the appellants two Notices of Appeal; competence of the appellant's brief and that the court below lacked  
D jurisdiction to deliver reasons for its decision after sixty (60) days as stipulated by the constitution.

On the hearing date of this appeal, learned senior counsel for the appellants, Mr. Sagay, who had the leave of court for Dr. Nwobike,  
E SAN to conduct the proceedings, moved his motion for an order consolidating the hearing and determination of the two (2) Notices of appeal filed. This order was granted as prayed.

After having carefully examined the Notices of the Preliminary  
F Objections and the issues raised in the appeal, it appears to me that both the preliminary objections and the appeal are based, primarily, on almost the same thing that is competence of the appeal and whether the court below had jurisdiction to deliver its reasons for judgment outside the sixty (60) days granted by the constitution within  
G which to decide the appeal. I will therefore, proceed to consider together the Preliminary objections of the 1st and 2nd respondents and I shall consider the 3rd respondent's preliminary objection later.

***It appears clear to me that the main points raised in the preliminary objections by the 1st and 2nd respondents appear to be on same subject matter, that is, the competence of some of the grounds/particulars of the grounds of appeal and some issues formulated by the appellant. I have had a look at the grounds of appeal and the issues attacked. I have gone through the submissions made in the matter and come to the***  
H

**conclusion that the attack on the grounds and their particulars was largely based on the format and not the substance of the appeal. I think I must be guided on this issue by what this court stated in the case of the MILITARY ADMINISTRATOR OF BENUE STATE VS. ULEGEDE (2001) 17 NWLR (Part 741) 193 at page 212 - 213, per Ayoola, JSC, that:**

*“Where the parties to an appeal and the court are not misled by the contents of a ground of appeal, complaint about its form becomes a technicality which does not occasion a miscarriage of justice and is inconsequential.”*

**On the multiplicity of Notices of Appeal, I go along the submission made by learned SAN for the appellants in his replies to the preliminary objections (particularly to that of the 1st respondent) that in the absence of the elements of an abuse of process the combination of the notices aforesaid is not an abuse of process. I find support in several decisions of this court that an appellant can file two [multiple] notices of appeal, more so, when our court Rules do not prohibit that. See: ABBA-TUKUR VS. GOVERNMENT OF GONGOLA STATE (1988) ALL NLR 42 at page 49. In fact, Obaseki, JSC, was of the view, with which I agree, that:**

*“All the notices combined have been in exercise of a right of appeal in the cause matter. They are in exercise of one right of appeal. They may have stated different grounds which if permissible in law, gives validity and competency to the notice. Where several notices of appeal have been validly filed, I do not see any thing preventing an application for leave to consolidate them into one or for the withdrawal of all except one.”*

**On the hearing date of this appeal, learned senior counsel for the appellant moved his application, which was granted for the consolidation of the two notices of appeal. This is all with a view to allowing the appellant to exercise his constitutional right of appeal, which is the only way, in our adversarial system, wherein the appellant, as required by the constitution and our Rules of court, is obligated to file a Notice or notices of appeal. I think that is a right legal step taken by the appellant in order to save his appeal.**

**On the issues for determination, it is the law and prac-**

***tice that where the complaint is not that the issues do not flow from the grounds of appeal or that the issues proliferate, an appellate court accepts them to be valid and will tolerate its ill-drafting in order to ensure that justice is done to the parties. I accordingly overrule the preliminary objections of the***  
**B 1st and 2nd respondents.**

On the objection raised by the 3rd respondent, it is pertinent to set out in full the said objection which reads as follows:

1. Based on the appellant's contention that the Court of Appeal lacked jurisdiction to deliver reasons for its decision after 60 days as the appeal against the decision had been entered at the Supreme Court, this appeal is incompetent.

2. This appeal constitutes an abuse of process for the reason that the appellants contention in this appeal are essentially the same as the contention in the Notice of Appeal filed by the appellants on a 6th and 18th January, 2012 respectively.

3. Based on the contention of the appellants that the Court of Appeal was bound to render the reasons for the decision along with its determination of the appeal and that the decision was therefore in breach of the constitution, the appeal from the decision of the Election Tribunal was not heard and disposed of within 60 days of the delivery of the judgment of the tribunal, and therefore, not lapsed.

Learned SAN for the 3rd respondent's challenge on the notices of appeal, the grounds of appeal; their particulars and the issues, must suffer the same fate as befallen the 1st and 2nd objectors on same. That portion of the objection is more of technicality than on the substance of the appeal. That portion of the preliminary objection is hereby overruled.

On the 2nd segment of his objection, the learned SAN for the 3rd respondent made submissions in his brief to the effect that having regard to the submissions made by the learned senior counsel for the appellants at page 9 paragraph 5 - 14 of his brief of argument on the provision of section 285(7) and (8) of the constitution, [1999] as altered, that section 283(8) 285(8) of the constitution will be an exception rather than the rule which will only apply to all final appeals from an Election Tribunal will not apply to a Court of Appeal sitting over a Governorship election petition appeal. The SAN for the 3rd respondent stated that the foregoing clearly may be compelling. More

compelling, however, is the logical effect of the argument. That effect is that for the reason that the Court of Appeal did not give the reason for the decision within the period of sixty days from the date of delivery of the judgment of the tribunal, it did not dispose of the appeal within the stipulated period. It then follows that the appeal lapsed not having been disposed of within that restricted time. Learned SAN for the 3rd respondent argued further that the term 'MAY' in the section ought not to be read as an option available to all the Courts for the reason that it was specifically fashioned to apply to all final appeals. He agrees with the appellants that non final decision is only valid when the court gives its decision along with the reasons for such decision. Based on that, he contended, the appeal lodged against the decision of the tribunal lapsed as neither the parties nor the court had the vires to extend the constitutionally prescribed limitation period.

