

SUPREME COURT OF NIGERIA
FRIDAY 11TH JULY, 2014. SC. 209/2010
CORAM:- W. S. N. ONNOGHEN, S. GALADIMA,
B. RHODES-VIVOUR, K. B. AKA'AH, J. I. OKORO, JJSC

1. HON. CHIGOZIE EZE & 147 ORS APPELLANTS
AND
1. GOVERNOR OF ABIA STATE
2. ATTORNEY-GENERAL OF ABIA STATE RESPONDENTS
3. ABIA STATE HOUSE OF ASSEMBLY
-

ADMINISTRATIVE LAW - L.G. council - Removal of officials - CA rightly found that 1st respondent - Wrongfully removed elected chairmen and councilors - And replaced them with unelected officials (H1)

ADMINISTRATIVE LAW - L.G. council - Continuous existence - It is duty bound on Governor by 1999 Constitution s. 7(1) - To ensure that L.G. system continues unhindered (H2)

AFFIDAVITS - Averments - Not based on evidence - In absence of evidence on salaries and allowances - No probative value can be ascribed to the affidavit - And no specific sum can be ordered by SC (H3)

COURTS - Justice - Upholding of - Judges must always decide according to justice - And lean towards equity instead of strict law - Thus order for payment of appellants' entitlement was right (H4)

ADMINISTRATIVE LAW - L.G. council - Removal of officials - Basis - Elected officials for fixed term can only be removed - If found to be in breach of official rules - Otherwise they shall be paid their entitlement (H5)

JUDGMENTS - Consequential order - Meaning of - It is an order that gives effect to judgment - As it flows from the judgment prayed for - And made consequent upon the relief claimed by plaintiff (H6)

SUPREME COURT - Consequential order - Grant - Basis - It will be

2936 Eze v. Gov. of Abia State (2014) 7 KLR (pt. 352) 2935:

wrong to order payment of specific money to appellants - In absence of evidence in support - As such order is not given for unproven relief (H7)

SUPREME COURT - Justice - Consequential order - Grant - By virtue of SC Act s. 22 - Consequential relief can be granted by the court in interest of justice - Even where not specifically claimed (H8)

FACTS

By an originating summons filed before the High Court of Abia State, plaintiffs/appellants instituted this action against defendants/respondents. Appellants are seeking among others for the interpretation of the following question - whether by virtue of section 7 of the 1999 Constitution and under the enabling Local Government Law of Abia State, 1st respondent can validly dissolve the Local Government Councils of Abia State and appoint caretaker committees to replace elected members of the said councils. Upon this question being answered in affirmative, appellants are mainly seeking inter alia for a declaration nullifying the dissolution of the Local Government Council, nullification of the appointment of the caretaker committee and reinstatement of appellants to complete their unexpired tenure of office.

The matter went for trial and at the end of which the learned trial Judge held that appellants had unexpired terms of office as at when they were asked to vacate their positions. The court therefore granted reliefs 1 and 3 of their claim and ordered that appellants be paid their salaries and allowances for the unexpired tenure of their office. Reliefs 2, 4, 5, 6 and 7 were refused by the court. Dissatisfied, appellants appealed to the Court of Appeal Owerri Division. In its judgment, the court granted all reliefs sought by appellants save relief no. 8. The court was of the opinion that reinstatement of appellants is no longer possible since their tenure had lapsed by effluxion of time. Aggrieved further, appellants are now on appeal in Supreme Court.

ISSUE FOR DETERMINATION

Whether the lower court was not in error when it failed to make a consequential order directing the payment of salaries and allowances to the appellants' after granting all the appellants reliefs except relief No. 8, which sought to reinstate them to their offices.

HELD (Unanimously allowing the appeal per **RHODES-VIVOUR JSC**)

ADMINISTRATIVE LAW - L.G. council - Removal of officials

1. The findings of the Court of Appeal which remain inviolate in the absence of a cross-appeal by the respondents is that the Governor of Abia State (the 1st respondent) was wrong to remove democratically elected Local Government Chairmen and Councilors and replace them with unelected Chairmen and Councilors, and the Chairmen and Councilors removed by the 1st respondent still had 23 months left to complete their tenure at the time they were removed from office. It amounts to Executive recklessness for the 1st respondent to remove from office democratically elected Chairmen, and Councillors and replace them with unelected Chairmen and Councillors under whatever guise. The findings of the Court of Appeal are correct and such an act by the 1st respondent should on no account be ever contemplated. It is illegal, and wrong. (p. 2946 C/H)

ADMINISTRATIVE LAW - L.G. council - Existence of

2. Section 7(1) of the Constitution states that:

“7(1) The System of Local Government by Democratically elected Local Government Councils is under this Constitution guaranteed; and accordingly the Government of every state shall, subject to section 8 of this Constitution ensure their existence under a law which provides for the establishment structure, composition, finance and functions of such councils.”

