

**SUPREME COURT OF NIGERIA**  
FRIDAY 14<sup>TH</sup> DECEMBER, 2012. SC. 190/2012  
**CORAM:- W. S. N. ONNOGHEN, C. M. CHUKWUMA-  
ENEH, B. RHODES-VIVOUR, M. U. PETER-ODILI,  
O. ARIWOOLA, M. D. MUHAMMAD,  
C. B. OGUNBIYI, JJSC**

1. CHIEF ACHIKE UDENWA  
2. ACTION CONGRESS OF NIGERIA .....APPELLANTS  
AND  
1. CHIEF HOPE UZODINMA  
2. INDEPENDENT NATIONAL  
ELECTORAL COMMISSION .....RESPONDENTS

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APPEALS - Preliminary objection - Purpose - The aim is to bring appeal to an end - Having been discovered to be incompetent - And court is expected to deal with the objection once it is raised (H1)

ELECTION PETITIONS - Appeals - Judgment - 1999 Constitution s. 285(6) - Once tribunal gives decision within 180 days and aggrieved party appeals - Its time runs until the 180 days shall be exhausted - And appellate court cannot extend the time (H2)

ELECTION PETITIONS - Appeals - Hearing - Limitation - 1999 Constitution s. 285(7) - The 60 days prescribed by the section for hearing appeal by CA & SC respectively - Cannot be extended (H3)

ELECTION PETITIONS - Appeals - National Assembly election - Final court - By s. 246(3) 1999 Constitution - Court of Appeal is the final court to determine dispute arising therefrom (H4)

***FACTS***

2<sup>nd</sup> respondent held elections into the Senate for Imo West Senatorial District constituency. 1<sup>st</sup> appellant contested for the election on the platform of 2<sup>nd</sup> appellant, while 1<sup>st</sup> respondent contested on the platform of Peoples Democratic Party. At the end of the election, 2<sup>nd</sup> respondent declared 1<sup>st</sup> respondent as the winner of the election. Dissatisfied with the result, appellants filed this election peti-

tion before the National and State Assembly Election Petition Tribunal, Owerri, challenging the return of 1<sup>st</sup> respondent as the winner of the election. Upon being served with the petition, 1<sup>st</sup> respondent filed a notice of preliminary objection asking the Tribunal to strike out the petition for being fundamentally defective and vesting no jurisdiction on the Tribunal. Appellants on their part opposed the objection. In its ruling, the Tribunal upheld the preliminary objection and thus struck out the petition.

Being dissatisfied, appellants appealed to the Court of Appeal, Owerri on the 6<sup>th</sup> September 2011. The court allowed the appeal in part on 17<sup>th</sup> October 2011 and ordered that the other part be heard on merit by a fresh panel. By computation of time by 27<sup>th</sup> October 2011, the petition had lapsed by expiration of 180 days allotted by section 285(6) of the 1999 Constitution (as amended) for the delivery of the judgment of the Tribunal. Subsequently on 9<sup>th</sup> November 2011, 2<sup>nd</sup> respondent filed motion on notice praying the trial Tribunal to strike out the petition on the ground that 180 days has expired. The Tribunal thus upheld the motion and struck out the petition. Aggrieved, appellants filed appeal at the same division of Court of Appeal. The court affirmed the decision of the Tribunal and dismissed the appeal. Aggrieved further, appellants appealed to Supreme Court.

**HELD** (Unanimously striking out the appeal per

**ARIWOOLA JSC)**

*APPEALS - Preliminary objection - Purpose*

**1. There is no doubt, the preliminary objection raised by the respondents to the hearing of the appeal has to be attended to first and foremost. Preliminary objection in a case is an objection that, if upheld would render further proceedings before the court impossible or unnecessary. An objection to the court's jurisdiction is an example of a preliminary objection.**

**Generally, the Rules of this court allow a respondent to rely on a preliminary objection to the hearing of the appeal. The purpose of this is to bring the appeal to an end having been**

**discovered to be incompetent and or fundamentally defective. It will therefore be unnecessary to continue with an appeal once an objection is raised without disposing of same. In other words, the court is expected to deal with and dispose of a preliminary objection once raised by a respondent before taking any further step in the appeal.**

**In the instant case, as earlier indicated, the two respondents raised preliminary objection which must be attended to before any other step is taken in the appeal. And it is trite law that once a preliminary objection to an appeal succeeds, there will no longer be any need to proceed to further consider the arguments in respect of the issues raised for determination in the appeal. (p. 4100 G)**

*ELECTION PETITIONS - Appeals - Judgment*

**2. As it relates to Section 285 (6) of the 1999 Constitution (as amended), this court had decided that once an election tribunal gives an appealable decision or makes an order within 180 days and an aggrieved party appeals, its time continues to run until the 180 days shall be exhausted. And an appellate court has no competence or jurisdiction to extend or enlarge the period of 180 days once it expires. (p. 4108 E)**

*ELECTION PETITIONS - Appeals - Hearing - Limitation*

**3. In the same vein, the period of sixty (60) days prescribed by the Constitution for the Court of Appeal and this court to hear and determine an appeal to them respectively cannot be extended or enlarged by either court to hear the appeal once the sixty days expire.**

**We are here concerned with Section 285 (7) of the 1999 Constitution in particular, which limits the time within which the court below is to hear and dispose of appeals to it from the date of delivery of the tribunal judgment. No one, or Institution, not even this apex court has the power, authority or competence to extend the day by one day from the prescribed limited sixty (60) days to hear and dispose of the appeal. In other words, once by simple arithmetic calculation, from the date of delivery of the decision of the court below the period**

***of sixty (60) days expires, the appeal becomes dead and there can never be any further action on a dead matter.***

***There is no dispute and it was conceded by the appellants that it was over sixty days after the court below gave its decision on 22/3/2012 before the instant appeal was filed.***

B (p. 4108 G)

#### *ELECTION PETITIONS - Appeals*

***4. Furthermore, this matter having arisen from the National and State Houses of Assembly Election Tribunal is incompetent and it violates the provisions of the Constitution. Section 246 subsection 3 of the 1999 Constitution (as amended) provides thus:***

***“The decision of the Court of Appeal in respect of appeals arising from election petitions shall be final.”***

***As stated earlier clearly, this is an appeal that arose from election petitions in respect of the decision of the National and State Houses of Assembly Tribunal sitting at Owerri. The court below is prescribed to be the final court to determine any dispute that may have arisen therefrom. This provision has also been considered by this court when it held that the decision of the court below in respect of appeals arising from election petitions such as Senatorial Election appeals is final and not subject to any further appeal, or review by any other court or tribunal.*** (p. 4109 H)

## NOTABLE POINTS OF INTEREST

### **ARIWOOLA JSC**

***1. Legislature is the proper institution to amend the Constitution***

What is being argued and contested by the appellants therefore is the validity of the said Section 285 (7) of the Constitution (supra) that prescribes the limitation. To talk about validity of a legislation means the legal sufficiency or bindingness of such a law.

There is no controversy, that the Nigerian Constitution of 1999 (as amended) is the Supreme Law of the land and it is binding on all authorities and persons throughout the Federation. See; Section 1

(1) of the 1999 Constitution of the Federal Republic of Nigeria.

Similarly, the National Assembly in Nigeria is the highest law making body in Nigeria. It follows therefore without much ado that the legislature, which possesses the supreme law making power in the country, possesses, as incidental thereto, the right to change, modify and even abrogate the existing laws in accordance with the relevant provisions of the Constitution. B

It is clear that sometime ago when it became necessary that the 1999 Constitution of the Federal Republic of Nigeria should be amended or altered, the National Assembly under its legislative function duly passed the Alteration Law and the said Constitution (as amended) became the Supreme Law thereafter. If therefore the appellants are desirous of challenging the validity of any provisions of the Constitution as amended, they know how to go about it, but certainly not before an Election Tribunal or Election appeal court. C  
(p. 4109 C) D

## **RHODES-VIVOUR JSC**

### ***2. Constitutional interpretation - Intention of legislature***

The primary consideration when interpreting sections in the Constitution is to find out the intention of those who made the Constitution, and so where the words used are clear and unambiguous they must be given their plain and ordinary meaning. All that the judge is required to do is to bring out the intended meaning and no more. E  
(p. 4116 G) F

## **REPRESENTATION**

Chief M. I. Ahamba, SAN with Emeka Mozie Esq. C. H. Nwuke Esq. James Ugbogu Esq., and Udochukwu Meribe, Esq., M. A. Aguda Esq., for 1<sup>st</sup> Respondent. G

L. M. Alozie Esq., for the 2<sup>nd</sup> Respondent

## **CASES REFERRED TO**

General Electric Co v. Akande (2010) 12 (Pt.2) SCM 96 H

Rabiu v. Adebayo (2012) 6 SCM 201

B.A.S.F. Nig Ltd. v. Faith Ent. Ltd (2010) 1 SCM 41

Emordi v. Igbeke (2011) 9 NWLR (Pt. 1251) 24

Osuji v. Ekeocha (2009) 16 NWLR (Pt. 1166) 122

- Abubakar v. Joseph (2008) 13 NWLR (Pt. 1104) 348  
Akinduro v. Alaiya (207) 15 NWLR (Pt. 1057) 312  
Elabanjo v. Dawodu (2006) 15 NWLR (Pt. 1001) 76  
PDP v. Onwe (2011) 4 NWLR (Pt. 1236) 166  
ANPP v. Goni (2012) 3 SCM 32  
B Awuse v. Odili (2003) NWLR (Pt. 8561) 116  
Ada v. NYSC (2004) NWLR (Pt. 891) 639  
Okonkwo v. Ngige (2002) 12 NWLR (Pt. 1047) 191  
Onuaguluchi v. Ndu (2001) 7 NWLR (Pt. 712) 309  
C Orubu v. NEC (1988) 5 NWLR (Pt. 94) 323