Learned SAN cited and relied on the recent decisions of this court in Appeals NO. SC.272/2011, SC.276/2011; Peoples Democratic Party (PDP) VS. Congress For Progressive Change (CPC) delivered on the 31st of October, 2011. He urged this court to dismiss the appeal.

In his reply brief [starting from page 7] the learned SAN for the appellants argued that the submission of learned Senior counsel for the 3rd respondent on the 60 days limitation placed by the Constitution pursuant to the provision of section 285(7), is only fanciful without any touch of law. Learned senior counsel for the appellants conceded that there is no dispute that on the 5th of January, 2012, the court below delivered its decision/judgment in the matter but went ahead to reserve the reasons for the said decision. Learned SAN submitted further and against the submission of the 3rd respondent that an appeal can be against the inaction of the court below. He referred to the case of BRAWAL SHIPPING LIMITED VS. F. I. NWADIKE CO. LTD. (2000) 1 NWLR (Part 678) 357 at 403. Learned SAN for the appellant submitted further that the 3rd respondent's argument on the invalidity of the court below judgment as it was not given within the constitutionally prescribed period is untenable because it is not the contention of the appellants that the judgment of the court below of 5th January, 2012 is nonexistent. And that the appellants only gave constitutional reasons why the decision cannot

stand including the so called reasons for the judgment given on the 27th of January, 2012. That as the 3rd respondent has already agreed with the appellants on the constitutional issue, it does not lie in its mouth to beat a detour, by giving a strained implication of the judgment of the court below. Learned SAN submitted that when the Court of Appeal has shirked its responsibility the Supreme Court will be in a tight position to act in the interest of justice and decide the appeal as if it was originally lodged therein, He cited section 26 of the Supreme Court Act. Learned SAN for the appellants contended that the so-called reasons for the judgment delivered by the court below on the 27th of January, 2012 [not the decision/judgment of 5th of January, 2012] is therefore null and void, a complete nullity having been given 18 days outside the 60 days limit prescribed by section 285(7) of the 1999 Constitution. He cited and relied on this court's decisions given on the 28th of January, 2011 in SC. 426/2011, at pages 9-10 of the judgment; SC.41/2011: SC.766/2011; SC.267/2011; SC.282/2011; SC.365/2011 and SC.357/2011 delivered on the 27th of January, 2011; SC.272/2011 and SC.276/2011 delivered on the 31st of October, 2011. The learned SAN for the appellants submitted further that the decision given by the court below on the 5th of January, 2012, but bereft of any reason(s) showing how the court arrived at the same is perverse and liable to be set aside. He cited *AGBENELO VS. UBN NIG. LTD* [2007] 7 NWLR [part 666] page 534 at 547 D - E. Further submissions by the learned SAN for the appellants are that in a situation where paragraph 1 of the Practice Direction [Election Appeals to the Supreme Court] No. 33 of 2011, FRN Official Gazette vol. 98, limits 14 days for the appellants to file appeal against the court below's decision of 5th of January, 2012, yet the reasons for that decision were deferred to 27th of January, 2012 when the appellants would have been out of time to appeal outside the 14 days period, is most prejudicial to appellants. The case of *Congress for Progressive Change vs. Independent National Electoral Commission* [supra] was cited in support. The learned SAN finally capped it all by stating that the judgment of 5th January, 2012, is a decision, and it is valid as it was given within the statutory sixty [60] days. It is immaterial, he argued, that the court below indicated in the judgment that it would give reasons at a later date which they could not do within the time prescribed by the constitution,

From the records of appeal before this court, [particularly vol. 5, page 7911], it is clear that the court below sat on the 5th day of January, 2012 to deliver its decision. That decision reads as follows:

*“COURT: This is our decision: Having considered the preliminary objections against the main and Cross-Appeals, parties’ arguments for and against the various appeals as contained in parties’ briefs and orally by way of emphasis, this court decided as follows:*

*(a) All preliminary objections are unmeritorious and are accordingly overruled.*

*(b) The main Appeal lacks merit same is dismissed.*

*(c) All three Cross-Appeals having succeeded are hereby allowed.*

*(d) Reasons this [sic] decision as well as the costs of the Appeals shall be delivered on a subsequent date to be communicated to parties. “*

On the 27th day of January, 2012 the court below, constituted of same panel that gave the decision quoted above, sat to deliver [judgment] or rather, reasons for the judgment. The court below stated, inter alia:

*“On 5/01/2012 this court made a pronouncement overruling the preliminary objections in this appeal, dismissing the cross-appeals. I now give reasons for the decision:”*

Now, section 285(7) and (8) of the 1999 Constitution (as amended) made the following provisions:

*“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.*

*(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 1999 Constitution [as amended] has dropped the definition given to the word “decision” by the former Constitution. The Electoral Act 2010 [as amended] however, has re-enacted the definition given to the word by the 1999 Constitution and it states:***

***“Decision, means in relation to court or tribunal, any determination of that court or tribunal and includes a judg-***

