

**SUPREME COURT OF NIGERIA**  
FRIDAY 20TH DECEMBER, 2013. SC. 556/2013  
**CORAM:- W. S. N. ONNOGHEN, M. S. MUNTAKA-  
COOMASSIE, S. GALADIMA, N. S. NGWUTA,  
K. M. O. KEKERE-EKUN, JJSC**

NICHOLAS CHUKWUJEKWU

UKACHUKWU

..... APPELLANT

AND

1. PEOPLES DEMOCRATIC

PARTY (PDP)

2. ALHAJI BAMANGA TUKUR

..... RESPONDENTS

3. DR. TONY NWOYE

4. INDEPENDENT NATIONAL

ELECTORAL COMMISSION (INEC)

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APPEALS - Judgment - Arrest - Application - Competence - Appellant's application which is intended to arrest judgment of CA - Is not recognized by SC rules and hence it is misconceived and incompetent (H1)

COURT PROCESSES - Abuse - Features - It shows in the improper use of judicial process by party - To interfere with the due administration of justice (H2)

COURT PROCESSES - Abuse - Effect - Courts do not treat abuse as mere irregularity - As it is a fundamental vice punishable by dismissal of the offending process (H3)

***FACTS***

Plaintiff/appellant commenced this action at the Federal High Court Port Harcourt, challenging the victory of 3<sup>rd</sup> respondent at the primary election conducted on 24<sup>th</sup> August 2013 by 1<sup>st</sup> respondent (PDP) to nominate its candidate for the 16<sup>th</sup> November 2013 gubernatorial election in Anambra State. In its judgment, the court ordered 4<sup>th</sup> respondent (INEC) to include appellant in its list of candidates for the said gubernatorial election. Aggrieved, 1<sup>st</sup> - 3<sup>rd</sup> respondents filed appeals in the Court of Appeal Port Harcourt Division.

The appeals were consolidated. In the course of the proceedings in the consolidated appeals (i.e. CA/PH/695/2013 and CA/PH/696/2013), appellant filed applications praying for an order disqualifying the panel of the Justices of the Court of Appeal in the appeals on grounds of bias and that learned counsel for 1<sup>st</sup> and 2<sup>nd</sup> respondents be disqualified from continuing to prosecute the appeal on the ground that the authority conferred on the counsel by PDP had been withdrawn. Appellant also filed application seeking for extension of time to file his brief of argument.

In its ruling on the 8<sup>th</sup> October 2013, the court refused appellant's applications. Appellant lodged appeal in Supreme Court against the ruling of Court of Appeal refusing his applications. The consolidated appeals were heard at the Court of Appeal and adjourned for judgment on a date to be communicated to the parties. Meanwhile, appellant filed application before the Supreme Court, seeking for an order staying further proceedings in the Court of Appeal in the consolidated appeals pending the hearing and determination of his interlocutory appeal by the Supreme Court, against the 8<sup>th</sup> October 2013 ruling of the Court of Appeal. The grounds for the application inter alia include the denial of appellant's right to fair hearing on account of bias of the Justices of the Court of Appeal.

**HELD** (Unanimously dismissing the application per **ONNOGHEN JSC**)

*Judgment - Arrest - Application*

**1. In the instant case, learned senior counsel for applicant, J.B. DAUDU, SAN has submitted that the application is not one for the arrest of judgment of the lower court. The above conclusion of learned senior counsel cannot be correct having regards to the facts of the case. It is not disputed that as at the time the application whose prayers have earlier been reproduced in this ruling, was filed, the lower court had heard the appeal even though without the oral participation of counsel for appellant/applicant and adjourned the matter for judgment; that appellant, being dissatisfied with the rulings of the lower court dismissing the application for disqualification of**

***the justices on grounds of bias, disqualification of counsel for 1st and 2nd respondents on the grounds that his instructions had been withdrawn by his clients, extension of time to file 1st respondent brief etc; had filed an appeal to this court. It is very clear therefore that as at the time the application was filed in this court, there was nothing left in the proceedings in the lower court except the delivery of the judgment so adjourned in respect of the consolidated appeals. It is therefore very clear that the application under consideration is aimed at or intended to arrest the said judgment though couched as a stay of further proceedings in the appeals.***

***It follows, therefore, that the application being to arrest the judgment of the lower court about to be delivered, it is an application not recognized by the rules of this court and consequently misconceived and incompetent.***

***It is therefore my considered view that the decision in Dingyadi's case supra does not derogate from the general principle stated in the Newswatch Communications Ltd case, also supra; that an application to arrest a judgment about to be delivered by a competent court/tribunal is unknown to the jurisprudence of this country and consequently incompetent and misconceived in law and fact. (pp. 4599 D/4604 H)***

#### *COURT PROCESSES - Abuse - Features*

***2. The concept of abuse of process involves circumstances and situations of infinite variety though its common feature is the improper use of the judicial process by a party in litigation to interfere with the due administration of justice. The abuse may lie both in proper and improper use of the judicial process in litigation though generally the term is used in relation to improper use of the judicial process to the annoyance, irritation, of the opponent and the effective and efficient administration of justice, such as institution of multiple actions on the same subject matter against the same opponent on the same issue. To institute an action during the pendency of another one claiming the same reliefs amounts to an abuse of court process and it does not matter whether the matter is an appeal or not, as long as the previous action has not been***

***finally disposed of. It is the subsequent action that is in abuse of the process of the court.*** (p. 4604 C)

*COURT PROCESSES - Abuse - Effect*

**3. Where an abuse of processes occurs the courts do not take it lightly as it is not a mere irregularity. It is a fundamental vice punishable by dismissal of the offending process.** (p. 4604 F)

**REPRESENTATION**

J.B. Daudu, SAN with Messrs. Orji Nwafor-Orizu; B. C. Igwilo; S. N. Anichebe; Esther Abbey-Olo; S. N. Obinna; U. Ifakandu; C. Oledimah and Nnenna Nwafor-Orizu, for the Appellant/Applicant