**STATUTES REFERRED TO**

Constitution of Federal Republic of Nigeria 1999 (as amended), ss. 1(1), 36, 233(2)(b)(e), 246(3), 285(5)(6)(7)

D

**BOOK REFERRED TO**

Black's Law Dictionary 9<sup>th</sup> Ed. p. 1299

**LEAD JUDGMENT BY ARIWOOLA JSC**

- E This is an appeal against the decision of the Court of Appeal sitting at Owerri, Imo State given on 22<sup>nd</sup> March, 2012 dismissing the appeal of the appellants against the Ruling of the National State Houses of Assembly Election Petitions Tribunal which was delivered on 23<sup>rd</sup> January, 2012 wherein the petition of the Appellant filed on 1<sup>st</sup> May, 2011 was struck out.  
F

- Sometime on the 9<sup>th</sup> day of April, 2011, the 2<sup>nd</sup> Respondent herein conducted elections into the Senate of the Federal Republic of Nigeria, in particular, for Imo West Senatorial District Constituency. The appellant contested on the platform of the 2<sup>nd</sup> appellant while the 1<sup>st</sup> respondent was the candidate of the Peoples Democratic Party in the said election. The 1<sup>st</sup> respondent was declared the winner of the said election by the 2<sup>nd</sup> respondent who accordingly issued him with Certificate of Return.  
G

- H The appellants were dissatisfied with the declaration by the 2<sup>nd</sup> respondent hence they went before the National and State Houses of Assembly Election Tribunal sitting at Owerri, with their petition, to challenge the return of the 1<sup>st</sup> respondent as the winner of the election.

Upon being served with the petition, the 1<sup>st</sup> Respondent filed a Reply wherein he raised preliminary objections, challenging the competence of the petition. Pursuant to the said preliminary objection, the 1<sup>st</sup> respondent filed an application on 5<sup>th</sup> July, 2011 praying for an order of the Tribunal striking out the petition for being fundamentally defective and that the Tribunal was lacking in competence to take the petition. The Petitioners/Appellants filed a written address to oppose the application. The Tribunal in its ruling delivered on 19<sup>th</sup> August, 2011 upheld the preliminary objection of the 1<sup>st</sup> Respondent and struck out the petition. B

Dissatisfied with the ruling, the appellants appealed to the court below on the 6<sup>th</sup> of September, 2011. On October 17, 2011 the court below allowed the appeal in part and ordered the other part to be heard on its merit by a new panel of the Election Tribunal. C

On the 9<sup>th</sup> November, 2011, the 2<sup>nd</sup> respondent filed an application for an order of the Tribunal striking out the petition on the ground that the 180 days allotted for the hearing and determination of the petition had expired. After hearing the application, the Tribunal upheld the preliminary objection and struck out the petition in its Ruling of 23<sup>rd</sup> January, 2012. D E

The appellants were dissatisfied with the Order of the Tribunal, and that led to the appeal filed on 7<sup>th</sup> February, 2012. In its judgment delivered on 22<sup>nd</sup> March, 2012, the court below dismissed the appeal and affirmed the decision of the Tribunal. Further dissatisfied, the appellant had appealed to this court by a Notice of Appeal filed on 10/04/2012. F

Pursuant to the Rules of this court, both parties filed their respective briefs of argument. On the 18<sup>th</sup> October, 2012 when the appeal came up for hearing, each of the counsel to the parties introduced their briefs of argument, adopted and relied on same to support their prayer on the appeal. G

In his brief of argument filed on 21/5/2012 the appellants distilled three Issues out of the *six* grounds of appeal contained in the Notice of Appeal. The 1<sup>st</sup> Respondent in his own brief of argument filed on 20/06/2012 also formulated three issues for determination. While in its brief of argument, the 2<sup>nd</sup> Respondent formulated four issues for determination. H

However, both respondents filed their respective Notices of

Preliminary Objection after filing their respective brief of argument to the appeal and raising same in the briefs.

The 1<sup>st</sup> Respondent's Notice of Preliminary Objection filed on 20/6/2012 sought the order of this court to strike out or dismiss the appeal in its entirety. In the alternative:

B *"An order striking out Grounds Three, Four and six of the Appellants' Notice of Appeal and Issue B in their brief of argument." The said preliminary objection is predicated on the following grounds:*

C *1. The sixty days allotted by Section 285 (7) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) for the hearing and determination of this appeal has expired.*

*2. This appeal also violates the provisions of Section 246(3) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).*

D *3. This Honourable court has no jurisdiction to entertain this appeal.*

*4. Grounds three, four and six of the appellants' Notice of Appeal do not arise from the judgment, of the lower court.*

E *The 2<sup>nd</sup> Respondent in its Notice of Preliminary Objection to the hearing of the appeal, sought the order of the court dismissing or striking out the appeal on the following grounds:*

*(a) That the Court lacks the prerequisite jurisdiction to hear this appeal and*

F *(b) That the appeal is incompetent and constitutes an abuse of the process of this court having regards to the provisions of Sections 233 (2) (e) and 246 (3) of the 1999 Constitution (as amended)"*

The appellants filed separate replies to the respective Notice of Preliminary Objection of the two Respondents.

G In due compliance with the Rules of this court, when this appeal came up for hearing on 18<sup>th</sup> October, 2012, the Respondents referred to their Notices of Preliminary Objection respectively and the appellants responded.

H ***There is no doubt, the preliminary objection raised by the respondents to the hearing of the appeal has to be attended to first and foremost. Preliminary objection in a case is an objection that, if upheld would render further proceedings before the court impossible or unnecessary. An objection to the court's jurisdiction is an example of a preliminary***

**objection.** See Black's Law Dictionary 9<sup>th</sup> Edition page 1299.

**Generally, the Rules of this court allow a respondent to rely on a preliminary objection to the hearing of the appeal. The purpose of this is to bring the appeal to an end having been discovered to be incompetent and or fundamentally defective. It will therefore be unnecessary to continue with an appeal once an objection is raised without disposing of same. In other words, the court is expected to deal with and dispose of a preliminary objection once raised by a respondent before taking any further step in the appeal.** See; General Electric Company Vs. Harry Ayoade Akande & Ors (2010) 12 (Pt.2) SCM 96; Lamidi Rabiun Vs. Tola Adebaio (2012) 6 SCM 201.

**In the instant case, as earlier indicated, the two respondents raised preliminary objection which must be attended to before any other step is taken in the appeal. And it is trite law that once a preliminary objection to an appeal succeeds, there will no longer be any need to proceed to further consider the arguments in respect of the issues raised for determination in the appeal.** See B.A.S.F.

Nigeria Ltd. Vs Faith Ent. Ltd. (2010) 1 SCM 41 at 65.

The 1<sup>st</sup> respondent referred to Section 285 (7) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and submitted that the sixty (60) days allotted by the Constitution for the hearing and determination of this appeal has expired. The respondent contended that this appeal arose from the judgment of the court below delivered on 22<sup>nd</sup> March, 2012. Being an election matter, the appeal ought to have been heard and disposed of within sixty days from March 22, 2012. The sixty days expired on 21<sup>st</sup> May, 2012. As a result, learned counsel submitted that the appeal is no longer alive to be heard having died upon the expiration of the sixty days allotted by Section 285 (7) of the 1999 Constitution (as amended). He urged the court to strike out the appeal.

Furthermore, the respondent referred to Section 246 (3) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and contended that the appeal instant violates the said provisions. He cited Emordi Vs Igbeke (2011) 9 NWLR (Pt.1251) 24 at 39.

The respondent referred to Petition No. EPT/IM/NASS/ SN/

10/2011 which was filed by the appellant herein before the National and State Houses of Assembly Election Tribunal sitting at Owerri on 1<sup>st</sup> May, 2011. Upon a preliminary objection raised by the 2<sup>nd</sup> respondent, the Tribunal had struck out the petition in its ruling on 23<sup>rd</sup> January, 2012.

B Dissatisfied with the Ruling, the appellants appealed on February 7<sup>th</sup> 2012. In its judgment of the 22<sup>nd</sup> March, 2012 the court below dismissed the appeal and affirmed the decision of the Tribunal to the effect that pursuant to the provision of Section 285

C (7) of the Constitution, the time within which the tribunal had to hear and determine the petition had lapsed. The respondent contended that by virtue of Section 246 (3) of the 1999 Constitution (as amended), the judgment of the court below became final upon delivery and cannot be subject of appeal to this court. The respondent D urged the court to uphold the preliminary objection and strike out the appeal for want of jurisdiction.

Further still, the respondent referred to Grounds 3, 4 and 6 of the appellants' Notice of Appeal and submitted that they do not arise from the judgment of the court below. He submitted that a ground E of appeal must relate to the decision appealed against and that a ground of appeal which does not arise from the judgment appealed against and the issue for determination formulated from such ground of appeal will be struck out by the appellate court. He relied on *Osuji Vs Ekeocha* (2009) 16 NWLR (Pt.1166) 122, *Abubakar Vs Joseph* F (2008) 13 NWLR (Pt.1104) 348 at 349, *Akinduro Vs Alaiya* (207) 15 NWLR (Pt.1057) 312 at 326.

