

**SUPREME COURT OF NIGERIA**  
FRIDAY 7TH FEBRUARY, 2014. SC. 16/2013  
**CORAM:- M. S. MUNTAKA-COOMASSIE,**  
**J. A. FABIYI, S. GALADIMA, N. S. NGWUTA,**  
**K. M. O. KEKERE-EKUN, JJSC**

HON. GOODLUCK NANA OPIA ..... APPELLANT  
AND

1. INDEPENDENT NATIONAL  
ELECTORAL COMMISSION

2. HON. LUKE CHUKWU ..... RESPONDENTS

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ACTIONS - Cause of action - Determination - Cause of action is determined by reference to statement of claim - As court should look at the writ of summons - And averments in statement of claim (H1)

ELECTIONS - Cancellation - Effect - In view of the fact that the election was cancelled by INEC - Appellant cannot be said to be a lawful candidate - Who has won election under the Act (H2)

ELECTION PETITIONS - Elections - Jurisdiction - It is Election Petition Tribunal that is vested with jurisdiction - To determine issues relating to conduct of election - Return of candidates - Nullification of election (H3)

COURTS - Federal HC - Jurisdiction - Limit - Declaration or injunction sought from the court - Must be in respect of the major items enumerated under 1999 Constitution s. 251 (H4)

**FACTS**

Plaintiff/appellant commenced this action by originating summons filed before the Federal High Court Owerri, seeking declaration that having scored the majority of lawful votes cast in the Imo State House of Assembly election conducted on 26th April 2011 and having been returned as the winner, it was unlawful, in light of the provisions of section 68(1)(c) of the Electoral Act 2010 (as amended), for 1<sup>st</sup> defendant/1<sup>st</sup> respondent to conduct any supplementary election to elect another person as member of the Imo State

House of Assembly. He sought various declaratory and injunctive reliefs.

Appellant contested the election into the State House of Assembly under the platform of the Peoples Democratic Party to represent Ohaji/Egbema State Constituency during the 2011 General Election held on 26th April 2011. 2<sup>nd</sup> defendant/2<sup>nd</sup> respondent was also a contestant at the same election but sponsored by All Progressive Grand Alliance. 1<sup>st</sup> respondent organized and conducted the election. The election was inconclusive and was cancelled by 1<sup>st</sup> respondent. Subsequently, a supplementary election was conducted and at the end of which 2<sup>nd</sup> respondent emerged as the winner and was issued a certificate of return. Appellant was dissatisfied with the conduct of the supplementary election and return of 2<sup>nd</sup> respondent as the winner. During the proceedings before the court, 2<sup>nd</sup> respondent filed preliminary objection challenging the jurisdiction of the court to entertain appellant's claim. The court heard the objection and declined jurisdiction on the basis that the claim was within the jurisdiction of Election Petition Tribunal. Aggrieved, appellant appealed to the Court of Appeal Owerri Division. The court dismissed the appeal. Hence, appellant appealed to Supreme Court.

### **ISSUE FOR DETERMINATION**

*"Whether the Court of Appeal was right when it affirmed the decision of the trial court, wherein the said court declined jurisdiction to hear and determine the Appellants' Amended Originating Summons."*

**HELD** (Unanimously dismissing the appeal per GALADIMA JSC)

*ACTIONS - Cause of action - Determination*

**1. A cause of action is determined by reference to the plaintiff's statement of claim. The immediate materials a court should look at are the Writ of Summons and averments in the statement of claim.** (p. 1008 D)

*ELECTIONS - Cancellation - Effect*

**2. In view of the fact that the election of 26th April, 2011**

***election was cancelled by INEC, (the electoral umpire) and that cancellation is still subsisting it cannot be said that the appellant is a lawful candidate who has won election under the Act. The cancelled election no longer exists in law, to confer any positive interest or right, like a certificate of return. It is note worthy that as the election of 26th April, 2011 was cancelled and supplementary Election held on 6th May, 2011 and the 2nd Respondent returned the winner, the Appellant cannot be said to be a “candidate who has won an election under the Act. (p. 1011 E)***

*Elections - Jurisdiction*

**3. The questions formulated by the Appellant for determination in the Originating Summons sought to challenge the validity of the Supplementary Election and the reliefs (especially reliefs 1 & 4) wanted the Federal High Court to also nullify the aforesaid Supplementary Election and return the 2nd Respondent. The consequence of such a declaration by the Federal High Court was to turn that Court into an Election Petition Tribunal in clear violation of S.133(1) of the Electoral Act (supra) and Section 285(1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended). It is only the Election Petition Tribunal that is vested with jurisdiction to determine issues relating to the conduct of election and the return of candidates in election and also has the powers to nullify the election and return the 2nd Respondent.**

**By Section 251 of the 1999 Constitution the eighteen main items enumerated therein do not include Election matter.**

**Section 285(1)(d) of the 1999 Constitution, having specifically conferred the power to decide disputes arising from the conduct of election on the Election Tribunal, to the exclusion of the regular Courts, including the Federal High Court, the latter lacks the vires to decide election disputes. (pp. 1013 H/1015 C)**

*Federal HC - Jurisdiction - Limit*

**4. The Appellant has placed heavy reliance on section 251(i) of the 1999 Constitution (supra) to contend that since his**

***Originating Summons sought for declaration and injunctions against the administrative action or decision of the 1st Respondent, the Federal High Court is imbued with the jurisdiction to entertain same. However it must be noted that all the matters that fall within the exclusive jurisdiction of the Federal High Court under section 251 of the 1999 Constitution (supra) have been specifically listed out. The legal implication is that the nature of the declaration or injunction being sought for it to be within the exclusive jurisdiction of the Federal High court must be in respect of the major items enumerated under the said section 251 (supra). The Draftsman in no mistaken terms painstakingly itemized the subject matters that fall within the exclusive jurisdiction of the Federal High Court.***  
(p. 1014 C)

D  
**NOTABLE POINTS OF INTEREST**  
**GALADIMA JSC**

***1. Where there is right, there is remedy***  
E The basic, broad and general principle of law is contained in the old Latin maxim - UBI JUS UBI REMEDIUM. “JUS” here signifies the legal authority to do or demand something and REMEDIUM means the right of action, or the means given by law for the recovery or declaration. Simply put, wherever the law gives a right, it also gives a  
F remedy conversely, wherever a plaintiff is claiming a remedy, that remedy must be joined on a legal right. (p. 1008 B)

***2. Courts ought not to fish for jurisdiction***  
G The lower court has no jurisdiction to stray into the realm exclusively reserved for election tribunals. It is not desirable for a court to fish for jurisdiction so that it may not be tagged as a chameleonic impostor or a ‘meddlesome interloper’. Both the lower court and the election tribunal are creations of the 1999 Constitution each assigned specific jurisdiction. Each of them should stay within its own-realm. One can-  
H not constitute a cog in the wheel of progress of the other. Where the Constitution gives jurisdiction to the election tribunal to the exclusion of all other courts or tribunal, the Federal High Court has no jurisdiction. (p. 1016 A)

**FABIYI JSC*****3. Competence of court***

A court is competent when, inter alia, a case comes before it, initiated by due process of law and upon fulfillment of any condition, precedent to the exercise of jurisdiction. As well, the subject matter must be cognizable by the court or Tribunal. (p. 1019 E) B

**REPRESENTATION**

Dr. Livy Uzoukwu SAN with K. C. O. Njemanze SAN and Valentine Offia Esq., for the Appellant C  
 Elisha Y. Kurah Esq., for the 1st Respondent  
 Wisdom Duru Eke Esq., for the 2nd Respondent

