

**SUPREME COURT OF NIGERIA**

8TH JUNE, 2012. SC. 191/2012 (CONS.)

**CORAM:- M. MOHAMMED, F. F. TABAI, J. A. FABIYI,  
O. O. ADEKEYE, B. RHODES-VIVOUR,  
M. U. PETER-ODILI, O. ARIWOOLA, JJSC**

1. PROF. STEVE TORKUMA UGBA
  2. ACTION CONGRESS OF NIGERIA ..... APPELLANTS
  1. SENATOR DANIEL I. SARORO
  2. ALL NIGERIAN PEOPLES PARTY
  - AND
  1. GABRIEL TORWUA SUSWAM
  2. PEOPLES DEMOCRATIC PARTY ..... RESPONDENTS
  3. INDEPENDENT NATIONAL  
ELECTORAL COMMISSION
- 

ELECTION PETITIONS - Hearing - 1999 Constitution s. 285(6) -  
Petition must be heard and judgment delivered within 180 days -  
From the filing date - And court cannot extend the period (H1)

JUDGMENTS - Meaning of - Judgment is court's final determination  
of - Rights and obligations of parties in a case - And it includes any  
order from which appeal lies (H2)

ELECTION PETITIONS - Appeals - Retrial order - Correctness of -  
Appellate court is competent to order retrial - Where appeal suc-  
ceeds within prescribed time (H3)

JURISDICTION - Sources - Basis - Jurisdiction is granted by statute  
or Constitution - Hence no court can confer same on itself (H4)

COURTS - Legislation - Interpretation - Courts applies the law as it is  
- And it is left for legislature to amend any hardship in the law (H5)

***FACTS***

3rd respondent conducted Governorship elections in Benue  
State and other States of Nigeria. 1<sup>st</sup> appellant and 1<sup>st</sup> respondent  
were among the candidates sponsored by their political parties that

participated in the said election. At the end, 1<sup>st</sup> respondent was declared winner of the election. The declaration did not go down well with 1<sup>st</sup> and 2<sup>nd</sup> appellants. Hence on the 17<sup>th</sup> May 2011, they filed this election petition at the Benue State Governorship Election Petition Tribunal sitting at Makurdi. Respondent opposed the hearing of the petition and the matter went on appeal to the Court of Appeal, Makurdi Division. Therein, the court held that the pre-hearing session in the petition was not properly initiated. The trial tribunal being guided by the ruling of the Court of Appeal, struck out the petition. Aggrieved, appellants appealed to Supreme Court against the ruling of the Court of Appeal. On 14<sup>th</sup> November 2011 the court held that pre-hearing could be commenced in any manner and thus ordered that the petition be heard on the merits. At the resumed sitting of the new panel of the trial tribunal, 1<sup>st</sup> respondent raised an objection to the jurisdiction of the tribunal to hear the petition on the basis that same has elapsed by effluxion of time by virtue of section 285 (6) of the 1999 Constitution of the Federal Republic of Nigeria and Supreme Court's decision in *ANPP v. Goni*. After considering the issues in the objection, the tribunal dismissed the petition. Appellants were dissatisfied and hence they filed appeal at the Court of Appeal, Makurdi. The court dismissed the appeal and affirmed the decision of the trial tribunal striking out the appeal. Being further aggrieved, appellants appealed to Supreme Court.

**HELD** (Unanimously dismissing the appeal per

**ARIWOOLA JSC)**

*ELECTION PETITIONS - Hearing*

**1. Now to section 285 (6) of the constitution (supra), the provision as stated above is clear and unambiguous. It does not require any special way of interpretation. It requires the election tribunal to deliver its final judgment in writing within 180 days from the date of the filing of the petition. (p. 2359 B)**

*JUDGMENTS - Meaning of*

**2. A judgment is a court's final determination of the rights and obligations of the parties in a case. The term judgment includes**

***an equitable decree and any order from which an appeal lies. Whereas, final judgment is a court's last action that settles the rights of the parties and disposes of all issues in controversy, except for the award of costs and enforcement of the judgment. (p. 2360 F)***

*Appeals - Retrial order - Correctness of*

***3. However, one thing is certain and not disputable, an appellate court, when an appeal succeeds within the time prescribed is competent to order retrial or hearing denovo. But certainly not after the time prescribed has lapsed or expired. Any such order or directive when the main substratum, such as, petition before the tribunal has ceased to exist having been either struck out or dismissed by the trial court becomes a nullity and will have no effect whatsoever. (p. 2361 A)***

*JURISDICTION - Sources - Basis*

***4. It has been decided in Plethora of cases by this court that jurisdiction of courts is granted by statute or Constitution but not by courts. In which case, no court shall have jurisdiction to go beyond the provisions of the enabling law. Otherwise, it will be ultra vires. (p. 2361 B)***

*COURTS - Legislation - Interpretation*

***5. My Lords, the courts are created and empowered to adjudicate on cases, applying the law as it is but certainly not as it ought to be. That is a function of yet another arm of the government. The law is made by and for man, not man for law. If a law made by the people for the people is creating hardship for the people, let the people sit down and do something about it, through its Law makers. It is not for the court in performing its function of interpreting that law to alter or amend it. (p. 2361 C)***

## NOTABLE POINT OF INTEREST

### **ARIWOOLA JSC**

***1. Election petition – Unique nature of***

Before I proceed further with this ruling, it must be pointed out once again as it had been so pointed out by this court and the court below whenever the need had arisen that an election matter is sui generis. That is, “*of its own kind or class*”. In other words, an election matter is unique and peculiar, different from other civil matters. Hence it should be handled specially. (p. 2359 A)

### **REPRESENTATION**

Oluwarotimi Akeredolu SAN, with S. A. Oarkumah, S. A. Ngavah, M. I. Atagher, Femi Falana, J. I. Abaagu, J. K. Manda, J. T. Agor, A. I. Wombo, S. O. Okpale, Omale Omale, C. Alashi and R. M. Ako (Mrs.), for the Appellants in Appeal Nos. SC. 191 & 191A/2012

D. D. Dodo SAN, D. C. Denwigwe SAN, DR. A. A. Ijohor SAN with I. A. Nomisha, J. S. T. Anchaver, Musa Tende, N. Ngbea, Nasir Dangiri, S. A. Udaga, Dr. A. T. Imbwaseh, S. M. A. Tor-Musa, Audu Anuga, M. T. Kachina, T. D. Pepe, T. T. Igba, Terhembra Gbashima, M. L. Lanna (Miss) N. L. Ikyaagba (Mrs.), Samson Eigege, F. T. Kusugh and Adewole Adegboyega, for 1<sup>st</sup> Respondent in all Appeals - SC.191, 191A AND 192/2012

Chief E. K. Ashiekaa with the counsel on the list of 2<sup>nd</sup> Respondent in the Appeals.

