

SUPREME COURT OF NIGERIA
11TH JANUARY, 2013. SC. 473/2012
CORAM:- M. MOHAMMED, J. A. FABIYI,
B. RHODES-VIVOUR, M. U. PETER-ODILI,
C. B. OGUNBIYI, K. B. AKAHS, S. S. ALAGOA, JJSC

COMRADE ADAMS ALIYU OSHIOMOLE APPELLANT
AND
1. CHARLES EHIGIE
AIRHIAVBERE MAJOR-GEN (RTD)
2. ACTION CONGRESS OF NIGERIA
3. INDEPENDENT NATIONAL
ELECTORAL COMMISSION
4. RESIDENT ELECTORAL
COMMISSIONER (EDO STATE)
5. THE RETURNING OFFICER EDO
STATE GOVERNORSHIP ELECTION RESPONDENTS

ELECTION PETITIONS - Non qualification - Pleadings - Petitioner who relies on non qualification to nullify election - Must make the issue a ground - And support same by specific pleadings (H1)

PARTIES - Action - Need for consistency - A party should be consistent in stating his case - And in proving same (H2)

PLEADINGS - Binding nature of - A party must confine himself to his pleadings - As pleaded facts must have nexus with ground (H3)

ELECTION PETITIONS - Grounds - Court - Adherence - Where petitioner relies on a ground - It will be injustice to adverse party - For court to look for other grounds to question the petition (H4)

FACTS

At the conclusion of the gubernatorial election held on 14th July 2012 in Edo State, wherein appellant and 1st respondent were candidates of the Action Congress of Nigeria and Peoples Democratic Party respectively, 3rd respondent declared appellant the winner of the election. 1st respondent was unhappy about the result and

thus he filed this election petition before the Edo State Governorship Election Petition Tribunal.

Appellant and 3rd to 5th respondents raised preliminary objection to the hearing of the petition on the ground inter alia, that the tribunal lacked jurisdiction to hear the petition. After hearing, the tribunal struck out several paragraphs of the petition. Dissatisfied, 1st respondent lodged an appeal in the Court of Appeal, Benin City division. The court upset the judgment of the tribunal and consequently restored the paragraphs struck out by the tribunal. Aggrieved, appellant filed appeal in Supreme Court.

ISSUES FOR DETERMINATION

Considering the pleadings of the 1st respondent (as Petitioner) particularly the sole ground of the petition, the vague facts pleaded thereon and the reliefs thereunder whether the lower court was not in grave error in upturning the judgment/ruling of the trial election tribunal by restoring the paragraphs of the petition struck out by the said tribunal, including the reliefs.

Considering the clear provisions of section 31 (4) (5) and (6) of the Electoral Act 2010 (as amended), read together with the pleadings of the petitioner, whether the lower court did not fall into a serious error in holding that the trial election petition tribunal has jurisdiction to adjudicate on the purported issue of disqualification of the appellant.

HELD (Unanimously allowing the appeal in part per

RHODES-VIVOUR JSC)

ELECTION PETITIONS - Non qualification - Pleading

1. A petitioner who relies on the non-qualification of his opponent to nullify the election must make the issue of non-qualification a ground and support the ground by specific pleadings and particulars.

In the absence of a ground on non-qualification the court would have no jurisdiction to consider any averment that has to do with the non-qualification of the appellant.

What the above is saying is that if there is no GROUND in a petition the court should examine the petition/pleadings to

see if there are grounds for questioning the election.

(p. 201 B)

Action - Need for consistency

2. The long laid down position of the law is that a Party should be consistent in stating his case and consistent in proving it.

(p. 201 H)

PLEADINGS - Binding nature of

3. That is the importance of pleading. A Party must confine himself to his pleadings. Plead facts must have nexus with the Ground/s. There is no nexus with the sole Ground and the averments on non-qualification of the appellant. The petition is thus irredeemably defective and cannot be considered on the issue of non-qualification. (p. 201 H)

ELECTION PETITIONS - Grounds - Court - Adherence

4. It must be elementary that where a petitioner relies on a ground to question the petition, it would amount to substantial injustice to the adverse party for the court to go looking for other grounds to question the petition. At all times the court is to ensure that parties are on a level playing field.

(p. 203 A)

NOTABLE POINT OF INTEREST

FABIYI JSC

1. Fair hearing in election petition

The court below felt that it had to do substantial justice in the stance taken by it. I agree with the appellant's counsel when he submitted that substantial injustice should not be imposed on his client. This is so as same touched on appellant's right to fair hearing as a result of the procedure adopted. After all fair hearing in an election matter is not a one way traffic but three-way bestower. It is justice to the petitioner, justice to the respondent and justice to the electorate which desire to have the outcome of a clear judicial contest as to who should preside over their affairs. (p. 209 F)

REPRESENTATION

Chief Wole Olanipekun, SAN, Rickey Tarfa, SAN, A. Akintola, SAN
 Chief Mike Ozekehome, SAN, A. J. Owonikoko, SAN, Femi Falana,
 SAN, B. Igbanor, Aisha Ali (Miss), O. Jolaowo, O.E. Maduka, O.
 B Osinowo, M. A. Yunusa, for the Appellants
 E.L. Akpofure, SAN, K.O. Obamogie, S. O. Aginede, P. O. Itua, E.
 Avboraye, D.O. Inegbeboh, K.I. Aigbe, I. Ogiamen, E. E. Esegbe,
 G.A. Oladejo, F. Omo-Osaday, A.O. Eikhon, S. S. Owootori, M.
 C Kunmi Olayiwola, Oga Obeya, T.O. Busari, A. Adedipe, N.I. Zarumi,
 P. Nwotu, E.R. Emukpoewo, A. Adedipe
 Z. Garubi, A.A. Usman, for the Respondents

CASES REFERRED TO

- D Hope Democratic Party v. INEC (2009) 8 NWLR (pt. 1143) 297
 CPC v. INEC (2011) 18 NWLR (pt. 1279) 493
 Adekoya v. Adesina (2010) 12 SC (Pt.11) 1
 Ojiogu v. Ojiogu (2010) 3-5 SC (Pt. 11) 1
 Akpan v. Bob (2010) 4-7 SC (pt. 11) 57
 E Baliol Nig Ltd v. Navcon Nig. Ltd (2010) 5-7 SC (pt. 11) 1
 Ajide v. Kelani (1985) 3 NWLR (pt. 12) 251
 Buhari v. INEC (2008) 4 NWLR (Pt. 1079) 546
 Josiah v. The State (1985) 16 NSCC (pt. 1) 132
 Oyeyemi v. Commissioner for L.G. Kwara State (1992) 2 NWLR (Pt.
 F 226) 661 Ogundele v. Ogiri (2009) 18 NWLR (Pt. 1173) 219
 Olusanya v. Jibowu (1983) NSCC 97
 Thomas v. Olufosoye (1986) 1 NWLR (Pt. 18) 669
 Abubakar v. Yar'Adua (2008) 19 NWLR (Pt. 1120) 1
 G Peenok Invest. Ltd v. Hotel Presidential Ltd (1932) NSCC Vol. 13, p.
 477

STATUTE REFERRED TO

H Electoral Act 2010 (as amended), ss. 31(4)(5)(6), 138(1)

LEAD JUDGMENT BY RHODES-VIVOUR JSC

On the 14th day of July 2012 gubernatorial elections were held in Edo State, The appellant was the candidate for the Action Congress of Nigeria, while the 1st respondent was the candidate for

the Peoples Democratic Party, Five other Political Parties and their candidates participated in the elections, but they are of no relevance to the issues in this appeal. At the conclusion of the elections the 3rd respondent, the regulatory body charged with the conduct of elections in Nigeria declared the appellant the winner after he was adjudged to have scored 477,478 votes as against the 1st respondent who scored 144,235 votes. The 1st respondent was not satisfied with the declaration, and so he filed a petition challenging the election and return of the appellant as the Governor of Edo State of Nigeria. B

The appellant (1st respondent of the trial tribunal) and the 3rd to 5th respondents raised preliminary objections to the hearing of the petition. The thrust of the objections were that; C

(a) the tribunal lacks jurisdiction to hear the petition and grant the reliefs claimed;

(b) the petition disclosed no reasonable cause of action, D

(c) the petition is academic, vague and hypothetical.