**CASES REFERRED TO**

Enemuo v. Duru (2004) 39 WRN 66 D  
 Inakoju v. Adeleke (2007) 4 NWLR (pt. 2015) 90  
 Ekpa v. Utong (1991) 6 NWLR (pt. 197) 258  
 Oshobola v. Amuda (1992) 6 NWLR (pt. 250) 690  
 Imonikhe v. A-G Bendel State (1992) 6 NWLR (pt. 248) 396 E  
 A-G Anambra State v. Okeke (2002) 12 NWLR (pt. 782) 575  
 Cappa & D'Alberto Ltd. v. Akintola (2003) 9 NWLR (pt. 824) 49  
 Nabaruma v. Offodile (2004) 13 NWLR (pt. 891) 599  
 SCC Nig. Ltd. v. SEDI (2013) 1 NWLR (pt. 1335) 230 F  
 Egolum v. Obasanjo (2007) 3 EPR 601  
 Adams v. Umar (2010) All FWLR (pt. 513) 1289  
 Obi v. INEC (2007) 9 MJSC 1  
 Babalola v. Rufus (2010) All FWLR (pt. 515) 309  
 Agbokoba v. INEC (2009) 24 WRN 1 G  
 Ajayi v. Adebisi (2012) All FWLR (pt. 634) 1

**STATUTE REFERRED TO**

Electoral Act 2010 (as amended), ss. 75(2), 132, 138(1)(b)(c) H

**LEAD JUDGMENT BY GALADIMA JSC**

This is an appeal against the judgment of the Court of Appeal, Owerri Division, which had struck out the Appellant/Originating Summons on the grounds that it lacked jurisdiction to entertain

same.

Dissatisfied with the aforesaid Judgment, Appellant has further appealed to this court on 4 grounds of appeal, which without their particulars read thus:

“1. GROUND 1: ERROR IN LAW

B The Court of Appeal erred in law when it held as follows:

The Learned trial Judge was thus right to have upheld the 2nd Respondent’s Notice of Preliminary Objection dated 13th June, 2011 and struck out the Appellant’s Amended Originating Summons filed on 6th June, 2011. Accordingly, this appeal lacks merit and it is accordingly dismissed.

C GROUND 2: ERROR IN LAW

The Court of Appeal erred in law when it held thus:

The Appellant in this case was a party in an election and his D political party (PDP) participated in the State House of Assembly election aforesaid under the provision of Section 132(1) of the Electoral Act 2010 (as amended). The Appellant would also from the facts of the case be entitled to question the election of the 2nd Respondent more particularly under the provision of Section 138(1)(b) and (c) E that is:

(b) That the election of the 2nd Respondent was invalid by reason of corrupt practices or non-compliance with the Provisions of the Act.

F (c) That the 2nd Respondent was not duly elected by majority of lawful votes cast at the election.

GROUND 3: ERROR IN LAW

The Court of Appeal erred in law when it held that:

In these circumstances, the learned Judge was right to have G said that the Plaintiff/Appellant’s case goes beyond merely interpreting Section 68(1)(c) of the Electoral Act, 2010 (as amended) in the light of the Plaintiff’s Exhibit ‘A’ Form EC8E(1) (pages 259 of the record). Also, that it goes beyond merely making declaratory and injunctive orders pursuant to the provisions of Section 75(2) of the H Electoral Act (supra) as argued by the learned Senior Advocate (page 2259 of the record).

GROUND 4: ERROR IN LAW

The Court of Appeal erred in law when it held as follows:

To the above extent, the case of Dr. Okey Enemuoh vs. Chief

Chidi Duru & 3 Ors (2004) 39 WRN 66 referred to by the learned Counsel for the 2nd Respondent is relevant, applicable and appropriate to the facts and circumstances of the present case.

Brief facts that gave rise to this appeal are that the appellant contested election into the Imo State House of Assembly under the platform of the Peoples Democratic Party [PDP] to represent Ohaji/ Egbema State Constituency during the 2011 General Election held on the 26th April, 2011.

The 2nd Respondent also contested the aforesaid Election for the same Constituency under the platform of All Progressive Grand Alliance [APGA], with the 1st Respondent herein acting as an umpire.

When the election was inconclusive and therefore nullified by the 1st Respondent and the supplementary election held on 6th May, 2011, the 2nd Respondent won the election and declared winner and issued a certificate of Return by the 1st Respondent; accordingly he was sworn as a member of the Imo State House of Assembly.

After the Supplementary Election and swearing in of the 2nd Respondent into the Imo State House of Assembly, the Appellant filed an originating Summons before the Federal High Court challenging the conduct of the election and return of the 2nd Respondent.

The 2nd Respondent filed a preliminary objection challenging the jurisdiction of the Federal High Court to entertain the Appellants' claim and the court declined jurisdiction on the ground that the Appellant's complaint was within the jurisdiction of the Election Petition Tribunal to handle and not the Federal High Court.

Dissatisfied by the aforesaid Ruling of the Court of Appeal, Appellant has further appealed to this court.

The 4 Grounds and Notices of Appeal have been set out above. The sole issue distilled from the Grounds of Appeal for determination is as follows:

*"Whether the Court of Appeal was right when it affirmed the decision of the trial court, wherein the said court declined jurisdiction to hear and determine the Appellants' Amended Originating Summons."*

The 1st Respondent formulated in its brief of argument an

issue similar in content to that of the Appellant. The sole issue reads:

*“Whether the Honourable Court of Appeal was right in affirming the decision of trial Court that it lacked the jurisdiction to hear and determine the Appellant’s Originating Summons.”*

B In the 2nd Respondent’s brief of argument 4 issues have been formulated for determination. These issues are as follows:

*“1. Was the Court of Appeal wrong in upholding the decision of the Federal High Court which upheld the 2nd Appellant/Respondent’s Notice of Preliminary Objection dated 13th June, 2011? (GROUND 1).*

C *2. Whether the Court of Appeal was wrong in holding that the Appellant could question the election of the 2nd Respondent under the provisions of Section 138(1)(b) of the Electoral Act 2010 (as amended)? (GROUND 2).*

D *3. Whether the Court of Appeal was wrong in upholding the decision of the trial Court that “Plaintiff/Appellant” case goes beyond merely interpreting Section 68(1)(c) of the Electoral Act 2010 (as amended) in the light of the Plaintiff’s Exhibit ‘A’ Form EC 8E(1) and goes. Beyond merely making declaratory and injunctive orders pursuant to section 75(2) of the Electoral Act? (GROUND 3).*

E *4. Whether the Court of appeal was wrong in applying the decision in DR. OKEY ENEMUO v. CHIEF CHIDI DURU & 3 Ors. (2004) 39 WRH 66? (GROUND 4)”*

F It is to be noted that on 14/11/2013 when this appeal came up for hearing learned Senior Counsel for the Appellant drew the attention of this Court to the Appellant’s motion for extension of time within which to file his Reply Brief and deeming the same as validly filed and served. However, on finding that the application was G incompetent and having been withdrawn by the learned Senior Counsel it was accordingly struck out.

H It is to be noted further that the 2nd Respondent has raised an objection in paragraph 2.1 of its brief alleging procedural irregularity as to the competence of single issue distilled from the Appellant’s four Grounds of appeal. The appellant has not run foul of any rule of this Court regarding formulation of a single issue, from his multitude Grounds of Appeal. This Court however, frowns upon unnecessary proliferation of issues for determination. It is for this reason I hold that the appellant’s sole issue distilled from the four Grounds of ap-

peal is competent.

This appeal shall be determined on the sole issue formulated by the Appellant. 1st Respondent's sole issue is substantially the same as that of the Appellant.