***ment, decree, conviction, sentence, order or recommendation”***

***The above meaning, in my view, is so elastic to cover interlocutory and final decisions. And without being unnecessarily pedantic, a judgment, as defined ordinarily, refers to the official and authentic decision of a court of law upon the respective rights and claims of the parties to an action or suit therein, litigated and submitted for the court’s determination. In the case law, however, a judgment is that binding, authentic, official, judicial determination of the court in respect of the claim and action or suit before it. See: SARAKI V. KOTOYE [1992] 9 NWLR [Part 264] at 165; NDIC V. FEDERAL MORTGAGE BANK OF NIGERIA [1997] 2 NWLR [part 490] 746; OSAFILE V. ODI [1990] 3 NWLR [part 137] 130; OREDOYIN V. AROWOLO [1989] 4 NWLR [part 117] 595. In the Criminal Procedure Code [CPC], judgment is referred to as the entire reasoning culminating in the finding of guilt, the conviction and pronouncement of the punishment which is the sentence. It is not merely the conclusion of the trial judge. See: EJELIKWU V. STATE [1993] 7 NWLR [part 307] 562. Thus, every decision of a court of law should flow logically from the conclusions of facts and law made by the court. It must also be plainly seen to be a logical result of such an exercise See: OLUYEMI V. IREWOLE LOCAL GOVERNMENT [1993] 1 NWLR [part.270] 468 It has been repeatedly pronounced in several decided authorities that a judgment which is good is that one which:***

***[a] sets out the nature of the action before the court and the issue[s] in controversy;***

***[b] reviews the cases presented by the parties;***

***[c] considers the relevant laws raised and applicable to the case***

***[d] gives reasons for arriving at those conclusions. See: IMOHEME V. ALOEWE [1995] 7 NWLR [part 409] 581; SANUSI V. AMEYOGUN [1992] 4 NWLR [part 237] 527.***

***It has been stated in ABACHA V. FAWEHINMI [2002] FWLR [part 4] 568 that, the substance of judgment of a court is embodied in its RATIO DECIDENDI or ration [s] in the case, that is, the reason or reasons for the decision [s] as against mere***



**passing remarks. There is therefore, the need for a court particularly one whose decision is subject to appeal, to always give reasons why it exercises its discretion in a particular way, if only because every such exercise of its discretion is subject to review.** See: EKWUNIFE V. WAYNE WEST AFRICA LIMITED [1989] 5 NWLR [part 122] 425 [1989] 12 SC 92; WILLIAMS V. VOLUNTARY FUNDS SOCIETY [1982] 1-2 SC 145. **It is thus, a general requirement even for a tribunal charged with the performance of judicial functions. This becomes more important where appeals lie from its decision to a higher court or tribunal. Even without the likelihood of appeal, it makes for open and even-handed justice for reasons to be given. To decide without giving reasons leaves room for arbitrariness and leaves the parties to grope in the darkness as to how the decision of the tribunal/court is arrived at. If judgments were to be delivered without supporting reasons, it will be an invitation to arbitrariness, a rule merely tossing the coin and likely to result in judicial anarchy.** See: AGBANELO VS. UBN [2000] 7 NWLR [part 666] 540.

**Section 246[c] of the Constitution 1999 [as amended] has conferred the right of appeal on an aggrieved person from the decision of the Governorship Tribunal on any question as to whether:**

**[i]...**

**[ii] any person has been validly elected to the office of a Governor or Deputy Governor.**

The appellants as petitioners presented their petition to the tribunal, after hearing; disposed of the petition by dismissing it on 11th of November, 2011. The appeal to the court was dismissed on the 5th January, 2012, but reasons for the judgment was to be given later.

Now, from the provisions of the Constitution as set out earlier, has the court below the discretion/power, in an appeal on a Governorship election which has been litigated before it, to give its decision and reserve the reason[s] thereof to a later date? I think before I answer this question, it is pertinent for me at this juncture to state that as of now, the Court of Appeal by the present political dispensation has, on matters of election, power to decide two types of election

matters from [1] decisions of the National and State Houses of Assembly Election Tribunals and [2] from Governorship Election Tribunals. See section 246[1] [b] and [c]. With regard to the former, subsection [3] of the same section stipulates that the decisions of the Court of Appeal in respect of appeals arising from the National and State Houses of Assembly election petitions shall be final as it is the final court on those matters. On the other hand, in the latter's case, although appeals on governorship elections go to the Court of Appeal from the Election Tribunal, they do not terminate there. Section 232 of the Constitution, 1999 [as amended] stipulates:

*"233[1] The Supreme Court shall have jurisdiction, to the exclusion of any court of law in Nigeria, to hear and determine appeals from the Court of Appeal*

*2] An appeal shall be from the decisions of the Court of Appeal to the Supreme Court as of right in the following cases.*

*[a] .....*

*[e] decisions on any question*

*[i] .....*

*[iv] whether any person has been validly elected to the office of Governor or Deputy Governor under this Constitution,*

*[v] whether the term of office of a Governor or Deputy Governor has ceased.*

*[vi] whether the office of Governor or Deputy Governor has become vacant"*

This provision is a novelty. It has now transferred the finality which the Court of Appeal had, on election matters involving a Governor of any of the States of the Federation.