On a careful reading, of the above it becomes clear that it is the duty of the Governor to ensure that the system of Local Government continues unhindered.

Dissolving Local Government Councils and replacing them with Caretaker Committee amounts to the Governor acting on his whim and fancies, unknown to our laws, clearly illegal. It is the duty of the Governor to ensure their existence

rather than being responsible for destroying them.
(p. 2946 D)

AFFIDAVITS - Averments - Not based on evidence

3. In the affidavit referred to above there is nothing, in it or in the Record of Appeal to show the purpose for which it was filed, and whether the respondents were aware of it, and had an opportunity to respond but failed to respond.

Furthermore since no evidence was led on salaries and allowances due to the appellants the sum of 13,636,889.00 claimed is highly suspect. In the circumstances no probative value can be ascribed to the contents of the affidavit. This becomes so obvious when the appellants' counsel claims N10,451,989.00 for his clients as the sums due to them. In the absence of the fact that no evidence was led to establish the sums due to the appellants as salaries and allowances no specific sum can be ordered by this court. (p. 2947 E)

COURTS - Justice - Upholding of

4. All Courts in the land are courts of Law and Equity. A court of equity will not allow the executive to get away with wrongful acts rather it would call the executive to order and ensure that justice is not only done but seen to be done. Judges are expected at all times to decide according to the justice of the case and what is right, and always lean towards equity instead of strict Law. Once the learned trial judge was unable to order the reinstatement of the appellants because their tenure had lapsed, His lordship was right to order that they be paid their entitlements in lieu of their reinstatement, since unpaid salaries are necessary and incidental to the relief seeking reinstatement. (p. 2948 A/B)

ADMINISTRATIVE LAW - L.G. council - Removal of officials - Basis

5. Elected persons for a fixed term of years can only be removed from office if found to be in breach of the rules governing the office or for infamous conduct. If such a person is removed from office in a manner the court finds to be wrong he shall be entitled to all his entitlement, to wit: salaries, allow-

ances etc.

The appellants were elected members of Local Government Councils in Abia State, as Chairman, Vice Chairman, and Councillors. It is unfortunate that they should come to court to ask for their entitlements in such circumstances. It goes without saying that the appellants ought to have been paid at the time the Governor exercised strange and dictatorial powers unknown to our laws to bring to an end the tenure of the Councils members when their fixed term of office had not expired.

In this situation the equitable maxim becomes applicable. Equity regards as done that which ought to have been done. Since they were illegally removed as elected officials of the Local Government Councils, their entitlements should be paid to them. (pp. 2948 A/2949 G)

JUDGMENTS - Consequential order - Meaning of

6. Consequential means following as a result of inference, following or resulting indirectly. A consequential order is an order that gives effect to a judgment. It gives meaning to the judgment. It is traceable or following from the judgment prayed for and made consequent upon the reliefs claimed by the plaintiff. A consequential order must be incidental and flow directly and naturally from reliefs claimed. It is an offshoot of the main claim and it owes its existence to the main claim. It gives effect to the judgment already given.

In this case the appellants' salaries flows naturally from the relief which sought reinstatement as a result of wrongful termination.

Salaries for a job done go together. A consequential order can in the circumstances of this case be made to order the payment of the appellants' salaries for the residue of 23 months. (p. 2948 E/H)

SUPREME COURT - Consequential order - Grant - Basis

7. To my mind if this court orders that a specific sum of money be paid to the appellants when there is no evidence to support the sum ordered to be paid, that would be wrong as a

consequential order should not be given for unproven relief.
(p. 2948 H)

SUPREME COURT - Justice - Consequential order - Grant

8. Furthermore section 22 of the Supreme Court Act provides:

“22. The Supreme Court may, from time to time, make any order necessary determining the real question in controversy in the appeal, and may amend any defect or error in the record of appeal, and may direct the court below to inquire into and certify its finding on any question which the Supreme Court thinks fit to determine before final judgment in the appeal and may make an interim order or grant any injunction which the court below is authorized to make or grant and may direct any necessary inquiries or accounts to be made or taken and generally shall have full jurisdiction over the whole proceedings as if the proceedings had been instituted prosecuted in the Supreme Court as a court of first instance and may rehear the case in whole or in part or may remit it to the court below for the purpose of such rehearing or may give such other directions as to the manner in which the court below shall deal with the case in accordance with the power of that court.”