Chief Joe-Kyari Gadzama, SAN with Messrs. Dr. Amaechi Nwaiwu, SAN; Paul Erokoro, SAN; Prof. Andrew Chukwuemerie, SAN; J. N. Egwuonwu, Esq; B. O. Igwe, Esq; Kemasuode Wodu, Esq; Henry Michael-Ihunde, Esq; N. N. Shaltha (Miss); A. S. Akingbade, Esq; U. M. Jawur, Esq; Ekere Eric, Esq; O. F. Olaopa (Miss); F. I. Bukar (Miss); Victoria Agu (Miss); Tina B. Eto (Miss) and M. A. Ajuonuma, Esq., for the 1st - 2nd Respondents

G. S. Pyul, SAN with Messrs U.G.O. Azinge; Chief Okey Aroh; C. Ezika; P. Agu; S. I. Okonkwo; I. Emenike; B. Fwangshak; F. S. Jimba; A. Robinson; and U. Obeuwou, for the 3rd Respondent

Ibrahim K. Bawa, Esq. with Messrs Alhassan A. Umar; Lynda Ikpeazu; T. Nweke; A. I. Goni and I. S. Mohammed for the 4th Respondent

**CASES REFERRED TO**

Audu v. FRN (2013) NSCQR 456

Dingyadi v. INEC (2010) 4 - 7 SC (pt. 1) 76

Newswatch Ltd. v. Attah (2006) 12 NWLR (pt. 993) 144

Shettima v. Goni (2011) 18 NWLR (pt. 1279) 413

H Inakoju v. Adeleke (2007) 4 NWLR (pt. 1025) 427

Madukolu v. Nkemdilim (1962) 2 SCNR 341

Okafor v. Nnaife (1987) 4 NWLR (pt. 64) 129

A-G Anambra State v. UBA (2005) 15 NWLR (pt. 947) 44

Arubo v. Aiyeleri (1993) 3 NWLR (pt. 280) 126

Saraki v. Kotoye (1992) 9 NWLR (pt. 264) 156

Ali v. Albishir (2000) 3 NWLR (pt. 1073) 94

Umeh v. Iwu (2008) 8 NWLR (pt. 1089) 225

Globe Motors Ltd. v. Honda Co. Ltd. (1998) 5 NWLR (pt. 550) 373

Akinyemi v. Odua Invest. Co. Ltd. (2012) 17 NWLR (pt. 1329) 218

B

### **RULES REFERRED TO**

Court of Appeal Rules 2011 (as amended), O. 18 r. 9(4)

### **LEAD REASONS FOR RULING DELIVERED ON 22-10-2013 BY ONNOGHEN JSC**

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On the 10th October, 2013 appellant filed an application in the court praying for an order “*staying further proceedings in the Court of Appeal, Port Harcourt Division, in the consolidated appeals nos. CA/PH/695/2013 Tony Nwoye v. Ukachukwu & 3 Ors and CA/PH/696/2013, PDP v. Nicholas Ukachukwu & 2 Ors pending the hearing and determination of the interlocutory appeal by this Honourable Court filed against the Rulings of the court below which ruling was delivered on this (sic) on 8th day of October, 2013 on a motion to disqualifying the Justices of the court from further sitting or adjudicating over the consolidated appeals; application to disqualify counsel to the PDP and ruling on application for extension of time within which to file the 1st respondent’s brief of argument*”

E

The grounds on which the application is brought are stated as follows:-

F

“1. The appellant/applicant was denied fair hearing on account of apparent bias of the Justices of the Court of Appeal.

2. Further proceedings by the court will destroy the subject matter of the appeal.

G

3. A situation of complete helplessness may be foisted on the Supreme Court if further proceedings are not stayed in this suit.

4. Further proceedings in the Court of Appeal may render the outcome of the suit at the Supreme Court nugatory.

5. There exist special circumstances for the grant of this application.

6. The appellants’ notice and grounds of appeal contains arguable grounds of appeal.”

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The application is supported by an affidavit of 14 paragraphs

as well as a further affidavit of 24 paragraphs filed on 17th October, 2013.

The facts of the case include the following:-

B In the course of the hearing/proceedings in the consolidated appeal nos. CA/PH/695/2013 and CA/PH/696/2013 at the lower court, applicant filed applications praying that court for an order disqualifying the justices constituting the panel hearing the said appeals on grounds of bias and relationship with the respondents in the appeals and that learned counsel for the present 1st and 2nd respondents, be disqualified from continuing to prosecute the appeal on the ground that the authority conferred on the counsel by PDP had been withdrawn. There was also a motion praying for enlargement of time within which the 1st respondent, now appellant in this court, can file his brief of argument.

D The lower court refused the applications for disqualification of the justices and of counsel for the present 1st and 2nd respondents and the motion for enlargement of time to file 1st respondent brief of argument was struck out.

E It is also the case of applicant that his right to fair hearing was breached by the lower court's refusal/failure to hear applicant before striking out his application despite his application for adjournment.

F The genesis of the case culminating in the application under consideration is that on the 24th day of August, 2013, the 1st respondent, Peoples Democratic Party, held its primary elections to elect its gubernatorial candidate for the Anambra State Governorship election scheduled for the 16th day of November, 2013, which primary election was won by the 3rd respondent, Dr. Tony Nwoye; applicant participated in the said election but was defeated resulting in applicant filing an action at the Federal High Court, Port Harcourt challenging the victory of the 3rd respondent.

G The Federal High Court delivered a judgment in which it ordered INEC, 4th respondent herein, to include applicant in its list of candidates for the said election.

H The decision of the trial court resulted in the 1st-3rd respondents herein filing appeals in the Court of Appeal, Port Harcourt Division which appeals were subsequently consolidated and heard on 8th October, 2013 and adjourned for judgment on the date to be communicated to the parties.

