

SUPREME COURT OF NIGERIA
FRIDAY 7TH FEBRUARY, 2014. SC. 111/2012 (CONS.)
CORAM:- M. S. MUNTAKA-COOMASSIE,
J. A. FABIYI, S. GALADIMA, N. S. NGWUTA,
K. M. O. KEKERE-EKUN, JJSC

CHIEF CYPRIAN CHUKWU

- (SC.111/2012)

AND

GOVERNOR ROTIMI AMAECHI

..... APPELLANTS

- (SC.336/2012) (CONSOLIDATED)

AND

1. INDEPENDENT NATIONAL
ELECTORAL COMMISSION

2. GOVERNOR ROTIMI AMAECHI

3. PEOPLES DEMOCRATIC PARTY

4. CELESTINE OMEHIA

..... RESPONDENTS

- (SC.111/2012)

AND

1. CELESTINE OMEHIA

2. CHIEF CYPRIAN CHUKWU

3. INDEPENDENT NATIONAL
ELECTORAL COMMISSION

4. PEOPLES DEMOCRATIC PARTY

- (SC.336/2012) (CONSOLIDATED)

APPEALS - Filing - Time - Notice of appeal shall be given within 3 months of date of final decision - And an application for leave must be within 3 months - And if out of time appellant needs to apply for extension of time within which to apply for leave (H1)

APPEALS - Filing - Interested party - Leave - Where application is made outside time prescribed for appealing - The person must first apply for leave to appeal as one having interest in the case - Before he makes the trinity prayers (H2)

APPEALS - Filing - Leave - Interested person - Condition - Only person whose interest has been directly and not obliquely affected by decision - That can validly seek leave to appeal as interested party against the decision (H3)

APPEALS - Court - Perverse finding - Meaning - Finding is perverse where it runs counter to evidence on record - Or where court considered matters it ought not to have considered - And SC does not hesitate to set aside such finding (H4)

APPEALS - Issue - Determination - Issue involved in the matter is not jurisdictional - As the main question is whether 4th respondent should be given leave - To appeal against judgment he derived benefit from (H5)

FACTS

By originating summons filed before the Federal High Court Abuja in suit No. FHC/ABJ/CS/656/2010, plaintiff/appellant sought for interpretation of the Supreme Court judgment in *Amaechi v. INEC* (2008) 5 NWLR (pt. 1080) 227. In the event of an interpretation being in his favour, appellant sought inter alia for declaration that in the eyes of the law and as decided by the apex court in the aforesaid case of *Amaechi v. INEC*, 2nd defendant/2nd respondent is the person who has been in office as the duly elected governor of Rivers State since 29th May 2010 pursuant to the gubernatorial election conducted on 14th April 2007 in which 2nd respondent was returned as the winner. And also for declaration that 2nd respondent whose term of office expired on 28th May 2011 cannot remain in office after the 28th May 2011 save upon having contested and won a fresh election for a second term of four years commencing with effect from 29th May 2011.

The court granted the reliefs sought by appellant, which culminated in the conduct of fresh gubernatorial election in Rivers State in April 2011. 4th respondent contested the election on the platform of All Progressive Grand Alliance and eventually lost to 2nd respondent. However, 4th respondent (who was a beneficiary of the effect of trial court's judgment) along with some other persons filed applications before the Court of Appeal Abuja, seeking for leave to appeal as

interested parties against the same decision of the trial court. The court granted only the prayer of 4th respondent and refused the rest of the applications. Dissatisfied, appellant filed appeal no. SC. 111/2012 in the Supreme Court. 2nd respondent was equally aggrieved with the judgment of the Court of Appeal. Hence, he filed appeal no. SC. 336/2012.

ISSUES FOR DETERMINATION

“(1) Whether the 1st respondent’s application for leave to appeal as an interested party as (such) is competent?”

“(2) Whether having regard to the facts and materials before the lower Court and the inherent lack of locus in the applicant (now 1st respondent) the lower Court was right in granting leave to the applicant (1st respondent) to appeal as an interested party against the judgment of the trial court? And

“(3) Whether the lower Court was right in exercising the discretion in favour of the applicant (1st respondent herein) by granting him leave to appeal as an interested party, considering the conduct of the applicant and the peculiar circumstance of the application.”

HELD (Unanimously allowing the appeals per

MUNTAKA-COOMASSIE JSC)

APPEALS - Filing - Time

1. Now by Section 25(2)(a) of the Court of Appeal Act, No. 43 of 1976 an appellant or any person desirous of appealing shall give notice of his appeal within 3 months of the date of final decision, and by several decisions of this court, a person applying for leave to appeal must do so within the statutory period of 3 months. If he is out of time he would need to apply for extension of time within which to apply for leave to appeal, otherwise, the leave sought will be refused. (p. 873 D)

APPEALS - Filing - Interested party - Leave

2. In the instant case, the applicant/respondent is hopelessly out of time in applying for leave to appeal. He is seven years late and what he ought to have done was first to apply for:-

(i) Leave to appeal under Section 222 of the 1979 Con-

stitution as a person having an interest in the case, and under the rules of courts.

(ii) *Extension of time within which to apply for leave to appeal;*

(iii) *Leave to appeal, he may, of course, add other prayers, as for instance.*

(iv) *Extension of time within which to file notice and grounds of appeal.*

It is necessary to point out that the last three prayers are wholly dependent on the first prayer. The other prayers cannot succeed unless the applicant is first made a party in the case. The applicant/respondent has in fact not asked for this first prayer and the Lower Court was, in my view, wrong to have given the respondent leave to appeal.

As can be deduced from the above authorities, the first relief for a new party to seek is leave to appeal.

As submitted by Fagbemi, SAN, it is clear from the foregoing that the first prayer a person seeking leave to appeal as an interested party must seek is for Leave to be made a party in the case, pursuant to the relevant section of the Constitution. So it is not just the trinity prayers that the applicant should seek. His first prayer be for leave to be made a party in the case or it may be couched as prayer one in the above quotation i.e. for leave to appeal under Section 243(a) of the 1999 Constitution (as amended) as a person having an interest in the case.

The other three prayers in the above quotation will now follow, if the application is made outside the time prescribed for appealing under Section 24(2) of the Court of Appeal Act, 2004. (p. 873 F)

APPEALS - Filing - Leave - Interested person - Condition

3. It is my firm view, flowing from the community reading of Section 243(a) of the Constitution of the Federal Republic of Nigeria (1999) (as amended) and the plethora of the case law authorities on this point that only a person whose interest has been directly and not obliquely, affected by a decision that can validly seek leave to appeal as an interested party. This would

not cover a person who has a general interest in the said decision to appeal against same. In the appeal at hand, we take the interest or right being relied upon by the 1st respondent as one which he shares with other aspirants from other political parties. In that wise, the 1st respondent needs to show more facts which made him more affected by the outcome of the case. (p. 880 A) ^B

Court - Perverse finding - Meaning

4. A finding is said to be perverse where it runs counter to the evidence on record or where it has been shown that the Lower Court took into account matters which they ought not to have taken into account or shut their eyes to the obvious. Therefore, this court shall not hesitate to set aside the perverse findings in the circumstances and I hereby do so. (p. 881 G) ^C ^D

APPEALS - Issue - Determination

5. My lords, I think the 4th respondent has over simplified the issue involved. I think the issue of jurisdiction in the circumstances of this case is mis-conceived. What is being called to question is whether Mr. Omehia should be allowed or given leave to appeal against a judgment he derived benefit from and has in fact utilized the procedure for claiming remedy, albeit unsuccessfully. Like in the case of Adesanya v. President; Federal Republic of Nigeria (supra) it is highly unconscionable for Mr. Omehia to now turn around to seek leave to appeal against a judgment he has taken or enjoyed so much benefit from. Fatayi Williams, CJN, of blessed Memory, opined in the Adesanya case (supra). And I fully agree with him, it is doubtful whether Mr. Omehia would have sought leave to appeal against the decision of the trial Federal High Court, if he had been successful at the poll which followed the decision of the trial court in this case. The issue involved is not jurisdictional as 4th respondent's counsel would want to describe it, rather what is involved is the unconscionable behavior of 4th respondent which I highlighted above. In the circumstances, I hold that issue No.3 is hereby resolved in favour of the appellants against the respondents. (p. 883 G) ^E ^F ^G ^H

NOTABLE POINTS OF INTEREST

MUNTAKA-COOMASSIE JSC

1. Locus standi to be decided on facts of each case

B My lords, I agree as submitted by the 1st respondent's counsel that the law on locus standi is not static and that the circumstances of each case are to be considered. Hence, what constitutes a legal right, sufficient or special interest adversely affected will, of course, depend on the facts of each case. See: Nyako (supra). Therefore each case should
C be considered on its merit and peculiar facts. (p. 879 G)

2. Derogatory words not to be used in briefs of argument

I have gone through the said 1st respondent's brief and regretfully I have no doubt in my mind that the words used by the 1st respondent's
D counsel are clearly bad and unbecoming of a legal practitioner. He needs not use such derogatory and insulting language in a brief of argument. The rule of professional conduct requires lawyers not only to display a respectful attitude towards the bench but also to exhibit
E a high level of decorum, candour and fairness to the court and to other lawyers.

A court of law, especially the apex court, is a place for serious legal business of adjudication, and not a domain for the exchange of all sorts of insult and defamatory innuendos. The age long and sacred traditional decorum of the bar must be protected, maintained
F and held in high esteem in the discharge of counsel duties to their clients. Need I say more. I therefore deprecate strongly the choice of words, used by the 1st respondents counsel in his brief of argument as one unbecoming of a legal practitioner and ought not to be used
G in any brief, such words should be avoided. (p. 884 G)

REPRESENTATION

Rickey Tarfa, SAN with Olusegun Jolaawo, Esq., Andrew Malgwi, Esq., O. Tarfa (Miss), F. C. Ani, Esq., Joshua Okon, Esq., Yetunde
H Kila (Miss), for the Appellants
U. N. Udechukwu, SAN with T. U. Nmah, Esq., O. O. Adeleye, Esq., Bunmi A. Aina-Criag (Miss), K. S. Elenwo, Esq., Mone Okonu, Mark Mailumo Esq., and Anita Otubu (Mrs.) for the 4th and 1st Respon-

dent

J. M. M. Majiyagbe, Esq., for the 1st Respondent

Mr. L. O. Fagbemi, SAN with Chief Akin Olujimi, SAN., Chief Awa U. Kalu, SAN., S. R. Dappa Addo., A. A. Dare, Esq., V. M. Uchendu, Esq., Hakeem Afolabi, Esq., U. M. Uchandu, Omosanya Popoola, Esq., Akinsola Olujimi, Akeem Umoru, Esq., Jennifer Nkwota (Miss), B
Aham Nnabue, Esq., Y. O. Ishola, (Mrs.), Ayo Akinsanya, Musa Adelodun, E. C. Ani, C. I. Obidike, Esq. and T. O. Ojo, Esq., O. A. Olayinka (Miss) for the 2nd Respondent in both SC.111/2012 and SC.336/2012

C

CASES REFERRED TO

Amaechi v. INEC (2008) 5 NWLR (pt. 1080) 227

A-G Federation v. Abubakar (2007) 10 NWLR (pt. 1041) 1

Uzodima v. Izunaso (No.2) (2011) 17 NWLR (pt. 1275) 30

D

Ojora v. Agip (Nig.) Plc (2005) 4 NWLR (pt. 916) 515

Owena Bank Nig. Plc v. NSE Ltd (1997) 8 NWLR (pt. 515) 1

Ezenwosu V. Ngonadi (1988) 3 NWLR (pt. 81) 163

C.P.C. v. Nyako (2012) 6 NWLR (pt. 1296) 199

Adeleke v. Oyo State House of Assembly (2006) 10 NWLR (pt. 987) E
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Omotosho v. Abdullahi (2008) 2 NWLR (pt. 1072) 526

Sun Insurance Office Ltd. v. Ojemuyiwa (1963) 1 All NLR 1

Bala v. Dikko (2013) 4 NWLR (pt. 1343) 52

F

Nkado v. Obiano (1997) 5 NWLR (pt. 503) 31

Awudo v. David (2005) 2 NWLR (pt. 909) 199

Okonkwo v. Ngige (2006) 8 NWLR (pt. 981) 119

Ojora v. Odunsi (1964) 3 NSCC 34

G

STATUTES REFERRED TO

Constitution of the Federal Republic of Nigeria 1999 (as amended),
s. 243(a)(b)

Court of Appeal Act 2004, s. 24(2)

Court of Appeal Act No. 43 of 1976, s. 25(2)(a)

H

LEAD JUDGMENT BY MUNTAKA-COOMASSIE JSC

The above two consolidated appeals arose from the ruling of the Court of Appeal, Abuja Division in appeal No: CA/A/299M/2011

in which the Court of Appeal, now court below, granted the application filed by the 4th respondent in SC.111/2012 for leave to appeal as an interested party against the judgment of the Federal High Court in Suit No: FHC/ABJ/CS/656/2010.