A careful reading of the above provisions reveals unlimited power available to this court to do substantial justice in deserving cases. A consequential relief can be granted by this court in the interest of justice even where such has not been specifically claimed. (p. 2949 B)

REPRESENTATION

Dr. L.O. Arinze, A. Ugwuanyi, E. Mgbemele, for the Appellants
K. Umeh (A. G. Abia State), V. Offia, N. Akinola ADCL, for the Respondents

CASES REFERRED TO

Nneji v. Chukwu (1988) 3 NWLR (pt. 81) 184
Sadiq v. Bundi (1991) 8 NWLR (pt. 210) 443
Usibaifo v. Usibaifo (2005) 3 NWLR (pt. 913) 665

- Awoniyi v. Amore (2000) 6 SC (pt. i) 103
A.G. Federation v. AIC Ltd (2000) 10 NWLR (pt. 675) 293
Akinbobola v. Plison Fisko (1991) 1 NWLR (pt. 167) 270
Gbadamosi v. Alete (1993) 1 NWLR (pt. 293) 113
Obayabona v. Obazee (1972) 5 SC 247
Inakoju v. Adeleke (2007) 4 NWLR (pt. 1025) 423 B
FBN PLC v. Associated Motors Co. Ltd (1998) 10 NWLR (pt. 571) 441
Labode v. Otuba (2001) 7 NWLR (pt. 712) 256
Oyekanmi v. NEPA (2000) 12 SC (pt. 1) 70 C
Amaechi v. INEC (2008) 1 LLR (pt. 247) 237
Ogunyande v. Oshunkeye (2007) 15 NWLR (pt. 1057) 218
Odofin v. Agu (1992) NWLR (pt. 229) 350

STATUTES REFERRED TO

- Constitution of the Federal Republic of Nigeria 1999, s. 7 D
Local Government Law of Abia State of Nigeria No.5 of 1999, ss. 19(3), 25
Abia State Local Government (3rd Amendment) Law 2004, ss. 4, 5 E
Supreme Court Act, s. 22

LEAD JUDGMENT BY RHODES-VIVOUR JSC

This is an appeal from the judgment of the Court of Appeal, Owerri Division delivered on the 23rd day of April, 2010.

On the 12th day of September, 2006, the appellants, as plaintiffs sued the respondents on an originating summons wherein they asked the following questions:

(i) Whether by the provisions of section 7 of the 1999 Constitution and the provisions of the Abia State Local Government Law as amended, the 1st defendant has the Legal competence to dissolve the Local Government Councils of Abia State and appoint Caretaker Committees to replace elected members of the said Local Government Council.

(ii) Whether given the provisions of Section 7 of the Constitution, sections 19(3) and 25 of the Abia State of Nigeria Local Government Law, No.5 of 1999 and sections 4 and 5 of the Abia State Local Government (third Amendment) Law, 2004 the tenure of both the Chairman and Vice Chairman as well as the Councillors is three

years or two years.

(iii) Whether the tenure of the Chairman and the Vice-Chairman as well as Councillors elected sometime in March 2004 and sworn in sometime in June 2004 will be regulated by the provisions of the Abia State Local Government (third Amendment) Law, 2004 which was passed sometime in September 2004 and assented to sometime in October 2004 but was made retroactive and came into effect on the 11th March, 2004 or the provisions of sections 19(3) and 25 of the Abia State of Nigeria Local Government law, No. 5 of 1999 which was the Law in force that regulated the conduct of the election of the plaintiffs as well as regulated their tenure.

(iv) Whether given the provisions of section 7 of the 1999 Constitution, section 19(3) and 25 of the Abia State of Nigeria Local Government Law, No 5 of 1999 and sections 4 and 5 of the Abia State Local Government (third Amendment) Law, 2004 the tenure of the plaintiffs as elected Councillors will commence from the date of their swearing in or the date of their judgments or the date of the bye-election respectively.

And sought the following reliefs:

“1. A declaration that the 1st plaintiff was elected for the first time on the 14th December 2005 and took the oath of office on the 14th day of January, 2006 while the 2nd plaintiff was returned on the 25th day of April, 2005 and took the oath of office on the 17th day of May, 2005.

2. A declaration that the tenure of the currently elected members of the Local Government Councils of Abia State is regulated by the provisions of section 25 of the Abia State of Nigeria Local Government Law, No. 5 of 1999 and not sections 4 and 5 of the Abia State Local Government (Third Amendment) Law, 2004.

3. A declaration that the tenure of the 1st plaintiff as an elected councilor of the Aba South Local Government Council started running from the date she took the oath of office which is the 18th day of January, 2000 while the tenure of the 2nd plaintiff as an elected Councillor of the Aba South Local Government Council started running from the date he took the oath of office which is the 17th day of May, 2005.

