

**SUPREME COURT OF NIGERIA**  
FRIDAY 9TH MAY, 2014. SC. 120/2011  
**CORAM:- W. S. N. ONNOGHEN, S. GALADIMA,**  
**B. RHODES-VIVOUR, M. U. PETER-ODILI,**  
**K. B. AKA'AH, JJSC**

DR. AHMED MOHAMMED SALIK ..... APPELLANT  
AND  
1. ALHASSAN UBA IDRIS  
2. ALL NIGERIA PEOPLES PARTY (ANPP)  
3. INDEPENDENT NATIONAL  
ELECTORAL COMMISSION (INEC)  
4. TIJANI ABDU CHINADE - RETURNING  
OFFICER DALA FEDERAL CONSTITUENCY  
5. KANO STATE RESIDENT ELECTORAL  
COMMISSIONER, INEC .... RESPONDENTS

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ELECTIONS - INEC Form EC8(1) - Significance of - Where a winner is issued with the form at the end of election - It confirms the validity and conclusiveness of the election (H1)

ELECTIONS - Results - Announcement - Duty of - The returning officer for Dala Federal Constituency - Has duty to announce the result - And not the resident electoral commissioner for Kano State (H2)

ELECTION PETITIONS - Filing - NA election tribunal - 1st and 2nd respondents' petition before the tribunal is in order - Hence CA by 1999 Constitution s. 246 had jurisdiction to hear appeal therefrom (H3)

ELECTION PETITIONS - NA elections - Final court - 1999 Constitution s. 246 (1)(b)(i) & (3) - Makes CA the final court in such election petition - SC lacks jurisdiction to entertain appeal therefrom (H4)

**FACTS**

Plaintiff/appellant instituted this action at the Federal High Court Abuja, contending that he was unlawfully substituted with 1<sup>st</sup> respon-

dent by 2<sup>nd</sup> respondent, following the primary election of 2<sup>nd</sup> respondent to nominate her candidate to contest the 2007 House of Representative election for the Dala Federal Constituency. The dispute in the matter is that appellant and 1<sup>st</sup> respondent were members of 2<sup>nd</sup> respondent. The name of appellant was forwarded to 3<sup>rd</sup> respondent by 2<sup>nd</sup> respondent as its candidate for the aforementioned 2007 election. However, 2<sup>nd</sup> respondent substituted appellant with 1<sup>st</sup> respondent. Dissatisfied with the substitution, appellant instituted this action at the Federal High Court wherein judgment was given in his favour. Meanwhile, at the time of the election, 1<sup>st</sup> respondent was still the candidate of 2<sup>nd</sup> respondent and at the end of which election, 1<sup>st</sup> respondent was declared the winner.

The attention of 5<sup>th</sup> respondent was drawn to the Federal High Court judgment nullifying the substitution of appellant. 5<sup>th</sup> respondent thus cancelled the name of 1<sup>st</sup> respondent and inserted that of appellant as the winner. 1<sup>st</sup> and 2<sup>nd</sup> respondents in dissatisfaction filed election petition before the National Assembly Election petition Tribunal, Kano challenging the unlawful alteration, return and declaration of appellant as the winner of the 2007 Federal House of Representatives Election for Dala Federal Constituency. While the petitioners' case was for unlawful alteration of declaration of result sheet, appellant's and 3<sup>rd</sup> – 5<sup>th</sup> respondents' case was that of unlawful substitution of appellant's name as the original candidate of 2<sup>nd</sup> respondent. The tribunal gave judgment in favour of appellant. Aggrieved, 1<sup>st</sup> and 2<sup>nd</sup> respondents appealed to the Court of Appeal which appellate court set aside the judgment of the election tribunal. Appellant's election and certificate of return issued to him were cancelled. In protest, appellant has appealed to Supreme Court despite the fact that the life span of the then House of Representative has long been spent.

### **ISSUES FOR DETERMINATION**

1. Whether it is today settled law that all pre - election matters including nomination and substitution of candidates and all matters preceding the actual holding of elections are only cognizable within the exclusive jurisdiction of the regular courts and outside the purview of the jurisdiction of Election Tribunal.

2. Whether judging from the records, the Court of Appeal was right in holding that the witnesses that testified gave direct evidence

that the 1st Petitioner/Appellant was the candidate sponsored by the 2nd Petitioner/Appellant for Dala Federal Constituency.

3. If the instant Election Petition was incompetent ab initio and not cognizable before the Election Tribunal, what is the effect of jurisdiction by the Court of Appeal within the 1999 Constitution of the Federal Republic of Nigeria?

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

### **AKA'HS JSC)**

*ELECTIONS - INEC Form EC8(1) - Significance of*

**1. Where at the end of an election, a winner is duly issued by the Independent National Electoral Commission (INEC) Form EC8(1), it confirms the validity and conclusiveness of the election. The form is to show that the person has been duly returned as the winner of the election.** (p. 2103 F)

*ELECTIONS - Results - Announcement - Duty of*

**2. Following from this case, it was the Returning Officer for Dala Federal Constituency that had responsibility to make the return but the Resident Electoral Commissioner for Kano State purportedly usurped the power and proceeded to make the alteration of the result by canceling the 1st respondent's name and substituting it with the appellant's name and announcing the appellant as the winner of the election. He had no power to alter the result by canceling the 1st respondent's name and inserting that of the appellant. The option opened to the appellant was to question the election of the 1st respondent under section 145(1)(d) of the Electoral Act 2006 which stipulates -**

**"145 - (1) An election may be questioned on any of the following grounds**

**(d) that the petitioner or its candidate was validly nominated but unlawfully excluded from the election".** (p. 2104 E)

*ELECTION PETITIONS - Filing - NA election tribunal*

**3. Since the return was tampered with by the Resident Electoral Commissioner of Kano State, the 1st and 2nd respon-**

**dents took the right step to present their petition before the National Assembly Election Tribunal Kano State in their petition No. EPT/KN5/HR/23/07 which was heard and determined on 28th February, 2008 and this paved way for appeal No. CA/K/EP/NA/19/2008 that was decided in favour of the 1st and 2nd respondents on 8th May, 2009.**

**Contrary to the position taken by the appellant that Petition No. EPT/KNS/HR/23/07 ought not to have been filed before the Election Tribunal which consequently robbed the Court of Appeal of jurisdiction to entertain appeal No. CA/K/EP/NA/19/2008, the Petition was properly filed before the Tribunal. A fortiori the Court of Appeal is clothed with jurisdiction under section 246 of the 1999 Constitution to hear the appeal and such appeals terminate in the Court of Appeal. (p. 2104 H)**

*ELECTION PETITIONS - NA elections - Final court*

**4. Section 246 (1)(b)(i) & (3) 1999 Constitution provides -**

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

***(b) decisions of the National Assembly Election Tribunals and Governorship and Legislative Houses Tribunals on any question as to whether -***

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

***(3) The decisions of the Court of Appeal in respect of appeals arising from election petitions shall be final”.***

**The amendment to this section which allowed appeals to get to the Supreme Court only affected the election of the Governor or Deputy Governor. As the election being questioned is an election to the National Assembly, this Court lacks jurisdiction to entertain the appeal. The preliminary objection filed by the respondents is hereby upheld and the appeal is consequently struck out. (p. 2105 D)**

## NOTABLE POINTS OF INTEREST

### **AKA'AHS JSC**

#### ***1. Announcement of election results – Officers responsible***

Section 28 of the Electoral Act 2006 enumerates those charged with responsibility to announce the various election results. Section 28 (2)(e) of the Electoral Act, 2006 assigned the duty to the Returning Officer at the Federal Constituency Collation Centre since the result was for Dala Federal Constituency. The Resident Electoral Commissioner of the State is the Returning Officer at the Governorship election. (p. 2103 B) C