I think the facts and circumstances leading to the consolidated appeals are quite brief and interesting devoid of any complication. It is like this. By an originating summons in suit No: FHC/ABJ/CS/656/2010, appellant in SC.111/2012 but 2nd respondent in SC.336/2012, as plaintiff, sued the appellant in SC.336/2012; Independent National Electoral Commission (INEC) and Peoples Democratic Party (PDP) in the proceedings seeking interpretation of the judgment of this court in *Amaechi v. INEC* (2008) 5 NWLR (Pt. 1080) page 227, for the following reliefs.

“(a) A declaration that in the eyes of the law and as decided by the Supreme Court in the case of Amaechi v. INEC (2008) 5 NWLR (Pt.1080) page 227 @ pages 318 - 319 the 2nd defendant is the person who has been in office as the duly elected governor of Rivers State of Nigeria since 29th May, 2010 pursuant to the gubernatorial election conducted by the 1st defendant on 14th April, 2007 in which the 2nd defendant being the lawfully sponsored candidate of 3rd defendant was returned as the winner of the gubernatorial election.

(b) A declaration that the 2nd defendant whose term of office expires on the 28th May, 2011 cannot remain in office after the 28th May, 2011, save upon having contested and won a fresh election of a second term of four years commencing with effect from 29th May, 2011 in accordance with section 180 (2) of the Constitution of the Federal Republic of Nigeria, 1999 as amended.

(c) A declaration that the 3rd defendant is bound to schedule and conduct primary election to choose its gubernatorial candidate for Rivers State in accordance with section 87(1) and (2) of the Electoral Act 2010 and the Extant INEC Guideline, at the same time with this conduct of primary elections to choose candidates of the 3rd defendant who will contest on it's platform in all other States of the Federation where the tenure of office of current incumbent governor will expire by law on 28th day of May, 2011.

(d) An Order compelling the 3rd defendant to schedule and conduct primary election to choose its gubernatorial candidate for

Rivers State at the same time with the conduct of primary elections to choose candidates of the 3rd defendant who will contest on its platform in all other States of the Federation where the terms of office of current incumbent governors will expire by law on 28th May, 2011

(e) An Order compelling the 1st Defendant to conduct gubernatorial election in Rivers State on the same date and at the same time when governorship elections are scheduled to be held for the purpose of electing successors to the office of governors in all other States of the Federation whose current term will expire on 28th May, 2011."

Judgment in this matter was delivered on 7th October 2010 by the Abuja Division of the Federal High Court per Abdul Kafarati, J herein after called trial court. He held that *"In view of the analysis of Amaechi v. INEC and Ladoja v. INEC cases, I resolve question 1, 2, 3 and 6 in the affirmative and questions 4 and 5 in the negative."*

The trial court consequently granted the reliefs sought by the plaintiff therein, which culminated in the conduct of a Fresh Governorship election in Rivers State in April, 2011.

The 1st respondent in Appeal No.SC.336/2012 Celestine Omehia - then brought an application before the Abuja Division of the Court of Appeal seeking, inter alia, leave to appeal against the ruling of the trial Federal High Court in FHC/ABJ/CS/656/2010 as an interested party. In its ruling delivered on 20th December, 2010 the Court of Appeal, therein after called the lower Court, granted leave to the 1st respondent to appeal as an interested party. As the record shows, the appellant vehemently opposed same.

It is against the above ruling of the lower Court that the appellants in SC.111/2012 and SC.336/2012 now appealed to the Supreme Court pursuant to leave granted by this court on 15th June 2012.

That being the case the appeals both in SC.111/2012 and SC. 336/2012 arose from the same ruling of the court below and the grounds appear similar except with minor difference. This was what actually led to this court consolidating the two appeals.

Let me start with the issue formulated by the appellant in appeal No.SC.111/2012 thus:-

(a) Whether the 4th respondent's application for leave to appeal as an interested party was competent in law before the lower

Court, and thus grantable. (Distilled from ground 4)

(b) Whether the 4th respondent by his application before the lower Court disclosed sufficient facts and interest to entitle him to the grant of his application for leave to appeal as an interested party by the lower Court. (Distilled grounds 2 and 3)

B (c) Whether the Lower Court was right in granting leave to the 4th respondent to appeal despite his conduct as disclosed in the materials before the court. (Distilled from ground 1)

C It is to be noted however, that the 4th respondent, Celestine Omehia, in SC.111/2012, just adopted the above issues as formulated by the appellant without more.

The 1st respondent also adopted the issues as formulated by the appellant and said no more. The 2nd respondent did not even file any response. This is perhaps, because he is appellant in appeal D number SC.336/2010 in which he is also challenging the judgment of the court below.

For the 3rd respondent, INEC, the following issues are formulated:-

E (i) Whether the 3rd respondent's application for leave to appeal as interested party is not competent?

(ii) Whether considering the facts and materials before it, the lower Court was not right to have granted leave to the 3rd respondent to appeal as an interested party.

F (iii) Was there anything in the conduct of the 3rd respondent stopping him from seeking and obtaining the discretionary favour of the lower Court to appeal as an interested party?

The 4th respondent in SC.111/2012 merely adopted the issues for the determination as distilled by the appellant.

G Now the issues formulated by the appellant in SC.336/2012 are:-

“(1) Whether the 1st respondent's application for leave to appeal as an interested party as (such) is competent?

H *(2) Whether having regard to the facts and materials before the lower Court and the inherent lack of locus in the applicant (now 1st respondent) the lower Court was right in granting leave to the applicant (1st respondent) to appeal as an interested party against the judgment of the trial court? And*

(3) Whether the lower Court was right in exercising the dis-

cretion in favour of the applicant (1st respondent herein) by granting him leave to appeal as an interested party, considering the conduct of the applicant and the peculiar circumstance of the application.”

On the part of the 1st respondent in SC.336/2012 three issues were formulated for determination of the appeal. This is different from what he did as 5th respondent in SC.111/2012 where he stated that he was adopting the issues formulated in that appeal. He is within his right to do so. Coming back to appeal number SC.336/2012. 1st respondent formulated the following issues for determination:-

“(1) Whether the prayers of the 1st respondent in the lower Court embody “the trinity of prayer”?

(2) Whether having regard to the facts and material before it, the lower court was right to grant the applicant (the 1st respondent herein) leave to appeal as an interested party?

(3) Whether in all the circumstance any “conduct” of the 1st respondent debarred the court below from granting him leave to appeal as an interested party?

Just as it did in SC.111/2012 the 3rd respondent in SC.336/2012 who is 1st respondent in SC.111/2012 simply adopted the issues raised by the appellant. 3rd respondent left the issues formulated by the two appellants to the court and indicated it would abide by the decisions of the court in those appeals, relying on the decisions of this court in Attorney-General Federation v. Abubakar (2007) 10 NWLR (Pt.1041) page 1; Uzodima v. Izunaso (No.2)(2011) 17 NWLR (Pt.1275) page 30 at 63 among others. The 2nd respondent did not file any brief of argument in SC.336/2012 although he has a separate appeal in SC.111/2012, just like the 2nd respondent in SC.111/2012 did not file any respondent’s brief of argument again apparently because he has another appeal on similar grounds.

The 4th respondent in SC.336/2012 distilled the following issues for determination of the appeal thus:-

“(i) Whether the 4th respondent’s application for leave to appeal as an interested party is not competent?

(ii) Whether considering the facts and material before it the lower Court was not right to have granted leave to the 4th respondent to appeal as an interested party?

(iii) Was there anything in the conduct of the 4th respondent stopping him from seeking and obtaining the discretionary favour of

the lower Court to appeal as an interested party?”

In my view, I think the issue spelt out by the appellant’s appeal number SC.336/2012 capture the real issues having regard to the grounds of appeal. I therefore adopt the issues formulated by the appellant in appeal number SC.336/2012 and will treat the appeal
B along this line without losing focus of what argument of each party is.

ISSUE 1

This issue here is whether the 1st respondent’s application for leave to appeal as an interested party is competent.

C Arguing this issue, Rickey Tarfa, SAN for the appellant in SC.111/2012 submitted that the first prayer sought by the 4th respondent in SC.111/2012, that is, Mr. Celestine Omehia through his counsel is misconceived in that, no law prescribes any period within
D which an interested party may bring his application for leave to appeal as a person having an interest in a mater. He relied on the cases of: *Re:- Madaki* (1996) 7 NWLR (Pt.459) page 153 at 164; and *Ojora v. Agip (Nig.) Plc* (2005) 4 NWLR (Pt.916) page 515.

Learned Silk went further to contend that relief number 1 sought by the 4th respondent was unnecessary, incompetent and so
E not grantable as the 4th respondent only had prayer for leave to appeal and prayer 3 for extension of time to file the Notice of Appeal for consideration.

Learned Senior Counsel further drew the attention of this
F court to the fact that the judgment of the trial court having been delivered about two hundred days before the motion for leave to appeal was brought, the 4th respondent’s prayer in the court below ought to have included the trinity prayers for extension of time to seek leave to appeal and extension of time to appeal.

G Arguing the appeal, learned counsel for appellant Lateef O. Fagbemi, SAN in appeal number SC.336/2012 contended that the 1st respondent’s application for leave to appeal as an interested party was incompetent and by extension the court below lacks the jurisdiction to entertain or grant the application. He referred to section 243(a)
H and (b) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) which provides for appeal by persons having interest.

According to the learned Silk, although section 243(a) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) gives right to seek leave to appeal to an interested party, section 243(b)

of the same Constitution makes the right exercisable only in accordance with the Act of the National Assembly and rules of the court for the time being in force. The relevant Act of the National Assembly in this particular case is the Court of Appeal Act.

It is the submission of the learned senior counsel that a party whose interest has been affected by a decision must seek leave of the Court to bring an appeal against such a decision, in accordance with the provisions of the Court of Appeal Act and Rules; relying on RE: Eke (1993) 4 NWLR (Pt.286) 176 at 190. He submitted further that a party, whether appealing as of right or as an interested party, must always file his appeal within the stipulated time prescribed by the Court of Appeal Act, that is section 24(2) of the Court of Appeal Act, 2004. He also submitted that even as an interested party a party must seek the usual trinity prayers in the event of failure to appeal within time, citing *Owena Bank Nig. Plc v. NSE Ltd* (1997) 8 NWLR (Pt.515) 1 at 13 and *Re: Madaki supra* as authorities in this regard.