Arguing the sole issue, learned Senior Counsel for Appellant, for ease of comprehension, set out the provision of Section 138(1) of the Electoral Act 2010 (as amended). He argued that the Appellant could not have validly filed an election petition challenging the supplementary election on any other ground pursuant to aforesaid sections 138(1) of the Electoral Act 2010 (as amended).

In other words, given the facts of his case none of the grounds of petition under this section is available to the Appellant. It is submitted that the Court below rightly stated on pp.475 - 476 that it is plaintiff's/claimant's claim that determines the question of jurisdiction, but the court erred in applying that principle of law to the Appellant's case. That the Court below having held that it is the Appellant's claim that determines the question of Court's jurisdiction, it ought to have accepted the averment of the non-participation of the Appellant in the Supplementary Election in determining the issue of jurisdiction.

It is submitted that having regard to the Appellant's claim the trial Court is a Court of competent jurisdiction within the contemplation of section 75(2) of the Electoral Act 2010 (as amended).

It is urged on this court to exercise its general power under section 22 of the Supreme Court Act so as to determine the merits of the Appellant's Amended Originating Summons. For this invitation of the Court to exercise its general powers, reliance was placed on a number of authorities viz: INAKOJU v. ADELEKE (2007) 4 NWLR (pt.2015) 90; EKPA v. UTONG (1991) 6 NWLR (pt.197) 258; OSHOBOLA v. AMUDA (1992) 6 NWLR (pt.250) 690; IMONIKHE v. A-G. BENDEL STATE (1992) 6 NWLR (pt.248) 396, A-G ANAMBRA STATE v. OKEKE (2002) 12 NWLR (pt.782) 575 and CAPP & D'ALBERTO LTD v. AKINTOLA (2003) 9 NWLR (pt.824) 49.

Learned Senior Counsel has contended that justice of this case demands that wide powers of this Court conferred on it by the said S.22 of the Supreme Court Act should be exercised; more so that all the fundamental conditionalities that must exist, before the

exercise of this power, have been met, in the circumstances and facts of this case.

Arguing on this sole issue learned Counsel for the 1st Respondent has conceded that it is a settled principle of law that the jurisdiction of the Court is determined by the case presented by the plaintiff  
 B in his Writ of Summons and Statement of Claim or Originating Summons and the affidavit in support of same. For this principle of law Learned Counsel relies on the cases of *OBI v. INEC* (2007) 9 M.JSC 1 of 30; *INAKOJU v. ADELEKE* (2007) All FWLR (pt.353) 3 at 87;  
 C *OLAGUNJU v. PHCN Plc* (2011) All FWLR (pt.582) 1635 at 1645; and *AJAYI v. ADEBIYI* (2012) All FWLR (pt.634) 1 at 30. He therefore referred to the following relevant Appellants' processes:

1. The Amended Originating Summons and the Affidavit in Support filed by the Appellant on pp.59 - 64 of the record of appeal;  
 D and the only question raised for determination which was reproduced on paragraph 4.02 of the 1st Respondent's brief.

2. The Appellant reliefs 1 and 4 of the Amended Originating Summons reproduced herein.

3. Depositions in paragraphs 12, 13 of the Affidavit in support of the Amended Originating Summons and paragraph 15 of the Appellant's further affidavit in support of the Originating Summons.  
 E

Learned Counsel, relying on the above processes and the question formulated for determination, submitted that it is crystal clear that the Appellant had the knowledge of the following facts: that a supplementary election was conducted by the 1st Respondent on 6/5/2011; that 2nd Respondent was returned as the winner of that Supplementary Election and sworn in as a member of the Imo State House of Assembly; and that the 1st Respondent has no power to  
 F declare any other person or 2nd Respondent as the winner of the Supplementary Election and issue him a Certificate of return.  
 G

It is therefore submitted that the Appellant's Originating Summons was challenging the conduct of the Supplementary Election as well as the return of the 2nd Respondent as the winner of the said  
 H election.

Learned Counsel has submitted that the effect of granting the reliefs sought by the Appellant could have the unsalutary effect of nullifying the Supplementary Election which was conducted on 6/5/2011 to the knowledge of the Appellant. The Originating Summons

was intended exactly to achieve that purpose. Therefore by virtue of S.133(1) of Electoral Act (supra) no election or return of an election under the Electoral Act shall be questioned in any manner, other than filing a petition before a competent tribunal complaining of undue return of the 2nd Respondent. It is submitted that Section 285(1)[d] of the 1999 Constitution (as amended), having specifically conferred the power to decide disputes arising from election on the tribunal, to the exclusion of regular courts, including Federal High Court; the latter lacked the vires to stray into the realm of deciding election disputes. Reliance was placed on the cases of *NABARUMA v. OFFODILE* (2004) 13 NWLR (pt.891) 599 at 623; *SCC NIG. LTD v. SEDI* (2013) 1 NWLR (pt.1335) 230 at 244; and *EGOLUM v. OBASANJO* (2007) 3 EPR 601 at 630. B  
C

It is conceded by the Learned Counsel for the 1st Respondent that S.22 of the Supreme Court Act, undoubtedly gives this court full jurisdiction over the whole proceedings, as if same had been instituted in the court, as Court of first instance. It is however, submitted that the powers conferred by the aforesaid section 22 of the Act, which is similar to section 15 of the Court of Appeal Act, do not extend to the powers to do what the Court of first instance could not have done. He relies on the cases of *ADAMS v. UMAR* (2010) All FWLR (pt.513) 1289 at 1361 *OBI v. INEC* (2007) 9 MJSC 1 at 38 and *BABALOLA v. RUFUS* (2010) ALL FWLR (pt.515) 309. D  
E

Learned Counsel has further submitted that the affidavit in support of the Originating Summons materially conflict with the Counter Affidavits filed by the 1st and 2nd Respondents. That it is a settled principle of law that where the averments in the affidavit in support of an Originating summons substantially conflict with the Counter-affidavit, it will be most inappropriate to dispose of the matter using affidavit evidence. F  
G

Learned Counsel finally submitted that the appellant's appeal is against the concurrent findings of fact by the trial court and the Court of Appeal. The findings can only be disturbed by this Court only if such findings are perverse and have occasioned miscarriage of justice. H

I have earlier observed that the 2nd Respondent presents 4 issues for determination of the appeal, whilst the Appellant and the 1st Respondent distill only a single issue for determination. This is

unnecessary proliferation of issues on the part of the 2nd Respondent. It is not shown that the Sole issues formulated by the Appellant and the 1st Respondent cannot aptly determine the appeal. My stance on this point becomes clear, when on careful perusal of arguments on the issues, they are found to be repetitive and/or that one argument in an issue dove tails with another. I am of the opinion that the 1st issue of the 2nd Respondent has adequately dealt with the crux of the Appellant's complaint. It is whether the Court of Appeal rightly upheld the decision of Federal High Court which upheld the 2nd Defendant/Respondent's Notice of Preliminary Objection dated 13th June, 2011.

Learned Counsel for the 2nd Respondent has submitted that from the reliefs sought in the Amended Originating Summons, the appellant's action amount to a query of the cancellation of the 26th April, 2011 election for Ohaji/Egbema State House of Assembly Constituency and the validity of the Supplementary Election of 6th May, 2011 and the return of the 2nd Respondent at the aforesaid Supplementary Election.

It is submitted that these matters are connected with election or related to elections and, therefore, matters for the Governorship and Legislative House Election Tribunal and not for the Federal High Court to determine.

Learned Counsel has contended that the cancellation of the election of 20th April, 2011 by the 1st Respondent and the conduct of the Supplementary Section established a new legal order which inures, except it is set aside by a valid judicial order. It is further argued that the conduct of the Supplementary Election without any judicial restraint raises strong presumption of law that the election of 26th April, 2011 was not conclusive and was cancelled.