4. A declaration that the 1st defendant or any of its agents lack the legal competence to dissolve the elected council of the Local

Government Councils of Abia State and appoint Caretaker Committees or Transition Committees.

5. *A declaration that the dissolution of the elected Chairman, Vice-Chairman and Councillors of the Local Government Councils of Abia State and the appointment of the 4th - 7th defendants and other persons as Chairmen and members of Transition Committees of the Local Government Councils by the 1st defendant are illegal, ultra vires null and void and of no effect whatsoever.*

6. *An order dissolving the appointment of the 4th - 7th defendants and other persons appointed as chairmen and members of Transition Committees or Caretaker Committees of the Local Government Councils of Abia State.*

7. *A declaration that as at the date of dissolution of the Local Government Councils in Abia State by the 1st defendant, the 1st and 2nd plaintiffs had a 17 and 11 months residue of their tenures respectively if the court holds that the plaintiffs are running 2 years tenure 29 and 23 months residue of their tenures respectively if the court holds that the plaintiffs are running 3 years tenure.*

8. *An order compelling, the 1st defendant to reinstate the plaintiffs as Councillors of Aba South Local Government Council to complete the residues of their respectively tenures."*

After considering written addresses filed by both sides, the learned trial judge delivered a considered judgment on the 10th of October, 2002. His lordship granted reliefs 1 and 3, and refused reliefs 2, 4, 5, 6 and 7.

In the concluding part of the judgment the learned trial judge had this to say:

"Having held that the plaintiffs were running two years tenure the plaintiffs still have unexpired tenure of 17/6/2006 to 13/1/2008 for the 1st plaintiff and 17/6/06 to 16/5/2007 for the 2nd plaintiff."

"I order that the plaintiffs be paid salaries and allowances as Councillors for the unexpired tenure of their office as Councilors..."

Dissatisfied with the judgment, Chigozie Eze and Ijeoma O. Ujournuna who were the plaintiffs at the trial court filed an appeal. All the other appellants joined as interested parties. The appeal was heard by the Owerri Division of the Court of Appeal. On 23rd of April, 2010 that court granted all the reliefs, except relief No. 8. The Court said:

“Appellants relief No. 8 for an order compelling the 1st defendant/respondent to reinstate the plaintiffs/appellants is now impossible to grant as the appellants said tenure had lapsed by effluxion of time.”

On unexpired tenure the Court said:

B *“...as at the date of dissolution of the Local Government Councils in Abia State by the 1st defendant/respondent the 2nd plaintiff/appellant had a residue of 23 (twenty-three) months of tenure as the appellants are running a 3 (three) years tenure.”*

C This is a further appeal by the appellants’ to this court. In accordance with Rules of this court briefs were filed and exchanged. At the hearing of the appeal on the 14th of April, 2014 learned counsel for the appellants’ Dr. L. B. Arinze adopted the appellants’ briefs filed on the 28th of July, 2010 and their reply brief deemed duly filed and
D served on the 1st of November 2012. Learned counsel withdrew Issue No. 1 and urged this court to grant issue 2.

Learned counsel for the respondent, Mr. K. Umeh, adopted the respondents brief deemed duly filed and served on the 1st November 2012. He also withdrew Issue No. 1 and urged this court to
E dismiss the appeal. With the withdrawal of Issue 1 in both counsel briefs, there is now a sole Issue contested by both sides.

The sole issue for consideration formulated by the appellants’ is:

F Whether the lower court was not in error when it failed to make a consequential order directing the payment of salaries and allowances to the appellants’ after granting all the appellants reliefs except relief No. 8, which sought to reinstate them to their offices.

Learned counsel for the respondents’ adopted the sole issue
G formulated by the appellants.

Learned counsel for the appellants observed that it is futile to grant all the declarations in favour of the appellants without granting any consequential order that would be of benefit to them, since they won the case. He argued that the court can grant a relief that is incidental necessary to the relief claimed even if such incidental relief
H had not been expressly claimed. Reliance was placed on: Nneji v. Chukwu (1988) 3 NWLR pt. 81 p. 184, Sadiq v. Bundi (1991) 8 NWLR pt. 210 p. 443, Usibaifo v. Usibaifo (2005) 3 NWLR pt. 913 p. 665.

Concluding learned counsel urged this court to make a mandatory order directing the 1st defendant/respondent to pay the appellants 10,451,989.00 (Ten Million four hundred and fifty-one thousand, nine hundred and eighty-nine naira per year to each of the appellants in lieu of their reinstatement into office to complete the residue of 23 months of tenure, being their salaries and allowances B for the period.