F J. S. Okutepa, SAN with D. O. Okanyi, Esq.; O. O. Ufuanina (Miss); K. D. Gomwalk, Esq.; A. U. Miango (Miss) and I. Osu (Miss), for 3<sup>d</sup> Respondent in SC.191/2012 AND SC. 191A/2012

G C. S. Orpin for Appellants in SC.192/2012, N. O. TER (Mrs.) with R. N. MANDE (Miss); E. P. Ector, Esq.; O. A. Momoh, G. N. Kanu (Miss), for 3<sup>rd</sup> Respondent in SC. 191/2012

### **CASES REFERRED TO**

H ANPP v. Goni (2012) 7 NWLR (Pt. 1298) 147  
 Yar'Adua V. Abubakar (2009) All FWLR (pt. 460) 672  
 Plateau State V. A-G Federation (2006) ALL FWLR (Pt. 305) 590  
 Sambo V. Alikero (2010) ALL FWLR (Pt. 541) 1569  
 Ezerebo V. Ehindero (2009) 10 NWLR (Pt. 1148) 126

Abubakar V. Bebeji Oil & Allied Products Ltd (2007) ALL FWLR (Pt. 362) 1855

Okore-affia v. Agwu (2008) ALL FWLR (Pt. 445) 1601

Hope Democratic Party (HDP) V. Peter Obi (2011) 18 NWLR (Pt. 1278) 80

Saraki V. Kotoye (1992) 11 & 12 SCNJ 26

Amoda v. Oshobajo (1984) 15 NWLR (Pt. 646) 557

ANPP V. Goni (2012) 7 NWLR (Pt. 1298) 147

B

### **STATUTES REFERRED TO**

Electoral Act 2010, paragraphs 18 (1)(3), 47 (1) of 1st schedule

Constitution of Federal Republic of Nigeria 1999 (as amended), ss. 36, 285 (5)(6)(7)(8)

C

### **BOOK REFERRED TO**

Black's Law Dictionary 9<sup>th</sup> Ed, pp. 918, 919

D

### **LEAD JUDGMENT BY ARIWOOLA JSC**

This appeal is against the judgment of the Court of Appeal, Makurdi Judicial Division, (hereinafter called the court below), delivered on the 12th day of April, 2012 in an interlocutory appeal filed by the Appellants against the Ruling of the Benue State Governorship Election Tribunal, Holden at Makurdi, delivered on 13th February, 2012 in Petition No. GET/BN/02/2011. The court below on the 19th September, 2011 had allowed the appeal filed by the present Respondents and struck out the petition of the Appellants before the Election Tribunal for improper commencement of pre-hearing session. The Appellants appealed to this court and on the 14th November, 2011, this court in appeal No.SC.360/2011 allowed the appeal and ordered the petition to be heard on the merits. It is note worthy that this court in the appeal, confined itself to the sole issue of whether paragraph 47 (1) of the 1st schedule to the Electoral Act, 2010 was applicable to an application under paragraph 18 (1) and (3) of the same schedule. When the matter came up again before the trial tribunal as ordered, with a new panel, the Appellants brought an application filed an 28/01/2012 seeking, inter alia, the following reliefs:

*“(c) An order restoring ground three of the petition and hearing and determining same on the merits pursuant to the directive/*

*order of the Supreme Court.*

*(d) An order entering judgment against the 1st, 2nd and 3rd Respondents in respect of Ground 3 of this petition in favour of the Petitioners.” (See page 711 of the record - Vol. II)*

In its considered ruling, notwithstanding the vigorous objection by the Respondents, the tribunal granted the restoration of ground three of the petition earlier struck out, as sought but refused to enter judgment against the Respondents in favour of the Appellants as Petitioners. Aggrieved by the refusal to enter judgment in their favor against the Respondents, the Appellants appealed on that sole ground.

However, on the 28th February, 2012, the Tribunal applied the decision of this court in *Action Alliance V. INEC & 4 ors* in Appeal No. SC.23/2012 delivered on 14/2/2012 and the consolidated appeals of *All Nigeria Peoples Party V. Alhaji Mohammed Goni & Ors* (2012) 7 NWLR (pt.1298) 147 and struck out the appellants’ petitions. The petitioners were dissatisfied and therefore filed their appeals on 29/2/2012 and 12/3/2012. The court below on 24/4/2012 based on the Preliminary Objection of the Respondents that the appeal had become an academic exercise had struck out the appeal. Aggrieved by the order of the court below which struck out the interlocutory appeal led to the instant appeal, SC.191/2012 which was filed on 4/5/2012 on eight (8) grounds of appeal.

Parties filed and exchanged briefs of argument. The appellants abandoned their ground eight (8) of the grounds of appeal and distilled five (5) issues from the remaining seven (7) grounds of appeal. At the hearing of the appeal on the 4th June, 2012 the 3rd Respondent through its counsel J.S. Okutepa, SAN indicated that he had a Preliminary Objection in respect of appeal No. SC.191/2012 He filed a separate Notice to that effect on 28/5/2012 and also raised it in the brief of argument filed on 01/06/2012 but deemed as properly filed and served on 04/6/2012. He sought leave of court to move his objection.

Mr. Akeredolu, learned senior counsel to the appellants referred to the Appellant’s reply brief of argument in response to the merits of the 3rd Respondent’s preliminary objection. The said reply was filed within time on 4/6/2012 only for SC. 191/2012. It was later agreed by both parties that since the three appeals (SC. 191/2012,

SC.191A/2012 and SC.192/2012) are based on the same decision of the court below; the preliminary objection should be taken first and ruled upon.

Learned senior counsel to the 3rd Respondent referred to his brief of argument, adopted and relied on same for the objection, argument in support of which is on pages 3-10 of the said brief of argument. As per appeal No. SC.191/2012, the Preliminary Objection is predicated on the following grounds -

- The appeal in its entirety constitute academic exercise as the appeal seeks reliefs which are unconstitutional and which this Honourable court will not grant in view of the lapses of 180 days within which judgment must be delivered from the date the petition on which the appeal is predicated was filed before the trial tribunal.

- The appellants by their own admission before this Honourable Court in Appeal No. SC.62/2012, SC.62A/2012 and SC.63/2012, Peoples Democratic Party V. Senator Daniel Saror & Ors Hon. Gabriel T. Suswam V. Senator Daniel Saror and Ors, Peoples Democratic Party v. Prof. Steve Torkuma Ugba & ors in the proceedings of 29/3/2012 admitted that any appeal arising from the Benue State Election Petition Tribunal in petition No. GET/BN/02/2011 is academic exercise, in view of the fact that the trial tribunal had on the 28/2/2012 struck out the petition of the appellants.

- It is a gross abuse of process and expensive academic exercise for these same appellants who had admitted through their counsel, S. A. Oarkumah Esq. before this Honourable Court in Appeals Nos. SC.62/2012, SC.62A/2012 and SC.63/2012 Peoples Democratic Party vs. Senator Daniel Saror & Ors, Hon Gabriel T. Suswam v. Senator Daniel I. Saror & ors, Peoples Democratic Party V. Prof. Steve Torkuma Ugba & Ors in the proceedings of 29/3/2012, that any appeal arising from the decision of the Benue State Election Petition Tribunal in petition No. GET/BN/02/2011, after 28/2/2012 when the petition was struck out would tantamount to an abuse of court process and an academic exercise, to turn round to file this appeal before the same court.

