

SUPREME COURT OF NIGERIA
FRIDAY 14TH DECEMBER, 2012. SC. 45/2012
CORAM:- I. T. MUHAMMAD, J. A. FABIYI, S. GALADIMA,
M. U. PETER-ODILI, O. ARIWOOLA, K. B. AKA'AH,
S. S. ALAGOA, JJSC

NATIONAL DEMOCRATIC PARTY APPELLANT
AND
INDEPENDENT NATIONAL
ELECTORAL COMMISSION RESPONDENT

APPEALS - Brief - Preliminary objection - The objection raised in a brief cannot be deemed argued along with the brief - As respondent is required to specifically seek and obtain leave - To move its objection (H1)

APPEALS - Court - Issues - Suo motu raising - Court can formulate issues in interest of clarity - But such issues must arise from grounds of appeal - As put forward by appellant (H2)

ELECTIONS - Election time table - Notice of - Under Electoral Act 2010 - INEC shall publish notice of activities not later than 90 days - Before the day appointed for holding an election (H3)

ELECTIONS - Election time table - Cancellation - There is no law requiring INEC to furnish parties with reasons - Why a time table could not be used for an election (H4)

APPEALS - Obiter dictum - Where opinion expressed by Court of Appeal is an obiter - Appellant's appeal against same is baseless - And liable to be discountenanced (H5)

ACTIONS - Academic suit - Meaning - A suit is academic when it is merely theoretical - And of no practical utilitarian value to plaintiff - Even if judgment is given in his favour (H6)

FACTS

Plaintiff/appellant commenced this action by originating sum-

mons in the High Court of Federal Capital Territory Abuja. Appellant inter alia, sought for a declaration that the election time table dated 7th September 2010 and published by defendant/respondent is valid and subsisting in so far as it relates to the conduct of political party primaries and nomination of candidates for 2011 general election. Appellant filed a 21-paragraph affidavit and a written address in support of the originating summons.

Respondent on the other hand filed counter-affidavit in opposition to the summons. In its judgment, the court dismissed the originating summons and this led to appellant filing an appeal in the Court of Appeal Abuja Division. The court dismissed the appeal. Aggrieved further, appellant appealed to Supreme Court.

ISSUES FOR DETERMINATION

1. Whether the Respondent has the power to make two Time Tables of Activity for only one General Election and thereby properly made the latter, that is, 2nd Time Table, to supersede the former, that is, 1st Time Table in the conduct of the 2011 General Election after the Appellant had taken steps on the 1st Time Table.

2. Whether the Court below properly came to the conclusion that the appellant's appeal was a mere academic exercise after having struck out an Issue on same matter formulated by the respondent, leading to the perversity of the judgment.

HELD (Unanimously dismissing the appeal per

ARIWOOLA JSC)

APPEALS - Brief - Preliminary objection

1. It is pertinent to refer to the Notice of Preliminary Objection given by the Respondent on page 4 of its brief of argument. It is equally apposite to say that the said Preliminary Objection was not moved before this court though argued, hence same was deemed abandoned and liable to be discounted. It should be noted that the Preliminary Objection raised by the Respondent in its brief of argument cannot be deemed argued along with the brief. This is because the Respondent is required to specifically seek leave of court and obtain same when the appeal is being heard, to move its ob-

jection. Therefore, the Respondent not having been available to seek leave and obtain same to argue its Preliminary Objection, same is of no moment. It is deemed abandoned and liable to be struck out.

Accordingly, the Notice of Preliminary Objection incorporated in the respondent's brief of argument is hereby discounted and struck out. (p. 3911 G)

Court - Issues - Suo motu raising

2. I have carefully considered the two issues raised respectively by both the appellant and the respondent in their briefs of argument. I found them saying the same thing but in different ways. The issues were however not clearly couched. There is no doubt that the court can either suo motu formulate issues or indeed reformulate issues for determination in an appeal. The reason being to narrow down the issue or issues in controversy in the interest of accuracy, clarity and brevity. However, the issue(s) so formulated by court must have arisen from the grounds of appeal as put forward by the appellant. (p. 3912 G)

ELECTIONS - Election time table - Notice of

3. As shown earlier, the requirement of the Electoral Act, 2010 is that the Commission shall publish the Notice of Activities NOT LATER THAN 90 days before the day appointed for holding of an election under the Act; how many Time tables the commission can issue before the election proper is not provided by the Electoral Act, but the most important thing is that there must be a valid Time Table published not later than 90 days before the holding of the general election.

It is noteworthy that even though there seemed to be two Time Tables issued by the respondent, only one was valid and recognized for the activities of the 2011 General Elections, and that was the Time Table dated 23rd November, 2010. To show that there was only one valid time table for the elections, page 3 of Exhibit P8 on page 175 of the record contains the following:-

"This Time table and Schedule of Activities supersedes

the earlier time table and Schedule of Activities for the 20 11 General elections issued by the Commission.”

The above, no doubt refers to the time table of Activities that was said to have been issued earlier on 7th September, 2010.). In other words, to have table of Activities issued on
B ***23rd November, 2010 to supersede the former meant that it annulled, made void or repealed the earlier Time table.***

The super-session rendered the first Time table of 7th September, 2010 a nullity and non-existent. In the circumstance no right can be predicated on such a nonexistent Time table. It is not in doubt that the Independent National Electoral Commission (INEC) that is, the respondent herein, has the sole responsibility to decide when elections are to hold.
C

The respondent also reserves the prerogative to decide what
D ***Time table of Activities to publish for a General Election.***

Therefore, since as at the time of the General election, 2011 there was only one valid Time table of Activities for the said elections, which was dated 23rd November, 2010, the court below was right to have held that the purported first Time table
E ***was non-existent and could not sustain any purported accrued right thereunder. It was a nullity act which is void.***

(p. 3920 D)

F ***ELECTIONS - Election time table - Cancellation***

4. Furthermore, it is interesting to note that the appellant had complained that the respondent did not give any reason for canceling the first Time table and why it had to issue another. My Lords, I am of the view that there is no law or regulation
G ***that requires the respondent to furnish the parties with reason why a particular Time table of Activities could not be used for an election. The INEC is only required to comply with the provisions of Section 30 of the Electoral Act, 2010 as earlier indicated. (p. 3921 E)***

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APPEALS - Obiter dictum

5. It is clear from the above that the court below did not dismiss the appellant’s case for being academic. The above was an obiter dictum - that is, “a remark that is in some way re-

lated but not essential to, the main argument “.

However, where an opinion or remark is expressed by the Judge, such an opinion amounts to nothing and it is baseless and not appealable. It is not a ratio decidendi of the decision of the court.

As a result, the appellant’s appeal against the above observation of the court below, not being appealable as an obiter is baseless, liable to be discountenanced. Accordingly, same is resolved against the appellant. (pp. 3922 G/3923 B) B

ACTIONS - Academic suit - Meaning C

6. No wonder then, the comment came up after the three issues formulated by the appellant for determination by the court had been resolved against the appellant. A suit is said to be academic when it is merely theoretical, makes empty sound, and of no practical utilitarian value to the plaintiff even if judgment is given in his favour. A suit is academic if it is not related to practical situations of human nature and humanity. (p. 3923 A) D

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NOTABLE POINTS OF INTEREST

FABIYI JSC

1. Necessary party – Joinder of

A necessary party is someone whose presence is essential for the effectual and complete determination of the issues before the court. It is a party in the absence of whom the whole claim cannot be effectually and completely determined. A necessary party should be allowed to have his fate in his own hands. F

There is no gainsaying the fact that other political parties should have been joined so as to protect their right to fair hearing as dictated by section 36 (1) of the 2010 Constitution (as amended). They are necessary parties, no doubt. Judgment made with order against a person who was not a party to a pending suit is to no avail. It cannot be allowed to stand. (p. 3925 H) G
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AKA’AHS JSC

2. INEC should stick to scheduled election time table

To avoid uncertainties it is desirable that INEC should make a conscious effort to stick to scheduled periods for the election once the necessary funds are released and there is no state of emergency declare in any part of the country. (p. 3938 A)

B **REPRESENTATION**

Chief Henry Akunebu for the appellant with B. C. Igwueto Esq., Okpe Ibrahim, Daniel Chinonso Williams, Esq. for the Appellant.
No legal representative for the Respondent

C **CASES REFERRED TO**

Nsirim v. Nsirim (1990) 3 NWLR (Pt. 138) 295

Onochie v. Odogwu (2006) 2 SCM 95

A-G Rivers State v. Ude (2006) 12 SCM (Pt. 1) 72

D Ben v. State (2006) 12 (Pt. 2) 77

Nwana v. FCDA (2004) 75 SCM 25

Unity Bank Plc. v. Bouari (2008) 2 SCM 193

Okoro v. State (1988) 5 NWLR (Pt. 94) 255

Musa Sha (Jnr) v. Da Rap Kwan (2008) 8 NWLR (Pt. 670) 685

E Adesanoye v. Adewole (2006) 14 NWLR (Pt. 1000) 242

Ajide v. Kelani (1985) NWLR (Pt.12) 248

Ogbe v. Asade (2009) 18 NWLR (Pt. 1172) 114

Ndukauba v. Kolomo (2005) 4 NWLR (Pt. 915) 411

PDP v. Sylva (2012) 13 NWLR (Pt. 1316) 85

F Labour Party v. INEC (2009) 2 SC 122

Ogunbayo v. State (2007) 5 SCM 154

STATUTES & RULES REFERRED TO

G Electoral Act 2010, ss. 30, 38, 41, 87(6)

