

**SUPREME COURT OF NIGERIA**

13TH APRIL, 2012. SC. 139/2008

**CORAM:- A. M. MUKHTAR, F. F. TABAI, S. GALADIMA,  
N. S. NGWUTA, O. ARIWOOLA, JJSC**

OSHIEZE VINCENT AKUJOBI EHIRIM ..... APPELLANT  
AND  
IMO STATE INDEPENDENT  
ELECTORAL COMMISSION & ORS ..... RESPONDENTS

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LEGISLATION - Interpretation - Local Govt. Council - Tenure - Imo State Local Govt. Admin. Law s.23(1)(2) - Three years term is reserved for the council - From date the chairman takes oath of office (H1)

APPEALS - Evidence - Evaluation - Basis - Court of Appeal Act s.16 - Where appellate court evaluates evidence - It is bound by evidence placed before trial court (H2)

**FACTS**

By way of originating summons filed before the High Court of Imo State sitting at Owerri, plaintiff/appellant sought to determine the computation of his three year term of office as the elected Chairman of Owerri Municipal Local Government Council. The reliefs he sought from the court are inter alia, a declaration that his term of office that commenced on 24<sup>th</sup> June 2005 should expire on 24<sup>th</sup> June 2008 and that 1<sup>st</sup> defendant/respondent should be perpetually restrained from conducting an election into the office of Chairman of the council prior to the expiration of appellant's term of office. Appellant based his claims on section 23(1) of Imo State Local Government Administration Law No.15 of 2000.

On the other hand, respondents raised preliminary objection that the court lacked jurisdiction to entertain the suit. Respondents further contended that the tenure of office of appellant cannot go beyond March 2007 when the tenure of other councillors and Chairmen in Imo State expired. In its judgment, the learned trial judge held that the court lacked jurisdiction over the suit. Accordingly, the suit was struck out. Dissatisfied, appellant appealed to Court of

Appeal, Owerri Division. The court allowed the appeal. On appeal to Supreme Court, respondents contend the propriety of Court of Appeal extending the tenure of office of appellant beyond 24<sup>th</sup> June 2008, when there was no such claim before the trial court and no evidence adduced thereon.

**ISSUE FOR DETERMINATION**

*“Whether the Court of Appeal was not wrong when in determining the 3 year tenure of the Appellant as Chairman Owerri Municipal Local Government Council failed to exclude the period the Appellant was unlawfully kept out of office?”*

**HELD** (Unanimously dismissing the appeal per **MUKHTAR JSC**)  
**LEGISLATION - Interpretation**

1. It seems that the 4th defendant was trying to make a case in consonance with the provision of Section 23 of the Imo State Local Government Administration Law which stipulates thus: -

*“23(1) The term of office of the Local Government shall be three years from the date the Chairman, Vice Chairman or Members of Council take the oath of office.”*

The above clearly stipulates the life span of a Local Government, but then sub-section (2) makes a further clarification thus:-

*“(2) Without prejudice to subsection (1) above, where prior to the commencement of this law a Chairman, Vice Chairman and Members of Council have taken oath of office, the term of office of such a Chairman or Vice Chairman or Members of Council shall take effect from the date the Chairman took the oath of office.*

It is constructive to note that even though subsection (1) supra establishes the life-span of a Local Government, the provision went on to qualify the time from which the period will start running, which is the date the Chairman and his officials take their oath of office. Subsection (2) supra further reinforces the provision of subsection (1) and the claim of the plaintiff that his tenure of office commences on the date he took his oath of office not any other date which has not been disclosed by any of the parties. My understanding of the above provisions is that the provisions are straight forward and unambiguous. The words used are plain and ordinary and the law enjoins the court in interpreting such legislation to give the provisions their plain meaning by restricting itself to the intendment of the legislator. (P. 1528 D)

***Evidence - Evaluation - Basis***

2. Again, on the purport of Section 23(1) of the Imo State Local Government Law *supra*, and the lower court's power to evaluate evidence before the trial court, as conferred on it by Section 16 of the Court of Appeal Act, this provision envisages that the decision to be arrived at, must emanate from available evidence before the trial court. In the case at hand, there was definitely no evidence that could warrant the extension of the plaintiff's tenure beyond 24/6/2008. It is elementary law that courts are bound by the materials before them, and they are not allowed to go beyond or outside what has been placed before them. In this respect, where an appellate court wears the toga of a trial court, a power that is conferred upon it by law, as was done in this case, the appellate court is required to confine itself within the evidence before the trial court. The affidavit evidence of the plaintiff did not suggest that the plaintiff's tenure should expand beyond 3 years, for a careful reading of paragraphs (9) and (10) of the affidavit in support negates that view. (p. 1530 A)