Learned counsel for the respondent contended that it is misconceived for the court to order payment and allowances to the appellants since there is no power in the courts to grant unclaimed reliefs. He observed that this court and the court below are not Father C Christmas that dole out unclaimed reliefs. Relying on: *Awoniyi v. Amore* (2000) 6 SC (pt. i) p. 103, *A.G. Federation v. AIC Ltd* (2000) 10 NWLR pt. 675 p. 293, *Akinbobola v. Plison Fisko* (1991) 1 NWLR pt. 167 p. 270, *Gbadamosi v. Alete* (1993) 1 NWLR pt. 293 p. 113. D

Learned counsel observed that since the court held that the claim of the appellants had elapsed by effluxion of time the only remedy is to strike out the appeal as monetary compensation cannot possibly follow consequentially from a suit that is academic and spent.

He urged this court to discountenance the appellants' arguments in this issue. E

The appellants were elected by the people of Abia State to serve as Chairmen, Vice-Chairmen and Councillors in the State's Local Government Councils.

The tenure was for a fixed term of three years (3 years). F

The appellants assumed office and commenced the work for which they were elected. On the 16th day of June, 2000 the Governor (i.e. the 1st respondent) dissolved all the Local Government Councils and appointed Caretaker Committees. G

Relevant extracts from the Court of Appeal judgment delivered on the 23rd day of April, 2010 relevant to this appeal is as follows:

1. The 1st respondent or any of its agents lack the legal competence to dissolve the elected councils of Abia State and appoint H Caretaker Committees or Transition Committees.

2. The dissolution of the elected Chairmen, Vice-Chairmen and Councillors of the Local Government Councils of Abia State and the appointment of the 4th - 7th respondents and other persons as Chair-

men and members of Transition Committees of the Local Government Councils by the 1st defendant/respondent are illegal, ultra, vires, null and void and of no effect whatsoever.

3. As at the date of dissolution of the Local Government Councils in Abia State by the 1st respondent, the 2nd appellant had a
B residue of 23 (twenty-three) months of tenure as the appellants are running a 3 (three) years tenure.

4. For an order compelling the 1st respondent to reinstate the appellants is now impossible to grant as the appellants said tenure
C had lapsed by effluxion of time.

***The findings of the Court of Appeal which remain inviolate in the absence of a cross-appeal by the respondents is that the Governor of Abia State (the 1st respondent) was wrong to remove democratically elected Local Government
D Chairmen and Councilors and replace them with unelected Chairmen and Councilors, and the Chairmen and Councilors removed by the 1st respondent still had 23 months left to complete their tenure at the time they were removed from office.***

***Section 7(1) of the Constitution states that:
E “7(1) The System of Local Government by Democratically elected Local Government Councils is under this Constitution guaranteed; and accordingly the Government of every state shall, subject to section 8 of this Constitution ensure their existence under a law which provides for the establishment structure, composition, finance and functions of such
F councils.”***

On a careful reading, of the above it becomes clear that it is the duty of the Governor to ensure that the system of Local Government continues unhindered.
G

***Dissolving Local Government Councils and replacing them with Caretaker Committee amounts to the Governor acting on his whim and fancies, unknown to our laws, clearly illegal. It is the duty of the Governor to ensure their existence
H rather than being responsible for destroying them.***

It amounts to Executive recklessness for the 1st respondent to remove from office democratically elected Chairmen, and Councillors and replace them with unelected Chairmen and Councillors under whatever guise. The findings of the Court

of Appeal are correct and such an act by the 1st respondent should on no account be ever contemplated. It is illegal, and wrong.

How much is due to the appellants as salaries, allowances etc for the unexpired term of 23 months?

An Appeal Court is entitled to look at the Record of Appeal and take notice of its contents. On page 64 of the Record of Appeal is an untitled affidavit deposed to by an unnamed 1st plaintiff. It contains four paragraphs and paragraph 2 reads:

“5. That I know as a fact that my total salaries and allowances for the unexpired residue of my tenure is N13,636,889.00 (Thirteen Million Six Hundred and Thirty-Six Thousand, Eight Hundred and Eight-Nine Naira).”

The concluding paragraph of the appellants brief reads in part:

“...make a mandatory order directing, the 1st defendant/respondent to pay the appellants the undisputed sum of N10,451,989.00 (Ten Million Four Hundred and Eighty Nine Naira) per year to each of the appellants in lieu of their reinstatement into office to complete the residue of 23 months of tenure, being their salaries and allowances for the period.”

In the affidavit referred to above there is nothing, in it or in the Record of Appeal to show the purpose for which it was filed, and whether the respondents were aware of it, and had an opportunity to respond but failed to respond.