Constitution of Federal Republic of Nigeria 1999 (as amended), ss. 33, 132(3)

Supreme Court Rules 2009 (as Amended), O. 6 r. 8 sub-r. 6

Court of Appeal Rule 2011, O. 9 rr. 1, 3

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BOOK REFERRED TO

Black's Law Dictionary 9th Ed. p. 1516

LEAD JUDGMENT BY ARIWOOLA JSC

The matter that culminated into this appeal was initiated by the appellant at the High Court of the Federal Capital Territory, in the Abuja Judicial Division. The action was commenced by an originating summons by the National Democratic Party (NDP) with the Independent National Electoral Commission as defendant. In the said Originating Summons, which was filed on 31/01/2011, the Plaintiff had sought the determination of the following questions:

“1. Whether the Time Table of Activities for 2011 General Election issued or published, by the defendant on 7th September, 2010 (hereinafter referred to as the First Time Table of 2011 General Elections) in so far as it relates to the conduct of primaries and nominations of candidates and other matters relating thereto, is valid and subsisting having regard to the Constitution of the Federal Republic of Nigeria, 1999 and the Electoral Act, 2010, which are the only valid and subsisting Laws for the conduct of 2011 general elections in the Federal Republic of Nigeria.

2. Whether the plaintiff, having complied with the first Time Table of 2011 General Elections by holding her special convention under Section 87 (6) of the Electoral Act, 2010 and submitting the final list of candidates which the party has resolved to sponsor in the 2011 General Elections, is not entitled to be issued with Forms CF001 and CF002 for the purpose of contesting the 2011 General Election.

3. Whether the defendant was right in refusing or neglecting to issue to the plaintiff the said Forms CF001 and CF002 to enable it complete all nomination formalities in accordance with Electoral Act, 2010.

4. Whether following the plaintiffs submission to the defendant of the final list of the candidates which the plaintiff has resolved to nominate or sponsor in the 2011 General elections, “the defendant is not under a mandatory duty to publish, pursuant to the provisions of the Electoral Act, 2010, the plaintiffs list of candidates as their nominated candidates for the 2011 General Elections.

5. Whether having regard to the Constitution of the Federal Republic of Nigeria, 1999 and Electoral Act, 2010, it is not only the plaintiff and the other parties, if any, which complied with the First Time Table of 2011 General Elections that is entitled to have the names of their candidates published by the defendant as having met

all the preconditions for nomination for the 2011 General Elections.

6. *Whether by a combined reading of the provisions of the constitution of the Federal Republic of Nigeria, 1999 and the Electoral Act, 2010, the defendant is entitled to receive from political parties other than the parties which have submitted their list of nominated candidates as ratified by them in compliance with time line prescribed by the first Time Table for 2011 General Elections which they intend to sponsor for the 2011 General Elections.*

7. *Whether the Time Table of Activities for 2011 General Elections as published by the defendant on the 23^d of November, 2011 (hereinafter referred to as the Second Time Table of 2011 General Elections) is not ultra vires the defendant or illegal and accordingly null and void in so far as it relates to the conduct of primaries and the nomination of candidates and other matters connected herewith having regard that the plaintiff has strictly complied with the time lines prescribed in the First Time Table of 2011 General Elections is contrary to the Electoral Act, 2010 and the 1999 Constitution of the Federal Republic of Nigeria.”*

In the said Originating summons, the plaintiff sought the following relief:

“1. *A declaration that the Time Table of activities for 2011 General Election issued or published by the Defendant dated the 7th day of September 2010 (hereinafter) referred to as the First Time Table of 2011 General Elections) is valid and subsisting in so far as it relates to the conduct of party primaries and nomination of candidates for 2011 General Election.*

2. *A declaration that the plaintiff having completed and complied with every step prescribed in the First Time Table of activities for 2011 General Elections as published by the defendant on the 7th of September, 2010 by holding her special convention under Section 87(6) of the Electoral Act 2010 and submitting the final list of candidates the plaintiff has resolved to sponsor is entitled to be issued with Statutory forms CF001 and CF002 so as to complete all nomination formalities as prescribed by the Electoral Act, 2010 having regard that the continued failure or refusal by the defendant to issue the said forms is contrary to law and ultra vires the powers of the defendant.*

3. *A declaration that the plaintiff having completed and complied with every step prescribed in the First Time Table of 2011 Gen-*

eral Elections is entitled to have the names of her candidates published by the defendant as having met all the pre-conditions for nomination for the 2011 General Election.

4. *A declaration that only the plaintiff and other political parties, if any, which have submitted the list of the party candidates nominated for the various elective offices within the line prescribed by the First Time Table of General Elections are qualified to contest for elective offices in the General Elections of 2011* ^B

5. *A declaration that the Second Time Table of Activities for 2011 General Elections as published by the defendant on the 23^d of November, 2011 (hereinafter referred to as the Second Time Table of 2011 General Elections) in so far it relates to the conduct of party primaries and nomination of candidates and other ancillary matters is contrary to the Electoral Act, 2010 and the 1999 Constitution of the Federal Republic of Nigeria and therefore illegal, ultra vires the powers of the defendant and null and void.* ^C

6. *An order of injunction restraining the defendant either by itself, agents, privies, assigns or howsoever described from working or in any other way using or relying on the second Time Table of 2011 General Elections for the 2011 General Elections in so far as it relates to the conduct of primaries and nomination of candidates and other matters connected therewith.* ^E

7. *An order of mandatory injunction directing the defendant to issue Forms CF001 and CF002 to the plaintiff and to publish as required by law the list of the candidates the plaintiff intend to sponsor for the 2011 General Elections.* ^F

8. *An order of this Honourable Court setting aside the Second Time Table of 2011 General Elections as being null and void and of no effect whatsoever in so far as it makes provisions for the conduct of primaries and nomination of candidates and other matters connected therewith.* ^G

In support of the Originating Summons was an Affidavit of 21 paragraphs which was deposed to by the Chairman of the Plaintiff - Prince Charles Chudi Chukwuani. Attached to the said affidavit as Exhibits are the following documents- ^H

1. First Time Table of 2011 General Elections - Exhibit PI.

2. Letter dated 6th October, 2010 captioned "Notification of NDP Special Convention Holden on 29th October, 2010 - Exhibit P2

3. Letter dated 25th October, 2010 - Exhibit P3.
4. List of Candidates of the Plaintiff - Exhibit P4.
5. Letter dated 3rd December, 2010 - Exhibit P5.
6. Copies of Letters dated 12th, 22nd and 30th November, 2010

- Exhibits P6(a)-P6(d) respectively.

- B 7. Letter dated 18th October, 2010 - Exhibit P7.
 8. Second Time Table-Exhibit P8.

The plaintiff filed a written address in support of the Originating Summons.

- C The defendant in opposition to the Originating Summons
 filed its counter affidavit on 18/2/2011 with the leave of court. Along
 with the counter affidavit was the defendant's written address. The
 plaintiff later filed a reply to the counter affidavit and a reply to the
 defendant's written address. In its considered judgment delivered on
 D 24th March, 2011, the trial court dismissed the Originating Summons
 of the Appellant which led to the appeal to the Court below with the
 Notice of Appeal filed on 31st March, 2011. The appeal was argued
 with the adoption of their respective brief of argument by counsel on
 10th October, 2011.

- E In its judgment handed down on 6th December, 2011, the
 court below dismissed the appellant's appeal having resolved the three
 issues formulated in its brief of argument against the appellant. That
 has led to the instant appeal by the appellant, commenced by the
 Notice of Appeal filed on 30/01/2012 before the court below. The
 F said Notice of Appeal has the following two grounds of appeal bereft
 of their particulars:

"GROUND ONE:-

1. Error in Law-

- G *The learned Justices of the Court of Appeal erred in law when
 they held at page 7 of the same judgment thus:-*

- "I have scrutinized the four grounds of appeal in the Notice
 of appeal and there is no complaint therein from which Issue 2 of the
 respondent could have arisen. There is equally no notice of Cross
 H Appeal or Notice of Intention to contend filed by the respondent.
 Therefore since issue 2 is not founded on any ground of appeal it is
 incompetent and discountenanced."*

The Court of Appeal after dismissing the respondent's issue 2 dealing on academic exercise then somersaulted at page 20 of their

judgment to dismiss the appeal on the ground that it is an academic exercise.

