

SUPREME COURT OF NIGERIA
10TH SEPTEMBER, 2012. SC. 332/2012
CORAM:- **A. M. MUKHTAR CJN, M. MOHAMMED,**
W. S. N. ONNOGHEN, S. GALADIMA, N. S. NGWUTA,
M. D. MUHAMMAD, C. B. OGUNBIYI, JJSC

1. PRINCE ABUBAKAR AUDU	
2. BARR. HENRY OJUOLA APPELLANTS
AND	
1. CAPTAIN IDRIS WADA	
2. ARC. YOMI AWONIYI	
3. PEOPLES DEMOCRATIC PARTY	
4. INDEPENDENT NATIONAL RESPONDENTS
ELECTORAL COMMISSION	
5. RESIDENT ELECTORAL	
COMMISSIONER, KOGI STATE	
6. ACTION CONGRESS OF NIGERIA	

ELECTION PETITIONS - Appeals - Notice of Appeal - Filing - Time limit - By para.1 Practice Directions 2011 - Appeal shall be filed within 14 days from the date of decision appealed against (H1)

APPEALS - Extension of time - Application - Reason for - Since the supporting affidavit did not disclose cogent reason for delay - The application cannot be granted (H2)

FACTS

Applicants' motion is for an order of the Supreme Court extending the time within which the applicants may file their Notice of Appeal against the judgment of the Court of Appeal delivered. The application is supported by an 18 paragraph affidavit.

Meanwhile, 1st, 2nd and 3rd respondents raised Preliminary Objections that Supreme Court has no jurisdiction to entertain the application on the ground that the provisions of paragraph 1 of the Practice Directions No. 33 of 2011 must be observed and applied by the Supreme Court in the hearing and determination of Election Appeals from the Court of Appeal. As such, they contend that Su-

preme Court does not have the jurisdiction to hear the application extending the time for the applicants to file their Notice of Appeal.

HELD (Unanimously dismissing the application per

MOHAMMED JSC)

ELECTION PETITIONS - Appeals - Notice of Appeal - Filing

1. The application of this provision has been considered by this Court in the case of C.P.C. V. INEC (2011) 18 NWLR (pt.1279) 493 where this court held that the unambiguous words used in that paragraph of the Practice Direction 2011, show that Section 285(7) of the 1999 Constitution (as amended) and paragraph 1 of the Practice Directions have the status of limitation laws and must be applied as such. The paragraph gives the appellants 14 days to file their appeal. There is no dispute that the Judgment of the court of Appeal sought to be appealed against, was delivered on 14/7/2012. The appellants did not file their Notice and grounds of appeal until 2/8/2012. The applicants Notice of appeal was therefore not filed within the time prescribed by the practice Directions. The applicants appeal is therefore incompetent and cannot be heard. The question now is whether this court can extend the time for the appellants to allow this court to hear their appeal. The answer is of course in the negative. The practice Directions prescribing 14 days to file the Notice and grounds of appeal also having been made pursuant to Sections 236, 233(2) (e) of the constitution to enable this court to hear election appeals within 60 days prescribed by Section 285(7) of the constitution, granting the applicants application shall be quite contrary to the practice Directions and the constitution itself which was amended to give Election Petitions and appeals expeditious hearing. I therefore hold that this court has no jurisdiction to grant the application to extend the time to appeal. (p. 3043 A)

APPEALS - Extension of time - Application

2. In any case even on the merit of the application, the affida-

vit of the applicants in support of the application has not disclosed any cogent and valid reasons for the appellant's failure to file their appeal within the time allowed. Reasons of the failure of the applicants to receive the copy of the judgment in time cannot be relied upon to obtain the discretion of this court. The affidavit of the applicants has not even addressed the second requirement of granting such application that the Notice of appeal contained grounds of appeal which show good reasons why the appeal must be heard. Thus the requirement of the law not having been met, the application must fail.
(p. 3043 F)