Based on the above grounds, the 3rd Respondent sought an order dismissing the appeal in its entirety and or in limine. Learned senior counsel contended that there is no dispute that this court in its unreported cases of Action Alliance vs. INEC & ors, Appeal No.SC23/

2012 delivered on 14/2/2012 Amadi V. INEC & Ors. Appeal No. SC.476/2011 and the consolidated appeal No.SC.1/2012 and SC.2/2012 held that by Section 285 (6) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) all petitions filed must be heard and determined within 180 days from the date of filing. Learned Senior Counsel further contended that there is no dispute that the appellants' petition was filed on the 17th May, 2011. By operation of Section 285 (6) of the 1999 constitution (as amended), the possibility of entertaining or deciding the petition of the appellants became constitutionally barred on the 12th day of November, 2011. It is also not in dispute that the tribunal on the 28/2/2012 struck out the petition of the appellants before it, following the judgments of this court. He referred to the decisions of this court in Action Alliance V. INEC & Ors. Appeal No.SC 23/2012 delivered on 14/2/2012 and ANPP v. Goni (2012) 7 NWLR (Pt.1298) 147 at 183. Learned senior counsel submitted that the appeal has been overtaken by events and has completely become academic outside the jurisdiction of this honourable court. Learned senior counsel contended that as at the time the appellants transmitted the records of appeal in this appeal on 4/5/2012 and filed their brief of argument on 16/5/2012 there was no pending petition before the tribunal neither was there any basis upon which an appeal or a hearing of the petition could be founded. He referred to appeal No. SC. 63/2012 which was consolidated and heard with other appeals No. 62/2012 and SC.62A/2012 in which the present appellants were the 1st and 2nd Respondents where on 29/3/2012 in the proceedings of that date, learned counsel to the Appellants herein had pointed out to this court then that the said appeals were academic and that this court had no jurisdiction to entertain them. The court agreed with the counsel and then dismissed the appeals on that day.

Learned Senior counsel submitted that the appellants herein have chosen to deliberately abuse the processes of this court to irritate and annoy not only the 3rd Respondent but this court as well. He further submitted that no court has jurisdiction to decide academic or hypothetical question. He relied on Yar'Adua V. Abubakar (2009) All FWLR (pt.460) 672 at 677, Plateau State V. Attorney General of the Federation (2006) ALL FWLR (Pt.305) 590 at 646-647, Sambo V. Alikero (2010) ALL FWLR (Pt.541) 1569 at 1589,



Ezerebo V. Ehindero (2009) 10 NWLR (Pt.1148) 126 at 176. Learned senior counsel further submitted that the court is established to determine live issues but not dead ones. He urged the court to hold that the appeal has become academic outside the jurisdiction of this court hence it should be dismissed.

Furthermore, learned senior counsel contended that the continuous prosecution of this appeal by the appellants despite the available undisputed facts, and having been overtaken by events constitute a gross abuse of judicial process. He relied on *Abubakar V. Bebeji Oil & Allied Products Ltd.* (2007) ALL FWLR (Pt.362) 1855 at 1902. *Okore-affia v. Agwu* (2008) ALL FWLR (Pt. 445) 1601 at 1623. He submitted that the appellants have consistently abused the court process by remaining obstinate to the orders of court which have consistently held that the matter is dead and cannot be resurrected. To act otherwise, he stated, will be unconstitutional and unlawful with respect to the provisions of section 285 (6) of the 1999 Constitution (as amended). He relied on *Hope Democratic Party (HDP) V. Peter Obi* (2011) 18 NWLR (Pt.1278) 80 at 100-111.

On the relief that judgment be entered for the appellants against the 1st, 2nd and 3rd Respondents as contained in the Notice & Grounds of Appeal, he submitted that this court has no jurisdiction to do so. Learned senior counsel submitted that as at the time the appellants filed their motion for judgment in 2012, the 180 days has elapsed. He urged the court to uphold the preliminary objection and dismiss the appeal.

Learned Senior Counsel for the 1st Respondent Mr. Dodo fully and wholly adopted the submissions of the learned senior counsel to the 3rd Respondent on his preliminary objection. He said one would have thought that after the decision of this court even last Friday - 01/6/2012 in appeal No. SC.154/2012 on a similar matter, the appellants would have just come to withdraw their matter. He contended that there is nothing new to urge in this court than urge the court to dismiss the appeal.

Chief Ashiekaa of counsel to the 2nd Respondent referred to his Notice of preliminary objection filed on 21/5/2012. He stated that his objection is the same as raised by the 3rd Respondent. He adopted the preliminary objection in its entirety and the submission of learned senior counsel to the 3rd Respondent on same. He referred to the

2nd Respondent's brief of argument filed on 21/5/2012, adopted and relied on same. He referred to the decision of this court on Akpabio's case delivered last Friday 1/6/2012 in appeal No.SC.154/2012. He contended that there was no invitation by the appellants herein for this court to depart from its said decision most recently on  
B the same subject and submitted that it is even indeed too late for the appellants to so urge this court for such departure from its decisions. He urged the court to dismiss the appeals for lacking in merits.

Mr. Dodo, SAN before the appellants replied to the Respondents' arguments on the preliminary objection stood up to adopt his  
C earlier arguments in appeal No.SC.191/2012 for the other appeals, Nos. SC.191A/2012 and SC.192/2012, since he has objection on the said other appeals, so as not to be taken as having waived his right to so argue. Mr. Oluwarotimi Akeredolu learned senior counsel  
D to the appellants in response to the preliminary objections by the Respondents to the appeals referred to the appellants' reply brief of argument to the 3rd Respondent's brief of argument filed within time on 4/6/2012. He adopted and relied on same. He also referred to the appellants reply brief of argument filed on 30/5/2012 in appeal  
E No.SC.191A/2012 in response to the 2nd Respondent's Preliminary Objection. Learned senior counsel in his oral argument in response to the Preliminary Objection came up with a question, what is the purport of the preliminary objection? He referred to the arguments  
F of the Respondents predicated on the fact that the appellants' appeal has become academic exercise or an abuse of court process. He asked - Can an abuse of court process occur in the exercise of a constitutional right? He answered in the negative, that it cannot be. He submitted that the court cannot shut out the appellants in the exercise of  
G their constitutional right of appeal. He referred to sections 233 (2), 246 and 285 (7) of the 1999 constitution (as amended) and Saraki V. Kotoye (1992) 11 & 12 SCNJ 26. He contended that the decision striking out the appellants' petition on 28/2/2012 arose from a concrete and live decision of the tribunal which was affirmed by the court  
H below in the face of the order of this court which directed the petition to be heard on the merits on 14/11/2011, which order has neither been discharged nor set aside by the court. He submitted that the order remained in force till today. Learned senior counsel submitted further that nowhere in section 285(6) of the constitution is the right

of appeal abolished or suspended. He stated that even in ANPP V. Goni (supra) this court alluded to that fact. He submitted that all the grounds canvassed by the 3rd Respondent in the preliminary, objection are grossly misconceived, lack substance and should be dismissed outright.

Learned senior counsel referred to ANPP V. Goni (Supra) <sup>B</sup> which is relied on by the Respondents for their Preliminary objections and submitted that as no two cases can ever be the same, the instant appeal is clearly distinguishable from ANPP V. Goni's case. He contended further that in the instant case, the order of this court that the matter be heard on the merit or denovo means it must be heard <sup>C</sup> by the trial tribunal as if it had never been heard at all. He submitted that as at the time this court ordered rehearing on merit, the 180 days had lapsed and the court was aware of this situation yet it ordered hearing on merit. He cited, Attorney General of Bendel State V. Attorney General of the Federation (1981) 10 SC 112-113 per Eso, JSC. <sup>D</sup>

Learned senior counsel referred to appeal No. SC.191A/2012 and stated that the reliefs therein include giving judgment on the matter by this court. He finally urged the court to overrule the preliminary objection and dismiss same. Mr. Orpin of counsel to the Appellant stated that he is in neither SC.191/2012 nor SC.191A/2012 but only in SC. 192/2012. He submitted that the appeal was ripe for hearing and he was ready. However, because there was preliminary objection too, to the competence of the same appeal he <sup>F</sup> responded orally, too to the preliminary objection to his appeal.