The respondent referred to issue B formulated by the appellants in their brief of argument from grounds 3, 4 and 6 of the appellants' Notice of Appeal. It was contended that the three grounds of G appeal concern the validity of Section 285 (6). And that the court below never made any pronouncement on the validity of Section 285 (6) of the Constitution. The respondent contended that the appellants raised the issue in grounds 2 and 4 of their grounds of H appeal to the court below and from the grounds of appeal they formulated Issue A in their brief of argument. The respondent submitted that those grounds and the issue distilled therefrom were struck out by the court below upon a preliminary objection by the 1<sup>st</sup> respondent. Therefore, it was submitted that the appellants grounds 3, 4

and 6 in the instant appeal not having arisen from the decision of the court below, along with the issue formulated therefrom are incompetent, liable to be struck out and should be struck out accordingly.

In response to the preliminary objection of the 1<sup>st</sup> respondent the appellants submitted that as a fact, there is no issue arising on this point hence they conceded that the sixty (60) days had actually expired at the time the appeal came up for hearing. They however contended that the issue that arises for determination is the legal effect of the purported Section 285 (7) of the 1999 Constitution (as amended) on the hearing and determination of the appeal. They contended that they had earlier submitted in their appellants brief of argument that the said Section 285(7) of the Constitution is invalid as it expressly relates to the period when an election matter is to be heard and disposed of not commenced, which is provided for in Subsection 1 of Section 285 of the Constitution. They relied on the decisions of this court in *Uor Vs Loko* (1988) 2 NWLR (Pt.77) 430 at 441 and *Elabanjo Vs. Dawodu* (2006) 15 NWLR (Pt. 1001)76. On whether Section 285 (7) of the Constitution is to the effect of creating a bar as a statute of Limitation to the appeal, it was contended that the basis for declaring Section 285 (7) of the Constitution as being in the realm of statute bar is neither traceable to the petition nor to any of the replies, nor to any facts of the petition. They submitted that the decision of the court below that the appeal before it was statute barred is unsustainable and should not be sustained.

The appellants submitted further that considering Section 285 (7) or its sister subsection (6) as part of the Constitution without first considering the validity of the enactment which brought it into existence is like putting the Cart before the horse. They contended that the crucial question is whether that part of the Alteration Act (No.2) which purported to have brought the subsection into existence *ab-initio* did not fall foul of the provisions of Sections 3, 4(8) and 9(3) of the Constitution. They submitted unequivocally that it is only after the specific alteration provision has passed the legislative consistency and prohibition tests already in existence in the Constitution, that such alteration may competently rub shoulders with existing provision as part thereof. It was submitted that whether subsection (7) of Section 285 of the Constitution is superior to Section 36 (1) of the Constitution is a second tier consideration to the issue of validity.

They submitted that the 1<sup>st</sup> respondent cannot be heard on the ouster effect of the provision, which is not conceded to exist, *until* the issue of validity is determined.

In response to the preliminary objection relating to Section 246 (3) of the Constitution, the appellants submitted that the appellate jurisdiction of the court of appeal to which Section 246 (3) of the Constitution applies is circumscribed and limited by the subject matter expressly provided in Section 246(1)(b) of the Constitution and does not affect the expressly conferred appellate jurisdiction of the Supreme Court in Section 233 (2) (b) and (c) of the Constitution. They relied on *PDP v. Onwe* (2011) 4 NWLR (Pt.1236) 166 at 173 and 174.

On the preliminary objection to Grounds 3, 4 and 6 of the appellants Notice of Appeal, the appellants submitted that when a matter constitutes a live issue under the substantive appeal, such issue cannot properly form part of preliminary objection, as any determination thereupon will amount to premature determination of the appeal. They contended that having submitted that the pronouncement of the Tribunal on validity of the provisions was an obiter *dictum* as held by the court below, the 1<sup>st</sup> respondent cannot be heard to say that the matter did not arise in the court below.

The appellants contended that having given elaborate submissions under their issue B in the appellants' brief of argument, in which they complained about the lower court's abdication of jurisdiction, answering this point of preliminary objection would be tantamount to arguing the appeal. They adopted their submissions under Issue B and part of Issue A on this aspect of the 1<sup>st</sup> respondent's preliminary objection. They urged the court to dismiss the grounds of the preliminary objection as being baseless.

As stated earlier, this appeal is against the judgment of the Court below handed down on 22/3/2012. The preliminary objection of the 1<sup>st</sup> Respondent is predicated on Sections 285(7) and 246(3) of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

Section 285(7) provides as follows:

*"An appeal from a decision of an election tribunal or Court of Appeal in an election matter shall be heard and disposed of within 60 days from the date of delivery of judgment of the tribunal or the Court of Appeal."*

There is no doubt this is an election matter which emanated from the National and State House of Assembly Election Tribunal sitting at Owerri in Imo State of Nigeria.

On October 17<sup>th</sup>, 2011 the court below had allowed the appeal by the Appellants herein and ordered that their petition be remitted to the Tribunal for trial on the merit by a panel other than the panel that first took the matter. B

Pursuant to the order of the Court below which remitted the petition to the Tribunal for trial de novo the parties returned to the Tribunal. At the Tribunal, both respondents brought their respective applications praying for an order of the Tribunal striking out the petition for want of jurisdiction. The grounds of the said applications are that Section 285(6) of the 1999 Constitution limits the time for hearing an election petition to one hundred and eighty (180) days from the date of the filing of the petition and or that the petition has died by affluxion of the 180 days allotted by Section 285(6) of the 1999 Constitution (as amended). C D

Meanwhile, the Petitioners/Appellants had also filed an application on 9<sup>th</sup> November, 2011 praying the tribunal for the following:

(a) Leave of the Tribunal to apply by Motion for determination of the effect of Section 285(6) of the Constitution on the time left for the prosecution of the petition after the order of pre-trial by the Court of Appeal. E

(b) An order that, without prejudice to the filing of the petition on 1/5/2011, the period of 180 days provided under Section 285(6) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) for the hearing and determination of the petition has not elapsed. F

(c) An order that the hearing of this petition on the order of the Court of Appeal after an appeal proceeding, should commence afresh from post pre-hearing session to full hearing on merit. G

(d) An order that the Petitioners/Applicants are under the Constitution of the Federal Republic of Nigeria, entitled to be fully heard on their competently initiated petition. H

In its considered Ruling of 23<sup>rd</sup> January, 2012 on the three applications, the Tribunal came to the following conclusion:-

“Accordingly, we hereby resolve the three issues formulated by the Learned Senior Advocate for the Petitioners/Respondents as

follows:

“(a) *The period between the judgment of the first Tribunal and the re-enlistment of the petition after the appeal can justifiably be construed to be part of the 180 days provided by Section 285(6) of the 1999 Constitution (as amended). See; PDP Vs. CPC (supra) where the Supreme Court held that no court has the power to extend the times as constitutionally provided in Section 285(5)(6) and (7) of the 1999 Constitution (as amended) by interpretation of the Section or otherwise.*

“(b) *Failure to allow the Petitioners/Respondents to ventilate their case on merit is not an infringement of their fundamental right to fair hearing because by virtue of Section 285(6) of the 1999 Constitution, the petition of the Petitioners is statute barred and the Petitioners right to further hearing is thus extinguished by the Constitution.*

“(c) *The present panel as constituted does not therefore have the competence to hear the petition fully on merit as ordered by the Court of Appeal especially as the order for retrial has lapsed or become void upon the expiration of 180 days.*

*Consequently, we hereby hold that this tribunal no longer has the requisite jurisdiction to continue to hear and determine the instant petition when the time allowed by the Constitution has expired. This motion of the 2<sup>nd</sup> Respondent therefore succeeds and is thus granted. This petition is hereby struck out as prayed...”*

Dissatisfied with the above Ruling of the Tribunal led to the appellants appeal to the Court below whose decision is the subject of the appeal to this Court. The Court below had agreed with and upheld the decision of the Tribunal which decline jurisdiction to hear and determine the petition of the petitioners/appellants, the 180 days prescribed by the Constitution for the hearing and determination of same by the Tribunal having elapsed or expired. The appeal was accordingly dismissed by the Court below.

It is important at this stage to note that the Appellants clearly conceded the fact that as at the time the appeal came up for hearing, the sixty (60) days provided by the Constitution for the hearing and disposal of the appeal had expired. It is however astonishing to hear the Appellants contended that “*the issue that arises for determination is the legal effect of Section 285(7) of the Constitution (as amended) on the hearing and determination of the appeal.*” This is exactly the

way they put it in their response to the 1<sup>st</sup> Respondent's preliminary objection.

