

SUPREME COURT OF NIGERIA
MONDAY 5TH MARCH, 2012. SC. 33/2012
CORAM:- M. MOHAMMED, C. M. CHUKWUMA-ENEH,
B. RHODES-VIVOUR, J. A. AFOLABI,
M. S. MUNTAKA-COOMASIE, JJSC

CONGRESS FOR PROGRESS
CHANGE

..... APPELLANT

AND

1. PHARM. DANBABA

DANFULANI SUNTAI

2. PEOPLES DEMOCRATIC PARTY

3. THE RESIDENT ELECTORAL

COMMISSIONER TARABA STATES

4. THE RETURNING OFFICER

TARABA STATE

5. THE COMMISSIONER OF POLICE RESPONDENTS

JUDGMENTS - Validity - Essential requirements - Facts as pleaded by parties must be set out - As well as issues for determination and resolution thereon - And a final order of court (H1)

ELECTION PETITIONS - Gubernatorial election - Appeal - Judgment - Final court - Since C.A. is not final court by virtue of s. 233(2)(e)(iv) 1999 Constitution - The judgment is appellable to S.C (H2)

ELECTION PETITIONS - Legislative Houses elections - Appeal - Final court - By virtue of ss. 246(1)(b)(c) & 285(8) 1999 Constitution - Appeals from such elections terminate at Court of Appeal (H3)

ELECTION PETITIONS - Appeals - Courts - Judgments - Reasons - S.C. and C.A. can give their decisions in final appeals under s. 285(8) 1999 Constitution - And reserve reasons thereof (H4)

WORDS & PHRASES - Decision - Meaning - 1999 Constitution s. 318 - Decision means any determination of court - Which includes judgment - Decree - Or Order (H5)

ELECTION PETITIONS - Appeal - Documents - Oral evidence - Appellants must adduce oral evidence - Linking the documents to his case - As court is not supposed to do a party's case (H6)

ELECTION PETITIONS - Crime - Proof - By s. 138(1)(2) Evidence Act - Onus is on appellant to prove beyond reasonable doubt - Allegation of corrupt practices (H7)

ACTIONS - Declaratory reliefs - Grant - Without evidence from claimant - Court does not grant such relief - As plaintiff succeeds on the strength of his case (H8)

FACTS

Petitioner/appellant (Congress for Progressive Change - CPC) sponsored one Engineer Ahmed Yusuf as her candidate at the 2011 gubernatorial election in Taraba State, while 2nd respondent (Peoples Democratic Party - PDP) sponsored 1st respondent as her candidate for the same election. 3rd and 4th respondents returned 1st respondent as the winner of the said election.

Being dissatisfied with the result at the election, appellant filed this election petition at the Taraba State Governorship Election Tribunal. After hearing, the tribunal dismissed appellant's petition. This led to appellant filing appeal at the Court of Appeal Yola Division. The court also dismissed the appeal. Aggrieved further, appellant appealed to Supreme Court.

ISSUES FOR DETERMINATION

"1. Whether considering the provisions of section 285(8) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) the Court of Appeal has the jurisdiction to deliver judgment in the this case and reserve its reasons to a later date.

2. Whether the Court of Appeal was right when it affirmed the decision of the Trial tribunal that since witnesses did not lead evidence in support of the documents tendered, it would not look at them.

3. Whether considering that election petition is sui generis, the Court of Appeal was right in holding that since the relief sought by the appellant is declaratory the burden is fixed on the appellant to

prove its case notwithstanding the fact that the 2nd respondent admitted substantial part of the petition.”

HELD (Unanimously dismissing the appeal per **CHUKWUMA-ENEH JSC**)

JUDGMENTS - Validity - Essential requirements

1. As gathered from the decided cases of this court the essential requirements of a judgment ordinarily that is to say apart from the formal introductory and concluding parts of the same are:

(1) In a civil matter including election petitions as here, the facts of the case as pleaded by the parties have to be set out and dealt with.

(2) The issues that arise for determination have to be spelt out.

(3) The resolution of the issues for determination i.e. predicated upon the reasons given for resolving the said issues.

(4) There has to be a final order of the court vis-a-vis the disposition of the reliefs sought in the matter (as also in election petitions) that is, by granting or refusing the same as a whole or in part and the judgment is authenticated by the Judge's signature. (p. 3560 D)

Gubernatorial election - Appeal - Judgment - Final court

2. The above provisions of section 285(7) and (8) supra are clear and have been raised by the appellant in contending that the Court of Appeal has no jurisdiction to deliver its judgment as it stands pursuant to Section 285(7) & (8) (supra) that is to say, upon submitting that the said judgment is not validly constituted pursuant to Section 285(7) & (8) and for not having elaborated on the judgment up till now, and so making what is therein not a judgment in the true sense of the term. Scrutinizing the provisions of the two subsections vis-à-vis the facts of this case, what seems to me to have emerged therefrom is that the said judgment of the Court of Appeal has

complied with the provisions of Section 285(8) upon my having held that the said judgment has met all the essential requirements of a full judgment and again upon having discounted as a mere surplusage the phrase to elaborate on it later. The said judgment is otherwise valid and subsisting and therefore appellable to this court by the instant appellant as the Court of Appeal cannot be in the circumstances “the court of final appeals” (as per Section 285(8) to hear and determine the governorship Election Petition appeals as the instant appeal duly covered under Section 233(2) (e) (iv) (supra). The Court of Appeal that is to say, if I may repeat is not the final court in the instant matter as per the provisions of Section 285(8). This conclusion is amply supported by the combined reading of the provisions of Section 233(2) (e) (iv) of the 1999 Constitution as amended and Section 285(8) supra.
 (p. 3562 C)

Legislative Houses elections - Appeal - Final court

3. On the other hand the final appeals from the decision of the National and State House of Assembly Election Tribunal and the Governorship Election Tribunal terminate at the Court of Appeal as the final court. This position is so as gathered from combined reading of the provision of Sections 285(8), 246(1) (b) & (c). (p. 3563 A)

Appeals - Courts - Judgments - Reasons

4. In essence both courts i.e. the Supreme Court and Court of Appeal can adopt the practice in election matters of first giving its decisions in final appeals covered under sections 285(8) and reserving the reasons thereof to a later date. The Supreme Court only before now has always been empowered to give the reasons for its decision at a later date; that such power has now been extended to matters pertaining to election petitions has now been put to rest as provided for under section 285(8) supra. (p.3563 B)

Decision - Meaning

5. Therefore, the postulation is whether the words “judgment”

“decision” and “reasons” (i.e. “opinions” properly so called - see section 294(2) & (3) of the 1999 Constitution) have the same meaning in relation to these provisions vis-a-vis the court and so whether they are interchangeable terms and have been so used in the instant provisions of these subsections. However, one thing that is beyond dispute is that at pp. 1445-1446 of Stroud’s Dictionary Vol. 3 has been defined the word “judgment” in the proper use of the term as an “order” given by the court and that the reasons themselves are not judgments. Also Section 318 of the 1999 Constitution has defined the word “Decision”, it means in relation to a court, any determination of that court and includes “judgment”, “decree”, “order” “conviction sentence or recommendation.” I make bold to hold that the words “decision” and “Judgment” in my considered opinion mean the same thing and are interchangeable in terms in relation to court matters. Our law reports are replete with the feature of the use of these terms. I cannot say so of the word “reasons” (otherwise opinions) whether it is the same as judgment, decision and even determination in relation to a court without knowing the context in which it is used. (p. 3563 H)

