

**SUPREME COURT OF NIGERIA**  
FRIDAY 9TH MAY, 2014. SC. 191-191A/2012 (CONS.)  
**CORAM:- W. S. N. ONNOGHEN, S. GALADIMA,**  
**B. RHODES-VIVOUR, M. U. PETER-ODILI,**  
**C. B. OGUNBIYI, K. B. AKA'AH, J. I. OKORO, JJSC**

1. PROF. STEVE TORKUMA UGBA ..... APPELLANTS  
2. ALL PROGRESSIVES CONGRESS  
AND  
1. GABRIEL TORWUA SUSWAM  
2. PEOPLES DEMOCRATIC PARTY  
3. INDEPENDENT NATIONAL  
ELECTORAL COMMISSION ..... RESPONDENTS

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SUPREME COURT - Judgment - Setting aside - The court has no jurisdiction to set aside its ruling or judgment - If properly made in the exercise of its powers - Save when the judgment is a nullity (H1)

COURTS - Procedure - Irregularity in - Waiver - Applicants having acquiesced to taking of the preliminary objection - By court at the time it did - Cannot be heard to complain of any irregularity - Which they are a part of (H2)

SUPREME COURT - Objection - Upholding of - It is the practice by the court after upholding preliminary objection - To automatically terminate the appeal - And thus strike out same (H3)

ELECTION PETITIONS - Tribunal - Hearing - Time limit - The jurisdictional competence of tribunal under 1999 Constitution s. 285(6) - Cannot exceed the 180 days allotted for hearing (H4)

JURISDICTION - Fundamentality of - Jurisdiction which is a creation of statute - Serves as authenticating mandate - And where statute does not create jurisdiction - Then it does not exist (H5)

APPEALS - Action - Academic issue - Fate of - Where appeal has no practical value to appellant - Any judgment given in his favour - Will certainly render such appeal merely academic (H6)

CONSTITUTIONAL LAW - Constitution - Supremacy of - Constitution is the only instrument - Which is imbued with absolute power - To create and confer jurisdiction (H7)

### **FACTS**

Petitioners/applicants brought this application before the Supreme Court pursuant to sections 6(6)(a)(b), 36(1)(3), 294(2) of the Constitution of the Federal Republic of Nigeria 1999 (as amended), section 22 of the Supreme Court Act 2004, Order 2 Rule 28(1) and Order 8 Rule 17 of the Supreme Court Rules 1999 (as amended) and the inherent jurisdiction of the court. Applicants seek inter alia for an order of the court setting aside its ruling delivered in Appeals Nos. SC. 191/2012 and SC. 191A/2012 which terminated the said appeals and an order enforcing its earlier decision that applicants' petition pending before the gubernatorial tribunal be heard on the merits. Following the conduct of the gubernatorial election in Benue State on the 26<sup>th</sup> April 2011, applicants filed election petition at the Governorship Election Petition Tribunal of the State, challenging the declaration of 1<sup>st</sup> respondent as the winner of the said election.

Applicants' application for pre-hearing notice to all respondents was granted by the tribunal. 1<sup>st</sup> and 2<sup>nd</sup> respondents sought for order to set aside the pre-hearing notice already issued. 1<sup>st</sup> and 2<sup>nd</sup> respondents applied to set aside the order granted. On dismissing the applications to set aside the pre-hearing, 1<sup>st</sup> respondent appealed to the Court of Appeal. The court set aside the ruling of the tribunal and eventually proceeded to dismiss the petition. Dissatisfied, applicants lodged appeal in Supreme Court. The court allowed the appeal, set aside the decision of the Court of Appeal and ordered that the petition be heard on the merit. By the time the parties went back to the tribunal, the 180 days time limit prescribed by the Constitution for hearing and determination of the petition had lapsed and the petition was accordingly struck out. On this basis, applicants seek the intervention of the Supreme Court via the present application.

### **ISSUE FOR DETERMINATION**

Whether in the circumstances of this case the applicants have, as a matter of law, satisfied the conditions to warrant this court, setting aside its Ruling delivered on 8th June, 2012.

# **HELD** (Unanimously dismissing the application per **OGUNBIYI JSC)**

*SUPREME COURT - Judgment - Setting aside*

**1. Following from the foregoing deductions, the principle is well established that this court has no jurisdiction to set aside its ruling or judgment if properly made in the exercise of its powers and jurisdiction. However and that notwithstanding, there is also a rider or a caveat which holds secure that in appropriate cases, it is expedient that the court, in the exercise of its inherent powers, can set aside its Ruling or judgment provided the circumstance calling for such order has satisfied the stringent conditions that the judgment or ruling is a nullity; that such decision was obtained by fraud; and that the court was misled in delivering the said judgment or ruling.** (p. 2146 C)

*COURTS - Procedure - Irregularity in - Waiver*

**2. I have also stated in the course of this ruling that the taking of the preliminary objection by the court at the time it did and subsequently ruled upon, was at the instance of all parties, inclusive of the applicants themselves; they cannot now be heard to complain against any irregularity which they are a part of, having accepted, waived or acquiesced.** (p. 2148 C)

*SUPREME COURT - Objection - Upholding of*

**3. I hasten to add also that it is the practice by this court after upholding the preliminary objection of a Respondent to automatically terminate the appeal and thus striking out same. See Adelekan V. Ecu-line NV supra at 58 where this court after upholding the preliminary objection of the Respondent, struck out the main appeal and the suit.** (p. 2148 H)

*ELECTION PETITIONS - Tribunal - Hearing - Jurisdiction*

**4. The Constitutional mandate and also its enforcement are well pronounced and enunciated in various judicial authori-**

***ties by this court wherein imposition is placed upon the tribunal to deliver its judgment within 180 days from the date of filing a petition.***

***By reference therefore, it goes without saying that the jurisdictional competence of the tribunal under Section 285(6) cannot by any reason exceed the 180 days allotted. It remains sacrosanct and can neither be added to nor subtracted from. With the Constitution being the final authority, any attempt to derogate there from would be met by a brick wall which cannot be penetrated through.*** (p. 2151 B)

*JURISDICTION - Fundamentality of*

***5. From the foregoing, it follows that the absence of jurisdiction is indeed futile. I wish to further restate that jurisdiction which is a creation of statute serves as an authenticating mandate; it is also obvious that where a statute does not create jurisdiction, then it does not exist.*** (p. 2151 G)

*Action - Academic issue - Fate of*

***6. The principle of law is also well entrenched in our judicial system as rightly submitted on behalf of the respondents that where an action or an appeal has no practical or utilitarian value to the appellant, any judgment given in his favour will certainly render such an appeal or action merely academic which this court had warned consistently, without mincing words, that such venture should not be embarked upon.*** (p. 2153 B)

*G Constitution - Supremacy of*

***7. Following from the foregoing therefore, the supremacy of the Constitution is obvious as being the only instrument which is imbued with absolute power to create and confer jurisdiction. It is the ultimate and can be compared to none.*** (p. 2154 E)

**NOTABLE POINT OF INTEREST**  
**ONNOGHEN JSC**

### ***1. Null judgment and erroneous judgment - Difference***

It is settled law that a decision that is a nullity is not the same as a decision that is erroneous in law but given by the court within its jurisdiction.

Whereas a null judgment is one given by the court without jurisdiction or competence or when a condition precedent for the court to assume jurisdiction has not been fulfilled, an erroneous judgment in law is a judgment delivered by a court of competent jurisdiction which is therefore subject to appeal in order to correct the error by setting same aside. (p. 2156 H)

### **REPRESENTATION**

S. A. Orkumah, Esq., M. I. Atagher, Esq., Ako Rhoda (Mrs.), J. I. Abaagu, G. A. Uggah, Esq., J. T. Agor, Esq., Chris Alashi, Esq., T.A.R. Tombowua, Esq., E. Z. Agbakor, Esq., S. Ogala, Esq., M. Abaagu, D Esq., P. Abaagu, Esq., Nomnor Maureen (Miss) and Omale Omale, Esq., for the Appellants

D. D. Dodo, SAN, OFR with Denwigwe, SAN, Prof. A. A. Ijohor, SAN, H. S. Tumba, Esq., Chief E. K. Ashiekaa, Esq., I. A. Nomishan, Esq., J.S.T. Anchaver, Esq., N. Nngea, Esq., Nasir Dangiri, Esq., S. E A. Udaga, Esq., A. Olatunder, Esq., A. Aligba, Esq., Dr. A. T. Imbwaseh, Esq., S. M. A. Tormusa, Esq., Audu Anuga, Esq., Jacob Ifere, Esq., F. R. Onoja, Esq., Steve Abar, Esq., M. T. Kachina, Esq., T. D. Pepe, Esq., T. T. Igba, Esq., Terhemba Gbashima, Esq., M. L. Ianna (Miss), F Samson A. Eigege, Esq., S. T. Yenge, Esq., F. T. Kusugu, Esq., Sonia Ajoko (Miss), A. G. Ibah, Esq., N. H. Obianuka-James (Miss), K. O. Ugbodaga (Miss), Adewale Adegboyega, Esq. and D. D. Asema Esq. for the 1st Respondent.

Chief Solomon Akuma, SAN with C.A. Gbehe Esq., P.N. Jooji (Miss), G and Samuel Igwe Esq., for the 2nd Respondent.

J. S. Okutepa, with Femi Atte, Esq., Usman O. Sule, Esq., Mrs. Oludolapo O. Ufaruna, Mrs. Hokaha H. Bassey, Mustafa A. Mairamri, Esq., Miss Ifeoluwa O. Ogunkanmi and Miss. Ejura P. Ochimana for the 3rd Respondent, for the Respondents H

### **CASES REFERRED TO**

Alao v. A.C.B. Ltd. (2000) 9 NWLR (pt. 672) 264  
Cardoso v. Daniel (1986) 2 NWLR (pt. 20) 1

- Tanko v. State (2009) 2 SCNJ 1  
 A-G Federation v. Guardian Newspapers Ltd (1999) 9 NWLR (pt. 618) 187  
 Odi v. Osafire (1985) 1 NWLR (pt. 1) 17  
 Rossek v. A.C.B. (1993) 8 NWLR (pt. 312) 382  
 B Okafor v. A-G Anambra State (1991) 6 NWLR (pt. 200) 659  
 Nwosu v. Udejaja (1999) 1 NWLR (pt. 125) 188  
 ANPP v. Goni (2012) 1 NWLR (pt. 1298) 147  
 Mobil Oil Nig. Ltd v. Assan (1995) 9 SCNJ 97  
 C Adeogun v. Fashogbon (2008) 17 NWLR (pt. 1116) 149  
 Agbakoba v. INEC (2008) 18 NWLR (pt. 1119) 489  
 Igwe v. Kalu (2002) 14 NWLR (pt. 787) 435  
 Adefulu v. Okulaja (1998) 5 NWLR (pt. 550) 435  
 Ibiroma v. Blakk (1998) 6 NWLR (pt. 555) 524

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**STATUTES & RULES REFERRED TO**

- Constitution of the Federal Republic of Nigeria 1999 (as Amended), ss. 4(8), 6(6)(a)(b), 36(1)(3), 236, 285(6)(7), 294(2)  
 Supreme Court Act 2004, s. 22  
 E Electoral Act 1982, s. 140  
 Supreme Court Rules 1999 (as Amended), O. 2 r. 28(1), O. 8 r. 17

**LEAD JUDGMENT BY OGUNBIYI JSC**

- F The application before us is dated 14th day of November, 2013 and filed on 15th November, 2013. It was brought pursuant to Sections 6(6)(a) and (b), 36(1) and (3), 294(2) of the 1999 Constitution (As Amended); Section 22 of the Supreme Court Act, 2004; Order 2 Rule 28(1) and Order 8 Rule 17 of the Supreme Court  
 G Rules, 1999 (As Amended); and the inherent jurisdiction of this Court and seeks for the following reliefs:-  
 a) An order setting aside its ruling delivered in open court on 8th day of June, 2012 in Appeals Nos. SC.191/2012 and SC.191A/2012, terminating the said appeals.  
 H b) An order implementing/Enforcing its order/decision delivered on 14th November, 2011 that the petition be heard on the merits:  
 c) An order Restoring Appeals Nos: SC.191/2012, SC.191A/2012 terminated on 8th June, 2012 and hearing same on the mer-

its;

d) Accelerated hearing of this application;

e) Such further order(s) as this Honourable court may deem fit to make in the circumstances.

There are eleven grounds predicating the application. On the 11th February, 2014 at the hearing of the application the learned counsel, Orkumah, Esq. represented the applicants and applied to abandon grounds 4 and 8 which same are now struck out. The subsisting nine grounds excepting 4 and 8 upon which the application is anchored are reproduced hereunder:

**“GROUNDS FOR THE APPLICATION**

*1. The respondents, particularly 1st respondent had manifested foreknowledge of the decision before its delivery as shown by the posting of the result thereof at 7:49 am of 8/6/2012 on Facebook (Village Corner) and the broadcast of same on Radio Benue on 7/6/2012;*

*2. S.6(6)(a) & (b) of the 1999 Constitution (as amended) vests this Honourable Court with all inherent powers and sanctions of a court of law in all matters between persons or between government or authority or any person in Nigeria in all actions and proceedings for the determination of any question as to the civil rights and obligations of that person, including election cases and appeals therefrom;*

*3. S.36(1) of the 1999 Constitution (as amended) was not taken into account in adjudicating on this appeals as the appellants' briefs were not considered in the ruling delivered on 8/6/2012 by this Honourable Court nor was S.285(2) considered in relation to the interpretation of S.285(6) of the 1999 Constitution (as amended) in the decisions of 8/6/2012 given by this Honourable Court;*

*5. This Honourable Court had on 14th November, 2011 in Appeal No. SC.360/2011 involving the same parties ordered this petition to be heard on the merits and the order has not been vacated or otherwise impugned in any proceedings and same is binding on this Honourable Court;*

*6. S.285(6) of the 1999 Constitution (as amended) cannot and does not apply to these appeals in which the petition was dismissed within 180 days (i.e. 19th September, 2011) and the appeals therefrom heard and determined within 60 days as stipulated by S.285(7) of the 1999 Constitution (as amended) in accordance with*

*the decision of this court in ANPP v Goni (2012) 7 NWLR (Pt.1298) 147;*

7. A full court was constituted to consider departing from its decision in the *ANPP v. Goni* lines of cases as indicated in the appellants' brief in *SC.191/2012* but on 4/6/2012 the panel declined to go into the matter and confined itself to the preliminary objection of the respondents' response to which formed substantial part of the arguments in the substantive appeals which were not considered by the court in its ruling;

9. This Honourable Court overlooked the decision of the full panel of this court in *Saraki v Kotoye (1992) 11/12 SCNJ 26, (1992) 9 NWLR (Pt.264) 156*, cited to it both in oral argument and appellants' reply brief to 3rd Respondent's brief to the effect that the exercise by a party of his Constitutional right of appeal under *SS.233(2), 246(1)(c)(ii) and 285(7) of the 1999 Constitution (as amended)* cannot constitute an abuse of court process or an academic exercise.