It is the contention of the appellant herein that the judgment of the Federal High Court was delivered on 7th October, 2010 whereas the application to seek leave to appeal was not filed until 27th May, 2011 (a period of about 200 days apart). Therefore, as at the time the application for leave to appeal as an interested party was made on 27th May, 2011 - the statutory time limit of 90 days allowed to appeal had lapsed. Hence, the applicant ought to have sought the "trinity prayers in addition to a prayer for leave to appeal but did not. Learned Silk, did an analysis of the prayers sought on the motion papers to further contend that the applicant failed to seek:

- (i) Extension of time within which to appeal
- (ii) Leave to appeal; and
- (iii) Extension of time within which to seek leave to appeal

All of which are mandatory where the applicant is out of time. Hence, he submitted that the application is incompetent and the Court of Appeal acted without jurisdiction in granting same.

Prince Fagbemi, SAN quoted in extenso the decision of this court in *Ezenwosu V. Ngonadi* (1988) 3 NWLR (Pt.81) page 163 at 175 and *Re: Madaki (supra)* at 164/165. In conclusion on this point, learned senior counsel submitted that, once the time within which to appeal has expired, an interested party must not only seek leave to appeal but also include the trinity prayers for extension of time to

apply for leave to appeal, leave to appeal and extension of time within which to appeal or file the Notice of Appeal.

Learned senior counsel's conclusion on this issue is simply that the complaint on the competence of the application granted by the Court of Appeal is a complaint on jurisdiction of the court. He
B therefore, urged this court to resolve it in favour of the appellant by setting aside the decision of the court below and strike out the application seeking to appeal as an interested party on this issue alone.

The contention of the 3rd respondent in SC.111/2012 but
C 4th respondent in SC.336/2012 in its briefs of argument and oral argument in relation to the issue under consideration is that the issue submitted and argued by the appellant is an abuse of court process. Learned senior counsel was counsel for the 3rd respondent in SC.111/2012 and 4th respondent in SC.336/2012.

D Learned Silk commenced his argument by referring this court to the provisions of section 243(b) of the Constitution and section 24(2) of the Court of Appeal Act. He contended that the latter is consistent with the former.

Learned Silk conceded that the application of the 4th re-
E spondent in appeal number SC.111/2012 but application in the court below was brought clearly outside the time limited by section 24(2) of the Court of Appeal. Learned Silk argued however, that unless the grounds of appeal are grounds of mixed law and facts (If it is an
F interlocutory appeal which he agreed is not) there would be no need to seek leave to appeal under section 241(1) and (b) of the Constitution of the Federal Republic of Nigeria.

Mr. Oke referred to the portion of his brief dealing with the application of the 4th respondent in SC.111/2012 as applicant in the
G court below and submitted that the grounds of appeal in the court below are all grounds of law. Learned counsel went further to state that once this court holds that *"all or any of the grounds of appeal is a ground of law alone, then this appeal must fall within the provisions of section 241(b) of the 1999 Constitution. It is thus, an appeal which
H can be brought as of right and thus requiring no leave."*

Mr. U. N. Udechukwu, SAN was the learned counsel for the 4th respondent in SC.111/2012 both 1st respondent in SC.336/2012. In this regard, the arguments and submissions in both respondent's appeal are basically the same and also similar in nature to the sub-

mission of counsel to the 3rd respondent in SC.111/2012. Udechukwu, SAN submitted that, contrary to the contention of the appellants in the two appeals, the application for leave to appeal as an interested party was competent and proper as it contains the requisite trinity prayers - enunciated in *Owena Bank Nig. Plc.*, supra. He submitted further that the first 3 prayers of the 1st respondent in the said application were in line with the dictates of Uwais, CJN as he then was, and Mohammad, JSC in the aforementioned cases. He referred this court to page 5 of the printed records, where the said application and relevant prayers can be found. He submitted emphatically that the application contains the trinity prayers; hence the submissions of the appellant to the contrary, in the face of the cold facts is misconceived. He concluded that the addition of the descriptive words “as an interested party” to each of the prayers enhances the prayer rather than derogates from it. He relied on the following cases:- *C.P.C. v. Nyako* (2012) 6 NWLR (Pt.1296) 199-271 and *Re: Ugadu* (1988) 5 NWLR (Pt.93) 189 at 195 in urging the court to resolve the issue against the appellant.

As indicated earlier, the stand of the Independent National Electoral Commission on this appeal as well as all the issues herein is to be neutral and abide by whatever this court decides. This is commendable.

Issue one for determination in this appeal, to all intents and purposes questions the competence of the 1st respondent’s application for leave to appeal as an interested party, and whether the Lower Court has the jurisdiction to entertain or grant the application.

From the submissions and counter argument exchanged by counsel on this issue, parties are ad idem that an application was filed seeking leave to appeal as an interested party pursuant to section 243(a) and (b) of the Constitution of the Federal Republic of Nigeria, 1999. However, the bone of contention was whether the said application, in view of the fact that the leave was not sought within the time allowed to appeal as provided in section 24(2) of the Court of Appeal Act, 2004 contained the “trinity prayer” as enunciated in the cases of *Owena Bank Plc v. Nse Ltd.* (supra); *Re: Madaki* (supra).

I think it is useful to start by saying that the following points are not in dispute in this appeal they are thus:-

- (i) That the original parties to this case at the Federal High

Court were Chief Cyprian Chukwu (as plaintiff) and Independent National Electoral Commission, Governor Rotimi Amaechi and Peoples Democratic Party as respondent.

(ii) Celestine Omehia was not a party to the suit at the Federal High Court.

B (iii) Judgment of the Federal High Court was delivered on 7th day of October, 2010.

(iv) Celestine Omehia brought an application for leave to appeal as an interested party on 27/5/2011.

C (v) The Court of Appeal granted the application hence these appeals SC.111.2012 and SC.336/2012.

It is also not in dispute that the application of the applicant in the Court of Appeal sought the following reliefs:-

D *“An order granting enlargement of time within which to seek leave to appeal as an interested party against the judgment of the Federal High Court, Abuja Division, delivered by the Hon. Justice A. Abdul Kafarati on the 7th October, 2010 between Chief Cyprian Chukwu as plaintiff and Independent National Electoral Commission, Governor Rotimi Amaechi and Peoples Democratic Party (PDP) as defendants.*

F *(2) An order granting leave to the applicant to appeal as an interested party against the said judgment of the Federal High Court, Abuja Division, delivered by the Hon. Justice A. Abdul Kafarati on the 7th October, 2010 in suit No.FHC/ABJ/CS/656/2010 between Chief Cyprian Chukwu as plaintiff and Independent National Electoral Commission, Governor Rotimi Amaechi and Peoples Democratic Party (PDP) as defendants*

G *(3) An order extending the time limited by section 24(2) of the Court of Appeal Act Cap 3 Laws of the Federation of Nigeria for filing the Notice of Appeal against the said judgment; and*

(4) An order for the accelerated hearing of this motion on Notice.”

H That being the case, it is my view that the applicant in the court below (Celestine Omehia) ought to first ask for leave to appeal only as an interested party under Section 243(a) of the Constitution. However, since it is not in dispute that he was seeking leave to appeal as an interested party and the time within which he should have appealed had expired, Section 243(b) of the Constitution comes into

play.

By section 243(b) of the Constitution, leave is only granted and the right of the applicant is only exercisable in accordance with the Act of the National Assembly and the rules of court. In this regard, applicant needs to consider the provisions of the Section 24(2) of the Court of Appeal Act which prescribes the time for appealing. In this connection, the decision of this court in *Ezenwosu v. Ngonadi* cited by Fagbemi, SAN applies. In that case, this court had the opportunity to pronounce on a similar provision to the present Section 243(a) of the 1999 Constitution as amended. And just as in this case, the matter dealt with an application for leave to appeal out of time by an interested party. In interpreting the provisions of section 222 of the then 1979 Constitution, this court held thus:-

"In the instant case, the applicant ought to have brought an application asking for:-

(a) Leave to be made a party in the case;

(b) Leave to appeal against the decision of the High Court."

Now by Section 25(2)(a) of the Court of Appeal Act, No. 43 of 1976 an appellant or any person desirous of appealing shall give notice of his appeal within 3 months of the date of final decision, and by several decisions of this court, a person applying for leave to appeal must do so within the statutory period of 3 months. If he is out of time he would need to apply for extension of time within which to apply for leave to appeal, otherwise, the leave sought will be refused. In the instant case, the applicant/respondent is hopelessly out of time in applying for leave to appeal. He is seven years late and what he ought to have done was first to apply for:-

(i) Leave to appeal under Section 222 of the 1979 Constitution as a person having an interest in the case, and under the rules of courts.

(ii) Extension of time within which to apply for leave to appeal;

(iii) Leave to appeal, he may, of course, add other prayers, as for instance.

(iv) Extension of time within which to file notice and grounds of appeal.

It is necessary to point out that the last three prayers

are wholly dependent on the first prayer. The other prayers cannot succeed unless the applicant is first made a party in the case. The applicant/respondent has in fact not asked for this first prayer and the Lower Court was, in my view, wrong to have given the respondent leave to appeal.

B As can be deduced from the above authorities, the first relief for a new party to seek is leave to appeal.

C As submitted by Fagbemi, SAN, it is clear from the foregoing that the first prayer a person seeking leave to appeal as an interested party must seek is for Leave to be made a party in the case, pursuant to the relevant section of the Constitution. So it is not just the trinity prayers that the applicant should seek. His first prayer be for leave to be made a party in the case or it may be couched as prayer one in the above quotation i.e. for leave to appeal under Section 243(a) of the 1999 Constitution (as amended) as a person having an interest in the case.

E The other three prayers in the above quotation will now follow, if the application is made outside the time prescribed for appealing under Section 24(2) of the Court of Appeal Act, 2004.

F The leave prescribed by Section 243(a) of the 1999 Constitution (as amended) is not rendered unnecessary by the fact that the grounds of appeal are on questions of law alone. Again, the nature of the grounds of appeal is not part of the complaint of the appellant in this appeal. The gravamen of the appellant's issue 1 is that, the Lower Court acted without jurisdiction in granting the application of the 1st respondent to appeal as a person interested when the prayers he sought did not include, one seeking leave to be made a party to this case pursuant to section 243(a) of the 1999 Constitution.

H This, court again in Re: Madaki (1996) 7 NWLR (Pt.459) 152 at 164D, H and 165, emphasized the need for a person seeking to appeal as an interested party to first obtain leave under Section 222 of the 1979 Constitution (now Section 243(a), "to become a party to the case". This court restated the point that after such a person has obtained leave to be made a party to the case, he should file his notice of appeal within the time prescribed by Section 25 of the Court of Appeal Act, 1976. "If the prescribed time expired be-

fore such application was made, then it becomes necessary to apply:

- (i) For enlargement of time to seek leave to appeal.
- (ii) Leave to appeal; and
- (iii) Extension of time within which to appeal.

This statement of the court is clear enough. The first relief to be sought by a person seeking to appeal as an interested party is to be made a party to the case. The three other prayers above will then follow if the application is made outside the three months prescribed by Section 24(2) of the Court of Appeal Act, 2004 for filing Notice of Appeal. The case of Adeleke v. Oyo State House of Assembly (2006) 10 NWLR (Pt.987) 50 at 69; does not purport to overrule this court and cannot do so on the interpretation handed down in Re: Madaki and in Ezenwosu v. Ngonadi (supra). I think the 3rd respondent in SC.111/2012 both 4th respondent in SC.336/2012 has simply mis-read and mis-understood the decision in Adeleke v. Oyo State House of Assembly (supra) and in Re: Madaki (supra) Ezenwosu v. Ngonadi (supra).