On the preliminary objection of the 1st Respondent in appeal No. SC.192/2012, he submitted that constitution must not be interpreted to do injustice or give unjust decision. He referred to the Appellants' reply brief of argument to the 1st respondent's preliminary objection. He adopted and relied on same to oppose the argument of Respondent's counsel on the objection. He urged the court to discountenance the preliminary objection and hear the appeal on merit. In respect of appeal No.SC.191A/2012, the learned senior <sup>H</sup> counsel to the 1st Respondent Mr. Dodo referred to his Notice of preliminary objection which was filed on 15/5/2012. He adopted and relied on the said Notice.

On the preliminary objection, learned senior counsel urged

the court to strike out the appeal for being academic, on the following grounds:

(a) The lower court upheld the 2nd Respondent's Notice of preliminary objection that the Appellants appeal was academic. (See Page 669 of the record).

B (b) The Appellants did not appeal against the decision of the lower court upholding the 2nd Respondent's Preliminary objection that their appeal at the lower court was academic.

C (c) The Lower court only proceeded to pronounce on the merits of the appeal only in the event that the Appellants successfully challenged the decision on the Preliminary Objection before this Honourable court. Before this pronouncing on the substantive appeal, the presiding Justice of the lower court held that: *"Assuming I am wrong in my finding above, I will examine the merit of the appeal."*

D (d) Having not appealed against the decision of the lower court upholding the preliminary objection that the appeal was academic, the decision remains valid and subsisting and even a favourable determination of the appeal will not affect the said decision.

E (e) This appeal is academic and bereft of any live issue; this Honourable court determines only live issues and not academic issues.

F (f) For this Honourable court to assume jurisdiction to hear this appeal, the judgment of the lower court that the appeal which gave rise to this appeal is academic must first be set aside.

G (g) Relief (iii), (iv) and (v) sought in this appeal by the Notice of Appeal cannot be granted even if all the issues raised by the Appellants are resolved in their favour, the jurisdiction of the trial tribunal to hear the petition having lapsed since November, 2011, as held by the decision of the lower court in its decision on the 2nd Respondent's Preliminary Objection.

H (h) The Honourable court should not be made to act in vain. As stated earlier, learned senior counsel to the appellants, Mr. Akeredolu referred to the Appellants' reply brief of argument to the 2nd Respondent's brief of argument, in particular, to oppose the preliminary objection. The said reply brief of argument was adopted and relied on in Response to the objection. In the said reply brief it was contended that the most curious arm of the objection is that

inviting this Honourable court to decline to adjudicate on this appeal on the ground that the petition giving rise to it was struck out on 28/2/2012, thereby rendering this appeal an academic exercise. The appellants contended that the principal reason for launching this appeal is to challenge the erroneous decision of the tribunal and the affirmation of the said decision by the court below. The 2nd Respondent is fully aware of the existence of an appeal against the striking out of the petition on 28/2/2012 by the tribunal despite the subsisting and competent order of this Honourable court directing the petition to be heard on the merits. The Appellants asked when has the trial tribunal acquired the jurisdiction to review and set aside an order of the Supreme Court, which is final? B  
C

It was submitted that even on the basis of the subsisting order of the Supreme Court issued on 14/11/2011 in Appeal No. SC. 360/2011 alone, this appeal cannot be justifiably described as an academic exercise as it cannot be doubted that there is no application to set it aside or discharge the said order. He cited couple of cases, including *Amoda v. Oshobajo* (1984) 15 NWLR (Pt. 646) 557 at 568, *ANPP V. Goni* (2012) 7 NWLR (Pt. 1298) 147 at 184. D

The appellants adopted and relied on their argument in response to the Preliminary Objection of 2nd and 3rd Respondents respectively on appeal No. SC.191/2012 and urged the court to dismiss the objection and hear the appeal on merit. E

Mrs. Ter of Counsel to the 3rd Respondent associated herself with the Learned Senior Counsel to the 1st Respondent in appeal No. SC.192/2012. She stated that she adopted and relied on the submission of the learned Senior Counsel to urge the court to dismiss appeal No. SC.192/2012. As earlier stated, the appeal is against the decision of the Court below in an interlocutory appeal filed against the decision of the trial Tribunal which dismissed their petition. The Respondents are however objecting to the competence of the appeal before this court. The crux of the Respondent's objection is the provisions of section 285 (6) of the 1999 constitution (as amended). Whether the order of this court made on 14/11/2011 for hearing of their petitions on merit has the capacity to enable the Tribunal proceed to hearing beyond the time prescribed or stipulated in the said constitutional provision. Ordinarily, it is the contention of the appellants herein that with the order of this court directing the hearing of F  
G  
H

their petitions de novo, time should not run against them. Whereas the Tribunal in agreeing with the Respondents held a different view. The tribunal believed that time began to run from the filing of the petition and does not stop for one second until it runs out. Hence, at the expiration of 180 days from the time the appellant's petitions were filed, the petitions were struck out with effluxion of time notwithstanding the order of this court for hearing on merit. What then does section 285 (6) of the 1999 constitution (as amended) say? It reads:

*"An election tribunal shall deliver its judgment in writing within 180 days from the date of the filing of the Petition."*

There is no doubt and there is no dispute that the Appellants' petition No. GET/BN/02/2011 was filed on 17/05/2011. Similarly, it stands to reason that the prescribed 180 days within which the tribunal had to deliver its judgment started to run from that 17/5/2011. (See pages 1-131 of Vol. 1 of the Record of Appeal). Ordinarily, arising from the provisions of the Constitution stated above, the tribunal in the instant case was expected to deliver its judgment on the Appellants' petition filed on 17/05/2011, latest on the 180th day from the 17/5/2011 when their petition was filed. There is therefore no gainsaying that if judgment of the tribunal on the said petition was not delivered within 180 days from 17/5/2011, the petition would have lapsed and no longer viable. However, the uniqueness of the case instant is that, before the expiration of the prescribed 180 days the petitioners left the Tribunal for a higher court to challenge an interlocutory decision of the tribunal. This challenge the petitioners fought up to the Supreme Court where the bulk stops. No one was in doubt that since the petitioners left the Tribunal for the court below and until they got to this court, they knew that their petition was still fresh and was waiting for attention at the Tribunal. At the conclusion of hearing of the issue taken up at this court, the directive was on 14/11/2011 given that the Petition must be heard on merit. Ordinarily, by simple calculation of time by days from 17/5/2011 it was 180 days on 12/11/2011 in which case by that time as required and with ordinary interpretation of section 285 (6) of the 1999 constitution (supra) the Tribunal was expected to have delivered its judgment on the appellants petition before it. But on Monday the 14th November, 2011 this court allowed the appeal of the instant Appel-

lants and directed that the matter before the Tribunal should be heard on merit. Before I proceed further with this ruling, it must be pointed out once again as it had been so pointed out by this court and the court below whenever the need had arisen that an election matter is sui generis. That is, “*of its own kind or class*”. In other words, an election matter is unique and peculiar, different from other civil matters. Hence it should be handled specially. See Eghareuba V. Eribo & Ors (2010) 9 SCM 121. B

***Now to section 285 (6) of the constitution (supra), the provision as stated above is clear and unambiguous. It does not require any special way of interpretation. It requires the election tribunal to deliver its final judgment in writing within 180 days from the date of the filing of the petition.*** This court has in couple of cases dealt with this section of the constitution. The most recent ones being the consolidated case of All Nigeria Peoples Party (ANPP) V. Alhaji Mohammed Goni & ors (2012) 7 NWLR (Pt.1298) 147, and Senator John Akpanudoedehe V. Godswill Obot Akpabio (Unreported) appeal No. SC.154/2012 delivered on 01/06/2012. ***In the ANPP V. Goni (supra) delivered on 17/2/2012 this court had finally once again stated that no one, not even this court by any means, can extend, expand or elongate the 180 days prescribed by the constitution within which an election Tribunal has to deliver judgment on any petition before it.*** The learned Senior Counsel to the Appellants had argued and admirably too, that the provisions of section 36 of the 1999 Constitution is sacrosanct and should be so handled in relation to Section 285 (6) of the 1999 constitution (as amended) which seems to be violating the constitutional right to fair hearing. C D E F