GROUND TWO:

Error in Law

The learned Justices of the Court of Appeal erred in law when they held at page 15 of their judgment thus:- B

“When the respondent decided to jettison that time table and publish a new one their reasons for doing so should be genuine and communicated to the appellants who have taken steps in compliance to the first publication,”

The Court of Appeal after finding and holding as aforesaid, then went on to uphold as legal the Second Time Table that was issued by the respondent without any genuine reasons adduced.” C
Pursuant to the Rules of this court, parties filed and exchanged briefs of argument. In other words, this appeal was heard on the following D briefs of argument:-

- (1) Appellant’s brief of argument filed on 27/3/2012
- (2) Respondent’s brief of argument filed on 04/5/2012
- (3) Appellant’s reply brief of argument filed on 23/7/2012

However, when the appeal was called for hearing, only the E appellant was represented by Counsel to proceed, while the respondent was not represented by anybody or counsel. Therefore, pursuant to Order 6 rule 8 sub-rule 6 of the Supreme Court Rules, 2009 (as Amended) the appellant’s counsel introduced its briefs of argument, adopted and relied on same as argument in support of the F appeal. Accordingly, the Respondent’s brief of argument was treated as having been adopted and relied on by the Respondent. The appeal was then deemed argued on 04/10/2012.

It is pertinent to refer to the Notice of Preliminary Objection given by the Respondent on page 4 of its brief of argument. It is equally apposite to say that the said Preliminary Objection was not moved before this court though argued, hence same was deemed abandoned and liable to be discountenanced. It should be noted that the Preliminary Objection raised by the Respondent in its brief of argument cannot be deemed argued along with the brief. This is because the Respondent is required to specifically seek leave of court and obtain same when the appeal is being heard, to move its ob- G H

jection. Therefore, the Respondent not having been available to seek leave and obtain same to argue its Preliminary Objection, same is of no moment. It is deemed abandoned and liable to be struck out. See Chief Nsirim vs Nsirim (1990) 3 NWLR (Pt. 138) 295, (1990) 5 SCNJ 174; Onochie & Ors Vs Odogwu & Ors
 B (2006) 2 SCM 95 at 101; Attorney-General Rivers State Vs Ude & Ors (2006) 12 SCM (Pt.1) 72 at 83, 92, Ben Vs The State (2006) 12 (Pt.2) 77 at 82. **Accordingly, the Notice of Preliminary Objection incorporated in the respondent's brief of argument is hereby discountenanced and struck out.**

C Now to the appeal.

In its brief of argument, the appellant formulated the following two issues for determination.

Issues for Determination

D 1. Is the court below right to have dismissed the Appellant's case for being academic after adjudging Issue two framed by the Respondent which canvassed the issue of the Appeal being academic as being not founded on any ground of appeal or any cross appeal or a notice of intention to contend filed by the Respondent.

E 2. Whether there is internal conflict in the judgment of the court below, which makes the decision perverse and in the circumstance deserving of a judgment of this Honourable court setting aside the said judgment of the court below for perversity.

F In its own brief of argument, determination as follows:

1. Whether the court below was wrong to have cautioned that a court of law has no duty to embark on academic exercise after the court found against the appellant on all the three issues formulated for determination.

G 2. Whether the decision of the court below on power of the respondent to issue a second Time Table and schedule of Activities is perverse.

**I have carefully considered the two issues raised respectively by both the appellant and the respondent in their
 H briefs of argument. I found them saying the same thing but in different ways. The issues were however not clearly couched. There is no doubt that the court can either suo motu formulate issues or indeed reformulate issues for determination in an appeal. The reason being to narrow down the issue or is-**

sues in controversy in the interest of accuracy, clarity and brevity. However, the issue(s) so formulated by court must have arisen from the grounds of appeal as put forward by the appellant. See *Emeka Nwana Vs. FCDA & Ors.* (2004) 75 SCM 25, *Unity Bank Plc & Anor Vs Bouari* (2008) 2 SCM 193 at 210; (2008) 7 NWLR (Pt. 1086) 372 at 401; *Okoro Vs. The State* (1988) 5 NWLR (Pt.94) 255; (1988) 12 SCNJ 191, *Musa Sha (Jnr) & Anor Vs. Da Rap Kwan & Ors* (20-08) 8 NWLR (Pt.670) 685 (2000) 5 SCNJ 101. In effect, the following can be summed up as the Issues in controversy in this appeal that call for determination of this court, anchored on the Grounds of Appeal as contained in the Notice of Appeal filed by the Appellant.

Issues for Determination

1. Whether the Respondent has the power to make two Time Tables of Activity for only one General Election and thereby properly made the latter, that is, 2nd Time Table, to supersede the former, that is, 1st Time Table in the conduct of the 2011 General Election after the Appellant had taken steps on the 1st Time Table.

2. Whether the Court below properly came to the conclusion that the appellant's appeal was a mere academic exercise after having struck out an Issue on same matter formulated by the respondent, leading to the perversity of the judgment.

The above two issues are interwoven on the issue of the first and second Time Tables issued out by the Respondent and the effect of same on the result of the conduct of the 2011 General Election. In the circumstance, the two issues shall be taken together in consideration.

On the first Issue above which relates to the Time Table of Activities by the respondent the appellant referred to the findings of the court below on page 333 of the record and contended that it is settled, that the respondent is enjoined to give reasons for the cancellation of the first time table and which in the instant case the respondent did not do. But that this did not reflect in the conclusion of the court below when it finally held that the second time table issued by the Respondent effectively annulled the first time table and made it void. Learned counsel to the appellant submitted that a good judgment must in its conclusion reflect its finding in such a manner that there is an organic connection between the finding and the conclu-

sion. It was contended that the court below did not proffer any legal explanation why the failure to give reason in exercising a discretion by the Respondent would not vitiate the said discretion in the circumstance of this case. Reliance was placed on *Ogolo Vs Ogolo* NSCQLR 16.

B Learned appellant's counsel further submitted that the conclusion of the court below with respect to the effective cancellation of the first time table did not reflect its finding that the same time table was cancelled without a reason by the Respondent and which said
C reason the Respondent was obligated to *give* the Appellant and other stakeholders. Even though the Appellant had argued that the Respondent has no power to cancel the first time table having regard to the provisions of Electoral Act, 2011 and the Constitution of the Federal Republic of Nigeria, 1999 (as amended), he submitted in the
D alternative that assuming without conceding that the Respondent has the power to cancel the first time table as held by the court below, that the said cancellation without reason given by the Respondent to the Appellant smacks of arbitrary exercise of discretionary power, lacking in judiciousness and bereft of any judicial quality and the said
E discretion is therefore vitiated.

Learned counsel contended that even if the Respondent has properly exercised its discretion, which is not conceded, the cancellation of the 1st time table after the Appellant had completely complied with the said time table resulting in right vesting in the Appellant and
F its candidates, is a bad law and of no moment. He submitted that by complying fully with the first time table, the Appellant acquired a right to sponsor its candidates in all the elections and candidates acquired the right to vote and be voted for and the Respondent was
G under a correlative duty to be bound by the legal right. Learned counsel submitted further that the appellant's candidates whose names were submitted to the Respondent acquired a private right to vote and be voted for in the April, 2011 election and that the said right cannot be abridged by the Respondent through cancellation of the
H first time table.

The appellant contended that the second time table which purports to annul and supersede the first time table came into being on the 23rd November, 2010 while the first time table came into factual existence on the 7th of September, 2010 with scheduled activities

spanning from the 11th of September 2010 to the 29th day of October 2010, the second time table cannot obliterate the right already congealed from the first time table.

The appellant further contended that the appellant's rights acquired under the first time table are rights acquired before the second time table came into being, and that even if the second time table purport to supersede the first time table, the phrase cannot be construed to mean that vested right that accrued from the first time table are abrogated. Learned counsel submitted that the phrase that the second time table supersedes the first time table can only be construed in the context to mean that the second time table is the current time table and not the first time table but that does not relate or take away the rights already vested on the appellant by reason of its compliance with the first time table which resulted in incurring consequential expense in the course of compliance by the appellant. Reliance was placed on *Adesanoye Vs. Adewole* (2006) 14 NWLR (Pt.1000) 242 at 277. B
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D

Learned counsel to the appellant further submitted that in the main, the first time table is valid and that the right that accrued therefrom is enforceable as the Respondent has no power to cancel the first time table, having regard to Sections 30 and 38 of the Electoral Act and Section 132 (3) of the Constitution of the Federal Republic of Nigeria, 1999. He urged the court to resolve the issue in favour of the Appellant. E

On the second issue whether the court below properly came to the conclusion that the appellant's appeal was a mere academic exercise after having struck out an Issue on the same matter formulated by the Respondent, which was said to have led to the perversity of the judgment, the Appellant referred to its three issues formulated from its ground of Appeal before the Court below. The Appellant also referred to the two issues formulated by the Respondent and contended that the Respondent's issue 2 has no nexus with the grounds of appeal filed by the Appellant. Learned counsel submitted that the Respondent's issue No. 2 amounted to a party creating a new case on appeal, which act destroyed the necessity of consistency in the presentation of one's case, whether at the trial court or at the appellate court. He cited, *Ajide V. Kelani* (1985) NWLR (Pt.12) 248. F
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Learned Counsel submitted further that issues on appeal must

be framed from the grounds of appeal as it represents the complaint against the judgment. Parties, whether the appellant or respondent must confine the issues they rely on in their brief of argument to the grounds of Appeal as an Appellate court has no jurisdiction to decide on issue that does not flow from the grounds of appeal.