#### ***2. Counsel should desist from filing frivolous actions***

The appellant is fully aware that this appeal is a wild goose chase. If he is not, the learned counsel representing him ought to have known better and advised him accordingly. Alas this is not the case. Knowing fully well that election tenure of all those elected in 2007 ended in 2011 it was senseless for learned counsel to argue that there is still a subsisting benefit to be derived from this appeal. D

The appeal is time wasting and the appellant must be mulcted in costs to serve as a deterrent to would be litigants. I wish to say that I will not hesitate to order costs to be personally borne by the counsel if this type of practice re - occurs in future. For the meantime the appellant is to pay costs of N250,000.00 (Two Hundred and Fifty Thousand Naira) to each set of respondents in the appeal. F (p. 2105 G) E

### **ONNOGHEN JSC**

#### ***3. Academic suit – Meaning of***

The question is what do we mean by an academic, speculative and hypothetic action/question. For an answer, see Attorney-General of Plateau State V. Attorney-General of the Federation (2006) 3 NWLR (Pt. 967) 346 at 419 where TOBI JSC stated the law as follows:- G

*“A suit is academic where it is merely theoretical, makes empty sound, and of no practical utilitarian value to the plaintiff even if Judgment is given in his favour. A suit is academic if it is not related to practical situation of human nature and humanity. H*

*A suit is speculative if it is based on speculation. A suit is specu-*

*lative if it is not supported by facts or very low on facts but very high on guesses. As courts of law are not established to adjudicate on guesses but on facts such actions are struck out.*

*A suit is hypothetical if it is imaginary and not based on real facts. A suit is hypothetical if it looks like a “Mirage” to deceive the defendant and the court as to the reality of the course of action. A suit is hypothetical if it is a semblance of the actuality of the cause of action or relief sought” (p. 2111 F)*

**REPRESENTATION**

- C Chinenye I. Okafor, for the Appellant
- Nureini Jimoh with Masud Alabelewe, Abdulwahab Muhammed, Saidah Abimbola and Ahmed Lambe, for 1st Respondent
- Nelson Uzuegbu with Ngozi Okafor, for 2nd Respondent
- D Abdulrahman Madaki with P. M. Anyam, for 3rd - 5th Respondents

**CASES REFERRED TO**

- Sowemimo v. Awobajo (1999) 7 NWLR (pt. 610) 335
- Okunola v. Ogundiran (1962) All NLR 84
- E Emordi v. Igbeke (2011) 4 SC (pt. 11) 107
- Alao v. ACB Ltd (2000) 9 NWLR (pt. 670) 264
- Adepoju v. Yinka (2012) 1 SC 125
- Okotie-Eboh v. Manager (2004) 18 NWLR (pt. 905) 242
- Odedo v. INEC (2008) 17 NWLR (pt. 1117) 554
- F NDP v. INEC (2013) 6 NWLR (pt. 1350) 392
- A-G Plateau State v. A-G Federation (2006) 25 NSCQLR 179
- Onuaguluchi v. Ndu (2007) 7 NWLR (pt. 712) 309
- Adepoju v. Yinka (2012) 1 SC 125
- G Udenwa v. Uzodinma (2012) 12 SC (pt. vii) 1
- Oyeneye v. Odigbesan (1972) 4 SC 244
- Adelaja v. Alade (1999) 6 NWLR (pt. 608) 544
- Bhojawani v. Bhojawani (1996) 6 NWLR (pt. 457) 663

**STATUTES REFERRED TO**

- Constitution of the Federal Republic of Nigeria 1999, ss. 246 (1)(b)(i)(3)
- Electoral Act 2006, ss. 28, 145(1)(d)

**LEAD JUDGMENT BY AKA'AH'S JSC**

The genesis of this appeal started as an inter party dispute on the candidate the All Nigeria Peoples Party (ANPP) nominated to contest the election for the Dala Federal Constituency seat of the House of Representatives in the General Election which took place on 21st April, 2007. After the conduct of the primaries, the ANPP forwarded the name of Alhassan Uba Idris (now 1st respondent) to INEC who was cleared and his name published to contest the election which he won. The appellant believed he won the highest number of votes at the primaries and felt short - changed on what the Party did and challenged the action of the Party at the Federal High Court, Abuja in Suit No. FHC/ABJ/CS/70/2007. The Court entered judgment in his favour.

Meanwhile the General Election had taken place and when the results for the Dala Federal Constituency was collated by Tijani Abdu Chinade, the Returning officer for Dala Federal Constituency, the 1st respondent who garnered 51,603 (Fifty One Thousand, Six Hundred and Three) votes was set to be declared the winner of the election. It was at this juncture that the Resident Electoral Commissioner for Kano State called the attention of the Returning Officer for Dala Federal Constituency to the judgment of the Federal High Court. He cancelled the name of the 1st respondent from the result sheet and then wrote the name of the appellant and proceeded to declare him as the winner of the election. Following this development, the 1st respondent and the ANPP filed a Petition No. EPT/KNS/HR/23/07 before the National Assembly Election Tribunal of Kano State. The petition was dismissed. The petitioners appealed against the decision to the Court of Appeal which reversed the Tribunal's judgment. It nullified the election as well as the certificate of return if any that was issued to the 1st respondent and declared that the 1st petitioner/Appellant, Alhassan Uba Idris is the candidate that met the requirement of the law and scored the highest number of votes cast at the election and was declared the winner and returned elected into the Dala Federal Constituency of the House of Representatives. It directed the 2nd, 3rd and 4th respondents to forthwith issue a certificate of return to the 1st petitioner.

The appellant has appealed to this Court and even though he is aware that the life of the National Assembly to which the 2007

election relates has been spent since 2011; he nevertheless is of the view that the appeal is neither stale nor academic and can still be determined by this Court because it is a pre - election matter which was filed in 2009 when the life of the National Assembly was still extant. The Notice of Appeal dated 12th May, 2008 contains four  
B grounds (See: pages 1175 - 1179 vol. 2 of the records) from which three issues were identified for determination. The issues formulated are:-

1. Whether it is today settled law that all pre - election matters  
C including nomination and substitution of candidates and all matters preceding the actual holding of elections are only cognizable within the exclusive jurisdiction of the regular courts and outside the purview of the jurisdiction of Election Tribunal. (Ground 1)

2. Whether judging from the records, the Court of Appeal was  
D right in holding that the witnesses that testified gave direct evidence that the 1st Petitioner/Appellant was the candidate sponsored by the 2nd Petitioner/Appellant for Dala Federal Constituency. (Grounds 3 and 4)

3. If the instant Election Petition was incompetent ab initio and  
E not cognizable before the Election Tribunal, what is the effect of jurisdiction by the Court of Appeal within the 1999 Constitution of the Federal Republic of Nigeria? (Ground 2)

All the respondents with the exception of the 2nd respondent  
F filed Notices of Preliminary Objection to the appeal. Their objection was on the competence of the appeal and the jurisdiction of this Court to entertain the appeal. The 1st respondent prayed that the appeal be dismissed or struck out while the 3rd - 5th respondents asked that the appeal be dismissed. The grounds for the objection  
G are:-

(1) This Honourable Court has no appellate or supervisory jurisdiction over the Court of Appeal in elections connected to the National Assembly under the Electoral Act 2006 and section 246 (1)(b)(i)(3) of the 1999 Constitution.