After hearing counsel, the tribunal delivered a considered Ruling on the 27th day of September 2012. The concluding paragraph of the Ruling reads:

“The two applications by the 1st and 3rd-5th respondents succeeds in part. Paragraphs 12 (iv), 13 (i) and (ii), 23, 24, 25 and 30 (i) and (2) are struck out from the petition. The petition is allowed to proceed to hearing on the merit with the remaining surviving paragraphs and the 4th and 5th respondents as parties to the petition.” E F

Dissatisfied with the striking out of several paragraphs of his petition the petitioner/1st respondent lodged an appeal in the Benin Division of the Court of Appeal. That court in its judgment delivered on the 15th day of November, 2012 upset the judgment of the tribunal in these words: G

“... it is hereby ordered that paragraphs 12(iv), 13(i) and (ii), 23, 24, 25 and 30(i) and 30(2) of the petition be and are hereby restored... “I hereby order that the petition be remitted back to the lower tribunal to be heard by another panel to be constituted by the Acting President of this court, Appeal allowed in part. No order as to costs.” H

This appeal is against that judgment. Briefs of argument were duly filed and exchanged by counsel. In the appellants brief filed on the 23rd of November 2012 three issues were formulated for deter-

mination of this appeal. They are;

1. Considering the pleadings of the 1st respondent (as Petitioner) particularly the sole ground of the petition, the vague facts pleaded thereon and the reliefs thereunder whether the lower court was not in grave error in upturning the judgment/ruling of the trial election tribunal by restoring the paragraphs of the petition struck out by the said tribunal, including the reliefs.

2. Whether the lower court was not altogether wrong in its making use of paragraph 9 of the 1st respondents reply to the appellants reply (to the 1st respondent's petition) in restoring the struck out paragraphs of the petition by the trial tribunal.

3. Considering the clear provisions of section 31 (4) (5) and (6) of the Electoral Act 2010 (as amended), read together with the pleadings of the petitioner, whether the lower court did not fall into a serious error in holding that the trial election petition tribunal has jurisdiction to adjudicate on the purported issue of disqualification of the appellant.

Learned counsel for the 1st respondent also formulated three issues for consideration. They are:

1. Whether the lower court was right when it held that the Governorship Election Tribunal has jurisdiction to hear and determine the issue of qualification or non-qualification of the appellant to contest the Governorship Election held in Edo State on 14th July, 2012 as formulated in 1st Respondent's petition.

2. Whether or not the lower court was right in restoring the paragraphs of the petition struck out by the trial tribunal.

3. Whether the lower court reference to paragraph 9 of the 1st respondents reply to the appellants reply to the petition occasioned perversion of justice.

Learned counsel for the 2nd respondent did not file a Brief.

Learned counsel for the 3rd to 5th respondents adopted the three issues formulated by learned counsel for the appellant. At the hearing of the appeal on the 7th day of January, 2013 learned counsel for the appellant, Chief W. Olanipekun, SAN adopted the appellants brief filed on the 23rd of November, 2012 and the reply brief filed on the 6th of December 2012 and in amplification of his briefs, he observed that the trial tribunal was right to strike out some of paragraphs of the petition since the sole ground did not rhyme with the

reliefs, further observing that the qualification of the appellant cannot be an issue since it was not made a ground. He urged this court to allow the appeal and restore the judgment of the trial tribunal.

Learned counsel for the 1st respondent, Mr. E. I. Akpofure SAN argued that the court should read the petition as a whole, and it would be clear that a ground on non-qualification can be discerned from the petition, Reliance was placed on Hope Democratic Party v. INEC 2009 8 NWLR pt. 1143 p.297. He urged on this court to dismiss the appeal and affirm the judgment of the Court of Appeal.

Learned counsel for the 3rd to 5th respondents, Mr. T.O. Busari adopted the 3rd to 5th respondents' brief filed on the 30th of November, 2012 and conceded the Appeal. I have examined the three issues formulated by the appellant, which were adopted by the 3rd to 5th respondents and the three issues formulated by the 1st respondent. The appellants issue (1) and the 1st respondent's issue (2) ask the same question. The appellant's issue 2 and the 1st respondent's issue 3 are similar, while the appellant's issue 3 and the 1st respondent's issue 1, ask the same question. I am of the view that the real grievance in this appeal is whether the Court of Appeal was right to restore paragraphs of the petition that were struck out by the Trial Tribunal and whether the alleged non-qualification of the appellant can be considered in the light of no ground on that issue.

Accordingly the appellant's issues 1 and 3 and the 1st respondent's issues 1 and 2 are issues that would easily resolve this appeal. The appellant's issues 2 and the 1st respondent's issue 3 are peripheral and so would not be considered. Two issues shall thus be considered.

ISSUES 1 & 2

Learned counsel for the appellant Chief W. Olanipekun, SAN observed that the reliefs claimed have no nexus with both the only ground of the Petition and the facts in support contending that Trial Tribunal was right to strike out paragraphs 12 (iv), 13(1), 13(II), 29, 24, 25, 30(1), 30(2) from the petition for being vague and incomprehensible, Reliance was placed on CPC v. INEC 2011 18 NWLR pt.1279 p.493 Concluding he observed that the decision of the Court of Appeal is perverse. He urged this court to allow the appeal, set aside the decision of the Court of Appeal and restore the decision of the trial Election Tribunal.

Learned counsel for the 1st respondent observed that the 1st respondent challenged the return of the appellant on two main grounds namely:

1. Non-qualification of the appellant to Contest the election.
2. Corrupt practices and non-compliance with provisions of the Electoral Act 2010 as amended.

He argued that on a global reading of the 1st respondent's petition in line with the decision of this Honourable Court in Hope Democratic Party the ground on non-qualification of the appellant to contest the election is disclosed. He submitted that the trial tribunal was wrong to strike out paragraphs from the petition. He urged this court to dismiss the appeal.

Learned counsel for the 3rd to 5th respondents Mr. T. Busari conceded the appeal. The issues for consideration are:

1. Whether or not the lower court was right in restoring the paragraphs of the petition struck out by the trial tribunal.
2. Whether the trial Election Petition Tribunal has jurisdiction to adjudicate on purported issue of disqualification or non-qualification of the appellant.

Both issues shall be taken together. The sole ground of the petition reads:

"The Petitioners say that the grounds of this Petition are that the purported election for the office of the Governor of Edo State which took place on the 14th day of July, 2012 was invalid by reason of corrupt practices and non-compliance with the provisions of the Electoral Act 2010 (as Amended). And the two reliefs read:

1. *That it be determined that the 1st petitioner is entitled to be returned by the 3rd and 5th respondents as having been duly elected as the Governor of Edo State by reason of having scored the highest number of lawful votes cast at the Governorship Election held on the 14th day of July, 2012.*

2. *In the alternative that it be determined that the election of the 1st respondent was invalid by reason that he was not qualified to run for the office of Governor of Edo State having not met the mandatory statutory requisite qualifications to contest in the Election and other non-compliance with the provisions of the Electoral Act 2010 (as Amended)."*

The trial tribunal struck out paragraph 12 (iv) 13 (i) and (ii),

23, 24, 25, 30 (i) and 30 (2).