10. This Court failed to consider appellants' response to 3rd respondent's preliminary objection contained in paragraph 1.1 - 1.50 (pp. 1-24 of appellants' reply brief to 3rd respondent's brief in its ruling of 8/6/2012 thereby breaching appellants' right to fair hearing under *S.36(1) of the 1999 Constitution (as amended)*.

11. Section 285(6) of the 1999 Constitution (as amended) cannot stand in the face of the combined provisions of Sections 4(8), 6(6)(a) & (b) 36(1) of the 1999 Constitution (as amended).

In support of the application is a 25 paragraphed affidavit deposed to by one Richard Agwa, a litigation secretary in the chambers of the solicitors representing the applicants. In addition to the foregoing, the other documents filed by the applicants' counsel include a written brief filed 25th November, 2013, replies on points of law in response to the 1st and 2nd respondents, counter affidavit and their written addresses respectively. The learned counsel Mr. Orkumah, Esq. in moving the motion, relied particularly on paragraphs 3 - 24 of the affidavit in support and also on all the other documents enumerated therein inclusive of the brief filed supra. The counsel on the totality moved in terms of the motion papers and urged that this court should grant the application per the reliefs sought and that the ruling delivered on 8th June, 2012, should be set aside.

In opposing the application, the learned senior counsel Mr.



*Dodo, SAN in company of his brother Prof. A. A. Ijohor, SAN, led a team of other lawyers and represented the 1st respondent. A counter affidavit containing seven paragraphs as well as a written submission against the motion were both filed 22nd November, 2013 and conclusively relied upon. The learned senior counsel Mr. Dodo emphasized that the applicants had not satisfied the requirement for setting aside the ruling as sought. Counsel further rated the application as lacking in merit and only aimed at wasting the time of the court.*

*On behalf of the 2nd respondent, his counsel Chief Akuma, SAN, intimated the court of their counter affidavits filed on 19th and 20th, November, 2013 respectively. On an application by the said counsel, the earlier one was withdrawn and struck out. Counsel thereafter adopted and relied on the subsisting counter affidavit as well as the written address filed 16th January, 2014 and also the exhibits attached thereto. Specific reference was made on paragraph 4.2 on page 10 of their written address. Counsel further impressed upon this court to strike out the applicants' reply on points of law, as it is a re-argument of the entire written address and therefore frivolous. It is also the counsel's further contention that by reason of Section 285(7) of the Constitution supra, the application is an academic exercise and also an abuse of this court's process. The learned counsel urged in favour of dismissing the application therefore.*

*Appearing on behalf of the 3rd respondent and in company of other counsel was Mr. J. S. Okutepe, SAN, whose objection was taken on points of law. The senior counsel also adopted the submissions made on behalf of the 1st and 2nd respondents and rated the application as most frivolous especially where the sum total raises the question relating a denial of the right to fair hearing. It is the submission of counsel further that Order 8 rule 16 of the Rules of this court is the only provision made and allowing for a setting aside of its own decision. In the same vein as his learned brothers for the 1st and 2nd respondents, the senior counsel also urged that this application should be dismissed as lacking in merit and an abuse of court process. The determination of this application will necessitate the giving of a brief background history of the preliminary objection which resulted in this court dismissing the appellants' applicants' appeals as being academic and an abuse of court process. By its Ruling Exhibit 2 delivered on the 8th June, 2012, this court held thus:-*

*“There is no requirement that the petition filed before the tribunal must be heard before a judgment can be delivered within 180 days. In otherwords, a petition needs not to be heard before the tribunal delivers its judgment which of course does not have to be a final judgment as the two convey different meanings... Therefore in compliance with S. 285(6) of the Constitution (supra), once an election tribunal gives an appealable decision or makes an order within 180 days and an aggrieved party appeals, it is my firm believe that time continues to run until the 180 days shall be exhausted. An appellate court does not have the jurisdiction to extend or enlarge the 180 days once it expires.*

*However, one thing is certain and not disputable, an appellate court, when an appeal succeeds within the time prescribed is competent to order retrial or hearing de novo. But certainly not after the time prescribed has lapsed expired. Any such order or directive when the main substratum, such as, petition before the tribunal has ceased to exist having been either struck out or dismissed by the trial court becomes a nullity and will have no effect whatsoever.”*

On 19th June, 2012, the appellants/applicants herein filed an application before this court and prayed for the following orders:- setting aside its ruling delivered 8th June, 2012, implement/enforce its order/decision delivered 14th November, 2011 that the petition be heard on the merits and restoring Appeal No. SC.191/2012 and SC.191A/2012 and hearing same on the merits. The said motion was withdrawn on 14/11/2013 and substituted with a motion filed 15/11/2013, the subject matter now before us; the reliefs and also the grounds in support, have been reproduced earlier in the course of this ruling.

The appellants/applicants by their written address in support of the motion on notice, have compartmentalized the reliefs into two main segments by taking A and C together while B, which seeks for direction that the petition be heard on its merits, is subject to and completely dependent upon the outcome of A and C. Unlike the applicants, the 1st respondent, on his brief of argument, raised three issues for consideration as follows:-

1) Whether this Honourable Court has the jurisdiction to entertain this application, having regard to the spirit and letter of Section 285(6) and (7) of the 1999 Constitution (as amended).

2) Whether the application is not an invitation to this Honourable Court to sit on an appeal over its decision.

3) Whether the application has disclosed very exceptional circumstances and satisfied the conditions to warrant this court to review or set aside its earlier Ruling.

The 2nd respondent's learned senior counsel, Chief Solomon Akuma, SAN in their written address opposed the motion by formulating a lone issue and thus posing the following question for determination- *"whether in the circumstances of this matter the applicants have satisfied the conditions to warrant this court in setting aside its Ruling delivered on 8th June, 2012."*

On behalf of the 3rd respondent, there was neither a written submission filed to substantiate its defence nor was any counter affidavit filed. Their Learned counsel Mr. J. S. Okutepe, SAN, however submitted and opposed the application on points of law.

I have carefully considered the reliefs sought by the applicants before us, the grounds predicated same and the arguments advanced in support thereof, also the three issues as well as the one raised on behalf of both the 1st and 2nd respondents respectively; the submission by the 3rd respondent on points of law was also considered and thus giving me the reason to draw the conclusion that the totality of the submissions of all counsel can conveniently be accommodated within the main lone issue raised by the 2nd respondent. In otherwords, all the three issues raised by the 1st respondent can easily be subsumed into the lone issue. This is because the totality of the facts established on the application are seeking an order of this court to set aside its ruling made on 8th June, 2012.

The propriety of this application is subject to the questions posed by the 1st respondent in the reverse order of his issues 2 and 1. In otherwords, if the application turns out to be an invitation on this court to sit on appeal over its own decision, the obvious and subsequent relating question is, whether the court has the jurisdiction to sit on such an appeal. The jurisdictional competence posed would have to be viewed from two dimensions. That is to say the appellate jurisdiction conferred by the Constitution as well as the jurisdictional limitation on adjudication in election matters.

The central focus of the submission by the applicants' counsel alleges a breach on the Constitutional provision of the right to fair

hearing. The senior counsel for instance related copiously to the Constitutionality of Section 285(6) in the light of Sections 4(8), 6(6)(a) and (b) and 36(1). It is the counsel's submission that the said Section 285(6) infringes on the provisions of Section 4(8) of same by interfering with the doctrine of the separation of powers under Sections  
 B 4, 5 and 6 particularly the second limb of Section 4(8), which stipulates that neither the National Assembly nor House of Assembly shall enact any law that ousts or purports to oust the jurisdiction of a court of law or a judicial tribunal established by law; counsel submits also  
 C that Section 285(6) and (7) constitute an unwarranted encroachment on the Independence of the judiciary by prescribing time limitation for hearing and delivering judgments in election petitions and appeals emanating therefrom; that Section 285(6) and (7) infringe on the powers of those judicial functionaries to regulate proceedings  
 D in their respective courts and should be declared void as violating Sections 4(8), 236 and 248 of the Constitution under reference.

In further establishing his position, learned counsel reiterated that Section 285(6) of the Constitution cannot take away the inherent powers and sanctions of a superior court of justice such as the  
 E Supreme Court etc that are not created by statute but by the Constitution. Counsel also submits the damaging effect of Section 285(6) which is capable of emasculating or destroying the appellants' Constitutional right of action, Constitutional right of appeal and Constitutional right to fair hearing implicit in Sections 285(2), 285(7), 246(i)(ii),  
 F 233(2)(e) (iv) and 36(i) of the said Constitution.

In further submission the learned counsel emphasized in strong terms that the Constitution cannot abrogate the right of appeal unless expressly or by implication so extinguished.

G It is also the submission of senior counsel that in the exercise of its powers under Sections 6(6), 233(1)(2) (e) (iv) and 285(7), this court is not to be inhibited by the provision of Section 285(6) of the Constitution especially if the tribunal gives the judgment within 180 days in compliance with the said Section and appeal arising there  
 H from is also decided by the Appellate court within 60 days in compliance with Section 285(7) of the said Constitution; it is the counsel's contention also that had this court's attention been drawn to the issues of fundamental right to fair hearing, Constitutional right of appeal, also right of action and the hallowed canons of Constitu-

tional interpretation laid down by a full panel of this court and bearing on cases relating on those fundamental Constitutional questions, that a different decision would have been given in Borno case of 17/2/2012. Further reliance was also made on paragraphs 11 and 12 of the affidavit supporting the application; that the unfortunate and regrettable development highlighted in the said paragraphs supra, is capable of seriously undermining the integrity of the ruling by this court delivered 8th June, 2012 and rendering same liable to setting aside. A number of judicial pronouncements relied upon by the applicants' counsel include but not limited to *Alao V. A.C.B. Ltd.* (2000) 9 NWLR (Pt. 672) 264 at 296, *Cardoso V. Daniel* (1986) 2 NWLR (Pt.20) 1 at 16, *Tanko V. State* (2009) 2 SCNJ 1 at 15 - 16, *Attorney-General of Federation V. Guardian Newspapers Ltd.* (1999) 9 NWLR (Pt.618) 187 at 266, *Odi V. Osafire* (1985) 1 NWLR (Pt. 1) 17 at 34 - 35; *Rossek V. A.C.B.* (1993) 8 NWLR (Pt.312) 382 at 431.

Specifically and with reference made to the case of *Alao V. A. C.B. Ltd.* (Supra), the counsel re-iterates the findings therein and adds that the provision of Section 6(6)(a) and (b) of the Constitution does not derogate from the general judicial powers of this court to set aside its own decision should injustice or miscarriage of justice be perpetuated; that the Supreme Court will unhesitatingly set aside its decision which is a nullity. See *Ogbu V. Urum* (1981) 451, *Okafor V. Attorney-General Anambra State & Ors.* (1991) 6 NWLR (Pt. 200) 659 at 680, and *Nwosu V. Udeaja* (1999) 1 NWLR (Pt. 125) 188.

Counsel in the result urged that prayers (a) and (c) on the motion paper should in the circumstance be granted.

While submitting to substantiate prayer (b), it is the Senior counsel's argument that, by ordering the petition to be heard on the merits on 14/11/2011, after correctly finding that there was no trial, the Supreme Court acted within its jurisdiction conferred on it by, the Constitution, the Supreme Court Act and the Supreme Court Rules; that by interfering with the judgment of 14/11/2011 on 8/6/2012, this court acted without compliance with the laid down procedure in *Cardoso V. Daniel*, *Tanko V. State* and *Attorney-General of Federation V. Guardian Newspapers Ltd.* all under reference supra; that the order made by this court on the 14/11/2011, is valid, subsisting and extant in law and remains binding on all parties until set aside by this Honourable court, when properly called upon to do so; this, counsel

argues, is not withstanding that it was reached per incuriam. In other words, it remains binding on all parties and all courts, including the court that rendered it. Reference was copiously made to the decision of this court in SC.2/2012 ANPP V. Mohammed Goni. See also *Amida v. Oshobaja* (1984) 7 SC 68 where it was held that the judgment of a court in either a civil or criminal proceeding is valid and effective until it is set aside by an appellate court; that such judgment, even if it is wrongly decided, is nevertheless effective until set aside. Learned counsel, to buttress his submission, cites the case of *Witt & Busch Ltd. V. Dale Power Systems Plc* (2007) All FWLR (Pt.382) 1816 at 1842 (B - C); see also *Mobil Oil Nig. Ltd V. Assan* (1995) 9 SCNJ 97 at 114 where his Lordship Uwais JSC (as he then was) held that an order made by a court of competent jurisdiction is to be obeyed until it is discharged; consequently, with the order made the 14/11/2011 still subsisting, the respondents are therefore bound to obey and comply there with. The learned counsel in the circumstance finally urged that this application be granted as prayed in the interest of justice.

On behalf of the 1st respondent, and to oppose the application, a counter affidavit of seven paragraphs was filed on 22/11/13 by one Terhemba Gbashima, Esq. a legal practitioner in the law firm of D.D. Dodo & Co. A written address to compliment the counter affidavit was also filed the same day. Submitting to substantiate their course of objection, the 1st respondent's lead counsel Mr. D.D. Dodo. SAN formulated three issues for determination which same had earlier been reproduced in the course of this ruling; I will not therefore repeat to avoid monotony.

Submitting on the 1st issue raised, the 1st respondent's counsel drew reference to the established principle of law that where an action or an appeal has no practical or utilitarian value to the appellant, even if judgment is given in his favour, the appeal is rendered a mere academic. A number of authorities were cited in buttress of this contention inclusive of *Adeogun V. Fashogbon* (2008) 17 NWLR (Pt.1116) 149 and *Agbakoba V. INEC* (2008) 18 NWLR (pt. 1119) 489; that by virtue of Section 285(7) of the Constitution, the 60 days within which this court is required to deliver its judgment in Appeal No. SC.191A/2012 lapsed on the 11th day of June, 2012, the decision appealed against having been delivered on the 12th day of April, 2012 while the 60 days within which it is also required to deliver

judgment in Appeal No. SC.191/2012 lapsed on the 23rd day of June, 2012 again the decision appealed against having been delivered on 24th April, 2012. A long line of judicial authorities were cited by the senior counsel in support of the obvious and the immutable nature of Section 285(6) of the Constitution.

While stressing the point further home, it is the counsel's submission that, 180 days having lapsed from the date the original petition was filed and 60 days also having lapsed from the date of delivery of judgments by the Court of Appeal which judgments were appealed against in Appeals SC.191/2012 and SC.191A/2012, the two appeals have lapsed; that with the substantive appeals which gave rise to the present application having lapsed therefore, the application itself has become academic and bereft of any live issue consequent upon which this court now lacks the jurisdiction to entertain this application which should determine only live issues. It is the contention of counsel that the court should decline jurisdiction by reason of the Constitutional operation.

In further submission, the learned counsel considered issues 2 and 3 together and stressed in strong terms the position taken by this court on the finality of its decisions, in a number of cases, which does not however extend to or include the power to sit on appeal over its decisions. See *Igwe V. Kalu* (2002) 14 NWLR (Pt.787) P435 wherein conditions are laid down there in as pre-requisites before a court can set aside its judgment or ruling. The learned counsel sought to draw a distinction between a decision that is a nullity and that which is only erroneous in law, but within the competence of a court. In other words, that, while on the one hand, a null judgment or decision is one which is given without statutory jurisdiction on the part of the court that delivered same or when a condition precedent for the court to assume jurisdiction has not been fulfilled, on the other hand, a judgment will not be rated a nullity even though it is erroneous in law, so long as it is within the court's competence. See the case of *GEN. & Aviation Serv. Ltd V. Thahal* (2004) 10 NWLR (Pt.880) p.50 at 81.