That therefore, the cumulative effect is that the election of 26th April, 2011, did not produce any winner and that no declaration was made in favour of any contestant including the Appellant herein.

On the question of the interpretation of ss. 68(1)(c) and 75(2) of the Electoral Act 2010 (as amended). Learned Counsel has submitted that the interpretation of any provision of a statute is based on a factual state of affairs and not on skewed facts. It is therefore submitted that the question for determination posed by the Appellant in

his Amended Originating Summons can only be ventilated by way of an election petition proceeding where a special procedure is prescribed.

Learned Counsel has argued that although S.68(1)(c) of the Electoral Act (supra) provides that a review of the decision of a Returning Officer shall be by a Tribunal or Court in an Election Petition proceeding under the Act. *“the word ‘or’ is disjunctive.*

*It does not therefore mean that the Election Tribunal and the Federal High Court have concurrent jurisdiction over matters that come under the aforesaid S.68(1), he argued. It is contended that it is not the intendment or spirit of the Constitution of the Federal Republic of Nigeria 1999 (as amended) that either the Federal High Court or a State High Court should have jurisdiction over a matter in an election petition.”*

On the Appellant’s assertion that himself and his party (PDP) did not participate in the Supplementary Election held on 6th May 2011, learned counsel submitted that, there is not iota of evidence on the record that either the Appellant or his political party opted out of the Supplementary Election as claimed in paragraph 11 of the Affidavit in Support of his Amended Originating Summons.

On the status of Exhibit ‘A’ that is, Form EC8E(1) which the Appellant claimed was issued to him by the Returning Officer, one Nwoke Ngozi for the cancelled election of 26/11/2011, it is submitted that the said Returning Officer did not depose to any affidavit in the matter; furthermore that the Exhibit “A” contained on pages 7, 22 and 40 of the Record of appeal and the Exhibit “A” contained on page 70 of the Record are not the same. That the Appellant has failed to explain this material discrepancy and this failure is fatal to his case: *GOZIE AGBAKOBA v. INDEPENDENT ELECTORAL COMMISSION & ONE* (2009) 24 WRN 1 at 54. It is submitted in view of the foregoing there was no document, in law; to found a case for interpretation and the Court of Appeal was right to have upheld the decision of the Federal High Court that *“plaintiff’s case goes beyond interpreting S.68(1)(c) of the Electoral Act (2010) (as amended) in the light of plaintiff’s Exhibit ‘A’ (Form EC8E (i)).”*

It is finally submitted that the Appellant’s claim is not competent even by his own showing that his case is a post election matter. That the trial court has no jurisdiction over election related post elec-

tion cases.

It is also submitted that the invitation for this court to exercise its general powers under section S.22 of the Supreme Court Act is not covered by any issue for determination.

B Furthermore, that this matter is a “hostile” proceedings oral evidence and cross-examination on the serious issues of fact. That there is need to cross-examine the Appellant on how he came into possession of two different Exhibits ‘A’ - (Form EC8E(1)). It is finally urged on this court to dismiss Appellant’s case as it lacks merit.

C The basic, broad and general principle of law is contained in the old Latin maxim - UBI JUS UBI REMEDIUM. “JUS” here signifies the legal authority to do or demand something and REMEDIUM means the right of action, or the means given by law for the recovery or declaration. Simply put, wherever the law gives a right, it also D gives a remedy conversely, wherever a plaintiff is claiming a remedy, that remedy must be joined on a legal right.

***A cause of action is determined by reference to the plaintiff’s statement of claim. The immediate materials a court should look at are the Writ of Summons and averments in the statement of claim.*** GABIRI OGBIMI v. BEAUTY OLOLO & ORS. (1993) SC 447; ALHAJI M. ABUBAKAR v. BEBEJI OIL & ALLIED PRODUCT LTD. & ORS. (2007) 2 SCNJ 170 and AJAYI v. ADEBIYI (2012) ALL FWLR (Pt.634) 1 at 30 ‘D’.

F In view of the foregoing recourse had to be made to the Appellant’s Amended Originating Summons and the Affidavit in support filed on page 59 - 64 of the record before the trial court, reproduced hereunder:-

G *“Whether having regard to section 68(i)(c) of the Electoral Act, 2010 as amended, the declaration made by the returning officer for Ohaji/Egbema State constituency that the plaintiff scored the Highest number of votes at the Imo State House of Assembly Election for the said state constituency held on 26th April, 2011 and thereby returned him as the winner and issued him with form EC8E(i), it is H legal and lawful for the Defendant to purport to organize or to hold a “Supplementary Election” or any other election by whatever name so-called for the same state constituency to elect another person as a member for the Imo State House of Assembly on 6th May, 2011.”*

*“1. A declaration that by virtue of section 68(i)(c) of the Elec-*

*toral Act 2010, as amended, the Returning Officer for Ohaji/Egbema State Constituency having declared that the plaintiff scored the majority of lawful votes as the state House of Assembly Election for Ohaji/Egbema State Constituency in Imo State held on the 26th April, 2010 and thereby returned him as the winner and issued him with form EC8E(i) it is illegal and unlawful for the Respondent to purport to organize or hold a "Supplementary Election" or any other election by whatever name so-called for the same state constituency on 6th May, 2011 to elect another person or the 2nd Defendant as a member for the Imo State House of Assembly".*

*"4. An order of perpetual injunction restraining the 1st defendant from in any manner however or whatsoever, issuing any certificate of return to any other person including the 2nd defendant consequent upon the holding of any purported supplementary election" or any other House of Assembly election whatsoever for the said Ohaji/Egbema State Constituency purportedly held on 6th May, 2011".*

In paragraphs 12 & 13 of the Affidavit in support of the amended Originating Summons, it was deposed on behalf of the Appellant thus:-

*"12. That the Defendant purportedly held what it called supplementary election" on 6th May, 2011 for the same state Constituency, among other three...*

*"13. That the purported election is illegal null and void".*

In paragraph 15 of the Appellant's further affidavit in support of this Originating Summons it was deposed for the Appellant thus:-

*"15. That it was also unlawful for the 2nd Defendant to be sworn in as a member of the House of assembly when he had no certificate of return".*

From the question formulated by the Appellant for determination by the trial court, the Reliefs he sought especially Reliefs 1 and 4 (supra), as well as the Affidavit in support of the Originating Summons, the Appellant knew or has reason to know the following facts:

(i) That a Supplementary election was conducted by the 1st Respondent on the 6th of May, 2011.

(ii) That the 2nd Respondent was the person returned as the winner of that Supplementary Election and was sworn in as a mem-

ber of the Imo State House of Assembly.

(iii) That the 1st Respondent has no power or 2nd Respondent as the winner and to issue him a certificate of Return.

It is clear here that the Appellant's Originating Summons was challenging the conduct of the Supplementary Election as well as the  
B Return of the 2nd Respondent as the winner of that Supplementary election.

From the reliefs sought by the Appellant, the effect of granting them will result on the nullification of the Supplementary election  
C of 6th May, 2011, by some other means other than by way of Election Petition duly filed before an Election Tribunal. I agree with the Learned Counsel for the 1st Respondent that the Appellant's Originating Summons was clearly geared towards achieving that purpose.

Learned Senior Counsel for the Appellant DR. LIVY UZO  
D UKWU put up an interesting argument plausible, though. It is that the Appellant having been declared the winner of the Ohaji/Egbema State Constituency Election of 26th April, 2011, on the face of Exhibit 'A,' by one Nwoke Ngozi Valentine who officiated as the Returning Officer for the election, his case for declaratory injunctive reliefs  
E falls squarely within the ambit of the provisions of section 68(1)(c) and section 75(2) of the Electoral Act 2010 (as amended) and therefore the 1st Respondent must be compelled to issue the appellant with a Certificate of Return.