In support of the sole ground, there is a thirty paragraph pleading which includes two reliefs. The well laid down position of the law is that parties are bound by their pleadings. That is to say if pleadings are to be of any use parties must be held bound by them. See Adekoya & 6 Ors. V. Adesina & 4 Ors 2010 12 SC (Pt.11) p.1, Ojiogu v. Ojiogu & Anor 2010 3-5 SC (Pt.11) p.1, Akpan v. Bob & 4 Ors 2010 4-7 SC (pt.11) p.57, Baliol Nig Ltd v. Navcon Nig. Ltd. 2010 5-7 SC (pt.11) p.1.

Paragraph 12 (iv) reads:

“The 1st respondent who purportedly returned as the winner of the said election was not qualified to contest for the said election for the office of the Governor of Edo State.

Paragraph 13(i)

“Further to paragraph 12, your petitioners State that when the 3rd respondent wanted to revise and update the various Voter Registers used in the 2011 General Elections for Presidential, National Assembly and State House of Assembly Elections in 2011 in Edo State in order to register those who subsequently attained the voting age of 18 years and above and for other valid statutory reasons, the 1st and 2nd respondents and their supporters vehemently and violently protested and the 3rd and 4th respondents were consequently constrained to postpone and suspend the said revision process until after the said Election of the 14th day of July, 2012 in Edo State.

Paragraph 13 (ii)

Your Petitioners aver that the chairman of the 3rd respondent Prof. Attahiru M. Jega, OFR in an address he delivered at the Stake-Holders Meeting on Edo CVR and Governorship Elections Conference Room, Abuja on May 18th 2012 formally announced the postponement of the said review of the said voters register exercise. The Petitioners shall find and rely on the said address at the trial of this petition.

Paragraph 23

Your petitioners aver that any Voter Register that was used for the July 14th 2012 Governorship Election in Edo State that does not tally with the Voters Register used for the 2011 General Election is null and void and all votes cast with the said void Register are liable to be voided.

Paragraph 24

Your Petitioners aver that the 1st respondent is not qualified to contest the said Governorship Election in Edo State having not met the minimum qualification to contest for the said office of Governor of Edo State as provided for in the 2010 Electoral Act (as Amended)

B *Paragraph 25*

Your petitioners further aver that there is no nexus between the 1st respondent and the academic qualifications he presented as his qualifications. The petitioners shall find and rely on Certified True Copies of these qualifications at the trial of this petition especially as depicted in Form CF:001 submitted to the 3rd respondent in 2007 and 2012 by the 1st respondent, Paragraph 30 (1) and 30 (2) are the reliefs they read:

30. WHEREFORE Your Petitioner prays as follows:

D *1. That it be determined that the 1st Petitioner is entitled to be returned by the 3rd and 5th respondents as having been duly elected as the Governor of Edo State by reason of having scored the highest number of lawful votes cast at the Governorship Election held on the 14th day of July, 2012.*

E *2. IN THE ALTERNATIVE, THAT IT BE DETERMINED that the Election of the 1st respondent was invalid by reason that he was not qualified to run for the office of Governor of Edo State having not met the mandatory statutory requisite qualifications to contest in the Election and other non-compliance with the provisions of the*
F *Electoral Act 2010 (as Amended).*

Now, a careful reading of these paragraphs of the petition respondent above reveals that paragraph 12 (iv), 24 and 25 relate to the qualification or non qualification of the appellant. These are facts of variance with the sole ground. It should be clear after examining paragraphs 12 (iv), 24 and 25 that there is no nexus whatsoever with the sole ground. The Court of Appeal was wrong to restore the said paragraphs in the absence of a ground to support or sustain them. The trial tribunal was right to strike them out.

H Section 138 (1) of the Electoral Act States that:

“An election may be questioned on any of the following grounds: that is to say -

(a) that a person whose election is questioned was at the time of the election, not qualified to contest the election,

(b) that the election was invalid by reason of corrupt practices or non-compliance with the provisions of this Act;

(c) that the respondent was not duly elected by majority of lawful votes cast at the election,

(d) that the petitioner or its candidate was validly nominated but was unlawfully excluded from the election.” B

A petitioner who relies on the non-qualification of his opponent to nullify the election must make the issue of non-qualification a ground and support the ground by specific pleadings and particulars. See judgment of this court in PDP v. Saror & Ors SC.381/2011 and Suswan v. Ors SC.381/2011 and SC383/2011 where the qualification of Suswan was made a ground. ***In the absence of a ground on non-qualification the court would have no jurisdiction to consider any averment that has to do with the non-qualification of the appellant.*** C D

Learned counsel for the 1st respondent placed reliance on HDP v. INEC 2009 8 NWLR pt.1143 p.297 in support of his argument that the court should examine the pleading in detail and see if the issue of non-qualification is pleaded. He contended that if it is pleaded, the court can make it a ground and proceed to rule on it. E

In HDP v. INEC supra the appellant was one of the duly registered political parties that participated in the April, 2007 Presidential Elections. The appellant was not satisfied with the outcome of the election and so it filed an election petition. It alleged that there was non-compliance with the Electoral Act and that the election was marred by corrupt practices. It then made appropriate prayers. There was NO GROUND in this petition. This court had this to say: F

“... the 23 paragraph petition contains numerous grounds for questioning the election. Although there is no identifiable paragraph of the petition with the grounds specifically set out therein, a global reading of the petition shows clearly that there are grounds for questioning the election...” G

What the above is saying is that if there is no GROUND in a petition the court should examine the petition/pleadings to see if there are grounds for questioning the election. The long laid down position of the law is that a Party should be consistent in stating his case and consistent in proving it. See Ajide v. Kelani 1985 3 NWLR pt. 12 p.251. ***That is the importance*** H

of pleading. A Party must confine himself to his pleadings. Pleaded facts must have nexus with the Ground/s. There is no nexus with the sole Ground and the averments on non-qualification of the appellant. The petition is thus irredeemably defective and cannot be considered on the issue of non-qualification.

Where there are no grounds in a petition as was the case in HDP v. INEC (supra) I can understand a judge undertaking a global reading of the petition to find a ground or grounds that question the election, but I cannot understand a judge adopting the same procedure in a case, such as this where the petitioner expressly states the ground on which he is questioning the election it would amount to making a case for the petitioner to go on a voyage in search of grounds to question the petition when the petitioner has stated the ground he relies on. The attitude of the Court of Appeal restoring the paragraphs struck out by the trial tribunal amounts to a clear case of the Court of Appeal making a case for the petitioner. The trial tribunal was right to strike out paragraphs 12 (iv), 24, 25, they being clearly at variance with the sole ground.

Furthermore paragraphs 13 (1), 13(II) and 23 are vague and were also quite rightly struck out by the trial tribunal. The surviving paragraphs of the petition, now extant can support the main ground of the petition together with paragraph 30 (1) which I hereby order to be restored.

In one breath, learned counsel for the 1st respondent said in his brief that the 1st respondent challenged the return of the appellant on two main grounds namely:

1. Non qualification of the appellant, and
2. Corrupt practices.

And yet in the next breath he asks this court to follow the reasoning in HDP v. INEC (Supra). The reasoning in HDP v. INEC (supra) can only be followed where there are no grounds in the petition, but where the ground the petitioner relies on is clearly Stated, HDP v. INEC (supra) would not be followed.

It is clear to my mind that the issue of non-qualification of the appellant is not properly before the court, and this is due to the blunder of counsel who prepared the petition. The standards expected are for counsel in such a situation to advise his client accordingly and

not waste judicial time by coming all the way to this court to see if he has a chance.

It must be elementary that where a petitioner relies on a ground to question the petition, it would amount to substantial injustice to the adverse party for the court to go looking for other grounds to question the petition. At all times the court is to ensure that parties are on a level playing field.

On the State of the petition, the Petitioner's case is that the election was invalid by reason of corrupt practices and not that the 1st respondent/appellant was not qualified to contest the election. The petitioner is bound by his case as pleaded.