I must say clearly, that there is no violation and no conflict between section 36 and Section 285 (6) of the Constitution (as amended). There cannot be strict application or interpretation of section 285 (6) to now breach or violate or trample on the constitutional right of an individual to fair hearing. It is note-worthy that Section 285 (6) of the Constitution original has four (4) subsections but when amended, four new subsections (5), (6), (7) and (8) are added. The first three subsections, 5, 6, and 7 prescribe time limit within which certain actions must be taken and concluded. They read thus: Section 285 - G H

“(5) *An election petition shall be filed within 21 days after the date of the declaration of result of the election;*

*(6) An election tribunal shall deliver its judgment in writing within 180 days from the date of the filing of the petition;*

B *(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.”*

C As clearly indicated in each of the subsection of section 285 of 1999 constitution (as amended), each of them has specific days for specific events. In sub-section 5, an election petition must be filed within 21 days after the date of the declaration of result of the election being challenged. Subsection 7 says an appeal from a decision of an election tribunal or Court of Appeal in an election matter shall D be heard and disposed of within 60 days from the date of delivery of judgment of the tribunal or Court of Appeal.

But a close look at subsection 6 to Section 285 reveals that “tribunal shall deliver its judgment in writing within 180 days from the date of the filing of the petition” There is no requirement that the E petition filed before the tribunal must be heard before a judgment can be delivered within 180 days. In other words, a petition needs not be heard before the tribunal delivers its judgment which of course does not have to be a final judgment as the two convey different F meanings.

***A judgment is a court’s final determination of the rights and obligations of the parties in a case. The term judgment includes an equitable decree and any order from which an appeal lies. Whereas, final judgment is a court’s last action that settles the rights of the parties and disposes of all issues in controversy, except for the award of costs and enforcement of the judgment.*** See Black’s Law Dictionary, Ninth Edition G pages 918 and 919. Therefore, in compliance with the provisions of section 285 (6) of the constitution (supra), once an election tribunal H gives an appealable decision or makes an order within 180 days and an aggrieved party appeals, it is my firm view that time continues to run until the 180 days shall be exhausted. An appellate court does not have the jurisdiction to extend or enlarge the 180 days once it expires.



***However, one thing is certain and not disputable, an appellate court, when an appeal succeeds within the time prescribed is competent to order retrial or hearing denovo. But certainly not after the time prescribed has lapsed or expired. Any such order or directive when the main substratum, such as, petition before the tribunal has ceased to exist having been either struck out or dismissed by the trial court becomes a nullity and will have no effect whatsoever. It has been decided in Plethora of cases by this court that jurisdiction of courts is granted by statute or Constitution but not by courts. In which case, no court shall have jurisdiction to go beyond the provisions of the enabling law. Otherwise, it will be ultra vires.***

***My Lords, the courts are created and empowered to adjudicate on cases, applying the law as it is but certainly not as it ought to be. That is a function of yet another arm of the government. The law is made by and for man, not man for law. If a law made by the people for the people is creating hardship for the people, let the people sit down and do something about it, through its Law makers. It is not for the court in performing its function of interpreting that law to alter or amend it.*** If it must be said once again, the interpretation this court has given to the provisions of Section 285 (6) of the Constitution has not in any way violated or breached the provisions of either Sections 36, 243 or 246 of the 1999 Constitution. Fair hearing does not only mean that a person must be given oral hearing.

In the final analysis, it is clear that considering this appeal will not lead to any useful result. Indeed, having been aware that their petition before the Tribunal has ceased to exist, having been struck out by the tribunal, the appeal is not only an academic exercise but is an abuse of court process, to say the least. We have no reason whatsoever to depart from our decision on this section 285 (6) of the Constitution (as amended) in ANPP V. Goni (supra). The preliminary objections raised by the Respondents in the three appeals No.SC.191/2012, SC.191A/2012 and SC.192/2012 based on the same decision of the trial tribunal succeed and it is allowed. As a result, the appeals above mentioned are liable to dismissal. Accordingly, each appeal is dismissed for being an academic exercise and an abuse of court process, to say the least. There is no order as to costs.

***FABIYI JSC***

When the three appeals were heard on 4th June, 2012, learned counsel for the parties addressed the court in respect of the preliminary objections raised to the competence of the appeals.

B Mr. J. S. Okutepa, SAN submitted that the court has no jurisdiction to entertain the appeals as the petition of the appellants to which these appeals relate has become extinguished as dictated by section 285(6) of the 1999 Constitution (as amended). Learned senior counsel observed that the petition was filed on 17th May, 2011. C As at 14-11-11 this court did not determine the point touching on 180 days and as such the court order of that day cannot confer jurisdiction on the Trial Tribunal at large. He referred to the decisions of this court in SC.1/2012 and SC.2/2012 ANPP V. Goni delivered on D 17-02-2012 and SC. 154/2012 John Akpanudoedehe v. Godswill Akpabio and others delivered on 1st June, 2012. Learned counsel submitted that the appeals constitute abuse of Court process and equate with academic exercise. He urged the court to decline jurisdiction and dismiss the appeals.

E Mr. D. D. Dodo, SAN who appeared for the 1st respondent maintained the same stance. He opined that in view of the decision of this court in a similar appeal on 1st June, 2012 the appellants should have withdrawn these appeals.

F Mr. E. K. Ashiekaa, learned counsel for 2nd respondent, aligned himself with the submissions of the senior counsel to the 3rd respondent. He urged that the appeals be dismissed as they constitute abuse of court process. He observed that there is no invitation by the appellants that this court should depart from its decisions in similar matters. On behalf of the appellants, Mr. Akeredolu, SAN maintained G that the appeal is not an abuse of court process. He maintained that there cannot be an abuse of court process where a constitutional right of appeal is exercised. He referred to Saraki v. Kotoye (1992) 9 NWLR (Pt. 264) 156 at 189, 194. He urged that the preliminary H objection be overruled as the appellants are exercising their constitutional right of appeal. He observed that this court directed that the petition be heard on the merit by the Trial Tribunal. Learned senior counsel submitted that the provisions of the Constitution should be read together. He referred to section 36 of the 1999 constitution

which deals with fair hearing. He felt that the decision in ANPP v. Goni is distinguishable. He cited Attorney-General, Bendel State v. Attorney-General of the Federation (1981) 10 SC 1 at 112-113 to urge the court to be firm and active. He urged the court to dismiss the preliminary objections.

Mr. C. S. Orpin who appeared for the appellants in SC. 192/ 2012 maintained that the word 'hearing' is not contained in section 285 (6) and that there must be a hearing before judgment can be arrived at. He urged the court to overrule the preliminary objections taken.

Mrs. N. D. Ter on behalf of the 3rd respondent in SC. 192/ 2012 aligned herself with submissions urged to prop the preliminary objections. She urged the court to dismiss the appeals.