It should be noted that the hearing of the appeals by the lower court was preceded by the proceedings of that court in relation to the applications brought by the present applicant praying for the earlier mentioned reliefs of disqualification of the justices and counsel and enlargement of time to file 1st respondent brief of argument. There was also an application by applicant for an order that 1st respondent adduce further evidence on appeal, which was also struck out by the Court. B

It is the ruling on the applications that gave rise to the interlocutory appeal on which the instant application for stay of further proceedings is predicated. C

In moving the application, learned senior counsel for applicant, J. B. DAUDU, SAN submitted that applicant's right to fair hearing had been breached by the lower court and if stay is not ordered as prayed, the substance of the appeal pending before this court would be destroyed; that the grounds of appeal are arguable and contain substantial points of law which should persuade the court to exercise its discretion in favour of applicant; that the constitutional right of appeal of applicant would be jeopardized if the application is refused resulting in injustice to the applicant. D E

Learned senior counsel referred the court to various pages of the record where the right of fair hearing of applicant were allegedly interfered with by the lower court and relying on the case of Audu v. F.R.N (2013) NSCQR 456 at 469: Dingyadi v. INEC (2010) 4 - 7 SC (Pt. 1) 76 at 136 - 138 urged the court to grant the application. F

On his part, CHIEF GADZAMA, SAN for the 1st and 2nd respondents submitted that there are three (3) issues involved in the application to wit:-

(a) Whether the application does not amount to an arrest of the judgment of the lower court which is a procedure unknown to our law, relying on Newswatch Ltd. v. Attah (2006) 12 NWLR (Pt. 993) 144 at 179; Shettima v. Goni (2011) 18 NWLR (Pt. 1279) 413 at 425; Inakoju v. Adeleke (2007) 4 NWLR (Pt. 1025) 427 at 623 - 627 G H

(b) Secondly learned senior counsel submitted that there is no competent appeal before the court as the grounds of appeal are either of fact or mixed law and fact, and no leave of court was obtained before filing same; relying on Madukolu v. Nkemdilim (1962)

2 SCNR 341 at 355 etc.

(c) Thirdly applicant has not given any substantial reasons why the application should be granted, relying on *Okafor v. Nnaife* (1987) 4 NWLR (Pt. 64) 129 at 137: that all the requirements mentioned in the above case must be satisfied before the order can be made; that  
B applicant counsel was in court but at a later time refused to participate any further in the proceedings. He urged the court to dismiss the application.

Learned senior counsel G.S. PWUL, SAN for the 3rd respondent submitted that stay of proceedings is designed to preserve the  
C res and maintain the status quo; that the res in the appeal is the right of applicant to have the appeal heard on the merit and submitted that to grant stay would not result in the appeal being heard; that 3rd respondent who is appellant at the lower court has the right to have  
D his appeal decided by that court and any aggrieved party can appeal against the decision.

It is the further submission of counsel that where an interlocutory appeal can be heard along with the appeal on the substantive matter an appellate court will not order stay of proceedings.

E On his part, learned counsel for the 4th respondent IBRAHIM K. BAWA, ESQ left the matter to the discretion of the court.

J. B. DAUDU, SAN on points of law submitted that the appeal is competent and that it is for the court to examine the grounds of  
F appeal and determined their validity; that the present notice of appeal can support the application for stay; that the issue of arrest of judgment is not relevant as there is no application to arrest any judgment; that by "*proceedings*" we mean from the institution of action to the delivery of judgment; that the res in the case is the right of  
G applicant to be heard before the appeal is decided by the lower court.

At the conclusion of arguments, the court delivered an on the bench ruling in which the application was dismissed with reasons for the decision to be given today, 20th December, 2013, which I now proceed to do.

H In the case of *Newswatch Communications Ltd v. Attah* (2006) 12 NWLR (Pt. 993) 144 at 178 - 179, this court stated the position of the law in relation to an application for arrest of judgment of a court. It was decided that the procedure for arrest of judgment is now hardly known in our civil jurisprudence; that an arrest of judgment is an act



of staying a judgment, or refusing to render judgment in an action at law in criminal cases after verdict; that it was done usually for some intrinsic matter appearing on the face of the record, which would render the judgment, if given erroneous or reversible.

The court further stated that under the old common law rule the procedure is not peculiar to criminal cases alone but applicable in civil cases. B

The above position notwithstanding the court held that the procedure for arrest of judgment is alien to our rules of court and does not apply in civil matters and that the application under consideration was misconceived both in law and fact. C

The court further stated that the rules of court in Nigeria do not make provision for an application to arrest a judgment which is about to be delivered by a court and that any such application cannot be described as proper application. D

***In the instant case, learned senior counsel for applicant, J.B. DAUDU, SAN has submitted that the application is not one for the arrest of judgment of the lower court. The above conclusion of learned senior counsel cannot be correct having regards to the facts of the case. It is not disputed that as at the time the application whose prayers have earlier been reproduced in this ruling, was filed, the lower court had heard the appeal even though without the oral participation of counsel for appellant/applicant and adjourned the matter for judgment; that appellant, being dissatisfied with the rulings of the lower court dismissing the application for disqualification of the justices on grounds of bias, disqualification of counsel for 1st and 2nd respondents on the grounds that his instructions had been withdrawn by his clients, extension of time to file 1st respondent brief etc; had filed an appeal to this court. It is very clear therefore that as at the time the application was filed in this court, there was nothing left in the proceedings in the lower court except the delivery of the judgment so adjourned in respect of the consolidated appeals. It is therefore very clear that the application under consideration is aimed at or intended to arrest the said judgment though couched as a stay of further proceedings in the appeals.*** E F G H

***It follows, therefore, that the application being to arrest***

***the judgment of the lower court about to be delivered, it is an application not recognized by the rules of this court and consequently misconceived and incompetent.***

Learned senior counsel for appellant/applicant has cited and relied on the decision of this court in the case of *Dingyadi v. INEC* B (No. 1) (2010) 18 NWLR (pt. 1224) 1 in which this court stayed the delivery of the judgment of the Court of Appeal as his authority for his propositions. What are the facts of the case? The facts includes the following:-

C The 1st respondent, INEC, conducted governorship election in Sokoto State on the 14th of April, 2007, as it did in all the States of the Federation. The 2nd respondent, Alhaji Wamakko who was sponsored by the 4th respondent PDP was returned the winner of the election as he scored the highest number of votes cast.