***REPRESENTATION***

Mr. D. O. Madu, for the Appellant

Mr. S. I. Opara, C. B. Mbawike, Mr. S. A. Njoku (A-G. Imo State), Uwaso DCL, MOJ Imo State, Mr. N. A. Nnawuchi, for Respondents

***CASES REFERRED TO***

Ladoja v. INEC (2007) 12 NWLR (Pt. 1047) 119

Amaechi v. INEC (2008) 5 NWLR (Pt. 1080) 227

Abaye v. Ofili (1986) 1 NWLR (Pt. 15) 134

Texaco Panama Inc. v. Shell Petroleum Development Corporation of Nig. Ltd (2002) 5 NWLR (Pt. 759) 209

Adejumo v. Military Governor Lagos State (1972) 3 SC 45

Owena Bank (Nig.) Plc. v. NSE Ltd. (1997) 8 NWLR (Pt. 515) 1

***STATUTES REFERRED TO***

Imo State Local Government Administration Law No. 15 of 2000, s. 23(1)(2)(3)

Court of Appeal Act, s. 16

Constitution of Federal Republic of Nigeria 1999, s. 180(2)

**LEAD JUDGMENT BY MUKHTAR JSC**

In the High Court of Imo State, Owerri Division, the appellant, by way of an amended originating summons, sought answers to the following questions:-

B *“1. Whether or not the term of office of the Plaintiff as Chairman of Owerri Municipal Local Government is not to run for 3 years commencing on the 24th day of June, 2005 when he took his oath of office?”*

C *2. Whether or not the 1st Defendant is competent to conduct election for the purposes of electing the Chairman of Owerri Municipal Local Government by the 24th day of February, 2007 or any other date before the expiration of the Plaintiff’s tenure in office?”*

The Plaintiff sought the following reliefs against the defendants:-

D *“(a) A declaration that by the Provisions of Section 23(1) of the Imo State Local Government Administration Law No. 15 of 2000 the Plaintiff is entitled to hold office as Chairman of Owerri Municipal Local Government Council for 3 years commencing on the 24th day of June, 2005.*

E *(b) A declaration that the 1st Defendant is incompetent to conduct any election for the purpose of electing the Chairman of Owerri Municipal Local Government Council on the 24th day of February, 2007 or any other date before the expiration of the Plaintiff’s tenure as Chairman.*

F *(c) A declaration that the Plaintiff’s tenure of office as Chairman of Owerri Municipal Local Government Council is to expire on or about the 24th day of June, 2008.*

G *(d) An injunction perpetually restraining the 1st Defendant by itself, agents or servants from conducting any election to elect the Chairman of Owerri Municipal Local Government Council on the 24th day of February, 2007 or any other date before the expiration of the Plaintiff’s tenure as Chairman.*

H *(e) An Injunction perpetually restraining the Defendants by themselves, their servants or agents from electing, recognizing or dealing with any other person as Chairman of Owerri Municipal Local Government Council other than the Plaintiff before the expiration of the tenure of office of the plaintiff Chairman.*

*(f) An Injunction perpetually restraining the Defendants by*

*themselves, their servants or agents in any form or manner tampering with the plaintiff's occupation and/or exercise of the functions of his office as Chairman of Owerri Municipal Local Government Council within his tenure of office expiring on 24th June, 2008."*

An affidavit sworn to by the plaintiff/appellant in support of the originating summons has the following pertinent depositions:- B

*"1. I am the Chairman of Owerri Municipal Local Government following the election to that office by the 1st Defendant on 18th June, 2005.*

*2. I was sworn into office following my victory at the said election by the 2nd Defendant on 24th June, 2005.* C

*3. The 1st Defendant recently advertised that it will conduct election into the offices of Chairmen and Councillors of the Local Government Councils in Imo State including the Owerri Municipal Local Government Council.* D