It is not in contention that the period of 180 days for the hearing of the petition has expired. Indeed, section 285(6) of the 1999 Constitution (as amended) provides as follows:-

*"An Election Tribunal shall deliver its judgment in writing within 180 days from the date of the filing the petition."*

Let me observe here that the word 'shall' has been employed by the lawmakers of the constitution which is the grund norm. It signifies a command. The envisaged act must be complied with. See Onochie v. Odogwu (2006) 6 NWLR (Pt. 975) 65 at 89; Ogich v. The State (2005) 5 NWLR (Pt.918) 286 at 327. The appellants placed reliance on the provision of section 36 of the Constitution. The legislature was aware of same when the later provision of section 285(6) was made to limit the time for the completion of an election petition. Specific time frame was made for a purpose which the court and parties cannot wish away. I strongly feel that the provision of section 36 of the constitution relating to fair hearing is not at large. It can only apply to a live matter. There is no pending live matter before the Tribunal. I said it before and I shall further reiterate the point that section 36 should not be interpreted in a way that makes the later section 285 (6) of the constitution moribund. See: Shelim v. Gobang (2009) 12 NWLR (Pt. 1156) 435 at 453. The senior counsel for the appellants referred to Attorney-General Bendel State v. Attorney-General of the Federation to urge this court to be firm and embark upon activism. This is a good point where the decision of this court in Transbridge Co. Ltd. V. Survey International Ltd. (1986) 4 NWLR

(pt. 37) 578 should be brought to the attention of the appellants. Therein Eso, JSC Pronounced as follows:-

*"I believe it is the function of judges to keep the law alive, in motion and to make it progressive for the purposes of arriving at the end of justice; without being inhibited by technicalities, to find every conceivable but accepted way of avoiding narrowness that would spell injustice, short of a judge being a legislator, a judge to my mind must possess an aggressive stance in interpreting the law."*

I agree with the strong views expressed above. A judge should be firm and pungent in the interpretation of the law but such should be 'short of a judge being a legislator.' Such should be short of a judge interpreting the law to defeat the purport of the law and intention of the legislator. After all, the judex is not a legislator. His duty is to interpret the law as it is and not as it ought to be. He should abide by division of labour as established by the constitution. The purport of the law should not be jettisoned by art or design. The purport of the law is to fix a specific period for the conclusion of a petition. The provision of section 285 (6) of the constitution must remain inviolate; in the main. Let me say it here that no tenable and valid argument has been advanced to warrant a departure from earlier decisions of this court in *ANPP v. Goni (supra)* and Senator John Akpanudoedehe (*supra*). See: *Rosseek V. ACB Ltd. (1993) 8 NWLR (Pt. 312) 382 at 442*. The appeals have to do with academic exercise, in the main. They equate with abuse of court process. I uphold the preliminary objections.

For the above reasons and those carefully adumbrated by my learned brother Ariwoola, JSC, I too hereby sustain the preliminary objections and accordingly dismiss the appeals.

G

### ***RHODES-VIVOUR JSC***

These three appeals arose from the Gubernatorial Elections held in April 2011 for Benue State. The petitions against the return of Hon. Gabriel T. Suswan as Governor of Benue State was filed on the 17th of May, 2011. On the 14th of November 2011 this court made an order that the petition be remitted to the trial Tribunal for hearing of the petition on the merit.

On the 28th day of February 2012 the Governorship Election

Tribunal struck out petition No: GET/BEN/02/2011 and the Court of Appeal affirmed the decision of the trial Tribunal in these words:

*“The appeal is an academic exercise which this court lacks the competence to indulge in. The appeal is hereby struck out. The decision of the Tribunal striking out the petition of the appellants on the 28th day of March 2012 is hereby affirmed.”* B

On the 28th of February 2012 the Governorship Election Tribunal struck out Petition No: GET/BEN/03/2011 and the Court of Appeal affirmed the decision of the trial Tribunal in these words:

*“The Ruling striking out the appellant’s petition is affirmed.”* C

Finally the Governorship Election Tribunal struck out petition No.GET/BN/02/2011 and the Court of Appeal affirmed the decision of the trial tribunal in these words:

*“...The appeal is therefore, unworthy of any further judicial consideration having been spent by the reason of the petition having been struck out on 28/2/12. It is accordingly struck out.”* D

The Court of Appeal struck out the appeals on 24/4/12, 26/4/12 and 12/4/12, and that triggered the filing of these three appeals in this court. Learned counsel for the 1st respondent Mr. D. Dodo and learned counsel for the 3rd respondent, Mr. J.S. Okutepa SAN both filed Preliminary objections to the hearing of the appeal. The thrust of the objection is that this court lacks jurisdiction to entertain this appeal on the grounds that the Petitions of the appellant to which this appeal relates had become extinguished by virtue of section 285 (6) of the Constitution. Reliance was placed on ANPP v. Goni & ors. SC. 1/2012 and SC.2/2012 Consolidated. Judgment delivered on 17/2/12. E F

Both Mr. C.S. Orpin and Mrs. M.D. Ter learned counsel for the other respondents agreed with the objection to the hearing of these appeals. The argument of learned counsel for the appellant, Mr. Akeredolu SAN is that since the Supreme Court ordered a trial afresh, de novo, 180 days should start to run all over again. The central issue is whether the trial tribunal has jurisdiction to hear a petition after 180 days from the date the petition was filed. Section 285 (6) of the Constitution has been explained by this court over and over again. See chief (Dr.) F. Amadi and Anor V. INEC and 2 ors. SC.476/2011, judgment delivered on 3/2/12, ANPP V. Alhaji M. Goni & 4 Ors SC.1/2012 and SC.2/2012. Judgment delivered on 17/2/2012 and very G H

recently Senator John Akpanudoedehe v. G.O. Akpabio. Suit No: 154/2012. All these cases say the same thing. A trial Tribunal is conferred with jurisdiction to hear petitions within 180 days from the date the petition is filed. Where an appeal court orders a retrial, the retrial must be concluded within the unexhausted days of the 180 days. No court can extend the 180 days period provided by section 285 (6) of the Constitution. There is no longer a live issue in the petition filed by the appellants since the 180 days provided for the hearing of this petition had since expired. The appellants were thus unable to take advantage of the order of this court for a retrial. In this case the subject matter is not only dead but buried a long time ago.

A petitioner who is unable to argue his petition to his satisfaction within 180 days as provided by section 285 (6) of the constitution or finds the time too short should approach the National Assembly with an appropriate bill to amend section 285 (6) of the constitution. Once again the courts have no jurisdiction to amend the constitution or extend time provided by section 285 (6) of the Constitution. An order of retrial is carried out subject to the section 285 (6) of the constitution. If this court or any court proceeds to amend the constitution or extend the time for the hearing of Election Petitions provided by Section 285 (6) such an exercise would amount to judicial legislation and that would be unfortunate for the streams of justice which must remain pure at all times. Section 22 of the Supreme Court Act confers wide powers on this court to rehear a matter as if it was the trial court, but where the trial court no longer has jurisdiction to hear a matter this court cannot hide under the provisions of section 22 supra. The wide powers conferred by section 22 of the Supreme Court Act is to enable this court assume jurisdiction and do what the court below ought to have done but did not do. Where the court below did not do what it was supposed to do because it had to do it within a time provided by the constitution, section 22 of the Supreme Court Act would be inapplicable.

It would amount to waste of judicial time to hear these appeals as they are clearly an academic exercise, and courts are only constituted to hear and determine live issues. For this and the more detailed reasoning in the Leading Ruling prepared by my learned brother Ariwoola, JSC, which I was privileged to read in draft the preliminary objection, is upheld and the appeals are dismissed.

