

SUPREME COURT OF NIGERIA

FRIDAY 28TH NOVEMBER, 2014. SC. 477/2013(R)

**CORAM:- I. T. MUHAMMAD, J. A. FABIYI, S. N. NGWUTA,
M. D. MUHAMMAD, C. B. OGUNBIYI,
K. M. O. KEKERE-EKUN, J. I. OKORO, JJSC**

ALL PROGRESSIVE CONGRESS (APC) APPELLANT
AND

1. INDEPENDENT NATIONAL
ELECTORAL COMMISSION
2. PEOPLES DEMOCRATIC PARTY
3. CAPTAIN IDRIS WADA
4. ACTION CONGRESS OF NIGERIA
5. PRINCE ABUBAKAR AUDU RESPONDENTS
6. ALL NIGERIA PEOPLES PARTY (ANPP)
7. ELDER UBOLO OKPANACHI
8. OCHOLI E. JAMES, SAN APPLICANT

IN RE:

CONGRESS FOR PROGRESSIVE CHANGE
AND

1. INDEPENDENT NATIONAL
ELECTORAL COMMISSION
2. PEOPLES DEMOCRATIC PARTY
3. CAPTAIN IDRIS WADA
4. ACTION CONGRESS OF NIGERIA
5. PRINCE ABUBAKAR AUDU
6. ALL NIGERIA PEOPLES PARTY (ANPP)
7. ELDER UBOLO OKPANACHI
8. OCHOLI E. JAMES SAN

APPEALS - Preliminary objection - Determination - Where there is objection against consideration/continuation of a process - The objection should be determined first (H1)

APPEALS - Filing - Legal capacity - CPC lacked the capacity to file the appeal - As it has ceased to exist as a political party - From 31st July 2013 when it metamorphosed into APC (H2)

APPEALS - Continuation of - Basis - Appeal can survive the person who initiated it - Subject to if such a person had the competence to do so - And the subject matter must itself pass the test of validity (H3)

MOTIONS - Document - Failure to exhibit - Applicant who fails to furnish court with vital documents - Does so at his own peril - As his application may be refused - And he cannot be heard to complain (H4)

MOTIONS - Documents - Withholding of - Refusal by applicant to exhibit vital documents - May tantamount to withholding of evidence - Which if produced would be unfavourable to applicant (H5)

DOCUMENTS - Commencement date - Where there is specific date of commencement - The same must be taken as the effective date - Irrespective of the date when signature was appended (H6)

FACTS

Before the Supreme Court of Nigeria, applicant/appellant brought this application seeking inter alia for an order substituting appellant in Appeal No. SC. 477/2013 with All Progressive Congress. The application was supported by 19 paragraph affidavit. 3rd respondent filed preliminary objection on the ground that by filing the appeal on 07/08/2013 after appellant had ceased to exist as a political party on 31/07/2013, the appeal is no longer competent as the same was initiated by a dead person in law. Following the swearing of 3rd respondent as the Governor of Kogi State on the basis of his victory at the 03/12/2011 gubernatorial poll, appellant and 8th respondent had commenced an action at the Federal High Court via an originating summons which was later amended.

Preliminary objections against the jurisdiction of the court to entertain action were filed by each of 1st, 2nd and 3rd respondents. The preliminary objections were upheld leading to a striking out of the action. On appeal to the Court of Appeal, the appeal was dismissed and the decision of the trial court that it lacked jurisdiction to entertain appellant's case was affirmed. Aggrieved, appellant lodged Appeal No. SC. 477/2013 in the Supreme Court. Appellant filed the appeal with the name – Congress for Progressive Change. Appellant

has now brought the present application seeking to substitute the earlier name with All Progressive Congress following its merger with Action Congress of Nigeria and All Nigerian Peoples Party.