This Court in the recent time has considered the provisions of Section 285(6) and (7) of the 1999 Constitution (as amended). In *All Nigeria Peoples Party (ANPP) Vs. Alhaji Mohammed Goni & Ors.* (2012) 3 SCM 32 at 53 - 55, (2012) 7 NWLR (Pt.1298) B 147 at 187-188 this Court held as follows:

There is no doubt about it that the Courts have a statutory obligation to hear and determine election matters within the time prescribed by Section 285(6) and (7) of the 1999 Constitution as amended. In the case of the tribunal, a petition must be heard and determined within 180 days. Outside the 180 days the Court of Appeal is not cloaked with statutory power to extend the period meant for the hearing of a petition for any reason either in the interest of justice or in exceptional cases. Once any person comes before the tribunal outside the 180 days, the Court is divested of jurisdiction to hear it. C D

The Court of Appeal in its appellate jurisdiction has no power to order the retrial of a petition which had lapsed by effluxion of time. There is no statutory provision of such a step. The Court of Appeal cannot invoke its rules of Court to extend time in election matters covered by Section 285 Subsections (6)(7) of the Constitution. E

The Court of Appeal must not be encouraged to import into this section of the Constitution, words that were not used by the legislature so as to defeat the purpose of the amendment to Section 285 of the Constitution. F

Once a matter has lapsed by operation of a limitation law the right of action becomes extinct, while the Court has nothing left to adjudicate upon... the order of retrial made by the Court of Appeal was an order made in vain as the petition was no longer alive". G

In the consolidated case of *Prof. Steve Torkuma Ugba & Anor Vs Gabriel Torwua Suswam & Ors* Appeal Nos. SC.191/2012, SC.191A/2012 and SC.192/2012 respectively, (unreported) delivered by this Court on 8<sup>th</sup> June, 2012, the respondents had raised a preliminary objection to the hearing of the appeal to this court. It is noteworthy, that in the said case, on an interlocutory appeal through to this court, the court had on 14/11/2011 ordered the hearing of H

the appellants' petitions by the tribunal on merit. The question was, whether that order of this court had the capacity to extend or enlarge the stipulated time prescribed for the hearing and determination of the petitions by the Tribunal. This court considered Section 285 subsections 5, 6 and 7 of the 1999 Constitution, (as amended) and  
 B opined as follows:-

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

D It is interesting to note that the appellants had argued in the instant case that subsection 7 of Section 285 of the 1999 Constitution (as amended) *"is invalid as it relates to the period when an election matter is to be heard and disposed of not commenced"* This, to say the least, is a misconception by the appellants. It should be noted  
 E that there is no proviso to either Section 285 as a whole or specifically to any of the Subsections to the main Section of the 1999 Constitution to restrict the application of the limitation provision to the full hearing of the petition, or appeal. **As it relates to Section 285  
 F (6) of the 1999 Constitution (as amended), this court had decided that once an election tribunal gives an appealable decision or makes an order within 180 days and an aggrieved party appeals, its time continues to run until the 180 days shall be exhausted. And an appellate court has no competence or jurisdiction to extend or enlarge the period of 180 days once it  
 G expires.** See; Ugba & Anor Vs Suswam & Ors (supra).

***In the same vein, the period of sixty (60) days prescribed by the Constitution for the Court of Appeal and this court to hear and determine an appeal to them respectively cannot  
 H be extended or enlarged by either court to hear the appeal once the sixty days expire.***

**We are here concerned with Section 285 (7) of the 1999 Constitution in particular, which limits the time within which the court below is to hear and dispose of appeals to it from**

***the date of delivery of the tribunal judgment. No one, or Institution, not even this apex court has the power, authority or competence to extend the day by one day from the prescribed limited sixty (60) days to hear and dispose of the appeal. In other words, once by simple arithmetic calculation, from the date of delivery of the decision of the court below the period of sixty (60) days expires, the appeal becomes dead and there can never be any further action on a dead matter.***

***There is no dispute and it was conceded by the appellants that it was over sixty days after the court below gave its decision on 22/3/2012 before the instant appeal was filed.***

What is being argued and contested by the appellants therefore is the validity of the said Section 285 (7) of the Constitution (supra) that prescribes the limitation. To talk about validity of a legislation means the legal sufficiency or bindingness of such a law.

There is no controversy, that the Nigerian Constitution of 1999 (as amended) is the Supreme Law of the land and it is binding on all authorities and persons throughout the Federation. See Section 1 (1) of the 1999 Constitution of the Federal Republic of Nigeria.

Similarly, the National Assembly in Nigeria is the highest law making body in Nigeria. It follows therefore without much ado that the legislature, which possesses the supreme law making power in the country, possesses, as incidental thereto, the right to change, modify and even abrogate the existing laws in accordance with the relevant provisions of the Constitution.

It is clear that sometime ago when it became necessary that the 1999 Constitution of the Federal Republic of Nigeria should be amended or altered, the National Assembly under its legislative function duly passed the Alteration Law and the said Constitution (as amended) became the Supreme Law thereafter. If therefore the appellants are desirous of challenging the validity of any provisions of the Constitution as amended, they know how to go about it, but certainly not before an Election Tribunal or Election appeal court.

In other words, the sixty (60) days prescribed by the Constitution for the hearing and disposal of an appeal against the decision of the Court below, having expired or elapsed since 21<sup>st</sup> May, 2012, the appeal is dead and deserves to be neatly buried.

***Furthermore, this matter having arisen from the National***

**and State Houses of Assembly Election Tribunal is incompetent and it violates the provisions of the Constitution. Section 246 subsection 3 of the 1999 Constitution (as amended) provides thus:**

**B “The decision of the Court of Appeal in respect of appeals arising from election petitions shall be final.”**

**C As stated earlier clearly, this is an appeal that arose from election petitions in respect of the decision of the National and State Houses of Assembly Tribunal sitting at Owerri. The court below is prescribed to be the final court to determine any dispute that may have arisen therefrom. This provision has also been considered by this court when it held that the decision of the court below in respect of appeals arising from election petitions such as Senatorial Election appeals is final and not subject to any further appeal, or review by any other court or tribunal. See; Senator Joy Emordi Vs Hon. Alphonsus Uba Igbeke (2011) 9 NWLR (Pt. 1251) 24 at 35-36, 39, 40, Awuse Vs Odili (2003) NWLR (Pt. 8561) 116, Okonkwo Vs. Ngige (2007) 12 NWLR 191.**

**E In other words, the provisions of Section 246 (3) of the 1999 Constitution is very clear and unambiguous. It does not require any special interpretation to understand its meaning. It means that the decision of the Court below on the subject it relates to is final upon delivery and would not be subject of a further appeal to the Supreme Court. Doing so, is to say the least, a complete waste of the precious time of this apex court and counsel should know better. There is no conflict between Section 36 and Section 285 (6) and (7) of the Constitution. There is no breach of the right to fair hearing in the application of the provision**

**H In the final analysis and without any further ado, the 1<sup>st</sup> Respondent’s preliminary objection to this appeal is meritorious and substantial. I need not consider the other issue raised in the objection in alternative. The one already considered is enough to sustain the objection. The appeal is incompetent and embarrassingly vexatious. It cannot be entertained by this court under whatever guise and it is liable to be struck out. Accordingly, this appeal is struck out for being incompetent and lacking in merit.**

As costs follow events, there shall be costs of N100,000.00

against the Appellants in favour of the 1<sup>st</sup> respondent only.

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**ONNOGHEN JSC**

By an election petition NO. EPT/IM/NASS/SN/10/2011, appellants, as petitioners before the National Election Tribunal Holden at Owerri, Imo State prayed the tribunal for the following reliefs: B

“(a) *A declaration that 1<sup>st</sup> respondent was not a lawful candidate at the election and all votes credited to him are void.* C

(b) *A declaration that the PDP had no lawful candidate at the election.*

(c) *An order expunging the votes credited to the PDP in the election from the Form EC8D and EC8E in the election.*

(d) *An order that the 1<sup>st</sup> petitioner is the duly elected candidate to represent Imo West Senatorial District Constituency in the Senate of the Federal Republic of Nigeria.*

(e) *An order that the declaration of result dated 10<sup>th</sup> April 2011, signed by the Returning Officer Engr. Prof. C. D. Okereke, is null and void.* E

(f) *An order that the 2<sup>nd</sup> respondent issues a certificate of return to the 1<sup>st</sup> petitioner forthwith.”*

The grounds on which the petition and above reliefs are based are stated in paragraph 3 of the petition as follows:-

“a. *That the 1<sup>st</sup> Respondent was, at the time of the election, not qualified to contest the election.* F

b. *That the 1<sup>st</sup> Respondent was not duly elected by a majority of lawful votes.*

*In the Alternative* G

c. *That the election was invalid by reason of corrupt practices and non compliance with the provisions of the Electoral Act.”*

The petition was challenged by a reply and preliminary objection as to the jurisdiction of the Tribunal to hear and determine same by 1<sup>st</sup> respondent which objection was upheld by the tribunal vide a ruling delivered on 19<sup>th</sup> August, 2011 . H

Appellants were not satisfied with the ruling and appealed against same to the Court of Appeal which, in a judgment delivered on 17<sup>th</sup>

October, 2011 allowed same and ordered that the petition be heard on the merit by another panel.

However, by 27<sup>th</sup> October, 2011, the 180 days allowed by section 285(6) of the 1999 Constitution (as amended) for the hearing and determination of election petitions expired resulting in the 2<sup>nd</sup> respondent filing a motion on 9<sup>th</sup> November, 2011 praying the tribunal to strike out the petition for want of jurisdiction which was granted vide a ruling delivered on 23<sup>rd</sup> January, 2012 resulting in another appeal to the lower court which affirmed the decision of the tribunal in a judgment delivered on the 22<sup>nd</sup> day of March, 2012.

The present appeal is therefore against the judgment of the lower court delivered on the 22<sup>nd</sup> day of March, 2012, the issues for the determination of which have been identified by learned Senior brief filed on 21/5/2012 and adopted in argument on 18/10/12 as follows :-

“A. Whether the purported *striking out of the Appellants’ grounds 2, and 4, and the consequential striking out of issue No. 1 of the Appellants Brief were justified in law (ground 5)*

B. Whether subsection (6) of section 285 is a valid provision upon which the Tribunal could abdicate its jurisdiction to hear competent petition (Grounds 3, 4 and 6).

C. Whether the Court of Appeal’s dismissal of the appeal against the abdication of jurisdiction by the Tribunal was proper (Grounds 1 and 2)”.

However, learned Counsel for 1<sup>st</sup> respondent, MARTIN AGUDA ESQ has filed a preliminary objection against the appeal which objection has been argued in the 1<sup>st</sup> respondent brief filed on 20/6/12 which was also adopted in argument of the appeal on 18/10/12

The grounds of the objection are as follows:-

“ 1. The *sixty days allotted by section 285(7) of the Constitution of the Federal Republic of Nigeria, 1999* (as amended) for the hearing and determination of this appeal has expired.