NOTABLE POINT OF INTEREST

OGUNBIYI JSC

1. Election petitions – Nature of

It is sufficient to re-iterate that election matters are sui generis by nature and hence the reason for the special enactment of set of laws regulating its procedure thereto. To urge the court to apply the ordinary rules of court would therefore greatly undermine the special nature of the Electoral Act and the other rules enacted for the purpose thereof. (p. 3047 B)

REPRESENTATION

Chief Charles Edosomwan (SAN) with Benson Igbanoi, Abdullahi Haruna, Isaac E. Ekpa, Nurudeen A. Ogbara, Kunle Adegoke, Maymuna Audu, Mutiu Olaoye, Panama Magdalene (Mrs.), Abdullahi Garba Ogbeide, Godwin Iyinbor, Dominic Ezerioha and Chibuike Ezeokwuora, for the Appellants

L.O. Fagbemi (SAN) with P. A. Akubo (SAN), Dr. J.O. Olatoke, Akin Akundeji, H.T. Fajimite, J.A. Akubo, J.S. Adesola, B.O. Adesina, Hadeem Afolabi, A.O. Popoola, A.F. Yusuf, B.A. Oyun, Akeem Umoru, Y.O. Ishola (Miss), A.B. Daibu, M.T. Hambolu, G.A. Ashaolu, M.A. Adelodun, K.C. Bon Nwakamma and A.D. Eribake. Chief Chris Uche (SAN) with Emeka Okoro, S.I. Okonkwo, Maduakolam Igwe, Kanayo Okafor, Nnamdi Nwafor, Bashir Bulama, Frank Molokwu, Adebayo Inyanda, Nonye Otiji (Miss) and Adanna Ilomuanya (Miss), Yusuf Ali (SAN) with A.O. Adelodun (SAN), Otumba Kunle Kalejaiye (SAN),

Dr. Wahab Egbewole, K.K. Eleja, Chief (Mrs.) Olufunmilayo Awomolo, S.A. Oke, R.O. Balogun, Yakub Dauda, A.O. Abdukadir, Adetunji Muraina, N.N. Adegboye, Tahir Aduagba, K.T. Sulyman (Miss), A.O. Orire T.E. Akintunde (M6), K.O. Lawal, Foluke Moronfoye (Miss), F.F. Kadir (Miss), Taiye Oloyede, A. Adeyi and Chidi Amaeze
B Dr. Muiz Banire with Tayo Olatunbosun, Dare Oketade, and Ibukun Fasanmi for the Respondents

CASE REFERRED TO

C C.P.C. V. INEC (2011) 18 NWLR (pt.1279) 493

STATUTES REFERRED TO

Practice Directions No. 33 of 2011, para. 1
Constitution of Federal Republic of Nigeria 1999 (as amended), ss.
D 236, 233(2)(e) and 285(7)

LEAD RULING BY MOHAMMED JSC

The Applicants Motion is for an order of this court extending the time within which the applicants may file their Notice of Appeal
E against the Judgment of the Court of Appeal delivered on July 14th 2012. The application is supported by an 18 paragraph affidavit to which the judgment of the court of Appeal of 14/7/2012 and the Notice of appeal filed on 2/8/2012 were exhibited.

However, the 1st and 2nd Respondents together with the
F 3rd Respondent have raised Preliminary Objection that this Court has no jurisdiction to entertain the application and grant the same in view of the present state of the law regarding the application having regard to the entire circumstances of this matter. That having regard
G to the provisions of the Practice Directions No. 33 of 2011 which must be observed and applied by this Court in the hearing and determination of Election Appeals from the Court of Appeal which prescribes 14 days within which to file their appeal, this Court does not have the jurisdiction to hear this application extending the time for
H the applicants to file their Notice of Appeal.

Paragraph 1 of the Practice Directions No. 33 of 2011 states:-
“The Appellant shall file in the Registry of the Court of Appeal his Notice and grounds of appeal within 14 days from the date of the decision appealed against.”