In further submission, counsel re-iterates that the totality of the applicants' affidavit allege "error" on the part of this court and not lack of competence in delivering the Ruling 8th June, 2012. In other words, it is the counsel's contention that while a court can set aside its

judgment for nullity, it cannot do same for a disclosure of an error in law. See the case of A.T. Ltd. V. A.B.H. Ltd. 2007 15 NWLR (Pt.1056) p.118 at 170. Reference was also made to Order 8 rule 16 of the Rules of this court 1985, which provision clearly prohibits interference with a judgment or any part thereof except under the slip rule.

B It is therefore firmly settled, counsel argues that judgments of this court cannot be reviewed; that the court has no power to over rule, reverse or nullify its previous decisions whether on questions of substantive or procedural law. See the cases of Adefulu & 16 Ors. V. Chief Okulaja & 6 Ors. (1998) 5 NWLR (Pt.550) 435 at 462; and C Owunari Long-John & Chief Ibiroma & 2 Ors. V. Chief Blakk & 2 Ors. (1998) 6 NWLR (Pt. 555) 524 at 546, (1998) 5 SCNJ 68 at 86.

Considering the decisions of this court cited supra, it is the counsel's contention that the application does not satisfy any of the D exceptional circumstances to warrant this honourable court interfering with its well considered decision delivered 8th June, 2012; that the totality of the facts deposed to on the applicants' affidavit in support of their application did not state any form of irregularity or absence of jurisdiction on the part of the court in delivering the said E Ruling 8th June, 2012; that a mere glance at the paragraphs of the affidavit show clearly that the present application is a deliberate attempt to invite this honourable court to sit on an appeal over its said Ruling delivered, the subject of this application. In re-iterating his F stance further, the learned counsel affirmed as a regurgitation, re-statement and re-argument of the applicants' written and oral submissions in response to the 3rd Respondent's Notice of Preliminary objection, which was argued intensely by all parties and upheld in a well considered ruling of this court, dismissing the appellants' appeals G as being academic and an abuse of court process.

The counsel on the totality therefore impressed upon this court to dismiss the application as lacking in merit.

In opposing the motion also, the 2nd respondent's counsel filed a counter affidavit of 31 paragraphs and a written address on H the 20/11/2013 and 16/1/2014 respectively. The only lone issue raised for determination is: whether in the circumstances of this matter the applicants have satisfied the conditions to warrant this court setting aside its Ruling delivered on 8th June, 2012.

It is the counsel's submission that this court does not as a gen-



eral rule have the jurisdiction to set aside its own judgment except on satisfaction of certain stringent conditions as set out in the case of Igwe V. Kalu supra; that the applicants at hand have failed to satisfy any of the conditions enumerated therein the said authority to warrant setting aside the Ruling of this court delivered 8th June, 2012.

In his further submission, the learned counsel re-iterates the practice of this court whereby the success of the Respondent's preliminary objection automatically terminates the appeal because the consequential effect is that there was no valid appeal before the court and hence there would be nothing more to consider. See Adelekan V. Ecu-line NV (2006) 12 NWLR Pt.993 p.33 and also Adigun V. Ayinde (1993) 8 NWLR (Pt.313) p.538; that the applicants having agreed and participated in the proceedings, cannot now be heard to complain that their main appeals were not heard. The applicants, counsel argued, are deemed to have waived their right because, a person cannot complain against an irregularity which he had accepted, waived or acquiesced. See Amaechi V. INEC (2008) 5 NWLR (Pt. 1080) P227.

On the allegation whether Section 285(6) and (7) constitutes an encroachment on the Independence of the judiciary and a denial of right to fair hearing to the determination of the applicants' petitions and appeals on merit, the learned counsel to the respondent rested his response on the immortal words of Uwaifo JSC in the case of A.G. Ondo State V. A.G. Federation (2002) 9 NWLR Pt.772 p.222 at 418-419. It is the counsel's argument on this score that the effect on this court of Section 285(6) and (7) of the Constitution is to impose limitations and constraints thereon and thereby rendering it helpless and of no effect. See the case of Inakoju V. Adeleke (2007) 4 NWLR PT.1025 P423. In further submission, counsel re-echoed that the order of this court made 14/11/2011 to hear the petition de novo has no effect whatsoever because it was made after the 180 days within which the tribunal was to hear and determine the applicants' petition filed 17/5/2011, which time expired on 12/11/2011.

On the totality of his submission the counsel concluded that the applicants have failed to satisfy the conditions that will warrant this court to set aside its ruling delivered 8th June, 2012; he therefore urged that the application be dismissed.

While adopting the submissions by the 1st and 2nd respon-

dents, the learned counsel Mr. Okutepa, SAN had also earlier in the course of this ruling submitted and argued the 3rd respondent's objection on points of law. The totality of his argument centred on Order 8 rule 16 of the rules of this court which empowers the court to set aside its own decision; that in the absence of any reason given for the setting aside of the judgment, the counsel in summary has also called for the dismissal of the application as a sheer abuse of court process.

It is intriguing to note that on the 4th June, 2012 when appeals Nos. SC.191/2012 and SC.191A/2012 came up for hearing, the 3rd Respondent, through its counsel, informed this court that it had a preliminary objection in respect of SC.191/2012. On how the above mentioned appeals and the preliminary objection would be taken, reference could be made to page 6 of the applicants' Exhibit D 2, the ruling in question wherein paragraph 2 reveals thus:-

*"It was agreed by both parties that since the three appeals (SC.191/2012, SC.191A/2012 and SC.192/2012 are based on the same decision of the court below, the preliminary objection should be taken first and ruled upon."*

Following an agreement by all parties, arguments were taken on the preliminary objection which was vehemently opposed by the applicants. It is the considered ruling delivered 8th June, 2012 that is now the subject matter of this application wherein this court upheld the preliminary objections and at page 32 of Exhibit 2 said thus:

*"The preliminary objections raised by the Respondents in the three appeals No. SC.191/2012, SC.191A/2012 and SC.192/2012 based on the same decision of the trial tribunal succeed and it is allowed. As a result, the appeals above mentioned are liable to dismissal. Accordingly, each appeal is dismissed for being an academic exercise and an abuse of court process, to say the least."*

The crux of the application is centered on the 1st relief which seeks an order setting aside the ruling delivered 8th June, 2012. The grounds predicated the reasons have been reproduced earlier in the course of this ruling. I also seek to add that prayers (b) and (c) are only viable and dependent upon the outcome of the 1st relief. In otherwords, the entire application would either fail or succeed on the outcome of relief (a).

The main issue for determination in this application therefore

is:-

Whether in the circumstances of this case the applicants have, as a matter of law, satisfied the conditions to warrant this court, setting aside its Ruling delivered on 8th June, 2012.

Order 8 rule 16 of the rules of court is specific in stating that the court has no jurisdiction to set aside its decision, Ruling/Judgment if properly made in the exercise of its powers and jurisdiction. Specifically, the provision states as follows:-

*“The court shall not review any judgment once given and delivered by it save to correct any clerical mistake or some error arising from any accidental slip or omission, or to vary the judgment or order so as to give effect to its meaning or intention. A judgment or order shall not be varied when it correctly represents what the court decided nor shall the operative and substantive part of it be varied and a different form substituted.”*

The forgoing provision has been well expatiated by this court in the case of Chukwuka & Ors V. Ezulike & Ors (1986) NSCC Vol. 17 part II page 1347. An earlier authority also decided under an identical provision is the case of Ministry of Lagos Affairs, Mines & Power and Anor. V. Chief O.B. Akinolugbade (1974) 11 SC 9 at 14 where it was held by this court that, *“to allow an application to be brought for the review of any fact or law in a previous judgment of this court, would amount to treating the application as an appeal.”*

Also and with reference to the application of Order 7 rule 30 of 1977 Rules to the case of Chief Iro Ogbu & Ors. V. Chief Ogburu-Urum and Anor. (1981) 4 SC 1, this court per Obaseki JSC at p.9 had this to say:-

*“...the provision of order 7 rule 30 deprives this court of any jurisdiction to review the judgment of dismissal for want of prosecution. The inherent jurisdiction of this court under Section 6(6)(a) of the Constitution cannot be invoked to save the situation.”*

The foregoing authority (supra) was approved and followed in Sodeinde Brothers (Nig.) Ltd. V. A.C.B. Ltd. (1982) N.S.C.C. 184.

As rightly submitted further by the learned counsel for the 1st respondent, this court has re-affirmed the finality of its decision in plethora of cases and also held times without number that its inherent power to set aside its own decision, when same are later found to be a nullity or obtained by fraud, does not extend to include the

power to sit on appeal over its judgment/ruling. This principle of law is well entrenched in the case of *Igwe V. Kalu* (supra) wherein his Lordship Ogwuegbu, JSC at page 455, held and said:-

*“The inherent jurisdiction of the court to set aside its judgment cannot be converted to an appellate jurisdiction as though the matter before it is another appeal, intended to afford losing litigants yet another opportunity to re-state or re-ague their appeal.*

*It must be emphasized that this court is a court of final resort and under the Constitution, it cannot under any guise sit on appeal over its judgment or review it except under very exceptional circumstances.”*

**Following from the foregoing deductions, the principle is well established that this court has no jurisdiction to set aside its ruling or judgment if properly made in the exercise of its powers and jurisdiction. However and that notwithstanding, there is also a rider or a caveat which holds secure that in appropriate cases, it is expedient that the court, in the exercise of its inherent powers, can set aside its Ruling or judgment provided the circumstance calling for such order has satisfied the stringent conditions that the judgment or ruling is a nullity; that such decision was obtained by fraud; and that the court was misled in delivering the said judgment or ruling.**

This was the decision of this court in *Igwe V. Kalu* (Supra) wherein Ogwuegbu, JSC again held at pages 453 - 454 and said:-

*“I shall state that this court possesses inherent power to set aside its judgment in appropriate cases. Such cases are as follows:-*

*(i) When the judgment is obtained by fraud or deceit either in the court or of one or more of the parties. Such a judgment can be impeached or set aside by means of an action which may be brought without leave. See Alaka V. Adekunle (1959) LLR 76; Flower V. Lloyd (1877) 6 Ch.D.297; Olufunmise V. Falana (1990) 3 NWLR (Pt. 136) 1.*

*(ii) When the judgment is a nullity. A person affected by an order of court which can properly be described as a nullity is entitled ex debito justitiae to have it set aside. See Skenconsult Ltd. V. Ukey (1981) 1 SC 6; Craig V. Kanssen (1943) KB 256, 262 and 263; Ojiako & Ors. V. Ogueze & Ors. (1962) 1 SC NLR 112, (1962) 1 All NLR 58; Okafor & Ors. V. Anambra State & Ors. (1991) 6 NWLR*

(Pt. 200) 659, 680.

(iii) *When it is obvious that the court was misled into giving judgment under a mistaken belief that the parties consented to it. See Agunbiade V. Okunoga & Co. (1961) All NLR 110 and Obimonure V. Erinoshio (1966) 1 All NLR 250.*"

In the case of Olorunfemi & Ors. V. Asho (1999) 1 NWLR (Pt. B 585) 1 for instance, this court set aside its judgment on the ground that it failed to consider the respondents' cross-appeal before allowing the appellants' appeal. It ordered that the appeal be heard de novo by another panel of Justices of this court. See also generally the case of Alao V. A.C.B. Ltd. supra particularly at 271 - 273; 280 - 281 and 296. C

The appropriate question to pose at this junction is, does the applicants' application before us fall within the foregoing situational circumstances and the decided authorities? The facts as revealed on the affidavit in support of the application are relevant. D

It is for instance expedient to restate that the totality of the applicants' averments in their supporting affidavit, only allege an "error" on the part of this court and not lack of competence in delivering the Ruling of 8th June, 2012. E

With reference made to the conditions set out in the case of Igwe V. Kalu supra, it is evident that for this court to set aside its judgment, the decision must have been a nullity. In other words it must have been made by the court either without statutory jurisdiction, or when a condition precedent for the court to assume jurisdiction has not been fulfilled. An erroneous judgment however, is one made within the court's competence and therefore cannot be branded as a nullity. F

The case of Gen. & Aviation Service V. Thabel supra at page G 81 had clearly drawn a distinction between null and erroneous judgments in the following words:-

*"a judgment may be declared a nullity to some fundamental vice such as lack of statutory jurisdiction to hear the case, or failure to fulfill a necessary condition precedent. See Madukolu V. Nkemdilim (1962) 2 SCNLR 341, (1962) 1 All NLR 587. A distinction must be drawn between an order or a judgment which a court is not competent to make and a judgment which, even though erroneous in law and in fact, is within the court's competence."* H

For the applicants to be entitled to the benefit of the exceptional circumstances principle to warrant this court tampering with its considered decision, they must show that the ruling is a nullity. Put differently, and taken for granted that the applicants did prove error in law by this court in delivering the said ruling, this will not entitle them to a setting aside which will only apply when the decision is a nullity.

The affidavit in support of the applicants' motion did not indicate that the court was misled into giving its ruling, or that there was the absence of jurisdiction on its part in entertaining the preliminary objection that culminated in the said ruling 8th June, 2012. It was not also disclosed that the ruling sought to be set aside was obtained either by fraud or deceit.

***I have also stated in the course of this ruling that the taking of the preliminary objection by the court at the time it did and subsequently ruled upon, was at the instance of all parties, inclusive of the applicants themselves; they cannot now be heard to complain against any irregularity which they are a part of, having accepted, waived or acquiesced.*** See Amaechi V. INEC (2008) supra at pages 448 – 449 where his Lordship Aderemi, JSC said:-

*"It is clear from the record of proceedings that the parties voluntarily settled issues for determination at the trial court. Again, by consent, all the parties tendered documents which they would rely upon... There is nothing on the record to show that any of the parties objected to this mode of trial. Indeed, they all conducted the case to the logical conclusion before the trial court... where, as in the instant case, a person in dealing with another is confronted with two alternatives and mutually exclusive procedures, in dealing with the case... This, in a nutshell, is the simple explanation of principle of waiver..."*

*That principle is to the effect that where an action was commenced by any irregular procedure and a defendant took steps to participate in the proceedings, as in the instant case, he cannot later be heard to complain of the irregularity as a person will not be allowed to complain against an irregularity which he himself has accepted, waived or acquiesced."*

***I hasten to add also that it is the practice by this court after upholding the preliminary objection of a Respondent to***

***automatically terminate the appeal and thus striking out same. See Adelekan V. Ecu-line NV supra at 58 where this court after upholding the preliminary objection of the Respondent, struck out the main appeal and the suit.*** See also this court in Adigun V. Ayinde under reference supra.