***Now, the slight problem that has been posed as per my observation by sub-paragraph 8 of section 285 of the Constitution is the phrase, "in all final appeals". Final appeals from the tribunal to the Court of Appeal to my understanding, can be equated to a final decision as against interlocutory. Several decided authorities have distinguished a final judgment to be one which puts an end to the action declaring that that plaintiff has or has not entitled himself to the remedy he sued for, so that nothing remains to be done except to execute the judgment. It has disposed of the rights of the parties thereto. That is the final bus stop for that court as far as that case,***

**issue, or matter is concerned. Nothing further can be done as there is no avenue for appeal. This set of cases affects matters on the election to State/National Assemblies. In this respect therefore, it is my humble view that all final appeals on such matters terminate at the Court of Appeal. Thus, a Court of Appeal sitting on appeal on a Governorship election from an Election tribunal, which now serves as an intermediate court [and not final], can only give its decision within time stipulated, along with reasons thereof. It has no power to defer giving reasons to a later date as both the judgment and its reason thereof have to be delivered at once within the stipulated time frame.** See our recent decisions in BUBA MARWA & ANOR. v. NYAKO & ORS. Appeal No. SC.141/2011; SC.766/2011, SC.267/2011; SC.282/2011; SC.365/2011; SC.357/2011 [all delivered on the 27th of January, 2012] and PEOPLES DEMOCRATIC PARTY VS. CONGRESS FOR PROGRESSIVE CHANGE & ORS., the case of ABUBAKAR VS. NASAMU, APPEALS NO. 14, 14A AND 14B/2012 delivered on the 24th of February, 2012 consolidated appeals delivered on the 31st of October, 2011. **In the instant appeal which hearing is being objected, it is clear that the trial tribunal delivered its judgment on the 11th of November, 2011. The Court of Appeal delivered its judgment with its reasoning on the 27th of January, 2012. A simple arithmetic will land us to find that there is from the 11th of November, 2011, to 27th of January, 2012, a period of about 72 days.**

**The provision of section 285 [7] stipulates that:**

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

**The appeal to the Court of Appeal emanated from the decision of the tribunal which was delivered on 11th November, 2011. The expiry date of 60 days from the day that decision was delivered [11/11/2011] would be the 10th day of January, 2012, within which both the judgment and reasons thereof must be delivered. There is no way one can separate decision/judgment from the reasons justifying the decision/judgment.**

***Therefore, as the reasons for the judgment of the court below were delivered on the 27th of January, 2012, outside the 60 days limited by the Constitution, there is no valid judgment worthy of pursuing on appeal. Accordingly, I declare the judgment of the court below delivered on the 6th of January, 2012, including its reasoning delivered on the 27th of January, 2012 as null and void. It amounts to a nullity.***

I sustain the preliminary objection of the 3rd respondent. The appeal is accordingly struck out.

C \_\_\_\_\_

### **ONNOGHEN JSC**

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

D I agree with his reasoning and conclusion that the judgment of the lower court giving rise to the appeal was given contrary to the provisions of section 285(7) of the 1999 Constitution, as amended and incompetent and liable to be struck out.

E I allow the appeal on the issue of competence of the appeal and strike out the judgment of the lower court same haven been given without jurisdiction. I abide by all the consequential orders made in the said lead judgment including the order as to costs.

F \_\_\_\_\_

### **ADEKEYE JSC**

The two appeals SC.18/2012 and SC.18A/2012 were consolidated pursuant to the order of this court on the 16th of February 2012. I have read in draft the judgment just delivered by my learned brother I.T. Muhammad JSC. I entirely agree with his reasoning and conclusion. My learned brother had given a summary of the background facts of the appeal and considered the preliminary objections of the respondents. My learned brother resolved the procedural objection relating to the filing of the Notices of appeal by the appellants.

H I agree with his conclusion.

The objection filed by the 3rd respondent; Independent National Electoral Commission [INEC] is jurisdictional in nature. I intend to add a few words to the input of my learned brother on this issue. It is trite that issue of jurisdiction is a threshold issue, hence

where the issue of jurisdiction of a court is challenged that court must first and foremost assume jurisdiction to determine whether it has jurisdiction to hear the case on the merits. Jurisdiction is a crucial issue of competence, it is either the court has jurisdiction to hear a case or it has not. *A-G Lagos State v. Dosumu* (1989) 3 NWLR (pt.111) pg.552. B

The preliminary objection of the 3rd respondent reads as follows -

1. Based on the appellant's contention that the Court of Appeal lacked jurisdiction to deliver reasons for its decision after 60 days as the appeal against the decision had been entered at the Supreme Court this appeal is incompetent. C

2. This appeal constitutes an abuse of process for the reason that the appellant's contention in this appeal are essentially the same as the contention in the Notice of Appeal filed by the appellants on 6th and 18th January 2012 respectively. D

3. Based on the contention of the appellants that the Court of Appeal was bound to render the reasons for the decision along with its determination of the appeal and that the decision was therefore in breach of the Constitution, the appeal from the decision of the election tribunal was not heard and disposed of within 60 days of the delivery of the judgment of the tribunal and therefore lapsed. E

The learned senior counsel for the 3rd respondent made submission to the effect that Section 285(8) of the 1999 Constitution as altered will only apply to all final appeals from the Election Tribunal but will not apply to a Court of appeal sitting over a governorship election Petition Appeal. The logical effect of this argument is that for the reason that the Court of Appeal failed to give its reasons for their decision within the period of 60 days according to Section 285(8) of the 1999 Constitution as altered, from the date of the delivery of the judgment of the tribunal the appeal was not heard and disposed of within the period stipulated. The appeal consequently lapsed not having been disposed of within 60 days. In such appeals, the court must give the reason simultaneously with the decision. The appeal lodged against the decision of the tribunal also lapsed as the parties and the court cannot take steps out of the constitutionally prescribed period. The learned senior counsel cited some unreported decisions of this court in Appeals No. SC.272/2011; SC.276/2011 F G H

Peoples Democratic Party v. Congress for Progressive Change delivered on the 31st of October 2011. The court is urged to strike out the appeal.