Appeal - Documents - Oral evidence

6. Issue 2: This issue has raised a pertinent question of the court evaluating documents allegedly dumped on it where there is no oral evidence linking the documents to the appellant’s case. It is significant that these documents as per exhibits PI - P201 have been tendered from the Bar with the consent of both sides. The appellant’s contention is that they have been taken as read and that it is the duty of the court to appraise the documents without more. I think the appellant has misconceived the law in this regard that where the documents so tendered are not examined in the open court by oral evidence showing the purpose for tendering them and thus linking them precisely to a part of the case of the appellant as per the pleadings of the petition. Otherwise there is no duty on the court to embark on a cloistered justice to examine To contend that the documents speak for themselves thereof is not

to appreciate that it is the appellant's duty to call direct evidence to support its case. Even as I agree that the Electoral Act 2010 has stacked a lot of imponderable hurdles for a petitioner to skip in proving electoral wrongdoings and malpractices. This area of one Electoral Act needs further tinkering with so as to bring it in line with what is fair and justifiable.
 (p. 3565 B)

ELECTION PETITIONS - Crime - Proof

7. The appellant's case has been faulted for want of proof of the allegation of corrupt practices - thus imputing criminal offences to the respondents. The onus on the appellant in this regard is as per section 138(1) and (2) of the Evidence Act and it has to be proved beyond reasonable doubt. Having perused the record of appeal I cannot but agree with the findings of the two lower courts of the appellant's failure to discharge the onus on it on this issue. I am in agreement with the Tribunal that having gotten some admissions to parts of the petition here may have falsely lured the appellant to unwittingly abandon the burden on it in this matter to its chagrin.
 (p. 3565 G)

ACTIONS - Declaratory reliefs - Grant

8. Issue 3: that is whether declaratory reliefs as claimed in this petition can be granted where there is no oral evidence in support thereof why this requirement is so embedded in our legal history which I do not intend to explore here. This area of the law has been so flogged that it has become rather trite. Without evidence from the claimant, the court is not obliged to grant such relief. The rule is so fundamental that the court does not grant declaratory reliefs on admissions by the defendant without the oral testimony of the plaintiff; so that the plaintiff will succeed in case on the strength of his case no more, no less. (p. 3566 B)

CASES REFERRED TO

Ihesi v. Arinze (2007) 5 NWLR (Pt. 1027) 241
 Jang v. Dariye (2003) 15 NWLR (Pt. 843) 436

Anyanwu v. Uzowuaka (2009) 13 NWLR (Pt. 115)) 445

Haruna v. Modibbo (2004) 16 NWLR (Pt. 900) 487

Ndayako v. Dantoro (2004) 13 NWLR (Pt. 889) 189

Anyanwu v. Uzowuaka (2009) 13 NWLR (Pt. 1159) 445

Emeje v. Positive (2010) 1 NWLR (Pt. 1174) 48

Igbeke v. Emordi (2010) 11 NLR (Pt. 209) 1

B

Tangale Traditional Council v. Fawu (2002) FWLR (Pt. 117) 1137

Omoju v. F.R.N. (2008) 2 SCNJ 97

Arabambi v. A.B. Ind. Ltd. (2005) 19 NWLR (Pt. 959)

Inakoju v. Adeleke (2007) All FWLR (Pt. 353) 3

C

Balogun v. Ode (2007) 4 NWLR (Pt. 1023) 1

Dumez Nig Ltd v. Nwakhoba (2009) All FWLR (Pt. 461) 842

Ogolo v. Ogolo (2006) ALL FWLR (Pt. 313) 1

Obun v. Ebun (2006) All FWLR (Pt. 327) 419

D

STATUTES REFERRED TO

Constitution of Federal Republic of Nigeria 1999, ss. 233(2), 240, 246(1)(b)(ii), (3)285(7)(8), 294(1)(2)(3)

Evidence Act s. 138(1)(2)

E

LEAD JUDGMENT BY CHUKWUMA-ENEH JSC

The appellant in this matter has appealed to this court against the unanimous decision of the Court of Appeal Yola Division given on 6/1/2012 dismissing the appellant's appeal in this matter for lack of merit. The appeal to the lower court is against the decision of the Taraba State Governorship Election Tribunal that has as well dismissed the appellant's petition. The petitioner has been the appellant in the proceedings in this court and before the two lower courts. The appellant (C.P.C) and the 3rd respondent (P.D.P) as political parties have sponsored respectively one Engineer Ahmed Yusuf and the 2nd respondent as candidates for the position of governorship position for Taraba State in the general election of 2011. The 1st, 4th and 5th respondents have returned the 3rd respondent as duly elected governor of Taraba State.

H

The parties herein have filed and exchanged their respective briefs of argument; the same have been adopted and relied on at the oral hearing of the appeal before us in this court on 1/3/2012; and to save the instant appeal from elapsing by effluxion of time (i.e. 60

days from the decision of the Court of Appeal as per Section 285(7) Constitution 1999, the judgment of this court in the instant matter has been fixed for 5/3/2012. The appellant's case in its brief of argument has been predicated on 3 (three) issues raised for determination to wit:

B *"1. Whether considering the provisions of section 285(8) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) the Court of Appeal has the jurisdiction to deliver judgment in the this case and reserve its reasons to a later date.*

C *2. Whether the Court of Appeal was right when it affirmed the decision of the Trial tribunal that since witnesses did not lead evidence in support of the documents tendered, it would not look at them.*

D *3. Whether considering that election petition is sui generis, the Court of Appeal was right in holding that since the relief sought by the appellant is declaratory the burden is fixed on the appellant to prove its case notwithstanding the fact that the 2nd respondent admitted substantial part of the petition."*

E The 1st, 4th and 5th respondents have filed a joint brief of argument in this matter and have raised similar issues for determination as encapsulated in the appellant's brief of argument that I see no need repeating them. The 2nd respondent however has in his brief of argument formulated the issues for determination as follows:

F *"(1) Whether the decision made by the Court of Appeal on 6/1/2012 dismissing the appeal of the appellant in this case is unconstitutional or invalid simply because the court stated thus in the course of its judgment. "I will elaborate on this on a later day" having regard to Section 285(7) and (8) and 294(1) and (2) of the Constitution of the Federal Republic of Nigeria 1999?*

G *(2) Whether the Court of Appeal was wrong when it upheld as unassailable the decision of the governorship Election Petition Tribunal Taraba State that it could not be called to supply the evidence which the appellant failed to do from the recess of its chambers in order to assist the appellant prove his allegation of corrupt practices against the respondents?*

H *(3) Whether the Court of Appeal was wrong in holding that the burden of proving his allegation of corrupt practices and establishing entitlement to declaratory reliefs sought lay on the appellants?"*