D The 1st applicant contested the same election as a candidate of the 2nd applicant DPP, and scored the second highest number of votes, and was dissatisfied with the result of the election. He consequently filed an election petition at the Governorship and Legislative Houses Election Tribunal for Sokoto State challenging the declaration of the 1st respondent as the winner. These grounds for the petition include disqualification of the 2nd respondent based on double nomination. The petition was dismissed on the ground that the 2nd respondent was properly nominated and that he won the election by majority of lawful votes cast. His appeal to the Court of Appeal, Kaduna E Division, was allowed resulting in the court nullifying the election and ordered fresh election between the same candidates and same parties as appeared in the statement of result sheet.

F The fresh election so ordered was duly conducted on the 24th G day of May, 2008 and was again won by the 2nd respondent with overwhelming majority resulting in a second round of election petition proceedings, by the 1st respondent, in petition no. SS/EPT/GOV/1/2008. The petition called on the tribunal to interpret the judgment of the Court of Appeal in the appeal setting aside the election of H 2007. The election tribunal dismissed it for lack of jurisdiction to interpret the said judgment and that the petition was in abuse of process.

Being, again, dissatisfied 1st applicant appealed to the Court of Appeal, this time the Sokoto Division in appeal no. CA/S/EP/GOV/

10/09. The appeal was pending at the time the application for stay of proceedings etc was filed in this court.

However, and before the fresh election ordered by the Kaduna Division of the Court of Appeal was conducted, the 1st applicant filed an originating summons in suit no, FHC/ABJ/C/S/260/08 at the Federal High Court, Abuja on 20th April, 2008 seeking, inter alia, the interpretation of the same judgment of the Court of Appeal, Kaduna Division and the disqualification of the 2nd respondent from contesting the re-run election as ordered by the Court of Appeal, Kaduna Division. The suit was struck out for being incompetent and on the ground that the court has no jurisdiction to interpret the judgment by the Court of Appeal. The applicants were not satisfied with that decision and consequently appealed against same to the Court of Appeal in appeal no CA/A/278/08. B  
C

It should be noted that the applicants invoked the jurisdictions of the High Court and the Election Tribunal seeking the interpretation of the judgment of the Court of Appeal, Kaduna Division earlier mentioned, concurrently. D

However, while the appeal no, CA/A/278/08 was pending, the applicants filed an application at the Court of Appeal, Abuja Division for leave to raise fresh issue not raised at the trial court, to wit, that the trial court had jurisdiction to enforce the judgment of the Court of Appeal, Kaduna Division but the application was opposed and in a ruling delivered on the 30th day of November, 2009, the court refused the application on the grounds that to accede to the applicants' request to argue the fresh points, would amount to the court taking a fresh cause of action and assuming jurisdiction contrary to the provisions of Section 240 of the Constitution of the Federal Republic of Nigeria, 1999 and that what the applicants wanted to do in the court with the leave being sought was to change the subject of the case which they brought before the trial court for adjudication. E  
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The applicants were not satisfied with the decision and consequently appealed to the Supreme Court urging the court to allow the appeal, grant the reliefs sought at the trial court and invoke its inherent powers under Section 22 of the Supreme Court Act and determine the substantive appeal on the merit. H

While their appeal to the Court of Appeal Sokoto Division was awaiting determination, the applicants filed notices of withdrawal of

their appeals at the Court of Appeal and the Supreme Court on 12th February, 2010.

However, despite pending applications in opposition to the withdrawal, the notice of withdrawal was taken by the Supreme Court in chambers, on 10th March, 2010 and applicants interlocutory appeal was dismissed before the respondents' pending applications in opposition were heard.

When the applications of the respondents came up for hearing on the 15th of March, 2010 and it turned out that the appeal had been dismissed in chambers, the Supreme Court granted the respondents' oral application to stay proceedings before the Court of Appeal, Sokoto Division scheduled for 16th March, 2010 in appeal no. CA/S/EP/GOV/10/09 pending the determination of the motions by the respondents to the Supreme Court.

However, since the filing of the notice of appeal by applicants on the 4th day of December, 2009, parties filed several court processes including a motion dated 11th February, 2010 for, inter alia, an order granting a departure from the rules, allowing and/or directing parties to make use of the record of proceedings of the Court of Appeal and compiled by the 2nd respondent for the purpose of the appeal, an order staying proceedings at the Court of Appeal, Abuja in appeal no. CA/A/276/08 which related to and concerned the subject matter of the appeal pending the final determination of the appeals.

On 1st March, 2010, the 1st respondent filed a notice of motion in opposition to the withdrawal of the appeal while the 2nd respondent filed a motion on notice on 10th March, 2010 praying the court for an order striking out the notice of withdrawal of appeal filed by the applicants. The application of the 2nd respondent was followed by another one filed on 12th March, 2010 seeking an order to set aside the ex parte order of the Supreme Court in chambers on 10th March, 2010 dismissing the appeal and restoring the appeal to the cause list. The 3rd respondent also sought the same reliefs. The grounds on which the respondents sought the setting aside of the dismissal of the appeal included that the proceedings in chambers of the Supreme Court on 10th March, 2010 denied the 2nd respondent a hearing and violated his right to fair hearing which deprived the court of jurisdiction.