Furthermore since no evidence was led on salaries and allowances due to the appellants the sum of 13,636,889.00 claimed is highly suspect. In the circumstances no probative value can be ascribed to the contents of the affidavit. This becomes so obvious when the appellants’ counsel claims N10, 451,989.00 for his clients as the sums due to them. In the absence of the fact that no evidence was led to establish the sums due to the appellants as salaries and allowances no specific sum can be ordered by this court.

Are the appellants entitled to be paid their salaries and allowance etc?

After the learned trial judge refused to reinstate the appellants because their tenure had lapsed by effluxion of time his Lordships said:

“...to meet the justice of this case, I order that the plaintiffs be paid salaries and allowances as Councilors for the unexpired tenure of their office as Councilors...”

All Courts in the land are courts of Law and Equity. Elected persons for a fixed term of years can only be removed from office if found to be in breach of the rules governing the office or for infamous conduct. If such a person is removed from office in a manner the court finds to be wrong he shall be entitled to all his entitlement, to wit: salaries, allowances etc. A court of equity will not allow the executive to get away with wrongful acts rather it would call the executive to order and ensure that justice is not only done but seen to be done. Judges are expected at all times to decide according to the justice of the case and what is right, and always lean towards equity instead of strict Law. Once the learned trial judge was unable to order the reinstatement of the appellants because their tenure had lapsed, His lordship was right to order that they be paid their entitlements in lieu of their reinstatement, since unpaid salaries are necessary and incidental to the relief seeking reinstatement.

Can the Court give a consequential order that the appellant's entitlements be paid?

Consequential means following as a result of inference, following or resulting indirectly. A consequential order is an order that gives effect to a judgment. It gives meaning to the judgment. It is traceable or following from the judgment prayed for and made consequent upon the reliefs claimed by the plaintiff. A consequential order must be incidental and flow directly and naturally from reliefs claimed. It is an offshoot of the main claim and it owes its existence to the main claim. It gives effect to the judgment already given. See *Obayabona v. Obazee* (1972) 5 SC p. 247, *Inakoju v. Adeleke* (2007) 4 NWLR pt. 1025 p. 423.

To my mind if this court orders that a specific sum of money be paid to the appellants when there is no evidence to support the sum ordered to be paid, that would be wrong as a consequential order should not be given for unproven relief. In this case the appellants' salaries flows naturally from the

relief which sought reinstatement as a result of wrongful termination.

Salaries for a job done go together. A consequential order can in the circumstances of this case be made to order the payment of the appellants' salaries for the residue of 23 months. B

Furthermore section 22 of the Supreme Court Act provides:

"22. The Supreme Court may, from time to time, make any order necessary determining the real question in controversy in the appeal, and may amend any defect or error in the record of appeal, and may direct the court below to inquire into and certify its finding on any question which the Supreme Court thinks fit to determine before final judgment in the appeal and may make an interim order or grant any injunction which the court below is authorized to make or grant and may direct any necessary inquiries or accounts to be made or taken and generally shall have full jurisdiction over the whole proceedings as if the proceedings had been instituted prosecuted in the Supreme Court as a court of first instance and may rehear the case in whole or in part or may remit it to the court below for the purpose of such rehearing or may give such other directions as to the manner in which the court below shall deal with the case in accordance with the power of that court." C D E F

A careful reading of the above provisions reveals unlimited power available to this court to do substantial justice in deserving cases. A consequential relief can be granted by this court in the interest of justice even where such has not been specifically claimed. G

***"Justicia vultus in ut perfectus quod futures perfectus"* means "Equity looks on that as done which ought to be done."**

The appellants were elected members of Local Government Councils in Abia State, as Chairman, Vice Chairman, and Councillors. It is unfortunate that they should come to court to ask for their entitlements in such circumstances. It goes without saying that the appellants ought to have been paid at the time the Governor exercised strange and dictatorial powers unknown to our laws to bring to an end the tenure H

of the Councils members when their fixed term of office had not expired.

In this situation the equitable maxim becomes applicable. Equity regards as done that which ought to have been done. Since they were illegally removed as elected officials of the Local Government Councils, their entitlements should be paid to them.

In the absence of a cross-appeal from the decision of the Court of Appeal that the appellants were wrongly removed from office, the appellants are entitled to be paid all their outstanding salaries, allowances etc for 23 months.

For the avoidance of doubt it is hereby ordered that the 1st respondent pays immediately to all the appellants their Salaries, allowances for 23 months.

Appeal allowed. Costs of N250,000 to the Appellants.

ONNOGHEN JSC

I have had the benefit of reading in draft the lead judgment of my learned brother, RHODES-VIVOUR, JSC just delivered.

I agree with his reasoning and conclusion that the appeal is meritorious and should be allowed.

The facts of this case are not in dispute. What was disputed is the issue as to whether at the time of election of the appellants their tenure of office was three years or two years. The lower court held that appellants are entitled to a three years tenure. There is no appeal against that finding.