Consequently the tribunal has no jurisdiction to hear and determine the qualification or non-qualification of the appellant since there is no ground from which such an issue can be formulated. A consideration of the non-qualification of the appellant would amount to going outside the pleadings and that would be wrong.

This appeal is allowed in part. The judgment of the Court of Appeal is hereby set aside. The Ruling and the orders of the tribunal are restored except for paragraph 30 (1) of the petition which shall remain part of the petition. No order on costs.

APPEAL NO: SC.475/2012

Appeal No.SC.475/2012 is an offshoot of Appeal No. SC.473/2012. The parties in both appeals are the same and it arose from the same petition. That is to say the same facts as in SC.473/12.

It is my view that since the hearing of the petition is still to be concluded on the basis of the subsisting paragraphs in the petition there would be no need to comment on SC.475/2012.

MOHAMMED JSC

I have been privileged before today of reading in draft the judgment just delivered by my learned brother Rhodes-Vivour, JSC. I entirely agree with the reasoning and the conclusion he finally arrived at in resolving the issues arising for the determination of this appeal. That the appeal has merit is quite obvious. Accordingly, I also allow the appeal in part set aside the judgment of the Court of Appeal Benin delivered on 15th November, 2012 and restore the Ruling and order of the trial Election Tribunal of 27th September, 2012

except for paragraph 30(1) of the petition which shall still remain part of the remaining paragraphs of the petition upon which the hearing of the petition shall continue.

The appeal is against the decision of the Court of Appeal which set aside the Ruling of the Benin Governorship Election Tribunal of B 27th September, 2012, in which the Tribunal struck out paragraphs 12(iv), 13(i), 13(ii), 23, 24, 25, 30(1) and 30(2) of the Election Petition on various grounds specified in the ruling. In presenting his petition at trial Tribunal, the 1st Respondent/Petitioner no doubt was C required to comply with Section 138(1) of the Electoral Act 2010 as amended, which makes provisions upon which any election may be questioned by an aggrieved party. In other words the Section prescribes the grounds upon which any election may be questioned. The Section reads -

D *“138(1) An election may be questioned on any of the following grounds, that is to say -*

(a) That a person whose election is questioned was, at the time of the election, not qualified to contest the election;

E *(b) That the election was invalid by reason of corrupt practices or non-compliance with the provisions of this Act;*

(c) That the respondent was not duly elected by majority of lawful votes cast at the election;

F *(d) That the petitioner or its candidate was validly nominated but was unlawfully excluded from the election.”*

Under this Section of the Electoral Act, a petitioner is free to present his petition before any Election Tribunal to challenge or question the return of any candidate in an election under one or more or all the grounds specified under the Section depending on the circumstances of each case. In the present case, the petitioner now 1st Respondent being fully aware of the existing 4 grounds upon which he could question the election and return of the 1st Respondent now Appellant, decided to predicate his petition on only one ground having regard to the complaint he had against the election and return of H the 1st Respondent/Appellant. The only ground picked by the petitioner in paragraph 8 of his petition clearly headed as grounds of his Petition, is the ground under Section 138(b) of the Electoral Act which complained that the election was invalid by reason of corrupt practices or non-compliance with the provisions of the Electoral Act. Para-

graph 8 of the petition reads -

“8 GROUNDS OF THE PETITION

The Petitioner (sic) say that the grounds of this Petition are that the ‘PURPORTED ELECTION’ for the office of the Governor of Edo State which took place on the 14th day of July, 2012 was invalid by reason of corrupt practices and non-compliance with the provisions of the Electoral Act, 2010 (as Amended)” B

In compliance with Rule 4 of the 1st Schedule to the Electoral Act which specified the contents of an election petition, the petition in the present case had specified the parties interested in the petition, the holding of the election, the scores of the candidates and the person returned as the winner of the election. The petition had also stated the facts of the election petition and the grounds on which the petition was based and the reliefs sought. In pleading the facts in support of the sole ground of his petition earlier quoted in this judgment, the petitioner/1st Respondent clearly stated in paragraph 12 of the petition in line with the requirement of Rule 4(1)(d) of the 1st schedule to the Electoral Act as follows - C

“12. Your Petitioners state that the facts supporting the grounds of this Petition are as follows: E

(i) The 4th Respondent invalidly returned the 1st Respondent as duly elected at said election despite the fact that the Election not having been conducted in compliance with the provisions of the Electoral Act 2010 (as Amended)

(ii) The 5th Respondent as the Returning Officer wrongly proceeded to declare the 1st Respondent winner of the Election by issuing FORM EC8E on the 15th day of July, 2012. F

(iii) The 4th Respondent also subsequently and wrongly issued the 1st Respondent with Certificate of Return on behalf of the 3rd Respondent. G

(iv) The 1st Respondent who was purportedly returned as a winner of the said Election was not qualified to contest for the said Election for the office of the Governor of Edo State.”

It can be seen quite clearly that from the opening sentence of paragraph 12 quoted above, sub-paragraphs (i), (ii), (iii) and (iv) above were averred not as grounds of the petition, which ground had already been plainly stated earlier in paragraph 8 of the petition, but as facts supporting the grounds of the petition as required by H

Rule 4(1)(a) of the Rules in the 1st Schedule to the Electoral Act. Therefore the facts averred in sub-paragraph (iv) of paragraph 12 of the petition above cannot be removed from the status of facts supporting the grounds of the petition and be elevated to the status of an additional or new ground of the petition. The facts averred in sub-paragraph (iv) of paragraph 12 therefore still remain as part of facts stated as supporting the petition in spite of the fact that it also contains a statement that the 1st Respondent now Appellant, was not qualified to contest the election for the office of the Governor of Edo State, since the Petitioner/1st Respondent had already elected to question the election and return of the 1st Respondent/now Appellant before the Election Tribunal on only one ground plainly stated at that part of the petition where grounds upon which the petition was based should be stated. For the same reason, I am of the view that the facts averred in paragraphs 24 and 25 of the petition, in spite of their contents challenging the absence of minimum qualification on the part of the Appellant/1st Respondent at the Tribunal to contest the election, still remained as facts averred in support of the sole ground upon which the petition was based in the absence of any amendment to the petition to question the election on more than one ground upon which the petition was predicated on filing.

For these reasons, paragraphs 24 and 25 of the petition cannot qualify as grounds upon which the petition was based to justify leading evidence before the Tribunal in challenge of a non-existent ground in law.

Although the Court below relied on the unreported decisions of this Court given on 28th November, 2011, in the cases of *PD.P. v. Saror & Others SC.381/2011* and *Suswan v. Saror & Others SC.383/2011*, those cases are distinguishable with the present case in that in those cases the petitioner clearly based his petition on the ground among others that the Respondent whose election was questioned was at the time of the election not qualified to contest the election. The petitions in those cases were struck out by the trial Tribunal and affirmed by the Court of Appeal on the ground that the grounds upon which the petitions were based were matters of pre-election which ought to have been heard and determined at the High Court, Federal High Court or the F.C.T. High Court. What is in issue in the present case however is the complete absence of a valid ground chal-

lenging the qualification of the 1st Respondent now Appellant, to contest the election.

On the whole therefore, for above reasons and fuller reasons contained in the judgment of my learned brother Rhodes-Vivour, JSC, I also feel that this appeal should be allowed even though in part and I accordingly hereby allow it. The judgment of the court below of 15th November, 2012 is hereby set aside and replaced with the Ruling and order of the Trial Tribunal of 27th September, 2012 except for the order of striking out of paragraph 30(1) which shall remain part of the remaining paragraphs of the petition so as to allow the tribunal to conclude the hearing of the petition still pending before it. I also make no order on costs.

APPEAL NO: SC.475/2012

This appeal arose from the same facts and circumstances in appeal No. SC.473/2012 which has just been determined in the judgment of this Court between the same parties. That judgment shall apply to the present appeal in which the dispute between the parties was confined to the reliefs sought in the petition in paragraphs 30(1) and 30(2) of the petition which had already been determined in the judgment in Appeal No. SC.473/2012. No order on costs.