The 3rd respondent has raised a preliminary objection in which it has maintained that the appeal is incompetent as the court has no jurisdiction to hear the same under Section 285(7) of the 1999 Constitution (as amended). It has relied on 7 grounds of objection which on the whole have raised the simple question of whether the court can remit the appeal for hearing before another panel of justices of the Court of Appeal after the expiration of 60 days provided in section 285(7) of the 1999 Constitution (as amended). The appellant has not reacted to the objection as no reply brief has been filed by the appellant in that regard. Having considered the objection cum the grounds in expatiation, I think the issue raised therein is coterminous with the issues to be resolved in the main appeal itself and so not a matter which can be taken at an interlocutory stage. The objection is most unnecessary in the light of the issues raised for determination even by the 3rd respondent in its brief of argument. I therefore overrule the same as it amounts to using two similar processes to achieve the same purpose which in my view is even then an abuse of process. Furthermore, it is my view that the objection has to be taken at one fell swoop with the appeal itself in order to obviate unnecessary repetition of the parties' entrenched positions in this matter. The 3rd respondent has also enunciated its arguments in the appeal in its brief of argument in the event of its objection being overruled.

The 3rd respondent's brief of argument filed in this matter has raised three issues for determination which in content and substantiality are very similar to the issues raised by the other respondents in this appeal. I see no need repeating the issues all over again as I go ahead to review its case in this matter.

The 3rd respondent has submitted that the Court of Appeal decision has determined the merits or otherwise of the appellant's appeal and therefore the inadvertence in referring to section 285(8) (supra) is a mere surplusage and has not occasioned a miscarriage of justice. It has relied on a number of decided cases of this court in support of the point. See *Ihesi v. Arinze & Anor.* (2007) 5 NWLR (Pt. 1027) 241 at 251; *INEC v. Musa & Ors.* (2002) 9/11 SCNJ 1 at 6, *H* (2002) 17 NWLR (Pt. 796) 412.

It also argued that the law is clear and settled that documents tendered from the bar are not a conclusive evidence of proof of the particular facts therein unless such documents have been positively

proved by oral evidence connecting them. See *Jang v. Dariye* (2003) 15 NWLR (Pt. 843) 436; *Anyanwu v. Uzowuaka* (2009) 13 NWLR (Pt. 115) 445 at 468. And so that where a petitioner fails to prove the facts alleged, in his petition is liable to be dismissed. See *Haruna v. Modibbo* (2004) 16 NWLR (Pt. 900) 487.

B On the question of declaratory reliefs claimed by appellant, the 3rd respondent has posited that the appellant has to proffer cogent and credible evidence to show the strength of his case and rely on the same in order to succeed thereof as against the weakness of the respondents' case. See *Ndayako v. Dantoro* (2004) 13 NWLR (Pt. 889) 189 at 214 to support the case that the court does not grant declarations in default of defence or indeed on admission without hearing evidence and being satisfied by such evidence. The instant appellant must therefore adduce oral evidence to establish this item of its claim. The court is urged to resolve all the issues in this appeal in favour of the respondents.

If I may observe the issues raised by the 2nd respondent as set out above and the 1st, 4th and 5th respondents (although not set out here) as I have said above are in all material particulars identical to the appellant's issues as set herein. Again, in that vein I may paraphrase the three common issues raised for determination herein by all the parties in this appeal; they have culminated firstly on whether there is the want of jurisdiction to deliver the decision of the lower court pursuant to section 285(8) of the 1999 Constitution as amended i.e. to elaborate the same at a later date as stated in the said judgment; also that upon the upholding of the findings of the trial tribunal that the appellant (as petitioner before the trial tribunal) has failed to discharge the burden of proof placed on it to link by evidence the documentary evidence i.e. exhibits P1-P201 with any particularity to the relevant facts as pleaded in the petition; and failing to establish by oral evidence the entitlement to the declaratory reliefs claimed by the appellant. The 6th respondent as a true umpire so to speak having no decisive stake in this matter has maintained its neutrality by filing no brief.

However, it has happened that on 6/1/2012 the Court of Appeal has delivered its decision in this matter having captioned it by stating that it has done so pursuant to section 285(8) *supra* and ending the decision by saying that "*I shall elaborate on this on later date*"

thus it has tasked the appellant to appeal this matter to this court urging that the Court of Appeal has no jurisdiction to give its decision piecemeal. See Section 285(8) (supra).

In challenging the decision the appellant has considered the combined provisions of Section 285(8) supra on the backdrop of 233(2) and 246(1) (b) (ii) and (3) both of the 1999 Constitution (as amended) and has submitted that the Supreme Court is the court in all final appeals albeit in the causes in regard to the governorship Election Petition matters appealed from the Court of Appeal; in other words, that such matters have to be covered under Section 233(2) (e) (iv) supra. Similarly that the Court of Appeal is by virtue of Section 246(1) (b) (ii) and (3) (supra) also the court in all final appeals from the election tribunal where the causes pertain to the National and State Houses of Assembly election matters. The point is taken even then that the Court of Appeal has not up till now given any reasons for its decision as per the decision of 6/1/2012. In this regard the appellant has claimed to be greatly disadvantaged and so that both the 14 days from 6/1/2012 allowable within which to appeal the decision by filing a notice of appeal and 60 days within which to prosecute the appeal it is submitted have elapsed. The appellant has also construed the meaning of the words “decision” and “judgment” and relied as per *Bamaiyi v. Attorney-General of the Federation* (2001) 7 SCNJ 346 at 355, (2001) 12 NWLR (Pt. 727) 468 to suggest that the decision of the Court of Appeal is neither a decision nor a judgment and has posited that the appellant in the situation has been denied its constitutional right of appeal amounting to a denial of fair hearing and has urged the court to set aside the decision of the Court of Appeal of 6/1/2012 for reserving its reasons to a later date for want of jurisdiction to do so. This issue is the appellant’s trump card in this appeal.

On issue 2: the appellant relying on a plethora of authorities to wit: *Anyanwu v. Uzowuaka* (2009) 13 NWLR (Pt. 1159) 445 at 451; *Emeje v. Positive* (2010) 1 NWLR (Pt. 1174) 48 at 49 paragraph 6-11; *Igbeke v. Emordi* (2010) 11 NLR (Pt. 209) 1, (2010) 11 NWLR (Pt. 1204) 1; *Tangale Traditional Council v. Fawu* (2002) FWLR (Pt. 117) 1137 at 1163 paragraphs G-H, (2001) 17 NWLR (Pt. 742) 293 and *Omoju v. F.R.N.* (2008) 2 SCNJ 97 at 215, (2008) D 7 NWLR (Pt. 1085) 38 but excluding *Arabambi v. A.B.I.L.* (2005) 12

SCNJ 331 at 354 - 355 reported as Arabambi v. A.B. Ind. Ltd. (2005) 19 NWLR (Pt. 959) 1 has submitted that the Court of Appeal has affirmed the decision of the Election Petition Tribunal on the erroneous premise which has alleged that the appellant has led no evidence to connect the relevant documents tendered in the tribunal to support the pleadings as per the petition even as it is trite that documentary evidence is the best form of evidence and more reliable. It is contended that the documents exhibit P1-P201 have practically been dumped on the court (untied).