*4. I was formerly elected alongside other Chairmen and Councillors in Imo State on the 27th day of March, 2004.*

*5. A fellow contestant at the former election one Jude Agbugba sponsored by the All Nigerian Peoples Party filed a petition against my said election and that petition was allowed by the Local Government Election Petition Tribunal declaring the election null and void and directing that a fresh election be held...* E

*6. My appeal against the judgment of the said Tribunal to the Appeal Tribunal was unsuccessful as the order of the said Lower Tribunal that a fresh election be conducted was upheld.* F

*7. The said fresh election was held on 18th of June, 2005 between myself sponsored by the Peoples Democratic Party and the said Jude Agbugba again sponsored by the All Nigerian Peoples Party.*

*8. The said Jude Agbugba also challenged my victory at the said fresh election of 18th June, 2005 but his petition was dismissed by the Local Government Election Petition Tribunal.* G

*9. I verily believe that my 3 year tenure of office started to run on the 24th day of June, 2005 and will terminate on the 24th day of June, 2008."* H

The 1st - 3rd defendants raised preliminary issues that the court lacked jurisdiction to entertain the suit, and that the suit was speculative and therefore incompetent. In a counter-affidavit sworn to by the clerk of the 4th defendant, he deposed thus inter alia.

“a. That the term of Office of the Plaintiff as the Chairman of Owerri Municipal Council started on the same date the councillors and whoever that was performing the duties of the Chairman (in the absence of the plaintiff as a result of the election petition against him) were sworn in and not on the 24th day of June, 2005 when the plaintiff was sworn in following his victory at the second election.

b. That the tenure of the plaintiff as the Chairman of Owerri Municipal Council will not last till June 2008 and cannot be beyond March 2007 when the tenure of the other councillors and Chairmen in Imo State will expire.”

The above represents the case of the parties in the court of first instance. At a stage of the proceedings, the 5th - 9th respondents sought to be joined as 5th - 9th defendants, and they were so joined. They did not file any affidavit. Learned counsel addressed the Court viva voce, and the learned trial judge after giving the submissions; the attention they deserved, held that the court lacked jurisdiction and struck out the suit. Unhappy with the decision the plaintiff appealed to the Court of Appeal. The Court of Appeal allowed the appeal and granted the reliefs (a) - (f) sought by the plaintiff. The defendants have appealed to this court on one ground of appeal, as they are not satisfied with the judgment of the court below. Learned counsel for the parties exchanged briefs of argument, which were adopted at the hearing of the appeal. The appellants formulated a sole issue for determination of the appeal thus:-

“Whether the Court of Appeal was not wrong when in determining the 3 year tenure of the Appellant as Chairman Owerri Municipal Local Government Council failed to exclude the period the Appellant was unlawfully kept out of office?”

The 1st - 3rd respondents' issue for determination is -

Whether the Court of Appeal was right in not extending the tenure of the appellant.

The view of the 4th - 9th respondents is that the issue for determination is -

Whether by virtue of section 16 of the Court of Appeal Act the court below could have made an order extending the appellant's term of office beyond 24/6/08 when there was no such claim before the trial court and no evidence adduced thereon.

The learned counsel for the appellant in canvassing argument

in respect of the sole issue, submitted that the Court of Appeal mis-applied the case of Ladoja v. INEC 2007 12 NWLR Part 1047 page 119. The learned counsel for the appellant went to great length in the brief of argument to distinguish the facts and circumstances in the two cases, and contended that the case that accords with the justice of this present case is that of Amaechi v. INEC 2008 5 NWLR part 1080 page 227. In his reply, the learned counsel for the 1st - 3rd respondents has submitted that the Court of Appeal properly applied the decision in the case of Ladoja supra, for one common feature in this case and the Ladoja's case has to do with the tenure of office of the two public office holders. The learned counsel punctured the appellant's submission that the case that applies to the instant case is the Amaechi's case supra, but argued, that the facts of this case are distinguishable from the Amaechi's case. B C

