

SUPREME COURT OF NIGERIA

1ST JUNE, 2012. SC. 154/2012

**CORAM:- C. M. CHUKWUMA-ENEH, J. A. FABIYI,
S. GALADIMA, B. RHODES-VIVOUR, N. S. NGWUTA,
M. U. PETER-ODILI, O. ARIWOOLA, JJSC**

1. SENATOR JOHN AKPANUDOEDEHE
2. DR. IME SAMPSON UMANNAH APPELLANTS
3. ACTION CONGRESS OF NIGERIA
- AND
1. GODSWILL OBOT AKPABIO
2. NSIMA EKERE RESPONDENTS
3. PEOPLES DEMOCRATIC PARTY
4. INDEPENDENT NATIONAL
ELECTORAL COMMISSION

CONSTITUTIONAL LAW - Constitution - Interpretation - Election petitions - 1999 Constitution s. 285(6) - Since the provisions are unambiguous - Supreme Court cannot extend the period provided therein (H1)

FAIR HEARING - Actions - Application of fair hearing - It applies to live suit - And not to case that is dead by effluxion of time - As in this case (H2)

FACTS

Appellants filed this election petition at the Akwa-Ibom State Governorship Election Petition Tribunal against the election of 1st respondent as the Governor of Akwa-Ibom State of Nigeria. The petition was dismissed by the tribunal after 60 days of hearing. Appellant felt dissatisfied and went on appeal which dragged to Supreme Court.

At the Supreme Court, appellant is asking the court to apply the principle of fair hearing in departing from its earlier decision in ANPP v. Goni and order a full trial of the petition at the Tribunal. Respondents filed preliminary objections to the hearing of the appeal on the ground that by the mere fact that 180 days has elapsed from the date the petition was filed at the Tribunal and going by the

2212 Akpanudoedehe v. Akpabio (2012) 6 KLR (pt. 314) 2211;
provision of section 285(6) of the Constitution of Federal Republic of
Nigeria 1999 (as amended), the petition is dead by effluxion of time.

HELD (Unanimously dismissing the appeal per **PETER- ODILI JSC**)

Constitution - Interpretation

1. Section 285 (6) of the constitution provides thus:

“An Election tribunal shall deliver its judgment in writing within 180 days from the date of the filing of the petition.”

The wordings of that provision above stated are clear and unambiguous and the meaning and purport thereof having been severally decided by this court and that is that it is not for this court to extend the period of 180 days at court of first instance and 60 days on appeal since this court cannot take the place of the legislature and amend the constitutional provision whenever it feels like. (p. 2214 F)

Actions - Application of fair hearing

2. This court is being persuaded to apply section 36 of the constitution to depart from its previous decisions and interpretation of section 285(6). This submission is indeed a beautiful academic rendition and the point has to be made and forcefully too that matter of fair hearing only applies where the suit is still alive not a dead one as in this case which death occurred by effluxion of time, the 180 days having been exhausted. (p. 2214 H)

REPRESENTATION

Kola Awodein SAN with Prof. Yemi Osibanjo, SAN; O. Akinsoun Esq., J. Alobo Esq. G. Adikwu Esq. and N. Nwotua-Efebo (Miss), for the Appellants

Chief Bayo Ojo SAN with Duro Adeyele SAN; J. S. Okutepa SAN; Chief V. Iyanam Esq., U. Nwoko Esq., S. A. Salman Esq., E. Onah Esq., A. O. Esq., T. Okwute Esq., U. Offiong Esq., A. Babalola Esq., and T. Nanle (Miss) for the 1st and 2nd Respondents.