In reaction to the above, the applicants filed a motion on 19th March, 2010 seeking, inter alia, an order setting aside or otherwise vacating the earlier order made on the 15th day of March, 2010 staying proceedings or delivery of the judgment of the Court of Appeal, Sokoto Division in appeal no. CA/S/EP/GOV/10/2009 and an order dismissing or otherwise striking out all other pending applications filed by the respondents to the applicants' appeal which was dismissed on 10th March, 2010. There were other applications by the 1st respondent for preservation of the res while the 3rd respondent sought extension of time to cross appeal.

The issues calling for determination by the Supreme Court were primarily.

*"1. Whether the judgment delivered on 10th March, 2010 by the Supreme Court sitting in chambers dismissing the applicants' appeal ought to be set aside.*

*2. Whether the order of the Supreme Court made on 15th March, 2010 staying proceedings of the Court of Appeal, Sokoto Division in appeal no. CA/S/EP/GOV/10/09 ought to be vacated.*

*3. Whether given the circumstances of this case, the application seeking departure from the Supreme Court Rules ought to be granted, and,*

*4. Whether the proceedings of the Court of Appeal, Abuja Division in appeal no. CA/A/276/08 and the proceedings of the Court of Appeal, Sokoto Division in appeal no CA/S/EP/GOV/10/09 ought to be stayed".*

In its decision rendered on the 4th day of June, 2010, the Supreme Court granted the order setting aside the order dismissing the appellants appeal pursuant to the notice of withdrawal of the appeal and re-listing the appeal in the cause list add stayed proceedings in the appeal pending at the Court of Appeal, Sokoto Division, pending the appeal before the Supreme Court.

In granting the order staying further proceedings in the appeal pending before the Sokoto Division of the Court of Appeal, which in effect amounted to an arrest of the judgment of that court, this court, at pages 75 - 76 stated that where two actions of similar or same nature and between same parties and subject matter are being prosecuted concurrently before same court or different courts, it is the later in time that vacates; that the appeals before the Court of Ap-

peal, Abuja Division and Sokoto Division were both on the interpretation of the decision of the Court of Appeal, Kaduna Division and or whether the 2nd respondent was qualified to stand the election that returned him as the Governor of Sokoto State; that while the appeal before the Abuja Division of the court was filed in 2008; that of the B Sokoto Division was filed on 5th March, 2009; that the appeal before the Sokoto Division was later in time and consequently liable to be vacated.

It is very clear that the decision of this court supra, is based on the principles of abuse of court process in which a process filed in C abuse is usually vacated leaving the one filed earlier in time.

***The concept of abuse of process involves circumstances and situations of infinite variety though its common feature is the improper use of the judicial process by a party in litigation to interfere with the due administration of justice. The abuse may lie both in proper and improper use of the judicial process in litigation though generally the term is used in relation to improper use of the judicial process to the annoyance, irritation, of the opponent and the effective and efficient administration of justice, such as institution of multiple actions on the same subject matter against the same opponent on the same issue. To institute an action during the pendency of another one claiming the same reliefs amounts to an abuse of court process and it does not matter whether the matter is an appeal or not, as long as the previous action has not been finally disposed of. It is the subsequent action that is in abuse of the process of the court.***

***Where an abuse of processes occurs the courts do not take it lightly as it is not a mere irregularity. It is a fundamental vice punishable by dismissal of the offending process.*** See A-G Anambra State v. UBA (2005) 15 NWLR (Pt. 947) 44; Arubo v. Aiyeleri (1993) 3 NWLR (Pt. 280) 126; Saraki v. Kotoye (1992) 9 NWLR (Pt. 264) 156; Ali v. Albishir (2000) 3 NWLR (Pt. 1073) 94; H Umeh v. Iwu (2008) 8 NWLR (Pt. 1089) 225, etc, etc.

In the instant application, there is no contention that the judgment, sought to be arrested or further proceeding stayed, was an abuse of court process of any kind.

***It is therefore my considered view that the decision in***

***Dingyadi's case supra does not derogate from the general principle stated in the Newswatch Communications Ltd case, also supra; that an application to arrest a judgment about to be delivered by a competent court/tribunal is unknown to the jurisprudence of this country and consequently incompetent and misconceived in law and fact.***

There was the sub-issue raised by CHIEF GADZAMA, SAN as to the competence of the appeal on ground; that it raises issues of fact and/or mixed law and fact which I do not think appropriate to go into at this stage of the proceedings as there is opportunity for same to be canvassed at the hearing of the appeal and having regards to the fact that the application has been found to be misconceived and consequently dismissed.

I will also not consider the issue as to whether applicant can or has the opportunity to raise the issues in the interlocutory appeal by filing an appeal against the final decision of the lower court, if it turns against applicant. The above issue, though substantial and relevant to a consideration of an application of this nature, goes to the merit of the application which, I think should rather not be gone into at this stage having regards to the grounds on which the application has been dismissed.

It is for the above reasons that I dismissed the application and made the orders as to costs on 22nd October, 2013.

Application dismissed.

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### **GALADIMA JSC**

On the 22nd day of October, 2013, I delivered my Ruling on the bench in agreement with my learned brother ONNOGHEN JSC, dismissing the application brought by the Appellant. The matter was adjourned to today for detailed reasons for the decision and I shall now do so.

The Appellant's application filed on 10/10/2013 in this Court is praying for an order staying proceedings in the Court of Appeal Port Harcourt Division, in the consolidated Appeals No. CA/PH/695/2013: TONY NWOYE v. UKACHUKWU & 3 ORS. AND CA/PH/696/2013: PDP v. NICHOLAS UKACHUKWU & 2 ORS, pending the hearing and determination of the interlocutory appeal by this

Court filed against the Ruling of the Court below. That ruling was delivered on 8/10/2013 on a motion disqualifying the Justices of the Court from further sitting or adjudicating over the consolidated appeals and application to disqualify Counsel to the PDP and Ruling on application for extension of time within which to file the 1st Respondents' brief of argument.