HELD (Unanimously dismissing the application per **I.T. MUHAMMAD JSC**)

APPEALS - Preliminary objection - Determination

1. Soon thereafter, Mr. Uche, SAN, for the 3rd respondent, stood up to say that he filed a Notice of Preliminary Objection and counter-affidavit. Mr. Ajana, for 2nd respondent, stated that he too filed a Notice of Preliminary Objection. None of the other counsel for the respondents filed any objection. This court granted permission to the objectors to proceed with their objections first. The trite law is that where there is an objection against consideration/continuation of a process that objection should be determined first. (p. 3212 G)

APPEALS - Filing - Legal capacity

2. On 31st July, 2013, INEC passed “death sentence” on CPC which was to take effect from that date. Thus, anything done by CPC, any day after the 31st of July, 2013, was done by a dead person whether in the grave or in the mortuary (see Exh. “E”). The position of the law on the status of a dead person has been severally stated by this court and other courts.

Where Mr. Okutepa, SAN, missed the point in this application is that, CPC lacks the capacity as the mere fact of its death before filing the appeal on record deprived it of such competence/capacity. The courts, too, I am sure, must be wary, loathe, reluctant or scared of accepting appeal from a dead person.

My lords, the learned SAN for the applicant, was himself not denying or doubting the death of CPC as a party. In applications which he filed before this court for same substitution which he is asking for now, agreed in his own words, that CPC, before filing the said appeal was dead.

Thus, the effective date as per Exh. “E”, when the coalition of the 3 political parties ACN, ANPP and CPC, metamorphosed

into All Progressive Congress (APC), and which signaled the final death of each of the 3 parties is the 31st of July, 2013. CPC, from that date was no more a political party and lacked the capacity to carry out any legal business transaction including filing an appeal.

B My noble lordships, consequent upon the final and irretrievable death of CPC on the 31st of July, 2013 no appeal or any process for that matter is maintainable in the name of CPC before any court of law. If there is or (are) then that appeal or process or anything hinged on the appeal, is afflicted by the death of its initiator (the appellant). Such an appeal or process is as well dead and lacks legal capacity to be maintained. The well known dictum of Lord Denning is that one cannot put something on nothing and expect it to stand. It will
C certainly collapse.
D

The application before this court is unmeritorious and unmaintainable. It is accordingly dismissed.

(pp. 3223 B/3224 B/3226 F)

E APPEALS - Continuation of - Basis

3. I agree with Mr. Okutepa, SAN that an appeal or a suit (in some circumstances) can survive the person that initiated it. That of course is subject to the condition that the person filing or initiating such an appeal or suit is, from the outset, imbued with competence to do so, equally, the subject matter of the appeal or suit must itself pass the test of validity. Where such conditions are lacking, even if the appeal process or the suit is commenced, it will have to abate once that militating
F fact has been brought to the attention of the court. (p. 3223 H)
G

Document - Failure to exhibit

4. throughout the application under consideration and the further affidavit in support of the motion filed by Mr. Okutepa,
H SAN, no document was attached as an exhibit to support what was prayed for. For instance, the documents for merger of the political parties, the Notice of Appeal filed; the certificate of Registration of the new party, if any, etc are in my view, strong supporting documents which ought to have been exhibited by

the applicant. It is the practice in all the courts of law that an applicant who fails to furnish the court with all necessary and vital document(s) for the due consideration of his application does so at his own peril as his application may likely be refused and he cannot be heard to complain. (p. 3225 B)

B

Documents - Withholding of

5. Not only that, my lords, I tend to agree with Mr. Uche, SAN, that refusal by the applicant to exhibit such vital documents such as the certificate of merger may, in fact, tantamount to withholding of evidence. Section 167(d) of the Evidence Act is very clear on that where it provides that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it. (p. 3225 F)

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DOCUMENTS - Commencement date

6. Thirdly, I think it stands to reason that where a document has been signed and in it is provided a specific date of commencement or date when effect is to be given or action to be taken, that date must be taken to be the 'effective' or commencement date irrespective of the date when the officer signing the document on behalf of the authority appended his signature. That specific date of commencement can be with retrospective effect, it may commence immediately after or on the date of signing or it may even be in the future. In public and civil services and of course, with private corporations, appointments, promotions or demotions may be done with retrospective effect or immediately. If it is retrospective, the officers concerned take arrears of their entitlements attached to that office. On the other hand, if the document is silent on the commencement date, then it will be presumed that effect is to be given to it from the date the officer signed the document. (p. 3225 H)