The learned senior counsel for the appellants submitted that the Court of appeal gave judgment in the appeal before it on 5/12/11

and adjourned reasons for the judgment to 27/1/12. As at the time the court gave reasons for the decision of 27/1/12, the appeal was statute-barred. The decision was given outside the statutory period. By virtue of Section 294(2) of the 1999 constitution, a court must give reasons for its judgment in law. By virtue of Section 285 (8) of the Constitution as altered, the Court of Appeal is only an intermediate court in matters relating to Governorship election petitions and so cannot enjoy the privilege under that law. The learned senior counsel cited the case of *Obmiami Brick & Stone Nig. Ltd. v. A.C.B. (1992) NWLR (Pt.229) pg.260*. The learned senior counsel urged this court to invoke Section 22 of the Supreme Court Act and step into the shoes of the Court of Appeal to hear and dispose of this appeal.

Chief Olanipekun learned senior counsel for the 1st respondent urged this court to dismiss the appeal or in the alternative strike same out. Sections 285(7) and 285(8) of the Constitution must be read together so as to achieve the intent of the legislature. The use of final appeals in Section 285(8) is to extend the scope of giving decision and deferring reasons to the Court of Appeal in all final appeals in a substantive as opposed to interlocutory appeals. There is no constitutional provision which says the Court of Appeal should give reasons for judgment within the period of 60 days. It has to be decided which is the valid judgment of the court. Section 22 of the Supreme Court Act cannot be invoked in tire circumstance of this appeal.

Mr. Adenipekun learned senior advocate for the 2nd respondent on the issue of the interpretation of section 285(7) and 285(8) associated himself with the submission of Chief Olanipekun. He submitted that all final appeals are to be distinguished from interlocutory appeals. The court is to invoke the mischief rule to identify the intent of the legislature.

This court is invited once again to construe and interpret the provisions of Sections 285(7) and (8) of the 1999 Constitution as it relates to the hearing and disposing of the appeals, from the decision

of the Election Petition Tribunals in respect of election petitions.

I must say that this legal question has become a recurring decimal in this court relating to appeals from the Court of Appeal to this court in Governorship elections. We have construed and interpreted Section 285(7) and 285 (8) either conjunctively or disjunctively in unreported appeals to this court to mention a few -

SC.272/2011; SC.276/2011 Peoples Democratic Party v. Congress for Progressive Change delivered on 31st of October 2011.

SC.476/2011 Chief Dr. Amadi & Ors v. INEC delivered on 3rd February 2012. SC.14/2012; SC.14A/2012; SC.14B/2012; SC.14C/2012 delivered on 24/2/12,

The controversial subsections of Section 285 of the 1999 Constitution as amended read as follows -

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 the judgment of the tribunal Court of Appeal.”*

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

The Court of Appeal Benin delivered a decision of the court on the 5th of January, 2012. The decision of the court reads:-

*“This is our decision. Having considered the preliminary objections against the main and cross-appeal, parties arguments for and against the various appeals as contained in parties briefs and orally by way of emphasis, this court decided as follows-*

*a. All preliminary objections are unmeritorious and accordingly overruled.*

*b. The main appeal lacks merit same is dismissed.*

*c. All three cross-appeals having succeeded are here by allowed.*

*d. Reasons this (sic) decision as well as the costs of the appeals shall be delivered on a subsequent date to be communicated to parties.”*

The court convened to give reasons for their decision delivered on the 5th of January, 2012 on the 27th of January, 2012. The court commenced the reasons as stated below -

*“On 5/1/12, this court made a pronouncement overruling the*

*preliminary objections in this appeal, dismissing the cross-appeals. I now give reasons for the decision.”*

At the time the Court of Appeal gave the decision of 5/1/12 without reasons, the 60 days for hearing and disposing of the appeal would expire on 10/1/12.

B The appellants filed the appeal SC.18/2012 on the 20/1/12 without the reasons for the judgment. The trial tribunal delivered its judgment on the 11th of November 2011. The Court of Appeal delivered its judgment on the 27th of January 2012; a period of 72  
C days. The expiry date from the 11th of November 2011 would be the 10th of January 2012.

In the previous decision of this court enumerated above, the court pronounced that by virtue of Section 285(7) of the 1999 Constitution as altered, the Court of Appeal was under a statutory obligation to hear and determine the appellants’ appeal before it within the  
D time of sixty days prescribed therein. Once an appeal is decided outside that time, the court is devoid of jurisdiction to hear it. Sections 285(6) and 285(7) of the 1999 Constitution as amended operate as a limitation law. The effect of a limitation law is that legal proceedings  
E cannot be properly or validly instituted after the expiration of the prescribed period.

2. All final appeals to the Court of Appeal from the tribunal excludes appeals from the governorship election petitions by virtue  
F of Section 233(2)(a)(i) of the 1999 Constitution as altered.