FABIYI JSC

I have read before now the judgment just delivered by my learned brother, Bode Rhodes-Vivour, JSC. I agree with the reasons therein advanced to arrive at the conclusion that the appeal should be allowed.

I seek leave to chip in a few words of my own for purpose of emphasis. It is of moment to state it here that paragraph 8 of the 1st respondent's petition against the return of the appellant raised a sole ground in challenging the election as follows:-

"8 GROUNDS OF THE PETITION:-

The grounds of this petition are (sic) as follows:-

"The Petitioners say that the grounds of this Petition are that the PURPORTED ELECTION for the office of the Governor of Edo State which took place on the 14th day of July, 2012 was invalid by reason of corrupt practices and non-compliance with the provisions of the Electoral Act, 2010 (as amended)."

The three reliefs put up by the 1st respondent read as follows:-

B “1. That it be determined that the 1st petitioner is entitled to be returned by the 3rd and 5th respondents as having been duly elected as the Governor of Edo State by reason of having scored the highest number of lawful votes cast at the Governorship Election held on the 14th day of July 2012.

C 2. In the alternative that it determined that the election of the respondent was invalid by reason that he was not qualified to run for the office of Governor of Edo State having not met the mandatory statutory requisite qualifications to contest in the Election and other non-compliance with the provisions of the Electoral Act, 2010 (as amended).

3. Costs of this petition.”

D The appellant herein, 1st respondent at the trial Tribunal, as well as the 3rd to 5th respondents raised preliminary objections to the hearing of the petition. They maintained that -

“(a) The Tribunal lacks jurisdiction to hear the petition and grant the reliefs claimed,

(b) The petition disclosed no reasonable cause of action.

E (c) The petition is academic, vague and hypothetical.”

F The trial Tribunal was duly addressed by counsel. In its considered Ruling of 27th September, 2012, it found in favour of the stated objections, in part. Paragraphs 12 (iv), 13 (i) and (ii), 23, 24, 25 and 30 (1) and (2) of the petition were struck out while the petition should proceed to hearing on the merit with the remaining surviving paragraphs.

G The 1st respondent herein, as petitioner, felt unhappy with stance posed by the trial Tribunal and appealed to the Court of Appeal, Benin Division which heard the appeal and allowed same on 15th November, 2012 and restored the above stated paragraphs of the petition which were struck out by the Tribunal. The Tribunal found that the ground for the petition did not agree with the relief touching on qualification. The Court of Appeal agreed that the pleadings are bare but went on to employ paragraph 9 of the Reply of the appellant to 1st respondent’s Reply to try to sustain the point relating to qualification which is at parallel lines with the sole ground for the petition earlier on reproduced in this judgment. The appellant was not heard on same and such led to want of fair hearing. It was not

right for the court below to have descended into the arena, as it were.

In ordinary civil cases, it hardly needs any gainsaying that cause of action must be grounded on the writ of summons and statement of claim; not statement of defence, talkless of Reply to same. By parity of reasoning, in an Election Petition which is sui generis, it is the petition that must only be considered in pinpointing the jurisdiction of the Tribunal. No other process is of moment. Parties are bound to strictly comply with the dictates of the enabling statutes in drafting their pleadings and presentation of the petition as inadvertence or omissions can be costly as same will not be tolerated in election proceedings. See: *Obi v. Mbakiwe* (1984) 1 SCNL 192; *Buhari v. INEC* (2008) 4 NWLR (Pt. 1079) 546. B
C

For issue of qualification to be invoked by a petitioner, it must be specifically made a ground of the petition and fully supported by attending particulars. The absence of a ground relating to qualification must ordinarily deprive the tribunal jurisdiction to consider averments that touch on same. That is the position of this court in *PDP v. Saror & Ors.* SC. 381/2011 and *Suswam v. Saror & Ors.* SC. 383/2011. It is apt to mention it that in *Suswam's* case qualification was made a ground and no court had to fish for it in extraneous processes. That stance is maintained herein. The case of *Hope Democratic Party v. INEC* clung to tenaciously by the 1st respondent is not apt here. D
E

The court below felt that it had to do substantial justice in the stance taken by it. I agree with the appellant's counsel when he submitted that substantial injustice should not be imposed on his client. This is so as same touched on appellant's right to fair hearing as a result of the procedure adopted. After all fair hearing in an election matter is not a one way traffic but three-way bestower. It is justice to the petitioner, justice to the respondent and justice to the electorate which desire to have the outcome of a clear judicial contest as to who should preside over their affairs. I draw this analogy from the pronouncement of Oputa, JSC in *Josiah v. The State* (1985) 16 NSCC H (pt. 1) 132 at 135. F
G
H

For the above and the fuller reasons contained in the lead judgment, I too feel that the appeal should be allowed. I order accordingly and set aside the judgment of the court below. I endorse

the consequential orders in the lead judgment inclusive of that relating to costs.

APPEAL NO. SC.475/2012

This appeal has bearing with SC.473/2012. Since hearing of the petition at the trial Tribunal is in progress in respect of the subsisting paragraphs of the petition, I hereby keep my peace in respect of SC. 475/2012.

PETER-ODILI JSC (CFR)

I agree totally with the judgment just delivered by my learned brother, Bode Rhodes-Vivour, JSC. I am also at one with the reasoning through which he came by the decision. A few remarks would underscore my support. This appeal is against the judgment of the Court of Appeal, Benin Judicial Division dated 15th November, 2012 whereby the Court below allowed substantially the appeal lodged before it by the 1st Respondent against the Ruling of the Governorship Election Tribunal delivered on 27th September, 2012 in which the Tribunal struck out paragraphs of the Petition brought before it by the 1st Respondent on the ground that the two main reliefs were not rooted in the only ground of Petition as well as the facts relied on. Also in the ruling is that the said paragraphs of the petition were vague.

The Court of Appeal in allowing the appeal based its decision on paragraph 9 of the Reply of the 1st Respondent (as petitioner) to the Appellant's Reply (as Respondent) to the petition. The Appellant being aggrieved has appealed to the Supreme Court by Notice of Appeal dated 20th November, 2012 of 8 grounds of appeal.

FACTS BRIEFLY STATED:

The 1st Respondent, General Charles Airhiavbere was the Peoples Democratic Party's candidate for the 14th July Gubernatorial Election in Edo State. The appellant is the Action Congress of Nigeria candidate for the same election. At the end of the said election, the Appellant was declared by the 3rd Respondent as the winner with a total of 477,478 votes as against the 1st Respondent's votes of 144,235. Dissatisfied with the declaration, the 1st Respondent filed a Petition dated 2nd August, 2012 challenging the election and return of the appellant as the Governor of Edo State. The peti-

tion at paragraph 8 thereof raised a sole ground in challenge of the said election, viz:-

“8. GROUNDS (SIC) OF THE PETITION:

The grounds of this petition are (sic) as follows:-

The Petitioners say that the grounds of this petition are That the ‘PURPORTED ELECTION’ for the office of the Governor of the Edo State which took place on the 14th day of July, 2012 was invalid by reason of corrupt practices and non-compliance with the provisions of the Electoral Act 2010 (as amended).