**PETER-ODILI JSC**

It was decided by the Court that the preliminary objection of the 3rd Respondent in SC.191/2012 would be used and the decision bind the parties in SC.191A/2012 and SC.191/2012. However where necessary reference would be made on those other appeals. B The preliminary Objection raised by the 3rd Respondent in SC/191/12 and it is as follows including the grounds thereof:-

***“NOTICE OF PRELIMINARY OBJECTION PURSUANT TO SECTION 285 (6) OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA 1999 AND THE INHERENT JURISDIC- C TION OF THIS HONOURABLE COURT.***

*TAKE NOTICE that the 3rd Respondent shall, at the hearing of Appeals No. SC.191/2012 and SC.191A/2012, raise a preliminary objection to the competence of the appeals on the grounds set out D hereunder.*

*TAKE FURTHER NOTICE that the grounds for the preliminary objection are as follows:-*

*(i) Appeals No. SC.191/2012 and SC.191A/2012 constitute E as abuse of process in view of the clear and unambiguous interpretation of the purport of Section 285 (6) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) by this Hon. Court in ANPP V. GONI, consolidated Appeals No. SC/1/2012 and SC.2/2012, delivered on 17/02/2012; a judgment in rem and other deci- F sions of this Hon. Court.*

*(ii) The appeals in their entirety constitute an academic exercise as the appeals seek reliefs which are unconstitutional and which this Hon. Court will not grant in view of the lapse of 180 days within which judgment must be delivered from the date the petition on G which the appeals are predicated was filed before the trial tribunal.*

*(iii) The Appellants by their own admission before this Hon. Court in Appeals No.SC.62/2012, SC.62A/2012 and SC.63/2012 Peoples Democratic Party V. Senator Daniel Saror & Ors, Hon Gabriel H T. Suswam v. Senator Daniel I. Saror & Ors. Peoples Democratic Party v Prof. Steve Torkuma Ugba & Ors in the proceedings of 29/3/2012 admitted that any appeal arising from the Benue State election petition tribunal in petition No. GET/BN/02/2011 is academic exercise in view of the fact that the trial tribunal had on the 28/2/2012 struck*

out the petition of the appellants.

(iv) *It is a gross abuse of process and expensive academic exercise for these same appellants who had admitted through their counsel, S.A. Orkuma Esq. before this Hon. Court in Appeals No. SC.62/2012, SC.62A/2012 and SC.63/2012 Peoples Democratic Party v Senator Daniel Saror & Ors, Hon. Gabriel T. Suswan v Senator Daniel I. Saror & Ors, Peoples Democratic Party v. Prof. Steve Torkuma Ugba & Ors in the proceedings of 29/3/2012 that any appeal arising from the decision of the Benue State Election petition Tribunal in petition NO. GET/BN/02/2011, after 28/2/2012 when the petition was struck out would be tantamount to an abuse of Court process and an academic exercise, to run round to file these appeals before the same court.*

*FURTHER TAKE NOTICE that based on the above grounds, the 3rd Respondent herein shall seek AN ORDER DISMISSING these appeals in their entirety, and or in limine. Dated this 25th day of May, 2012."*

The arguments in respect of this Preliminary Objection were made in the 3rd Respondents Brief of Argument settled by J. S. Okutepa SAN and filed on 28/5/12. MR. OKUTEPA SAN arguing the Objection stated that they filed a preliminary Objection in respect to the three appeals on 28/5/12. The arguments are embedded in on 28/5/12. Their contention in this preliminary objection is that this court has no jurisdiction to entertain this appeal on the ground that the petition of the appellant to which this appeal relates had become extinguished by virtue of Section 285 (6) of the 1999 constitution as amended by virtue of the expiration of the 180 days. He stated on that all parties agree that the petition was filed on 17/5/11. It is also not in dispute that on 14/11/11 when this court ordered this case to be remitted to the Trial Tribunal, the issue of 180 days was not before this court and so this court could not make a pronouncement on it. That order made by this court on the 14/11/11 cannot confer jurisdiction on the trial tribunal beyond the 180 days see ANPP v Alhaji Mohammed Goni (unreported judgment of court in SC.1/12 and SC.2/12. This position was confirmed by this court in the case of Senator Udoedoghe v. Godswill Obot Akpabio on 31st May 2012. The facts of that case and the present are on all fours. This appeal is an academic exercise and should be dismissed.



Mr. Dodo SAN learned counsel for the 1st Respondent stated his adoption of the objection raised by the 3rd Respondent and the arguments he articulated. That after this court's decision on the 31st May 2012 the Appellant would have discontinued the appeals. Mr. Ashieka learned counsel for the 2nd Respondent also adopted the preliminary objection of the 3rd Respondent and urged this court to dismiss the appeal. That there is no basis for this court's departure from the case of Akpan Udoedeghe v. Godswill Akpabio decided last Friday. Responding for the Appellant in SC.191/12 and SC.191A/12 Chief Akeredolu SAN adopted their Reply Brief filed on 31/5/12 and said the court should discountenance the submissions of counsel for the Respondents. That there cannot be an abuse of court process when a party is in pursuit of his constitutional right as in this instant appeal. He cited Saraki v. Kotoye (1992) 9 NWLR (Pt.264) 156 at 189. Senior counsel went on to contend that this appeal is based on the extant decision of this court directing that the matter be heard on the merit which order has not been set aside. That the appeal herein is distinguishable from ANPP v. Goni. He said the 180 days commenced from the retrial ordered by this court and that the provisions of Section 285 (6) of the constitution should not be read in isolation but with other sections of the constitution relevant thereto including that of fair hearing under section 36 of the said constitution. He cited A.G. Bendel State v. A.G. Federation (1981) 10 SC 1 at 112 & 113. He concluded by saying that prayers SC.191/12 and SC.191A/12 are different as in the latter appellant is asking for judgment and not for the matter to be sent back to the Tribunal. That the Preliminary Objection should be dismissed.

It seems to me necessary to go back a bit to the background of the appeals upon which this Preliminary objection is based. On 26th day of April, 2011 the 3rd respondent conducted Governorship elections in Benue State and other States in Nigeria. The 1st Respondent was sponsored by the 2nd Respondent as its Governorship candidate while the 2nd Appellant sponsored the 1st Appellant as its governorship candidate. The 1st Respondent won the Governorship election and was declared and returned winner of the said election on 27th April, 2011 by the 3rd Respondent. The 1st and 2nd Appellants were not satisfied with the outcome of the election and filed a petition at the trial tribunal on the 17th of May, 2011. Upon being

served with the petition, the 1st Respondent filed his reply to the petition dated and filed on 14/6/2011. Following the judgment of the Court of Appeal Makurdi Judicial Division on 16th September, 2011 that the pre-hearing session in the petition was not properly initiated, the trial tribunal struck out the petition of the Appellants.

- <sup>B</sup> The Appellants being dissatisfied with the judgment of the Lower court on the mode of commencement of pre-hearing session appealed to this Honourable court in SC.360/2011 by first filing a Notice of Appeal on 16th September, 2011. They then filed another Notice of Appeal on 26th September 2011 and subsequently a third one on <sup>C</sup> 28th September 2011 before finally settling for a fourth Notice of Appeal Filed on the 4th of October 2011. It transpired that the Appellants eventually relied on their Notice of Appeal filed on 4th October 2011. Their Appellants' brief in that appeal was filed on 7th <sup>D</sup> October 2011, 21 whole days after their first notice of appeal. This Honourable court ultimately determined the Appellant's appeal (SC.360/2011 between Ugba v PDP) on the 14th of November, 2011 that pre-hearing could be commenced in any manner and on that basis that the petition be heard on the merits. As at 14th November, 2011 when this Honourable court in SC.369/2011 (Ugba) v. <sup>E</sup> PDP) ordered that the petition be heard on the merits, the 180 days stipulated by section 285 (6) of the 1999 constitution (as amended) had already lapsed and this Honourable court in its judgment of 14th November, 2011 did not consider the effect of the 180 days stipulated by section 285 (6) of the 1999 constitution (as amended) on <sup>F</sup> the hearing of the petition.