H (2) The appeal has become academic and spent as the legislative tenure for the Dala Federal Constituency from 2007 to 2011 has elapsed by effluxion of time.

This is a threshold issue which has to be decided first before delving into the merit of the appeal if the need arises.

As I earlier stated, it was when the results of the election held on 21st April, 2007 had been compiled and the returning officer for Dala Federal Constituency was about to declare the results and the winner that the Kano State Resident Electoral Commissioner intervened and this led to the cancellation of the 1st respondent's name and the substitution of the appellant's name on the result sheet. Section 28 of the Electoral Act 2006 enumerates those charged with responsibility to announce the various election results. Section 28 (2)(e) of the Electoral Act, 2006 assigned the duty to the Returning Officer at the Federal Constituency Collation Centre since the result was for Dala Federal Constituency. The Resident Electoral Commissioner of the State is the Returning Officer at the Governorship election.

The main defence which the 3rd - 5th respondents put up at the Tribunal for the alteration of the result for Dala Federal Constituency was that there was unlawful substitution of the original candidate for the election which was challenged at the Federal High Court and it was that court which authorized the imposition of the appellant's name and the removal of the 1st respondent's name as the winner of the election.

The petitioner's (1st respondent in this appeal) case is that he was the candidate that was duly recognised by the ANPP (the Party) as well as 3rd - 5th respondents at the election as his name was variously listed and published, and that he contested the election which he won and he was returned both in the Declaration of Result (before the unlawful alteration) as well as INEC List of successful candidates after the election. ***Where at the end of an election, a winner is duly issued by the Independent National Electoral Commission (INEC) Form EC8(1), it confirms the validity and conclusiveness of the election. The form is to show that the person has been duly returned as the winner of the election.*** See *Sowemimo v. Awobajo* (1999) 7 NWLR (Part 610) 335.

In *M. H. Okunola v. D. Ogundiran & Anor* (1962) ALL NLR 84 the appellant and the cross- appellant and one other person were candidates at a parliamentary election. As a result of an arithmetical error in the counting of the votes, the appellant was declared elected by the Returning Officer, although he was not the candidate having the highest number of votes. Upon discovering the error, the Return-

ing Officer declared the cross - appellant, who, in fact, had the highest number of votes, elected. The appellant then brought a petition praying the court to declare that he was duly elected or returned, or ought to have been returned at the election; and that the cross - appellant was not duly elected or returned, and that the declared  
 B election of the cross - appellant, or his purported election was void. The cross - appellant asked for declaration that the appellant was not duly elected or returned and that he, the cross - appellant ought to have been declared properly elected by a majority of the lawful votes, and was duly returned.

C At the trial, it was argued for the Appellant that the returning Officer could not revise the return; as the proper way of questioning a Return was by an Election Petition. This submission was upheld by the trial court. On appeal to the Supreme Court it was held that -

D (1) Where in the counting of votes cast at an Election, an arithmetical error is discovered after the Return has been made, the Returning Officer cannot make a second Return; any Return made subsequent to the original Return is invalid.

E (2) Notwithstanding his ruling as to the validity or invalidity of the return; the Judge in deciding an Election Petition must declare which candidate was duly elected.

***Following from this case, it was the Returning Officer for Dala Federal Constituency that had responsibility to make the return but the Resident Electoral Commissioner for Kano State purportedly usurped the power and proceeded to make the alteration of the result by canceling the 1st respondent's name and substituting it with the appellant's name and announcing the appellant as the winner of the election. He had no power to alter the result by canceling the 1st respondent's name and inserting that of the appellant. The option opened to the appellant was to question the election of the 1st respondent under section 145(1)(d) of the Electoral Act 2006 which stipulates -***  
 F  
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***"145 - (1) An election may be questioned on any of the following grounds***  
 H

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

***Since the return was tampered with by the Resident Electoral Commissioner of Kano State, the 1st and 2nd respon-***

**dents took the right step to present their petition before the National Assembly Election Tribunal Kano State in their petition No. EPT/KN5/HR/23/07 which was heard and determined on 28th February, 2008 and this paved way for appeal No. CA/K/EP/NA/19/2008 that was decided in favour of the 1st and 2nd respondents on 8th May, 2009.** B

**Contrary to the position taken by the appellant that Petition No. EPT/KNS/HR/23/07 ought not to have been filed before the Election Tribunal which consequently robbed the Court of Appeal of jurisdiction to entertain appeal No. CA/K/EP/NA/19/2008, the Petition was properly filed before the Tribunal. A fortiori the Court of Appeal is clothed with jurisdiction under section 246 of the 1999 Constitution to hear the appeal and such appeals terminate in the Court of Appeal. Section 246 (1)(b)(i) & (3) 1999 Constitution provides -** C

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

**(b) decisions of the National Assembly Election Tribunals and Governorship and Legislative Houses Tribunals on any question as to whether -** E

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

**(3) The decisions of the Court of Appeal in respect of appeals arising from election petitions shall be final”.** F

**The amendment to this section which allowed appeals to get to the Supreme Court only affected the election of the Governor or Deputy Governor. As the election being questioned is an election to the National Assembly, this Court lacks jurisdiction to entertain the appeal. The preliminary objection filed by the respondents is hereby upheld and the appeal is consequently struck out.** G

**The appellant is fully aware that this appeal is a wild goose chase. If he is not, the learned counsel representing him ought to have known better and advised him accordingly. Alas this is not the case. Knowing fully well that election tenure of all those elected in 2007 ended in 2011 it was senseless for learned counsel to argue that there is still a subsisting benefit to be derived from this appeal.** H

The appeal is time wasting and the appellant must be mulcted in costs to serve as a deterrent to would be litigants. I wish to say that I will not hesitate to order costs to be personally borne by the counsel if this type of practice re - occurs in future. For the meantime the appellant is to pay costs of N250,000.00 (Two Hundred and Fifty  
 B Thousand Naira) to each set of respondents in the appeal.

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**ONNOGHEN JSC**

C This is an appeal against the Judgment of the lower court, Holden at Kaduna, delivered on the 8th day of May, 2009 in which the court set aside the decision of the National Assembly Election Tribunal, holden in Kano in respect of Dala Federal Constituency seat for the 2007 - 2011 legislative assembly.

D The 1st respondent and appellant were members of the 2nd respondent, a political party which initially sent the name of appellant to the 3rd respondent as its candidate for April, 2007 election into Dala Federal Constituency seat in the House of Representatives. Later on, the name of appellant was substituted with that of 1st respondent as its candidate for that election resulting in an action instituted by appellant at the Federal High Court which appellant won.  
 E

However the name of 1st respondent remained in the ballot as the candidate of 2nd respondent at the said election and was subsequently declared the winner.  
 F

When the attention of the 5th respondent was drawn to the Judgment of the Federal High Court on the matter which nullified the substitution of appellant, the 5th respondent canceled the name of 1st respondent and substituted it with that of appellant resulting in  
 G 1st and 2nd respondent filing an election petition before the National Assembly Election Petition Tribunal, Kano challenging the unlawful alteration, return, and declaration of the appellant as winner of the 2007 Federal House of Representatives Election for Dala Federal Constituency.

H It was the contention of the petitioners that the alteration of Form EC8 E (1), which is the declaration of result sheet in which the name of 1st respondent was cancelled and that of appellant inserted after declaration of result, was unlawful. On the other hand, appellant and 3rd - 5th respondents contended that the substitution of

appellant's name as the original candidate with that of 1st respondent by the 2nd respondent was wrongful.