This court went further to hold in Odofin v. Agu (1992) 3 NWLR 350 at page 373 A - C as follows:-

“The further submission that because appellant failed to raise the issue until now he cannot raise it now, in my view, he has lost sight of the nature of the issue. It raises, as I have said, a serious issue of jurisdiction of the court to have made the order at all as well as the competence of the proceedings. Jurisdiction is a threshold issue in that a court must have jurisdiction before it can enter into the cause or matter at all, or before it can make a binding order on it. Where the statutory period to appeal has expired, the appellate court loses jurisdiction to hear an appeal on the matter. It requires a proper application under Order 3 Rule 4 of the Rules as well as a prayer and a valid order for an extension of time to restore that jurisdiction. In the absence of these, a condition precedent to exercise of jurisdiction would be lacking.”

In the foregoing premises, it is obvious that the respondent clearly misunderstood the thrust of the appellant’s appeals in both SC.111/2012 and SC.336/2012 on the 1st issue.

In view of the foregoing, I hold that issue 1 above is resolved in favour of the appellants. As a result, I hold that the application of Omehia to the court below was incompetent.

The resolution of issue 1 is enough to dispose of this appeal. However, in view of the important issue raised in issue two (2), I believe I should treat and resolve the issue:-

ISSUE 2

Under this issue, the learned senior counsel for the appellant B in SC.336/2012 contended that the learned justices of the court below were wrong in granting leave to the 1st respondent to appeal as an interested party against the judgment of the trial Federal High Court, in the absence of requisite locus or sufficient interest, and especially where the applicant has failed to demonstrate any interest, C or any grievance from the record before the court. Learned senior counsel submits that for an applicant to be entitled to be granted leave to appeal, as an interested party in a matter as prescribed under section 243(a) of the 1999 Constitution of the Federal Republic D of Nigeria (as amended), such an applicant must, above all show not only that he is a person having an interest in the matter, but also that the order/judgment of the court he is seeking leave to appeal against pre-judicially affects his interest. Counsel further, submits that to succeed in such an application, the applicant needs to show that he is a E person who is aggrieved, or a person who has suffered legal grievances and against whom decision has been pronounced which wrongfully deprived him of something or wrongfully affected his title to something. He relied on:- *Omotosho v. Abdullahi* (2008) 2 NWLR (Pt.1072) 526; *Sun Insurance Office Ltd. v. Ojemuyiwa* (1963) 1 All F NLR 1. Appellant then proceeded to recall from the record the following salient facts:-

(i) Independent National Electoral Commission (INEC), 3rd Respondent therein in appeal number SC.336/2012 against whom G the trial court's judgment was given and against whom positive orders were made by the trial court were apparently satisfied or content with the said judgment therefore, did not appeal against it.

(ii) No order(s) was made against the applicant (1st respondent in SC.336/2012 by the trial court, to justify the grant of leave to H him to appeal as an interested party against same.

(iii) Applicant 1st respondent was not involved in the matter at the hearing before the trial court.

(iv) No shred of evidence pertaining to the applicant/1st respondent in appeal number SC.336/2012 was led at the proceed-

ing; and

(v) Even the applicant's proposed notice of appeal failed to reflect any grievance suffered by the applicant by the pronouncement of the trial court's decision.

Learned senior counsel further submitted that the findings of the lower Court in the determination of the application for leave to appeal as an interested party was perverse and unfounded hence ought to be set aside. B

Fagbemi, SAN drew our attention to the reliefs of the plaintiff at the Federal High Court, 2nd respondent in SC.336/2012 and submitted that the reliefs granted in his favour were essentially against the Independent National Electoral Commission, Peoples Democratic Party and the applicant, who was at the material time, the Governor of Rivers State and the subject matter of the suit was to determine his tenure and nothing more. C

It was the further contention of Prince Fagbemi, SAN that the interest sought to be an interested party who desires to appeal must be shown from the record, but did not from the affidavit in support of the application for leave. This is so because the appeal would be determined on the record and not on the extraneous matters. D

That being the case, in the absence of any legal grievance and sufficient interest, the application is unmeritorious and ought to be dismissed relying on the following authorities.

(a) *Omosho v. Abdullahi* (2008) 2 NWLR (Pt.1072) 526 at 545. F

(b) *Mobil Producing (Nig.) Unlimited v. Monokpo* (supra)

Learned counsel concluded that having analysed in detail the claims granted by the trial Federal High Court and considering G the totality of the affidavit evidence, no interest worthy of the court's protection is demonstrated to warrant the grant of the application.

By the provisions of Section 243(a) of the Constitution of the Federal Republic of Nigeria (as amended), there are two categories of persons who can appeal. The 1st category belongs to parties H to the proceedings who may appeal as of right.

The second category can only do so with leave of the court and not as of right. The right to appeal in this instance is only exercisable with leave, at the instance of the person who can show that he

has an interest in the matter. Such a person has the Herculean duty to satisfy the court that he has a legal grievance in the matter and that the decision pronounced has wrongfully and prejudicially refused him something which he had a right to demand. See Omotosho (supra).

B For the 3rd respondent in SC.111/2012 but 4th respondent
in SC.336/2012, the argument is one in each of the two briefs of
argument filed. The position taken by Olusola Oke, follows that of
Uchekchukwu, SAN on the point that the second shows that the ap-
pellants herein did not challenge the findings of fact by the Court of
C Appeal on the issue that the appellant filed uncontroverted and un-
challenged affidavit evidence to show that he has sufficient interest.
Oke then submitted that an appellate court will not interfere with the
exercise of discretion by the court below and urged us to interfere.

Oke, further stated that the outcome of the appeal may af-
D fect the applicant especially where the court holds that the tenure of
the appellant, Rotimi Amaechi, in SC.336/2012 did not expire on
28th May, 2011. This according to the learned counsel may necessi-
tate the conduct of another election.

E My lords, I must state from the onset that my focus in deter-
mining this issue should be on the concept of locus standi to appeal a
decision of the court rather than the locus to institute a suit or venti-
late a cause of action.

According to the 1st respondent the two planks on which he
F relied to bring his application for leave to appeal as an interested
party against the judgment of the trial Federal High Court are con-
tained in the uncontroverted deposition in the affidavit in support of
the application to the effect that:

(a) He was a party to the judgment of the Supreme Court
G subjected to interpretation at the Federal High Court and should have
been made a party to same; and

(b) That he is and was a person interested in the office of
Governor of Rivers State of Nigeria.

H However, a calm look at pages 49 - 51 as well as pages 105
- 108 of the record in SC.336/2012 would reveal abundantly that
the said depositions were effectively controverted by the respondents
to the application who filed counter-affidavit in opposition, includ-
ing:-

“(i) 1st respondent’s counter affidavit to motion on notice

dated and filed on the 27th day of May, 2011 deposed to by Dauda Lamiri; and particularly

(ii) Paragraphs 5, 11, 12, 13 14 and 18 of the 2nd respondent's counter affidavit against applicant's motion dated and filed on 27th May, 2011 deposed to by Ashaolu Gbenga that:

(5) I have also seen and read the judgment of the lower Court delivered on 7/10/2010, per Abdul Kafarati and fully understand its content and purport.

The said judgment was attached to applicant's motion as Exhibit CO."

"(11) By reading through the judgment, I know that, it does not in any way affect the interest of the applicant who was not a party in the lower Court.

(12) The judge merely referred to the name of the applicant as the usurper of the 3rd respondent's mandate as declared by the Supreme Court in the case of Amaechi v. INEC (2008) 5 NWLR (Pt.227);

(13) I have also perused the Originating Summons that gave rise to the judgment of the Lower Court and I know that same does not contain any complaint against the interest of the applicant;

(14) I know by virtue of my legal training that an interested party is one who ought to have been joined at the Lower Court; and

(18) Apart from the processes referred to above, I have also thoroughly read through the proposed Notice of Appeal attached to the motion and discovered that none of the complaints therein personally affects the interest of the applicant."

Considering the above my lords, it is therefore, not true as contended by the first respondent in SC.336/2012 herein that the depositions made by the applicant/1st respondent herein were uncontroverted or not decided. This situation therefore, places the burden of demonstrating "sufficient interest" on the applicant/1st respondent in SC.336/2012.

My lords, I agree as submitted by the 1st respondent's counsel that the law on locus standi is not static and that the circumstances of each case are to be considered. Hence, what constitutes a legal right, sufficient or special interest adversely affected will, of course, depend on the facts of each case. See: Nyako (supra). Therefore each case should be considered on its merit and peculiar facts.

It is my firm view, flowing from the community reading of Section 243(a) of the Constitution of the Federal Republic of Nigeria (1999) (as amended) and the plethora of the case law authorities on this point that only a person whose interest has been directly and not obliquely, affected by a decision that can
 B ***validly seek leave to appeal as an interested party. This would not cover a person who has a general interest in the said decision to appeal against same. See Bala v. Dikko (2013) 4 NWLR (Pt.1343) page 52 at 63 - 64. In the appeal at hand, we take the***
 C ***interest or right being relied upon by the 1st respondent as one which he shares with other aspirants from other political parties. In that wise, the 1st respondent needs to show more facts which made him more affected by the outcome of the case.***

D The Court of Appeal in Omotosho v. Abdullahi (2008) 2 NWLR (Pt.1072) page 526 at 543, has also decided that in a matter of application for leave to appeal by an interested party, his interest must be clear from the record of proceedings and not from the affidavit he filed in support of his application as per Salami, JCA. The
 E Supreme Court did not overrule same.

That being the case, the relevant question then is: did the applicant in the court below disclose sufficient interest in making the instant application for leave to appeal? I think not. To my mind, it is
 F not enough to allege, as applicant did in his affidavit in support of his application, that he was a party to the judgment of the Supreme Court subject of interpretation in the Federal High Court and ought to be granted leave to appeal. He needs to do more. After all, he did not acquire any legal right via the said judgment of the Supreme
 G Court, which adjudged him “an imposter” or pretender with no right worthy of protection. See the Supreme Court’s case of Amaechi v. INEC (2008) 5 NWLR (Pt.1080) page 227 at 316 which he relied upon to anchor his interest. Page 318 of that report described the applicant in the court below as “a pretender” to the office of Governor of Rivers State. How then a pretender will qualify to be a person
 H interested to seek leave to appeal remains to be seen or appreciated.

My lords, on this point alone, this issue 2 ought to be resolved in favour of the appellant against the respondents and it is hereby resolved accordingly.

Furthermore my lords, it is not also enough to ground locus merely by alleging that he is interested in the office of the Governor of Rivers State and has been prejudicially affected by the decision, just like several other aspirants, especially in the face of the denial in the numerous counter affidavit filed in opposition. I am therefore not convinced that the 1st respondent has demonstrated sufficient interest to warrant the grant of leave. B

1st respondent having not shown how the judgment of the Federal High Court, he is seeking leave to appeal against prejudicially affected his interest and having not demonstrated that he is a person aggrieved, who has suffered legal grievance which deprived him of something or wrongfully affected his title to something is not entitled to the leave sought. The mere fact that the appellant in the court below stated that he was a person interested in becoming the Governor of Rivers State, to my mind, is not enough to confer interest on the applicant to seek leave to appeal. Apart from the fact that he has not shown any grievance, he is also not the only person who desires to be the Governor of Rivers State. See the decision of the court in Ayida & Ors. v. Town Planning Authority & Anr (2013) 10 NWLR (Pt.1362) 226 at 257 per Mohammed, JSC. C D E

This my lords, leads me to the finding of the Lower Court to the effect that:-

“The record of appeal has shown the grievance suffered by the applicant and reference was made to him by the trial judge in its decision. The applicant by affidavit evidence before the court has shown sufficient interest in the pending appeal and we are satisfied.” F

Having held earlier, the above findings are perverse and unmaintainable and ought to be set aside. See: Nkado and Ors. v. Obiano & Anor. (1997) 5 NWLR (Pt.503) 31. **A finding is said to be perverse where it runs counter to the evidence on record or where it has been shown that the Lower Court took into account matters which they ought not to have taken into account or shut their eyes to the obvious. Therefore, this court shall not hesitate to set aside the perverse findings in the circumstances and I hereby do so.** I rely on Awudo v. David (2005) 2 NWLR (Pt.909) 199; Okonkwo v. Ngige (2006) 8 NWLR (Pt.981) 119. Finally, I resolve this issue 2 in favour of the appellant. G H

ISSUE NUMBER 3

The issue here was treated by the two appellants in SC.111/2012 and SC.336/2012 in much the same argument and I propose to treat them together.