Section 68(1)(c) of the electoral Act 2010 (as amended) -  
F hereafter simply referred to as "the Act" provides as follows:

*"68(1) The decision of the Returning Officer on any question from or relating to*

*(c) Declaration of scores of candidates and the return of a*  
G *candidate shall be final subject to review by a tribunal or Court in an election petition proceeding under the Act."*

The Act provides in section 75 thus:

*"75(1) A Sealed Certificate of Return at an election in a prescribed form shall be issued within 7 days to every candidate who has*  
H *won an election under this Act.*

*Provided that where the Court of Appeal or the Supreme Court being the final appellate court in any election petition as the case may be nullifies the Certificate of Return of any candidate, the Commission shall, within 48 hours after the receipt of the order of*

*such court, issue the successful candidate with a valid certificate of return”.*

(2) Where the Commission refuses or neglects to issue a Certificate of Return, a certified true copy of the order of a court of competent jurisdiction shall, ipso facto be sufficient for the purpose of swearing-in a candidate declared as the winner of the Court.” B

Learned Senior Counsel for the Appellant contended that the Federal High Court was the Court with competent jurisdiction to grant the declaratory and injunctive reliefs sought by the Appellant under the aforesaid sections 68(1)(c) and 75(2) of the Electoral Act to compel issuance of a Certificate of Return for the Appellant. With due respect to the Learned Counsel this is a flawed argument. Clearly from the appellant’s claim an Election Petition Tribunal is the appropriate forum on the face of the clear proviso to the provision of section 75(1) of the Act, which contemplates a Certificate of Return by a final appellate court in an election petition proceeding. C D

Section 75(2) of the Act does not confer jurisdiction on the Federal High Court to hear the appellant’s case because section 75(2) is subject to section 75(1) of the Act which is to the effect that

*“a sealed certificate of return is issued to a candidate who has won an Election under the Act”.* E

***In view of the fact that the election of 26th April, 2011 election was cancelled by INEC, (the electoral umpire) and that cancellation is still subsisting it cannot be said that the appellant is a lawful candidate who has won election under the Act. The cancelled election no longer exists in law, to confer any positive interest or right, like a certificate of return. It is note worthy that as the election of 26th April, 2011 was cancelled and supplementary Election held on 6th May, 2011 and the 2nd Respondent returned the winner, the Appellant cannot be said to be a “candidate who has won an election under the Act.*** F G

It is inconceivable to think that the Appellant’s grouse is not about a matter that revolves around or related to election. The certificate of return being now demanded revolves around or is connected with the cancelled election of 26th April, 2013 which the 2nd Respondent had won. H

Learned Counsel for the 1st Respondent has found the au-

thority of OBASANYA v. BABAFEMI (2000) FWLR (pt.15) 2585 at 2602; and also (2000) 15 NWLR (pt.689) 1, relevant and quite applicable to the case at hand. In that case the issue involved in the plaintiff's Originating Summons was about the propriety of the return of the 1st Defendant as a Councilor of a Local Government election held in Lagos State in 1998. In his affidavit in support of summons, the complaint of the plaintiff is the enforcement of his right to hold the office of a Councilor. That the 2nd Defendant (INEC) denied him of the Certificate of return of election and the issuance of same to the 1st defendant.

The learned trial judge in his ruling held that the plaintiff's action was proper before his court.

I, then as a justice of the Court of Appeal, in my lead judgment in that case held as follows:

*"The real issue involved in the plaintiff's Originating Summons is about the propriety of the return of the 1st defendant as councilor in the Local Government Election held on 5/12/98. Clearly the reliefs sought by the 1st Respondent in the Originating Summons and the facts deposed to in the affidavit in support of the summons all go to prove this fact.*

*Here it is quite clear that the learned trial judge, in rejecting the argument of the Appellant's counsel on the application for dismissal of the action, held that rather than the issue involved is the "civil right" of the plaintiff/1st Respondent and therefore he is perfectly entitled to approach the court to seek the protection of such right. With due respect the learned trial judge failed to appreciate the clear and real issue in the 1st Respondent's action. From the facts as presented before the lower court, the action is a challenge of the return of the Appellant as a councilor. To my mind this makes this action, in substance and circumstantially, only maintainable for an election petition before the Election Tribunal. See Section 80, 83, 84, 90 and schedule 5 of Decree No. 36 of 1998 (Supra). The 1st Respondent, as plaintiff is questioning or challenging the return of the appellant. By the provision of section 80 (supra) no other Court or Tribunal shall be entitled to or be vested with the jurisdiction to look into and determine any question connected or its conduct except the election tribunal".*

In the case of A.N.PP. v. Returning Officer, Abia State Sena-

torial District (2005) 6 NWLR (pt.920) 140 at 171 - 172 it was held thus:

*“The position in this appeal is that the trial court found that it had no jurisdiction on all the matter. I entirely agree with the learned trial Judge that his court lacked jurisdiction to entertain any issue which is consigned by the constitution to another court or Tribunal. The consideration of Exhibits SEK4, 5 or any other, which stemmed from an election can only be competently treated by the election petition Tribunal created by section 285 of the constitution of the Federal Republic of Nigeria, 1999.”*

In the case of OHAKIM v. AGBASO (2011) All FWLR [pt.553] 1806 at 1845 - 1846 H - D it was further held as follows:

*“Secondly, having regards to the facts of this case, there is the need to take a closer look at the jurisdiction of the Election Tribunal with regard to election related matter such as what took place that gave rise to the institution of the present action on appeal. Election is not an event but a process leading to the election including the actual election, and its aftermath come within the jurisdiction of the election tribunal. That will stem the tide of parties trying to pursue election related matters in parallel courts which will only result in confusion, a gleam of which can be seen in the Sokoto State gubernatorial Election Petition Saga. In any event, it is my considered view that since the action concerned an election conducted on 14th April, 2007 by the appropriate authority whether inchoate or not, the proper court with jurisdiction to entertain any action arising therefore or relating thereto is the relevant election tribunal established by the constitution of this country as the matter is not a pre-election matter neither can it be accommodated under the procedure of judicial review. Section 164 of the Electoral Act, 2006 defines election as meaning “any election held under this act and includes a referendum.” It is therefore beyond doubt that what took place on 14th April, 2007 in Imo State in particular was an election and as such any action relating to the process leading thereto including the actual conduct of the event or its cancellation fall within the jurisdiction of the election tribunal by operation of law and no other court or Tribunal is clothed with the jurisdiction to entertain it in any guise.”*

**The questions formulated by the Appellant for determination in the Originating Summons sought to challenge the**

**validity of the Supplementary Election and the reliefs (especially reliefs 1 & 4) wanted the Federal High Court to also nullify the aforesaid Supplementary Election and return the 2nd Respondent. The consequence of such a declaration by the Federal High Court was to turn that Court into an Election**  
 B **Petition Tribunal in clear violation of S.133(1) of the Electoral Act (supra) and Section 285(1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended). It is only the Election Petition Tribunal that is vested with jurisdiction to**  
 C **determine issues relating to the conduct of election and the return of candidates in election and also has the powers to nullify the election and return the 2nd Respondent.**

**The Appellant has placed heavy reliance on section 251(i) of the 1999 Constitution (supra) to contend that since**  
 D **his Originating Summons sought for declaration and injunctions against the administrative action or decision of the 1st Respondent, the Federal High Court is imbued with the jurisdiction to entertain same. However it must be noted that all the matters that fall within the exclusive jurisdiction of the**  
 E **Federal High Court under section 251 of the 1999 Constitution (supra) have been specifically listed out. The legal implication is that the nature of the declaration or injunction being sought for it to be within the exclusive jurisdiction of the Federal High court must be in respect of the major items enumerated**  
 F **under the said section 251 (supra). The Draftsman in no mistaken terms painstakingly itemized the subject matters that fall within the exclusive jurisdiction of the Federal High Court.**  
 See OLADIPO v. NCSB (2009) 12 NWLR (pt.1156) 563 at 585. In  
 G **OLUTOLA v. UNILORIN (2004) 18 NWLR (pt.905) 416 at 462 this court held inter alia that:**