The tribunal at the conclusion of hearing, held that the substitution of appellant in the circumstances of the case was wrongful and that appellant was the rightful candidate of 2nd respondent for the election in issue. B

The 1st and 2nd respondents appealed against the decision to the Court of Appeal, Kaduna Division which, on 8th may 2009, set aside the Judgment of the trial tribunal, nullified the election of appellant and cancelled the certificate of return issued to appellant, which decision resulted in the instant further appeal. The issue for the determination of which have been formulated by learned counsel for appellant, FABIAN OKONKWO Esq. in the appellant brief of argument deemed filed on 14/15/13 as follows: C

*"(1). Whether it is today settled law that all pre-election matter including nomination and substitution of candidates and all matters preceding the actual holding of elections are only cognizable within the exclusive jurisdiction of the regular courts and outside the purview of the jurisdiction of Election Tribunal (Ground 1)."* D

*"(2) Whether judging from the records, the Court of Appeal was right in holding that the interests witnesses that testified gave direct evidence that the 1st petitioner/Appellant was the candidate sponsored by the 2nd Petitioner/Appellant for Dala Federal Constituency (Grounds 3 and 4)."* E

*"(3) If the instant Election Petition was incompetent ab initio and not cognizable before the Election Tribunal, what is the effect of assumption of jurisdiction by the Court of Appeal within the 1999 Constitution of the Federal Republic of Nigeria - Ground 2"* F

However, learned counsel for the respondents have filed preliminary objections against the appeal, which they have argued, as required by the rules of this Court, in their respective respondent briefs of argument. The grounds of the objection are in the main, three. These are simply. G

That this court lacks jurisdiction over the decision of the State Houses of Assembly Election Tribunals as provided in section 246(1)(b)(1) and (3) of the Constitution of the Federal Republic of Nigeria, 1999, hereinafter referred to as the 1999 Constitution, (as amended) as decisions of the Court of Appeal in respect of decision H

of the said tribunal are final, and,

Secondly that the appeal is academic and spent as the legislative house tenure to which it relates i.e. 2007 - 2011, had lapsed by effluxion of time, and,

Thirdly that the grounds of appeal and issues formulated therefrom are incompetent having regards to the decision of the lower court.

In arguing the objection, it is the contention of both counsel that the provisions of section 246(1) (b) and (3) of the 1999 Constitution, as amended, are clear and unambiguous; that it provides that the decisions of the Court of Appeal in respect of appeals arising from National and State House of Assembly elections shall be final; that the instant appeal falls within the purview of appeals which this Court has no jurisdiction to entertain, relying on the decision in *Senator Emordi V. Igbeke* (2011) 4 S.C. (Pt. 11) 107 at 115; *Alao Vs A.C.B. Ltd.* (2000) 9 NWLR (Pt. 670) 264.

On whether the appeal is now academic, learned counsel cited and relied on *Adepoju Vs. Yinka* (2012) 1 S.C. 125 at 147 and 148. *Okotie-Eboh V. Manager* (2004) 18 NWLR (Pt. 905) 242 at 284, *Odedo Vs INEC* (2008) 17 NWLR (Pt. 1117) 554 at 600. *NDP V. INEC* (2013) 6 NWLR (Pt. 1350) 392 at 423.

It is the further submission of counsel for the objectors that the decision of this Court in the case of *Attorney-General of Plateau State of Nigeria Vs. Attorney-General of the Federation* (2006) 3 NWLR (PT. 967) 340 referred to by counsel for appellant on the issue of the appeal being academic is distinguishable from the facts of this case as the earlier case has to do primarily with interpretation of the provisions of the Constitution which is not the case here and urged the court to uphold the objection and strike out the appeal for being incompetent.

On his part, learned counsel for appellant submitted that there is a difference between pre-election and post election matters; that pre-election matters are triable at the Federal or State High Courts as Election Petition Tribunal has no jurisdiction over such matters and section 246 of the 1999 Constitution, as amended, does not apply; that any appeal arising therefrom goes all the way to the Supreme Court.

It is the further submission of counsel that a post election mat-

ter, on the other hand, deals with conflicts arising from an election; that the proper forum for redress of any such conflict is the Election Petition Tribunal; that any appeal arising from such a proceeding terminates at the Court of Appeal by virtue of the provisions of section 246 of the said 1999 Constitution, as amended; that in the instant appeal both appellant and 1st respondent are members of the 2nd respondent, a political party and the issue in contention between the parties is the question of who represents the 2nd respondents in the general election held in 2007. B

On the question as to whether the appeal has become an academic exercise, learned counsel submitted that it has not, relying on the case of Attorney-General of Plateau State V. Attorney-General of the Federation (2006) 25 NSCQLR 179 at 236 on the ground that the issue as to whether or not a person has been a member of the National Assembly or any legislative House or Parliament is a Constitutional matter which cannot be said to be an academic issue; that the appeal was filed in 2009 while the life time of that legislature was still extant; that membership of the National Assembly or any legislative Assembly is one that goes to the status of a person affected for life; that a matter of status is a matter in rem-for which counsel cited no authority in support. In any event, counsel urged the court to overrule the objections. C D E

Both parties agree that by the provisions of section 246(1)(b) and (3) of the 1999 Constitution as amended an appeal on the decision of the National/State Houses of Assembly Election Tribunal over a National/State House of Assembly election petition terminates at the Court of Appeal as the final court of appeal on the matter. F

However, whereas the respondents/objectors contend that the instant appeal falls within the provision of section 246 of the 1999 Constitution as amended, learned counsel for appellant contended that it does not as same is concerned with a pre-election matter in which this court, the Supreme Court of Nigeria has final jurisdiction. The question is which of the two contending positions is right having regards to the facts of the case and the law applications thereto. G H

Section 246 (1)(b) and (3) of the 1999 Constitution, as amended, provides inter alia, as follows:-

*“An appeal to the Court of Appeal shall lie as of right from -  
(b) Decisions of the National Assembly Tribunals and Governorship*

and Legislative Houses Election Tribunals on any question as to whether –

(1) Any person has been validly elected as member of the National Assembly or of a House of Assembly of a State under this Constitution;

B (3) The decisions of the Court of Appeal in respect of appeals arising from election petitions shall be final.”

It is not disputed that the action that gave rise to this appeal before this Court started as an election petition No. EPT/KNS/HR/23/07 before the Governorship and Legislative Houses Election Petition Tribunal, Holden at Kano. The grounds of the petition are stated in paragraph 6 of the petition as follows:-

“(i) That the 1st respondent was at the time of the election, not qualified to contest the election;

D (ii) That the 1st respondent was not duly elected by majority of lawful votes cast at the election.

(iii) That the election of the 1st respondent was invalid by reason of non compliance with the provisions of this Act.

E (iv) That the 1st Petitioner was validly nominated and elected at the election but was unlawfully excluded or substituted by the 2nd to 4th respondents as the winners of the election.”

While the reliefs sought are as follows:

F “(i) Declaration that the 1st respondent who was later returned as elected was not validly elected at the elected (sic) into the Dala Federal Constituency of the House of Representatives;

(ii) Nullifying the election and or return as well as the certificate of Return if any, that has been or may have been issued and or delivered to the 1st respondent.

G (iii) Declaration that the 1st Petitioner ALHASSAN UBA IDRIS is the candidate that has met the requirements of the law and scored the highest number of votes cast at the election, and is hereby declared the winner and returned elected into the Dala Federal Constituency of the House of Representatives.