A. Oyesanya Esq. with D. Okon Esq., E. Bassey Esq., E. O. Akpan Esq., and N. Udoh Esq., for the 3rd Respondent.

Dr. O. Ikpeazu SAN with E. Etiaba Esq., Jacob Akpong; Lynda Chuba-Ikpeazu; Tochukwu Nweke Esq., and Mavis Ekwechi Esq. for the 4th Respondent, for the Respondents

CASES REFERRED TO

Ogboru v. Uduaghan (2011) 17 NWLR (pt.1277) 727

Rosseck v. ACB Ltd (1993) 8 NWLR (Pt.312) 382

STATUTES REFERRED TO

Constitution of Federal Republic of Nigeria 1999 (as amended), ss. 9(2)(3), 36, 246, 285 (6)(7)(8)

LEAD JUDGMENT BY PETER-ODILI JSC

This appeal is in the main asking the court to depart from its decision in *ANPP v Goni* and other decisions in its interpretation of section 285 (6) of the Constitution as amended. The 1st and 2nd respondents on one part and the 4th respondent each filed a Preliminary objection and had the arguments embedded in their Briefs of Arguments. The 3rd respondent did not file a preliminary objection, but aligned to the raising of those objections and anchoring on the arguments.

Chief Bayo Ojo SAN for the 1st and 2nd respondents submitted that the appellants are estopped from filing this appeal seeking that their petition be remitted back to the trial tribunal for hearing, the status of a petition after 180 days of the date of it being filed having been conclusively resolved against their interest in *ANPP v. Goni* (supra).

Dr. Onyechi Ikpeazu SAN for the 4th respondent contended that jurisdiction is a creation of statute and to an appellate court, an appeal is regarded as continuation of hearing and so where a cause of action is extinguished by operation of law, no appeal can subsist with respect to a spent cause of action.

The appellants' response in these objections is that to the extent that section 285(6) of the constitution dealing with election petition is construed have a devastating effect on the provision of Section

36 of the constitution then that Section requires for its validity to have been enacted under section 9(3) of the constitution and not as it was done by the legislature here under section 9(2). That section 285(6) cannot and must not be read in isolation from the provisions of other Sections of the constitution especially section 246, 36, 285
 B (7), (8) and 6(6) of the same constitution. That as the new sections 285(7) and (8) themselves preserve the right of appeal in both interlocutory and final appeals it must stand to reason that the powers of the appellate court in exercise of its appellate jurisdiction which included the power to apply the principle of fair hearing under section
 C 36 and the power to order a retrial in this case.

Having heard learned counsel for the 1st and 2nd respondents, Chief Bayo Ojo SAN, the learned counsel to the 3rd respondent, Mr. Oyesanya and Dr. Onyechi Ikpeazu SAN for the 4th
 D spondent and the appellant whose reply were made available by Chief Awodein SAN in line with the written brief in the Preliminary objections and Reply on point of law. What comes out clear is the matter of whether or not there is a live issue regarding the petition at the trial tribunal on which this court can make an order for retrial.
 E The basic obstacle to deal with is the fact of the 180 days created by section 285(6) of the constitution that a petition thereof must be started and concluded, computation starting from date of filing. On this fact it cannot be challenged that the 180 days have expired.
 F What appellant is asking for is for this court standing on the principle of fair hearing under Section 36 of the Constitution to order for a full trial at the Tribunal on the Gubernatorial Election of 2011.

Section 285 (6) of the constitution provides thus:

***“An Election tribunal shall deliver its judgment in writing
 G within 180 days from the date of the filing of the petition.”***

***The wordings of that provision above stated are clear and unambiguous and the meaning and purport thereof having been severally decided by this court and that is that it is not
 H for this court to extend the period of 180 days at court of first instance and 60 days on appeal since this court cannot take the place of the legislature and amend the constitutional provision whenever it feels like. See Ogboru v. Uduaghan (2011) 17 NWLR (pt.1277) 727, ANPP v Goni in the unreported judgment of this court in SC1/11 and SC2/11. This court is being persuaded***

to apply section 36 of the constitution to depart from its previous decisions and interpretation of section 285(6). This submission is indeed a beautiful academic rendition and the point has to be made and forcefully too that matter of fair hearing only applies where the suit is still alive not a dead one as in this case which death occurred by effluxion of time, the 180 days having been exhausted. As this court held in *Rosseck v. ACB Ltd* (1993) 8

NWLR (Pt.312) 382 at 442, no ground exist which warrant a departure from the earlier decisions in interpretation of section 285(6) of the Constitution with the time expiration of the trial tribunal, the implication being that there is therefore no foundation on which this court can do what the appellant is urging it. This appeal and what is intended fall within the sphere of an abuse of court process as it is a clear academic exercise glaring to all. It is on that basis that I uphold the preliminary objection raised by counsel for the respondents. I dismiss the appeal. Parties to bear own costs.