On issue 3: It has been submitted that the burden of proof as per declaratory reliefs is fixed on the appellant and being aware of this onus the appellant it is contended has discharged the burden satisfactorily even on a minimal scale as the 22nd respondent has admitted substantial averments of the petition. It is also its contention that this burden even then does not extend to election petition matters. No authorities I must confess have been cited to court to support this novel proposition. It must be taken as clearly unsubstantiated.

In the premises the court is urged to set aside the decision of the Court of Appeal and to affirm the decision of the Court of Appeal.

The 1st, 4th and 5th respondents having submitted that the appellant wrongly has misconstrued the wrong law as per Section 285(8) of the 1st, Amendment Act which does not contain the words “*or Court*” immediately before the words “*may adopt*” as per the 2nd Amendment Act i.e. being the correct provisions of Section 285(8) it has naturally missed the salient point as the Court of Appeal has rightly acted in pursuance to Section 285(8). It is opined that regard has to be had as to the other relevant and similar provisions of the Constitution in construing these provisions including in this case, section 246(1) (c) (ii) supra to show that the provisions of section 285(8) can be invoked by the Court of Appeal in all final appeals from the Election Petition Tribunal in regard to the National and State House of Assembly Election matters if I may observe over which it is the final court. They have relied on a host of authorities for so contending including Inakoju v. Adeleke (2007) All FWLR (Pt. 353) 3 at 104 D, (2007) 4 NWLR (Pt. 1025) 423; Attorney-General of Abia State v. Attorney-General of the Federation (2003) FWLR (Pt. 152) 131 at

201 G, (2003) 4 NWLR (Pt. 809) 124; Kraus Thompson Organization v. N.I.P.S.S. (2004) All FWLR (Pt. 218) 797 at 809 F-G, (2004) 17 NWLR (Pt. 901) 44; Balogun v. Ode (2007) 4 NWLR (Pt. 1023) 1; Attorney-General of Kaduna State v. Hassan (1985) 2 NWLR (Pt. 8) 483; Attorney-General of Lagos State v. Eko Hotels Ltd. (2006) All FWLR (Pt. 342) 1398 at 1471 H-1472A, (2006) 18 NWLR (Pt. 1011) 378 and thus having construed the said provisions it has been submitted that even though the Court of Appeal has as stated proceeded to deliver a brief judgment all the same it has delivered a comprehensive judgment consistent in every respects with a regular and full judgment which has affirmed crucial findings of the trial tribunal's judgment and that it has actually been delivered pursuant to section 285(8) supra. It is a full judgment with reasons for its findings that is to say, notwithstanding having stated that it will elaborate on the judgment later.

On issue 2: Relying on *Ilori v. Tella* (2007) ALL FWLR (Pt. 393) 122 at 139 D-G, (2006) 18 NWLR (Pt. 1011) 267; *Nwole v. Iwuagwu* (2006) All FWLR (Pt. 316) 325 at 344 E-G, (2005) 16 NWLR (Pt. 952) 543; *Olawepo v. Saraki* (2009) All FWLR (Pt. 498) 256 at 303 H-304D; *ANPP v. Usman* (2009) All FWLR (Pt. 463) 1202 at 1337 A-B, (2008) 12 NWLR (Pt. 1100) 1; *Udeagha v. Omegara* (2010) All FWLR (Pt. 542) 1785-1815 A-B, (2010) 11 NWLR (Pt. 1204) 168; *Idowu v. State* (1998) 9 SCNJ 40 at 49 paragraphs 4-9, (1998) 11 NWLR (Pt. 574) 354; *Ivienagbor v. Bazuaye* (1999) 6 SCNJ 255-243, paragraphs 25-38, (1999) 9 NWLR (Pt. 620) 552 they have urged the court to accept the submission as settled that oral evidence must at all times be adduced to link or explain documentary evidence tendered in court where particularly the petitioner is to prove any alleged electoral wrongdoings as corrupt practices and non-compliance and that the appellant has failed to do so here.

On issue 3: The 1st, 4th and 5th respondents make the point that where declaratory reliefs as here have been sought, the petitioner as the appellant here cannot succeed on the admission by or the weakness of the case of any of the respondents rather it has to succeed on the strength of the case of the petitioner. See *Dumez (Nig.) Ltd. v. Nwakhoba* (2009) All FWLR (Pt. 461) 842 at 850 F-G, (2008) 18 NWLR (Pt. 1119) 361; *Ogolo v. Ogolo* (2006) ALL FWLR (Pt. 313)

1 at B-H - 14A, (2006) 5 NWLR (Pt. 972) 163; Obun v. Ebun (2006) All FWLR (Pt. 327) 419 at 454-455. In short that the burden of proof required under the Electoral Act 2010 as amended rests squarely on a petitioner/appellant who in this matter has failed woefully in challenging the election result. See Buhari v. INEC (2009) All FWLR B (Pt. 459) 419 at 519 C, (2008) 19 NWLR (Pt. 1120) 246. It is urged on the court to dismiss the appeal as lacking in merit and also upon the concurrent findings of the two lower courts.

The 22nd respondent: if I may state his case in brevi manu, C this is because his treatment of this matter is almost identical to the above respondents. The Court of Appeal has nonetheless given its decision pursuant to section 285(8) (supra) concluding the same by saying “*I will elaborate on this later date*”; even as it, all the same has given a full decision and has dismissed the appeal for lacking in merit D and so has not been voided by section 285(8). He has submitted besides that the decision has been given within 60 days as required by section 285(7) of the Constitution and therefore the instant judgment cannot be impeached on any ground as per section 285(7) and (8); thus making the question of elaborating on judgment later a E mere surplusage; and that the appellant has in error asked for the appeal to be dismissed for being unconstitutional. The 22nd respondent having regard to sections 240, 246(1) (c) (ii) and 3, 285(7) and 8 and 294(1) supra has opined that the effect of section 285(8) supra is to permit the Court of Appeal or the Supreme Court to exercise the liberty of first giving the decision and reserving the reasons thereof to a later date where they are so empowered to do so by the F provisions of section 285(7) and (8) in entertaining final appeals.

On the 2nd issue i.e. this is on the question of tendering relevant documents in support of the appellant’s allegation of corrupt G practices against the respondents and on having been rejected by the Court of Appeal on the ground that the documents have been dumped on the court without their being examined, tested in open court and so linked by oral evidence to the relevant facts as pleaded in the H petition. The 22nd respondent has relied on Terab v. Lawan (1992) 3 NWLR (Pt. 231) 569 at 590 paragraphs G-H for the proposition and that the court should not be seen to do a cloistered justice by conducting the examination of such documents outside the court. See Onibudo v. Akibu (1982) 7 SC 60; Obasi Bros. Co. Ltd. v. M.B.A.S.

Ltd. (2005) 9 NWLR (Pt. 929) 117 at 140 H-141A.