- At the resumed sitting of the new panel of the trial tribunal, the 1st Respondent applied by way of a motion on notice that the petition be struck out on the ground that it had lapsed by the operation <sup>G</sup> of Section 285 (6) of the 1999 Constitution of the federal Republic of Nigeria. The trial Tribunal dismissed the application. The 1st Respondent's appeal against the said decision of the trial tribunal was dismissed by the Lower court and the 1st Respondent's appeal to the <sup>H</sup> Supreme Court against the judgment of the Lower court was still pending when this Honourable court delivered two landmark decisions in ACTION ALLIANCE v. INDEPENDENT NATIONAL ELECTORAL COMMISSION & 4 ORS in appeal No. SC.23/2012 delivered on 14/2/12 (Unreported) and ANPP v. GONI (2012 7 NWLR

(pt.1298) P.147, which decisions firmly laid to rest all legal disputes on the correct purport and effect of Section 285 (6) of the Constitution of the Federal Republic of Nigeria 1999 (as amended). After the judgment in ACTION ALLIANCE v. INDEPENDENT NATIONAL ELECTORAL COMMISSION & 4 ORS in appeal No. SC.23/2012 delivered on 14/2/12 (Unreported) and ANPP v GONI (2012) 7 B NWLR (Pt.1298) P.147, the 1st Respondent filed a motion on notice before the trial tribunal drawing its attention to the said judgment and seeking a determination whether in view of the said decisions, the trial tribunal still had jurisdiction to entertain the petition. Following the time honoured doctrine and principle of stare decisis, the trial tribunal found that since the material facts in the two landmark judgments of this Honourable court were similar to the facts of this case, it lacked jurisdiction and the petition was accordingly struck out. The striking out of the petition at the trial tribunal led this Honourable court to dismiss the 1st Respondent's pending appeal in SC.62A/2012 referred to in paragraph 2.9 above, on the ground that being an appeal against an interlocutory decision, it had become an academic exercise because the substratum from which it arose, no longer existed. Meanwhile the Appellants, appeal to the Lower court sitting in Makurdi, against the decision of the Governorship Election Tribunal Benue state dated 28th February, 2012 in Petition No. GET/BN/02/2011 for striking out the Appellants' petition was on 24th April 2012 struck out and the decision of the trial tribunal striking out the petition was affirmed. Dissatisfied with the decision of the lower court, the appellants filed a Notice of Appeal dated 4th May 2012 containing 8 Grounds, but elected to abandon the 8th Ground. C D E F

From the facts above and the arguments of counsel for the Respondents on one side and the Appellant on the other, the straight forward narrow question is whether or not this Court has jurisdiction upon which it can proceed with the appeals before it. The beacon of light in this matter before court is section 285 (6) of the 1999 constitution of the Federal Republic of Nigeria as amended. It has provided thus: G H

*“285(6) An Election Tribunal shall deliver its judgment in writing within 180 days from the date of the filing of the Petition.”*

From this provision of section 285 (6) of the constitution above quoted prima facie the petition had been extinguished by effluxion

of time. This is so because there is no conflict on the date the Appellants' petition was filed being the 17th day of May, 2011 and so by 12th November 2011 the petition was dead and so the Notices and grounds of appeal filed on 23rd April, 2012 to the Court of Appeal would achieve nothing since that court had lost its jurisdiction to entertain any proceedings arising from the petition by operation of law.

However the stance of Chief Akeredolu for the Appellants is from a different angle as he sees section 285 (6) not to be such as can be taken in isolation but in the light of section 36 of the same constitution to ensure that the right to the fair hearing of the Appellant was not infringed upon but guaranteed. To that extent the petition cannot be taken as dead but alive upon which an appeal therefrom can be entertained by the Court of Appeal and the Supreme Court respectively. That Appellant's side to the story belies the reality on ground supported by numerous authorities of this court including very recently a week ago in the unreported case of Akpan Udoedeghe v. Godswill Obot Akpabio Appeal No. SC.154/12. This court in Action Alliance v. INEC & Ors Appeal No SC.23/2012 per Onnoghen JSC held thus:

*"As at today, the 180 days has long lapsed and by the decision of this court the time stipulated in the constitution cannot be extended...in the circumstance, the appeal is misconceived as same is an exercise in futility and is consequently dismissed."*

In like manner in the case of ANPP v Goni, Appeals No. SC.1/2012 and SC.2/2012 my learned brother Onnoghen JSC said:

*"It is my considered view that the provisions of section 285 (6) supra is like a statute of limitation which takes away the right of action from a party leaving him with an unenforceable cause of action. The law may be harsh but it is the law and must be obeyed to the letter, moreso when it is a constitutional Provision."*

Taking the above cited authorities in view it is clear to me that there is nothing distinguishable between this case and those authorities and no basis to depart from the ground rules. In a situation where a statute of limitation such as section 285 (6) of the 1999 constitution applies, it is a waste of time to talk of fair hearing, since the issue of fair hearing has to be invoked in the premises of a live issue or matter not a dead one. To push on with the hammering of section 36 of the constitution aforesaid is an empty noise or at best navigation within

the academic arena which is not within the scope of duty of any court intruding the Supreme Court. Stated another way, as high as the Supreme Court is, it still lacks the power to bring to life and assume jurisdiction in a matter that had died at the port of embarkation. This is because in this case the court is helpless and the appellant has to come to terms with the position of things and cut his losses. See *Yar'Adua v. Abubakar* (2009) All FWLR (Pt.460) 672 at 677; *Plateau State v. Attorney General of the Federation* (2006) All FWLR (Pt. 305) 590 at 646 - 647; *Ezerebo v. Ehindero* (2009) 10 NWLR (pt. 1148) 166 at 176 - 177; *Odedo v. INEC* (2008) 17 NWLR (Pt. 1117) 554. B  
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From all that I have said and the better articulated Ruling of my learned brother, Olukayode Ariwoola JSC this appeal SC. 191/2012 cannot be entertained the petition having lost its five long ago at the trial tribunal. By the same token the judgment sought in D SC.191A/2012 is like a fishing expedition in the desert and therefore that appeal also cannot be entertained. The two appeals having been brought on an academic foray are dismissed.

SC.192/2012. For the Appellant, Mr. Orpin on his behalf said the Preliminary objection does not obtain. That the objection filed by 1st Respondent should be taken within the ambit of the constitution being a living organism and so cannot be interpreted in a way that is unjust. That there is a lacuna in section 285 (6) of the constitution since it talked of judgment and no mention of a hearing and so there should be a hearing. He adopted their Reply Brief filed on 21/5/12 in response to the Preliminary Objection. Responding, Mr. Okutepa SAN for the 1st Respondent said the Supreme Court cannot exercise jurisdiction which the trial court could not the time having elapsed. Mrs. Ter, Learned counsel for 3rd Respondent aligned with the objection of 1st Respondent and adopted the arguments proffered urging that the appeal be dismissed: E  
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This appeal stemming from the same root as the two appeals earlier dealt with in SC. 191/2012 and SC.191A/2012 would suffer the same fate since there is no viable basis upon which this appeal can be handled. It is hereby with the fuller reasons in the leading Ruling dismissed. I abide the consequential orders in the lead Ruling. H