GALADIMA JSC

I have the privilege of reading the draft copy of the judgment of my learned Brother Peter-Odili JSC. I do not have an iota of doubt that this preliminary objection raised on this appeal should succeed. The decision of this Court in *ANNP v. GONI & ORS*, exhaustively discussed in the lead Ruling has once and for all settled this matter. I have no reason to depart from it. I sustain and uphold the preliminary objection and consequently this appeal is hereby dismissed. I make no order as to costs.

RHODES-VIVOUR JSC

After hearing arguments on the 1st day of June, 2012. Justice M. U. Peter-Odili, JSC delivered the leading Ruling wherein the Preliminary objection was upheld and the appeal dismissed. I am in complete, agreement with the reasoning and conclusion in the leading Ruling.

Section 285 (6) of the Constitution states that:

“An Election Tribunal shall deliver its judgment in writing within

180 days from the date of the filing of the petition.”

In ANPP v. Goni SC.1/2012 and SC.2/2012 consolidated appeals. Judgment delivered by this court on 17/2/2012 I explained section 285 (6) as follows:

B *“...180 days provided by section 285(6) of the constitution is not limited to trials but also to de novo trials that may be ordered by an appeal court. For the avoidance of any lingering doubt once an election petition is not concluded with 180 days from the date the petition was filed by the petitioner as provided by section 285 (6) of the Constitution an election tribunal no longer has jurisdiction to hear the petition, and this applies to re-hearings. 180 days shall at all times*
C *be calculated from the date the petition was filed...”*

The central issue in the preliminary objections filed by the 1st, 2nd and 4th respondents is whether the petition filed on 16/5/2011
D but dismissed after 60 days of hearing can be heard outside the 180 days from the date the petition was filed. Section 36 of the Constitution guarantees the right to fair hearing in our courts. When the Constitution provides a limitation period for the hearing of a matter (in this case 180 days) the right to fair hearing is guaranteed by the
E courts within 180 days. Once 180 days elapsed the hearing of the matter fades away along with any right to fair hearing. There is no longer a live petition left. There is nothing to be tried even if a retrial order is given. It remains extinguished forever. Put in another way
F fair hearing provided by section 36 of the Constitution is only applicable when the petition is alive. In this case the petition is dead by effluxion of time and so the issue of fair hearing cannot be raised.

A petitioner who is unable to argue his petition to his satisfaction within 180 days as provided by section 285(6) of the Constitu-
G tion or finds the time too short should approach the National Assembly with an appropriate bill to amend section 285 (6) of the Constitution. If this court extends the time provided in section 285 (6) for the hearing of election petitions it would amount to judicial legisla-
H tion and that would be wrong. The National Assembly is to make laws and that includes amending existing laws and the Constitution. The role of the judiciary is to interpret what, the National Assembly has done. The appeal is an abuse of court process and a clear abuse of time. I uphold the preliminary objection and dismiss the appeal. Parties to bear their costs.

NGWUTA JSC

I read in draft the led ruling delivered by My Lord, Peter-Odili, JSC.

The provision of s.285 (6) of the 1999 Constitution is intended to remedy a situation in which an election petition dragged on to the next election. The provision is sacrosanct. Its application has restored sanity in election petition cases by restricting the determination of same to specified time frame. This Court has no reason to depart from the application of the provision in cases such as Goni's case. B

The applicant made an issue of fair hearing in s.36 of the Constitution. Fair hearing cannot be conducted in vacuo. There must be a live case before anyone can have a right to a fair hearing and the petition here was struck out in the trial Tribunal. Since it cannot be re-listed, the applicant cannot enjoy a right to a fair hearing in respect of that petition. The right to a fair hearing can be exercised only in relation to a live case. If the applicant is aggrieved by the provision, he should appeal to the Lawmakers rather than ask this Court to usurp the function statutorily reserved for the National Assembly and pass a legislative judgment. C D

In view of the above and the fuller reason in the lead ruling, I sustain the preliminary objection and also dismiss the application as abuse of process of Court. E

F

G

H