B Learned appellant's counsel referred to Order 9 rule 1 of the Court of Appeal Rule, 2011 and the consequence of respondent's failure to comply with the provisions of the rules of court. By virtue of Order 9 rules 1 and 3, Court of Appeal Rules, 2011, the appellant
C submitted that the Respondent is not entitled to any relief relating to an issue raised in its respondent's brief of argument, that is, that the appeal is academic not having filed a Notice of Cross Appeal or respondent's Notice to contend. The appellant relied on *Ogbe V. Asade* (2009) 18 NWLR (Pt.1172) 114 to submit that an issue for
D determination not covered by a ground of appeal is incompetent.

Learned appellant's counsel submitted that the judgment of the court below with respect to the holding that the appellant's appeal has become defunct and therefore academic was in effect, unwittingly granting the respondent's relief No.2 after the court had
E declared it incompetent and should be discountenanced.

Learned counsel further submitted that the conclusion reached by the court below did not reflect its finding that Issue No.2 raised by the Respondent with respect to the academic nature of the Appeal is
F incompetent and should be discountenanced.

Learned counsel however contended that assuming without conceding that the court below can decide an issue other than as contained in the ground of appeal, he submitted that the court before doing so must give both parties opportunity of addressing the
G court on such an issue not contained in any ground of appeal in the interest of fair hearing. He cited *Trade Bank V. Chami* (2003) 13 NWLR (Pt.836) 181, *Ndukauba V. Kolomo* (2005) 4 NWLR (Pt.915) 411.

The appellant conceded that there is no doubt that the Respondent has the power to issue guideline for primaries and nomination having regard to Section 30 of the Electoral Act, 2011 (as amended) and the Constitutional powers to conduct an election as provided in Section 15(a) of part III of the 2nd Schedule to the Constitution. But he submitted that where the Respondent has acted pur-

suant to its powers under the enabling Statute to issue Time table for primaries and nomination, the guideline issued becomes a subsidiary instrument having constitutional and statutory force which is regulated by the enabling Statute.

Learned counsel contended that Section 30 of the Electoral Act (as amended) cannot be construed to invest the Respondent with a limitless power to issue Time table for nomination and election subject to the time limit as imposed by the Section of Act. B

The appellant submitted that, to hold that the Respondent has powers to issue several Time tables subject only to time limit as imposed by Section 30 of the Electoral Act, 2011, amounts to subjecting the reserved power to the Respondent to issue Time table to the whimsicality of the Respondent to the prejudice of all stakeholders. C

Learned appellant's counsel further submitted that an appeal as constitutionally fundamental as the present case that raises substantial constitutional questions cannot be guillotined on the thin technical guise of being academic. D

The appellant urged the court to invoke Section 22 of Supreme Court Act, 1990 to order that the appellant's candidates being the only validly nominated candidates for the April, 2011 General Election are declared elected and certificate of returns be issued to them having regard to Sections 38 and 41 of the Electoral Act 2011 (as amended) and Section 33 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). E
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It was urged on the Court to resolve this issue in favour of the appellant that the court below wrongly came to the conclusion that the appellant's appeal was a mere academic exercise.

On the two interwoven issues formulated, the Respondent referred to the three Issues distilled by the appellant before the court below and how the three were resolved against the appellant. Learned counsel submitted that the court below did not determine the appeal on the basis of issue No.2 formulated by the Respondent as contented by the appellant. G
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The respondent contended that there is no appeal against the decision of the Court below that the respondent has power to issue the 2nd Time Table and that the 1st Time table became spent on the issuance of the 2nd Time table.

Learned respondent's counsel submitted that the appellant cannot justifiably argue that the court below determined the appeal using a discountenanced issue raised by the respondent. It was contended that the court below adopted the three Issues formulated by the appellant and resolved same against the appellant. Learned counsel B submitted that the *ratio decidendi* for discussing the appeal by the court below included the finding that the Respondent has the power to issue the 2nd Time table and that the 2nd Time table supersedes the 1st Time table.

C The respondent referred to the observation of the court below on page 339 of the record and submitted that it was only a passing remark or an obiter which did not affect the reason for resolving all the issues against the appellant.

D Learned counsel submitted that the appellant failed to show that it complied with the Electoral Act, 2010 with respect to proper nomination of its candidates.

E On the issue whether the respondent was properly held to have the power to issue the 2nd Time table by the court below, the respondent referred to the findings of the court below and the relevant enabling laws to contend that the Appellant did not appeal against the finding of the court below that its claim is limited to determining whether the respondent had power to issue the 2nd Time table. It was submitted that the respondent has the sole responsibility to fix dates for elections and can cancel the election and appoint another F day for the elections. Reliance was placed on the decision of this court on PDP V. Timipre Sylva & ors then unreported but now reported in (2012) 13 NWLR (Pt.1316) 85 at 122.

G The respondent submitted that the decision of the court below on the power of the Respondent to issue the 2nd Time table is not perverse. It was urged on the court to dismiss the appeal.

H As earlier stated, the main issue on this appeal is whether the court below was right in declaring the Respondent's second Time table valid that supersedes the first Time table for the activities of the General election of 2011. And whether the court below rightly declared the Appellant's appeal mere academic.

There is no doubt that the issue in the instant appeal involves Electoral process which is "the method by which a person is elected to public office in a democratic society." It is therefore not in dispute

that the body that is saddled with the responsibility of organizing, undertaking and supervising all elections to the offices of the President and Vice President, the Governor and Deputy Governor of a State and to the Membership of the Senate, the House of Representatives and the Houses of Assembly of each State of the Federation is the Independent National Electoral Commission (INEC), See; Section 15 (a) Part I of third Schedule to the 1999 Constitution of the Federal Republic of Nigeria (as amended). B

In effect, in carrying out its constitutional responsibility in organizing and conducting an election, the Commission reserves the prerogative of issuing Notice of Activities for the election. As in the instant case, the Electoral Act, 2010 (as amended) provides a guideline as follows:- C

Section 30

(1) *“the Commission shall not be later than 90 days before the day appointed for holding of an election under this act, publish a notice in each State of the Federation and the Federal Capital Territory-*

(a) Stating the date of the election and

(b) Appointing the place at which nominating papers are to be delivered. E

(2) The notice shall be published in each constituency in respect of which an election is to be held.”

In the instant matter, the election in question was that of 2011 General Elections. As clearly admitted in paragraph 4 of the affidavit in support of the Originating summons of the appellant, the respondent is the Commission established by law and charged with the powers, *inter alia*, to organize and conduct elections into various elective offices in Nigeria. F

Pursuant to this Statutory power, the Commission (hereinafter referred to as the Respondent) issued and published a Time Table of Activities for 2011 General Elections dated 7th September, 2010. (See Exhibit P1) page 27 of the record. However, sometime on the 23rd day of November, 2010, the Respondent issued yet another Time Table of Activities for 2011 General Elections (See; Exhibit P8) on page 173 of the Record. G

It is important to note that the appellant’s complaint before the trial court was on the Time Table of Activities issued on 23rd No- H

vember, 2010 (hereinafter referred to as 2nd Time Table) after the party claimed to have acted on the Time Table earlier issue on 7th September, 2010 (hereinafter referred to as first Time table). Indeed, the appellant believed that the respondent ought not to have issued another Time table after having issued one in September, 2010 upon which the appellant purportedly acted and incurred expenses. The appellant also claimed to have had an accrued right in the first Time table which cannot be washed away by the issuance of another Time table of Activities for the same General Elections of 2010.

There is no doubt that as far as the respondent is concerned, the only Time table of Activities for 2011 General Elections was that one issued on 23rd November, 2010 duly signed by the Chairman of the Commission. In the said Time table, the first election was to take place on 2nd April, 2011, that was, National Assembly Elections, followed by Presidential Election to hold on 9th April, 2011 and the last Election of Governorship and State Assembly scheduled to hold on 16th April, 2011.

As shown earlier, the requirement of the Electoral Act, 2010 is that the Commission shall publish the Notice of Activities NOT LATER THAN 90 days before the day appointed for holding of an election under the Act; how many Time tables the commission can issue before the election proper is not provided by the Electoral Act, but the most important thing is that there must be a valid Time Table published not later than 90 days before the holding of the general election.