3. In all final appeals to the Supreme Court on governorship petitions the Court of Appeal is only an intermediate court.

4. The Court of Appeal cannot invoke Section 287(8) to give its decision and reserve reasons to a later date in appeals where it is  
G an intermediate court.

5. In the instant appeal, the two decisions of the Court of Appeal delivered on 5/1/2012 and the 27th January, 2012 are both invalid.

H The judgment delivered on 5/1/12 without reasons offends against Section 294(2) of the 1999 Constitution as it lacks the essential attributes of a good and complete judgment going by the various decisions of this court. A good judgment has five distinct parts as follows -

1. Introduction of issues between the parties.



2. Cases of either side to the litigation going by the pleadings.
3. Evidence adduced by either side.
4. Resolution of the issues of fact and law.
5. The court's decision and reasons for arriving at the decision.

The judgment delivered on 27/1/12 lapsed by operation of law as it was delivered outside the 60 days prescribed by law, Any judgment however well written if given without jurisdiction is no judgment at all. This court is divested of jurisdiction in the matter as the appeal is no longer alive. This court cannot invoke Section 22 of the Supreme Court Act to save this appeal as the lower court lacked jurisdiction to adjudicate on the appeal.

With fuller reasons given in the lead judgment of my learned brother, Muhammad JSC, I also declare the two judgments of the lower delivered on 5/1/12 and 27/1/12 respectively, null and void. The preliminary objection of the three respondents is sustained. The appeal is accordingly struck out. I abide the consequential orders including the order of costs.

---

**PETER-ODILI JSC**

The parties in the two appeals being the same, there is no need to repeat the tilting. While SC.18A/2012 has to do with the Ruling of the Court of Appeal sitting in Benin, delivered on 27/1/12 where in the Lower Court dismissed the Appellants' Motion on Notice dated 25/1/12 praying the said Court to decline jurisdiction for proceeding on the said 27/1/12 to deliver reasons for its judgment earlier given on 5/1/12

Being dissatisfied with the said Ruling of the Lower court, the appellants have lodged appeal to this court by virtue of Notice of Appeal dated and filed on 8/2/12.

The second Appeal SC.18/2012 is for the main appeal that had to do with after the judgment of the court of Appeal, after hearing the appeal against the judgment of the Governorship Election Tribunal Asaba Delta State, overruled the appellants' preliminary objections, dismissed their Appeal but allowed the cross-Appeals of the 1st - 3rd respondents without giving any reason for the decision within the 60 days provided by the constitution or even the 14 days limited for the Appellants to give Notice of Appeal to the Supreme

Court. The background to the two appeals are the same and would be stated hereunder for a clearer picture.

**FACTS BRIEFLY STATED**

By a Petition filed at the Registry of the Governorship Election Tribunal in Asaba Delta State, the Appellants, as candidate and Political Party, challenged the return of the 1st respondent as the Governor of Delta State at the Governorship Election of April 25, 2011. The Ground of the Petition is that the 1st respondent was not returned by a majority of the lawful votes cast at the election aforesaid. See paragraph 12 of the Petition, pages 3 and 4, Vol. 1 of the Record of Appeal. The ground of challenge aforesaid is limited to the validity or lawfulness of the votes for the whole of Warri North, Burutu and Bomadi Local Government Areas and of the votes in parts of Warri South, Warri South West and Ethiope West Local Government Areas. Also referred to as dispute units or areas.

The summary of the facts pleaded in the Petition in support of the ground aforesaid is contained in paragraph 13(a) and (b) of the Petition whilst paragraph 14 of the Petition, with its several sub-paragraphs, contain a detailed rendition of the facts which show that of the 525,793 votes with which the 1st respondent was returned as the Governor of Delta State, 291,840 of those votes are not lawful votes. See Pages 4 - 15 Vol. 1 of the Record of Appeal.

The summary of the facts pleaded to support the contention that over three hundred thousand votes are not lawful votes are that the votes were produced in the complete absence of the constitutive elements of a due electoral process, some of which include; absence of the receipt of sensitive electoral materials, accreditation, collation and recording on all INEC forms. The invalidation of these unlawful votes, from the return at the election of April 26, 2011, left the 1st appellant with the highest number of lawful votes cast at the election with full compliance with the constitutional requirements for his return as the Governor of Delta State.

In proof of the facts pleaded in the Petition, the appellants called 31 witnesses. Furthermore, to effectively interrogate and impugn the electoral materials that were purportedly used in the 6 Local Government Areas (LGAs) challenged, the appellants, through the Head of Operation of the 3rd respondent (INEC), tendered all the electoral materials INEC made available to them to prove, in line

with the facts pleaded in the Petition, the absence of receipt of electoral materials by presiding Officers (POs); absence of certification and verification of ballot papers by Presiding Officers; inconsistency between ballot papers and the votes/results recorded on Form EC8A. The votes thereby rendered unlawful are as stated at Page 20 of the Petition and at Page 20 of Vol. 1 of the Records of Appeal. B

In a nutshell, the case of the Appellants is that:

a. Votes returned by the 3rd respondent without or in the absence of the receipt of electoral materials by Presiding Officers are not lawful votes. The only evidence of the receipt of electoral materials by Presiding Officers for use at the polling units is the Form EC 25B. C

b. Votes returned by the 3rd respondent without or in the absence of the use of ballot papers are not unused ballot papers at a polling unit is the Form EC 40A duly signed by the Presiding Officer D of the Polling Unit.