Under this issue, learned senior counsel for the appellants submitted that the grant or refusal of an application for leave to appeal as an interested party is a call on the equitable discretion relying of the court, on *Ojora v. Odunsi* (1964) 3 NSCC 34 at 48. It was further submitted that a person who goes to the temple of equity must do so with clean hands otherwise the very same mercy he seeks must be refused citing the case of: *Okwulume v. Anoliefo* (1996) 1 NWLR (Pt.425) 480 in support. It was contended that the application for leave ought not to be granted in view of certain uncontroverted facts, which are reprehensible and they include the under mentioned:

(i) 1st respondent that is Mr. Omehia had knowledge of the trial court's judgment in suit No. FHC/ABJ/656/2010 prior to the election of April, 2011.

(i) 1st respondent lost to the appellant who was the 4th respondent's Peoples Democratic Party-candidate in the election.

(ii) 1st respondent had unsuccessfully challenged the result of the election at the tribunal and on appeal; and

(iii) It was the desire of the 1st respondent to nullify the unfavourable election result that engendered the application for leave to appeal as an interested party.

Learned Senior Counsel, Fagbemi, SAN submitted that the aforementioned facts were deliberately misrepresented to the court below in the presentation of the application and ought to have compelled the refusal of the application.

Counsel also contended that law and equity would not allow anyone to engage in taking benefit of a course (as the 1st respondent did) but later resort to challenge that same course on the ground that he was not fortunate to have the benefit. He cited the case of *Adesanya v. President, FRN* (1984) 2 NCLR 3258 in support.

It was further submitted that the conduct of the applicant/1st respondent in participating the election and loosing is tantamount to waiver/compromise/abandonment of any perceived right by the applicant. See: *Ariori v. Elemo* (1983) 1 SCNLR 1; *Olatunde v. O.A.U* (1993) NWLR (Pt.178) at 178. Counsel finally urged this court to

resolve issue 3 in favour of the appellant.

Like the appellants, the arguments or submissions of the opposing respondents are also along the same line. On this issue, learned senior counsel for the 1st respondent Mr. Oke, submitted that the issue of waiver does not arise on the facts and in the circumstances of this case. Learned counsel further submitted that waiver would not apply because all the grounds of appeal dwell on the issues of jurisdiction and constitutionality. Mr. Oke, SAN referred this court to Exhibit C04, the proposed notice of appeal at pages 37-43 of the record and submitted that no conduct of a litigant can result in waiver where the court lacks jurisdiction. The case of *Adesola v. Abidiloye* (1999) 14 NWLR (Pt.637) 28 at 52 was cited in support. It was contended that illegality and unconstitutionality cannot be waived and that in fact and in all the circumstances of this case there is absolutely no issue of waiver, as waiver, can only arise in well defined circumstances. D

The above, my lords, represented a summary of the argument and submission of all the counsel in respect of issue (3). There is no doubt that the 4th respondent in SC.111/2012 but 1st respondent in SC.336/2012 had taken benefit under the judgment he sought to appeal against to the court below. E

Specifically, it has been shown that Mr. Omehia participated in the election which came up following the judgment of the trial court in this case. 4th respondent in SC.111/2012 had participated actively as a candidate in the election and lost. He also exhausted all the appeal remedies available to him as a petitioner. It was after exhausting all the above that he now resorted to pursuing an application for leave to appeal as an interested party. 4th respondent now finds it convenient to argue that his grounds of appeal are jurisdictional. The corollary effect of the above is that one cannot waive a jurisdictional or constitutional matter. F

My lords, I think the 4th respondent has over simplified the issue involved. I think the issue of jurisdiction in the circumstances of this case is mis-conceived. What is being called to question is whether Mr. Omehia should be allowed or given leave to appeal against a judgment he derived benefit from and has in fact utilized the procedure for claiming remedy, albeit unsuccessfully. Like in the case of *Adesanya v. President; Federal Republic of Nigeria* (supra) it is highly un-con- H

scionable for Mr. Omehia to now turn around to seek leave to appeal against a judgment he has taken or enjoyed so much benefit from. Fatayi Williams, CJN, of blessed Memory, opined in the Adesanya case (supra). And I fully agree with him, it is doubtful whether Mr. Omehia would have sought leave to appeal against the decision of the trial Federal High Court, if he had been successful at the poll which followed the decision of the trial court in this case. The issue involved is not jurisdictional as 4th respondent's counsel would want to describe it, rather what is involved is the unconscionable behavior of 4th respondent which I highlighted above. In the circumstances, I hold that issue No.3 is hereby resolved in favour of the appellants against the respondents.

Lateef O. Fagbemi, SAN at the hearing of this appeal, the D complained about the language and style of the brief of the 1st respondent SC.336/2012. He called the attention of this court to the use of the following words “contumacious fabrications” “fraud, “collusion”, “treason”, “holy cows”; by the 1st respondent’s counsel in his brief, to describe and accuse the appellant and his counsel. He further specifically referred this Honourable court to paragraphs 1.00 on page 1, 1.00 on page 5, 4.02 on page 9, 6.02 on page 37, 6.17 on page 43; 6.02 on page 49, and particularly paragraph 6.24 on page 51 of the 1st respondent’s brief in SC.336/2012, where he submitted that the 1st respondent, again, used debasing, scathing, F and unfortunate choice of words against his person without any iota of proof.

Finally, relying on the case of Abubakar v. Yar’adua (2008) 19 NWLR (Pt.11220) 175 and Udo v. Eshiel (1994) 8 NWLR (Pt.363) G 483; he urged this court to condemn in strong terms the conduct of the 1st respondent’s counsel and admonish him on the ethics and decorum of the profession, which is a noble and honourable one.

I have gone through the said 1st respondent’s brief and regretfully I have no doubt in my mind that the words used by the 1st H respondent’s counsel are clearly bad and unbecoming of a legal practitioner. He needs not use such derogatory and insulting language in a brief of argument. The rule of professional conduct requires lawyers not only to display a respectful attitude towards the bench but also to exhibit a high level of decorum, candour and fairness to the

court and to other lawyers.

A court of law, especially the apex court, is a place for serious legal business of adjudication, and not a domain for the exchange of all sorts of insult and defamatory innuendos. The age long and sacred traditional decorum of the bar must be protected, maintained and held in high esteem in the discharge of counsel duties to their clients. Need I say more. I therefore deprecate strongly the choice of words, used by the 1st respondents counsel in his brief of argument as one unbecoming of a legal practitioner and ought not to be used in any brief, such words should be avoided.

In conclusion, I hold that as the appeals are pregnant with a lot of merits same are therefore allowed vis-à-vis appeal number SC.336/2012 as consolidated with SC.111/2012. I set aside the leave granted by the court below.

I allow the appeals and set aside the order of the court below which granted the 1st respondent -Celestine Omehia leave to appeal against the judgment of the Federal High Court. No order as to costs.

FABIYI JSC

On 11th November, 2013, this appeal was consolidated with SC.111/2012. Basically, they touch on same facts and law. Both appeals challenge the decision of the Court of Appeal made on 20th December, 2011 in which the 1st respondent herein Celestine Omehia was granted leave to appeal as an interested party against the judgment of Abdu-Kafarati, J. delivered on 7th October, 2010.

I agree with my learned brother - Muntaka -Coomassie, JSC that this appeal should also be allowed.

It is hereby allowed. I endorse all the consequential orders; inclusive of that relating to costs.

SC.111/2012

I have read in advance the judgment just delivered by my learned brother -Muntaka-Coomassie, JSC. I agree with the reasons advanced therein to arrive at the conclusion that the appeal is meritorious and should be allowed.

The appellant herein, as plaintiff at the Federal High Court, Abuja filed an Originating summons against the 1st, 2nd and 3rd respondents seeking determination of five (5) questions. In the event

of a resolution of the questions in his favour, he sought three declaratory reliefs and two orders. I need not restate them as they are already set out in the lead judgment.

On 7th October, 2010, Abdu-Kafarati, J resolved all the issues in favour of the plaintiff. The reliefs sought were granted. In April 2011, the Governorship election in Rivers State took place. The 4th respondent -Celestine Omehia contested the election on the platform of All Progressive Grand Alliance (APGA) and lost to the 2nd respondent herein. His efforts to sail through the Electoral Tribunal upwards to challenge the result met a brickwall. The 4th respondent along with others then filed applications before the Court of Appeal, Abuja Division for leave to appeal against the trial court's decision as interested parties. The Court of Appeal only granted the application of the 4th respondent. The other similar applications were refused. The appellant herein felt unhappy and filed this appeal. The 2nd respondent herein also felt dissatisfied and filed his own appeal with No. SC.336/20012. The two appeals were consolidated since they are inter-related.

The issues submitted by the appellant herein for determination are as follows:-

“(i) Whether the 4th respondent’s application for leave to appeal as an interested party was competent in law before the lower court, and thus grantable.

(ii) Whether the 4th respondent by his application before the lower court disclosed sufficient facts and interest to entitle him to the grant of his application for leave to appeal as an interested party by the lower court.

(iii) Whether the lower court was right in granting leave to the 4th respondent to appeal despite his conduct as disclosed in the materials before the court.”

The complaint of the appellant in respect of issue (i) is that the lower court acted without jurisdiction in granting the application of the 4th respondent to appeal as a person interested when his prayers did not include one seeking leave to be made a party to the case pursuant to section 243 (a) of the 1999 Constitution.

In the case of *Ezenwosu v. Ngonadi* (1988) 3 NWLR (Pt.81) 163 at 175, this court clarified the position of the law on the point. In interpreting Section 222 of the 1979 Constitution which is in pari

materia with Section 243 (a) of the 1999 Constitution as amended, it was laid down that where an interested party desires to appeal out of time, as herein, he ought to bring application asking for - (a) leave to be made a party in the case; and (b) leave to appeal against the decision of the High Court. The essential prayer must be accompanied by the trinity prayers as follows: B

“(i) Leave to appeal under section 222 of the 1979 Constitution as a person having an interest in the case; and under the rules of court;

(ii) extension of time within which to apply of leave to appeal; C

(iii) leave to appeal; he may, of course, add other prayers;

(iv) extension of time within which to file notice and grounds of appeal.”

It was pointed out that the last three prayers are wholly dependent on the first prayer. The other prayers cannot succeed unless the applicant is first made a party in the case. And where an applicant did not ask for the first prayer, it will be wrong to grant the applicant leave to appeal. See also in *Re: Madaki* (1996) 7 NWLR (Pt.459) 153 at 164 where this court restated the point. Same is a matter which goes to the serious issue of jurisdiction. E

In the application before the lower court, the foremost prayer for leave to be made a party; which should give the applicant the leeway to participate in the appeal was left out. There is no gainsaying the fact that the application was incompetent and should have been struck out. F

For the above reasons and the detailed ones contained in the lead judgment, I too feel that the appeal is meritorious. It is hereby allowed. I endorse all the consequential orders contained in the lead judgment, that relating to costs inclusive. G

GALADIMA JSC

SC.111/2012 and SC.336/2012 are consolidated appeals. The appeals were heard together on 14/11/2014. I have considered the appeals separately. The facts and circumstances in the two consolidated appeals are on all fours. The Appeals arose from the Ruling of the Court of Appeal Abuja Division, delivered in Appeal No. CA/A/299/M/2013 on 20/12/2011. Having allowed the Appeal in SC.111/ H

2012, I shall also allow the appeal in SC.336/2012. I also resolve the first issue herein in favour of the Appellant and set aside the order of the Court of Appeal delivered on 20/12/2011.