On issue 3: The 22nd respondent speaking on the issue of declaratory reliefs and the burden on the appellants as the petitioner has echoed as the respondents above that declaratory reliefs cannot be granted upon mere admission by the opposing party and that a party so claiming the same must rely on the strength of his case rather than on the weakness of the case of his adversary. See *Quo Vadis Hotels Ltd. v. Commissioner* (1973) 6 SC 71 at 96; *Nwobodo v. Onoh* (1984) 1 SC 4 at 14; 39-42, (1984) 1 SCNLR 1; 39-42; *Omoboriowo v. Ajasin* (1984) 1 SC 101 at 102, (1984) 1 SCNLR 108 and *Oladipo v. Mopa L.C.A.* (2010) 5 NWLR (Pt. 1186) 117.

The court is urged ultimately to dismiss the appeal. I think, I have given wide enough coverage in reviewing the parties' respective cases as per their briefs in this matter - this being an election petition matter based essentially on facts and evidence and to give all parties a good review of their cases.

In recent weeks this court has had occasions as per a plethora of cases decided by it examined, scrutinized, and construed the provisions of Section 285(6) (7) and (8) of the 1999 Constitution (as amended). Again, this court has left no one in any doubt as to its position on the interpretation and application of the instant provisions as per its declarations on the same.

The appellant as the petitioner has claimed in its petition the following reliefs:

1. That the election is void by reason of non-compliance with the provisions of the Electoral Act (as amended).
2. That the 2nd respondent was not duly elected by a majority of lawful valid votes.
3. That the election is invalid by reason of corrupt practices which substantially voided the election.

I have considered the processes filed in this matter as well as the submissions as per the briefs of argument filed by counsel for the parties to this matter against the background of the issues for resolution; and I now proceed to deal with the questions raised in this matter more particularly as to the gist of this matter as predicated on the construction of section 285(7) and (8) of the 1999 Constitution (as amended).

The appellant having lost in this matter and its case on being

dismissed at the Taraba State Election Petition Tribunal has appealed to the court below which also dismissed the appeal. The decisions constitute a concurrent finding of the lower courts. Because the said judgment has been misconceived *vis-a-vis* the provisions of Section 285(6), (7) and (8) (*supra*).

B I have resolved therefore to reproduce the entire judgment as follows:

“Pronouncement made pursuant to section 285(8) of the Constitution of the Federal Republic of Nigeria 1999 (as amended). The appellant being a registered political party had sponsored her candidate who contested against the 2nd respondent and other candidates in the Governorship election for Taraba State, held on 26th April, 2011. The 2nd respondent who was sponsored by the Peoples Democratic Party (PDP) - 3^d respondent herein, was returned and declared as the winner of that election by the 1st respondent - INEC. The appellant not unnaturally felt dissatisfied with the result of the said election, so she filed an election petition at the Governorship Election Petition Tribunal, holden at Jalingo, Taraba State. The grounds upon which the petition was anchored at paragraph 15 of the same are:

(a) That the election is void by reason of non-compliance with the provision of the Electoral Act (as amended);

(b) That the 2nd respondent was not duly elected by majority of lawful votes;

(c) That the election is invalid by reason of corrupt practices which substantially voided the election.”

Each set of the respondents, filed their respective replies to the petition and after a pre-trial session was held on the petition it proceeded to hearing as appellant called two witnesses - PW1 and PW2 and some documentary exhibits P1-P201 were admitted in evidence by consent of all counsel from the bar. The 1st, 4th and 5th respondents called one witness as RW1 whilst the 2nd respondent called one witness as PW2. The 3^d respondent did not call any witness, however, she tendered in evidence a document which was admitted and marked exhibit R1. Each counsel to the respective parties, filed their written addresses and the lower tribunal upon a consideration of the petition in her judgment delivered on 10th November, 2011, dismissed the petition. This appeal is against that decision of 10th No-

vember, 2011. The appeal is erected on grounds and from them, the appellant formulated nine issues for determination. The 1st, 4th & 5th respondents formulated four issues for determination in their joint brief of argument whilst the 2nd and 3rd respondents in their separate briefs of argument formulated five issues each for determination in this appeal. Upon a calm consideration of this appeal, I am of the firm opinion that the decision of the lower tribunal when it found thus: B

“In the instant case, the allegations of what the petitioner described as corrupt practices were contained in the pleadings. He tendered these exhibits from the bar and none of these witnesses gave evidence of the corrupt practices. Their evidence centered on collation of the exhibits and explaining some procedures in the manual. This Tribunal cannot be called to do in (the) recess of its Chambers what the petition(er) failed to do. It is unarguable that part of this failure emanated from the inadmissible evidence of the petitioner’s witnesses which were struck out. S.J. Gani’s argument that the purport of these exhibits were explained when the tribunal ordered that they be taken as read is strange and very frivolous. It is unfounded in law and unacceptable, is unassailable, so it cannot be overturned. Indeed, it appears clear to me that the prosecution of the petition at the lower tribunal by the petitioner was lackadaisical, on the believe that the 2nd respondent admitted substantial parts of the petition and so the petition must willy-nilly succeed. But it is not easy, for in a claim or petition where the petitioner prays for declarative reliefs as in this case, the petitioner had the burden fixed on him to lead credible evidence and establish his claim/petition and not to take solace in an assumption that the defendant/respondent has admitted the claim/petition. In the end, I am satisfied that the petitioner instead of painstakingly fighting his own fight by a dutiful prosecution of the petition, fell into being distracted by the assumption that the said respondent had admitted the petition thereby losing focus and losing the petition. I shall elaborate on this on a later date. The appeal is lacking in merits and the same is ordered as dismissed. (Italics supplied). The judgment of the Taraba State Governorship Election Tribunal, Jalingo in Re-EPT/TR/G/02/2011 dated 10th November, 2011 is accordingly affirmed. Each side to bear own costs.” Signed: Tom Shaibu Yakubu Justice, Court of Appeal C D E F G H

The forgoing is the lead judgment as delivered by the Court of Appeal on 6/1/2012. It speaks for itself and in regard to whether the appellant's labeling it unconstitutional as per section 285(8) is tenable. Without much ado one can say that the above judgment of the Court of Appeal contains sufficient reasons in respect of the points in issue. I am now opportuned to examine the applicability of the provisions of Section 285(6), (7) and (8) severally or in combination thereof in the circumstances in relation to the said judgment. Up till now the said judgment of the Court of Appeal has remained the same as the elaboration as stated therein has not taken place. Even then it has remained the focal point of the appellant's attack as the appellant has submitted that the decision is a nullity. However, the respondents in the circumstances, see the caption to elaborate on the decision later as a mere surplusage to be discountenanced or ignored and I agree. Whether the instant decision is a decision on the merits as claimed by the said judgment itself and so in accordance with Section 285(8) supra depends on the said judgment satisfying the essential requirements of a full judgment. On the peculiar facts of this matter, it is important to take this discussion that far. ***As gathered from the decided cases of this court the essential requirements of a judgment ordinarily that is to say apart from the formal introductory and concluding parts of the same are:***

(1) In a civil matter including election petitions as here, the facts of the case as pleaded by the parties have to be set out and dealt with.

(2) The issues that arise for determination have to be spelt out.