The application of this provision has been considered by this Court in the case of C.P.C. V. INEC (2011) 18 NWLR (pt.1279) 493 where this court held that the unambiguous words used in that paragraph of the Practice Direction 2011, show that Section 285(7) of the 1999 Constitution (as amended) and paragraph 1 of the Practice Directions have the status of limitation laws and must be applied as such. The paragraph gives the appellants 14 days to file their appeal. There is no dispute that the Judgment of the court of Appeal sought to be appealed against, was delivered on 14/7/2012. The appellants did not file their Notice and grounds of appeal until 2/8/2012. The applicants Notice of appeal was therefore not filed within the time prescribed by the practice Directions. The applicants appeal is therefore incompetent and cannot be heard. The question now is whether this court can extend the time for the appellants to allow this court to hear their appeal. The answer is of course in the negative. The practice Directions prescribing 14 days to file the Notice and grounds of appeal also having been made pursuant to Sections 236, 233(2) (e) of the constitution to enable this court to hear election appeals within 60 days prescribed by Section 285(7) of the constitution, granting the applicants application shall be quite contrary to the practice Directions and the constitution itself which was amended to give Election Petitions and appeals expeditious hearing. I therefore hold that this court has no jurisdiction to grant the application to extend the time to appeal.

In any case even on the merit of the application, the affidavit of the applicants in support of the application has not disclosed any cogent and valid reasons for the appellant's failure to file their appeal within the time allowed. Reasons of the failure of the applicants to receive the copy of the judgment in time cannot be relied upon to obtain the discretion of this court. The affidavit of the applicants has not even addressed the second requirement of granting such application that the Notice of appeal contained grounds of appeal which show good reasons why the appeal must be heard. Thus the requirement of the law not having been met, the application

must fail.

Granting the application will certainly result in pulling out the practice Direction out of the root of the Provisions of the constitution in sections 233(2)(e) and 285(7) of the 1999 constitution, which were specifically made to ensure expeditious hearing and determination of Election Petitions and appeal arising from such cases.

In the result, as this court has no power to extend the time to appeal as prescribed in paragraph 1 of the practice Direction No. 33 of 2011 and that even on the merit, the application has no chance whatsoever in succeeding in the circumstances of this case, the application is hereby refused and the same is hereby dismissed with no order on costs. Consequently, there is no appeal before this Court.

MUKHTAR CJN

This court has no jurisdiction to hear this application in view of the provision of the Practice Direction for Election Appeals of 2011. In addition, the application has no merit, as it has not disclosed good and substantial reasons for the delay in filing the notice of appeal within the time allowed by the law to warrant the exercise of our discretion in favour of the applicants. The application is therefore dismissed. Consequently there is no appeal before this court.

ONNOGHEN JSC

I agree with the lead ruling just read by my learned brother MOHAMMED, JSC that the time fixed in the Practice Direction for filing appeal against the judgment of the Court of Appeal in relation to Governorship Election or any other relevant election cannot be extended having regards to the nature of election matters in respect of which time remains of essence.

The above notwithstanding and in the alternative it is very clear that no substantial reason has been offered by the applicants to explain why the appeal was not filed within the 14 (fourteen) days provided in the Practice Direction particularly when applicants collected the judgment (certified true copy) two days to the expiration of the time allotted for the filing of the appeal.

Secondly, learned senior counsel for the applicants did not

satisfy the court that the grounds of appeal are substantial enough to warrant this court to exercise its discretion in their favour. In fact he did not address the issue at all when the above requirement must co-exist with that of substantial reason to explain why the appeal was not filed within time.

In conclusion the application has no merit and is consequently dismissed. Consequently there is no appeal before us. I abide by the consequential orders made in the said lead ruling including the order as to costs.

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NGWUTA JSC

I entirely agree with the ruling just read by my learned brother, Mohammed, JSC. Paragraph 1 of the Practice Direction 2012 makes it mandatory that appeals from the judgment of the Court of Appeal on Governorship Election Petition be filed within 14 days after the delivery of the judgment appealed against.