It is noteworthy that even though there seemed to be two Time Tables issued by the respondent, only one was valid and recognized for the activities of the 2011 General Elections, and that was the Time Table dated 23rd November, 2010. To show that there was only one valid time table for the elections, page 3 of Exhibit P8 on page 175 of the record contains the following:-

“This Time table and Schedule of Activities supersedes the earlier time table and Schedule of Activities for the 2011 General elections issued by the Commission.”

The above, no doubt refers to the time table of Activities that was said to have been issued earlier on 7th September, 2010. In other words, to have table of Activities issued on

23rd November, 2010 to supersede the former meant that it annulled, made void or repealed the earlier Time table. See Black's Law Dictionary, 9th Edition page 1516. **The super-session rendered the first Time table of 7th September, 2010 a nullity and non-existent. In the circumstance no right can be predicated on such a nonexistent Time table. It is not in doubt that the Independent National Electoral Commission (INEC) that is, the respondent herein, has the sole responsibility to decide when elections are to hold.** See Peoples Democratic Party Vs. Timipre Sylva & Ors (2012) 13 NWLR (Pt.1316) 85 at 122. **The respondent also reserves the prerogative to decide what Time table of Activities to publish for a General Election.**

Therefore, since as at the time of the General election, 2011 there was only one valid Time table of Activities for the said elections, which was dated 23rd November, 2010, the court below was right to have held that the purported first Time table was non-existent and could not sustain any purported accrued right thereunder. It was a nullity act which is void. See; Labour Party Vs. INEC (2009) 2 SC 122.

Furthermore, it is interesting to note that the appellant had complained that the respondent did not give any reason for canceling the first Time table and why it had to issue another. My Lords, I am of the view that there is no law or regulation that requires the respondent to furnish the parties with reason why a particular Time table of Activities could not be used for an election. The INEC is only required to comply with the provisions of Section 30 of the Electoral Act, 2010 as earlier indicated.

It is very clear from the record, that the appellant did not participate in the activities of the 2011 General Elections predicated on the Time table of Activities published on 23rd November, 2010. The appellant believed though erroneously, that the said Time table of Activities was invalid. No wonder it was contended by the appellant that the Respondent has no power whatsoever under the Electoral Act or the 1999 Constitution of the Federal Republic of Nigeria, to publish or issue the second Time table of 2011 General Election. And that it is null and void and of no effect. This, to say the least, is a misconception. The Time Table of Activities issued and which was

used for the 2011 General Elections was validly issued and used by the respondent.

The next issue is whether the court below properly came to the conclusion that the appellant's appeal was a mere academic exercise after having struck out an issue on same matter formulated by the Respondent thereby leading to the perversity of the judgment.

At the court below, the appellant formulated three Issues for determination while the respondent distilled two issues. The court below adopted the three Issues distilled by the appellant to determine the appeal. The three issues were carefully considered and resolved against the appellant.

However, just before the court finally came to the end of the judgment, it made reference in passing to the case of the appellant before the trial court as follows:-

"The appellant went to the court below seeking reliefs relating to the Election Time table issued by the respondent for the 2011 General election. The General Election 2011 was conducted and concluded in line with Respondent's second Time table published after the first time table was superseded.

The appellant, of course exercising his constitutional right to appeal came to this court insisting on the first Time table. I must caution that a court of law has no duty to embark on academic exercise. The duty of the court is to adjudicate on live issues. Where an appeal is of no practical utilitarian value to the appellant even if the appeal succeeds it is merely academic. Every suit must be related to practical situation of human nature with life cause of action. Where an issue in an appeal is defunct, it becomes academic. This is the scenario in the present circumstance.

In the final analysis, that I have resolved the three issues against the appellant, I hold this appeal is devoid of merit and is hereby dismissed." (See; pages 338-339 of the record).

It is clear from the above that the court below did not dismiss the appellant's case for being academic. The above was an obiter dictum - that is, "a remark that is in some way related but not essential to, the main argument". See *Oludotun Ogunbayo Vs The State* (2007) 5 SCM 154 at 173 (2007) All FWLR (Pt.365) 408; (2007) 5 NWLR (Pt.1035) 157 at 185 (2007) 30 WRN 172 at 194-195.

No wonder then, the comment came up after the three issues formulated by the appellant for determination by the court had been resolved against the appellant. A suit is said to be academic when it is merely theoretical, makes empty sound, and of no practical utilitarian value to the plaintiff even if judgment is given in his favour. A suit is academic if it is not related to practical situations of human nature and humanity. B
 See; Plateau State of Nigeria & Anor Vs Attorney General of the Federation & Anor (2006) 1 SCM 130 at 184.

However, where an opinion or remark is expressed by the Judge, such an opinion amounts to nothing and it is baseless and not appealable. It is not a ratio decidendi of the decision of the court. C
 On a similar expression of opinion or remark, this court had this to say:

“This observation, no doubt, is an obiter dictum of the learned justice of the Court of Appeal. It was not part of the argument before the court. The learned Justice adverted to the point on his own in the cause of his judgment. It played no part whatsoever in the decision reached either by the lower court or even by the maker himself. It is not a fit subject for appeal as appeal is fought on the basis of the decision of the court and is not taken against mere obiter”. D E

See Abacha Vs. Fawehinmi (2000) 6 NWLR (Pt 660) 228 at 351 per Uwaifo, JSC.

I cannot agree more with my learned brother on the above. F
As a result, the appellant’s appeal against the above observation of the court below, not being appealable as an obiter is baseless, liable to be discountenanced. Accordingly, same is resolved against the appellant.

In the final analysis, there is no gainsaying that this appeal is G lacking in merit and substance. It deserves to be dismissed. Accordingly, it is dismissed.

Even though costs follow events, I make no order on costs.

FABIYI JSC

I have had a preview of the judgment just delivered by my learned brother - Ariwoola, JSC. I agree with the reasons therein advanced to arrive at the conclusion that the appeal deserves to be

dismissed.

This appeal is against the judgment of the Court of Appeal Abuja Division delivered on 6th December, 2011 wherein the judgment of the trial High Court, Federal Capital Territory, Abuja delivered on 24th March, 2011 in which the plaintiffs /appellant's claims were dismissed, was affirmed.

I wish to state the relevant facts briefly. The appellant is a duly registered political party in Nigeria. The respondent is the Commission established by law and charged with powers, *inter alia*, to organise and conduct elections into various offices in Nigeria.

The Commission, pursuant to its statutory powers, issued and published a Time Table of Activities for 2011 General Elections dated 7th September, 2010 (Exhibit PI). On 23rd November, 2010, the respondent issued another Time Table of Activities for the 2011 General Elections (Exhibit P8) which it maintained, superceded the first one. The 2nd Time Table was issued after the update of the Enabling Legislation to wit: The Constitution of the Federal Republic of Nigeria, 1999 (as amended).

The appellant maintained that it had taken steps to conduct a tentative primary based on the first Time Table of activities issued by the respondent. The appellant felt that it had acquired vested rights. There was the desire to support General Ibrahim Babangida for the office of President but one Alhaji Danjuma Bello was the Presidential aspirant.

The change in the Time Table of activities affected all the political parties. The appellant desired to be declared as the only party and possibly any other party that acted under the first Time Table of activities, as being qualified for the 2011 General Elections. The other parties were not joined by the plaintiff/appellant and were not heard on the crucial claims raised at the trial court.

The trial High Court refused to accede to the claims of the appellant to avoid anarchy. The 2011 Elections have since been conducted, won and lost. The plaintiff appealed to the Court of Appeal which affirmed the stance taken by the trial court.

This is a further appeal to this court. Briefs of argument were accordingly exchanged and duly adopted on 4th October, 2012 when the appeal was heard.

The main issue in the appeal is whether the court below was

right in declaring the respondent's second Time Table of activities as valid and that it supersedes the first Time Table for the General Elections of 2011. Another peripheral issue is whether the court below declared the appellant's appeal as a mere academic exercise.

Let me point it out here that after the convention of the appellant on 29th October, 2010, it issued what it tagged 'Resolution' B which can be found on pages 38-41 of the Record of Appeal. The last paragraph of page 38 to lines 1-3 of page 39 is of moment here. It reads as follows:-

"The special convention hereby takes judicial notice of the unsettled legal and political environment regarding the update of the enabling legislation for the upcoming 2011 General Elections and as such shall ratify our single aspirant(s) for the various elective positions in a manner that will be flexible and proactive to the ever changing legislative and legal environment without prejudice to sections 31, 32 C and 35 of the Electoral Act 2011". D

From the above, it is manifest that the appellant was aware of the unsettled legal and political environment regarding the update of the enabling legislation for the 2011 General Elections. That vital Legislation happened to be the Constitution which was undergoing a process of amendment at the material time. The appellant appreciated that its convention held on 29th October, 2010 was a 'tentative' one. E

With the uncertain position of things known to the appellant, one is at a loss in respect of the fuss generated by it when the respondent issued the second Time Table of activities which was in tune with the provision of section 30 of the Electoral Act. I shall touch same briefly in this judgment *anon*. F

The appellant merely filed its action against the respondent G only, without joining other political parties as necessary and/or desirable parties. No doubt, they ought to be heard in a matter which has direct bearing on their activities. This is as submitted by learned counsel for the respondent. On this point, there was no adequate reply by the appellant. H

A necessary party is someone whose presence is essential for the effectual and complete determination of the issues before the court. It is a party in the absence of whom the whole claim cannot be effectually and completely determined. A necessary party should be

allowed to have his fate in his own hands.