2. *This appeal also violates the provisions of section 246(3) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)*

3. *This Honourable Court has no jurisdiction to entertain this appeal.*

4. *Grounds THREE, FOUR and SIX of the Appellants’ Notice of Appeal do not arise from the judgment of the lower court.”*

I had already given the relevant facts of this case as can be gleaned from the record and there is no doubt whatsoever that the instant appeal has its origin in a proceeding instituted by the appellants in the National Election Tribunal, holden at Owerri following the National Assembly Election held on the 9<sup>th</sup> day of April, 2011 in which the 1<sup>st</sup> appellant and 1<sup>st</sup> respondent and others were candidates who contested to the seat of Imo West Senatorial District, a.k.a. Orlu Zone. B

The primary issue in the objection is whether this court, the Supreme Court of Nigeria, has jurisdiction to hear and determine this appeal in the circumstances. C

Section 246(3) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) hereinafter to as the 1999 Constitution (as amended) provides as follows:

“The decision of the Court of Appeal in respect of appeals arising from the National and State Houses of Assembly election petitions shall be final”. D

This court has had occasion to interpret the above Constitution provisions in a number of appeals including EMORDI VS IGBEKE (2011) 11 NWLR (pt. 1251) 24 where at page 39 I held as follows: E

*“It is clear that by the provisions of 246(3) of the Constitution of the Federal Republic of Nigeria 1999, the decision of the Court of Appeal in respect of appeals arising from election petitions, such as senatorial election petition appeals as in the instant case, is final by which it is understood to mean not subject to any further appeal or review by and other court or tribunal. The provision is clearly mandatory and in no way discretionary and I hold the view that no amount of ingenuity employed by learned Counsel can confer jurisdiction in this Court to intervene under any guise. The jurisdiction of this Court, just as that of the lower court is statutory as the same is prescribed by the Constitution or Statute”.* F G

The above statement of the law remains my opinion of the law and have since not had any reason to hold a contrary view of the law applicable to the relevant facts. H

The above being the position, it is my view that it has rendered the other grounds of objection irrelevant because this Court must first have the jurisdiction to entertain appeals arising from the decisions of the lower court on election petitions arising from National

and State Houses of Assembly elections before it becomes necessary to decide the issue as to whether the sixty (60) days allotted by the Constitution for the hearing and determination of such relevant appeals has expired and or whether the grounds of appeal purporting to invoke the jurisdiction of this Court in the circumstance are competent or not.

In the circumstance I uphold the objection of learned Counsel for 1<sup>st</sup> respondent and agree with the conclusion of my learned brother ARIWOOLA JSC that the appeal is incompetent and liable to be struck out.

I therefore order accordingly and abide by the consequential orders made in the said lead judgment including the order as to costs. Preliminary objection sustained and appeal struck out.

D

### **CHUKWUMA-ENEH JSC**

I have read the judgment prepared and delivered by my learned brother Ariwoola JSC in this matter. I agree (sic) court it is 60 days from the date of the lower court's judgment. The constitution has made no provisions for extending time in that regard so that once the prescribed limited time expires, that is to say in each case the period of time to hear and determine the appeal by the court below or this court it cannot be extended. The appellants having conceded that the instant appeal has been commenced after the prescribed period of 60 days their appeal without more becomes incompetent. And this court has no jurisdiction to go to deal with it any more and it is liable to be struck out at that stage, on this court having ceased to have the power to entertain it See: *Ada v. NYSC (2004) NWLR (Pt.891) 639*.

Again, this appeal is caught by Section 246(3) of the 1999 Constitution as amended. The provisions of this section have been construed by this court in numerous cases including *Senator Joy Emordi v. Hon. Alphonsus Uba Igbeke (2011) 9 NWLR (Pt. 251) 24* and *Okonkwo v. Ngige (2002) 12 NWLR (Pt.1047) 191*. This court has made it abundantly clear that appeals from the National and State Houses of Assembly Election Tribunal as the instant one terminate at the Court of Appeal as their final court and not in this court as provided by Section 246(3) (*supra*). Strangely enough the parties in

this matter have taken expensive pleasure in dragging their appeals to this court indeed against the clear and unambiguous provisions of Section 246 (supra). And they must be tow in dearest of terms that their appeal stops at the lower court.

As can be seen this appeal is most unmeritorious and I also dismiss it and abide by all the orders in the lead judgment.

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

I have had the privilege of reading in draft the leading judgment prepared by my learned brother Ariwoola, JSC. I am in full agreement with his lordships reasoning and conclusions. I propose to add only a few observations.

C

The live issue in this appeal is whether it violates the provisions of section 246 (3) of the Constitution OR whether this court has jurisdiction to entertain this appeal.

D

#### **THE FACTS**

The 2<sup>nd</sup> respondent the regulatory body charged with the conduct of elections in Nigeria held elections on the 9<sup>th</sup> of April 2011 for the Imo West Senatorial Constituency. The 1<sup>st</sup> appellant was the candidate of the 2<sup>nd</sup> appellant, while the respondent was the candidate of the Peoples Democratic Party (PDP). The 2<sup>nd</sup> respondent declared the 1<sup>st</sup> respondent the winner of the election and he was issued a Certificate of Return. Not satisfied with the results of the election the appellants filed a petition before the National and State Houses of Assembly Tribunal which sat in Owerri, Imo State. The Petition challenged the return of the 1<sup>st</sup> respondent as the winner of the election. On the 5<sup>th</sup> of July 2011 the 1<sup>st</sup> respondent filed an application asking the Tribunal to strike out the petition for being fundamentally defective in that the tribunal had no jurisdiction to hear the petition. The 1<sup>st</sup> respondent succeeded and the petition was struck out. Dissatisfied with the ruling striking out their petition the appellants appealed. On the 17<sup>th</sup> of October, 2011 the Court of Appeal allowed the appeal in part and ordered the other part to be heard on its merit by a new panel of the Election Tribunal. On the 9<sup>th</sup> of November 2011, the 2<sup>nd</sup> respondent filed application wherein it prayed that the Tribunal should strike out the petition on the ground that the 180 days stipulated by section 285 (6) for the hearing and determination of election petition

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had run out. The Tribunal agreed with the 2<sup>nd</sup> respondent and struck out the petition of the 23<sup>rd</sup> of January, 2012.

The appellants' appealed. The Court of Appeal in a judgment rendered on the 22<sup>nd</sup> of March, 2012 dismissed the appeal and affirmed the decision of the Tribunal. It is clear that this is an election matter which emanated from the National and State Houses of Assembly Election Tribunal. The issue before the Tribunal was who between the 1<sup>st</sup> appellant and 1<sup>st</sup> respondent is the elected Senator for Imo West senatorial Constituency. Section 246(1) of the Constitution states that:

"246(1). An appeal to the Court of Appeal shall lie as of right from -

(a) decisions of the Code of Conduct Tribunal established in the fifth Schedule to this Constitution.

(b) decisions of the National and State Houses of Assembly Election Tribunals; and

(c) decisions of the Governorship Election Tribunals, on any question as to whether -

(i) any person has been validly elected as a member of the National Assembly or of a House of Assembly or of a State under this Constitution.

(ii) any person has been validly elected to the office of a Governor or Deputy Governor, or

(iii) the term of office of any person has ceased or the seat of any such person has become vacant.

(2) The National Assembly may confer jurisdiction upon the Court of Appeal to hear and determine appeals from any decision of any other court of law or tribunal established by the National Assembly.

(3) The decisions of the Court of Appeal in respect of appeals arising from the National and State Houses of Assembly election petitions shall be final.

The primary consideration when interpreting sections in the Constitution is to find out the intention of those who made the Constitution, and so where the words used are clear and unambiguous they must be given their plain and ordinary meaning. All that the judge is required to do is to bring out the intended meaning and no more. See *ANPP v. Goni* 2012 49 NSCQR p.1.

Section 246 (3) of the Constitution makes the Court of Appeal the final court in respect of appeal from the National and State Houses of Assembly election Tribunal.

The issue in this appeal has to do with Senatorial elections for Imo West Senatorial Constituency. Such matter came to an end with a judgment of the court of Appeal. No appeal from the court of appeal on senatorial elections can be entertained by this court in view of Section 246 (3) of the Constitution. Since this matter has to do with Senatorial elections, that came before the National and State Houses of Assembly elections Petition Tribunal as provided by section 246(3) of the Constitution, this court has no jurisdiction to examine whether the said Tribunal, or and the Court of Appeal heard and delivered their judgments within the periods stipulated in section 285 of Constitution.

The decision of the Court of Appeal being final in view of Section 246(3) of the Constitution remains correct even if it appears to be wrong.

Once again the Supreme Court has no jurisdiction to hear this appeal in view of section 246(3) of the Constitution. I strike out this appeal with costs of N100,000 against the appellant and in favour of the 1<sup>st</sup> respondent.

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### **PETER-ODILI JSC**

This is an appeal against the judgment of the Court of Appeal sitting at Owerri, Imo State, delivered on March 22<sup>nd</sup> 2012, dismissing the appeal of the appellants against the Ruling of the National Assembly Election Petitions Tribunal, delivered on 23<sup>rd</sup> January, 2012 striking out the petition of the appellants filed on 1<sup>st</sup> May, 2011.

#### **FACTS BRIEFLY STATED**

On 9<sup>th</sup> April, 2011, the 2<sup>nd</sup> respondent held elections into the senate of the Federal Republic of Nigeria for Imo West Senatorial District Constituency. The 1<sup>st</sup> appellant contested on the platform of the 2<sup>nd</sup> appellant, while the 1<sup>st</sup> respondent contested the election on the platform of the Peoples Democratic Party. At the end of the elections the 2<sup>nd</sup> respondent declared the 1<sup>st</sup> respondent as the winner of the election and issued him with a Certificate of Return.