The reliefs claimed in the Petition are as follows:-

“30. THAT IT BE DETERMINED *that the 1st Petitioner is entitled to be returned by the 3rd and 5th Respondents as having been duly elected as the Governor of Edo State by reason of having scored the highest number of lawful votes cast at the governorship Election held on the 14th day of July, 2012.*

30. IN THE ALTERNATIVE, THAT IT BE DETERMINED *that the Election of the 1st Respondent was invalid by reason that he was not qualified to run for the office of Governor of Edo State having not met the mandatory statutory requisite qualifications to contest in the election and other non-compliance with the provisions of the Electoral Act 2010 (as amended).*

3. Costs of this Petition.”

The Appellant herein raised a preliminary objection to the Petition on the ground that the Tribunal lacked jurisdiction to adjudicate on the Petition and grant the reliefs claimed as the petition as a whole disclosed no reasonable cause of action and the entire Petition was academic, vague and hypothetical. The Trial Tribunal heard arguments on the motion premised on the preliminary objection which that court upheld. The Court of Appeal set aside the ruling of the Tribunal hence this appeal. On the 7th day of January 2013 date of hearing, learned counsel for the Appellant, Chief Wole Olanipekun adopted their Brief of argument filed on 23/11/12 and also a Reply Brief to the 1st Respondent’s Brief. The Reply Brief was filed on 6/12/12.

In the Appellant’s Brief were formulated three issues for determination as follows:-

(i) Considering the pleadings of the 1st Respondent (as Petitioner), particularly the sole ground of the Petition, the vague facts

pleaded thereon and the reliefs thereunder, whether the Lower Court was not in grave error in upturning the Judgment/Ruling of the trial Election Tribunal by restoring the paragraphs of the petition struck out by the said Tribunal, including the reliefs - Grounds 4, 5, and 6.

(ii) Whether the Lower court was not altogether wrong in its making use of paragraph 9 of the 1st Respondent's Reply to the Appellant's Reply (to the 1st Respondent's petition) in restoring the struck out paragraphs of the petition by the trial Tribunal-Ground 2.

(iii) Considering the clear provisions of Section 31 (4) (5) and (6) of the Electoral Act 2010 (as amended), read together with the pleadings of the petitioner, whether the Lower court did not fall into a serious error in holding that the Trial Election Petition Tribunal has jurisdiction to adjudicate on the purported issue of disqualification of the appellant -Grounds 1, 3, 7 and 8.

Chief E. L. Akpofure SAN of counsel for the 1st Respondent adopted their Brief filed on 27/11/12 and crafted three issues for determination, viz:-

1. Whether the Lower Court was right when it held that the Governorship Election Tribunal has jurisdiction to hear and determine the issue of qualification or non-qualification of the Appellant to contest the Governorship Election held in Edo State on 14th July, 2012 as formulated in 1st Respondent's petition- Grounds 1, 3, 7 and 8.

2. Whether or not the Lower Court was right in restoring the paragraph of the petition struck out by the trial Tribunal. Distilled from - Grounds 4, 5 and 5.

3. Whether the Lower Court's reference to paragraph 9 of the 1st Respondent's Reply to the Appellant's Reply to the petition occasioned perversion of justice -Ground 2.

Learned counsel for the 2nd Respondent informed the Court he did not file a Brief.

For the 3rd, 4th and 5th Respondents a brief settled by Ahmed Raji SAN was adopted by learned counsel on its behalf. The Brief was filed on 30/11/12 and in it learned counsel for 3rd, 4th and 5th Respondent conceded the appeal.

I would like to utilize issue No.1, of the Appellant which when determined, settles the issues raised in issues 2 and 3 which viewed closely are similar to the issue 1 aforesaid.

ISSUE No.1:

Considering the pleadings of the 1st Respondent (as Petitioner) particularly the sole ground of the Petition, the vague facts pleaded thereon and the reliefs hereunder, whether the Lower Court was not in grave error in upturning the Judgment/Ruling of the Trial Election Tribunal by restoring the paragraphs of the Petition struck out by the said Tribunal, including the reliefs. B

Chief Olanipekun SAN contended for the Appellant that the Trial Tribunal rightly held that pleadings in paragraphs 12 (iv), 13 (i), (13) (ii), 23, 24, 25, 30 (1), 30 (2) are vague, incomprehensible and nebulous and accordingly struck them out. That it was the Court of Appeal which erred by setting aside that Ruling of the trial Court. He further stated that the Lower court failed to appreciate the fact that paragraphs 30 (1), (2) has no nexus with the sole ground of the Petition. That on the face of the Petition itself, the sole ground is at cross-purposes with the facts pleaded; while the ground and facts pleaded on one hand have no nexus with the reliefs on the other hand. C

For the Appellant it was also canvassed that the Court of Appeal holding that the Tribunal appeared to have considered only the bare pleadings in the Petition and failed to consider the particulars applied at paragraph 9 of the Petitioner's Reply to the 1st Respondent's Reply. That what the Court below did was not within its ambit of adjudication of the matter before it and thereby compromised the Appellant's right to fair hearing the Court of Appeal having raised the issue suo motu without affording Appellant the opportunity of being heard on it. He cited *Oyeyemi v. Commissioner for Local Government, Kwara State* (1992) 2 NWLR Pt. 226) 661, *Ogundele V. Ogiri* (2009) 18 NWLR (Pt. 1173) 219 at 238. D

Chief Akpofure SAN for 1st Respondent stated in response that Section 138 (1) (a) of the Electoral Act, 2010 (as amended) empowers an aggrieved candidate to challenge the return made at an election conducted under the Act on the ground that the person whose election is questioned was, at the time of the election, not qualified to contest the said election. That they specifically pleaded this non-qualification in paragraphs 12 (iv), 24 & 25 of the Petition. E

Learned Senior Counsel said that the Tribunal itself found the contention on the non-qualification of the Appellant as weighty and F

so cannot justify having those paragraphs in relation thereto struck out. That the 1st Respondent's petition at the Trial Tribunal is hinged on more than one ground and so the Tribunal was wrong to say no ground supported the matter of non-qualification. He cited Hope Democratic Party v. INEC (2009) 8 NWLR (pt. 1143) 297 at 315.

B In reply on points of law, learned counsel for the appellant urged the court to distinguish the facts in Hope Democratic Party V. INEC (supra) which the 1st respondent was hanging on to find a ground to sustain the pleadings on the non-qualification of the appellant to contest the election. From the summary of the submissions
C above in context with the Petition, pleadings, reliefs and the sole ground, it can be seen that the contest is premised on whether or not Trial Tribunal was right to have struck out the paragraphs it did and retained others. The next question that naturally comes up is if it was
D Court of Appeal that did right by setting aside what the Tribunal did.

Indeed the sole ground of the petition was really *"That the purported election was invalid by reason of corrupt practices and non-compliance with the provisions of the Electoral Act, 2010."* There is no disputing the fact that a challenge to the appellant's non-academic qualification for the office he sought, entered an election for and was declared winner and thereafter sworn in as Governor of Edo State is a very weighty fact or serious a matter. It becomes really
E strange that such a contest acclaimed by either side and recognized by this court as grave should find itself without a ground and to be
F smuggled into a foreign territory such as the sole ground in the Petition which ground talks of corrupt practices and non-compliance with the provisions of the Electoral Act, 2010 as amended). Adumbrating further is to say that a candidate's non-qualification is a matter which
G came into existence long before the election and even before election was ever contemplated. Therefore to take such a fact and slot it into what transpired on the day of the election is akin to strange bedfellows co-habiting.

As if the above was not enough, the pleadings in relation to
H this non-qualification are clearly bare without flesh, nothing supporting. It is therefore easy to see how the mind of the trial tribunal worked and that tribunal not seeing any need to leave such incompetent paragraphs of the petition hanging to no purpose. In short, Section 138(i) (b) of the Electoral cannot be anchor for pre-election matters

intertwined with electoral offences or infractions on day of election accommodated under one umbrella of a single Ground which ground covers only the electoral transactions of the day.

That said, it needs be said that it was the Court of Appeal which went off course by importing a paragraph 9 of the Reply of the respondent to the Appellants Reply to the Petition. This clearly was the appellate court entering into the arena and seeing that there was no material on which it would set a fresh case, then went into purely extraneous matters to fish out the equipment to get an answer for a situation begging for an answer. In doing this the Court of Appeal was wrong in suo motu driving the process and without affording the parties a hearing and compromising the fair hearing of the appellant.