H (i) Directing the 2nd - 4th respondents to forthwith issue a certificate of Return in favour of the 1st Petitioner.”

It is settled law that it is the case of the plaintiff/petitioner as disclosed in the Statement of Claim/petition that determines the jurisdiction of the court.

From the reliefs claimed by the petitioners before the tribunal and the grounds on which they are claimed it is very clear that the claim was an election petition matter within the jurisdiction of the tribunal concerned. It is not a pre-election matter as contended by learned counsel for appellant. I hold the further view that even if it were a pre-election matter, once it was filed in an election Tribunal and relates to National Assembly election as in the instant case, by the provisions of section 246(1)(b) and (3) the Court of Appeal is the last bus stop for appellant. B

For a decision on a pre-election matter to be appealed to the Supreme Court, it must have arisen from an action instituted in the Federal/State High Courts or where it is raised in an election petition, the matter must relate to a Governorship election whose appeal currently terminates at the Supreme Court. C

The issue of finality of the decision of the Court of Appeal on election petitions involving election in National and State Houses of Assembly has been settled by this Court in a number of cases including *Emordi V. Igbeke* (2011) 4 S.C. (Pt.11) 107 at 115. *Onuaguluchi V. Ndu* (2007) 7 NWLR (Pt. 712) 309, etc. D

On the second ground of objection to wit, that the appeal has become an academic exercise, it is not in dispute that the legislative tenure being contested for that is, the Dala Federal Constituency has long lapsed, the election in question being for the tenure of 2007 to 2011. Secondly neither appellant nor 1st and 2nd respondents are in office; even the reliefs sought in the action had long lapsed, spent or expired. Thirdly, another election for another legislative tenure of May, 2011 to 2015 has been put in place with different participants. E  
F

The question is what do we mean by an academic, speculative and hypothetic action/questions. For an answer, see *Attorney-General of Plateau State V. Attorney-General of the Federation* (2006) 3 NWLR (Pt 967) 346 at 419 where TOBI JSC stated the law as follows:- G

*“A suit is academic where it is merely theoretical, makes empty sound, and of no practical utilitarian value to the plaintiff even if Judgment is given in his favour. A suit is academic if it is not related to practical situation of human nature and humanity.* H

*A suit is speculative if it is based on speculation. A suit is speculative if it is not supported by facts or very low on facts but very high*

on guesses. As courts of law are not established to adjudicate on guesses but on facts such actions are struck out.

A suit is hypothetical if it is imaginary and not based on real facts. A suit is hypothetical if it looks like a “Mirage” to deceive the defendant and the court as to the reality of the course of action. A  
B suit is hypothetical if it is a semblance of the actuality of the cause of action or relief sought”

Applying the above to the established facts of this case, it is very clear that the action on appeal or this appeal qualifies as an  
C academic, speculative and hypothetical action; an exercise in futility and consequently liable to be struck out.

To bring home finally the futility of the present exercise of appealing against the decision of the lower court in the circumstances prevailing herein, this Court in the case of Adepoju V. Yinka (2012) 1  
D S.C. 125 at 147 has this to say:-

“In the instant case appeal under consideration, however, rights and obligations sought to be entered are no longer available, the three - year term of office of the appellants as chairman of their various Local Government Council having expired. The fact that the  
E three - year term of office of the appellants as chairmen of their various Local Government Council has been unequivocally alluded to and even asserted by the Appellants themselves, it is clear from the foregoing acknowledgments by the appellants themselves that their  
F three year term of office as Chairmen of their various Local Government Councils ended on 24th May, 2010...”

It is for the above reasons and the more detailed reasons contained in the lead Judgment of my learned brother AKA’AHS JSC that I too sustain the preliminary objections and hold that the appeal  
G is consequently incompetent and liable to be struck out.

I order accordingly and abide by the consequential orders made in the said lead Judgment including the order as to costs. Appeal struck out.

H

### **GALADIMA JSC**

I have read before now the judgment of my learned brother AKA’AHS JSC, just delivered. I agree with him that the preliminary objections raised by the 1st and 3rd - 5th respondents be sustained.

I too, sustain their preliminary objections and the appeal is consequently incompetent and must be struck out.

The background facts leading to this appeal, from the decision of the Court of Appeal Kaduna Division delivered on 8/5/2009, have been comprehensively set out in the leading judgment. It is needless repeating those facts. B

Appellant herein, formulated 3 issues set out in the leading judgment.

In this appeal all the respondents, with the exception of the 2nd respondents, filed Notices of preliminary objection as to the competence of the appeal and some argued in their respective briefs of argument. They prayed that the appeal be struck out or dismissed, setting out the 3 main grounds of objections as follows:- C

1). That this court has no appellate or supervisory jurisdiction over the Court of Appeal in election connected to the National Assembly under the Electoral Act 2006 and Section 246(1) (b) (i) (3) of the 1999 Constitution. D

2). That the appeal has become academic and spent as the legislative tenure of the Dala Federal Constituency from 2007 to 2011 has elapsed by effluxion of time. E

3). That the grounds of appeal and issues formulated there from are incompetent having regards to the decision of the lower court.

Presenting their argument on the objection both counsel have contended that the clear and unambiguous provisions of section 246 (1) (b) and (3) of the 1999 Constitution, as amended, is to the effect that the decisions of the Court of Appeal in respect of appeals arising from National and State House of Assembly Elections shall be final and that the case at hand, fall squarely within such appeals and therefore the Supreme Court has no jurisdiction to entertain same, relying on the decisions of this court in SENATOR EMORDI vs. IGBEKE (2011) 4 SC (pt.11) 107 at 115 and ALAO v. ACB LTD (2000) 9 NWLR (pt.670) 264. F

On the question of whether the appeal has become academic, hypothetical and spent, learned counsel cited and placed reliance on the case of ODEDO v. INEC (2008) 17 NWLR (pt.1117) 554 at 600; NDP v. INEC (2013) 6 NWLR (pt.1350) 392 at 423; ADEPOJU v. YINKA (2012) 1 SC, 125 AT 147. It is submitted by the learned H

counsel for the 2nd respondent that the issue of jurisdiction, as threshold issue, it can be raised at any time, even so for the first time before this court, relying on *MADUKOLU v. NKEMDILIM* (1962) 2 SCNLR 341. That assuming that the issue of jurisdiction rested on the election petition tribunal to hear the case, was not raised at all before the Court of Appeal, this Court can still be called upon at this stage to determine the petition.

It is further submitted that the decision of this court in *ATTORNEY GENERAL OF PLATEAU STATE OF NIGERIA v. ATTORNEY-GENERAL OF THE FEDERATION*. (2006) 3 NWLR (pt. 967) 349, which was referred to by counsel for appellant on the issue of the appeal being academic is distinguishable from the facts of the case at hand. That the earlier case dealt mainly with the interpretation of the provisions of the constitution, which is not the case here. It is in the light of the foregoing that this court is urged to sustain the objections and strike out the appeal for being grossly incompetent.

Whereas the respondents/objectors have contended that this appeal falls within the purview of section 246 of 1999 Constitution and for that reason the Supreme Court has no jurisdiction to entertain, and that even if the appeal has become an academic exercise, the legislative tenure for Dala (Kano) Federal Constituency counsel for appellant contended that the appeal has not become an academic exercise as same does not fall within section 246 of the Constitution [supra], the matter being a pre-election, this court has a final jurisdiction.

Whither the right position of the two contending parties, having regards to the facts of the case and the applicable law?

First section 246 (1) (b) and (3) of the 1999 Constitution, as amended provides.