Dissatisfied with the declaration of 1<sup>st</sup> respondent as the winner

of the election, the appellants filed a petition before the National and State Houses of Assembly Tribunal, sitting at Owerri challenging the return of the 1<sup>st</sup> respondent as the winner of the election.

Upon being served with the petition the 1<sup>st</sup> respondent filed his Reply, wherein he raised some preliminary objections challenging the competence of the petition. Pursuant to the preliminary objection raised by the 1<sup>st</sup> respondent in his Reply, the 1<sup>st</sup> respondent filed a motion on July 5, 2011, asking for the tribunal to strike out the petition for being fundamentally defective and vesting no jurisdiction on the Tribunal. The appellants filed a written address in opposition to the motion and in its Ruling the Tribunal upheld the preliminary objection of the 1<sup>st</sup> respondent and struck out the petition.

Dissatisfied with the Ruling, the appellants appealed to the Court of Appeal on 6<sup>th</sup> September, 2011. The lower court allowed the appeal in part on 17<sup>th</sup> October 2011 and ordered the other part to be heard on its merit by a fresh panel.

By computation of time by 27<sup>th</sup> October, 2011 the petition had lapsed by expiration of the 180 days allotted by section 285 (6) of the 1999 Constitution (as amended) for the delivery of the judgment of the Tribunal.

On the 9<sup>th</sup> November, 2011, the 2<sup>nd</sup> respondent filed a motion on notice praying the Tribunal to strike out the petition on ground that the 180 days allotted for hearing and determination of the petition had expired. After hearing the motion, the Tribunal upheld the preliminary objection and struck out the petition, in its Ruling delivered on 23<sup>rd</sup> January, 2012.

Dissatisfied with the Ruling the appellants appealed to the lower court on 7<sup>th</sup> February 2012. On the 22<sup>nd</sup> March, 2012 the lower court affirmed the decision of the Tribunal and dismissed the appeal.

Dissatisfied with the decision of the lower court, the appellants have further appealed to this Court by Notice of Appeal filed on 10<sup>th</sup> April, 2012.

On the 18th October, 2012 date of hearing learned counsel for the appellants, Chief Mike Ahamba SAN adopted their Brief of Argument filed on 21/5/2012 and Replies to the Briefs of 1<sup>st</sup> respondent and 2<sup>nd</sup> respondent filed on 26/9/2012 and 8/10/12 respectively. In the appellant's Brief were formulated three issues for determination as follows:

A. Whether the purported striking out of the appellant grounds 2 and 4 and the consequential striking out of Issue No. 1 of the appellants' Brief were justified in law.

B. Whether subsection (6) of Section 285 is a valid provision upon which the Tribunal could abdicate its jurisdiction to hear a competent petition. B

C. Whether the Court of Appeal's dismissal of the appeal against the abdication of jurisdiction by the Tribunal was proper.

Learned counsel for the 1<sup>st</sup> respondent adopted their Brief of Argument filed on 20/6/2012 and settled by Martins Aguda. In the Brief were distilled three issues for determination as follows: C

1. Whether the lower court was right when it struck out Grounds 2 and 4 of the Appellants Grounds of Appeal and Issue No. 1 of their Brief of Argument.

2. Assuming (without conceding), that the lower court was D wrong when it struck out Grounds 2 and 4 of the appellants Grounds of appeal, and Issue No. 1 of their Brief of Argument whether Section 285(6) of the 1999 Constitution (as amended) is a valid alteration to the Constitution.

3. Whether the lower court was right when it dismissed the E appeal of the appellants.

However, the 1<sup>st</sup> respondent had filed a Notice of Preliminary objection on 20/6/12 which arguments were embedded in the Brief of the 1<sup>st</sup> respondent.

Mr. L.M. Alozie learned counsel for the 2<sup>nd</sup> respondent adopted F their Brief filed on 18/6/12 in which four issues were formulated for determination, viz:

1. Whether the provisions of Section 285(6) of the 1999 Constitution of the Federal Republic of Nigeria as amended is in conflict G or inconsistent with the provisions of Section 36 (1) of the said Constitution.

2. Whether section 285 (6) & (7) of the 1999 Constitution as amended operated to deny the appellants of their fundamental right H to fair hearing.

3. Whether the learned Justices of the Court of Appeal were right when they struck out the appellant's grounds (Issue No. 1) on the grounds that they raised issues of validity of section 285(6) of the 1999 constitution which did arise before the tribunal for determina-

tion.

4. Whether the learned Justices of the court of Appeal were not right in affirming the decisions of the tribunal which struck out the appellants petition for want of jurisdiction to continue to hear same after the expiration of the constitutional period of 180 days

B The 2<sup>nd</sup> respondent had filed a Notice of Preliminary Objection on 15/10/12 and argued the objection in his brief.

C Before proceeding with the appeal the Preliminary Objections have to be first considered and ruled upon since the competence or jurisdiction of court is placed on the front burner. The court has to convince itself it has the authority to enter into the appeal otherwise there is a risk of acting in vain in the event that the appeal is adjudicated on when the power to even go forth does not exist.

D NOTICE OF PRELIMINARY OBJECTION BROUGHT PURSUANT TO ORDER 2. RULE 9(1) OF THE SUPREME COURT RULES, AND UNDER THE INHERENT JURISDICTION OF THE COURT

E TAKE NOTICE that the 1<sup>st</sup> respondent/applicant herein shall raise a preliminary objection to the hearing of this appeal, and shall seek the order of this honourable court to dismiss or strike out this appeal in its entirety.

OR, IN THE ALTERNATIVE

F An order striking out Grounds THREE, FOUR AND SIX of the appellant's Notice of appeal, and Issue B in their Brief of Argument. AND TAKE NOTICE that the grounds upon which this application is brought are as follows:

G 1. The sixty days allotted by Section 285 (7) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), for the hearing and determination of this appeal has expired.

2. This appeal also violates the provisions of section 246(3) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)

3. This Honourable court has no jurisdiction to entertain this appeal

H 4. Grounds THREE, FOUR AND SIX of the appellants; Notice of appeal do not arise from the judgment of the lower court.

AND TAKE FURTHER NOTICE that the 1<sup>st</sup> respondent/applicant shall rely on all the processes filed in this matter, at the hearing of this applicant.

NOTICE OF PRELIMINARY OBJECTION BROUGHT PURSUANT TO ORDER 2, RULE 9(1) OF THE SUPREME COURT RULES, AND UNDER THE INHERENT POWER OF THE HONOURABLE COURT.

TAKE NOTICE that 2<sup>nd</sup> respondent/Applicant herein shall at the hearing of this appeal, raise a preliminary objection to the hearing of this appeal and seek the order of the Honourable Court dismissing or striking out this appeal. B

AND TAKE NOTICE that the Grounds of this preliminary objection are as follows:

a. The Honourable court lacks the prerequisite jurisdiction to hear this appeal. C

b. The appeal is incompetent and constitutes an abuse of the process of this Honourable Court having regards to the provisions of Section 233(2) (e) and 246 (3) of the 1999 Constitution as amended,- D

FURTHER TAKE NOTICE that the 2<sup>nd</sup> respondent/Applicant shall rely on all the processes filed in this preliminary objection.

Objecting to the Appeal, learned counsel for the 1<sup>st</sup> respondent in his arguments stated that the sixty days allotted by section 285(7) of the constitution of the Federal Republic of Nigeria, 1999 (as amended) for the hearing and determination of this appeal had expired. E

That the appeal arose from the judgment of the lower court delivered on 22<sup>nd</sup> March 2012 and being an election matter, this appeal ought to have been heard and disposed of within sixty days from 22<sup>nd</sup> March to the date of the delivery of the judgment. That the sixty days expired on 21<sup>st</sup> May 2012 and therefore the appeal was no longer alive and should be struck out. He referred to Section 285(7) of the 1999 Constitution (as amended); Shettima v Goni (unreported) G Appeals No. SC.332/2011; SC. 333/2011 and SC.352/2011 per Onnoghen JSC; Appeals Nos. SC. 272/2011; SC.276/2011 (Consolidated); Peoples Democratic Party (PDP) vs. Congress for Progressive Change (CPC) unreported delivered on 31<sup>st</sup> day of October, 2011. Mr. Aguda of counsel went on to state that the appeal violates H the provisions of section 246 (3) of the Constitution of the Federal Republic of Nigeria 1999 (as amended); Emordi v. Igbeke (2011) 9 NWLR (Pt.1251) 24 at 39. He went on to contend that by virtue of Section 246 (3) of the constitution of the Federal Republic of Nigeria,

1999 (as amended) the judgment of the Court of Appeal became final on being delivered, and cannot be subject of appeal to this court.

B He concluded by saying that a ground of appeal must relate to the decision appealed against and that in this instance Issue B distilled from grounds 3,4 and 6 of the Grounds of appeal, complaint bordering on the validity of Section 285(6) which matter of validity was never pronounced at the court below since it did not arise thereat. That Issue B of the Appellants Brief should be struck out. He cited *Osuji v Ekeocha* (2009) 16 NWLR (Pt.1166) 81 at 122; *Abubakar v Joseph* (2008) 13 NWLR (Pt. 1104) 307 at 348 - 349; *Akinduro v Alaiya* (2007) 15 NWLR (Pt. 1057) 312 at 326.