I am however mindful of the applicants' affidavit at paragraph 9 wherein they averred as follows:-

*"9. That I am informed by appellants' counsel whom I verily believe that it is the tradition of this Honourable court to take the substantive appeal and the preliminary objections together and consider same in its judgment in constitutional matters such as the appellants' appeals raising the issue of non-qualification/disqualification of 1st respondent."*

The counter affidavits filed by the 1st and 2nd respondents are vehemently opposing the foregoing deposition in its entirety and more. For purpose of contradicting the said paragraph 9 supra, it is on record that the procedure adopted by the court in conducting the proceedings was agreed upon by parties. The case of Amaechi V. INEC (supra) is again in reference. The applicants have, in the result waived their right and cannot be allowed to approbate and reprobate.

As rightly submitted and also deposed to on the 1st respondent's written submissions, and counter affidavit respectively, the totality of the application is an attempt to invite this court to sit on an appeal over its Ruling delivered 8th June, 2012 and which it is not clothed with the power to do.

The other arm of the applicants' view-point for consideration is the submission relating Section 285(6) and (7) of the Constitution (supra) which learned senior counsel argues constitutes encroachment on the independence of the judiciary and a denial of right of fair hearing to the determination of the applicants' petitions.

By the very nature of the application before us, it is my strong view that a general impression is created that the effect and finality of Section 285(6) and (7) of the Constitution have not been comprehended/recognized at all or fully understood. This is in view of the incessant recurrence of the applications made and calling upon the court to either revisit or set aside its earlier decisions. I need to add quickly that this court had in various judicial pronouncements interpreted on the Constitutional finality of the foregoing provisions which

cannot be questioned for whatever reason.

Therefore, the apt and pertinent question to pose at this juncture is:- in view of the limitations and constraints imposed on this court and the rights of the applicants by the provisions of Section 285(6) and (7) of the Constitution as amended, is this court clothed  
B with the jurisdiction to make the orders sought by the applicants, that their appeals be heard on the merits? That is to say in otherwords, taken for granted that the application for setting aside succeeds.

The poser question, I must say is purely hypothetical in view of  
C the earlier conclusion arrived at and refusing the setting aside of the ruling delivered 8th June, 2012.

In summary, the totality of the submission by the learned senior counsel for the applicants placed heavy premium particularly on the two cases of *Unongo V. Aku* (1983) 14 NSCC 563 and *Kadiya V. Lar* (1983) 2 SCNLR 368 wherein counsel lamented the havoc  
D wreaked by Section 285(6) on the provision of Section 4(8) of the Constitution and thus interfering with the doctrine of the separation of powers under Sections 5 and 6 of the same Constitution.

It is however intriguing to say that the said learned counsel had  
E totally failed to appreciate that the foregoing two cases, upon which the ganging force is anchored, were both decided under Section 140 of the Electoral Act, 1982 which was an entirely different dispensation from the present application; thus a remarkable distinguishing  
F feature marking the difference.

In otherwords and put differently, the present time line application for the hearing and determination of election petitions and appeals are the creation of Section 285(6) and (7) of the Constitution of the Federal Republic of Nigeria 1999 (as amended). Therefore, it is not out of place to conclude that all the brilliant authorities  
G cited by the learned applicants' counsel in support of the application but which were decided under the old dispensation, are of no relevance.

It is not in contention between parties for instance that the  
H Ruling, the subject matter of application in the two appeals SC.191/2012 and SC.191A/2012 emanated from the two appeals filed against the decisions of the Court of Appeal Makurdi, Judicial Division delivered on 12th April, 2012 and 24th April, 2012 respectively. By implication and application of Section 285(7) of the 1999 Constitution



(as amended) the 60 days within which this court is required to deliver judgment in Appeal No. SC.191A/2012 lapsed on the 11th June, 2012, the decision appealed against having been delivered on the 12th April, 2012. Correspondingly, and in Appeal SC.191/2012, the date of delivering judgment also lapsed on 23rd June, 2012 with the delivering of the decision appealed against made on the 24th April, 2012. <sup>B</sup>

***The Constitutional mandate and also its enforcement are well pronounced and enunciated in various judicial authorities by this court wherein imposition is placed upon the tribunal to deliver its judgment within 180 days from the date of filing a petition.*** <sup>C</sup> Prominent among such authorities is the case of ANPP V. Goni (2012) 1 NWLR (Pt.1298) P.147 at 181, per Onnoghen, JSC which affirmed the immutability of the 180 days instituted in Section 285(6); there in the decision, the court re-iterated the time tested principle of law that jurisdiction is a creation of statute and said:- <sup>D</sup>

*“I am compelled by circumstances beyond my control to state, without fear of contradiction as same has been settled by a long line of authorities that jurisdiction is a creation of statute or the Constitution. Jurisdiction is therefore not inherent in an appellate court neither can it be conferred on a court by order of court.”* <sup>E</sup>

***By reference therefore, it goes without saying that the jurisdictional competence of the tribunal under Section 285(6) cannot by any reason exceed the 180 days allotted. It remains sacrosanct and can neither be added to nor subtracted from. With the Constitution being the final authority, any attempt to derogate there from would be met by a brick wall which cannot be penetrated through. From the foregoing, it follows that the absence of jurisdiction is indeed futile. I wish to further restate that jurisdiction which is a creation of statute serves as an authenticating mandate; it is also obvious that where a statute does not create jurisdiction, then it does not exist.*** <sup>F</sup> <sup>G</sup>

Further still and on the foregoing authority of ANPP V. Goni <sup>H</sup> (supra), the immutable nature of Section 285(6) was again restated and guaranteed by Onnoghen, JSC at pages 192 - 193 when he said:-

*“Despite the decisions of this court, since October, 2011 on*

- the time fixed in the Constitution some of the justices of the lower court still appear not to have gotten the message. From where will the election tribunal get the jurisdiction to entertain the retrial after the expiration of the... 180 days assigned in the Constitution, without extending the time so allotted? Do the courts have the vires to*
- B *extend the time assigned by the Constitution? The answer is obviously in the negative. It should be constantly kept in mind that prior to the provisions of Section 285(6) of the 1999 Constitution, as amended; there was no time limit for the hearing and determination*
- C *of an election petition by the election tribunals or the appeals arising therefrom. That situation resulted in undue delay in the hearing and determination of an election petition by the election tribunals or the appeals arising therefrom. That situation resulted in undue delay in the hearing and determination of election matters. The amendment*
- D *to the original Section 285 of the 1999 Constitution by allotting time within which to hear and determine election petition and appeals arising therefrom is designed to ensure expeditious hearing and conclusion of election matters ...If the decision of the lower court ...is allowed to stand as urged by the respondents it would reintroduce*
- E *the earlier mischief which the amendment sought to correct. It will mean that the instant election petition can go on for another... 180 days or more after the expiration of the original... 180 days assigned by the Constitution.*
- F *It is my considered view that the provisions of Section 285(6) ...is like a statute of limitation which takes away the right of action from a party leaving him with an unenforceable cause of action. The law may be harsh but it is the law and must be obeyed to the letter... ”*

G The implication of the foregoing restatement by his Lordship is very explicit, clear and simple and needs no further interpretation. In otherwords, the provision of the Constitution had spoken, there cannot be an addendum or another re-opening of the case with the intention to either add there to or subtract therefrom.

H Contrary to the submission made by the learned senior counsel representing the applicants, the contention put forth on behalf of the respondents’ stands very well positioned, that the present application is nothing but mere academic. This was the view held by this court in an unreported Ruling in Appeals Nos. SC.1/2012 and SC.2/2012 between Alhaji Mohammed Goni & Anor. V. Alhaji Kashim

Shetima & Ors. Delivered on 8th Day of May, 2012 wherein Tabai, JSC said:-

*“...by virtue of Section 285(6) an appeal from a decision of the Court of Appeal to this court lapses 60 days after judgment of the Court of Appeal.”*

The application in that case was held as mere academic, unwarranted and accordingly dismissed. B

***The principle of law is also well entrenched in our judicial system as rightly submitted on behalf of the respondents that where an action or an appeal has no practical or utilitarian value to the appellant, any judgment given in his favour will certainly render such an appeal or action merely academic which this court had warned consistently, without mincing words, that such venture should not be embarked upon.*** C  
The foregoing endorsement was for instance emphasized in the case of Adeogun V. Fashogbon supra, it was held at page 180 that: D

*“This appeal centres on whether the issues involved in the matter are now academic and hypothetical or are still live issues. In Plateau State of Nigeria V. Attorney General of the Federation (2006) 3 NWLR (Pt. 967) 346, I defined academic and hypothetical suits at page 419:* E

*“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. A suit is hypothetical if it is imaginary and not based on real facts...”* F

Also in a similar case of Agbakoba V. INEC supra, 547 this court held amongst others and said:-

*“When an issue in an appeal has become defunct it does not require to be answered or controvert about and leads to making bare legal postulations which the court should not indulge in...”* G

It is a matter of common knowledge that the 180 days from the date the original petition was filed and also the 60 days from the date of delivery of the judgments by the Court of Appeal which judgments were appealed against in Appeals SC.191/2012 and SC.191A/2012, have lapsed. Consequently, it is therefore evident that the totality of the present application has become academic and bereft of any live issue, which this court lacks the jurisdiction to entertain. H

In otherwords, and whichever way it goes, the setting aside of

the ruling as sought on the relief will in no way salvage or benefit the course of the applicants' case, which application did not lie within the jurisdictional competence of this court by reason of expiration of time. Put differently, the applicants, as rightly submitted on behalf of the respondents, will not in the circumstance of this application enjoy any practical or utilitarian value from the decision, because this court has no power to determine the appeal in issue, with same having become constitutionally barred. In the same vein, it also follows that the trial tribunal is equally no longer clothed with jurisdiction to hear the petition on the merits.

For instance and borrowing from the words of Tobi, JSC, the learned jurist in the case of Inakoju V. Adeleke (2007) 4 NWLR (Pt.1025) p. 423 had this to say at page 597:

*"The courts become helpless when the Constitution itself provides for ouster clauses such as Section 188. In such a situation, the courts hold their heads and arms in despair and desperation. They can only bark but cannot bite. Their jurisdiction is to give effect to the ouster clause because that is what is in the Constitution or what the Constitution says."*

**Following from the foregoing therefore, the supremacy of the Constitution is obvious as being the only instrument which is imbued with absolute power to create and confer jurisdiction. It is the ultimate and can be compared to none.** The Learner's Dictionary concise Edition defines the word supreme as thus: *"the greatness of a quality or thing."*

Also in the famous words of Uwaifo, JSC in the case of A.G. Ondo State V. A.G. Federation (supra) at 418 - 419 his Lordship had this to say:-

*"It must be recognized that our Constitution is an organic instrument which confers powers and also creates rights and limitations. It is the supreme law in which certain first principles of fundamental nature are established. Once the powers, rights and limitations under the Constitution are identified as having been created, their existence cannot be disputed in a court of law."*

Again the learned jurist Onnoghen, JSC did not also mince his words in the case of ANPP V. Goni (supra) when he said:

*"Jurisdiction is a creation of statute or the Constitution... it is not inherent in an appellate court neither can it be conferred on a court by*

*order of court.*”

On a community reading of the foregoing conclusions arrived there at, it is evident that the Constitutional effect of Section 285(6) and (7) has been well pronounced upon by this court times without number, in plethora of authorities. The subsequent recurrence of suits filed and seeking to overreach the Constitutional interpretation of the Section thereof is of great concern. Clarion calls are made in loud and clear terms that there must be an end to litigation. It is unfortunate that the call appears as if it is a lone voice sounding only in the wilderness and not within human hearing. Decisions in case laws are meant to speak volume both in the given situation and for future guidance. Counsel is well advised to desist from filing unnecessary suits which are merely academic and yielding no benefits but mere waste of quality time.

The application at hand in my view is purely academic and therefore frivolous, vexatious and an abuse of court process. Same I hold is hereby refused and dismissed. There shall also be punitive costs awarded against the applicants’ counsel and it is assessed at N1,000,000.00k in favour of each set of respondents.

The application is hereby dismissed with N1,000,000.00k costs in favour of each set of respondents against the applicants’ counsel.

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### **ONNOGHEN JSC**

By a motion filed on 15/11/13 the applicants prayed the court for an order setting aside its ruling delivered in open court on 8th June, 2012 in appeal NOS. SC/191/2012 and SC/191A/2012; an order implementing/enforcing its order/decision delivered on 14th November, 2011 that the petition be heard on the merits and an order restoring appeal NOS. SC/191/2012; SC/191A/2012 terminated on 8th June, 2012 and hearing same on the merits.

I have had the benefit of reading in draft the lead ruling of my learned brother, OGUNBIYI, JSC just delivered. I agree with his reasoning and conclusion that the application has no merit whatsoever and deserves to be dismissed.

It is settled law that the decisions of this court are final by which is meant that the court has no jurisdiction to sit on appeal over its decision once delivered. However, the court has the inherent power

to set aside its decisions when same are later found to be a nullity or obtained by fraud. The above power does not extend to sitting on appeal over its decisions as stated in the case of *Igwe vs Kalu* (2002) 14 NWLR (Pt.78) 435 at 455 where it is stated as follows:-

B *“...the inherent jurisdiction of the court to set aside its judgment cannot be converted to an appellate jurisdiction as though the matter before it is another appeal, intended to afford losing litigants yet another opportunity to re-state or re-argue their appeal.*

C *It must be emphasized that this court is a court of final resort and under the Constitution, it cannot under any disguise sit on appeal over its judgment or review it except under very exceptional circumstances...”*

D The exceptional circumstances the court referred to, supra, are very stringent indeed and are stated at pages 453 - 454 of the case of *Igwe vs Kalu* supra as follows:-

*“I shall state that this court possesses inherent power to set aside its judgment in appropriate cases. Such cases are;*

E *(i) When the judgment is obtained by fraud or deceit either in the court or of one or more of the parties. Such a judgment can be impeached or set aside by means of an action which may be brought without leave. See Ataka vs Adekunle (1959) L.L.R 76; Flower vs Loyd (1877) Ch. D 297; Olufunmise vs Falana (1990) 3 NWLR (Pt.136) 1.*

F *(ii) When the judgment is a nullity. A person affected by an order of court is entitled ex debito justitiae to have it set aside. See Skenconsult Ltd vs Ukey (1981) 1 S.C. 6; Craig vs Kanssen (1943) KB 256 at 262 and 263; Okiako & Ors vs Ogueze & Ors (1962) 1 SCNLR 112, (1962) 1 All NLR 58; Okafor & Ors vs Anambra State G & ors (1991) 6 NWLR (Pt.200) 659, 680.*

*(iii) When it is obvious that the court was misled into giving judgment under a mistaken belief that the parties consented to it. See Agunbiade vs Okunoga & Co (1961) All NLR 100 and Obimonure vs Erinsho (1966) 1 All NLR 250.”*

H It is settled law that a decision that is a nullity is not the same as a decision that is erroneous in law but given by the court within its jurisdiction.

Whereas a null judgment is one given by the court without jurisdiction or competence or when a condition precedent for the

court to assume jurisdiction has not been fulfilled, an erroneous judgment in law is a judgment delivered by a court of competent jurisdiction which is therefore subject to appeal in order to correct the error by setting same aside.