Such a perverse action has to be corrected. See *Oyeyemi v. Commissioner for Local Government of Kwara State* (1992) 2 NWLR (Pt. 226) 661; *Olusanya v. Jibowu* (1983) NSCC 97 at 102. Chief Akpofure for the 1st respondent had tried very strenuously to get this court to apply the case of *Hope Democratic Party v. INEC* (2009) 8 NWLR (Pt. 1143) 297 and for the court to seek out a ground to cover the vexed issue of non-qualification. That cannot be since the facts in *Hope Democratic Party V. INEC* (supra) are opposite to what we have here. In the *Hope's* case supra, the petition did not put up a ground but had the pleadings well covered from which out of the abundance of caution, this court could ferret out the embedded grounds. In the case in hand the Petitioner had himself settled for the ground he crafted for himself unequivocally and in plain words therefore any attempt by this court to go outside that ground to bring in other grounds would be tantamount to making the case for the 1st respondent/petitioner. An entry into the boxing ring as a contestant when the actual contestants are known. Anyway the court has no business doing that, even if the disputing parties are not identifiable or identified.

There is also no basis for the contention that allowing what the tribunal did would be giving room to technical justice. This is because as in the case in hand when the process or parts of a process are of no use nothing holds back the hand of the court to terminate such in limine. See *Thomas v. Olufosoye* (1986) 1 NWLR (Pt. 18) 669 CPC v. *INEC* (2011) 18 NWLR (pt. 1279) 493 at 558 - 559. From the foregoing and the fuller reasons in the lead judgment, this appeal is

allowed in part. The decision of the Court of Appeal setting aside the trial tribunal Ruling is set aside. The Ruling of the trial tribunal is restored except for the restoration of paragraph 30(1) of the petition, the first part of the two Reliefs. I abide by the consequential orders in the lead judgment.

B APPEAL NO.SC.475/2012

This appeal stems from the same background and facts in the appeal just decided. There is no need to comment further in this appeal since it is caught up by the decision in SC. 473/2012 just made and the imminent continuation of the trial at the tribunal. The matter would therefore rest as I say no more.

OGUNBIYI JSC

D The determinant focus of this appeal is centered squarely on paragraph 8 of the petition as depicted from the grounds predicated some which states as follows:-

“GROUNDS OF THE PETITION

The grounds of this petition are as follows.-

E *The Petitioners say that the grounds of this petition are that the “PURPORTED ELECTION” for the office of the Governor of Edo State which took place on the 14th day of July, 2012 was invalid by reason of corrupt practices and non compliance with the provisions of the Electoral Act 2012 (As Amended). ”*

F Following from the foregoing paragraph, the grouse alleging the invalidation of the election were corrupt practices and non-compliance with the provisions of the Electoral Act 2012 (As Amended). The reproduction of the threefold reliefs sought by the petitioners
G are also contained of paragraph 30 of the petition as follows:-

“30. WHEREFORE Your Petitioners pray as follows:

THAT IT BE DETERMINED that the 1st Petitioner is entitled to be returned by the 3rd and 5th Respondents as having been duly elected as the Governor of Edo State by reason of having scored the
H *highest number of lawful votes cast of the Governorship Election held on the 14th day of July, 2012.*

2. IN THE ALTERNATIVE, THAT IT BE DETERMINED that the Election of the 1st Respondent was invalid by reason that he was not qualified to run for the office of Governor of Edo State having

not met the mandatory statutory requisite qualification to contest in the Election and other non-compliance with the provisions of the Electoral Act 2012 (as amended).

3. Costs of this Petition.”

With reference to the ground predicated the petition, it is obvious that the alternative relief (2) that questions the qualification of 1st respondent/appellant has no correlation or bearing whatsoever with the sole ground challenging the petition. The ground in otherwords is out rightly incongruous with the relief as specified. The petitioner did not also pitch his case on that ground. Suffice it to say however that it was the Justices of the lower court in their wisdom who, suo motu, raised the issue by relying on paragraph 9 of the petitioner’s response to appellants reply and hence made out a case for respondent. This is what the lower court had to say for instance in its judgment of pages 109, 110 and 112 of the record of appeal.

“However, pleadings must be examined in whole. They cannot be isolated or compartmentalized. The Tribunal appeared to have considered only the bare pleadings in the petition. Let even (sic) admit without conceding that the paragraphs 12 (iv) and 24 are not copious enough, what of the particulars supplied in paragraph 9 of page 689 - 690 of the Petitioner’s Reply to 1st Respondent’s reply.

Paragraph 9 of the Reply to the 1st Respondent’s Reply of page 689 States as follows:

9. In reply to paragraphs 27 and 28 of the 1st Respondent’s Reply to the Petitioner’s petition, the Petitioner States that the 1st Respondent is not the owner of Secondary Modern School Certificate and the altered Testimonial presented to the 3rd Respondent and the 1st Respondent does not have Primary School Leaving Certificate... I am of the humble but firm view that on a corporate reading of the pleadings of the Appellant of the lower court, they were clear and direct and positively indicated the complaints of petitioner.

By no stretch of the imagination can the total pleadings of the Appellant be called vague and a wild goose chase. Full details and particulars were given in the pleadings of what his case is about. I am of the view that paragraphs 12 (iv), 24 and 25 and other portions of the total pleadings of the Appellant show the complaint in the petitions. They are hereby restored.”

As rightly submitted and tabled by the appellant’s learned coun-

sel, the view held by the lower court *supra*, was certainly influenced by paragraph 9 under reference and which was not made an issue before the lower court. Further still and to compound the situation, the said paragraph 9 was, by the Trial Tribunal struck out on the ground that it did not relate to the appellant's paragraphs 27 and 28.

B The law is well settled that parties are not expected to spring surprises on their opponents by their pleadings but ought to be well informed in good time of what case to expect in court and hence prepare in its defence thereof. The authority in the case of Hope Democratic Party V. INEC (2009 8 NWLR (Part 1143) 297 relied upon by the 1st respondent's counsel is not applicable to his case but very much distinguishable. Contrary to the case at hand, the petitioner in that case did put up a ground and his relief was well within the claim and not outside. Parties are bound by their pleadings. The D Petitioner's alternative relief (2) in the absence of any correlative complaint has no basis in imposing on the appellant to defend a non-existent allegation not made against him. To do otherwise and to subject him to the unknown would certainly work great injustice against him. The appellant's business is to do with the known and existing E situation. The circumstance of the case at hand would amount to changing our adversarial system of adjudication to inquisitorial.

The due process of such an amendment is not shown to have been followed. The appellant's complaint before this court is very well founded and on the authority of the case of Oyeyemi V. Commissioner for Local Government Kwara State (1992) 2 NWLR (Pt F 226) 661. It is well settled that a party who complains of a breach of his right to fair hearing needs not show what damages or losses he has suffered. It is sufficient injustice that the lower court pronounced on G the paragraph raised *suo motu* and against the appellant without affording him a hearing. His fundamental right to fair hearing had been breached as it goes to the root of the case. It was the extraneous issue raised that was used and relied upon in giving judgment against the appellant. In an attempt to save the "bare" pleadings, H recourse was therefore had to the extraneous materials which were never placed before the court. It is needless to emphasize that the Tribunal in the circumstance had no jurisdiction to adjudicate on issue of qualification which was not raised. The second relief sought at paragraph 30 (2) of the petition is therefore out of place and has no

ground upon which to subsist. I make an order that the relief ought to and is hereby struck out.