C Mr. Alozie for the 2<sup>nd</sup> Respondent submitted that by the provision of Section 233(2) (e) of the 1999 Constitution (as amended) the jurisdiction of the Supreme Court in election petition appeals are D clearly limited to Governorship and Presidential Election Petitions. The provisions, learned counsel said are clear and unambiguous and the basic principles interpretation is expression “*unis est exclusion alterius*,” the express mention of one thing means the exclusion of the other. He cited *Ojukwu v Yar'Adua* (2008) 4 NWLR (Pt.1075) E 435. That by Section 246(3) of the 1999 Constitution( as amended) the decision of court of appeal in respect of appeal arising from the National and State Houses of Assembly election petitions is final and there is no jurisdiction thereafter on the Supreme Court to entertain F the instant appeal. He referred to the cases of *Madukolu v Nkemdilim* (1962) SCNLR 341; *Ukachukwu v UBA* (2006) ALL FWLR (Pt. 300) 1736; *Ogboru v Ibori* (2005) 13 NWLR (pt.942) 319. That this appeal is incompetent as it constitutes an abuse of court process.

G Rejecting the contention of the objectors as stated above, learned Senior Advocate, Chief Mike Ahamba said the issue that arises for determination is the legal effect of Section 285(7) of the Constitution (as amended) on the hearing and determination of the appeal. That the provision of Section 286(7) relates to the period when the election matter is to be heard and disposed of not “commenced” H which is provided for under Section 285(1) of the Constitution. He referred to *Ulor v. Loko* (1988) 2 NWLR (Pt. 77) 430 at 441.

For the appellant and respondent in these objections, Chief Ahamba said the germane issue that falls for determination in this appeal is whether in the face of all statutory provisions or judicial

pronouncements which have so far related statute bar to commencement and not hearing of a suit a decision by the lower court which rested on the court's view that Section 285(7) of the Constitution was in the realm of statute bar was sustainable without any departure from or a reversal of existing judicial decision. That 1<sup>st</sup> respondent/objector made no effort to rebut the legal submissions on statute bar in the appellant's Brief. He cited *Elebanjo v Dawodu* (2006) 15 NWLR (Pt. 1001) 76. B

That in the instant case, the basis for declaring Section 285(7) as being in the realm of statute bar is neither traceable to the petition nor to any of the replies and so the submission based on statute bar is unsustainable and should be not sustained. That the validity of Section 285(7) or its sister Section 285(6) as part of the Constitution without first considering the validity of the enactment which brought it into existence is like putting the cart before the horse. C

Chief Ahamba said the crucial question is whether that part of the Alteration Act (No.2) which purported to have the subsection into existence ab initio did not fall foul of the provisions of Section (3) 4(8) and 9(3) of the Constitution. That it is after the specific alteration provision has passed the legislative consistency and prohibition tests already in existence in the Constitution that such alteration may competently rub shoulders with existing provision as part thereof. He said sub-section (7) is superior to Section 36(1) of Constitution which is a second tier consideration to the issue of validity. He said the 1<sup>st</sup> respondent cannot be heard on the ouster effect of the provision, which is not conceded to exist until the issue of validity is determined. The learned senior counsel said the appellate jurisdiction of the Court of Appeal to which Section 246(3) applies is circumscribed and limited by the subject matter expressly provided in Section 246(1) (b), and does not affect the expressly conferred appellate jurisdiction of the Supreme Court in Section 233(2) (b) and (c) of the Constitution. He relied on *PDP v. Onwe* (2011) 4 NWLR (Pt. 1236) 166. D

Chief Ahamba SAN said it cannot be properly argue that the matter of validity was not raised in the court below which had described the validity issue as an obiter dictum of the Tribunal. That the point cannot be considered as part of the preliminary objection since it would be premature being a matter for the main appeal. E

Responding to the objection of the 2<sup>nd</sup> respondent, Chief F

Ahamba SAN contended that he was drawing the court's attention to Section 233(2) (b) and (c) of the Constitution of Nigeria 1999 (as amended) which make the Supreme Court final, without exception in all matters on interpretation of the provisions of the Constitution, and matter relating to any of the provisions in Chapter IV of the Constitution. That these items form the basis of issues for determination in this appeal cannot be excluded from the jurisdiction of the Supreme Court and Court of Appeal concurrently final on those issues which would be judicially dangerous. Going on learned Senior Advocate said only the Supreme Court is and can be final on the points of law pertaining to interpretation of the provision of the Constitution, and any question on any of the provisions of Chapter IV of the Constitution.

Chief Ahamba SAN further contended that the subject matters of this appeal are within the jurisdiction of the Supreme Court under Section 233(2) (b) and (c) whose finality is exclusive to the Supreme. That the mere fact that the subject matter in which the Supreme Court had express jurisdiction conferred on it by the constitution arose in an election petition proceeding does not whittle or even nibble at the jurisdiction of the Supreme Court as expressly provided in the Constitution. He said the extent and limit of the jurisdiction of the Supreme Court being the apex court cannot fully, exhaustively and appropriately construed in exclusion of Section 233 of the Constitution which was not in any way limited or circumscribed by Section 246(3) of the Constitution, which is the determination of whether a person was duly elected or not etc. That no such decision had taken place in the instant case. He said to oust the jurisdiction of this apex court in any issue of interpretation of the Constitution or matters relating to Chapter IV of the Constitution, the exclusion must be express, direct and unambiguous. He cited *Uttih v. Onoyiowe* (1991) 1 NWLR (Pt.166) 166 at 243, *Ondo State v. Adewunmi* (1988) 3 NWLR (Pt. 82) 280 at 295. Learned counsel for the appellant said section 246(3) does not contain any such exclusionary provision. That the implication of that the jurisdiction of a court cannot be ousted impliedly but unequivocally and that was the basis upon which this court assumed jurisdiction in *PDP v. Onwe* (2011) 4 NWLR (Pt. 1236) 166.

That the 2<sup>nd</sup> respondent has not shown or attempted to show

any cogent reason why this court should depart from PDP v Onwe (supra) abdicate its jurisdiction under Section 233 (2)(b) and (e) of the constitution. To decline jurisdiction the decision by the Tribunal must be tied to Section 246 (i) (b) (i) or (ii), or (iii) and this has not been done so far as the matter had not been heard, even partially that the preliminary objection did not arise from the pleading, of the parties. That the issue arose out of an independent legislation whose doubtful (sic) B

Learned Senior Advocate, Chief Mike Ahamba has now come before this court asking for this court in full panel to revisit the matter and interpret Section 285(6) (7) of the Constitution as amended in order to make a finding that the action was not statute barred but also within the competence of the Supreme Court to enter into pursuant to Section 233(2) (b) and (c) of the Constitution. He also contended that Section 246(3) of the Constitution had not curtailed the powers of the Supreme Court to adjudicate on the matter or appeal in hand. C D

The stand of Chief Ahamba was vigorously rejected by the two respondents who had each filed this Notices of Preliminary Objection subject of this judgment. Mr. Aguda stated that even by Section 285 (7) of the constitution this appeal is no longer viable since the 60 days for an appeal from the Court of Appeal to this court for hearing and determination had expired since 21<sup>st</sup> May, 2012 as the judgment of the Court of Appeal took place 22<sup>nd</sup> March 2012. Also that this is outside the realm of the Supreme Court by virtue of Section 246 (3) of the Constitution (as amended). E F

Mr. Alozie for the 2<sup>nd</sup> Respondent said Section 233(2) (e) of the 1999 Constitution (as amended) conferred the Supreme Court in election petition appeals to Governorship and Presidential Election Petitions and had not left any room for any other business. G

A foray into these Constitutional provisions which appellants are holding onto for life and the respondents are also positing from a different stand point is needful here. In respect to Section 233(1), (2)(b)(e) it has been provided thus: H

*“233 (1) The Supreme Court shall have jurisdiction, to the exclusion of any other court of law in Nigeria, to hear and determine appeals from the Court of Appeal.”*

*(2) An appeal shall lie from decisions of the Court of Appeal to*

*the Supreme Court as of right in the following cases:*

- (a) *where the ground of appeal involves questions of law alone, decisions in any civil or criminal proceedings before the Court of appeal.*
- B (b) *Decisions in any civil or criminal proceedings on questions as to the interpretation or application of this court.*
- (e) *decisions on any question -*
  - (i) *whether any person has been validly elected to the office of President or Vice President under this Constitution.*
  - C (ii) *whether the term of office of President or Vice President has ceased.*
  - (iii) *whether the office of President or Vice President has become vacant, and*
  - (iv) *whether any person has been validly elected to the office*
  - D *of the Governor or Deputy Governor under this Constitution.*
  - (v) *whether the term of office of a Governor or Deputy Governor has ceased;*
  - (vi) *whether the office of Governor and*
  - (f) *such other cases as may be prescribe by an Act of the Na-*
  - E *tional Assembly”.*

Clearly from the above stated provisions of the Constitution, Section 233(1), (2), the jurisdiction of the Supreme Court in relation to Election Petitions have not been kept in the dark. The provisions went to specifics and those pertaining to the election to the offices of Governor or President and left no room either for speculation or for completion of a vacuum in what has been provided for.

Again there is no accommodation upon which the election into either State Houses of Assembly or the National Assembly whether Senate or House of Representatives can be squeezed into. Since Section 233 of the Constitution in its various sub-sections have stated in clear terms those whose elections come within the ambit thereof then in effect what is intended is that those other offices not provided for under that provision, Section 233 of the Constitution cannot under any guise be slotted in under the guise of the supreme powers of this court. I place reliance in the case of *Ojukwu v. Yar'Adua* (2008) 4 NWLR (Pt. 1075) 435.