The application under consideration is not complaining about absence of jurisdiction/competence in the court in deciding the matter on 8th June, 2012 but that the decision so reached was reached in error of law which complaint cannot be entertained by this court, being a court of final resort.

The above notwithstanding, it is very unfortunate that applicants have decided to persist in the practice of pestering the court with applications of this nature as this is not the first time applicants have approached this court with similar application which was refused. Learned senior counsel for the applicants are presumed to know the state of the law applicable to the application under consideration, which is clearly not on their side but deliberately decided to present same before the court, may be for the purpose of annoying the court.

I do not think that the motive for the application is grounded on the desire to seek justice according to law or ignorance of the state of the law as senior counsel ought to have been familiar with the decisions of this court on the effect of Section 285(1) of the Constitution of the Federal Republic of Nigeria, 1999 as amended, hereinafter referred to as the 1999 Constitution including *ANPP vs GONI* (2012) 1 NWLR (pt. 1298) 147 at 181 where I stated that appellate jurisdiction is a creation of Statute or Constitution or both and that no order of court can confer jurisdiction on a court which has no jurisdiction to hear and determine a matter or where it had jurisdiction, it has ceased to have same by effluxion of time. If learned senior counsel had read the judgment and others in the same vein, he would have realized the futility of the instant application because granted, without conceding, that this court is satisfied to set aside its decision of 8th June, 2012, the order of 14th November, 2011 cannot be relied upon as conferring jurisdiction on any court/tribunal which has meanwhile lost the jurisdiction to hear or determine the matter by effluxion of time.

Looked at in every direction, this application is directed at irritating the court for reasons best known to the applicants and their

learned senior counsel and consequently misconceived.

It is for the above and more detailed reasons assigned in the lead ruling of my learned brother OGUNBIYI, JSC that I too find no merit whatsoever in the application and consequently dismiss same.

I abide by the consequential orders made in the lead ruling  
B including the order as to costs. Application dismissed.

### **GALADIMA JSC**

C I had a preview of the Ruling of my learned brother OGUNBIYI, JSC, just delivered. I am in complete agreement that the application brought by the Appellants to set aside the Ruling of this court on the 8th day of June, 2012, lacks merit and therefore, must be dismissed.

It is trite law that the decisions of this court are final. The court  
D has no jurisdiction to sit on appeal over its decision once it has been delivered except under very exceptional circumstances, such as:

1). When the judgment is obtained by fraud or deceit in the court or of one or more of the parties: See *OLUFUNMISE v. FALANA* (1990) 3 NWLR (pt.136) page 1.

E 2). When the judgment is a nullity: See *SKEN CONSULT LTD v. UKEY* (1981) 1 SC 6, *OKAFOR v. ANAMBRA STATE & ORS* (1991) 6 NWLR (Pt.200) 659, 680.

3). When it is obvious that the court was misled into giving  
F judgment under a mistaken belief that the parties consented to it: *AGUNBIADE v. OKUNGA & Co.* (1961) ALL NLR 100 and *OBIMONURE v. ERINOSHO* (1966) 1 All NLR 250.

The application under consideration is complaining that the decision of this court was reached in error of law. This court cannot  
G entertain such by this work, being a court of final resort. Learned counsel for the applicants ought to have realized the futility of this application which is predicated on the wrong state of the law.

This court is invited to revisit its earlier decision when it was obtained by fraud or deceit and is not a nullity nor any of the parties  
H misled into being part of a judgment irregularly nor was the judgment given without jurisdiction.

Viewed carefully, this application has not been brought in good faith, as it is aimed at embarrassing, or irritating, Respondents. It is purely academic, frivolous and vexatious and an abuse of court pro-



cess. I too, dismiss the application and abide by order made as to costs.

### **RHODES-VIVOUR JSC**

I have had the privilege of reading in draft the lead Ruling of my learned brother Ogunbiyi, JSC. I agree that this application should be dismissed. I propose to add a few observations, which I hope will be of assistance to counsel who fail to understand the doctrine of separation of powers, that it is the duty of the Legislature to make laws, amend them, etc while it is the duty of the courts to interpret legislation.

On the 8th day of June, 2012 this court delivered a Ruling. In that Ruling we held that:

*“There is no requirement that the petition filed before the tribunal must be heard before a judgment can be delivered within 180 days. In other words, a petition needs not to be heard before the tribunal delivers its judgment which of course does not have to be a final judgment as the two convey different meanings. Therefore in compliance with Section 285(6) of the Constitution once an election tribunal gives an appealable decision or makes an order within 180 days and an aggrieved party appeals, it is my firm belief that time continues to run until the 180 days shall be exhausted. An appellate court does not have the jurisdiction to extend or enlarge the 180 days once it expires. However, one thing is certain and not disputable, an appellate court, when an appeal succeeds within the time prescribed is competent to order retrial or hearing de novo. But certainly not after the time prescribed has lapsed. Any such order or directive when the main substratum, such as, petition before the tribunal has ceased to exist having been either struck out or dismissed by the trial court becomes a nullity and will have no effect whatsoever.”*

The application before this court, addressed in the leading Ruling seeks an order setting aside the above Ruling delivered on 8/6/12 and restoring appeals No.SC.191/2012 and SC.191A/2012.

Dismissing, the application Ogunbiyi JSC said:

*“On a community reading of the foregoing conclusions arrived there at, it is evident that the Constitutional effect of Section 285(6)*

and (7) has been well pronounced upon by this court times without number, in plethora of authorities. The subsequent recurrence of suits filed and seeking to overreach the Constitutional interpretation of the section thereof is of great concern. Clarion calls are made in loud and clear terms that there must be an end to litigation. It is  
 B unfortunate that the call appears as if it is a lone voice sounding only in the wilderness and not within human hearing. Decisions in case laws are meant to speak volumes both in the given situation and for future guidance. Counsel is well advised to desist from filing unneces-  
 C sary suits which are merely academic and yielding no benefits but mere waste of quality time.”

Her lordship is correct. In several cases decided by this court Section 285(6) and indeed Sections of the Constitution were explained - In ANPP & 2 Ors v. Goni & 4 Ors 2012 2 SC (Pt. iii) p.35,  
 D Onnoghen, JSC said-

“that the time fixed by the Constitution is like the rock of Gibraltar or Mount Zion which cannot be extended or expanded or elongated or in any way enlarged, that if what is to be done is not done within the time so fixed, it lapsed as the court is thereby robbed  
 E of the jurisdiction to continue to entertain the matter.”

Adekeye, JSC said:

“There is no doubt about it that the courts have a statutory obligation to hear and determine election matters within the time prescribed as Section 285(6) and (7) of the 1999 Constitution. In  
 F the case of the tribunal, a petition must be heard and determined within 180 days. Outside the 180 days, the Court of Appeal is not cloaked with statutory power to extend the period meant for the hearing of a petition for any reason either in the interest of justice or  
 G in exceptional cases. Once any petition comes before the tribunal outside the 180 days, the court is divested of jurisdiction to hear it... The Court of Appeal cannot invoke its rules of court to extend time in election matters covered by Section 285 subsections (6), (7) of the Constitution.

H This is what I had to say:

“Any limitation of time within which the tribunal can hear and determine election petitions must be found in the words used by the legislature and the time stated is mandatory. Provisions of the Constitution can only be altered by the legislature. Not by the courts. 180

*days provided by Section 285(6) of the Constitution is not limited to trials but also to de novo trials that may be ordered by an appeal court. For the avoidance of any lingering doubt once an election petition is not concluded within 180 days from the date the petition was filed by the petitioner as provided by Section 285(6) of the Constitution an election tribunal no longer has jurisdiction to hear the petition and this applies to re-hearings. 180 days shall at all times be calculated from the date the petition was filed.*

In Amadi & Anor v. INEC & 2 Ors 2012 2 SC (Pt.i) p.1 Peter-Odili, JSC said that:

*“...there is nothing, anyone can do to remedy a situation that is incurably bad as the appellants’ case caught as it were in the grip of Section 285 (7) of the Constitution without room for anything, else but to say it as it is that the appeal had died before it got here and that is the end of the matter.”*

Ngwuta, JSC said:

Section 285 (7) of the Constitution is a statute of limitation with regard to the hearing and disposal of appeal in election matters. Any action brought outside a statutory limited period is time barred. See also Abubakar & 2 Ors v. Nasamu & 5 Ors (No.2) 2012 2 SC (Pt. iii) p.173, Okadigbo v. Emeka & 2 Ors (No.1) 2012 1 SC (Pt. iv) p.136, Ikenya & 2 Ors v. PDP & 1122 ors 2012 3 SC (Pt. i) p.1, PDP v. Okorocho & 10 Ors 2012 2 - 3 SC P.119.

There is cause for concern when counsel submits that:

(a) Section 285 (6) and (7) of the Constitution constitutes an unwarranted encroachment on the independence of the judiciary by prescribing, time limitation for hearing, and delivering judgments in election petitions.

(b) Section 285 (6) and (7) infringe on the powers of those judicial functionaries to regulate proceedings in their respective courts and should be declared void as violating, Sections 4(8), 236 and 248 of the Constitution.

(c) Section 285 (6) cannot take away the inherent powers and sanctions of a superior court of justice such as the Supreme Court that are not created by statute but by the Constitution.

(d) Section 285 (6) is capable emasculating or destroying the appellants’ Constitutional right of action Constitutional right of appeal and Constitutional right to fair hearing implicit in Section 285

(2), 285(7), 246(i), (ii), 233 (2)(e)(iv) and 36(1) of the Constitution,  
 (e) By the provisions of Section 6(6), 233(1)(2), (e) (iv) and  
 255(7) this court is not to be inhibited by the provision of Section  
 285(6).

I must explain that the Constitution sets up a Federal system  
 B by dividing powers between the Federal and State Governments. It  
 establishes a National Government divided into three independent  
 branches. The Executive branch enforces the law. The legislative branch  
 makes the laws, while the Judiciary explains the law. There is no docu-  
 C ment superior to the Constitution in Democratic Governance. It is  
 the heart and soul of the people. That explains why the Constitution  
 commences with:

*“We the people of the Federal Republic of Nigeria having firmly  
 and solemnly resolved:”*

D All provisions in the Constitution were put in by the accredited  
 representatives of the people- The legislature. For as long as they are  
 not amended by the legislature provisions in the Constitution remain  
 sacrosanct. It is the duty of the Judiciary to interpret provisions of the  
 Constitution and in doing so the intention of the legislature must be  
 E established. Not the intention of the judge or how the judge would  
 like it to be. Section 285(6) and (7) of the Constitution provides the  
 time within which an election Tribunal and the Court of Appeal shall  
 deliver their judgment.

F A court that extends the time provided therein would be wrong,  
 as that would amount to judicial legislation, the preserve of the legis-  
 lature. Asking this court to re-list appeals to consider again Section  
 285(6) and (7) of the Constitution would be a waste of time in view  
 of plethora of cases that explained the section.

G For this and the exhaustive reasoning in the leading Ruling the  
 application is dismissed with costs of One Million naira  
 (N1,000,000.00).

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H **PETER-ODILI JSC**

I am at one with the judgment and reasonings just delivered  
 by my learned brother, Clara Bata Ogunbiyi, JSC. To emphasise that  
 support, I shall make some comments.

The Appellants/Applicants pray for the following reliefs:-

a) An order setting aside its ruling delivered in open Court on the 8th day of June, 2012 in Appeals Nos.

SC.191/2012 and SC.191A/2012 terminating the said appeals;

b) An order implementing/enforcing its order/decision delivered on 14th November, 2011 that the petition be heard on the merits; B

c) An order restoring appeals NOS. SC.191/2012, SC.191A/2012 terminated on 8th June, 2012 and hearing same on the merits;

d) Accelerated hearing of this application; C

e) Such further order(s) as this Honourable Court may deem fit to make in the circumstances.

The Grounds for the application minus 4 and 8 which learned counsel for the Applicants abandoned and were struck out are stated below and thus:- D

a. An order restoring appeals NOS. SC.191/2012, SC.191A/2012 terminated on 8th June, 2012 and hearing same on the merits

b. ACCELERATED HEARING of this application;

c. Such further order(s) as this Honourable Court may deem fit to make in the circumstances. E

#### GROUND FOR THE APPLICATION:

1. The respondents particularly 1st respondent had manifested foreknowledge of the decision before its delivery as shown by the posting of the result thereof at 7.49am of 8/6/2012 on Facebook (Village Corner) and the broadcast of same on Radio Benue on 7/6/2012. F

2. S.6(6)(a) & (b) of the 1999 Constitution (as amended) vests this Honourable Court with all inherent powers and sanctions of a Court of law in all matters between persons or between government G or authority or any person in Nigeria in all actions and proceedings for the determination of any question as to the civil rights and obligations of that person, including election cases and appeals therefrom.

3. S.36(1) of the 1999 Constitution (as amended) was not taken into account in adjudicating on this appeals as the appellants' H brief were not considered in the ruling delivered on 8/6/2012 by this Honourable Court nor was S.285(2) considered in relation to the interpretation of S.285(6) of the 1999 Constitution (as amended) in the decisions of 8/6/2012 given by this Honourable Court.

4. This Honourable Court had on 14th November, 2011 in Appeal NO.SC.360/2011 involving the same parties ordered this petition to be heard on the merits and the order has not been vacated or otherwise impugned in any proceedings and same is binding on this Honourable Court.

B 5. S.285 (5) of the 1999 Constitution (as amended) cannot and does not apply to these appeals in which the petition was dismissed within 180 days i.e. 19th September, 2011, and the appeals therefrom heard and determined within 60 days as stipulated by S.285  
C (7) of the 1999 Constitution (as amended) in accordance with the decision of this court in ANPP v GONI (2012) 7 NWLR (Pt.1298) 147.

6. A full Court was constituted to consider departing from its decisions in the ANPP v GONI likes of cases as indicated in the appellants' brief in SC.91/2012 but on 4/6/2012, the panel declined to go into the matter and confined itself to the preliminary objection of the respondents' response to which formed substantial part of the arguments in the substantive appeals which were not considered by the Court in its ruling.

E 7. This Honourable Court overlooked the decision of the full panel of this Court in Saraki v Kotoye (1992) 11/12 SCNJ 26, (1992) 9 NWLR (Pt.264) 156, cited to it both in oral argument and appellants' reply brief to 3rd Respondent's brief to the effect that the exercise by a party of his constitutional right of appeal under SS.233(2),  
F 246 (1) (c) (ii) and 285 (7) of the 1999 Constitution (as amended) cannot constitute an abuse of Court process or an academic exercise.

8. This Court failed to consider appellants' response to 3rd respondent's preliminary objection contained in paras. 1.1-1.50  
G (pp.1-24 of appellants' reply brief to 3rd respondent's brief in its ruling of 8/6/2012 thereby breaching appellants' right to fair hearing under S.36(1) of the 1999 Constitution (as amended).

9. S.285 (6) of the 1999 Constitution (as amended) cannot stand in the face of the combined provisions of Sections 4 (8), 6 (6)  
H (a) & (b) and 36 (1) of the 1999 Constitution (as amended).