The grounds upon which the application was predicated have been carefully set on in the leading judgment so also are the salient facts of the case.

The grouse of the Appellant/Applicant are that:

1. The Appellant was denied fair hearing on account of apparent bias of the justices of the Court Appeal.

2. There is fear that the subject matter of the Appeal will be destroyed.

3. There exists a state of "*fait accompli foisted*" on this Court, if further proceedings of the Court below are not stayed.

4. The Appellant's Notice and grounds of appeal contain arguable grounds of appeal.

Briefly, the background facts that led to the present applications under consideration are as follows: On 24/8/2013 the 1st Respondent People Democratic Party (PDP) had held its Primary Gubernatorial Elections to elect a candidate for the Anambra State Governorship election which was scheduled for 16/11/2013. The 3rd Respondent, (Dr. Tony Nwoye) won the Primary Election. The Applicant who participated in that election was defeated resulting in his filing an action at the Federal High Court Port Harcourt, challenging the victory of the 3rd Respondent herein. In its judgment, that Court ordered the 4th Respondent (INEC) to include him in its list of candidates for the said election.

Again, the decision of the trial Court resulted in the 1st - 3rd Respondents herein filing appeals in the Court of Appeal Port Harcourt Division which appeals were subsequently consolidated and heard on 8/10/2013 and adjourned for judgment on the date to be communicated to the parties.

It is note worthy that the hearing of the aforementioned appeals by the Court of Appeal was preceded by the proceedings of that Court in relation to the applications brought by the Applicant herein in which those reliefs seeking for disqualification of the Justices



and Counsel were brought and enlargement of time to file 1st Respondent's brief of argument. Another application brought by the Applicant was for an order to allow the 1st Respondent adduce further evidence on appeal, but this was struck out. The Ruling on those applications resulted in the filing of the interlocutory appeal on which the application for stay of further proceedings is predicated. B

On 22/10/2013 the application was taken. Learned Senior Counsel for applicant submitted that applicant's was not accorded fair hearing by the Court of appeal and for that reason if stay of its proceedings is not ordered as prayed, the 'res' in the appeal pending C before this court would be destroyed. It is further submitted that the Appellant's grounds of appeal are arguable as they raise substantial point of law and that if the application is refused the applicant's constitutional right of appeal would be jeopardized. Referring this Court to some pages of the records of appeal where the right of fair hearing D of the applicant were said to have been interfered with by the lower Court, the learned senior counsel relied on the cases of AUDU v. FRN. (2013) NSCQR 456 at 469 and DINGYADI v. INEC. (2010) 4-7 SC (Pt 1) 76 at 136-138. He urged the Court to grant the applica- E tion.

Learned Counsel for the 1st and 2nd Respondents posed 3 questions for consideration in this application. These issues involved, the propriety of this application amounting to an arrest of the pending judgment of the lower Court; the competence of the appeal be- F fore this Court as the Appellant's grounds of appeal are either of fact or mixed law and fact, and no leave was obtained before filing; and lack of substantial reason why the application should be granted. Reliance was placed on decided authorities on each of the issue.

Learned Senior Counsel for the 3rd Respondent submitted G that stay of proceeding serve the purpose of preserving the 'res' and maintenance of status quo. That in this appeal, the 'res' is the right of applicant to have the appeal heard and determined on the merit; that to grant the stay of proceedings would mean that the appeal in this case would not be heard and that the 3rd Respondent who is the H appellant at the lower Court has the right to have his appeal decided by that Court and if any party is aggrieved by the decision, he has the right to appeal.

On 20/12/2013 delivering our ruling on the bench on this

matter, in his leading Ruling, my brother ONNOGHEN JSC referred to the relevant statements of the law in relation to the subject of an application for “arrest” of judgment. The decision of this Court in NEWSWATCH COMMUNICATIONS LTD v. ATTAH (2006) 12 NWLR (pt 993) 144 at 178 - 179, a locus classicus on this matter comes readily in hand. This Court stated the position of the law in relation to an application for “arrest” of judgment of a Court thus:

*“In my view, the application to ‘arrest’ the Judgment after all the opportunities granted to the appellant which it deliberately refused to take was merely calculated to hinder due administration of Justice. From the records available the appellant always claimed that they would settle the matter out of Court when indeed they merely wanted to delay the due administration of Justice. The procedure for arrest of judgment is now hardly known on our civil jurisprudential system. It is the act of staying a judgment; or refusing to render judgment in an action at law in criminal cases after verdict. It is usually for some intrinsic matter appearing on the face of the record, which would render the judgment if given erroneous reversible. Unlike the Old Common Law Rule the procedure for arrest of judgment, is not peculiar to the criminal cases alone, it was available in civil cases... but the procedure is alien to rules of Court and does not apply in civil matters. See BOB-MANCIL v. BRIGGS (1995) 7 NWLR (pt 409) 537 ...I think the application to arrest the judgment about to be delivered, was in fact a cynical attempt to taunt the trial Court.”*

Although learned Senior Counsel for applicant, J.B. DAUDU SAN has argued forcefully that this application is not and it does not intend to arrest the rendering judgment of the Court of Appeal Port Harcourt Division, with due respect to the Senior counsel, plausible as his argument maybe we can see the smoke, beneath it there is amber-fire which when it perniciously burns out, it will be clear then that this application is aimed at, or intended to eventually arrest the judgment of the Court below; it matters not, the way the application was crafted. The facts and circumstances of this case lend credence to this conclusion. It is on record that as at the time the application for “disqualification” of Justices of the Court below on grounds of bias, disqualification of Counsel for 1st and 2nd Respondents on grounds that his instruction had been withdrawn by this clients, extension of time to file 1st respondent’s brief, the Court below had heard the

appeal, and adjourned it for judgment. It becomes clear that as the time the application was filed in this Court there was nothing left in the proceedings before the lower court. What was pending was the delivery of the judgment adjourned in respect of consolidated appeals.