*“The implication of this technique is that the said Federal High Court is actually a Court of enumerated jurisdiction that is a court whose jurisdiction is not only delimited by statute but whose jurisdiction is delimited in relation only to the subject matters enumerated therein. It would therefore amount to wrecking havoc on the express letters and intendment of the said section 251 to construct it as granting the said court a carte blanche to deal with every conceivable matter that is beyond those expressly enumerated. ...The effect of*  
 H

*the circumscription of the jurisdiction of the Court to those eighteen major items is that wherever the question of jurisdiction of the court is canvassed, attention ought to be focused on the subject matter of the suit, if the subject matter of the suit cannot be pitch - forked into any of those eighteen major items, then that court is not the proper forum for the ventilation of that action...*" B

Though the reliefs sought by the Appellant were for declarations and injunctions against 1st Respondent, who is agency of the Federal Government, the main declaratory and injunctive reliefs prayed by the Appellant were in respect of election held on 26th April, 2011, the Supplementary Election held on the 6th May, 2011, and the Return of the 2nd Respondent based on the result of the said Supplementary Election. C

**By Section 251 of the 1999 Constitution the eighteen main items enumerated therein do not include Election matter.** D

**Section 285(1)(d) of the 1999 Constitution, having specifically conferred the power to decide disputes arising from the conduct of election on the Election Tribunal, to the exclusion of the regular Courts, including the Federal High Court, the latter lacks the vires to decide election disputes.** E

In the case of NABARUMA v. OFFODILE (2004) 13 NWLR (pt.891) 599 at 623, it was held inter alia thus:

*"Section 285(1)(d) of the Constitution specifically provides that the election tribunal to the exclusion of any court or tribunal has original jurisdiction to hear and determine petitions as to whether a question or petition brought before the election tribunal has been properly or improperly brought. So it was not proper for the respondent herein to rush to the lower court to challenge the propriety of the petition filed by the 6th appellant. The respondent should have contested the propriety or otherwise of the petition before the 1st to 5th appellants tribunal and not surreptitiously rush to the lower court to attempt to cloth it with jurisdiction which has been expressly excluded by section 285(1)(d) of the Constitution."* F G H

I have given section 251 of the 1999 Constitution which comes before section 285(1)(d) a clear reading. No supervisory jurisdiction is expressly contained therein. Even if there is an atom of supervisory jurisdiction imaginable therein, talkless of surmised in-

herent jurisdiction, such is excluded by section 285(1)(d) of the 1999 Constitution.

The lower court has no jurisdiction to stray into the realm exclusively reserved for election tribunals. It is not desirable for a court to fish for jurisdiction so that it may not be tagged as a chameleonic impostor or a ‘meddlesome interloper’. Both the lower court and the election tribunal are creations of the 1999 Constitution each assigned specific jurisdiction. Each of them should stay within its own-realm. One cannot constitute a cog in the wheel of progress of the other. Where the Constitution gives jurisdiction to the election tribunal to the exclusion of all other courts or tribunal, the Federal High Court has no jurisdiction. The decision in *Okpala v. Ezeani* (supra) is here relevant.

I come to the conclusion that the appeal of the 1st - 5th appellants is equally meritorious. The trial court has no jurisdiction. The order made by it on 12/11/2003 was to no avail. The 1st - 5th appellants should continue to take necessary action on the petition duly filed before them. The respondent herein shall pay N5,000 costs to each set of appellant(s).

In another case of *ENEMUO v. CHIDI DURU & 3 ORS* (2004) 39 WRN 66 at 102, it was held thus:

*“...as far as section 285(1) of the 1999 Constitution is concerned, the National Assembly Election Tribunal Awka is the only Court in Nigeria that has jurisdiction to hear and determine the claims”.*

It is glaring from the foregoing that the Court below was right to affirm the Ruling of the trial Federal High Court which had struck out the Appellant’s Originating Summons on the ground that it lacked jurisdiction to entertain same. The appellants’ further appeal to this court is against the concurrent findings of the two lower courts. The Appellant has not demonstrated that these findings are perverse and have led to miscarriage of justice. I cannot therefore, disturb the findings. Accordingly the appeal is dismissed in its entirety, as it lacks merit. The judgment of the court below is affirmed. I make no order as to costs, in the circumstance of this case. Parties to bear their costs.

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### **MUNTAKA-COOMASSIE JSC**

As can be seen that this is an appeal against the decision of

the Court of Appeal, Owerri Division, hereinafter referred to as court below. The court below struck out the originating summons used in the trial court for lack of jurisdiction to entertain the matter.

Aggrieved by the said decision the appellant, Hon. Goodluck Nana Opia has further appealed to the Supreme Court on four grounds of appeal. There is no need for me to reproduce the grounds in this judgment. My learned brother has done so creditably. <sup>B</sup>

Parties before us filed and exchanged briefs of argument. In view of the preliminary objection filed by the 2nd Respondent, Hon. Luke Chukwu, the court below declined jurisdiction on the ground that the matter was supposed to be within the jurisdiction of the Election Petition Tribunal and not the Federal High Court. Dissatisfied the appellant now appealed to this court. He then formulated one single issue. <sup>C</sup>

*“Whether the Court of Appeal was right when it affirmed the decision of the trial court, wherein the said court declined jurisdiction to hear and determine the appellants’ Amended Originating Summons”.* <sup>D</sup>

The 1st Respondent, INEC, distilled one issue as well, thus:-

*“Whether the honourable Court of Appeal was right in affirming the decision of the trial court that it lacked the jurisdiction to hear and determine the appellant’s Originating Summons”.* <sup>E</sup>

The 2nd Respondents brief contained four (4) Issues thus:

*“1. Was the Court of Appeal wrong in upholding the decision of the Federal High Court which upheld the 2nd appellant/respondent’s Notice of Preliminary Objection dated 13th June, 2011? (Ground 1)* <sup>F</sup>

*2. Whether the Court of Appeal was wrong in holding that the appellant could question the election of the 2nd Respondent under the provisions of Section 138(1)(b) of the Electoral Act 2010 (as amended)? (Ground 2).*

*3. Whether the Court of Appeal was wrong in upholding the decision of the trial court that Plaintiff/appellant case goes beyond merely interpreting Section 68(1)(c) of the Electoral Act 2010 (as amended) in the light of the plaintiffs Exhibit ‘A’ Form EC8E(1) and Goes beyond merely making declaratory and injunctive orders pursuant to Section 75(2) of the Electoral Act? (Ground 3)* <sup>H</sup>

*4. Whether the Court of Appeal was wrong in applying the*

*decision in Dr. Okey Enemuo v. Chief Chidi Duru & 3 Ors (2004) 39 WRH 66? (Ground 4)”*

I was privileged to have a preview of the illuminating lead judgment of my learned brother Galadima JSC. His lordship has competently and correctly too, in my view, treated all the issues sent to us for determination. I looked at the reasons and conclusions reached by his lordship in dismissing the appeal and found that they tally with my understanding of the law on the subject. I also dismiss this appeal for lacking in merits. The judgment of the court below is correct and it is hereby restored and affirmed. Parties to bear their own respective costs.