The application is supported by a 25 paragraph affidavit deposed to, by Richard Agwa, Litigation Secretary in the Office of Counsel. I shall reproduce the relevant paragraphs of the said deposition for a fuller understanding of the facts leading to this application.

3. That I was present in this Court on 31/5/2012 when the appeals of the appellants/applicants in SC.191/2012 and 191A/2012 were adjourned to 4/6/2012 in order to enable a full panel of this court hear the appeals involving an application praying this court to depart from its earlier decisions in respect of the interpretation of S.285 (6) of the 1999 Constitution (as amended). B

4. That I was also present in this Court on 4/6/2012 when the appeals came up for hearing and this court decided to hear the preliminary objections first before hearing the appeals on the merit.

5. That I know that on 4/6/2012 the appellants/applicants filed and served the 3rd respondent their reply brief containing the appellants' response to the 3rd respondent's preliminary objection regarding the interpretation of S.285(6) of the 1999 Constitution (as amended). C

6. That it is also a fact that 3rd respondent made no reference to the appellants' reply brief served on her in court while arguing her preliminary objection. D

7. That I know it as a fact that this court while reading its ruling on 8/6/2012 made no reference to the appellants' reply brief to 3rd respondent's brief containing the response to 3rd respondent's preliminary objection which is in the court's file. E

8. That I know it as a fact that this court in its ruling read on 8/6/2012 did not consider the issue of departure from its earlier decisions which was the main reason for its constitution as a full court but only confined itself to the preliminary objection. F

9. That I am informed by appellants' counsel whom I verily believe that it is the tradition of this Honourable Court to take the substantive appeal and the preliminary objections together and consider same in its judgment in constitutional matters such as the appellants' appeals raising the issue of non qualification/disqualification of 1st respondent. G

10. That although the appellants referred to some portions of their briefs in answer to the 3rd respondent's preliminary objection, this Honourable Court declined to examine the matter on the merits or at all and resolve same. H

The appellants' various briefs attest to this.

11. That at 7.40am on 8/6/2012 before the judgment was delivered by this court, Dr. Cletus Akwaya, Special Adviser to the

Governor of Benue State on Media Affairs, posted on Facebook (Village Corner) the result of the judgment of this court yet to be delivered. A copy of contents thereof is hereto attached and marked as "Exhibit '1').

B 12. That I know that on 6th and 7th June, 2012, Radio Benue broadcast news that this court will on 8/6/2012 validate the issue of 180 days in S.28S (6) of the 1999 Constitution (as amended) and this was what happened in court on 8/6/2012 in the ruling of His Lordship, Ariwoola JSC read later in the morning of 8/6/2012.

C 13. That I was present in court on 4/6/2012 and I heard Akeredolu SAN, counsel to the appellants cite to this court the case of Saraki v Kotoye to show that exercise of constitutional right of appeal cannot constitute an abuse of court process or an academic exercise. I have also seen this case in the appellants' reply brief to 3rd respondents' brief which I typed myself and filed.

D 14. That I was in court on 8/6/2012 when the lead ruling was being read and when this was over the presiding Justice read his supporting ruling and thereafter stated without reading from any papers/documents that the other justices who sat on the appeal had E agreed with the lead ruling. None of the judgments was brought out one by one and read out by the presiding Justice on 8/6/2012.

F 15. That it is a known fact that on 14/11/2011 in Appeal No. SC.360/2011, this Honourable Court ordered the appellants' petition to be heard on the merits and none of the respondents challenged this order which is still in force and has never been set aside.

G 16. That I am informed by appellants' counsel whom I verily believe that the trial Tribunal, the Court of Appeal and this Court are bound by the order of 14/11/2011 issued by this court.

H 17. That I know it as a fact that this petition was dismissed on 19/9/2011, within 180 days by the Tribunal and all appeals therefrom and subsequent appeals were decided within 60 days respectively by this Court and the Court of Appeal.

H 18. That when this appeal came up for hearing on 31/5/2012, it was adjourned to 4/6/2012 in order to be heard by the full court regarding the issue of departure from its previous decisions raised in appellants' brief.

19. That on 4/6/2012 at the hearing of this appeal, the court only confined itself to the hearing of the respondent's preliminary



objections which were taken without hearing the main appeals and adjourned to 8/6/2012 for ruling.

20. That since the ruling was read on 8/6/2012, all efforts to obtain a copy thereof have failed and the reason given is that it is not ready. This has dragged from 11th-18th June, 2012, more than 7 days prescribed by the constitution. B

21. That on the 19th day of June, 2012, the Appellants/Applicants filed a similar application as this one before this court. The motion came up for hearing on 14th November, 2013 but was withdrawn by the Appellants' counsel and struck out on the ground that the ruling of 8th June, 2012 was not exhibited to the application. C

22. That I have now obtained a copy of the said ruling of this Honourable Court delivered on 8/6/2012 which is herewith attached and marked as "*Exhibit 2*".

23. That the appellants' reply brief to 3rd respondent's brief D containing the response to 3rd respondent's preliminary objection at pp.1-24 thereof is in the registry of this court and was filed on the 4th day of June, 2012 on the day of hearing the appeals.

24. That the decision that gave rise to appeal NO.SC.191/2012 was delivered by the Court of Appeal on 24/4/2012. E

The counter affidavit of the 1st Respondent was deposed to by Terhemba Gbashima, legal practitioner of counsel and some of the relevant paragraphs are stated hereunder, viz:

3. That as one of the counsel in chambers assigned to handle this matter, all the facts deposed herein are facts within my personal knowledge which I obtained in the course of handling this matter and which I verily believe to be true as follows: F

a) That the Applicants served the 1st Respondent with a Motion on Notice dated 14th November, 2013 and filed on 15/11/2013, G seeking in the main, for the orders of this Honourable Court: setting aside the ruling of this court delivered on 8th June, 2012 in Appeals Nos.SC.191/2012 and SC.191A/2012; implementing/enforcing the order/decision delivered on 14th November, 2011; and restoring Appeals Nos. SC.191/2012 and SC.191A/2012 and hearing same H on the merits.

b) That I have studied and understood all the grounds and averments in the said Applications, Motion on Notice.

c) That there is no pending appeal in this matter and the 1st

and 2nd Applicants are not in fact Appellants as they chose to refer or describe themselves on the motion paper.

B d) That I believe that prayers (b) and (c) in the application seeking an Order implementing/enforcing the order/decision delivered on 14th November, 2011 that the petition be heard on the merits; and an Order restoring Appeals Nos.SC.191/2012 and SC.191A/2012 for hearing on the merits are conflicting prayers which are mutually exclusive.

C e) That prayer (c) in the Applicants' present application does not arise from the Ruling of this court sought to be set aside by this application.

(f) That all the material averments contained in the Applicants' affidavit in support of the said motion are entirely false.

D (g) That I know as a fact that the Applicants' motion is inviting the Supreme Court to sit on appeal over its Ruling delivered on 8th June, 2012.

(h) That the Applicants' motion is not praying this court to correct any clerical mistake or some error arising from accidental slip.

E (i) That the application, especially paragraphs 4, 5, 6, 7, 8, 8, 10, 13, 14, 17, 18, 20, 21 and 22 of the affidavit in support of the motion is an attempt to invite the Honourable Court to sit on appeal over its Ruling, a regurgitation and re-argument of the Applicants' written and oral submission in response to the 3rd Respondent's Notice of Preliminary Objection which was argued intensely by all parties and was upheld in a well considered Ruling of this court, dismissing the Applicants' appeals for being an academic exercise and abuse of court process.

F (j) That paragraphs 6, 7, 8, 9 & 10 of the Applicants' Affidavit in support of motion are untrue, this court considered all the materials that were placed before it and brought to its attention by counsel to the respective parties before it arrived at its well considered Ruling dismissing the Applicants' appeals for being academic and an abuse of court process.

H (k) That specifically paragraph 14 of the Applicants' affidavit in support of the motion is untrue as the deponent was not on the bench with the Justices of this Court while the Ruling was being delivered and not in the position to authoritatively tell from which document or source the concurring Rulings were read. Each member of

the panel delivered his concurrent Ruling.

(l) That I was informed by Dr. Cletus Akwaya during an interview with him in our office at No.10 Atbara Street Wuse 2, on the 18th day of November, 2013, at about 2pm that paragraph 11 of the Appellants/Applicants' affidavit in support of the motion is entirely untrue and a fabrication of lies, that no such post on Facebook (Village Corner) of the result of the Judgment of this court yet to be delivered was made by him or the 1st Respondent or his agent and the Applicants' fabrication is obvious as they did not attach a copy of the alleged Facebook Post which they claim is Exhibit '1'. B

(m) That I was further informed by Dr. Cletus Akwaya during an interview with him in our office at No. 10 Atbara Street, Wuse 2, on the 18th day of November, 2013, at about 2pm that he is an avid listener to Radio Benue and that paragraph 12 of the affidavit in support of the Applicants' motion is entirely false, as no such broadcast was made by the 1st respondent or any other person at his behest before the delivery of the ruling and the appellants' fabrication is obvious as they did not show any evidence of the alleged radio broadcast. C D

n) That the affidavit in support of the applicants' motion does not allege nor disclose facts showing that the Ruling of this court delivered on 8th June, 2012 was obtained by fraud or deceit. E

o) That the affidavit in support of the applicants' motion does not allege nor disclose facts showing that the Ruling of this Court delivered on 8th of June, 2012 is a nullity. F

p) That the applicants in the affidavit in support of the application did not state that the court was misled into giving its Ruling.

q) That applicants did not state facts disclosing the absence of jurisdiction of the court in delivering its Ruling on 8th June, 2012. G

r) That I know as a fact that, the Ruling of this court delivered on 8th June, 2012 in Appeals Nos. SC.191/2012 and SC.191A/2012, which the applicants are now seeking to set aside, is a Ruling on the two appeals filed against the Rulings of the Court of Appeal Makurdi, Judicial Division delivered on 12th April, 2012 and 24th April, 2012, H respectively.

s) That the 60 days within which this court is required to deliver judgment in Appeal No.SC.191A/2012 lapsed on the 11th day of June, 2012, the decision appealed against having been delivered

on the 12th day of April, 2012.

t) That the 60 days within which this court is required to deliver judgment in Appeal No.SC.191/2012 lapsed on the 23rd day of June, 2012, the decision appealed against having been delivered on 24th April, 2012.

B u) That prayer (b) in the applicants' motion is seeking an order implementing/enforcing the order/decision of this court delivered on 14th November, 2011 that a certain petition be heard on the merits.

C v) That I have read Section 285 (b) (b) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), which provides that an election petition tribunal shall deliver its judgment in writing within 180 days from the date of filing of the petition.

w) That the particular petition the applicants are seeking to be heard on the merits was filed on the 17th day of May, 2011.

D x) That the 180 days prescribed for the hearing and delivery of judgment in the election petition lapsed on the 13th of November, 2011.

(y) That both the substantive petitions and appeals which gave rise to this present application having lapsed, this application has become academic and bereft of any live issue and this Honourable Court determines only live issues and not academic issues.

F z) That it is necessary to save the Honourable Court the trouble of dissipating energy and resources in deciding an application over a subject matter that is spent.

aa) That I sincerely believe that in view of the several decisions of this court that the 180 and 60 days for hearing of election petitions and appeals cannot be extended, this present application is a gross abuse of the solemn process of this Court.

G 4. That the 1st Respondent will be highly prejudiced if this application is granted.

The counter affidavit for the 2nd Respondent was deposed to by George E. Ukaegbu, a legal practitioner in the firm of counsel and some of the depositions are as follows:-

H (9) That I gave a copy of the Applicants' Motion on Notice and affidavit in support to -Dr. Cletus Akways who read same and informed me as follows:-

(i) That the averment contained in paragraph 11 of the Applicants' affidavit is not true.

(ii) That he did not post any comment on facebook (village corner) at 7.49am on the 8th June, 2012.

(iii) That the press release issued in respect of the decision of the Supreme Court on 8th June, 2012 was issued after the delivery of the Ruling of the court on 8th June, 2012 as he had no way of knowing what the decision of the court will be as at 7.49am on 8th June, 2012

(iv) That he is not the author of the article attached to the Applicants' affidavit as Exhibit '1' and did not authorise any one to author the said article on his behalf.

(10) That I know as a fact that the alleged comment in Exhibit '1' could not have been made by 7.49am on 8th June 2012 as the opening paragraphs states as follows:-

*"Benue State Governor, Rt. Hon. Gabriel Suswam has said his victory this morning, Friday June 8 at the Supreme Court is justice to the people of the State....."*

(11) That paragraph 12 of the affidavit is false and is denied. I know as a fact that Radio Benue did not and could not have made any broadcast concerning the decision of this Honourable Court when same was yet to be delivered as at 6th and 7th of June, 2012.

(12) That in reply to paragraphs 13 and 14 of the Applicants' affidavit, I know as a fact that this Honourable Court dealt with all the issues relating to the preliminary Objection raised against the appeals of the Applicants by the Respondents in the ruling delivered on 8th June, 2012.

(13) That paragraphs 15 - 22 of the Applicant affidavit, are hereby denied.

(14) That the petition which gave rise to the appeal which was decided on 8th of June, 2012 was filed on 17th of May, 2012.

(15) That I know as a fact that as at 14th November, 2012 when SC.360/2011 was decided by this court, 180 days from the 17th of May, 2011 had elapsed.

(16) That I know as a fact that an election petition cannot be decided outside 180 days from the date it was filed.

(17) That I know as a fact that the Court of Appeal decision appealed against in Appeal Nos.SC.191/2012 and SC.191A/2012 were delivered on the 24th of April, 2012 and the 12th day of April, 2012 respectively.

(18) That I know as a fact that this Honourable Court delivered its decisions in the two appeals on the 8th of June, 2012 within the 60 days allowed by the constitution.

(19) That I know as a fact that this Honourable Court lacks jurisdiction to hear any appeal on an election matter outside 60 days from the date of the decision of the Court below.

(20) That I know as a fact that 60 days from the 13th of April, 2012 and 24th of April, 2012 when the decision of the Court of Appeal were delivered have elapsed.

(21) That I know as a fact that this Honourable Court is a final Court of Appeal and its decisions are not appealable,

(22) That I know as a fact that this court does not set aside its decisions as a matter of -course but only when certain conditions exist.

(23) That the Applicants have not established the said conditions in their affidavit in support of the motion on notice.

(24) That I know as a fact that the Appellants are not inviting this court to correct a slip in its judgment but is asking this court to set aside decision when the court has become functus officio.

Learned counsel for the Appellants/Applicants contended that this Apex Court had emphasised the right to fair hearing under Section 33(1) of the 1979 Constitution which is now provided for in Section 36(1) of the 1999 Constitution and the entitlement of the court to its independence in the conduct of the hearing under Section 4 (8) of the Constitution. In this wise, he cited *Unongo v Aku* (1983) 14 NSCC 563 at 577 - 578; *Kadiya v Las* (1983) 2 SCNLR 368 at 372; *Attorney-General Bendel State v Attorney General Federation & Ors* (1981) All NLR 85.