In his oral argument learned counsel for the 1st - 3rd respondents cited the very recent judgment of this court in appeal No. SC/141/2011 delivered on 27/1/2012 on tenure elongation i.e. C.P.C. and Anor v. Admiral Murtala Nyako & Ors. There was a departure from the argument of the appellant and the 1st - 3rd respondents by the learned counsel for the 4th - 9th respondents by venturing into the powers of the Court of Appeal under Section 16 of the Court of Appeal act, which empowers the court to evaluate evidence given in the trial court, and giving such judgment as is warranted by the evidence. He relied on the case of Abaye v. Ofili 1986 1 NWLR part 15 page 134, contending that where a trial court has no jurisdiction to make an order, the Court of Appeal cannot make an order under the said Section 16 of the Court of Appeal. He argued that a court does not give to a party a relief not claimed by him, and even where the court makes a consequential order, such order must be supported by the evidence before the court. He referred to the reliefs sought and the facts in support of the amended originating summons, particularly paragraph 9 of the supporting affidavit, and argued that there was no evidence before the trial court that the appellant was removed from office before the expiration of his term. It was further argued that Section 23(1) of the Imo State Local Government Administration Law of 2000 is in pari material with Section 180(2) of the Constitution of the Federal Republic of Nigeria 1999. D E F G H

At this juncture it is imperative that I focus my attention on the

facts and evidence available at the trial court. By virtue of the affidavit evidence in support of the originating summons the plaintiff took the oath of office on the 24th June, 2005 as the Chairman of the Owerri Municipal Local Government, after the fresh election that took place on 27th of March, 2005. This fact was not debunked by the  
 B 4th defendant, for whereas there was a general denial, in the only counter-affidavit, the date the councillors were sworn in was not specified, which signifies that the 4th defendant did not even know the date of the swearing in of the councillors elected with the plaintiff as  
 C Chairman. At least one thing is clear from the deposition in paragraph (3)(a) of the counter-affidavit, and that is that the plaintiff was not sworn in on the same day the councillors were sworn in. It is also an admission of the plaintiff's claim that he was sworn in on the 24th day of June 2005.

D ***It seems that the 4th defendant was trying to make a case in consonance with the provision of Section 23 of the Imo State Local Government Administration Law which stipulates thus:-***

E ***"23(1) The term of office of the Local Government shall be three years from the date the Chairman, Vice Chairman or Members of Council take the oath of office."***

The above clearly stipulates the life span of a Local Government, but then sub-section (2) makes a further clarification thus:-

F ***"(2) Without prejudice to subsection (1) above, where prior to the commencement of this law a Chairman, Vice Chairman and Members of Council have taken oath of office, the term of office of such a Chairman or Vice Chairman or Members of Council shall take effect from the date the Chairman took the oath of office."***  
 G

H ***(3) Where a vacancy occurs in the office of the Chairman, Vice Chairman or Councillor, the term of office of a person who fills the vacancy shall terminate on the date upon which the term of office of the person whose place he took would ordinarily have ended."***

***It is constructive to note that even though subsection (1) supra establishes the life-span of a Local Government, the provision went on to qualify the time from which the period will start running, which is the date the Chairman and his offi-***



***cials take their oath of office. Subsection (2) supra further reinforces the provision of subsection (1) and the claim of the plaintiff that his tenure of office commences on the date he took his oath of office not any other date which has not been disclosed by any of the parties. My understanding of the above provisions is that the provisions are straight forward and unambiguous. The words used are plain and ordinary and the law enjoins the court in interpreting such legislation to give the provisions their plain meaning by restricting itself to the intendment of the legislator.*** See *Texaco Panama Incorporation (Owners of the Vessel M.V. Stautulsa) v. Shell Petroleum Development Corporation of Nigeria Ltd* 2002 5 NWLR Part 759 page 209, *Adejumo v. Military Governor Lagos State* 1972 3 SC 45, and *Owena Bank (Nig.) PLC. V. NSE Ltd.* 1997 8 NWLR part 515 page 1.