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**FABIYI JSC**

I have read before now the judgment just delivered by my learned brother - Galadima, JSC. I agree with the reasons therein advanced to arrive at the conclusion that the appeal is devoid of merit and deserves an order of dismissal.

I wish to chip in a few words of my own for sake of emphasis only. The appellant agreed that a supplementary election was conducted in respect of the State Constituency in question. The result was announced and the 2nd respondent was declared winner and sworn as a member of the Imo State House of Assembly. The proper forum the appellant should have approached to ventilate his grouse as dictated by section 285(1) of the Constitution of the Federal Republic of Nigeria 1999, as amended, was the Election Tribunal. A petition on the ground that the election of the 2nd respondent was invalid for non-compliance with the provisions of the Electoral Act, could have been properly situated thereat. See: *Dr. Okey Enemuo v. Chief Chidi Duru & Ors (2004) 39 WRN 66*.

The appellant, with utmost zeal, desired to clothe the Federal High Court with jurisdiction in a post-election matter. He attempted to cast his lot on the provisions of section 251(1) of the stated Constitution which lists eighteen (18) items on which the Federal High Court has exclusive jurisdiction. Matters relating to post-election disputes cannot be found in the clearly listed items.

Perhaps this is an appropriate place to remind the appellant the *Expressio unius est exclusio alterius* Rule. This means that the

express mention of one thing in a statutory provision automatically excludes any other which otherwise would have been excluded by implication. See: PDP v. INEC (1999) 11 NWLR (Pt 625) 200; Buhari v. Dikko Yusuf (2003) 1 NWLR (Pt. 841) 446; Udoh v. Orthopaedic Hospital Management Board (1993) 7 NWLR (Pt. 304) 139; Halsbury's Laws of England 4th Edition Paragraph 876. B

What I am trying to say is that since post-election related matter is not listed in section 251 of the stated Constitution as an item over which the Federal High Court has jurisdiction, it is, no doubt, excluded in principle or by implication. It is therefore wrong for the appellant to try to force his way through the trial Federal High Court. That court was right when it declined the appellant's overtures. In the same vein, the lower court was on a firm stand when it affirmed the stance of the trial court. C

There is no doubt about it that section 285(1) imbued the Election Tribunal with exclusive jurisdiction to determine the appellant's grouse. Jurisdiction is very basic in adjudicatory process. It has to be determined at the earliest opportunity, as done by the trial Federal High Court in this matter. Any defect in competence is fatal as same is extrinsic to adjudication. D E

A court is competent when, inter alia, a case comes before it, initiated by due process of law and upon fulfillment of any condition, precedent to the exercise of jurisdiction. As well, the subject matter must be cognizable by the court or Tribunal. See: Madukolu v. Nkemdilim (1962) 2 SCNLR 341; Oloba v. Akereja (1988) 3 NWLR (Pt. 84) 508. The two courts below appreciated that the case of the appellant did not fall in line with the two criteria laid down in the above cited authorities. F

Lastly, the findings of fact made by the two lower courts are concurrent; in the main. They have not been shown to be perverse in any respect. To my mind, they appear pragmatic. It is not usual for this court to interfere in such a situation. See: Anaeze v. Anyaso (1993) 5 NWLR (Pt. 291). G

For the above reasons and the detailed ones set out in the lead judgment, I too feel that the appeal lacks merit and should be dismissed. I order accordingly and abide by all consequential orders therein; that relating to costs inclusive. H

**NGWUTA JSC**

I had the privilege of reading in draft the lead judgment just read by my learned brother, Galadima, JSC, and for reasons and conclusion therein, I agree that the appeal is bereft of merit.

B I desire to make one or two brief comments by way of emphasis. I wish to comment in passing on the grounds of appeal, if only for future guidance.

C Order 8 Rule 2(3) of the Supreme Court Rules 1990 (as amended) provides:

*“Ord.8 r.2(3): The notice of appeal shall set forth concisely and under distinct heads the grounds upon which the appellant intends to rely at the hearing of the appeal without any argument or narrative and shall be numbered consecutively.”*

D Also Ord. 8 r. 2(4) provides:

*“No ground which is vague or general in terms which discloses no reasonable ground of appeal shall be permitted save the general ground that the judgment is against the weight of evidence, and any ground of appeal or any part thereof which is not permitted under this rule may be struck out by the Court of its own motion or on the application by the Respondent.”*

F Each of the four grounds of appeal raised by the appellant is a reproduction of a passage from the judgment appealed against, and this, in my humble view, is not a concise formulation of a ground of appeal. At best each ground is in general terms.

G A ground of appeal ought to be a concisely crafted complaint shorn of embellishment, against the judgment and not a mere reproduction of portion of the judgment, except where the facts and circumstances so dictate. It is not the case in this appeal. A ground of appeal should be concisely and elegantly drafted and straight to the point so that the error complained of, be it of fact or law, is apparent on its face. See *Oloruntoba-Ohu & Ors v. Abdul-Raheem & Ors* (2009) 13 NWLR (Pt.1157) 83.

H Appellant built his case on section 138(1) of the Electoral Act 2010 (as amended). The said section stipulates grounds for questioning an election. It has to be read and applied in conjunction with section 137(1) of the same Act which enumerates persons entitled to present election petition.

Appellant did not, for whatever reason, take part in the supplementary election at which the respondent emerged winner. Consequently, he has no locus to question the election of the Respondent or to ask that the supplementary election be annulled. In any case, as demonstrated in the lead judgment, any challenge to the election of the Respondent in the supplementary election is an election petition proper over which the regular Courts have no jurisdiction in the case of State Houses of Assembly elections. B

What is more, the issues in the Originating Summons, even if the trial Court had jurisdiction in the matter, are hostile and not suitable for determination by originating summons procedure. See Pam v. Muhammad (2008) 35 NSCQR 123 at 205 and Oba Osubade v. Oba Oyewunmi (2007) 30 NSCQR 434. C

It is for the above and the exhaustive reasoning and the apt conclusion reached in the lead judgment that I also find that the appeal is devoid of merit. Consequently, I also dismiss same, affirm the judgment of the Court below and strike out the appellant's originating summons in the trial Court for want of jurisdiction of that Court to determine same. I also order that parties bear their respective costs. D

Appeal dismissed. E

### **KEKERE-EKUN JSC**

I have had a preview of the judgment of my learned brother, Galadima, JSC, just delivered. I agree entirely with the reasoning and conclusion reached that this appeal lacks merit and should be dismissed. F

His Lordship has exhaustively dealt with the sole issue submitted for determination. I add a few comments in support of the lead judgment. G

The House of Assembly election for Ohaji/Egbema State constituency of Imo State took place on 26th April 2011. The appellant contested the election on the platform of the Peoples Democratic Party (PDP) and won, having scored the highest number of lawful votes. Consequently he was returned as the winner, He averred that he was issued with Form EC8E(1). The 2nd respondent also contested the election on the platform of the All Progressive Grand Alliance (APGA). However the 1st respondent, INEC subsequently can- H

celled the election and organized a supplementary election, which took place on 6th May 2011. The 2nd respondent won the supplementary election and was declared the winner. He was issued with a certificate of return by the 1st respondent and was accordingly sworn in as a member of the Imo State House of Assembly. The appellant  
 B was dissatisfied with the turn of events and filed an originating summons before the Federal High Court, Owerri Division seeking a declaration that having scored the majority of lawful votes cast in the election conducted on 26th April 2011 and having been returned as  
 C the winner, it was unlawful, in light of the provisions of Section 68(1)(c) of the Electoral Act 2010 (as amended), for the 1st respondent to conduct any supplementary election to elect another person as member of the Imo State House of Assembly. He sought various declaratory and injunctive reliefs, fully set out in the lead judgment.