SC.111/2012

Both Appeals, SC.111/2012 and SC.336/2012 stem from the B Ruling of the Court of Appeal Abuja Division, delivered on 20/12/2011, wherein in the two Appeals the 4th and 1st respondent, herein, respectively, was granted leave to appeal as an interested party against the judgment of the trial Federal High Court per Abdul Kafarati, (J) delivered on 7/10/2010. Both appeals have been consolidated.

C I shall first consider Appeal No. SC.111/2012. The said Ruling of the Court below is at pages 137 to 139 of volume 2 of the Records. The Appellant herein as plaintiff, at the trial court dissatisfied with that Ruling, vide leave of this court on 15/6/2012 appealed against it. On D 7/8/2012. The Notice of Appeal containing THREE GROUNDS without their particulars read as follows:-

“GROUND ONE (1):

The learned Justices of the Court of Appeal erred in law by refusing to consider and be bound by the authority of SENATOR E ABRAHAM ADESANYA v. PRESIDENT FEDERAL REPUBLIC OF NIGERIA (1981) 2 NCL 358, in spite of their findings at page 18 of the cyclostyled ruling that the Applicant 4th Respondent contested in the election he was challenging, they will proceed in granting leave to the same Applicant 4th Respondent to appeal as interested party.

F GROUND TWO (2):

The learned Justices of the Court of Appeal erred in law in their application of the Authority of OMOTOSHO v. ABDULLAHI (2008) All FWLR (PT.402) Pages 1114.

G GROUND THREE (3)

The learned Justices of the Court of Appeal erred in law when they held at page 19 of the cyclostyled judgment as follows:

“The record of appeal has shown the grievance suffered by the applicant and reference was made to him by the trial Judge in its H decision. The applicant has by affidavit evidence before the Court shown sufficient interest in the pending appeal and we are so satisfied...” and therefore occasioned miscarriage of Justice”

The issues that were formulated by the parties for the determination of this appeal will be set out in the court of this Judgment.

However, briefly the relevant facts that give rise to this appeal need be exposed first. These facts are as follows: The Appellant herein, as plaintiff, commenced suit No. FHC/ABJ/656/2010 at the Federal High Court Abuja by Originating Summons against the 1st, 2nd and 3rd Respondents as defendant. He presented the following questions before the trial court to determine: B

“1. Whether in the eyes of the law, and as decided by the Supreme Court in the case of AMAECHI v. INEC (2008) 5 NWLR (PT.1080) SC 227 Particularly @ 318-319, the 2nd Defendant is not the person who has been in office as the duly elected Governor of Rivers State of Nigeria since 29th May, 2007 pursuant to the gubernatorial election conducted by the 1st Defendant on 14th April, 2007 in which the 2nd Defendant being the lawfully sponsored candidate of 3rd Defendant was returned as the winner of the gubernatorial election. C

2. If issue one is determined in the affirmative, whether the 2nd Defendant’s 4 year term of office provided for the Section 180(2) of the Constitution of the Federal Republic of Nigeria 1999 as amended will not expire on the 28th of May, 2010. D

3. Whether having regard to the incidence of the assumption and occupation of the office of the Governor of Rivers State by the 2nd Defendant, on platform of the 3rd Defendant, for the 2007-2011 term, a fresh Gubernatorial election in Rivers State is not due at the same tie fixed for conduct of governorship election in other State of the Federation where the tenure of the incumbent will expire on 28th of May, 2011. E

4. Whether having regard to the legal incidence of the assumption and occupation of the office of Governor of Rivers State by the 2nd Defendant on the platform of the 3rd Defendant based on elections by the 1st Defendant on 14th April, 2007, the 2nd Defendant is entitled to remain in office beyond 28th May, 2011. G

5. Whether having regard to the Powers and functions of the 1st Defendant, it can schedule or fix a date to conduct any elections which will have the effect of allowing the 2nd Defendant to remain in office as governor of Rivers State beyond 28th May, 2011 without having contested and won an election for a second term of four years by that date. H

6. Whether having regard to Section 87(1) and (3) of the Elec-

toral Act 2010 and the extent INEC Electoral Guideline and Time Table for 2010 general elections, the 3rd Defendant is not obliged to conduct primaries of the 3rd Defendant to choose Gubernatorial candidate for Rivers State for the other states of the Federation where the tenure of office of the incumbent governors will expire on 28th May, 2011.”

Consequent upon the above posers the plaintiff sought the following reliefs:

“1. A DECLARATION that in the eye of the law and as decided by the Supreme Court in the case of *AMAECHI v. INEC (2008) 5 NWLR (Pt.1080) SC 227* particularly at 218-319, the 2nd Defendant is the person who has been in office as the duly elected Governor of Rivers State of Nigeria since 29th May, 2007 pursuant to the gubernatorial election conducted by 1st Defendant on 14th April, 2007 in which the 2nd Defendant being the lawfully sponsored candidate of 3rd Defendant was returned as the winner of the gubernatorial election.

2. A DECLARATION that the 2nd Defendant whose term of office expires on the 28th of May, 2011 cannot remain in office after the 28th of May, 2011 save upon having contested and won a fresh election for a second term of four years commencing with effect from 29th May, 2011 in accordance with Section 180 (2) of the Constitution of Federal Republic of Nigeria 1999 (and/or) as amended.

3. A DECLARATION that the 3rd Defendant is bound to schedule and conduct primary election to choose its gubernatorial candidate for Rivers State in accordance with Section 79(1) and (3) of the Electoral Act, 2010 extant INEC Guidelines at the same time with the conduct of primary elections to choose candidates of the 3rd Defendant who will contest on its platform in all other states of the Federation where the tenure of office of current incumbent governors will expire by law on 28th of May, 2011.

4. AN ORDER compelling the 3rd Defendant to schedule and conduct primary election to choose its gubernatorial candidate for Rivers State at the same time with the conduct of primary elections to choose candidates of the 3rd Defendant who will contest on its platform in all other states of the federation where the tenure of office of current incumbent governors will expire by law on 28th of May, 2011.

5. AN ORDER compelling the 1st Defendant to conduct gubernatorial election in Rivers State on the same date and at the same time when Governorship elections are scheduled to be held for the purpose of electing successors to the office of governors in all other states of the federation whose current tenure will expire on 28th May, 2010.” B

Attached to the Originating Summons were some exhibits and the plaintiff's written address. The Defendants on the other hand filed processes to counter the plaintiff's claim of the foregoing reliefs.

In his considered Ruling Judgment delivered on 1/9/2010, Abdul Kafarat (J) resolved all the issues in favour of the plaintiff. C

Whilst refusing the applications of the other applicants, the trial Court granted that of the 4th Respondent herein holding that he had demonstrated sufficient interest and therefore could appeal as an interested party against the judgment directing the holding of the election. D

As earlier stated the Appellant was not satisfied with the decision of the lower Court, hence, he further appealed to this Court. In his Appeal containing 3 grounds the following 3 issues were formulated in his brief deemed filed on 20/3/2013: E

“(1) Whether the 4th Respondent's application for leave to appeal as an interested party was competent in law before the lower Court, and thus grantable (Distilled from ground 4)

(ii) Whether the 4th Respondent by his application before the lower Court disclosed sufficient facts and interest to entitle him to the grant of his application for leave to appeal as an interested party by the lower Court (distilled from grounds 2 and 3) F

(iii) Whether the lower Court was right in granting leave to the 4th Respondent to appeal despite his conduct as disclosed in the materials before the court... (Distilled from ground 1).” G

Learned counsel for the 1st Respondent J. M. Majiyagbe Esq. having identified the brief deemed filed on 11/11/2013, adopted the three issues formulated by the Appellant.

It is note worthy that the 1st Respondent has maintained its neutrality in the determination of the appeal and will abide by decision of this Court. H

No brief was filed by the 2nd Respondent in this appeal. During the hearing of this appeal, his learned senior counsel so owned it

up, as the 2nd Respondent is not opposing the appeal. However as an appellant in SC 336/2012, a brief was filed on his behalf.

The 3rd Respondent's brief was prepared by Chief Olusola Oke Esq. Three issues formulated by the Appellant were restructured in the following terms:

B “(i) *Whether the 4th Respondent's application for leave to appeal as interested party is not competent.*

 (ii) *Whether considering the facts and materials before the lower Court was not right to have granted leave to the 4th Respondent to appeal as an interested party.*

C (iii) *Was there anything in the conduct of the 4th Respondent stopping him from seeking and obtaining the discretionary favour of the lower Court to appeal as interested party.”*

D It is to be noted that the 4th Respondent herein simply adopted the Appellants' issues as formulated.

The salient facts and circumstances leading to the consolidating of the two appeals have been comprehensibly exposed in the lead judgment. Needless setting them out here.

E Now to the consideration of the arguments of counsel in Appeal No. SC. 111/2012. Learned senior counsel for the Appellant Rickey Tarfa submitted that the first relief sought by the 4th Respondent is misconceived as the period within which an interested party may bring his application as a person having an interest in a matter, is prescribed by any law. He placed reliance on the cases of *Re-MADAKI* (1996) FWLR (Pt.459) 133 at 164 and *OJARA v. AGIP (NIG) Plc* 4 FWLR (Pt. 916) 515.

G It is further contended by the learned senior counsel that relief 1 sought by the 4th Respondent was unnecessary and therefore incompetent and cannot be granted. He further drew the attention of this Court to the fact that the judgment of the trial Court have been delivered about 200 days before the motion for leave was brought, the 4th Respondent's prayed in the Court below ought to have sought for trinity prayers.

H On his part the learned senior counsel for the Appellant, Chief Lateef Fagbemi, who in Appeal No. SC.336/2012. He ably advanced the argument further on this point. He contended that the 1st Respondent's (Celestine Omehia) application for leave, to appeal as interested party was most incompetent and for this reason the Court

below lacked jurisdiction to entertain and grant his application. He placed reliance on S. 243 (a) and (b) of the 1999 Constitution which he reproduced in paragraph 4.05 of his brief. It is submitted that a party whether appealing as of right or as interested party must always file his appeal within the stipulated time frame allowed by the Court of Appeal Act 2004, S.24(2). In the event of the failure to appeal within time, even as interested party, a party must seek for the usual trinity prayers; for

- (1) extension of time to seek leave to appeal
- (2) leave to appeal; and
- (3) extension of time to appeal.

Learned senior counsel placed reliance on the cases of *OWENA BANK (NIG) Plc v. N.S.E. LTD* (1997) 8 NWLR (Pt. 515) 1 at 13, *EZENWOSU v. NGONADI* (1988) 3 NWLR (Pt. 81) 163 at 175 and *Re: Madaki* (supra) at 164-165.

In his conclusion learned senior counsel L. O. FAGBEMI submitted that the complaint of the Appellant is on the competence of application granted by the Court below and this is a complaint against the jurisdiction of the Court, and that being the situation this Court is being urged to resolve the issue in favour of the Appellants in both appeals by setting aside the decision of the Court below and striking out the application seeking appeal as an interested party.