However, the lower court after holding that appellants were shortchanged in respect of their tenure and that the relief of reinstatement cannot be granted due to effluxion of time, left the appellants without monetary compensation in lieu of reinstatement even though the learned trial judge had made such an order by way of consequential relief.

It is a general principle of law of great antiquity to the effect that where there is a violation of right there must be a remedy. Put in another way, *ubi jus ibi remedium* - meaning where there is a right there is a remedy - see *Bello v. A-G Oyo State* (1986) 5 NWLR (pt. 45) 828; *FBN PLC v. Associated Motors Co. Ltd* (1998) 10 NWLR

(pt. 571) 441; Labode V. Otuba (2001) 7 NWLR (pt. 712) 256, Oyekanmi v. NEPA (2000) 12 SC (pt.1) 70 at 84.

In the instant case the appellants have been adjudged to be entitled to a three year tenure of office which they did not fully utilize due to the deliberate actions of the respondent. It follows therefore that they are entitled to a remedy by way of monetary compensation B for the unexpired period of their truncated tenure, in view of the fact that they cannot be reinstated to complete their tenure.

It is under the above general principle of law that another principle was developed or emerged; that of consequential relief which is a principle that enables a court of law to grant to a party a relief C incidental to the main relief(s) and which was/were not claimed by the party in question. It is designed to enable the court do justice between the parties. It is in line with the above that this court had ordered payment of salary and wages for the intervening period even D though not expressly claimed, such as in the case of Ekpenyong v. Nyong (1975) 2 S.C. 7 at 81- 82; Nneji v. Chukwu (1985) 3 NWLR (pt. 81) 184 at 208; Sadiq v. Bundi (1991) 8 NWLR (pt 210) 443 at 457; Ladejobi v. A.G. Federation (1982) 3 NCLR 564; Usiobaifo v. Usiobaifo (2005) 3 NWLR (pt. 913) 665 at 675; Amaechi v. INEC E (2008) 1 LLR (pt. 247) 237; Ogunyande v. Oshunkeye (2007) (2007) 15 NWLR (pt. 1057) 218.

In the instant case if appellants are left with the declaration that they were entitled to a three year tenure, which had long lapsed F without a consequential order by way of payment of salaries and allowances to them for the unexpired period they would have served, the mere declaratory order would confer no material benefit on them: that, to me, would not be justice.

It is for the above reasons and the more detailed reasons given G in the said lead judgment of my learned brother, RHODES-VIVOUR, JSC that I too, hold that the appeal has merit and allow same.

I abide by the consequential orders made in the lead judgment including the order as to costs. Appeal allowed.

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GALADIMA JSC

I have had the privilege of reading in advance the judgment of my learned brother RHODES-VIVOUR JSC, just delivered. I agree

entirely that this appeal is meritorious and ought to be allowed. The facts and circumstances leading to this appeal as borne from the record and carefully set out in the leading judgment need no further adumbration by me. The only issue here is whether the court below erred when it failed to make a consequential order, directing the payment
B of salaries and allowances to the appellants after granting all the appellants' reliefs except relief No. 8, which sought to reinstate them to their offices.

I agree with the learned counsel for the appellants that having
C resolved all the issues in favour of them, the court below ought to have made some consequential orders to give effect to the judgment. Learned counsel for the respondents to my mind is wrong to have contended that this court cannot make an order for relief not asked for. This is not the position of the law in all circumstances.

D Courts of law have the jurisdiction to make consequential orders where necessary. See *USIOBAIFO v. USIOBAIFO* (2005) 3 NWLR (pt 913) 565 to 692. In the instant appeal, considering the relief before the trial court, the learned trial Judge refused to order reinstatement of the appellants but it held that their removal from
E office as councilors of their respective Local Government was unconstitutional. The learned trial Judge was right to have ordered that the appellants be paid their salaries and allowances for the unexpired tenure of their office.

F Clearly the appellants had a residue of 23 months of tenure as they were running three-year tenure. A consequential relief that can be granted, by this court to meet the justice of this case is that the appellants be paid without further delay their outstanding salaries and allowances for 23 months.

G In view of the foregoing and for detailed reasoning in the leading judgment, I too allow the appeal and abide by order made as to costs.