He stated on that it is plain that Section 285 (6) of the 1999 Constitution infringes on Section 4 (8) of the said Constitution by interfering with the doctrine of separation of powers under Sections 4, 5 and 6 of the same Constitution with particular reference to Section 4(8). He referred to *Attorney General Bendel State v Attorney General Federation* (1981) 10 SC 1; *Ude v. Ojechem* (1995) 8 NWLR (Pt.412) 152 at 171; *Military Governor Ondo State v. Adewunmi* (1982) 3 NWLR (Pt.82) 280 at 313; *Obayuwana v Alli & Anor* (1982) 12 SC 147 at 214 - 215; *Attorney General Abia State & Ors v Attorney General Federation* (2002) 6 NWLR (Pt.763) 264 at 397 where

this court held that Section 25 (10) of the Electoral Act 2001 which sought to limit the period within which any judicial proceedings must be concluded infringes on the principles of separation of powers and so was void. That Section 285 (6) and 7 constitute an unwarranted encroachment on the independence of the judiciary by prescribing the time limit for the hearing and judgments in election petitions and appeals emanating therefrom. That this is because the legislative powers of the National Assembly is restricted to any matter in the Exclusive Legislative List spelt out in Part 1 of the 2nd Schedule to the Constitution. He said the power to make rules of practice and procedure of the Supreme Court and the Court of Appeal rests in the Chief Justice and the president of the Court of Appeal respectively as provided for in Sections 236 and 248 of the Constitution. B  
C

For the Applicants was further submitted that the inherent powers of the court can be invoked in the interest of justice so as to order a retrial in this matter pursuant to Section 6 (6) of the Constitution. He cited *Adigun v A. G. Oyo State (No.2) (1987) 2 NWLR (Pt.56) 197*; *Ilodibia v. Okafor (1984) 5 NCLR 798 at 801* etc. D

Also canvassed is that these inherent powers so provided cover the powers of the Supreme Court as enshrined in Sections 22 and 26 of the Supreme Court Act and in the Rules of Court to order trial de novo as recognised by Sections 233(6) and 236 of the 1999 Constitution as amended. He cited Order 8, Rules 12 (2) & (5) and 13. Rules of Court: *Inakoju v Adeleke (2007) All FWLR (Pt.353) 3 at 93-94*. E  
F

Chief Akeredolu opined that Sections 6(6) (a) & (b) and Section 4 (8) of the 1999 Constitution amply provide the court with a general power to inquire into the validity of enactments in our statute books made by the legislature or deemed to be so made. He relied on *Uwaifo v A. G. Bendel State (1982) 7 SC 124 at 210*; *Customs & Exercise Board v Ene (1982) 2 NCR 232 at 248*. G

That Section 285 (6) & (7) infringes on the provisions of Section 36 (1) as to fair hearing when the civil rights and obligations of a person to (i) know his elected representatives (ii) be granted fair hearing regarding the determination of his dispute. He said the issue of conflict or inconsistency with the provisions of Section 36 (1) safeguarding the fundamental right to fair hearing and other provisions of the Constitution or other laws have since been settled. He cited H

LPDC v. Fawehinmi (1985) 2 NWLR (Pt.7) 300 at 373; Uzuda v. Obigah (2009) 15 NWLR (Pt.1163) 1 at 4 - 5; Pam v Mohammed (2008) 16 NWLR (Pt.1121) 1 at 48; Olufeagbu v Abdul Raheem (2009) 18 NWLR (Pt.1173) 384 at 403 etc.

B Learned counsel for the Applicants went on to say that the constitutional right of appeal and right to fair hearing implicit in Sections 285 (2), 285 (7), 246(1)(ii), 233 (2) (e) (iv) and 36 (1) of the 1999 Constitution as altered conferred on the Governorship tribunal to hear and determine an election petition and for appeals, therefrom to Court of Appeal and Supreme Court are inviolate and cannot be eroded. He cited Nafin Rabi v The State (1980) 8 - 11 SC (Rep) 85 at 144 - 145 etc.

D That the decisions of the Supreme Court that every provision of the constitution or statute must comply with the basic principle of natural justice or fair hearing under Section 36 (1) of the 1999 Constitution as altered remain applicable. He referred to AC v. INEC (2007) All FWLR (Pt.378) 1012 at 1037 - 1038 etc.

E It was stated for the Applicants that one of the grounds why the applicants are seeking an order setting aside the ruling of this Court delivered on 8/6/12 is the foreknowledge of the decision of this court as disclosed on the internet at 7.49 am of 8/6/12 and on 7/6/12 through Radio Benue, Makurdi. That the development so highlighted in paragraphs 11 and 12 of the supporting affidavit is capable of seriously undermining the integrity of the ruling of this court delivered on 8th June, 2012 and rendering same liable to be set aside. F He cited Alao v ACB Ltd (2000) 9 NWLR (Pt.672) 264 at 296.

G Chief Akeredolu SAN further contended that though the Supreme Court does not sit on appeal over its own judgment whether they are right or wrong, in certain circumstances, it can set aside its own decision. He cited Cardoso v Daniel (1986) 2 NWLR (Pt.20) 1 at 16; Tanko v State (2009) 2 SCNJ 1 at 15 - 16; A. G. Federation v Guardian Newspaper Ltd (1999) 9 NWLR (pt.618) 187 at 266 etc.

H He stated on that by ordering the petition to be heard on the merits on 14/11/2011, after correctly finding that there was no trial, the Supreme Court acted within its jurisdiction conferred on it by the constitution, the Supreme Court Act and the Supreme Court Rules. He said by interfering with the judgment of 14/11/2011 on 8/6/2012, this Court acted without compliance with the laid down procedure in



Cardoso v Daniel (supra) etc, and a miscarriage of justice ensued.

He said this Court's order of 14th November, 2011 is valid, subsisting and extant in law and remains binding on all parties until set aside by this Court and that has not yet happened.

Mr. Dodo SAN, learned counsel for the 1st Respondent had settled a written address filed on 22/11/13 and in it raised three issues B which are thus:-

1. Whether this Honourable Court has the jurisdiction to entertain this application having regard to the spirit and letter of Section 285 (6) & (7) of the 1999 Constitution (as amended) C

2. Whether the application is not an invitation to this Honourable Court to sit on an appeal over its decision.

3. Whether the application has disclosed very exceptional circumstances and satisfied the conditions to warrant this court to review or set aside its earlier Ruling. D

Clearly the three issues are so co-related that the learned counsel for 1st Respondent in his responses tackled all and so his submissions would be taken together. Mr. Dodo of counsel contended that it is a well established principle of law that where an action or an appeal has no practical or utilitarian value to the appellant even if the judgment is given in his favour, such an appeal is said to be academic and Court of law are enjoined not to embark on a fruitless academic venture as the Courts have no duty to do so. E

He relied on Adeogun v Fashogbon (2008) 17 NWLR F (pt.1116) 149 at 180; Agbakoba v INEC (2008) 18 NWLR (Pt.1119) 404 at 546 - 547.

For the 1st respondent was canvassed that by virtue of Section 285 (7) of the 1999 Constitution (as amended), the 60 days within which this Court is required to deliver judgment in Appeal No. SC.191/ 2012 lapsed on the 11th day of June, 2012, the decision appealed against having been delivered on the 12th April, 2012 while the 60 days within which this Court is required to deliver judgment in Appeal No. SC.191/2012 lapsed on 23rd June, 2012, the decision appealed against having been delivered on 24th April, 2012. Also, an Election Petition Tribunal hearing an election petition is mandated to deliver its Judgment in writing within 180 days from the day the petition was filed. He cited ANPP v Goni (2012) 1 NWLR (Pt.1298) 147 at 147 at 181; Appeals Nos. SC.1/20.2012 and SC.2/2012 be H

tween Alhaji Mohammed Goni & Anor v Alhaji Kashim Shettima & Ors delivered on 8th day of May, 2012.

Learned Senior Counsel for 1st Respondent said that with the 180 days having lapsed from date the original petition was filed and 60 days from the date of delivery of the judgment, by the Court of Appeal, the two appeals had expired. That those substantive appeals which gave rise to the present application having lapsed, this application is academic and bereft of a live issue and this Court has no jurisdiction to entertain the application.

He went further to submit that the inherent power of this Court to set aside its own decisions only apply where the decisions are a nullity or obtained by fraud and does not extend to or include the power to sit on appeal over its decisions. He relied on *Igwe v Kalu* (2002) 14 NWLR (Pt.787) 435 at 455; *A. T. Ltd v. A.P.H. Ltd* (2007) 15 NWLR (Pt.1055) 118 at 170; *Gen. & Aviation Services Ltd v. Thahal* (2004) 10 NWLR (Pt.880) 50 at 81.

Mr. Dodo urged the Court to dismiss the application as it is an abuse of court process.

For the 2nd Respondent learned counsel distilled a single issue in their written address which Solomon Akuma SAN settled and filed on 16/1/2014 which is as follows:-

Whether in the circumstances of this matter the Applicants have satisfied the conditions to warrant this Court in setting aside its Ruling delivered on 8th June, 2012.

Learned Senior Advocate for the 2nd Respondent said the Supreme Court has no jurisdiction to set aside its ruling or judgment if properly made in the exercise of its powers and jurisdiction. He cited *Chukwuka v. Ezulike* (1986) 5 NWLR (pt.45) 892; *Minister of Lagos Affairs v Chief O. B. Akin-Olugbade* (1974) 11 SC 11 at 19.

He said even if for purposes of argument, the striking out of the appeals was irregular by the Court taking the preliminary objection, the Applicants having agreed and participated in the proceedings cannot be heard to complain that their main appeals were not heard as they are deemed to have waived their right because a person cannot complain against an irregularity which he had accepted, waived or acquiesced. He cited *Amaechi v INEC* (2008) 5 NWLR (Pt.1080) 227 at 448 - 449.

It was submitted for the 2nd Respondent that whatever limita-

tions and constraints the provisions of Section 285 (6) and (7) of the 1999 Constitution as amended imposes on this court and the rights of the Applicants, this Court is helpless and can do nothing. He cited Inakoju v Adeleke (2007) 4 NWLR (Pt. 1025) 423; A. G. Ondo State v A.G. Federation (2002) 9 NWLR (Pt 772) 222 at 308.

Chief Akuma SAN, said the Applicants' right to fair hearing was not breached in course of the hearing of the preliminary objection as they were afforded every opportunity of being heard but their rights to the determination of their Petition and appeals were foreclosed by Section 285 (6) and (7) of the Constitution 1999. He referred to Amadi v INEC (2013) 4 NWLR (Pt.1345) 595 at 626 - 627.

In this application and the proposed appeal, if I may use that word the Applicants' counsel had made much of the operation of Section 36 of the Constitution in which is embedded the principles of fair hearing and the absolute need that a party be not shut off having his grievance brought in the open and duly considered by Court. Learned counsel quoted some judicial authorities albeit copiously especially dicta of this Court. He had cited the case of Engineering Enterprises v A. G. Kaduna (1987) 2 NWLR (Pt.57) 389 at 400. I shall have to refer to the various views of the jurists involved. Aniagolu JSC stated in Engineering Enterprises v A.G. Kaduna (1987) 2 NWLR (Pt.57) 389 at 400.

*"...I conceive that where on a balance of justice a citizen's right is to be protected, this court as a court of last resort, must not hesitate, in keeping with the accepted legal principles of ubi jus ibi remedium, even to pronounce upon a new head of remedy suitable to meet an exigent situation and dictated by the particular facts and circumstances, on the principle that in a new and advancing world, in the protection of the rights of the individuals, the categories of remedies may never be closed. In that way, the law is adapted to meet the needs of society and not used to foreclose the legitimate yearning demands of the rights of the citizenry."*

See also P415 where Oputa JSC stated thus:-

*"Section 220 (1) (a) of the 1999 Constitution gave the Appellants an unqualified right of appeal against any final decision of the High Court sitting as a Court of first instance. Suit KDU/77/79 was squarely within the contemplation of Section 220 (1) (a) above. It is*

*the glory, happiness and pride of our various constitutions, that to prevent any injustice, no man is to be concluded by the first judgment, but that if he apprehends himself to be aggrieved, he has another court to which he can resort for relief.*

B For this purpose, the law furnishes him with the right of appeal  
 as of right. Can this Court as the Country's last and final Court allow  
 this excellent guarantee of justice to be thwarted by the act of a judge  
 misplacing or throwing away his judgment? I sincerely hope not, otherwise,  
 we open up a floodgate that will ultimately swallow up all our  
 C ideals of justice by and through the intervention of appellate courts.  
 Bowen L. J. was very right when in *The Queen v. Justices of the*  
*County of London & Ors* (1893) L.R. 2 A.B 492 he remarked:-

"If no appeal were possible, I have no great hesitation in saying  
 that this would not be a desirable country to live in.... It is quite  
 D true that there is enough difficulty in appealing as it is; but if there is  
 no appeal at all possible the system would be intolerable."

*We have to keep the doors of our appellate Courts open if we are to preserve our rights and our freedom."*

Oputa JSC further stated thus

E "The courts have a duty to investigate and discover what in  
 any particular case will satisfy the interest and demands of justice.  
 And the interest and demands of justice will certainly be dictated by  
 the peculiar facts and the surrounding circumstances of each case."

F Belgore JSC at p. 419 stated as follows:-

"The function of Courts is to do justice between parties by  
 settling their dispute. Anything short of this defeats the spirit of law  
 and the constitution. Every wrong not the fault of a party must not  
 be visited on that innocent party and where agents of the state are at  
 G fault, the innocent victim must be atoned. *Nasiru Bello v Attorney-*  
*General of Oyo State* (1986) 5 NWLR 828."

Apart from its powers derived from the constitution which remain  
 extant and unimpaired, the Supreme Court is also imbued with  
 inherent powers as explained in *Connelly v D.P.P.* (1964) A. C. at P.  
 H 1301 where Lord Morris said:-

"There can be no doubt that a court which is endowed with a  
 particular jurisdiction has powers which are necessary to enable it act  
 effectively within such jurisdiction. I would regard them as powers  
 which are inherent in its jurisdiction.

*A Court must enjoy such powers in order to enforce its rules of practice and to suppress any abuses of its process and to defeat any attempted thwarting of its process."*

Having referred to those quotations from this Court, the point has to be made that in upholding the principles of fair hearing and doing substantial justice, no Court has the power to allow its jurisdiction to set aside its judgment to be converted to an appellate jurisdiction as though the matter before it is another appeal, intended to afford a losing litigant another opportunity to restate or re-argue their appeal. Therefore, a court especially this Court must guard against the use of its inherent power to set aside its judgment which jurisdiction it has in stated circumstances or even exceptional ones to start a new case, give a party a chance to re-open a concluded matter or a chance to remedy faults in the earlier determined appeal or in an extreme situation, through the back door, sit on appeal on an earlier decision. See *Igwe v. Kalu* (2002) 14 NWLR (Pt.787) 435 at 455.