c. Votes returned by the 3rd respondent where ballot papers are inconsistent with the scores recorded on the result sheet Form EC8A are not lawful votes.

d. Votes returned by the 3rd respondent without accreditation E of voters are not lawful votes.

e. Votes returned by 3rd respondent without sorting or counting of ballot papers or ballot papers not expended on Form EC40A could not lead to collation and are therefore unlawful votes. F

The appellants through PW30, INEC's Head of PW31 Certified Forensic Accountant led evidence in proof of the aforesaid matters. The respondents according to the appellants totally failed to lead any credible evidence to prove the facts they pleaded in their respective Replies or debunk the evidence led by the appellants. G

In the Judgment of the Governorship Election Tribunal dated 11/11/11, which is copied out at Page 7225 - 7359 Vol. 4 of the Record of Appeal, the Tribunal invalidated, in the 6 Local Government Areas (LGAs) challenged, a total of 137,526 (PDP): 103,287; DPP: 23,278; Other Parties: 10,961) as unlawful votes on the basis H of the evidence led by the appellants, that there were no ballot papers in support of the unit results (Forms EC8A) and that the ballot papers produced were inconsistent with the scores recorded on the unit results.

But, the trial tribunal refused to invalidate 201,432 votes which were also unlawful votes because they were votes produced either without voters registers or without certification and verification by Presiding Officers of the used and unused ballot papers in the Polling Units or in absence of the receipts of sensitive election materials. The trial Tribunal, in its Judgment, affirmed the return of the 1st respondent on the basis that the total lawful votes of the 1st respondent and 1st appellant after invalidation of the unlawful votes respectively are 433,509 and 410,556, respectively.

Dissatisfied with the Tribunal's failure to invalidate the full spectrum of votes the appellants proved to be unlawful votes, the appellants filed their Notice of Appeal dated the 1st of December 2011 containing 15 grounds of Appeal. See pages 7407 - 74020 of the Record of Appeal.

Each of the respondents filed a Cross-Appeal against the judgment of the Tribunal containing several grounds of Appeal. See pages 7316-7395, 7396-7400 and 7421 - 7434, Vol. 4 of the Record of Appeal. Briefs of Argument were filed, duly adopted and argued. See pages 7435 - 7871 Vol.5 of the Record of Appeal for the Briefs of argument in respect of the main Appeal and the cross-Appeals.

On January 5, 2012 the Court of Appeal, without giving any, reason, overruled all the preliminary objections, dismissed the Main Appeal, allowed the cross-Appeal and reserved the reasons for its decision to a later date to be communicated to the parties. See pages 7911 and 7013, vol. 5 of the Record of Appeal. Dissatisfied with the aforesaid decision of the Court of Appeal, the appellants filed two Notices of Appeal, firstly on January 6, 2012 and January 18, 2012. The appellants relied on both Notices of Appeal in setting down the issues for determination in this Appeal. See Pages 7914 - 7919, vol.5 of the Record of Appeal for the Notice of Appeal dated and filed on January 6, 2012 and Pages 7920 - 7923, Vol. 5 of the Record of Appeal for the Notice of appeal dated and filed on January 18, 2012.

On the 16th February, 2012 date of hearing, the appellants adopted their Brief filed on 17/1/12 in SC.18/2012 wherein, were formulated five issues which are as follows:-

1. Whether the Court of Appeal was in overruling, as it did, the Preliminary Objection of the appellants to Grounds 1 and 2 of 1st and 2nd respondents Notices of Cross-Appeals, when those

Grounds and Issues distilled from them are incompetent.

2. Whether the Court of Appeal was in error in overruling as it did, the Preliminary Objection of the appellants to the Notice of cross-Appeal filed by the 3rd respondent when the 3rd respondent was not vested by the law with any Right of Appeal.

3. Whether, having regard to the totality of the evidence, the court of Appeal was not in error in dismissing the Appellants' Appeal as lacking in merit and providing no reason for the dismissal. B

4. Whether having regard to the totality of the case, the Court of Appeal was in error in allowing the Cross-Appeals of the 1st - 3rd respondents and providing no reason for allowing them. C

5. Whether the Court of Appeal as not being a Final Court in Governorship appeals was in error in reserving the reasoning for its decision to a later date.

In a Brief filed on 3/2/12 settled by Chief Wole Olanipekun SAN for the 1st Respondent, 1st respondent argued their Preliminary Objection in SC.18/2012 and another Objection on the 13/2/12. The 2nd respondent through learned counsel, Adebayo Adenipekun SAN raised as Notice of Intention to rely upon a Preliminary Objection filed on 15/2/12. The 3rd respondent through a Brief settled by Dr. Onyechi Ikpeazu SAN also argued their Preliminary Objection. The appellants responded to all the Preliminary Objections in the Reply Briefs filed by them. E

It is clear that the issue raised in the Objections which have to first deal with the competence of the Appeals and the validity of the judgment in the Court of Appeal, has to be tackled and thereafter that it would be known whether or not the merits in the appeals can be gone into. F

#### PRELIMINARY OBJECTIONS: G

The Grounds upon which the 1st Respondent based their Objection in SC.18.2012 are thus:-

i. The Supreme Court lacks jurisdiction to entertain the strange and unprecedented appeal.

ii. The appeal is grossly incompetent. H

iii. The appeal constitutes a gross abuse of the process of Court.

iv. In addition or alternative to (i), (ii) and (iii) (supra), this latest appeal robs the Supreme Court the jurisdiction to entertain the earlier appeals dated 6th January, 2012 and 18th January, 2012,

brought by the same Appellants against the same Respondents in respect of the same appeals entertained by the Lower Court on the judgment of the Governorship Election Tribunal sitting in Asaba and dated 11th November, 2011.