Election matters are time bound. There is no provision for extension of the time stipulated in the Practice Direction. It is in public interest that such matters be disposed of timeously and any extension of time will defeat the purpose of the Practice Direction. The appeal filed in breach of the practice Direction has not been initiated by due process. It is therefore incompetent and the court is without jurisdiction to entertain it. See *Madukolu & ors v. Nkemdilim* (1962) 2 NSCC 372. The application for extension of time after the expiration of the time frame in the Practice Direction is incompetent.

Assuming without conceding that the application is competent, the applicant failed to provide valid reason for the delay. Furthermore, the applicant did not refer to the ground of appeal or show that he has arguable grounds of appeal. The application has no merit and for the more comprehensive reason in the lead ruling, I also dismiss same. I make no order for costs.

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OGUNBIYI JSC

The application at hand seeks leave to bring an application for extension of time within which to file the notice of appeal against the judgment of the Court of Appeal delivered on the 14th July,

2012. It also seeks an order extending the time within which to file the notice of appeal against the judgment and further order deeming as properly filed and served the notice of appeal, completed record of appeal and appellant's brief.

Against the application are two sets of preliminary objections
 B by the 1st and 2nd respondents as well as the 3rd respondent that
 the appeal is incompetent. The 1st objection borders on the jurisdic-
 tion of this court on the account of the notice having been filed out of
 time and secondly that grounds 19, 24 and 26 of the grounds of
 C appeal are grounds which do not directly attack the ratio decidendi
 of the judgment. All parties extensively addressed the court on the
 application with the appellant's counsel relying on all the paragraphs
 of the affidavit in support as well as the exhibits attached and also the
 replies to the respondent's written addresses. From the cumulative
 D deduction on the submissions of all counsel, it is obvious that this
 court as rightly submitted by the learned 1st to 5th respondents' coun-
 sel is bereft of any jurisdiction to entertain this application. This is
 especially, having regard to the Practice Direction Election Appeals to
 the Supreme Court and Section 285(7) of the Constitution of the
 E Federal Republic of Nigeria as amended. The Practice Direction in
 other words, has the force of law. It is obvious and also conceded to
 by all counsel inclusive of the applicant's senior counsel that the pur-
 ported notice of appeal was not filed within time and hence the rea-
 son for the application. With the specification of the law requiring
 F that the appeal should be filed within 14 days of the judgment of the
 Court of Appeal, this application is outside the jurisdiction of this court
 and it cannot now exercise jurisdiction thereon. The court's jurisdic-
 tion cannot in other words be activated.

G Furthermore and even if taken for granted the court had
 jurisdiction to entertain same, the merit of the application requires
 that for the applicant to earn the discretion of this court he must
 adduce good and substantial reasons why discretion could be exer-
 cised in his favour. The reasons advanced and upon which reliance is
 H anchored are twofold; that is to say the inability of the applicant in
 obtaining the CTC copy of the judgment of the Court of Appeal
 within time and secondly that the applicant's counsel had the errone-
 ous belief that the appeal was to be filed within 21 days of the judg-
 ment as against 14 days. These are borne out at paragraphs 9 and

14 of the affidavit in support of the motion. It is on record that the applicant's counsel was in court on the date the judgment of the Court of Appeal was read in court. It has also been pronounced upon by the apex court times without number that failure to obtain CTC judgment is not a good reason for inability to appeal within time. On the conclusion of the two reasons advanced, same I hold do not qualify as sufficient for this court to grant the application even on the merit of the case as it were. B

It is sufficient to re-iterate that election matters are sui generis by nature and hence the reason for the special enactment of set of laws regulating its procedure thereto. To urge the court to apply the ordinary rules of court would therefore greatly undermine the special nature of the Electoral Act and the other rules enacted for the purpose thereof. C

On the totality of this application and whichever way it is looked at the entire case I hold is grossly incompetent and or devoid of any merit which same is hereby dismissed in terms of the lead ruling. Consequently, I therefore agree that there is no appeal before us and I also abide by the order made as to cost. D

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