For a clearer picture, I shall restate the circumstances or conditions under which the Supreme Court can exercise its inherent powers to set aside its Ruling or judgment such as the one being prayed for in this instance. These conditions are well captured in the case of *Igwe v Kalu* (2002) 14 NWLR (Pt.787) 435 which are:-

1. When the judgment is obtained by fraud or deceit either in the court by one or more of the parties, such a judgment can be impeached or set aside by means of an action which may be brought without leave; or
2. When the judgment is a nullity. A person affected by an order of court which can properly be described as a nullity is entitled *ex debito justitiae* to have it set aside; or
3. When it is obvious that the Court was misled into giving judgment under a mistaken belief that the parties consented to it; or
4. Where the judgment was given in the absence of jurisdiction; or
5. Where the procedure adopted was such as to deprive the decision or judgment of the Character of a legitimate adjudication.

Having placed above the conditions upon which an application such as the present can be validly made and favourably considered, I shall quote the Constitutional provisions under Section 285 which is at the root of the reliefs sought.

*“Section 285:*

*(5) An election petition shall be filed within 21 days after the date of the declaration result of the election;*

*(6) An election tribunal shall deliver its judgment in writing within 180 days from the date of the filing of the petition;*

B *(7) An appeal from a decision of an election tribunal or Court of Appeal in an election matter shall be heard and disposed of within 60 days from the date of the delivery of judgment of the Tribunal or Court of Appeal.”*

C The Appellant/Applicants are touting Section 36 (1) of the 1999 Constitution of the Federal Republic of Nigeria which stipulates that the civil rights and obligations of a party must be allowed to be ventilated in keeping with the fair hearing principle within a reasonable time in such a manner that the impartiality and independence of D the Court of law are guaranteed.

In the light of these Constitutional provisions, would be determined which way forward, in this instance where Section 285 (5) (6) and (7) have prescribed the period within which the electoral dispute in a gubernatorial election would be filed, tried at the Election Tribunal, heard at the Court of Appeal and now with finality at the Supreme Court. The processes above juxtaposed within the ambit of E the fundamental Human right of fair hearing as stipulated in Section 36 (1) of the same Constitution.

F To be reiterated is the sui generic nature of an election dispute procedure in adjudication. This translates to a special unique process which cannot be treated in the same light as the usual disputes which come up in the normal run of events in the Courts. It is in that regard that this unique and peculiar adjudicatory process has to be dealt G with in a crucible and while Section 36 (1) of the Constitution is not jettisoned, the fair hearing has to be within the time frame as mandatorily and specifically prescribed by Section 285 (5) (6) and (7) of the same Constitution. See *Egharevba v Eribo & Ors* (2010) 9 SCM 121.

H Broken down in a way of stating the above differently is to say that the fair hearing of the petition and appeals must be within the period specified and that is filing within 21 days of the declaration of result, hearing and determination at the trial Tribunal within 180 days, an appeal to the Court of Appeal not outside 60 days of the delivery

of judgment of the Tribunal and the appeal to the Supreme Court heard and determined within 60 days of the delivery of the judgment of the Court of Appeal. The straight meaning of what is required is that the fair hearing must be fitted into those time frames and anything outside any of the given prescribed period, no party can cry for infringement of his right of fair hearing. B

To refresh the memory on the facts of this case, it is that when the matter was first initiated at the Trial Tribunal and while the matter was still pending, interlocutory appeals rose therefrom to the Court of Appeal and to this Court. In the determination at the Supreme Court, it was seen that the 180 days for the completion of the trial at the Tribunal were still to elapse and when the Court found for the Appellants it sent the matter back to them for conclusion of trial. However, the trial was not concluded when the 180 days expired and a new round of appeals ensued at the end of which the Supreme Court struck out the matter on account of the effluxion of time of the 180 days for trial and determination at the Election Tribunal since that court no longer had jurisdiction upon which the jurisdiction of either the Court of appeal or the Supreme Court could be vested. The Supreme Court in a considered Ruling made no bones of the non-existence of the necessary vires upon which the Appellants/Applicants could articulate their rights and possibly get the reliefs they aim at. C  
D  
E

Therefore, at the risk of repetition, the Supreme Court is now called upon to revisit this matter firmly concluded by the striking out earlier made on the 8th June, 2012 when the judgment was not obtained by fraud or deceit and the judgment is not a nullity nor any of the parties misled into being part of a judgment irregularly obtained nor was the judgment given when this Court lacked jurisdiction nor can this Court be accused of utilising a procedure which reduced the decision or Ruling or judgment without the character of a legitimate adjudication. All these or none of those conditions established there is no basis upon which this thorough academic, hypothetical eruption in the name of an appeal with a motion to set aside the judgment of 8th June, 2012 so as to keep alive the order/decision of this Court of 14th November, 2011 so the petition can be heard on merit. See *Chukwuka v Ezulike* (1986) 5 NWLR (Pt.45) 892; *Minister of Lagos Affairs v. Chief O. B. Akin-Olugbade* (1974) F  
G  
H

11 SC 11 at 19.

For emphasis, when the Constitution by the provisions of Section 285 (6) and (7) imposed on this Court and the parties, the period within which whatever needs be done must be done and not outside that time frame, there is helplessness in those ouster clauses and nothing can be done about it. The implication is that the matter has died and is buried and attempting to go round that Constitutional mortal blow is an act of desperation which only lead to embarking on an academic journey best left for the Ivory Tower of knowledge which our Universities are intended for and the Court not the right forum. The Constitution is supreme and what it has stipulated remains sacrosanct, immutable and nothing to do about it but to strictly comply. I rely on *Inakoju v Adeleke* (2007) 4 NWLR (Pt.1025) 423; *A. G. Ondo State v A. G. Federation* (2002) 9 NWLR (Pt.772) 222 at 308.

I cannot conclude without letting it be known that this application and appeal are very irritating and vexatious since there are numerous authorities of this Court for the past three years on the interpretation of these very Sections of the Constitution, Section 285 (6) and (7) taken alongside Section 36 (1) of the same Constitution to the knowledge of the counsel for the Applicants and it is crystal clear that this court is being used as a soap box in the realm of politics which is not what the Courts are for. This grandstanding should be taken elsewhere as this electoral dispute ended a long time ago.

For the above and the fuller reasoning in the Lead Ruling, I too dismiss the Application which is unmeritorious. I also award N1,000,000.00 costs on the Appellants/Applicants in favour of the Respondents and the Costs to be paid by counsel for applicants.

G

### **AKA'AH'S JSC**

Section 285(2) (6) and (7) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) provides:-

H “285(2) *There shall be established in each State of the Federation one or more election tribunals to be known as the Governorship Election Tribunals which shall, to the exclusion of any court or tribunal, have original jurisdiction to hear and determine petitions as to whether any person has been validly elected to the office of gover-*



*nor or Deputy Governor of a State.*

*(6) An election petition shall deliver its judgment in writing within 180 days from the date of the filing of the petition.*

*(7) An appeal from a decision of an election tribunal or Court of Appeal in an election matter shall be heard and disposed of within 60 days from the date of delivery of judgment of the tribunal or Court of Appeal”.*

The background facts leading to this application may be stated as follows:-

The applicants were the petitioners against the declaration of the 1st respondent as the winner of the Gubernatorial Election which held in Benue State on 26/4/2011 in Petition No: GET/BN/02/2011 filed on 17/5/2011. On 23/6/2011 they applied by motion ex-parte for the issuance of pre-hearing notice under paragraph 18(1) of the 1st Schedule to the Electoral Act (as amended). The Tribunal granted the order and caused pre-hearing conference notice to be issued to all the respondents. The 1st and 2nd respondents by different motions on notice sought orders to set aside the pre hearing notices already issued. While the 1st respondent later withdrew his application which was struck out on 29/6/2011 the Tribunal proceeded to hear the 2nd respondent's motion which was dismissed on 19/7/2011. On appeal by the 1st respondent, the Court of Appeal set aside the ruling of the Tribunal and consequently decided that leave under paragraph 47 of the 1st Schedule to the Electoral Act is applicable to all applications under paragraph 18(1) of the same schedule and proceeded to dismiss the petition. On an appeal to this Court in SC.360/2010 delivered on 14/11/2011, the appeal was allowed and the decision of the Court of Appeal was set aside. This court then made an order that the petition be heard on the merit. By the time the parties went back to the Tribunal, the 180 days time limit prescribed by the Constitution for hearing and determination of the petition had lapsed and the petition was accordingly struck out. Despite the decision of this court in ANPP VS Mohammed Goni (2012) 2 SC (Pt. III) 35 which held that any petition filed which cannot be heard and determined within the 180 days from the date of filing the petition such a petition automatically lapses, several spirited attempts have been made to have that decision reversed to enable this petition to be heard on the merit. This is the sole reason why the present appli-

cation was brought.

When this Court has decided on an issue, such decision is final and the court lacks jurisdiction to sit on appeal over its decision once it has been delivered unless exceptional circumstances are shown such as-

- B (a) When the judgment was obtained by fraud or deceit;
  - (b) When the judgment is a nullity
  - (c) When it is obvious that the court was misled into giving judgment under a mistaken belief that the parties consented to it.
- C See Agunbiade VS Okunoga & Co. (1961) All NLR 119; Obimonure VS Erinosho (1966) All NLR 245.

On 4th June, 2012 when appeal Nos. SC.191/2012 and SC.191A/2012 came up for hearing before this court, the 3rd respondent's counsel informed the court that it had preliminary objection in respect of SC.191/2012. It was agreed by both parties that since appeals SC.191/2012; SC.191A/2012 and SC.192/2012 are based on the same decision of the court below, the preliminary objection should be taken first and ruled upon. This Court then ruled on 8th June, 2012 that-

- E *"The Preliminary objection raised by the Respondents in the three appeals Nos. SC.191/2012: SC.191A/2012 and SC.192/292 based on the same decision of the trial tribunal succeeds and it is allowed. As a result the appeals above mentioned are liable to dismissal. Accordingly each appeal is dismissed for being an academic exercise and an abuse of court process, to say the least".*

This is the ruling that is being sought to be set aside. Since the case of A.N.P.P. VS. Mohammed Goni supra settled the interpretation of Section 285(6) of the Constitution on the time frame for disposing of an election petition, it is a wasteful effort on the part of the applicant that the petition must be heard on the merit. This Court did not declare Section 285(6) of 1999 Constitution as null and void when it ruled on 14/11/2011 that the petition be heard on the merit because as at that date, it was not yet 180 days from the date it was filed.

In the circumstances, I agree with the leading Ruling delivered by my learned brother, Ogunbiyi, JSC that the application is merely academic and a futile exercise and it is hereby dismissed. I abide by the order made on costs.

**OKORO JSC**

I was obliged with a copy of the judgment just delivered by my learned brother, Clara Bata Ogunbiyi, JSC with which I agree both in the reasons advanced and the conclusion that this application is devoid of any merit and is liable to be refused. In support of this ruling, I propose to make a few comments. B

By a motion on notice filed in the Registry of this Court on 15th November, 2013, the Applicants prayed for the following reliefs:

(a) An order setting aside its ruling delivered in open court on 8th day of June, 2012 in Appeal Nos. SC.191/2012 and SC.191A/2012 terminating the said Appeals; C

(b) An order implementing/enforcing its order/decision delivered on 14th November, 2011 that the petition be heard on the merit; D

(c) An order restoring Appeal Nos. SC.191/2012, SC.191A/2012 and hearing same on the merits;

(d) Accelerated hearing of this application;

(e) Such further order(s) as this Honourable Court may deem fit to make in the circumstance. E

There are nine grounds upon which this application is anchored, two grounds of the original eleven grounds having been abandoned. They are grounds 4 and 8 which are accordingly struck out. The remaining grounds are well set out in the lead Ruling and I do not intend to repeat the exercise. F

The Application is supported by an affidavit of 25 paragraphs deposed to by one Richard Agwu, a Litigation Secretary in Applicants' Solicitor's Chambers. The Respondents filed their respective counter affidavits. Written addresses were filed and exchanged and were duly adopted at the hearing of this application. A brief facts leading to this application will suffice.

On 4th June, 2012, when appeal Nos. SC.191/2012 and SC.191A/2012 came up for hearing in this court, the 3rd Respondent herein, through its counsel informed the court that it had a preliminary objection in respect of SC.191/2012. On how the above mentioned appeals and preliminary objection would be taken, page 6 of the Applicants Exhibit 2 captures it thus: H

*“It was later agreed by both parties that since the three appeals (SC.191/2012, SC.191A/2012 and SC.192/2012) are based on the same decision of the court below, the preliminary objection should be taken first and ruled upon.”*

The gist of the preliminary objection alluded to above was:

- B *“The appeal in its entirety constitutes an academic exercise as the appeal seeks reliefs which are unconstitutional and which this Hon. Court will not grant in view of the lapse of 180 days within which judgment must be delivered from the date the petition on which the appeal is predicated was filed before the trial tribunal.”* (See pages 6  
C -7 of Exhibit 2).

After taking arguments on the preliminary objection, this court on 8th June, 2012, held as follows:-

- D *“The Preliminary objection raised by the Respondents in the three appeal Nos. SC.191/2012, SC.191A/2012 and SC.192/2012 based on the same decision of the trial tribunal succeed and it is allowed. As a result, the appeals above mentioned are liable to dismissal. Accordingly each appeal is dismissed for being an academic exercise and an abuse of court process, to say the least.”*

- E It is the above ruling that is sought to be set aside. Let me state categorically that there is no constitutional provision enabling this court to review its judgment once delivered. Whenever this court decides on an issue and is truly embodied in some judgment or order, then  
F the court cannot reopen the matter and cannot substitute a different decision in place of the one which had been recorded. If the judgment so given captures the intention of the court in the matter, that is the end of the duty of this court. However, where the decision does not capture the intention of the court, Order 8 Rule 16 of the Supreme Court Rules 1985 (as amended) enables this court to make  
G necessary corrections and nothing more. See *ALHAJI TAOFEEK ALAO V. AFRICAN CONTINENTAL BANK LTD* (2000) 9 NWLR (Pt.672) 264.

- H Be that as it may, this court has an inherent jurisdiction to set aside its judgment or decision that is a nullity, or obtained by fraud or deceit or where the court was misled in any material particular or where the judgment was given in the absence of jurisdiction or where there was an obvious miscarriage of justice. See *SKEN CONSULT NIG. LTD V. UKEY* (1981) 1 SC 6, *IGWE V. KALU* (2002) 14 NWLR

(Pt 78) 435.

I have carefully considered the 25 paragraphs of the affidavit of the Applicants in support of this application and I have not seen any fact or reason why this ruling should be set aside in view of the position of the law on the subject adumbrated above. There is nothing to show that the Ruling was obtained by fraud or that the Ruling was a nullity or that this court was misled in giving the ruling. There is also nothing to show that this court lacked the jurisdiction to make the ruling. B

I note that Section 285(6) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) was exhaustively considered in the ruling sought to be set aside. The argument of the learned senior counsel for the Applicants in this motion is clearly a repeat of the arguments made in that matter. This court had decided on that issue. The present application is certainly a call on this court to sit on appeal over its decision. I need say that this court does not have jurisdiction to do that. There exists not even one condition for setting aside the Ruling sought to be set aside. For me, this motion is an abuse of the process of this court and is overripe for dismissal. Accordingly, I refuse this application. It is hereby dismissed. I abide by the consequential orders made in the lead Ruling of my learned brother Ogunbiyi, JSC that relating to costs, inclusive. C D E

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