On this issue of the competence of Celestine Omehia's application both in SC. 111/2012 as 3rd Respondent and in SC. 336/2012 as 4th Respondent, learned counsel in the two appeals, Chief Olusola Oke Esq. has submitted as follows:

That it is not in every interlocutory appeal that leave to appeal is required. It is for instance not required as provided in S. 241 (1) (b) of the 1999 Constitution (as amended) where the ground of appeal involves question of law alone or as in 24(1)(c) of the Constitution (supra) where the appeal involves any civil criminal proceedings as to the interpretation or application of the Constitution. It is contended that all grounds in the Notice of Appeal on pp. 37-43 of the Record 4th Respondent herein show that the grounds of appeal are all of law alone, and therefore the appeals falls within the provision of section 241(b) of the aforesaid 1999 Constitution. It is submitted that the application to the lower Court did not require any Trinity Prayers, contrary to the contention of the Appellants in the

two appeals.

Chief U. N. Udechukwu is the learned senior counsel for the 4th Respondent in SC.111/2012 but for 1st Respondent in SC.336/2012. On this issue learned senior counsel, has submitted that the Application for leave to appeal in the two appeals as interested party was competent as it contains the requisite trinity prayers. He has submitted that the 3 prayers of the 1st Respondent were in line with the dicta of UWAIS CjN and Mohammed, JSC, in *Re-Madaki* (1996) 7 NWLR (pt. 459) 153 at page 165.

Learned Senior Counsel has argued strenuously that the application in the case at hand, contains all the 3 prayers including a prayer for extension of time. He refers to paragraphs 21 and 23 of the affidavit in support of the motion at page 12 of the record, which shows that the Court of Appeal had complained that one of the 3 prayers was surplusage and the counsel to the 1st Respondent had maintained that a trinity prayers was needed and again had to refile the application with the trinity prayers.

Learned senior counsel further submitted that the addition of the descriptive phrase “as an interested party” to each prayer enhances each prayer relying on *KALU v. ODILI* (1992) 5 NWLR (Pt. 240) 130 at pages 165 and 170.

From the onset I have set out the six questions the plaintiff/Respondent respectively in Appeals SC.111/2012 and SC. 336/2012 sought the determination and the accompanying reliefs. This 1st issue, no doubt questions the competence of the 4th Respondent’s (in SC. 111/2012) application for leave to appeal as an interested party and by extension whether the Court below has jurisdiction to entertain or grant the application.

S.243 (a) and (b) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) clearly provides for appeals by a person having interest. Careful perusal of this provision, no doubt, shows that a party whose interest has been affected by a decision of Federal High Court or a High Court must seek the leave of Court to bring appeal against such a decision and in addition in accordance with the provisions of the Court of Appeal Act and Rules made pursuant thereto. Furthermore, in ventilating his grievance, an aggrieved party must file his appeal within the time allowed by law regulating the filing of an appeal to the Court to which the appeal is to be heard,

that is the Court of Appeal. Then S. 24(2) of the Court of Appeal Act, 2004 provides for the time limit thus:

“The period for giving of notice or Notice of application for leave to Appeal are:-

(a) In appeal in a Civil cause or matter, fourteen days where the appeal is against an interlocutory decision and three months where the appeal is against a final decision. B

(b) In an appeal in criminal cause or matter, ninety days from the date of the decision appealed against.”

By this provision a party whether appealing as of right or as interested party must always file his appeal within the stipulated time C by the Court of Appeal Act (supra).

If a party fails to a appeal within time, even as an interested party, a party must seek for the usual trinity prayers: - for extension of time to seek leave to appeal; leave to appeal and extension of time D to appeal. See OWENA BANK (Nig) Plc v. N.S.E. Ltd (1997) 8 NWLR (Pt. 515) 1 at 3. The salient portion of the passage of the case reads:

“The Supreme Court has made several Pronouncements over this issue and it has been emphasized in those decisions that once a party were to appeal from either a final or interlocutory decision of the High Court; whether he is original party or an interested party, he must file his appeal within the time prescribed by S.25 of the Court of Appeal Act. If the time within which he could file his appeal has expired he must apply for an extension of time within (1) to seek leave to appeal, (2) leave to appeal and (3) extension of time within which to appeal. If any of these three prayers is not included in the application, the application shall be incompetent and must be struck out.” E F

I have carefully looked into the 4th Respondent’s Application G for leave to appeal as interested party. Prayer one on the motion paper is incompetent because the application has not sought for extension of time within which to seek leave to appeal as an interested party. It is to be noted however, that judgment of the Federal High Court was delivered on 7/10/2010 whereas the application to seek H leave was made on 27/3/2011 a period of about 200 days in between. As at the time the application was made on 27/5/2011, the statutory time limit of 90 days allowed to appeal had clearly lapsed. That being the situation the applicant (4th Respondent), at the Court

of Appeal, ought to have sought for the trinity prayers. See OWENA BANK (Nig) Plc v. N.S.E. Ltd (Supra) at page 13.

Prayer two barely satisfied the requirement of S. 243 of the 1999 Constitution (as amended). Prayer 3 was for the applicant to appeal as an interested party. It was just for extension of time to appeal. In effect the applicant did not seek (1) extension of time within which to appeal and (2) leave to appeal. In effect the 4th Respondent's incompetent application before the lower Court robbed the lower Court of the jurisdiction to grant same and so the grant thereof was a nullity in law. This issue having been resolved in favour of the Appellant, I agree entirely with my learned brother COOMASSIE, JSC that this appeal be allowed. The order of the lower Court granting leave to the 1st Respondent to an appeal as an interested party is set aside. I am of the respectful view however, that having resolved the first issue in favour of the Appellant in this appeal it would be mere academic exercise going further into issues 2 and 3 for determination.

I make no order as to costs parties are to bear their respective costs. Appeal allowed.

I shall however, by the way, considered it worthy to add my voice to the observations made by my learned brother in this lead judgment. He has condemned the damning criticism made by James C. I. Ezike, learned counsel for 1st Respondent in SC.336/2011 against his two learned senior colleagues, Lateef O. Fagbemi, SAN and Rickey Tarfa (SAN) on pages 1. (Para 1.00) page 9. (Para 4.02) p.52 (Para 6.24) of his brief of argument. I have read these pages. The languages used by the learned counsel for the 1st Respondent are unnecessarily abusive, debasing, derogatory, scathing, and unprofessional. I admonish this learned gentleman to be extremely sedulous and show high level of decorum in his choice of words and phrases in his long days of practice. After all, he too must be aspiring to be a respected Senior Advocate of Nigeria. He must apologize to this Apex Court and the gentlemen he has hurt so much.

NGWUTA JSC

I have had the privilege of reading and considering the exhaustive reasons in the leading judgment just delivered by my learned

brother, Muntaka-Coomassie, JSC in the consolidated appeals. I entirely agree with the views expressed by His Lordship in the lead judgment. I wish to chip in a few words by way of emphasis.

The application granted by the Court below and against which these appeals lie is reproduced hereunder for ease of reference:

“(1) An Order granting enlargement of time within which to seek leave to appeal as an interested party...” ^B

“(2) An Order granting leave to the applicant to appeal as an interested party...”

“(3) An Order extending the time limited by Section 24(2) of the Court of Appeal Act Cap. C36... for filing the Notice of Appeal...” ^C

It was argued for the 1st Respondent that his application has the trinity reliefs thereby satisfying the requirements for the application. I think that this argument is misconceived. The application is beset by a fundamental vice. It is still-born. ^D

Section 242 (1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) provides:

“S.242(1) Subject to the provision of S.241 of this Constitution, an appeal shall lie from decisions of the Federal High Court or a High Court to the Court of Appeal with the leave of the Federal High Court or that High Court or the Court of Appeal.” ^E

Section 241 of the Constitution (supra) which provides for appeals as of right from the Federal High Court or a High Court does not accommodate an applicant seeking leave to appeal as an interested party. The application of the 1st Respondent falls under S.242 ^F (1) reproduced above, and the said Section does not contemplate a time frame within which the application for leave to appeal can be brought.

Also, S.243 (a) pursuant to which the application was brought ^G has no provision relating to time frame. It follows that the first arm of the motion seeking enlargement of time to seek leave to appeal as interested party is grossly incompetent and this affects the other arms of the motion which depend on it.

The 1st Respondent, in the circumstances, should have asked ^H for leave to appeal as an interested party without reference to time frame.

Since, if leave is granted, he was already out of time to appeal he should then have asked for the trinity reliefs in addition to prayer

for leave as appeal as interested party. See the decision of this Court in *Ezenwosu v. Ngonadi* (1988) 3 NWLR (Pt. 81) 163 at 175 which listed the four reliefs an applicant for leave to appeal as interested party should ask for if the time to appeal has run. The appeal was decided on s.222 of the 1979 Constitution which is in *pari materia* with S.242 (1) of the Constitution (*supra*).

For the above and the fuller reasons in the lead judgment, I allow the appeals, set aside the order of the Court below made in favour of the 1st Respondents and strike out the application in the Court below as incompetent. Parties to bear their respective costs.

KEKERE-EKUN JSC

I have had the benefits of reading in draft the judgment of my learned brother, Muntaka-Coomassie, JSC just delivered. I entirely agree with his reasoning and conclusion that the appeal is meritorious and should be allowed.

The appellant as plaintiff commenced Suit No. FHC/ABJ/CS/656/2010 at the Federal High Court, Abuja (hereinafter referred to as the trial court) by Originating Summons against the 1st, 2nd & 3rd respondents seeking the determination of the following questions:

1. "Whether in the eye of the law and as decided by the Supreme Court in the case of *Amaechi v. INEC* (2008) 5 NWLR (Pt. 1080) SC 227 particularly @ 318-319, the 2nd Defendant is not the person who has been in office as the duly elected Governor of Rivers State of Nigeria since 29th May, 2007 pursuant to the gubernatorial election conducted by the 1st Defendant on 14th April, 2007 in which the 2nd Defendant being the lawfully sponsored candidate of 3rd Defendant was returned as the winner of the gubernatorial election.

2. If issue one is determined in the affirmative, whether the 2nd Defendant's 4 year term of office provided for by Section 180 (2) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) will not expire on the 28th May, 2010.

3. Whether having regard to the legal incidence of the assumption and occupation of the office of the Governor of Rivers State by the 2nd Defendant on the platform of the 3rd Defendant, for the 2007-2011 term, a fresh gubernatorial election in Rivers State is not due at the same time fixed for conduct of governorship elec-

tion in other states of the federation where the tenure of the incumbent will expire on 28th of May, 2011.

4. Whether having regard to the legal incidence of the assumption and occupation of the office of Governor of Rivers State by the 2nd Defendant on the platform of the 3rd Defendant based on elections by the 1st Defendant on 14th April, 2007, the 2nd Defendant is entitled to remain in office beyond 28th May, 2011. B

5. Whether having regard to the powers and functions of the 1st Defendant, it can schedule or fix a date to conduct any elections which will have the effect of allowing the 2nd Defendant to remain in office as Governor of Rivers State beyond 28th May, 2011 without having contested and won an election for a second term of four years by that date. C

6. Whether having regard to Section 87(1) and (3) of the Electoral Act 2010 and the extant INEC Electoral Guideline and Time Table for 2010 general elections, the 3rd Defendant is not obliged to conduct primary election to chose its gubernatorial candidate for Rivers State at the same time as scheduled for the conduct of primaries of the 3rd defendant to choose gubernatorial candidate for the other states of the federation where the tenure of office of the incumbent governors will expire on 28th May, 2011. D

In the event of a resolution of the question in his favour he sought the following reliefs:

1. *"A DECLARATION that in the eye of the law and as decided by the Supreme Court in the case of Amaechi v. INEC (2008) 5 NWLR (Pt. 1080) SC 227 particularly @ 318-319, the 2nd Defendant is the person who has been in office as the duly elected Governor of Rivers State of Nigeria since 29th May, 2007 pursuant to the gubernatorial election conducted by 1st Defendant on 14th April, 2007 in which the 2nd Defendant being the lawfully sponsored candidate of 3rd Defendant was returned as the winner of the gubernatorial election."* F

2. *A DECLARATION that the 2nd Defendant whose term of office expires on the 28th of May, 2011 cannot remain in office after the 28th of May, 2011 save upon having contested and won a fresh election for a second term of four years commencing with effect from 29th May, 2011 in accordance with Section 180(2) of the Constitution of the Federal Republic of Nigeria 1999 (and/or) as amended."* H

3. A DECLARATION that the 3rd Defendant is bound to schedule and conduct primary election to choose its gubernatorial candidate for Rivers State in accordance with Section 87 (1) and (3) of the Electoral Act, 2010 extant INEC Guidelines at the same time with the conduct of primary elections to choose candidate of the 3rd Defendant who will contest elections to choose candidates of the 3rd Defendant who will contest on its platform in all other states of the federation where the tenure of office of current incumbent governors will expire by law on 28th of May, 2011.