The interpretation given by the learned justice in the lead judgment is in order and I endorse the lower court's interpretation of section 23 of the Local Government Administration Law which reads as follows:-

*"The provisions of Section 23 of the Local Government Administration Law are quite clear in this regard. By virtue of subsection (sic) thereof (1) the term of office of the Local Government shall be three years from the date the Chairman, Vice Chairman of members of council take the oath of office. There is no provision allowing for the extension of the chairman's tenure. This court is therefore not entitled to read into the law provisions it does not contain. See Ladoja vs. I.N.E.C. (supra) at 214 lines 19 -32 and 243 lines 9 -20."*

I subscribe to the above, even though in an earlier portion that forms part of the above excerpt of the lower court's judgment the learned justice did state as follows:-

*"In paragraph 4.04 of the appellant's brief of argument he has urged us to calculate the three year tenure to exclude the period from 13th April, 2007 when he was illegally removed from office to the date when he is restored to office."*

The learned justice may have derailed a little bit, as per particulars of error (i) in the sole ground of appeal. I do not however see that anomaly has negatively impacted on the justice of the case, to the extent that it affects the correctness of the judgment. It has not in anyway robbed off on the entirety and conclusion in the judgment,

which to my mind meets the justice of the action and the reliefs sought.

***Again, on the purport of Section 23(1) of the Imo State Local Government Law supra, and the lower court's power to evaluate evidence before the trial court, as conferred on it by Section 16 of the Court of Appeal Act, this provision envisages that the decision to be arrived at, must emanate from available evidence before the trial court. In the case at hand, there was definitely no evidence that could warrant the extension of the plaintiff's tenure beyond 24/6/2008. It is elementary law that courts are bound by the materials before them, and they are not allowed to go beyond or outside what has been placed before them. In this respect, where an appellate court wears the toga of a trial court, a power that is conferred upon it by law, as was done in this case, the appellate court is required to confine itself within the evidence before the trial court. The affidavit evidence of the plaintiff did not suggest that the plaintiff's tenure should expand beyond 3 years, for a careful reading of paragraphs (9) and (10) of the affidavit in support negates that view.***

E For a good understanding I will reproduce the salient paragraphs here, even though I have reproduced one of them earlier on. The paragraphs read thus:-

F *"9. I verily believe that my 3 year tenure of office started to run on the 24th day of June, 2005 when I took a fresh oath of office following the fresh election and will terminate on the 24th day of June, 2008.*

G *10. I verily believe that there is no vacancy in the position of Chairman of Owerri Municipal Local Government and no necessity to conduct any election by the 1st Defendant to fill such non existent vacancy."*

H The questions in the body of the amended originating summons and the reliefs sought are in consonance with the above depositions. It is on record that issues were joined in respect of the claim of June 2008 being the termination date of the council in paragraph 3(b) of the 4th defendant's counter-affidavit, where it claims that the tenure should not be beyond March 2007. If I may digress here, the action was initiated by the plaintiff, (not the councillors), and the provision of Section 23 of the Local Government law that is the plank

of the suit talks about the date of the oath taking of the plaintiff. It is instructive to note here that the plaintiff did not seek an elongation of his tenure as the Chairman of the Owerri Municipal Council area, but a confirmation and endorsement that he be allowed to exhaust the three years allowed him by the law i.e. Section 23 of the Imo State Local Government Administration Law *supra*, the enabling law. B There was no evidence that the plaintiff swore to an oath in 2007, and the lower court was right when it found as follows:-

*“...I inevitably come to the conclusion that the appellant’s term of office of three years commenced on 24th June 2005 and will terminate on 24th June 2008.”* C

The above finding accords with all the facts before the lower courts, and so I fail to see that the lower court erred in its decision. Perhaps I should state at this juncture that the case of Amaechi v. INEC 2008 5 NWLR part 1080 page 227 upon which the learned D counsel for the appellant made heavy weather on is not on all fours with the instant case. In this vain, the sole issue raised in the appellant’s brief of argument is resolved in favour of the respondents and the sole ground of appeal to which it is married fails and it is hereby dismissed. In the light of the foregoing the appeal has no merit and substance and has to be dismissed. It is hereby dismissed with E N50,000.00 costs in favour of the respondents against the appellant. There are two other notices of appeal filed by the 4th defendant/appellant, and the 1st - 3rd defendants/respondents, in respect of F which no steps have been taken. In the circumstances the appeals are deemed abandoned by the appellants, and so they are hereby dismissed.

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### **GALADIMA JSC**

I have been privileged to read the draft of the leading judgment of MUKHTAR, JSC just delivered I agree that the appeal has no merit and it should be dismissed.