D The 2nd respondent raised a preliminary objection to the jurisdiction of the trial court to entertain the matter. The objection was upheld and the trial court declined jurisdiction on the ground that the appellant's complaint could only be ventilated before an Election Petition Tribunal. Being dissatisfied the appellant appealed  
 E against the ruling to the court below, which court affirmed the ruling, hence the instant appeal.

The sole issue for determination in this appeal is:

Whether the Court of Appeal was right when it affirmed the  
 F decision of the trial court wherein the said court declined jurisdiction to hear and determine the Appellant's amended originating summons?

It is the contention of Appellant that since he did not participate in the supplementary election, on the authority of *Ohakim Vs Agbaso* (2011) All FWLR (Pt.353) 1806 and *Abubakar Vs Yar'Adua* (2008) 19 NWLR (Pt.1120) 1 @ 84 A - D, he could not have filed a petition before the Election Tribunal to challenge it as it cannot be accommodated under Section 138(1)(a) - (d) of the Electoral Act 2010 (as amended).  
 G

H He argued that it is the plaintiff's claim as set out in the amended originating summons that determines the court's jurisdiction and that the reliefs being sought were primarily based on the outcome of the interpretation of Section 68(1)(c) of the Electoral Act and the appellant's right to be issued with a certificate of return.

Learned counsel for the appellant is quite correct and it is settled law that where the jurisdiction of the court to entertain a cause or matter is challenged, it is the originating processes that would be examined in order to determine the issue. See: Balogun Vs Ode & Ors. (2007) 4 NWLR (Pt.1023) 1 @ 14 D - H: A.G. Anambra State Vs A.G. Federation (1994) 3 NWLR. (Pt.335) 659. It is also well settled that jurisdiction is fundamental in that it goes to the competence of the court to hear the case, Where the court lack jurisdiction, the entire proceedings are a nullity. See: Madukolu Vs Nkemdilim (1962) 2 SCNLR 341; Obiweubi Vs C.B.N. (2011) 7 NWLR (Pt.1247) 465.

While a first glance at the amended originating summons might suggest that the appellant was merely seeking the interpretation and application of Section 68(1)(c) of the Electoral Act 2010 (as amended), upon closer examination, it is quite clear that the complaint is against the conduct of the supplementary election and its outcome. In his claim, the appellant seeks a declaration that *“it is illegal and unlawful for the defendant to purport to organize or to hold a “supplementary election” or any other election by whatever name so-called for the same State Constituency on 6 May 2011 to elect another person as a member for the Imo State House of Assembly.”*

He also seeks, inter alia, a declaration the defendant has no power to issue a certificate of return to any person other than himself consequent upon his victory at the election held on 26th April 2011.

Now, Section 68(1)(c) of the Electoral Act provides:

*“68(1) The decision of any Returning Officer on any question arising from or relating to -*

*(c) declaration of scores of candidates and the return of a candidate shall be final subject to review by a Tribunal or Court in an election petition proceedings under this Act.”*

Also relevant is Section 75 of the Act, which provides:

*“75 (1) A sealed Certificate of Return at an election in a prescribed form shall be issued within 7 days to every candidate who has won an election under this Act -*

*PROVIDED that where the Court of Appeal or Supreme Court being the final appellate court in any election petition as the case may be nullifies the Certificate of Return of any candidate, the Commission shall, within 48 hours after the receipt of the order of such Court,*

issue the successful candidate with a valid *Certificate of Return*.

(2) *Where the Commission refuses or neglects to issue a Certificate of Return, a certified true copy of the order of a court of competent jurisdiction shall, ipso facto, be sufficient for the purpose of swearing-in a candidate declared as the winner by that Court.*"  
B (Emphasis supplied).

By Section 68(1)(c) of the Electoral Act referred to above, any complaint concerning the return of a candidate is subject to review by a Tribunal or Court in an election petition proceeding under the  
C Act. Section 285(1) of the Constitution of the Federal Republic of Nigeria 1999 provides as follows:

*"There shall be established for each State of the Federation and the Federal Capital Territory, one or more election tribunals to be known as the National and State Houses of Assembly Election  
D Tribunals which shall, to the exclusion of any other Court or Tribunal, have original jurisdiction to hear and determine petitions as to whether*

*a. any person has been validly elected as a member of the National Assembly; or  
E b. any person has been validly elected as member of the House of Assembly of a State.* (Emphasis supplied).

Thus, any complaint, which centres on whether a person has been validly elected as a member of a State House of Assembly, as in  
F this case, could only be determined by a Election Petition Tribunal. It also follows that where a complainant seeks to invoke the provisions of Section 75 of the Electoral Act, only a court of competent jurisdiction as provided for in Section 285(1) of the 1999 Constitution could make the order.

G It is true that Section 251(1) of the 1999 Constitution, relied upon by learned counsel for the appellant, confers exclusive jurisdiction on the Federal High Court in civil cases in respect of

*(1) "Any action or proceeding for a declaration or injunction affecting the validity of any executive or administrative action or decision by the Federal Government or any of its agencies".*  
H

It goes on to spell out in sub-paragraphs (a) - (r) the specific matters upon which the court shall exercise its exclusive jurisdiction.

The issues raised in the amended originating summons relate specifically to a post-election matter, which cannot be determined

without considering the validity of the elections conducted on 26/4/2011 and 6/5/2011 respectively. The Federal High Court has no jurisdiction to entertain any matter arising from a post-election dispute, thus placing jurisdiction squarely with the Election Petition Tribunal. The learned trial Judge held at page 259 of the record:

*“The plaintiff, by his Amended Originating Summons, wants this court to make pronouncements regarding the elections of 26th April 2011 and the supplementary elections of 6th May 2011 and the status of the person who scored the highest number of votes in those two elections, This to my mind goes beyond merely interpreting Section 68(1)(c) of the Electoral Act (as amended) in the light of the Plaintiff’s Exhibit “A” i.e. Form EC8E(1). It goes beyond merely making declaratory or injunctive orders pursuant to Section 75(2) of the Electoral Act, as argued by the Learned Senior Advocate. What the plaintiff is actually though very covertly doing is that he is questioning the validity of the supplementary elections of 6th May 2011 based on Exhibit “A” attached to his affidavit in support and he is definitely questioning the return and election of the 2nd defendant as member representing Ohaji/Egbema State Constituency in the Imo State House of Assembly as well as the issuance of a certificate of return to that person (i.e. 2nd defendant) since he is of the belief that himself and not the 2nd defendant ought to have been issued with a certificate of return.”*

I could not agree more. The lower court agreed with this finding. It has not been shown to be perverse.

Section 133 of the Electoral Act 2010 (as amended), provides that no election and return at an election under the Act shall be questioned in any manner other than by a petition complaining of undue election or undue return presented to the competent court or tribunal in accordance with the provisions of the 1999 Constitution (as amended). It is very clear and unambiguous. Section 138(1) of the Electoral Act 2010 (as amended) provides the grounds upon which a petition may be brought, which includes sub-paragraphs (b) and (c) to wit:

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

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

In the instant case, INEC had cancelled the election of 26/4/2011 and conducted a supplementary election on 6/5/2011 wherein the 2nd respondent was declared the winner and issued with certificate of return. The case is predicated on the legality or otherwise of the supplementary election. It is no doubt a post-election issue. The only court competent to determine the matter is the Election Petition Tribunal. The trial court was therefore in order when it declined jurisdiction to hear the case. The lower court rightly, in my view, upheld the decision. The concurrent findings of the two lower courts are unassailable.

It is for these and the more comprehensive reasons ably advanced in the lead judgment of my learned brother, Galadima, JSC, that I also find no merit in this appeal and hereby dismiss it. I affirm the judgment of the court below and make no order for costs.