Now heading into Section 246(3) of the Constitution I would firstly quote the provision for a clear vision. The Section reads:

*“246(1) an appeal to the Court of Appeal shall lie as of right from*

*(b) Decisions of the National and State Houses of Assembly Election Tribunals.*

*(3) The decisions of the Court of Appeal in respect of Appeals arising from the National and State Houses of assembly election petitions shall be final”* B

Those words of Constitutional provisions are neither ambiguous nor unclear and had gone on to say the decision of the Court of Appeal on appeals from the Election Tribunals in respect to seats for the Senate, House of Representative or States Houses of Assembly are final. The language is simple and easy to understand and that understanding is that appeals from the Election Tribunals in respect of the Assembly elections, State or National at the Court of Appeal are ended with finality and no further destination when a journey D has reached its place of disembarkation which the Court of Appeal is in this instance, there is no where else to go. Any other line of thinking can only have its place in dream land, certainly not the Supreme Court. That being so, there is no jurisdiction in the Supreme Court to even give an audience for the appeal. See *Madukolu v Nkemdilim* E (1962) SCNLR 341, *Ogboru v Ibori* (2005) 13 NWLR (Pt. 942) 319; *Emodi v Igbeke* (2011) 9 NWLR (Pt. 1251)24 at 39.

For full measure, I will go into Section 285(1) of the 1999 Constitution (as amended), I will note the relevant portions thereof: F

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

*(7) An appeal from the decision of an election Tribunal or Court of appeal in an election matter shall be heard and disposed of within 60 days from the date of the delivery of judgment of the Tribunal or G Court of appeal”.*

On this point of validity of the appeal/learned counsel for the Appellant insists on this court entering into the matter of interpretation of when the appeal's or petition's commencement starts to run and if this court goes along that pathway, it would find that there has been no limitation as to time and the appeal competent or valid while the Petition would be alive to be adjudicated upon. I dare say by H which ever way, that the request is clearly farfetched and akin to what the knight errant, the legendary “PINOCCIO” would embark

upon. It is all the more so in view of the recent, numerous authorities of this court in its interpretation of the same section 285 (6) & (7) of the Constitution as amended. In that regard, I would refer to a few, Shettima v. Goni (unreported) Appeals No. SC.332/2011; SC. 333/2011 and SC.252/201; Peoples Democratic Party (PDP) vs. Congress for Progressive Change (CPC) Unreported in 272/2012: SC.276/2011 delivered on 31<sup>st</sup> day of October, 2011.

For a fact learned counsel for the Respondents has made out the case of the upholding of their respective Preliminary Objections and it is not easy not to go along with their submissions. From the foregoing and the better articulated reasons in the lead judgment of my learned brother, Olukayode Ariwoola JSC, I uphold the Preliminary Objections and strike out the appeal.

D

### **MUHAMMAD JSC**

I had a preview of the lead judgment of my learned brother Ariwoola, JSC just delivered. I entirely agree with his lordship that the preliminary objections raised by the respondents to the competence of the appeal have merit. I also uphold the objections and in consequence strike out the appeal.

My lord has lavishly supplied the background facts from which the appeal purports to emanate. The crucial submission made by learned counsel to the respondents/objectors is that the instant appeal being against the judgment of the Court of Appeal, hereinafter referred to as the court below, from the National and State Houses of Assembly Election Tribunal is incompetent. They hinge this limb of their objection on Section 246 of the 1999 Constitution (as amended) and urge that the appeal be struck out. Section 246 (1) (b) (i) and (3) are hereunder reproduced for ease of reference :-

*“246(1) An appeal to the Court of Appeal shall lie as of right from -*

*(b) decisions of the National and State Houses of Assembly Election Tribunals; and*

*(i) any person has been validly elected as a member of the National Assembly or of a House of Assembly or of a State under this Constitution.*

*(3) The decisions of the Court of Appeal in respect of appeals*

*arising from the National and State Houses of Assembly election petitions shall be final. “*

The foregoing is as clear and unambiguous as it ever can be. The intention of the legislature, in my firm and considered view, is to make the decisions of the court below in respect of appeals from the decision of the National and State Houses of Assembly in respect of Elections Petitions Final. To hold otherwise is to read into the law what it does not contain. I agree with learned counsel to the respondents/objectors that this Court in view of the clear words of Section 246 (1) and (3) of the 1999 Constitution (as amended), lacks the jurisdiction to hear and determine the instant appeal. It is specifically for this that I uphold their objections and strike out the incompetent appeal. See Senator Joy Emordi V Hon. Alphonsus Uba (2011) 9 NWLR (part 1251) 24 at 40. In Onuaguluchi V Ndu (2001) 7 NWLR (part 712) 309, this court explained the import of Section 81 (3) of the National Assembly (Basic Constitutional and Transitional Provisions) Decree No. 5 of 1999 which is in pari materia with Section 246 (3) of the 1999 Constitution (as amended) thus:-

*‘...Where the appeal is actually in respect of National Assembly election or other relevant election, whatever errors of a procedural nature, or of procedural vice as to jurisdiction or competency cannot be corrected by this Court. They can only be corrected by the court of appeal or else they will remain uncorrected, unresolved as this court cannot intervene since it has no appellate or supervisory jurisdiction over the Court of Appeal in such circumstances. This court will not permit or encourage any subterfuge under which it may assume jurisdiction to hear an appeal in respect of which the Constitution has in clear and unambiguous language made the Court of Appeal the final court. It follows that an appeal in respect of a decision of the Tribunal, in an election petition when decided by the Court of Appeal cannot be taken on appeal to the Supreme Court but is final for all purposes. If I may add, the provisions of S. 81 (3) of Decree 5 of 1999 were included in S. 246 of (3) of 1999 Constitution just when the said Decree was repealed. Section 246 (1) (b) specifies the elections concerned to be National Assembly, Governorship and State Houses of Assembly elections. It must be emphasised that such finality applies also to every interlocutory decision, or any decision taken in respect, of a matter or an issue concerning or arising*

*from the decision, reached in the appeal. No appeal shall lie from it to any other court even if it is patently wrong.* “See also *Awuse V Odili* (2003) 18 NWLR (part 851) 116 and *Orubu V NEC* (1988) 5 NWLR (part 94) 323.

I consider it fruitless to consider whether or not the incompetent appeal is lodged within the time Section 285 of the Constitution allows for such appeals to be instituted and determined. For one, the learned senior counsel to the appellant has conceded that time for the hearing and determination of the appeal has expired. This Court, were it to have the jurisdiction to entertain the purported appeal, would have lost same with the effluxion of time. And in such matters, the courts lack the vires to extend the time within which the appeal is to be heard or determined. See *ANPP V Alh. Moh Goni* (2012) 7 NWLR (part 1298) 147 at 187-188. Most importantly, the fact remains until this Court has the jurisdiction to determine the appeal, and I have held it does not, consideration of the other grounds in the preliminary objections being hypothetical and academic must be avoided. See *Global Trans S. A. v. Free Enter (Nig.) Ltd* (2001) 5 NWLR (part 706) 426 and *Asafa Foods Factory V Alrain (Nig.) Ltd* (2002) 12 NWLR (part 781) 353.

For the foregoing and more so the detailed reasons in the lead judgment, I also strike out the appeal and abide by the consequential orders in the lead judgment including the order on costs.

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### **OGUNBIYI JSC**

The appeal is against the judgment of the Court of Appeal, sitting in Owerri, Imo State delivered on 22<sup>nd</sup> March, 2012 dismissing the appeal of the appellants against the ruling of the National Assembly Election Petition Tribunal delivered on January 23 2012, striking out the petition of appellants, filed on 1<sup>st</sup> May 2011.

Pursuant to a notice of preliminary objection filed by 1<sup>st</sup> respondent on the 20<sup>th</sup> June 2012, an order was sought for the dismissal or striking out of this appeal in entirety. In the alternative however a further order was prayed for a striking out of grounds Three, four and six of the appellants’ notice of appeal as well as issue B in their brief of argument.

There are four grounds predicated the application as follows:

(1) The sixty days allotted by section 285(7) of the Constitution for the hearing and determination of this appeal has expired.

(2) This appeal also violates the provisions of section 246(3) of the Constitution as amended.

(3) This court has no jurisdiction to entertain this appeal.

(4) Grounds 3, 4 and 6 of the notice of appeal do not arise B  
from the judgment of the lower court.

The appeal in question originates from the decision of the Tribunal wherein it dismissed the appellants' appeal against the ruling of the National Assembly Election Petition Tribunal. The relevant and applicable legislation for the determination of the preliminary objection is section 246(3) of the Constitution of the Federal Republic of Nigeria 1999 which reproduction states: C

*"The decisions of the Court of Appeal in respect of appeals arising from the National and State Houses of Assembly election petition shall be final."* D

The finality of the Court of Appeal being the ultimate arbiter has been demonstrated in a number of judicial authorities inclusive of *Emordi v. Igbeke* (2011) 9 NWLR (Pt 125) 24 at 39 wherein Onnoghen JSC held the Court of Appeal as a final destination. E

In further consideration, I also hasten to add that with the appellants having conceded the expiration of the 60 days provided by the Constitution vide section 285(7) within which to appeal, there can no longer be any issue arising therefrom. In other words, the limitation period provided as specified by the constitution, cannot be subject to question or debate. The chapter in a nutshell had been closed and contesting same will only amount to an academic exercise in futility as it is with the case at hand. F

From the collective account of the entire appeal before us, the preliminary objection raised on the issue of jurisdiction is upheld and sustained. In the same vein as the lead judgment of my learned brother Ariwoola, JSC, therefore, the appeal on the whole is incompetent and a gross abuse of court process. It is accordingly struck out in terms of the lead judgment and I also abide by the order made as to costs. G  
H