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

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

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

*(3). the decisions of the Court of Appeal in respect of appeals arising from the National and State House of Assembly election peti-*

*tions shall be final.”*

It is trite law that it is the case of the plaintiff or petitioner as set out in the statement of claim or petition that determines the jurisdiction of the court. It is not in dispute that the action that gave rise to this appeal before this court was initiated by the appellant before the National Assembly Election Tribunal in Kano in Petition No. EPT/ B KNS/HR/23/07.

The grounds of the petition as stated in paragraph 6 of the petition read as follows:-

*“(i) that the 1st respondent was at the time of the election, not qualified to contest the election.* C

*(ii) that the 1st respondent was not duly elected by majority of lawful votes cast at the election;*

*(iii) that the election of the 1st respondent was invalid by reason of non-compliance with the provisions of this act.* D

*(iv) That the 1st petitioner was validly nominated and elected at the election but was unlawfully excluded or substituted by the 2nd to 4th respondent as the winners of the election.”*

The reliefs sought in the petition are stated as follows: *“(i). Declaration that the 1st respondent who was later returned as elected was not validly elected into the Dala Federal Constituency of the House of Representatives.* E

*(ii). Nullifying the election and or return as well as the Certificate of Return any that has been or may have been issued and or delivered to the 1st respondent.* F

*(iii). Declaration that the 1st petitioner Alhassan Uba Idris is the candidate that has met the requirements of the law and scored the highest number of votes cast at the election, and is hereby declared the winner and returned elected into the Dala Federal Constituency of the House of Representatives.* G

*(iv). Directing the 2nd - 4th respondents to forthwith issue a Certificate of Return in favour of the 1st petitions.”*

If the law is that the case of the plaintiff as disclosed in the Statement of claim that determines the jurisdiction of the court, then from the reliefs sought by the petitioners (Appellant and 2nd respondents herein) at the trial Tribunal and the grounds of the petition, set out above, it becomes clear as crystal that the matter was an election petition within the purview of the jurisdiction of the tribunal. I hold H

the view too that it is not a pre-election matter as contended; and that even if it were a pre-election the matter having been filed in an Election Tribunal and it relates to National Assembly election, by the provisions of section 246 (1) (b) and (3) reproduced above, the decision of the Court of Appeal in respect of such appeal is final. See  
 B EMORDI v. IGBEKE (supra) and ONUAGULUCHI v. NDU COLLINS (2002) 7 NWLR (Pt. 712) 309.

The amendment to section 246(1) (b), (i) and (3) of 1999 Constitution which allowed appeals to get to the Supreme Court only  
 C affected the election of the Governor or Deputy Governor of a State.

As the election being contested is an election to the National Assembly, this Court lacks jurisdiction to entertain the appeal.

In view of the foregoing reasons and the fuller reasoning in the leading judgment I also sustain the preliminary objection and hold  
 D that the appeal is incompetent and must be struck out.

I abide by the Consequential orders made as to costs

### **RHODES-VIVOUR JSC**

E I had the advantage of reading, in draft the judgment prepared by my learned brother, Aka'ahs JSC. I agree with His lordship on both points which arise in this appeal. Jurisdiction, and the academic exercise involved in deciding, in 2014 who won an election in  
 F 2007.

The course which the proceedings have taken, and the relevant facts, are set out in the leading judgment. His lordships account I readily accept. I shall add a few words of my own on both points.

G On the 8th day of May, 2009 the Court of Appeal ruled that the 1st respondent won the General Elections conducted in 2007 for the Dala Federal Constituency of the House of Representatives.

Dissatisfied with the judgment the appellant has come here oblivious of the clear provisions of Section 246 of the Constitution which states that:

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

(b) decisions of the National Assembly Election Tribunals and legislative Houses Tribunals on any questions as to whether.

(i) any person has been validly elected as a member of the

*National Assembly or of a House of Assembly of State under this Constitution;*

*(3) The decisions of the Court of Appeal in respect of appeals arising from election petitions shall be final.”*

The election being questioned is an election to decide who shall represent Dala Federal Constituency in the House of Representatives for 2007 to 2010. The election is thus for the National Assembly, a seat in the House of Representatives. B

By virtue of section 240(3) of the Constitution decisions of the Court of Appeal in respect of appeals arising from election petitions concerning elections into the National Assembly are final. See Udenwa v. Uzodinma (2012) 12 SC (pt. vii) p.1, Emordi v. Igbeke (2011) 4 SC (pt. ii) p. 107 C

It must be abundantly clear that by the provisions of section 246 (3) of the Constitution, decisions of the Court of Appeal in respect of appeals arising from election petitions such as House of Representatives election petitions as in this case are final. Such matters come to an end with the judgment of the Court of Appeal. No appeal from the Court of Appeal on House of Representative elections can be entertained by the Supreme Court. The appeal before this court is in the circumstances incompetent as this court does not have jurisdiction to hear the appeal. The decision of the Court of Appeal delivered on the 8th day of May, 2009 is final in view of section 246(3) of the Constitution. E

In this appeal the election questioned is the 2007 General Elections for the Dala Federal Constituency for the House of Representatives. The legislative seat had a life span of four years, 2007 to 2011. F

What a judge restrains himself from deciding issues in a case or the whole case because his effort would amount to an academic exercise, all that his lordship is saying is that if he decides the suit it would end with a hollow victory. A victory with no value whatsoever. A victory that cannot be enforced. That explains why in a plethora of cases it has been said that courts should not engage in academic exercise, rather courts should restrict judicial time to determine live issues. See Oyeneye v. Odigbesan 1972 4 SC p. 244, Adelaja & ors v. Alade & anor 1999 6 NWLR pt. 608 p. 544, Bhojawani v. Bhojwani 1996 6 NWLR pt. 457 p. 663, Bamgboye v. Unilorin 1999 10 NWLR pt. 622 p. 290. G  
H

It is a case such as this that judges are not to waste time on. Even if this court had the jurisdiction to hear the merits of the appeal the better course would be to refrain from so doing and strike out the appeal as it would amount to an academic exercise to render a decision. Resolving who won an election in 2007 for a seat in the House  
B of Representatives whose life span ended in 2011 is a dead and buried issue after 2011, as there is no way that the successful party can have the judgment enforced in 2014. The hands of the clock cannot be turned back to enable the appellant, if he succeeds resume his  
C seat in a House whose tenure expired in 2011. The courts have concluded the hearing of elections conducted in 2011 for seats in the House of Representatives whose tenure would come to an end in 2015, and are looking forward to elections in 2015, yet the appellant has been doggedly resolute and undeterred in proceeding with this  
D case when the RES has long since disappeared and a judgment in his favour would amount to nothing. To ask the court in 2014 to determine elections concluded in 2007 is absurd in the extreme.

Once again I completely agree with all that my learned brother Aka'ahs, JSC had to say in the leading judgment. The appeal is devoid of any merit.  
E

### **PETER-ODILI JSC**

I am in total agreement with the judgment just delivered by  
F my learned brother, Kumai Bayang Aka'ahs JSC in which he upheld the Preliminary Objection and had the appeal struck out. To show my support I shall make some comments

This is an appeal against the decision of the Court of Appeal,  
G Kaduna Division delivered on the 8th May, 2009 setting aside the decision of the National Assembly Election Tribunal, sitting in Kano in respect of the Dala Federal Constituency seat in the House of Representatives for the expired 2007 - 2011 Legislative period.