The claims of the Plaintiff, (the Appellant, herein) in the originating summons before the Imo State High Court sitting at Owerri, is centred on the computation of his three year term of Office as the elected Chairman of Owerri Municipal Local Government Council. In this appeal the sole issue raised for determination is as follows:-

*“Whether the Court of Appeal was not wrong when in determining the 3 year Tenure of the Appellant as Chairman Owerri Municipal Local Government Council failed to exclude the period the Appellant was unlawfully kept out of Office.”*

B Each of the two sets of Respondents formulated the same or similar issue. Section 23 of the Imo State Local Government Administration Law provides as follows:

*“S.23(1): The term of office of the Local Government shall be three years from the date the Chairman, Vice Chairman or Members of Council take the Oath of Office.*

C *S.23(2): Without prejudice to Subsection (1) above, where prior to the commencement of this law a Chairman, Vice Chairman and Members of Council have taken oath of Office, the term of office of such Chairman or Vice Chairman or Members of Council shall D take effect from the date the Chairman took the Oath of Office.*

*S.23(3): Where a vacancy occurs in the office of the Chairman, Vice Chairman or Councillor, the term of Office of a person who fills the vacancy shall terminate on the date upon which the term of office of the person whose place he took would ordinarily E have ended.”*

In his brief, the appellant has strenuously urged this Court to re-write S.23(1) of the Imo State Local Government Administration Law No. 15 of 2000, reproduced above, so as to extend his tenure, beyond 24/6/2008, because he was improperly removed. I must say F that it is not the function of this court to so do; since neither the Constitution, the provisions of the law reproduced above nor any other existing law for that matter empowers this Court to undertake such a task. Clearly the Appellant is entitled to a 3 year tenure commencing from 24/6/2005 when he took his Oath of Office to 24/6/ G 2008.

From the above and on the basis of the fuller reasons given in the lead judgment, this appeal is lacking in merit. I too, dismiss it with N50,000 costs in favour of the Respondents against the Appellant.

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### **NGWUTA JSC**

My learned brother, His Lordship, Mukhtar, JSC graciously obliged me with a draft of the lead judgment in this appeal and I

have carefully read same.

The matter centres on the computation of the three year term of office of the Respondent as the elected Chairman of Owerri Municipal Local Government Council. The claims of the plaintiff (now Respondent) in the originating summons before the High Court of Imo State sitting at Owerri is predicated on the answer to question B one in the originating summons:

*“Whether or not the term of office of the plaintiff as chairman of Owerri Municipal Local Government is not to run for three years commencing on the 24th day of June, 2005 when he took his oath of office.”* C

In relief No. (a), the plaintiff (now respondent) claimed as follows:

*“(a) A declaration that by the provisions of section 23(1) of the Imo State Local Government Administration Law No. 15 of 2000, D the plaintiff is entitled to hold office as Chairman of Owerri Municipal Local Government Council for three years commencing on the 24th day of June 2005. Reliefs (b) - (f) are predicated on relief (a) reproduced above.”*

The issue formulated by the appellant reads: E

*“Whether the Court of Appeal was not wrong when in determining the 3 years tenure of the appellant as Chairman, Owerri Municipal Local Government Council failed to exclude the period the appellant was unlawfully kept out of office.”*

In substance, each of the two sets of respondents formulated F the same or similar issue. Section 23 of the Imo State Local Government Administration Law provides:

*“S.23(1): The term of Office of the Local Government shall be three years from the date the Chairman, Vice Chairman or Mem- G bers of Council take the Oath of Office.*

*S.23 (2): Without prejudice to subsection (1) above, where prior to the commencement of this law a Chairman, Vice Chairman and Members of Council have taken oath of office, the term of office of such a Chairman or Vice Chairman or Members of Council shall H take effect from the date the Chairman took the Oath of Office.*

*S.23(3): where a vacancy occurs in the office of the Chairman, Vice Chairman or Councillor, the term of office of a person who fills the vacancy shall terminate on the date upon which the*

*term of office of the person whose place he took would ordinarily have ended.”*

There is nothing in the provisions reproduced above to suggest that the three year tenure stipulated in s.23(1) of the Law must be an unbroken term of three years. The time runs from the date the  
B Oath of Office is administered and cannot be extended for any reason, for any period of time beyond three years.

For the above and on the basis of the fuller reasons given in the lead judgment, I agree the appeal has no merit. I also dismiss the  
C appeal. I adopt the consequential orders including order on costs.

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