(3) The resolution of the issues for determination i.e. predicated upon the reasons given for resolving the said issues.

(4) There has to be a final order of the court vis-a-vis the disposition of the reliefs sought in the matter (as also in election petitions) that is, by granting or refusing the same as a whole or in part and the judgment is authenticated by the Judge's signature.

The foregoing represents the essential requirements of a full judgment. Clearly in the first two paragraphs of the Court of Appeal judgment it has set out the facts of the case followed by the three

issues upon which the result of the election of 26/4/2011 have been challenged in this matter. It then has proceeded to recall and review the oral testimonies of the witnesses and the deficiencies thereof arising from the dumping of exhibits PI - P201 tendered by the appellant against the background of the issues for resolution before it. It has decried want of proving the declaratory reliefs sought. It has also taken this exercise further by quoting a relevant abstract of the decision of the Election Petition Tribunal on the matter and has castigated the petitioner's untidiness and unseriousness in doing its case that is to say, all in the process of the resolution of the issues for determination in the matter. It contained how the issues have been resolved eventually. In the end, there is a final order of the Court of Appeal dismissing the appeal upon finding that the petitioner's case lacks merit. The judgment in my view contains all the essential requirements of a full judgment and the judgment has satisfied the parameters set out above. See Emmanuel Agbanelo v. U.B.N. Ltd. (2000) 4 SCNJ 353 at 363-364, (2000) 7 NWLR (Pt. 666) 534; Dike v. Aduba (supra). The Automatic Telephone and Electric Co. Ltd. v. Federal Military Government of Nigeria (1968) 1 ANLR 429 reported as A.T.E.C. Ltd. v. F.M.G. (1968) SCNLR 552.

The above requirements are a *sine qua non* for a full judgment in civil matters. Having examined the instant-judgment on the backdrop of the above essential requirements of a full judgment I have no iota of doubt in my mind that it has satisfied the essential requirements and is therefore a full judgment notwithstanding the inclusion by the Court of Appeal to elaborate on the judgment later which it never did and I hold that inclusion is extraneous to the judgment and discountenancing it in the judgment will have no effect whatsoever to the judgment i.e. as to its fullness and quality as a judgment.

There is no gainsaying that the matter has been decided on the merits. In the result, I discountenance the inclusion to elaborate on the judgment later as a mere surplusage. Upon this conclusion it is my view though pre-emptorily speaking that section 285(7) & (8) has been complied with in this case as the instant judgment has been given within 60 days of the decision of the Tribunal and therefore within jurisdictional competence of the Court of Appeal as per section 285(8). The appellant has failed to fault the judgment in any of

the grounds as contested in this appeal. I reject, with respect the appellant's unfavourable interjections against the said judgment.

I have now come to scrutinize the provisions of Section 285(7) and (8) supra and their applicability to the facts of this matter. These provisions are set out as follows:

B Section 285:

"7. An appeal from a decision of an Election Tribunal or Court of Appeal as an Election matter shall be heard and dispose within 60 days from the date of the delivery of judgment of the tribunal or Court of Appeal.

C *8. The Court in all final Appeals from an election tribunal or court may adopt the practice of first giving its decision and reserving the reasons therefore to a later date."*

The above provisions of section 285(7) and (8) supra are clear and have been raised by the appellant in contending that the Court of Appeal has no jurisdiction to deliver its judgment as it stands pursuant to Section 285(7) & (8) (supra) that is to say, upon submitting that the said judgment is not validly constituted pursuant to Section 285(7) & (8) and for not having elaborated on the judgment up till now, and so making what is therein not a judgment in the true sense of the term. Scrutinizing the provisions of the two subsections vis-à-vis the facts of this case, what seems to me to have emerged therefrom is that the said judgment of the Court of Appeal has complied with the provisions of Section 285(8) upon my having held that the said judgment has met all the essential requirements of a full judgment and again upon having discounted as a mere surplusage the phrase to elaborate on it later. The said judgment is otherwise valid and subsisting and therefore appellable to this court by the instant appellant as the Court of Appeal cannot be in the circumstances "the court of final appeals" (as per Section 285(8) to hear and determine the governorship Election Petition appeals as the instant appeal duly covered under Section 233(2) (e) (iv) (supra). The Court of Appeal that is to say, if I may repeat is not the final court in the instant matter as per the provisions of Section 285(8). This conclusion is amply supported by the combined reading of the provisions of Section 233(2) (e) (iv) of the 1999

Constitution as amended and Section 285(8) supra.

On the other hand the final appeals from the decision of the National and State House of Assembly Election Tribunal and the Governorship Election Tribunal terminate at the Court of Appeal as the final court. This position is so as gathered from combined reading of the provision of Sections 285(8), 246(1) (b) & (c).

In essence both courts i.e. the Supreme Court and Court of Appeal can adopt the practice in election matters of first giving its decisions in final appeals covered under sections 285(8) and reserving the reasons thereof to a later date. The Supreme Court only before now has always been empowered to give the reasons for its decision at a later date; that such power has now been extended to matters pertaining to election petitions has now been put to rest as provided for under section 285(8) supra.

There is therefore no gain in exploring the meanings of ‘decision’ as defined in Section 318 of the 1999 Constitution *vis-a-vis* the words “determination” or “Judgment” and “reasons”: in the context of this matter in relation to a court as it has become rather otiose. However in relation to the provisions of subsections 6, 7 and 8 of Section 285 (*supra*) the framers of the 1999 Constitution as amended have in their wisdom without due advertence to their relative meanings as used in other parts of the 1999 Constitution as amended, it must be noted used the words “judgment” “decision” and “reason” in these subsections to wit:

In subsection 6 “...*deliver its judgment in writing*”. In subsection 7 “... *An appeal from a decision of an election tribunal ...*”. In subsection 8 “... *Reserving the reasons therefore to a later date*” (Italics mine)

The question that has arisen in this matter is the proper meaning of these words in the context of these provisions and in relation to a court. Even then, *prima facie* words are presumed to be used in their popular sense even as there is also the presumption that words in Constitutions or Statutes are used precisely and not loosely.

Therefore, the postulation is whether the words “judgment” “decision” and “reasons” (i.e. “opinions” properly so called - see section 294(2) & (3) of the 1999 Constitution)

have the same meaning in relation to these provisions vis-a-vis the court and so whether they are interchangeable terms and have been so used in the instant provisions of these sub-sections. However, one thing that is beyond dispute is that at pp. 1445-1446 of Stroud's Dictionary Vol. 3 has been defined the word "judgment" in the proper use of the term as an "order" given by the court and that the reasons themselves are not judgments. See *R. v. Ireland* (1970) 44 A.L.J.T. 263 and with approval the case of *Dalfam (Nig.) Ltd. v. Okaku International Ltd.* (2001) 15 NWLR (Pt. 735) 203 at 242 per Oduyemi J.C.A. Also Section 318 of the 1999 Constitution has defined the word "Decision", it means in relation to a court, any determination of that court and includes "judgment", "decree", "order" "conviction sentence or recommendation." See *Garuba & Ors. v. Omokhodion & Ors.* (2011) 6/7 SC (Pt. V) 89 at 138, (2011) 15 NWLR (Pt. 1269) 145. ***I make bold to hold that the words "decision" and "Judgment" in my considered opinion mean the same thing and are interchangeable in terms in relation to court matters. Our law reports are replete with the feature of the use of these terms. I cannot say so of the word "reasons" (otherwise opinions) whether it is the same as judgment, decision and even determination in relation to a court without knowing the context in which it is used.*** See Sections 294 of the 1999 Constitution.