### **BACKGROUND FACTS**

H The 1st respondent and the appellant are members of the 2nd respondent (All Nigeria Peoples Party). The name of the appellant was forwarded to the 3rd respondent by the 2nd respondent as its candidate for April, 2007 election into Dala Federal Constituency seat in the House of Representatives. The name of 1st respondent

was subsequently forwarded to the 3rd respondent to substitute the name of the appellant. The appellant dissatisfied with the development instituted an action at the Federal High Court challenging his substitution by the 2nd respondent wherein judgment was delivered in his favour.

At the time of the election, it was the 1st respondent that was still the candidate of the 2nd respondent for the polls at the end of which election the 1st respondent was declared winner. The attention of the 5th respondent was drawn to the Federal High Court judgment nullifying the substitution of the appellant and he cancelled the name of the 1st respondent and inserted that of the appellant in his office.

The 1st and 2nd respondent in dissatisfaction filed an election petition before the National Assembly Election petition Tribunal, Kano challenging the unlawful alteration, return and declaration of the appellant as the winner of the 2007 Federal House of Representatives Election for Dala Federal Constituency.

The case of the petitioners at the tribunal was unlawful alteration of Form ECS8 (i) i.e. declaration of the result sheet in which the name of the 1st respondent was removed and that of the appellant was inserted after he was declared winner. On the other hand, the case of the appellant and 3rd - 5th respondent was that of unlawful substitution of the appellant's name as the original candidate who was wrongly substituted and declared the right candidate of the 2nd respondent by the judgment of the Federal High court. The court of trial held that the evidence of the 1st and 2nd respondents contradicted their sworn declarations on oath and supported the case of the appellant was the candidate of the 2nd respondent as the appellant was wrongly substituted and ought to be the right candidate of the 2nd respondent who won the election.

The 1st and 2nd respondents in reaction appealed to the Court of Appeal which appellate court set aside the judgment of the election tribunal, nullified the election of the appellant and cancelled the certificate of return issued to him.

It is against that judgment that the appellant has appealed to this court.

On the 13th day of February, 2014, learned counsel for the appellant, Mr. C. I. Okafor adopted the brief of Argument settled by

Prof. Ilochi A. Okafor SAN, filed on the 9/10/12 and deemed properly filed on 26/9/13 and a Reply Brief deemed filed on 13/2/14 which were response for 1st and 2nd respondents, preliminary Objection and Reply to 3rd -5th respondents, Brief of argument respectively.

B Mr. Nureini Jimoh for 1st respondent adopted their Brief of Argument settled by the same counsel, filed on 16/5/13 in which was incorporated the arguments in the preliminary Objection of the 1st respondent.

C Mr. Nelson Uzuegbu of counsel adopted the Brief of Argument of the 2nd respondent which he settled and filed on the 16/5/13. In it was incorporated the arguments of the preliminary objection he had raised.

D Mr. Abdulrahman Madaki of counsel adopted the brief of argument of 3rd - 5th respondents which he settled and filed on the 2nd July 2013. He had embedded in the brief his arguments on the preliminary objection he raised.

E It needs not be said that the preliminary Objection would occupy a paramount position and be talked firstly before the court can go forth since the court has to be satisfied that there is the necessary vires before it can go on.

F The grounds of each of the objections raised by the 1st respondent, the 2nd and the 3rd -5th respondents are in the main the same since each posits that the appeal is incompetent and this court lacks jurisdiction to entertain the appeal.

G For the 1st respondent was submitted that the legal regime that operates during this electoral period is the Electoral Act 2006 and the 1999 Constitution before it was amended, while the election in question was held on 21st April 2007. That election matters are purely and strictly statutory and so common law remedies are not applicable.

H The electoral law and Constitution in form being the operating force when the cause of action arose. That by the provision of Section 246 (1) (a) (i) & (ii) of the then 1999 Constitution, the Court of Appeal has the only appellate jurisdiction over election petition questioning the validity of the election of persons to the National Assembly, State Assembly, Governors and Deputy Governors. He said by Section 246(3) of the said constitution the decision of the Court of Appeal is final on those election petitions. He cited HDP v Mr. Peter

Obi & Ors (2011) 12 SCNJ 182, Onuaguluchi v Ndu (2001) 7 NWLR (pt. 712) 309; Awuse v. Odili (2003) 18 NWLR (Pt.851) 116.

Mr. Jimoh of counsel for the 1st respondent stated that the election period had long gone and the period on ground now being that from May 2011- 2015 which is fast running out and so the cause of action is dead and there is no utilitarian value for this action which is clearly academic, lifeless, speculative and spent. He cited *A. G. Anambra State v. A. G. Federation* (2005) 9 NWLR (pt. 931) 572/610; *Yusuf v. Toluhi* (2008) 14 NWLR (pt. 1107) 237; *State v. Azeez* (2008) 14 NWLR (Pt. 1108) 439. B

Learned counsel for the 2nd respondent, Mr. Nelson Uzuegbu contended that the appellant in their brief had set up a case different from that presented by the 1st and 2nd respondent at the trial court and Court of Appeal which respondents petition had bordered on the wrongful and unlawful alteration of the form EC8 (ii) i.e. INEC declaration of Result sheet by the 5th respondent herein, return and declaration of the appellant as the winner of the election. He stated that the issue of unlawful substitution of the candidate as a pre-election matter was an issue unilaterally raised by the appellant and the 3rd - 5th respondents. That it needs be said that parties cannot under any guise confer or rob the court with jurisdiction and the appellant is to be reminded that the appeal does not relate to pre-election matter as is being misconceived by the appellant. He relied on *Agballah v. Nnamani* (2005) ALL FWLR pt 245. C

For the 2nd respondent was further canvassed that the right of the appellant to occupy the legislative seat had long expired thus making this appeal academic, hypothetical and/or speculative. He cited *Adepoju v. Yinka* (2012) ALL FWLR (pt. 624) 26 at 39; *Odedo v. INEC* (2008) 17 NWLR (pt. 1117) 554 at 600. E

Learned counsel for the 3rd - 5th respondents, Mr. A. Madaki submitted that this court lacks jurisdiction to entertain the appeal in view of Section 246(3) of the constitution which conferred final appellate jurisdiction on the Court of Appeal. He cited *Emordi v. Igbeke & ors* (2011) 4 SC (pt. II) 107 at 115; *Alao v. ACB Ltd* (2000) 9 NWLR (pt. 670) 264. F

In response, learned counsel for the appellant submitted that there is a subject matter dichotomy between pre-election and post election matters and in the appeal on ground is a pre-election matter G

which has to be considered and not curtailed as would a post election issue.

On whether the appeal has become academic, Mr. Okafor of counsel said he was invoking the powers of this court under section 22 of the Supreme Court Act to make a consequential order that the  
B appellant be paid all the entitlements due him as a member of the House of Representatives for Dala Federal Constituency from May 8, 2009 to June 5, 2011. He relied on *peter Obi v. INEC* (supra) at 436 - 437; *Charles Chinwendu Odedo v. INEC* (2009) EPR 407 at 438.

C That issues of jurisdiction are thresh-hold matters which can be raised at anytime even for the first time before the Supreme Court. He cited *Madukolu v. Nkendilim* (1962) 2 SCNLR 341. That assuming that the issue of jurisdiction of the election petition tribunal to hear the case was not raised at all before the Court of Appeal, the  
D Supreme Court can still be called upon even at this stage to determine a petition and that the tribunal has jurisdiction to adjudicate on the matter. He cited *Omokhafa & Ors v. Military Administration Edo State & Ors* (2004) 20 NSC QLR 355 at 364.