H **AKA'AH S JSC**

I agree with the judgment just delivered by my learned brother, Bode Rhodes-Vivour, JSC. The frequent dissolution of Local Governments and appointment of Caretaker Councils by State Governors in this country is not only illegal but highly undemocratic as

Section 7(1) of the Constitution of Federal Republic of Nigeria 1999 (as amended) guarantees the existence of democratically elected local government councils. It provides:

“The system of local government by democratically elected local government councils is under this Constitution guaranteed; and accordingly, the Government of every State shall, subject to Section 8^B of this Constitution, ensure their existence under a Law which provides for the establishment, structure, composition, finance and functions of such councils”. If general elections are held every four years to elect the President, Governors and Members of the National and State Assemblies, there is no justifiable reason, except where a state of emergency has been declared, for a State Governor to dissolve a Local Government and appoint a Caretaker Council in its place. If the State Government through a law passed by the State House of Assembly decides that the life-span of the Local Government council should be 2 or 3 years, the State Independent Electoral Commission established under section 197 of the Constitution should exercise its mandate as spelt out in Part II of the Third Schedule to organize, undertake and supervise all elections to local government councils within the State as soon as the Local Government Councils are dissolved.^C

Although the appellants pressed for their reinstatement which cannot be ordered since the life-span of the Local Governments to which they were elected have become spent, they should be paid their salaries and allowances for the unexpired period of their tenure.^D The appeal therefore succeeds and it is hereby allowed. I endorse the order on costs made by my noble Lord, Rhodes-Vivour JSC.^E

OKORO JSC

I have had a preview of the judgment of my learned brother, Bode Rhodes-Vivour, JSC, just delivered with which I am in complete agreement that there is merit in this appeal and ought to be allowed. The facts leading to this appeal are well captured in the lead judgment and I do not intend to repeat the exercise. The lone issue left for the determination of this appeal states thus:^F

“Whether the lower court was not in error when it failed to make a consequential order, directing the payment of salaries and

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allowances to the appellants, after granting all the appellants' reliefs except relief No. 8 which sought to reinstate them to their offices."

Learned counsel for the respondents agreed this is the only issue left for the determination of this appeal.

In his argument, learned counsel for the appellants submitted that having resolved all the issues in favour of the appellants, the court below ought to have made some consequential orders to give effect to the judgment citing and relying on a number of cases including *Usiobaifo v. Usiobaifo* (2005) 3 NWLR (Pt. 913) 665. He then urged this court to resolve the lone issue in favour of the appellants.

Learned counsel for the respondents contended that this court cannot make an order for relief not asked for as the court is not a Father Christmas. He cited some cases in support including *Awoniyi v. Amore* (2000) 6 SC (Pt. 1) 103 and *Akinbobola v. Plisson Fisko Nigeria Ltd* (1991) 1 NWLR (Pt. 167) 270.

There is no doubt that one of the inherent powers of the court is to make consequential orders in deserving cases. A consequential order is one which flows directly and naturally from the decision or order of the court made on the issues in litigation and inevitably consequent upon it. Such order is one giving effect to a judgment or order to which it is consequential. It follows that a consequential order must be directly traceable to or flows from that other judgment or order duly prayed for and made. See *Funduk Engineering Ltd v. James Mcarthumps & Ors* (1996) 7 NWLR (Pt. 459) 153, Chief T. A. L. Akapo (*Ojora of Lagos*) v. *Alhaji H. A. Hakeem-Habeeb & Ors* (1992) 7 SCNJ 119, *Peter Adeboye Odofin & Anor. v. Chief Agu & Anor* (1992) NWLR (Pt. 229) 350, *Obayabona v. Obazee* (1970) 5 SC 247.

In the instant appeal, the learned trial judge refused to order reinstatement of the appellants though it held that their removal from office by the 1st respondent was unconstitutional. The reason is not far fetched. Their tenure had expired by effluxion of time. The learned trial judge then ordered that they be paid salaries and allowances for the unexpired tenure of their office. The Court of Appeal agreed with the trial court that an order compelling the Governor to reinstate them is now impossible to grant as their tenure had lapsed by effluxion of time.

Although the trial court held that the appellants had a two

years tenure, the Court of Appeal overruled this and held that the appellants have a three years tenure. There is no appeal against the order of the trial court that the appellants be paid for their unexpired tenure. Also, there is no appeal against the decision of the Court of Appeal that the appellants had a residue of 23 months of tenure as they are running a three years tenure.

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Clearly, there is a subsisting order of court that the appellants be paid their salaries and allowances for their unexpired tenure. There is also a subsisting judgment that the appellants have a 23 months unexpired tenure. For me, a consequential order ought to have been made to give effect to these subsisting judgments and order. An order for the 1st respondent to pay to the appellants their salaries and allowances for the unexpired tenure adjudged by the two lower courts clearly fits into the definition of a consequential order.

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It is on the above reasons and the elaborate ones adumbrated in the lead judgment that I agree that a consequential order be and is hereby made directing the 1st respondent to pay all the appellants their salaries and allowances obtainable when they were in office for 23 months. I abide by the order as to costs.

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