The foregoing reasoning has further fortified my conclusion in holding that the judgment of 6/1/2012 of the Court of Appeal is a full judgment even then a decision or determination and can so stand in the context in which these terms have been so used in Section 285(8) *supra* and does not need to be elaborated upon that is by any reasons to be given at a later date. See *Ihesi v. Arinze & Anor* (2007) 5 NWLR (Pt. 1027) 241 at 251; *Dike v. Aduba* (2000) 3 NWLR (Pt. 647) 1; *Kalu v. Odili* (1992) 5 NWLR (Pt. 240) 130 at 189; *Onyekweli v. Ugwu* (2008) 15 NWLR (Pt. 1111) 545 at 558. It all boils down to the fact that the appellant has not showed how the invocation of the provisions of 285(8) upon the facts and circumstances of this matter has impugned the said judgment of the Court of Appeal. Having failed to discharge this burden it cannot be heard to allege an infringement of its constitutional right of fair hearing. It is

far fetched.

In conclusion, the judgment of the Court of Appeal in this matter is competent and appellable. This finding has sealed the fate of this appeal, so that the appellant's case to set aside the judgment as unconstitutional having failed, issue one is resolved against the appellant. B

Issue 2: This issue has raised a pertinent question of the court evaluating documents allegedly dumped on it where there is no oral evidence linking the documents to the appellant's case. It is significant that these documents as per exhibits PI - P201 have been tendered from the Bar with the consent of both sides. The appellant's contention is that they have been taken as read and that it is the duty of the court to appraise the documents without more. I think the appellant has misconceived the law in this regard that where the documents so tendered are not examined in the open court by oral evidence showing the purpose for tendering them and thus linking them precisely to a part of the case of the appellant as per the pleadings of the petition. Otherwise there is no duty on the court to embark on a cloistered justice to examine them on its own outside the court. The court is not supposed to do a party's case for him. C

I am fortified for so holding by a plethora of cases including Jang v. Dariye (supra), Anyankwo v. Uzowuaka (supra) to mention but a few. ***To contend that the documents speak for themselves thereof is not to appreciate that it is the appellant's duty to call direct evidence to support its case. Even as I agree that the Electoral Act 2010 has stacked a lot of imponderable hurdles for a petitioner to skip in proving electoral wrongdoings and malpractices. This area of one Electoral Act needs further tinkering with so as to bring it in line with what is fair and justifiable.*** D

The appellant's case has been faulted for want of proof of the allegation of corrupt practices - thus imputing criminal offences to the respondents. The onus on the appellant in this regard is as per section 138(1) and (2) of the Evidence Act and it has to be proved beyond reasonable doubt. Having perused the record of appeal I cannot but agree with the findings of the two lower courts of the appellant's failure to dis- E

charge the onus on it on this issue. I am in agreement with the Tribunal that having gotten some admissions to parts of the petition here may have falsely lured the appellant to unwittingly abandon the burden on it in this matter to its chagrin.

The appeal therefore ought to be dismissed. Issue 2: is again resolved against the appellant.

Issue 3: that is whether declaratory reliefs as claimed in this petition can be granted where there is no oral evidence in support thereof why this requirement is so embedded in our legal history which I do not intend to explore here. This area of the law has been so flogged that it has become rather trite. Without evidence from the claimant, the court is not obliged to grant such relief. The rule is so fundamental that the court does not grant declaratory reliefs on admissions by the defendant without the oral testimony of the plaintiff; so that the plaintiff will succeed in case on the strength of his case no more, no less. See C.B.N. v. Amao (2010) 16 NWLR (Pt. 1219) 271 at 298 ; All Finder Kwajaffa & Ors. v. Bank of the North (2004) 13 NWLR (Pt. 889) 146 at 172. I do not buy the appellant's case that this principle has no application to election petition matters. No authorities have been enlisted in support and so it is discountenanced. On the contrary, what is clear is that in election petition matters, the reliefs sought are more often than not set out in declaratory form. I find no substance in the appellant's case in this regard which I reject and so issue 3 is again resolved against the appellant.

In the result, there is no sense in wasting further time over this appeal which is without any basis whatsoever save to dismiss it in its entirety and order that that the parties bear their respective costs. And I so order. Appeal dismissed.

MOHAMMED JSC

This appeal is challenging the decision of the Court of Appeal Yola Division delivered on 6th January, 2012 dismissing the appellant's appeal against the judgment of the Governorship Election Petition Tribunal of Taraba State delivered on 10th November, 2011 dismissing the appellant's petition against the election and return of the 2nd

respondent as the Governor of Taraba State of Nigeria. The grounds upon which the appellant based its petition as pleaded in paragraph 15 of the petition are -

a. That the election is void by reason of non-compliance with the provisions of the Electoral Act (as amended).

b. That the 2nd respondent was not duly Elected by a majority of lawful votes.

c. That the election is invalid by reason of corrupt practices which substantially voided the election.

After hearing the parties on the appellant's petition, the trial tribunal had this to say on the ground of invalidity of the election by reasons of corrupt practices which substantially voided the election- C

"In the instant case, the allegation of what the petitioner F described as corrupt practices were contained in the pleadings. He tendered these exhibits from the bar and non of these witnesses gave D evidence of the corrupt practices."

The appellant was not happy with the decision of the trial Tribunal which after considering of all the remaining grounds in the appellant's petition, was satisfied that the petition was not proved to entitle the appellant/petitioner to the reliefs sought, dismissed the petition. For this reason the appellant proceeded to the Court of Appeal on appeal against that decision where it again lost in the appeal when its appeal was dismissed. The judgment of the Court of Appeal at pages 1453 to 1456 of the record of appeal clearly contains reasons for the judgment of the court in spite of the promise by the Judge to elaborate on the reasons given at a later date. This is what the Judge said at pages 1455 and 1456. E F

"In the end, I am satisfied that the petitioner A instead of painstakingly fighting his own fight by a dutiful prosecution of the G petition, fell into being distracted by the assumption that the said Respondent had admitted the petition thereby losing focus and losing the petition. I shall elaborate on this on a later date. The appeal is lacking in merits and the same is ordered dismissed. H The judgment of the Taraba State Governorship Election Tribunal, Jalingo in Re-EFT/TR/G/02/2011 dated 10th November, 2011 is accordingly affirmed."

It is against this judgment of the Court of Appeal that the appellant has now further appealed to this court. The first issue raised

in the appellant's brief reads

"Whether considering the provisions of section 285(8) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) the Court of Appeal has the jurisdiction to deliver judgment in this case and reserve its reasons to a later date."