E That the Electoral Act, 2006 did not envisage such an issue as a post election matter coming to the Election petition Tribunal. He said the respondents have not shown that they brought the petition under any of the circumstances outlined in the case of *Martin Agbaso v. Ikedi Ohakim* (2010) 7 EPR 420 at 456.

F Two posers are in my humble view raised in this objection which are, whether an appeal from an election tribunal in the matter of election to the seat in the House of Representatives can be entertained by this court and the second question is whether the appeal has a live issue. To answer these questions first recourse has to be  
G made to the constitution, the relevant section being section 246(1) (b) (i) and 3.

Interestingly the Amended Constitution done in 2010 has the same provisions except for Governorship election disputes which have its final settlement in the Supreme Court.

H Section 246: an appeal to the Court of Appeal shall lie as of right from-

(b) Decisions of the National Assembly Tribunals and Governorship and legislative Houses Election Tribunals on any question as to whether -

(i) Any person has been validly elected as member of the National assembly or of a House of Assembly of a state under this constitution.

3. The decisions of the Court of Appeal in respect of appeals arising from election petitions shall be final.

On the finality of the Court of Appeal decision on any appeal emanating from the Election Tribunal on either the states Houses of Assembly or the National Assembly, I shall rely on the case of Sen. Emordi v. Igbeke & 5 Ors (2011) 4 SC (pt. 11) 107 at 115 where the Supreme Court held thus:

*“As stated earlier on in this judgment, the preliminary objection is rooted on the provision of Section 246(3) of the 1999 Constitution which reads as follows:*

*“246 (3): The decisions of the Court of Appeal in respect of appeals arising from election petitions shall be final”.*

The word ‘decision’ in legal parlance is defined as a judicial determination after consideration of the facts and the law, especially a ruling, order or judgment pronounced by a court when considering or disposing of a case.

The word ‘shall’ as employed in the above quoted applicable section 245(3) of the Constitution denotes obligation or a command and gives no room for discretion. By its nature it is mandatory and one cannot wriggle out same. It imposes a duty. Where a thing shall be done it goes without equivocation that a preemptory mandate is enjoined... Briefly put, the word ‘final’ as employed in the applicable section 246(3) connotes conclusiveness, point never to be revisited. The above cited authority captures the appropriate interpretation of what obtains with such a mandatory provision as stated in Section 246(3) of the Constitution and it is not for a court of appellate jurisdiction such as this one to take on the garb of jurisdiction not donated to it by law or the Constitution all for the sake of doing justice. See Alao v. ACB Ltd (2000) 9 NWLR (pt. 670) 264.

The appellant is invoking the jurisdiction of this court on the ground that the case of A. G. Plateau State v. A. G. Federation (2006) Vol. 25 NSLQLR 179 at 236 is the authority on which that can be done. This court had in that case held that issues relating to the interpretation of law cannot be dead, academic, speculative or hypothetical and so the appeal in that case was entertained. That in my view is

not the same scenario here as what is at play is not the mere interpretation of a Constitutional provision and what it portends. In fact what is visible is the reality of a debate of an election which brought out victors who took their seats in the various Houses of Assembly or the National Assembly and which life-span was exhausted in 2011. In 2011 a fresh election was held and persons are occupying positions which life is fast expiring in 2015, a year from now. The picture thrown up is what purpose assuming there is jurisdiction and the appeal goes in favour of the appellant. It seems to me that the matter has been settled by the case of Adepoju & 9 Ors v. Yinka & 5 Ors (2012) 1 SC 125 at 147, 148 in which the Supreme Court faced with similar circumstances as the present held thus:

*"In the instant appeal under consideration, however, rights and obligations sought to be enforced are no longer available, the three year term of office of the appellants as chairman of their various Local Government Council having expired. The fact that the three year term of office of the appellants as chairmen of their various Local Government Council has been unequivocally alluded to and even asserted by the appellants themselves. It is clear from the foregoing acknowledgment by the appellants themselves that their three-year term of office as chairmen of their various local government councils ended on 24 May, 2010."*

A reminder of the reliefs sought by the appellant at the Federal High Court is of essence at this point in time.

The appellant, as plaintiff, at the Federal High Court, sought the following reliefs:

(i) A declaration that by virtue of the provisions of the Electoral Act, 2006 and the 1st defendant's Electoral Guidelines, the substitution purportedly made vide the letter dated 11th day of January 2007 and signed by the 2nd defendant's secretary is null, void and of no effect in law.

(ii) A declaration that the non-compliance with the prescribed Form CF004A as stated in the Electoral Guidelines of the 1st defendant renders the purported substitution of the plaintiff as the 2nd defendant's candidate for the Dala Federal Constituency of Kano State null, void and of no effect in law.

(iii) A declaration that the earlier list of candidates for National Assembly election submitted on or before 22/12/2006 by the 2nd

defendant to the 1st defendant remains the valid and subsisting, list for April, 2007 National Assembly election.

(iv) A declaration that it is unconstitutional, illegal and unlawful for the defendants to change the name of the plaintiff as the duly nominated candidate of the 2nd defendant for Dala Federal Constituency in Kano State having accepted the nomination of the plaintiff by publishing his name in accordance with Section 32(3) of the Electoral Act, 2006 without compliance with the Electoral Act. B

(v) A declaration that by virtue of the provisions of Section 34(2) of the Electoral Act, 2000, the letter dated 11 January, 2007 written by the 2nd defendant to the 1st defendant seeking to substitute the plaintiff's name does not raise any cogent and verifiable reason sufficient in law to warrant a substitution of the plaintiffs name by the 1st defendant. C

(vi) An Order of perpetual injunction restraining the defendants either by themselves, their agents, privies, servant or however described, from substituting or changing the name of the plaintiff as the duly nominated candidate for Dala Federal Constituency, Kano State for the April, 2007 election into the National Assembly. D

An appeal at the Supreme Court being a continuation of the initial suit instituted at the Federal High Court, the reliefs thereby sought having been restated above, it is clear assuming there is the vires in this court to enter into the merits of the appeal, again assuming the court finds for the appellant and he is declared to be the person in whom the justice of the case resides, the court would then enter into the granting of those same reliefs at inception and the complication would then arise in that the court in granting the prayers would be making an order against persons not before it as whoever is presently occupying the seat of the Dala Federal Constituency from 2011-2015. E F G

Assuming again it is not the same person who has been in occupation from 2007 - 2011 the relevant period involving this suit, then the court would have gotten into the murky water of making an order against a party not before it and who has not been heard. All these infractions of the constitutional right of fair hearing as enshrined in the constitution with particular reference to Section 36 or 33 of the 1979 Constitution. H

Clearly what I have attempted above is clearly within the realm

of an academic speculation at its very best and with hypothetical questions brought out with this court mindful of the fact that such questions are not to be given answers to or for adjudication since the questions do not relate to live issues in the litigation. It is evident that what is before court in this appeal is a spent process, a dead issue or  
B matter to which no right or benefit can inure on the victorious party. I ask myself, to what purpose do we tarry on therefore in the prevailing circumstances? I refer to *Odedo v. INEC* (2008) 17 NWLR (pt. 1117) 554 at 600; *Okotie - Eboh v. Manager* (2004) 13 NWLR (pt. 905) 242 at 284.  
C

The appeal before court this certainly an exploratory venture with neither a radar nor compass. A situation that should remain in the imagination wherein a person would delve in a wandering game in his mind and not let it out into involving the court in a wasteful  
D exercise.

From the above and the fuller and better articulated reasoning by my brother, I uphold the preliminary Objection and I strike out the appeal, while abiding with the consequential orders made.

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