There is no gainsaying the fact that other political parties should have been joined so as to protect their right to fair hearing as dictated by section 36 (1) of the 2010 Constitution (as amended). They are necessary parties, no doubt. Judgment made with order against a person who was not a party to a pending suit is to no avail. It cannot be allowed to stand. See: Chief Abusi David Green v. Dr. E. T. Dublin Green (1987) 3 NWLR (Pt. 60) 480; Uku v. Okumagba (1974) 1 All NLR 475.

I now touch briefly the provision of section 30 of the Electoral Act, 2010 (as amended) which provides as follows:-

“30 (1) The Commission shall not later than 90 days before the day appointed for holding of an election under this Act, publish a notice in each state of the Federation and the Federal Capital Territory -

(a) Stating the date of the election and

(b) Appointing the place at which nomination papers are to be delivered.

(c) The notice shall be published in each constituency in respect of which an election is to be held.”

The Commission has the duty to publish valid Time Table of activities for party primaries not later than 90 days before the holding of the general election. A vital exigency like the unsettled legal and political environment regarding the update of enabling legislation for the upcoming general election acknowledged by the appellant in its convention resolution provided the respondent with adequate discretion to issue another Time Table of activities and there should be no fuss generated on same, I repeat.

Even in election proper, the respondent has the sole responsibility to decide when same should hold. See *Peoples Democratic Party v. Timipre Sylva & Ors. (2012) 13 NWLR (Pt. 1316) 85 at 122*. By parity of reasoning, the respondent also reserves the prerogative to decide when to publish the Time Table of Activities for a General Election in compliance with the Law.

There is the peripheral issue touching on the *obiter dictum* of the court below. *Obiter dictum* constitutes words of opinion entirely unnecessary for the decision of the case, a remark made in passing incidentally or collaterally, and not directly upon the question before

the court. Such is not binding as precedent. Black's Law Dictionary, Sixth Edition, page 1072.

I dare say that an *obiter dictum* of a judge is not appealable. It is not a big deal and ought to be discountenanced more especially as the court below decided all the three issues submitted to it for determination. B

Let me say it pungently that the concurrent findings of the two courts below that the respondent had power to issue the 2nd Time Table of Activities is without blemish. Such findings have not been shown to be perverse. They are in tune with reasoning and for avoidance of a state of anarchy. I shall not interfere with same in the interest of peace and tranquility. See: *Echi & Ors. v. Nnamani & Ors.* (2000) 5 SC 62 at 70. C

For the above reasons and the fuller ones adumbrated in the lead judgment, I too feel that the appeal is devoid of merit and should be dismissed. I order accordingly. As well, I make no order on costs. D

GALADIMA JSC

I have had the privilege of reading the Draft of the Judgment just delivered by my Learned Brother ARIWOOLA JSC. E

I agree with his reasoning and conclusion leading to the dismissal of this appeal. The facts of this case as set out in the lead judgment are quite straight forward. F

The *crux* of this matter is bordered on the issuance and publication of the two *Time-Tables of Activities* for 2011 General Election dated 7/9/2010 (Exhibit PI) and another dated 23/11/2010 both were issued by the respondent. F

The Appellant had contended that it had taken steps to conduct a tentative primary based on the *First Time Table* and for this reason it had acquired vested interest and rights. This is evident in its desire to support *General Ibrahim Babangida* but that Alh. Danjuma Bello was its Presidential Aspirant. G

The Appellant's complaint before the trial court was on the 2nd Time Table of 23/11/2010 after it had acted on the 1st Time Table of 7/9/2010. The Appellant maintained that the Respondent had issued an earlier one in September upon which it acted and incurred expenses. H

The Respondent has maintained that the only *Time Table of Activities* for 2011 *General Elections* was the second *Time Table* duly endorsed and signed by its Chairman. In that *Time Table*, the First Election was fixed for 2/4/2011, that is for National Assembly Election followed by Presidential election fixed for 9/4/2011 and Governorship and State Assembly scheduled for 16/4/2011.

The Appellant sought for a declaration that it was the only party for the Election and possibly any other Political Party that acted under the First *Time Table of Activities* as well.

The trial High Court refused to accede to the Appellant's claim. The Appellant's appeal to the Court of Appeal was dismissed. The court affirmed the decision of the trial High Court.

In the further appeal to this court, the Appellant is contending that the court below erred in declaring Respondent's Second *Time Table of activities* as valid and that it supersedes the First *Time Table*.

After the convention of the Appellant on 29/10/2010, it issued a "Resolution" acknowledging the "unsettled Legal and Political environment regarding the update of the enabling Legislation" for the 2011 General Election. The "enabling legislation" which is vital is the constitution then undergoing a process of amendment at the material time. The Appellant herein accepted that its convention held on 29/10/2010 was tentative in nature. Hence, for this stance the Appellant should not be heard to complain when the Respondent had to issue the *Second Time Table of Activities* on 23/11/2010.

The appellant filed its action against the Respondent. It did not join other political parties as necessary parties in a matter which has direct bearing on their activities. As necessary parties, any judgment handed down without them cannot stand see *UKU v. OKUMAGBA* (1974) 1 All NLR 475.

However, on the vexed question of the validity of *Time Table of Activities*, the provision S. 30 of the Electoral Act 2010 (as amended) is quite clear. The law has left no one in doubt that the Respondent has the duty to publish valid *Time Table of Activities* for Party Primary Elections not later than 90 days before conducting the General Election. Updating of enabling legislation was a very vital issue that had to be settled by the Respondent before the holding of the Election. Thus the Appellant acknowledged this at a resolution arrived at its convention. This, indeed, provided sufficient reason for the Respon-

dent to issue another “Valid” Time Table of Activities. The Appellant’s complaint is of no moment. The Respondent has the sole responsibility to decide when the General Election should hold. The corollary to this duty is the Respondents discretion to decide when to publish the Time Table of Activities for the General Election.

For the foregoing reasons and the much fuller ones in the leading Judgment. I too, dismiss the appeal as it is lacking in merit. I make no order as to costs.

PETER-ODILI JSC

Having had the opportunity of reading the draft judgment of my learned brother, Olukayode Ariwoola, JSC which decision I agree with. To place my support on record I shall make my views known.

This is an appeal against the judgment of the Court of Appeal, Abuja Division sitting in Abuja presided over by Hon. Justice Zainab Adamu Bulkachuwa and the lead judgment in the said Appeal delivered on the 6th day of December, 2011 by Hon. Justice Regina Obiageli Nwodo.

The Appellant was the Plaintiff at the High Court Abuja and commenced the action by an originating summons dated the 25th day of January, 2011 and filed on the 31st day of January, 2011. On the 4th October 2012 date of hearing the learned counsel, for the Appellant, Chief Henry Akunebu adopted Appellant’s Brief filed on 27/3/12 and a Reply Brief filed on 23/7/12. In the Appellant’s Brief were couched two issues for determination, viz:-

1. Is the Court below right to have dismissed the Appellant’s case for being academic, after adjudging Issue 2 framed by the Respondent which canvassed the issue of the Appeal being academic as being not founded on any ground of Appeal, or any Cross Appeal and or a notice of intention to contend filed by the Respondent.

2. Whether there is internal conflict in the judgment of the Court below which makes the decision perverse and in the circumstance deserving of a judgment of this Honourable Court setting aside the said judgment the Court below for perversity.

Learned counsel for the Respondent, being absent even though present on the day the date of hearing was taken had the Respondent’s Brief filed on 4/5/12 accepted by the Court and the

arguments therein taken as argued. In the Brief were couched two issues for determination which are as follows:-

1. Whether the Court below was wrong to have cautioned that a Court of law has no duty to embark on academic exercise after the Court found against the Appellant on all the three issues formulated for determination.

2. Whether the decision of the Court below on power of the Respondent to issue a Second Time Table and Schedule of activities is perverse.

The Respondent through learned counsel had filed a Preliminary Objection which arguments thereof are embedded in the Brief of Argument of the Respondent. It needs no saying that the Preliminary Objection is usually taken first as the life of the appeal is dependent on it whatever decision the Court reached after consideration of the arguments for and against the Preliminary Objection.

This Notice of Preliminary Objection in the light of the absence of learned counsel for the Respondent not having been moved was taken as abandoned and the only fate that could befall it is a striking out which I do now. That having been put out of the way I would go into the appeal proper utilizing the issues as formulated by the Appellant's counsel.