Having stated that the application of the Appellant is intended to arrest the judgment of the lower Court about to be delivered, the Rules of this Court does not recognize such application; it is therefore misconceived and incompetent. B

Undue reliance placed on the authority of *DINGYADI v. INEC* (No. 1) (2010) 18 NWLR (Pt 1224) by the senior counsel for the Applicant, is not applicable to this case at hand. My learned brother in the leading Ruling has taken pains and opportunity indeed to carefully explain the circumstances and the ratio in that case particularly on the vexed issue of abuse of process of Court. C

I have also carefully studied the *DINGYADI'S* case (supra) and the case at hand. The decision in that case does not derogate from the general principles enunciated in *NEWSWATCH COMMUNICATION LTD v. ATTAH* (Supra) 9 Pt that an application to “arrest” a judgment about to be delivered by a competent Court or tribunal is unknown to our jurisprudence and consequently incompetent and misconceived in law and fact. D

I, too, do not think it necessary, at this stage of the proceedings, to consider the sub-issue raised by the learned senior counsel for the 1st and 2nd Respondents, as to the competence of the appeal pending in this Court, to the affect that appeal raises issues of fact and/or mixed law and fact. There is opportunity for this issue to be canvassed at the hearing of the appeal bearing in mind the fact that the applications under consideration have been found to be misconceived and dismissed. E

For the above reasons and fuller ones contained in the lead judgment, I also dismissed the application and abide by order made as to costs. F

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**KEKERE-EKUN JSC**

On the 22nd day of October, 2013 I delivered my ruling on the bench in agreement with my learned brother, Onnoghen, JSC

dismissing the application brought by the Appellant. The matter was adjourned till today for the detailed reasons for the decision, which I shall now deliver.

By a motion on notice dated 10/10/2013 and filed the same day, the applicant sought an order of this court “*staying further proceedings in the Court of Appeal, Port Harcourt Division in the consolidated Appeals Nos. CA/PH/695/2013 TONY NWOYE V. UKACHUKWU & 3 ORS and CA/696/2013, PDP V. NICHOLAS UKACHUKWU & 2 ORS pending the hearing and determination of the interlocutory appeal by this (sic) Honourable Court filed against the Rulings of the court below which ruling was delivered of this (sic) on 8th day of October 2013 on a motion to disqualify the Justices of the Court from further sitting or adjudicating over the consolidated appeals; application to disqualify counsel to the PDP and ruling on an application for extension of time within which to file the 1st Respondent’s brief of argument.*” The grounds for the application are:

1. The Appellant/Applicant was denied fair hearing on account of apparent bias of the Justices of the Court of Appeal.
2. Further proceedings by the Court will destroy the subject matter of the Appeal.
3. A situation of complete helplessness may be foisted on the Supreme Court if further proceedings are not stayed in this suit.
4. Further proceedings in the Court of Appeal may render the outcome of the suit at the Supreme Court nugatory.
5. There exist special circumstances for the grant of this application.
6. The Appellant’s Notice and Grounds of Appeal contains arguable grounds.

The application is supported by a 14-paragraph affidavit with the proposed Notice of Appeal attached therewith as an exhibit, and two further affidavits in support filed on 17/10/2013 and 18/10/2013 respectively. In opposition the 1st and 2nd respondents filed a 6-paragraph counter affidavit on 17/10/2013. The 3rd respondent also filed a counter affidavit on the same date containing 20 paragraphs.

The facts that gave rise to this application are as follows: On 24/8/2013 the 1st Respondent, Peoples Democratic Party (PDP) held primary elections to select a candidate for the Anambra State Guber-

natorial Election fixed for 16th November 2013. The 3rd Respondent (Dr. Tony Nwoye) emerged victorious. The applicant herein instituted an action before the Federal High Court, Port Harcourt Division challenging the outcome of the primaries and the 3rd respondent's victory. The trial court entered judgment in favour of the applicant and ordered the 4th respondent (INEC) to include the applicant's name in the list of candidates for the election. The 1st - 3rd respondents herein were dissatisfied with that decision and filed an appeal before the Court of Appeal Port Harcourt Division in two appeals that were subsequently consolidated.

During the course of proceedings in the consolidated appeals, the applicant herein filed several applications praying (i) for the justices of the lower court to disqualify themselves from further participation in the consolidated appeals on grounds of partiality, bias and relationship with the respondents in the appeals; (ii) for an order disqualifying counsel to the PDP from further appearance on the ground that the authority to prosecute the appeals had been withdrawn; and (iii) extension of time to file the 1st respondent's (appellant herein) brief of argument. On 8/10/2013 the applications to disqualify the learned justices of the Court of Appeal and to disqualify counsel to the 1st respondent were refused and dismissed accordingly while the application for extension of time was struck out. Thereafter the lower court heard the appeal and reserved judgment to a date to be notified to the parties. The applicant was dissatisfied with the rulings delivered on 8/10/2013 and filed a notice of appeal dated 8/10/2013 against the said decisions.

In support of the instant application, learned counsel for the applicant, J.B. DAUDU, SAN referred to the proposed Notice of Appeal alongside relevant portions of the record of proceeding and submitted that the grounds of appeal raise substantial issues of law, as they raise the issue of a breach of the applicant's right to fair hearing. He submitted that the applicant is entitled to exercise his constitutionally guaranteed right of appeal before the lower court reaches a decision in the substantive appeal. He relied heavily on the authority of *Dingyadi v. INEC & 2 ors*, (2010) 4 - 7 SC (Pt. 1) 76 @ 136- 138. On the issue of fair hearing he referred to: *Audu Vs F.R.N. (2013) NSCQR 456 @ 468*.