4. AN ORDER compelling the 3rd Defendant to schedule and conduct primary election to choose its gubernatorial candidate for Rivers State at the same time with the conduct of primary elections to choose candidates of the 3rd Defendant who will contest on its platform in all other states of the federation where the tenure of office of current incumbent governors will expire by law on 28th of May, 2011.

5. AN ORDER compelling the 1st Defendant to conduct gubernatorial election in Rivers State on the same date and at the same time when Governorship elections are scheduled to be held for the purpose of electing successors to the office of governors in all other states of the federation whose current tenure will expire on 28th May, 2010."

Counter processes were filed and written addresses exchanged. On 7/10/2010 the trial court per Abdu-Kafarati, J. resolved all the issues in favour of the plaintiff and granted the reliefs sought in the Originating Summons. Consequent upon the said judgment the Governorship election in Rivers State took place in April 2011. The 4th respondent, CELESTINE OMEHIA, along with some other persons filed applications before the Court of Appeal, Abuja Division (hereinafter referred to as the lower court) for leave to appeal against the trial court's decision as interested parties. All the applications were refused except that of the 4th respondent. It was the appellant's dissatisfaction with the grant of the 4th respondent's application that led to the filing of the instant appeal. Governor Rotimi Amaechi was also dissatisfied with the decision. He also appealed against it in SC.336/2012. The two appeals were consolidated by an order of this court. The issues for determination as formulated by the appellant in SC.336/2012 formed the basis upon which this appeal was determined. They

are:

1. Whether the 1st respondent's application for leave to appeal as interested party as (such) is competent?

2. Whether having regard to the facts and materials before the lower court and the inherent lack of locus in the applicant (now 1st respondent) the lower court was right in granting leave to the Applicant (1st Respondent) to appeal as an interested party against the judgment of the trial court? B

3. Whether the lower court was right in exercising its discretion in favour of the applicant (1st Respondent herein) by granting him leave to appeal as an interested party, considering the conduct of the Applicant, and the peculiar circumstance of the application? C

My comments in support of the lead judgment are in respect of competence of the application before the lower court.

By his motion on notice filed on 27/5/2011, the 4th respondent in SC.111/2012 (1st respondent in SC.336/2012) sought the following reliefs: D

1. An order granting enlargement of time within which to seek leave to appeal as an interested party against the judgment of the Federal High Court, Abuja Division, delivered by Hon. Justice A. Abdu-Kafarati on 7/10/2010 in suit No. FHC/ABJ/CS/656/2010 between Chief Cyprian Chukwu as plaintiff and Independent National Electoral Commission, Governor Rotimi Amaechi and Peoples Democratic Party as defendants. E

2. An order granting leave to the applicant to appeal as an interested party against the said judgment of the Federal High Court, Abuja Division, delivered by Hon. Justice A. Abdu-Kafarati on 7/10/2010 in suit No. FHC/ABJ/CS/656/2010 between Chief Cyprian Chukwu as plaintiff and Independent National Electoral Commission, Governor Rotimi Amaechi and Peoples Democratic Party as defendants. F

3. An order extending the time limited by section 24 (2) of the Court of Appeal Act, Cap. C36, Laws of the Federation of Nigeria for filing the appeal against the said judgment. G

4. An order for the accelerated hearing of this motion on notice. H

It is the contention of the appellant that the application was incompetent and ought not to have been granted by the trial court

because:

i. There is no provision of any law stipulating a time limit within which an application for leave to appeal as an interested party may be brought, therefore the prayer for extension of time to do so was incompetent.

B ii. By the combined effect of Section 243(a) and (b) of the Constitution of the Federal Republic of Nigeria, as (amended) and Section 24(2) of the Court of Appeal Act 2004, the applicant, being out of time, required what is known as “the trinity prayers” in addition to a prayer seeking leave to appeal as an interested party.

C It is contended on behalf of the appellant that the incompetence of the application robbed the court below of jurisdiction to grant same and that the grant of the application amounted to a nullity.

D On behalf of the 4th respondent, it was argued that the prayer for enlargement of time within which to seek leave to appeal as an interested party was competent. It was contended that having sought enlargement of time within which to seek leave to appeal as an interested party, leave to appeal and extension of time to appeal, the applicant had complied with the requirement for the trinity prayers. E It was further submitted that even if the prayer for enlargement of time to appeal as an interested party amounted to a surplusage, it was not sufficient to render the entire process incompetent.

F Relevant Constitutional and statutory provisions for the resolution of this issue include Sections 241 (1), 242 (1), 243 (1) (a) and (b) of the Constitution of the Federal Republic of Nigeria (as amended) (hereinafter referred to as the Constitution) and Section 24(2) of the Court of Appeal Act 2004.

G Section 241 (1) of the 1999 Constitution (as amended) provides for circumstances in which an appeal shall lie AS OF RIGHT from decisions of the Federal High Court or a High Court to the Court of Appeal. Such circumstances include:

H a. “final decisions in any civil or criminal proceedings before the Federal High Court or a High Court sitting at first instance;

b. where the ground of appeal involves questions of law alone decisions in any civil or criminal proceedings;

c. decisions in any civil or criminal proceedings on questions as to the interpretation or application of this Constitution;

Section 242 (1) of the Constitution provides:

“242(1) Subject to the provisions of Section 241 of this Constitution, an appeal shall lie from decisions of the Federal High Court or a High Court to the Court of Appeal with the leave of the Federal High Court or the Court of Appeal.”

Section 243(1) (a) and (b) of the Constitution provides:

“243 (1) Any right of appeal conferred by the Constitution from decisions of Federal High Court or High Court shall be -

a) exercisable in the case of civil proceedings at the instance of a party thereto or with the leave of the federal high court or high court or high court or court of appeal at the instance of any other person having an interest in the matter...

b) exercised in accordance with any Act of the National Assembly and Rules of Court for the time being in force regulating the powers, practice and procedure of the Court of Appeal.”

The right of appeal is determined by two factors - the nature of the appeal and the party exercising the right. Where the appeal falls within Section 242 (1) of the Constitution, an appeal lies as of right. Where the appeal does not fall within Section 241 (1) of the Constitution, Section 241 (1) applies. In other words, leave is required. The right of appeal conferred by Sections 241 (1) & 242 (1) of the Constitution is exercisable at the instance of a party thereto or with leave at the instance of a party having an interest in the matter. Thus, an aggrieved person who was not a party to a decision, which falls within the purview of Sections 241 (1) or 242 (1) of the Constitution, can only appeal against those decisions if he first seeks and obtains leave to appeal as an interested party. The leave to appeal as an interested party is the gate that opens the path to seek any other relief connected with the decision complained of.

The Court of Appeal Act, 2004 is an Act of the National Assembly. It prescribes the times within which to appeal against decisions of the Federal High Court or the High Court of a State. Section 24(2) of the Act provides;

“24(2) The periods for the giving of notice of appeal or notice of application for leave to appeal are:-

a. In an appeal in a civil cause or matter, fourteen days where the appeal is against an interlocutory decision and three months where the appeal is against a final decision;

b. In an appeal in a criminal cause or matter, ninety days from the date of the decision appealed against.”

A party to any decision covered by Section 241(1) (a) of the Constitution may appeal as of right but within the period prescribed by the Court of Appeal Act in compliance with Section 243(1) (b) of the Constitution. Where he is out of time, he simply applies for enlargement of time within which to appeal against the decision. See the recent decision of this court in *Ault & Wilborg (Nig.) Ltd v. Nibel Ind. Ltd.* (2010) 16 NWLR (1220) 486 @ 498 - 499 H-A.

Where the appeal does not fall within Section 241(1) of the Constitution, the appellant must come under Section 242(1) and seek leave to appeal (e.g. an interlocutory appeal or appeal from decision of Federal High Court or High Court in its appellate jurisdiction). Where he is out of time, he must seek the trinity prayers. See *Ault & Wilborg (Nig) Ltd v. Nibel Ind. Ltd* (supra) @ 498 G; *Owena Bank Nig Plc v. NSE Ltd.* (1997) 8 NWLR (pt. 515) 1 @ 13-14 G-A.

Pursuant to Section 243 (1) (a) of the Constitution, a party interested in an appeal, who was not originally a party to the decision complained of, must first seek leave as an interested party. There is no time limit within which the application for leave to appeal as an interested party may be brought. See: *In Re Madaki* (1996) 7 NWLR (Pt. 459) 153 @ 164 A-B. Once he is granted admittance into the proceedings, he must then comply with the requirements of the law in the same manner as any other party. In other words if he is out of time to appeal, he requires the trinity prayers. See: *Owena Bank (Nig.) Plc v. N.S.E. Ltd.* (supra). Since he is in the category of persons who require leave, ab initio, in order to participate in the proceedings, the application for leave to appeal as an interested party, cannot be subsumed in the trinity prayers. It is a separate relief.

The judgment of the trial court was delivered on 7/10/2010 while the application for leave to appeal as an interested party was made on 27/5/2011, more than 200 days thereafter. The statutory period of 90 days within which to appeal had lapsed. In the circumstances the applicant ought to have sought the following reliefs:

1. Leave to appeal as interested part. (No enlargement of time required). This prayer is what opens the door for the interested party to participate in the appeal.

Being out of time he then required:

2. Extension of time to seek leave to appeal.

3. Leave to appeal

4. Extension of time to file Notice and Grounds of Appeal

See: Ezenwosu v. Ngonadi (1988) 3 NWLR (81) 163 @ 175; (1988) 1 NSCC Vol. 19 (Part 1) 1071 @ 1073 lines 5-23, wherein this court held that prayers 2, 3 and 4 above are wholly dependent upon prayer 1 and that the other prayers cannot succeed unless the applicant is first made a party in the case. In the instant case prayer 1 of the 4th respondent's motion was incompetent. The remaining prayers had no leg to stand on. Therefore the application was incompetent and ought to have been struck out. This issue is accordingly resolved in the appellant's favour. It is for these and the much more comprehensive reasons contained in the lead judgment that I also allow the appeal and set aside the order of the lower court granting CELESTINE OMEHIA, the 4th respondent therein leave to appeal against the decision of the trial court. I abide by the order on costs.

SC.336/2012

On 11/11/2013 we heard this appeal, SC.336/2012 along with SC.111/2012 as consolidated appeals. The facts and circumstances of this appeal are on all fours with the Appeal in SC.111/2012.

Both appeals are against the order of the lower court in Appeal No.CA/A/299/M/2013 made on 20/12/2011 granting the 1st Respondent, CELESTINE OMEHIA, leave to appeal as an interested party against the judgment of the trial court delivered on 7/10/2010 per Abdu-Kafarati, J.

Having allowed Appeal No.SC.111/2012, I agree with my learned brother, Muntaka-Coomassie, JSC in the lead judgment that this appeal, SC.336/2012 should also be and is hereby allowed. I hereby set aside the order of the lower court and abide by the order on costs.