B This issue clearly does not arise from the judgment of the Court of Appeal delivered on 6th January, 2012. This is because although the court indicated that it was delivering the judgment pursuant to section 285(8) of the 1999 Constitution, the judgment delivered clearly contains full reasons for the judgment. That judgment is plainly a determination arrived at after consideration of facts, and in the legal context of the law applicable to the facts. It is for this reason that I am of the strong view that, that judgment was not delivered in violation of the provisions of section 285(8) of the 1999 Constitution in an appeal arising from the decision of the Election Tribunal in Governorship Election Petition as submitted by the appellant. This appeal therefore qualifies to be heard on the merit rather than declaring the judgment a nullity.

E On the determination of the appeal on the merit, I have had a preview of the judgment of my learned brother Chukwuma-Eneh, JSC which he has just delivered. I entirely agree with him that there is no merit at all in this appeal which deserves to fail and therefore ought to be dismissed. The trial tribunal having found that the appellant as the petitioner has failed to establish any of the three distinct grounds upon which it challenged the election and return of the 2nd respondent as the Governor of Taraba State in the Governorship election conducted on 26th April, 2011, the trial Tribunal was right in dismissing the petition while the court below was equally right in dismissing the appellant's appeal.

F In the result, I also dismiss this appeal and affirm the judgment of the trial Election Petition Tribunal of 10th November, 2011 as affirmed by the Court of Appeal in its judgment delivered on 6th January, 2012 with no order on costs.

H

MUNTAKA-COOMASSIE JSC

This appeal is clearly challenging the decision of the Court of

Appeal, Yola Division delivered on 6/01/2012. The Governorship Election Tribunal received a petition from Congress for Progressive Change (CPC) challenging the declaration of the 2nd respondent as the elected Governor of Taraba State. The tribunal stated that the petitioner was not able to adduce witnesses or evidence to support their allegation of corrupt practices which substantively voided the election and also the allegation of non-compliance with the provision of the Electoral Act. B

The appellant was aggrieved by the decision of the Election Tribunal and unsuccessfully appealed to the Court of Appeal, Yola C division, now lower court. The lower court held that the petition was not proved therefore the petitioner/appellant was not entitled to the reliefs it claimed. Appeal was therefore dismissed. The reason for the decision of that court was clearly and completely too stated therein. The statement of the Justice of the lower court “*to further elaborate on the reasons given at a later date*” therefore in my view, remained surplusage and un-called for. See pages 1455 and 1456 of the record. D He then affirmed the judgment of the Election Tribunal.

The appellant now appealed to this court on the ground that the lower court has no power to deliver its judgment without reasons E and to promise to deliver its reasons for judgment in a later date.

I have read the lead judgment of my learned brother, Chukwuma-Eneh, JSC. I agree that there is no merit in the appeal. The judgment of the lower court is intact; it is a judgment with its F reasons. In this appeal, there is a concurrent decision of the two lower courts which are not perverse. That being the case, it will be difficult to interfere with.

I entirely agree with his lordship Chukwuma-Eneh, JSC. The appeal is dismissed and the decision of the Election Tribunal is affirmed. No order as to costs. G

FABIYI JSC

This is an appeal against the judgment of the Court of Appeal, Yola Division handed out on 6th January, 2012 wherein the appellant’s appeal against the judgment delivered by the trial tribunal on 10th November, 2011 was dismissed. H

The 1st respondent conducted election for the office of Governor of Taraba State of Nigeria on 26th April, 2011. The 2nd respondent, who contested the election on the platform of the 3rd respondent was declared as the winner and was duly returned by the 1st respondent.

The appellant, a political party which fielded a candidate during the election was not happy with the result of the election. It filed a petition at the trial Tribunal in Yola. The petition alleged non-compliance with the provisions of the Electoral Act, 2010 (as amended); the 2nd respondent was not duly elected by a majority of lawful votes and that the election is invalid by reason of corrupt practices which substantially voided the election.

The trial tribunal heard the petition and in its judgment, it found as follows:

"In the instant case, the allegation of what the petitioner described as corrupt practices were contained in the pleadings. He tendered these exhibits from the bar and none of these witnesses gave evidence of corrupt practices."

The petition was dismissed. The appellant felt unhappy and appealed to the Court of Appeal which heard the appeal. In its own judgment which was handed out on 6th January, 2012 it gave adequate reasons in support of same. The court below went further to say - 'I shall elaborate on this on a later date'. The court purported to have acted in tune with the provision of section 285 (8) of the Constitution of the Federal Republic of Nigeria 1999 (as amended). To my mind, with the adequate reasons contained in the judgment, the promise to elaborate on a later date appears superfluous.

The appellant capitalized on the seeming goof and has appealed to this court. The germane issue couched by the appellant reads as follows:

"Whether considering the provisions of section 285(8) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) the Court of Appeal has the jurisdiction to deliver judgment in this case and reserve its reasons to a later date."

As stated above, the lower court furnished adequate reasons for its judgment which renders the above issue non sequitur. Where reasons for judgment have been furnished the provision of section 285(8) of the Constitution cannot be invoked to knock out same under any guise. I have earlier on stated it that the promise by the

Court of Appeal to give further reasons later is immaterial. Any further reason given will be superfluous.

I have read before now the judgment just delivered by my learned brother-Chukwuma-Eneh, J.S.C. I completely agree with him that the appeal should be dismissed as the Court of Appeal with apt and correct reasons dismissed the appeal before it. Appeal is dismissed. I make no order on costs.

RHODES-VIVOUR JSC

I read in draft the judgment delivered by my learned brother, Chukwuma-Eneh, JSC. I am in complete agreement with his Lordships reasoning and conclusion. Dismissing the appellant's appeal, the Court of Appeal, Yola Division said:

"In the end, I am satisfied that the petitioner instead of painstakingly fighting his own fight by a dutiful prosecution of the petition, fell into being distracted by the assumption that the said respondent had admitted the petition thereby losing focus and losing the petition."

I shall elaborate on this on a later date. The appeal is lacking in merits and the same is ordered dismissed. The judgment of the Taraba State- Governorship Election Tribunal Jalingo in RE-EPT/TR/G/02/2011 dated 10th November, 2011 is accordingly affirmed."

The issue raised in the appellant's brief is:

Whether considering the provisions of section 285 (8) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) the Court of Appeal has the jurisdiction to deliver judgment in this case and reserve its reasons to a later date.

Section 285 (8) of the Constitution State that:

"8. The court in all final appeals from an Election Tribunal or court may adopt the practice of first giving its decision and reserving the reasons therefore to a later date."

The interpretation of the above is that when an appeal is final, the court that hears such an appeal may give its decision and give reasons for the decision on a later date.

Decisions of the Court of Appeal are final when the matter arises from National and State Houses of Assembly election petitions.

In such cases, the Court of Appeal can invoke the provisions of Section 285 (8). Where on the other hand, decisions of the Court of Appeal are not final as in this case/ appeal, the Court of Appeal cannot invoke Section 285 (8) of the Constitution.

B Since the judgment of the Court of Appeal, Yola Division contains reasons for the judgment; the judgment was not delivered in violation of the provisions of Section 285 (8) of the Constitution. I would dismiss this appeal.

C

D

E

F

G

H