In respect of relief 30 (1) however same is hereby restored and sustained and the outcome is left to be determined by the Tribunal. In other words and on the totality of the appeal, I completely associate myself with the lead judgment of my brother Rhodes-Vivour JSC and also allow the appeal in terms of the orders made in the lead judgment inclusive of that made as to costs. B

APPEAL NO.SC.475/2012

The appeal in this case is predicated and subsisting on Appeal No. SC. 473/2012 with same yet to be concluded, it is therefore sub-judice and I say no more. C

ALAGOA JSC

This is an appeal against the judgment of the Court of Appeal Benin Division which allowed the appeal against the ruling of the Governorship Election Tribunal delivered on the 27th September, 2012. The facts leading up to the present appeal before us are briefly set out as follows: D

The Appellant Comrade Adams Aliyu Oshiomhole was the ACN (Action Congress of Nigeria) candidate in the July 14th 2012 Gubernatorial Election in Edo State while the 1st Respondent Charles Ehigie Airhiavbere, Major General (Rtd) was the PDP (Peoples Democratic Party) candidate in the same election. At the end of the said election, the Appellant was declared the winner by the 3rd Respondent, he having been adjudged as having scored or polled total votes of 477,478 as against 144,235 votes said to have been scored by his PDP candidate. E

Aggrieved by the results of the said election as declared by the 3rd Respondent the 1st Respondent Major General Charles Ehigie Airhiavbere, (Rtd), filed a petition against the said results on the 2nd August, 2012 which is contained at pages 1-14 of volume 1 of the Record of Appeal. Paragraph 8 of the said petition reads as follows:- F

GROUNDS OF THE PETITION

The grounds of this petition are as follows: G

The Petitioners say that the grounds of this petition are that the “purported election” for the office of Governor of Edo State which H

took place on the 14th day of July, 2012 was invalid by reason of corrupt practices and non-compliance with the provisions of the Electoral Act 2010 (As amended).

I think it is pertinent to state at this stage that apart from paragraph 8 no other paragraph of the petition dealt with the grounds of appeal and it is safe to say that though paragraph 8 referred to grounds of the petition, the said petition disclosed only one ground which referred to corrupt practices and non-compliance with the provisions of the Electoral Act 2010 (as amended).

Paragraph 30, page 13 of Volume 1 of the Record of Appeal stated the reliefs sought by the petitioner as follows:-

WHEREFORE YOUR petitioners pray as follows:-

1. THAT IT BE DETERMINED that the 1st Petitioner is entitled to be returned by the 3rd and 5th Respondents as having been duly elected as the Governor of Edo State by reason of having scored the highest number of lawful votes at the Governorship election held on the 14th day of July, 2012.

2. IN THE ALTERNATIVE THAT IT BE DETERMINED that the election of the 1st Respondent was invalid by reason that he was not qualified to run for the office of Governor of Edo State having not met the mandatory statutory requisite qualification to contest in the election and other non-compliance with the provisions of the Electoral Act 2010 (as amended).

3. Costs of this petition.

As a result of this petition the Appellant (now as 1st Respondent) before the trial tribunal raised a preliminary objection in which he contended that the tribunal lacked the jurisdiction to entertain the petition and grant the reliefs sought as the petition disclosed no reasonable cause of action, was academic, vague and hypothetical.

A Motion on Notice in line with the preliminary objection was filed by the 1st Respondent. The reliefs sought for and contained at p. 654 of Volume 2 of the Record of Appeal are inter alia as follows:-

AN ORDER striking out and/or dismissing the petition for being incompetent, fundamentally defective and vesting no jurisdiction in the Tribunal to adjudicate on it and;

AN ORDER striking out paragraphs 8, 12 (iv), 13 (i), (ii), (iii), 14 (a-q), 15 (a-k), 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30 (1) and (2) of the petition, afortiori striking out the entire petition.

AND FOR SUCH FURTHER or other ORDERS as this Honourable Tribunal may deem fit to make in the circumstance.

Suffice it to say that the trial tribunal in its ruling considered as vague, nebulous and incomprehensible paragraphs 12 (iv), 13 (i), 13 (ii), 23, 24, 25, 30 (1 and 30 (2) of the petition and accordingly struck them out. The aggrieved 1st Respondent Major General Charles Ehigie Airhiavbere (Rtd) appealed to the Court of Appeal which allowed the 1st Respondent's appeal and restored the paragraphs of the petition struck out by the trial tribunal. B

In allowing the appeal of the 1st Respondent, the Court of Appeal, (the lower court) heavily also relied on paragraph 9 of a purported Reply of the 1st Respondent (as petitioner) to the Appellant's Reply (as Respondent) to the petition. It is this aspect of this appeal before us that I would wish to comment on. Of paragraph 9, the lower court had said in its judgment thus, "*What of the particulars supplied in paragraph 9 at page 689-690 of the petitioner's reply to the 1st Respondent's Reply.*" The said paragraph 9 referred to the non-qualification by the Appellant to contest the election for academic reasons. It is noteworthy that the 1st Respondent (as Appellant) before the lower court did not raise any issue in connection with paragraph 9 of his reply to the Appellant's reply as Respondent. C D E

It has been held in a number of decided cases that a party cannot go outside the grounds of his petition or pleadings. See ABUBAKAR v. YAR'ADUA (2008) 19 NWLR (PART 1120) 1 at 84; OSHO & ANOR. V. FOREIGN FINANCE CORPORATION & ANOR (1991) 4 NWLR (PART 184) 157; PEENOK INVESTMENT LTD V. HOTEL PRESIDENTIAL LTD (1932) NSCC VOL. 13, 477. F

On the state of the petition which is in the nature of pleadings, the ground of the petition is without doubt and as disclosed in paragraph 8 of the petition that the election was voided by reason of corrupt practices and non-compliance with the Electoral Act 2010 (as amended). Whether the 1st Respondent/Appellant was qualified to contest the election or not was not in issue and the petitioner must be held bound by what he has pleaded. The lower court was therefore clearly in error to have held that the trial tribunal had jurisdiction to hear and determine the issue of qualification. G H

On a careful examination of HOPE DEMOCRATIC PARTY V. INEC (2009) 8 NWLR (PART 1143) 297 relied upon by counsel for

the 1st Respondent Chief Akpofure, SAN, that case is inapplicable to the present situation. In HOPE's Case (*supra*) the petitioner did not put up a ground while in the present case the petitioner had relied on a ground for the petition and it would be nebulous to go outside it. The issue of non qualification was not properly before the lower court and it would be making a case for the 1st Respondent to have even attempted to delve into it. I see no nexus or connection between the only ground of the petition as stated in paragraph 8 of the petition and what has been averred as to the non qualification of the Appellant to contest the election. The petition must therefore be considered defective as to the issue of non-qualification.

It is settled on the authorities that an issue for determination must arise from a ground. See *KALU v. ODILI* (1992) 6 SCNJ 76; *CHUKWUMA OKWUDILI UGA V. AMANCHUKWU OBIEKWE & ANOR* (1989) 1 NWLR (PART 99) 566 at 580; *STANDARD CONSOLIDATED DREDGING & CONSTRUCTION CO. V. KATONCREST NIG. LTD* (1986) 5 NWLR (PART 44) 791; *OKOYE V. NCF CO. LTD* (1991) 6 NWLR (PART 199) 501. In the present case the issue of non-qualification of the Appellant to contest the election has no nexus with the sole ground being canvassed by the 1st Respondent. I am also to add that from a cursory examination of the petition, paragraphs 12 (iv), 24 and 25 having no bearing with the sole ground of the petition and a blanket restoration of the grounds of the petition struck out by the trial tribunal by the court below is wrong.

For the above reasons and the fuller reasons given by my learned brother Bode Rhodes-Vivour, JSC in his lead judgment which I had the privilege to read before now, I would also allow the appeal in part while abiding by all the other order or orders contained in the said lead judgment including the order on costs.

APPEAL NO. SC.475/2012

The above stated appeal has the same parties as appeal No. SC/473/2012 just determined. It arose out of the same facts and circumstances as Appeal No. SC/473/2012. The hearing of the petition has still not been concluded and I would consider it unsafe to comment on the said Appeal No. SC. 475/2012.