Chief Gadzama, SAN, on behalf of the 1st and 2nd respon-

dents relied on the counter affidavit filed on 17/10/2013 in opposing the application. He submitted that the grant of this application in the circumstances of this case would amount to an arrest of the judgment of the court below, which procedure is unknown to our law and rules of procedure. He referred to: *Newswatch Communications Ltd. v. Attah* (2006) 12 NWLR (pt. 993) 156 @ 179; *Shettima V. Goni* (2011) 18 NWLR (Pt.1279) 413 @ 425; *Inakoju V. Adeleke* (2007) 4 NWLR (pt.1025) 427 @ 625 - 627 per Niki Tobi, JSC. He submitted that there is no competent appeal before the court having regard to the fact that the grounds of appeal are grounds of fact or mixed law and facts, for which leave ought to have been obtained. He referred to *Madukolu V. Nkemdilim* (1962) SCNLR 341 @ 355; *Akinyemi v. Odua Investment Co. Ltd.* (Pt.2012) 17 NWLR (pt.1329) 218 @ 235 - 240. He also contended that even on the merits the applicant has not shown any compelling or convincing reason why a stay of proceedings should be granted. He submitted that none of the requirements set out in *Okafor V. Nnaife* (1987) 4 NWLR (Pt.64) 129 @ 137, for the grant of an application of this nature, which must be met conjunctively, have been shown to have been fulfilled in this case. He submitted that if this application is granted the res would be destroyed rather than preserved, as it is in the interest of all parties that the candidate of the 1st respondent be known before the election slated for November 16th 2013.

On behalf of the 3rd respondent, GARBA PWUL, SAN relied on the counter affidavit filed on 17/10/2013. He submitted that an application for stay of proceedings is meant to preserve the res in litigation and to maintain the status quo. He submitted that the present application would destroy rather than preserve the res. He submitted that the 3rd respondent has a constitutional right to have his appeal before the lower court determined on its merits. He submitted that if the application is granted the 3rd respondent would not be able to reap the benefit of the judgment of the lower court in the event that the appeal before that court succeeds once the election is held on 16/11/2013. He associated himself with the submissions of J.B. DAUDU, SAN with regard to the incompetence of the appeal.

Learned counsel for the 4th respondent left the grant or refusal of the application to the court's discretion.

In his reply on points of law, J.B. DAUDU, SAN denied the

suggestion that the application seeks to arrest the judgment of the lower court and maintained that the res to be preserved is the appellant's right to be heard before the lower court.

The law is settled that in an application of this nature, which calls for the exercise of the court's discretion, the discretion must be exercised judicially and judiciously taking all the facts and circumstances of the case into consideration. In the instant case, it is of considerable importance that at the court below, the appeal has been heard and judgment reserved to a date to be notified to the parties. The applicant herein is seeking a stay of proceedings. It raises the question as to what proceedings are still pending before the lower court that could be stayed. An appeal is heard once the briefs of arguments filed by the respective parties have been adopted and relied upon in open court. By virtue of Order 18 Rule 9(4) of the Court of Appeal Rules, 2011 (as amended) even where a party or his counsel is absent but a brief has been filed on his behalf, he would be deemed to have argued the appeal. Once argued there is no other pending proceeding save the delivery of judgment. In the circumstances, I agree with my learned brother, Onnoghen, JSC in the lead ruling that although this application purports to be seeking a stay of proceedings at the lower court to all intents and purposes it is aimed at arresting the judgment already reserved.

There is no provision for the arrest of a judgment in our rules of court as categorically stated by this court in the case of: *Newswatch Communications Ltd. v. Attah* (2006) 12 NWLR (Pt.993) 144 @ 179 F - G. In effect the application is incompetent.

As noted earlier, learned Senior Counsel for the applicant, J.B. DAUDU, SAN placed considerable reliance on the case of *Dingyadi V. INEC & 2 Ors.* (No. 1) (2010) 4 - 7 SC (Pt. I) 76 @ 136 - 138; (2010) 18 NWLR (Pt.1224) 1 in support of his prayer that the proceedings before the lower court should be stayed pending the determination of the appeal before this court. My learned brother, Onnoghen, JSC has done an in-depth analysis of the facts and circumstances that gave rise to the decision of this court in that case. I agree with his analysis and the conclusion that *Dingyadi's* case is distinguishable from the facts of this case, as in that case there was a clear case of abuse of court process, which this court had a duty to bring to an end. In *Dingyadi's* case (*supra*), at pages 76-77 G-E of

the NWLR citation, the decision of this court in the case of Globe Motors Holdings Ltd. V. Honda Motor Co. Ltd. (1998) 5 NWLR (Pt.550) 373 @ 381 - 382 per Ayoola, JSC was cited with approval, wherein His Lordship stated inter alia;

“Any action or course of conduct that is seen to be designed to introduce anarchy into the judicial system must be dealt with appropriately. In the instant case, the plaintiff while the order of the court still subsists rushed to the court below to seek orders which are in direct conflict with the subsisting order of this Court not disclosing to that court the subsisting order of this court and the fact (that) the defendant may have made preparations to clear the cars from the ports pursuant to the unconditional order of this court. ...In my view this court would be remiss in its duties if it does not bring it home to the parties that while all sorts of unethical behavior may be regarded as cleverness in the market place, such is not permissible in the legal system of our country. In the present case the conduct of the plaintiffs prima facie indicated a determination to abuse the judicial process. In the result I would grant the injunction as sought.”

In the instant case, as stated earlier, the clear intention of the applicant was to arrest the judgment of the court below. There was no suggestion that there had been an abuse of the court’s process, which would warrant the application of the decision in Dingyadi’s case to the facts of this case.

I also agree with my learned brother that the issue as to the competence of the notice of appeal should await the determination of the substantive appeal. Having found the application to be incompetent, I agree that this application is misconceived and lacks merit. It is for these reasons and the more detailed reasons contained in the lead ruling that I also dismissed it on 22nd October 2013. I abide by the order on costs.

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