ISSUE NO. 1

Is the Court below right to have dismissed the Appellant's case for being academic after adjudging Issue 2 framed by the Respondent which canvassed the issue of the Appeal being academic as being not founded on any ground of Appeal or any Cross-Appeal or a notice of intention to contend filed by the Respondent.

Chief Akunebu, learned counsel for the Appellant submitted that the Respondent's issue two in the Court of Appeal amounted to a party creating a new case on appeal, which said act destroys the necessity of consistency in the presentation of one's case, whether at the trial court or at the Appellate Court. That issues on appeal must be framed from the grounds of appeal as the ground of appeal represents the complaint against the judgment. That parties whether Appellant or Respondent must confine themselves to the issues they rely on in their brief to the grounds of appeal as an Appellate Court has no jurisdiction to decide an issue not flowing from the grounds of Appeal which the Appellate Court is invited to review.

Chief Akunebu went on to say that a Respondent as in this case intending to raise an issue which frames its argument in its brief unrelated to the grounds of Appeal filed by the Appellant such a Respondent is enjoined by the Rules of the Court of Appeal to file a Notice of Cross-Appeal upon leave of the Court or to file Respondent's Notice to contend and which obligation is mandatory with a compulsory imputation. He cited *Ajide v Kelani* (1985) NWLR (Pt. 12) 248; Order 9 Rules 1 & 3 of the Court of Appeal Rules, 2011; *Ogbe v Asade* (2009) 18 NWLR (Pt. 1172) 114; *Osigweme v INEC* (2011) 9 NWLR (Pt. 1253) 429. B

That the obligation to confine issues framed for determination to the grounds of Appeal finds fortification in logic and common sense and this obligation is fixed and must be observed by all parties to any appeal as to do otherwise will enthrone lack of certainty in the prosecution of a party's case. He cited *Umukoro v Ogaga* (2003) 14 NWLR (Pt.839) 125. C

That the conclusion and judgment of the Court below breached the provision of Order 9 Rule 3 of the Court of Appeal Rules, 2011 and should be set aside. He referred to *Udengwu v Uzuegbu* (2003) 13 NWLR (Pt. 836). D

Learned counsel for the Appellant stated on that if the Court below was of the considered opinion that the question whether the appeal was academic as constituted, was germane to its adjudication the Court below had a duty before adjudication on the issue to take address from parties counsel on the issue before adjudication in order not to infract on fair hearing as in this case the Appellant had not in any process or even in an oral submission been heard on the question whether the Appeal was academic or not. That the failure of the Court below to submit the said question of whether the appeal was academic to be heard by taking the address of counsel to parties harmed the Appellant's right to fair hearing and therefore made the judgment void. He cited *Trade Bank v Chami* (2003) 13 NWLR (Pt. 836) 181. E

For the Appellant was put forward that the Respondent has powers to issue guideline for primaries and nomination having regard to Section 30 of the Electoral Act, 2011 (as amended) and Section 15 (a) of part III of the Second Schedule to the constitution. Also that Section 132 (2) of the Constitution of the Federation, 2011 F

G

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(as amended) provides an illuminating beacon in determining the ambit of the powers of the Respondent in issuing time table for the provisions, nomination and matters connected therewith. He also cited Section 38 of the Electoral Act, 2011 (as amended). That the power reserved to the Respondent is the power to extend nomination table and not the power to cancel time table as done in this case by the Respondent since the power is not limitless. He referred to *Buhari v Yusuf* (2003) 10 MJSC 101; *Adesule v Majuwa* (2011) 13 NWLR (Pt. 1263) 146; *State v Olatunji* (2003) 14 NWLR (Pt. 839) 152.

Chief Akunebu further contended that the first time table is valid and cannot be cancelled or can only be cancelled with reason which reason was not given in this case. That Appellant having complied with the said first time table and the only party to have to have so complied, its candidates are taken to be the only validly nominated candidates for the April, 2011 General Election as contended by the Appellant, the effect is that candidates of the Appellant should be declared the only validly nominated candidates and this Court should deem them as returned by the Respondent for the elective offices they are so nominated to. He cited Section 41 of the Electoral Act, 2011 (as amended); Section 133 of the Constitution (as amended); Section 22 of the Supreme Court Act.

In response, Mr. I. K. Bawa learned counsel for the Respondent said that there is no appeal against the decision of the Court below that the Respondent has power to issue the 2nd Time Table and that the 1st Time Table became spent on the issuance of the 2nd Time Table. That it cannot be argued that the Court of Appeal determined the appeal on an issue not before it. That the Appellant misconceived the issue upon which the Appeal was argued. That there is no appeal against the decision of the Lower court on the applicability of Section 132 (3) of the Constitution and Section 38 of the Electoral Act to this appeal. That the effect is that the Appellant cannot be heard in argument on those sections.

What I see in this issue is the question whether the decision by the Court of Appeal was merely an academic matter which was not within the realm of adjudication. Of interest is the Appellant's contention that the matter of the academic nature of the appeal was not before the Court of Appeal and it ought not to have said so.

I would like to quote the related portion of the judgment basis of the grouse which has become the bone of contention under this issue under discourse. The Court of Appeal, per Nwodo JCA delivering the Lead judgment had put forward the following and it is necessary to quote as follows:-

“The Appellant of course exercising his constitutional right to appeal came to this Court insisting on the first time table. I must caution that a court of law has no duty to embark on academic exercise. The duty of the court is to adjudicate on live issues. Where an appeal is of no practical utilitarian value to the appellant even if the appeal succeeds it is merely academic. Every suit must be related to practical situation of human nature with a life cause of action. When an Issue in an appeal is defunct it becomes academic. This is the scenario in the present circumstance.”

The complaint of the Appellant as shown in the Grounds of Appeal is that the matter of the first time table issued by the Respondent is valid and subsisting under the provisions of the Electoral Act 2010 (as amended) and under the relevant provisions of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

This grouse of the Appellant I must say is not a debate he can win as no matter what has been placed before court, if it finds that the process before it is a worthless, useless exercise and perhaps veering into an area solely academic, the Court must say so and deal with it for it's worthlessness as that is not part of its work of adjudication, it is not necessary that it is not part of the Grounds of Appeal or that no one has raised it as such. This is because entering into academic discourse in the course of adjudication is not what the Court has been empanelled to do. Therefore once the court sees that what is before it would neither help the course of justice nor have any substance it needs no urging but to have it thrown out.

This issue I must say is against the Appellant.

ISSUE NO.2:

Whether there is internal conflict in the judgment of the Court below which makes the decision perverse and in the circumstance deserving of a judgment of this Honourable Court setting aside the said judgment of the Court below for perversity.

Chief Akunebu, learned counsel for the Appellant stated that a good judgment must in its conclusion reflect its finding in such a manner

that there is an organic connection between the finding and the conclusion. That the Court below did not even proffer legal explanation why the failure to give reason in exercising a discretion by the Respondent would not vitiate the said discretion in the circumstance of this case. He cited *Ogolo v Ogolo* NSQLR Vol.16.

B That the fact that the conclusion of the Court below was not based on its findings in the circumstance of this case faulted the decision beyond redemption. That even if the respondent has the power to cancel the first time table as held by the Court below, the said
C cancellation without reason given by the Respondent to the Appellant smacks of arbitrary exercise of discretionary power lacking in judiciousness and benefit of any judicial quality and the said description is therefore vitiated. He cited *Agbenyi v Abo* (1994) 7 NWLR (Pt. 359) 738.

D For the Appellant was further submitted that the Appellant's right acquired under the first time table are rights acquired before the second time table came into being and so those first time table acquired rights cannot be taken away by the second time table. That the doctrine of estoppel operated to stop the Respondent from resiling from their representation after the Appellant had acted on same and altered its legal relation. He cited *Adesanoye v Adewole* (2006) 14 NWLR (Pt. 1000) 242 at 277; S. 151 of the Evidence Act; *A. G. Rivers State v A.G. Akwa Ibom State* (2011) 8 NWLR (Pt. 1248) 53.

F In response, Mr. Bawa for the Respondent contended that the decision of the Court of Appeal is well grounded and is not perverse. That section 30 (1) of the Electoral Act, 2010 as amended vested powers on INEC to publish election Time Table. Also that where unforeseen circumstances present the Respondent changes the time table
G for elections, all stakeholders should be duly informed and the power was not arbitrarily utilized. That the Respondent had power to publish the second Time Table and the effect of the second Time Table is that the first became null and actions and activities consequent upon the 1st time table became void. He referred to *People's Democratic Party v Timipre Sylva & Ors* (2012) 13 NWLR (Pt. 1316) 85 per
H Rhodes-Vivour JSC.

I would like to quote part of the judgment of the Court below, subject of this appeal and it is as per Regina Nwodo JCA, thus:-

“Under Issue 3 whether the substitution of the first time table

with the second time table by the Respondent did affect the rights already acquired by the Appellant."