B 2nd respondent through counsel on their behalf, Adebayo Adenipekun SAN objecting urged the Court to dismiss or strike out this appeal for want of jurisdiction on the following grounds:-

1. This appeal is academic as it has no utilitarian value to the appellants.

C 2. This appeal is a gross abuse of the process of this Honourable Court.

3. The motion from which the appeal emanated is incompetent.

D 4. Issues 2 and 3 as formulated in the appellants' brief are incompetent.

Dr. Onyechi Ikpeazu SAN for the 3rd respondent also raised a Preliminary Objection on the grounds as follows:-

E 1. Based on the Appellants' contention that the Court of Appeal lacked jurisdiction to deliver reasons for its decision after 60 days as the appeal against the decision had been entered at the Supreme Court.

F 2. This appeal constitutes an abuse of process for the reason that the appellant's contention in this appeal are essentially the same as the contention in the Notice of Appeal filed by the Appellants on 6th and 18th January, 2012 respectively.

G 3. Based on the contention of the appellants that the Court of Appeal was bound to render the reasons for the decision along with its determination of the appeal and that the decision is therefore in breach of the constitution, the appeal from the decision was therefore in breach of the constitution, the appeal from the decision of Election Tribunal was not heard and disposed of within 60 days of the delivery of the judgment of the tribunal and therefore lapsed.  
H The appellants filed Reply Briefs in answer to all the arguments in the various Preliminary Objections. Briefly the main issue to determine in this preliminary Objection proponents position and that of the appellants refusing to go along is whether or not the Court of Appeal had the jurisdiction to deliver judgment and give reasons at a later date.

Also having given the reasons albeit beyond the 60 days allowed by the constitution to hear and dispose of the appeal whether with that happening the judgment was valid and appealable.

The respondents view as showcased by counsel on their behalf namely, Chief Wole Olanipekun SAN, Chief Adebayo Adenipekun SAN and Dr. Onyechi Ikpeazu SAN is that the Court of Appeal not being the final court within the Amended 1999 Constitution lacked the power to deliver judgment and give the reasons at a later date. Also postulated by the respondents is that not giving the reasons for the judgment within 60 days allowed invalidated the judgment.

Appellants through counsel on their behalf, O. M. Sagay SAN contend that there is a distinction between an interlocutory appeal and a judgment appealed against in the main suit. That while the Court of appeal cannot deliver judgment and adjourn to a later date to give its reasons, it has such powers the main judgment which this instance would proceed to the Supreme Court.

There is no need for a full exposition of the different well detailed arguments of counsel on either side of the divide, since the issue is now almost trite. This Court has in recent time in related appeals portraying similar features as the current case and so I will go straight to restate what I believe we already know. In relation to Sections 285(7) and (8) of the Constitution, this Court said a community reading of the two subsections show that an appeal being disposed of within 60 days mean that the reasons for the judgment where the Court is the last port of call must be within the 60 days and no more. My learned brother, W.S.N. Onnoghen JSC in *Buba Marwa & anor v Murtala Nyako & ors* (unreported consolidated appeals) in SC.141/2011, SC.766/2011, SC.267/2011, SC.282/2011, SC.365/2011 and SC.357/2011 delivered on Friday 27th January, 2012 anchored the position of this Court when he said:-

*“It is settled law that the time fixed by the constitution for doing of anything cannot be extended. It is immutable, fixed like the rock of Gibraltar. It cannot be extended, elongated, expanded, or stretched beyond what it states.”*

It has to be re-emphasized that the final appeals used in Section 285(8) in relation to the Court means that Court from which there cannot be any further recourse to a superior. It has come to the very final end. In this vein there is no distinction between a decision

in an interlocutory process and that in the main appeal. Therefore when the Court of Appeal delivered a purported judgment and reserved the reasons for later which it later did, it did both things in futility since it was no vires, As if the situation was not bad enough the piled a further futility on top by not giving the reasons as prescribed  
B by Section 285(7) as if the reasons of a judgment are not part and parcel of the judgment. That is the picture of what transpired in the Court below when it set out to deliver a judgment without reasons on 5/1/12 and presuming 5/1/12 and presuming upon an imaginary  
C power to give its reasons on 27/1/12. This robbed the purported judgment the qualification to be called a judgment since the features of a valid judgment being its reasons which should accompany the process of 5/1/12 was absent.

As I said, the reasoning even came beyond the 60 days allowed calculated from the date of the judgment of the Trial Tribunal  
D given on 11/11/11. It can be seen therefore and with the fuller reasons of my learned brother I.T. Muhammad that these Preliminary Objections have merit and are upheld. There being no valid judgment of the Court of Appeal, there is consequently no appeal so  
E called and so the need to strike out what has come as an appeal and I strike it out while setting aside the purported judgment of the Court below leaving as subsisting, the judgment of the Trial Tribunal and its orders.

F

G

H