The learned senior counsel contended that the appellant as a political party acquired a right to present its candidates under the constitution and the Electoral Act and by the first time table and she is entitled to be issued with forms CF001 and CF002 by the Respondent. B

He submitted that a retroactive time table published by the Respondent will not affect a right acquired by the Appellant under the Constitution, Electoral Act and the first time table the said right arising from the conduct of primaries and issuance of statutory forms extinguished, it could not have survived as contended by the learned senior counsel for the Appellant. C

When the first time table ceased to be in existence by the publication of exhibit 'P8' which expressly annulled the first time table all right of political parties on what to do under Exhibit 'PI' in relation to when to collect forms, hold primaries all terminated. Certainly, no right can survive when the foundation had extinguished. To appreciate this point I pose the question, what really is a vested right?" D

In *Adesanoye v. Adewole* (2006) 14 NWLR (Pt. 1000) SC 242 Pt. 277 to Para. G-H. The Supreme Court per Tobi JSC on vested right said: E

"And that takes me to what the Court of appeal called vested right. A vested right is a right held by some body in something to his advantage and interest. A vested right accrues to the owner or holder, who has it for keeps as the allodial owner. F

In order to lay claim to and enjoy a vested right, it should not be encumbered or weighed down by any other competing right. A vested right can be so recognized by law, if it is really vested in the holder. When a vested right is founded or predicated on a document which, in law and in fact, does not and cannot donate the so-called right, then no right in law passes to the claimant of the right. This is because the document which is assumed or presumed to pass the right, did not do so in law. In other words, where a claim to a vested right is premised on a wrong footing, the so-called vested right must collapse and with no ado or fanfare." G H

From the very well set out findings and reasonings of the Court of Appeal which I have quoted extensively, that judgment enters into

those findings of a Lower court, the higher Court has no business disturbing. This is because the Lower Court considered effectively what was at stake and dealt with it appropriately leaving nothing upon which the appellant can situate a grievance. Clearly the Appellant is claiming a right that accrued from the first time table. That right cannot be validated or considered existing solo without balancing it with the powers of the Respondent within its scope of responsibilities as provided by Sections 30 and 38 of the Electoral Act and section 132 (3) of the Constitution of the Federal Republic of Nigeria 2011 (as amended).

What I am saying in other words are that the rights of the Appellant cannot be considered or established without recourse to the powers of the Independent National Electoral commission (INEC), the establishment endowed with the authority to set time tables and effect elections. That means the right of the Appellant in the particular election in issue is subject to the powers of INEC, the Respondent. The Appellant's posture is that the Respondent did not have power to issue a time table and turn round to cancel it and provide a second time table. That position cannot stand in the light of the interpretation of the relevant laws, that is Sections 30 and 38 of the Electoral Act, 2011 (as amended) and Section 132 (3) of the Constitution of the Federal Republic of Nigeria, 2011 (as amended).

My learned brother, Bode Rhodes-Vivour captured the situation with clarity in *People's Democratic Party v Timipre Silva & Ors* (2012) 13 NWLR (Pt.1316) 85. He said and I quote:-

"INEC has the sole responsibility to fix dates for elections and to my mind if INEC fixes date for elections and for whatever reason, be it logistic do not think anyone has a cause of action against INEC for canceling an election (not held) and rescheduling elections for another."

The logic as I see in not contesting the power of the Respondent to schedule elections, cancel and reschedule so long as no step has been put in place by way of the electoral process, then the power of the Respondent cannot be shackled, otherwise it would be either a lame duck or an impotent umpire which will be too disabled to function.

As I said earlier there is nothing on which this Court can hang a revisiting of what the Court of Appeal did. This issue also resolved

against the Appellant, the natural course of events is that the appeal lacks merit. From the foregoing and the better reasoning in the Lead judgment, I dismiss the appeal. I abide by the consequential orders made in the lead judgment.

B

AKA 'AHS JSC

I was obliged with a copy of the draft judgment prepared by my learned brother ARIWOOLA JSC. The central issue in this appeal is whether the respondent has power to issue more than one guideline to the various political parties for the holding of their primaries to nominate candidates for the various posts slated for the 2011 general election in the country. The appellant conceded that the respondent has power to issue guidelines to the various registered political parties to hold primaries with a view to nominating candidates the parties wish to sponsor for the general election in 2011 but contended that section 30 of the Electoral Act 2010 (as amended) cannot be construed to invest the respondent with limitless power to issue time table for nomination and election. Section 30 of the Electoral Act 2010 (as - amended) stipulates as follows:-

E

“30-(1) The Commission shall, not later than 90 days before the day appointed for holding an election under this Act publish a notice in each State of the Federation and the Federal Capital Territory...

F

(a) Stating the date of the election; and

(b) appointing the place at which nomination papers are to be delivered.

(2) The notice shall be published in each constituency in respect of which an election is to be held.

G

(3) In the case of a bye election, the Commission shall not later than 14 days before the date appointed for the election publish a notice stating the date of the election”

The Independent Electoral Commission’s discretionary power to publish the Notice of activities cannot be fettered unless such Notice falls short of 90 days to the date of the election. Moreover, the Independent National Electoral Commission (INEC) has sole responsibility to decide when elections are to hold. See: *Peoples Democratic Party vs. Timipre Sylva & Ors* (2012) 13 NWLR (Pt. 1316) 85.

H

No enforceable right could accrue to the appellants in claiming that since they acted on the Time Table of Activities for 2011 General Elections dated 7th September, 2010, the Independent National Electoral Commission could not issue another Time Table on 23rd November 2010. To avoid uncertainties it is desirable that INEC should
 B make a conscious effort to stick to scheduled periods for the election once the necessary funds are released and there is no state of emergency declare in any part of the country.

I find no merit in the appeal and I agree with my learned
 C brother. ARIWOOLA JSC in the lead judgment that the appeal should be dismissed. I equally dismiss the appeal

ALAGOA JSC

D This is an appeal against the judgment of the Court of Appeal Abuja Division delivered on the 6th December, 2011 which upheld the judgment of the High Court of the Federal Capital Territory, Abuja. In the High Court of the FCT Abuja the
 E Appellant as Plaintiff had commenced an action by way of originating summons claiming a number of reliefs which have already been stated in the lead judgment of my learned brother Olu Ariwoola JSC and need not be repeated here. The crux of the matter was whether the time table of activities for the 2011
 F General Elections issued by the Independent National Electoral Commission (INEC) as it touches and concerns the conduct of primaries and nomination of candidates published by the said INEC on the 7th September 2010 (otherwise referred to as the
 G 1st time table) is not valid and subsisting regard being had to the 1999 Constitution and the Electoral Act 2010 which INEC purportedly jettisoned in favour of a second time table published by INEC in November, 2010. Appellant said it had acted on the 1st time table and queried the refusal of the Independent National Electoral Commission (INEC) to issue forms CF 001 and CF 002 to enable it
 H test the 2011 elections. The reliefs sought for by the Appellant inter alia included a Declaration that the 1st time table is valid and subsisting; the setting aside or jettisoning of the 2nd time table; the issuance of forms CF 001 and CF 002 to the Appellant and an order directing the Respondent (INEC) to publish the list of candidates that the Ap-

pellant intends to sponsor for the 2011 General Elections. The Respondent filed a memorandum of Appearance and a Counter Affidavit to the Appellant's affidavit in support of the originating summons. Written addresses were exchanged. The High Court of the FCT dismissed the Appellants' claims and they (Appellants) thereafter appealed to the Court of Appeal Abuja Division which also dismissed their claims hence this appeal to the Supreme Court. It is the law that the Independent National Electoral Commission (INEC) has the unfettered discretion and sole responsibility to do what it did and even more so to cancel an election and fix another day for fresh elections. This position of the law is amply and very clearly stated in the case of *PEOPLES DEMOCRATIC PARTY V. TIMIPRE SYLVA* (2012) 13 NWLR (PART 1316) 85 delivered on the 20th April, 2012 where Bode Rhodes-Vivour, JSC stated as follows:

"INEC has the sole responsibility to fix dates for elections and to my mind if INEC fixes a date for elections and for whatever reason, be it logistic, I do not think anyone has a cause of action against INEC for canceling an election (not held) and rescheduling elections for another".

What the Appellant is asking this court to do is to my mind ludicrous because not only can the court not declare persons who are not validly nominated in accordance with the Electoral Act 2010 as duly elected, the Court cannot also cancel all the elections conducted in 2011 without giving winners of the elections the opportunity of being heard. It is for these reasons and the fuller reasons given in the lead judgment of my learned brother Olu Ariwoola JSC that I too find no merit in the Appeal and dismiss same with no order made as to costs.

MUHAMMAD JSC

I have had the privilege of reading in draft, the judgment just delivered by my learned brother, Ariwoola, JSC. I agree with My Lord's reasoning and conclusion. I abide by all consequential orders made in the leading judgment. I make no order as to costs.