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NOTABLE POINTS OF INTEREST

I.T. MUHAMMAD JSC

1. Objection – Meaning of

It is significant to state from the out-set my lords, that an objection ordinarily is that act which is said or felt in opposition or disagreement; the reason or cause for disagreeing, or disputing. It is an adverse reason or argument. It is a way of saying that one does not like or agree with what the other wants to do, or has indeed started doing
 B it or has even done it. In legal parlance, however, objection represents a formal statement opposing something that has occurred, or is about to occur in court and the objector is seeking court's immediate ruling on the point. It may be in general or specific form. An objection is general where no grounds in support of the objection are
 C given. It is specific if it is supported by one or more grounds.
 (p. 3214 F)

2. Preliminary objection – Meaning of

D Anything "Preliminary" denotes anything coming and usually leading up to the main part of that thing or something else. Thus, a Preliminary Objection in a case/suit before a court of law or tribunal is that objection which if upheld would render further proceedings before that court or tribunal impossible or unnecessary. An example
 E which readily comes to mind is an objection to the court's or tribunal's jurisdiction to entertain a matter placed or raised before it by any of the parties. It is the duty of the court to consider that objection and give a ruling on it without much ado. The importance of such an approach has been re-stated severally by this court. (p. 3214 H)
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3. Juristic personality - Death of - Status

My lords, above are the provisions of the Electoral Act which we were all referred to by the learned SAN for the applicant. The fundamental question still remains: Is CPC (the appellant on record), dead
 G or alive, as at the time of filing its appeal to this court? Although the death of a political party cannot be similar to that of a natural human person, yet its death resembles, though with dissimilarities, the death of juristic/corporate entity. For instance, a company is said to have
 H died finally and beyond resurrection when it is completely wound-up. Mere withdrawal, cancellation or recall of its certificate of registration does not bring its corporate existence to an end.
 (p. 3220 A)

M.D. MUHAMMAD JSC

4. Decisions of court must relate to facts

Decisions of courts must, therefore, irredeemably relate to the facts which inform them. Justice suffers whenever decisions of courts proceed not on the basis of the facts which should otherwise inform those decisions. (p. 3241 C) B

5. Averments not controverted are deemed as true

Firstly, the averments in the affidavits in support of the 3rd respondent's preliminary objection as well as those in his counter affidavit in opposition to the application to which this ruling also relates, remain uncontroverted. This Court, it is the practice, has to accept those averments as true. (p. 3241 G) C

6. Admitted facts requires no further proof

Secondly and much more importantly, facts deposed to by a party and admitted by an opponent require no further proof from the party who made the deposition. The admitted facts are deemed established. (p. 3242 A) D

7. Existence of political party - Certificate of registration

Again, the law is that the best evidence of the proof of the existence of the appellant, a registered political party, is the production of a genuine certificate of its registration by the Independent National Electoral Commission, (INEC), the 1st respondent herein. (p. 3244 A) E F

REPRESENTATION

J. S. Okutepa, SAN, with Ugbede Idachaba, Esq., M. N. Madaula, Esq., Ocholi O. Okutepa, Esq., Oludolapo Ufaruna (Mrs.), Hokaha G Bassey (Mrs.), Ejura Ochimana, Esq., Elizabeth O. Ifedayo (Mrs.) and Olatunji Oladunmoye Esq., for the Appellants
Eyitayo Fatogun, with Marcus A. Abu Esq., Oluwasanmi Aiyemowa Esq., Feyisayo Folorunsho (Mrs.) Zagana Gbaje Esq., Chief A. O. Ajana, with him; O. Akinyibo, for the 2nd respondent
Gordy Uche, Esq., with Emeka Okoro Esq., Chinelo Okafor (Mrs.) and Isaac Nwachukwu Esq., for the 3rd respondent
Isaac Ekpa for the 4th and 5th respondents/cross appellants
John Mathew for the 6th respondent/cross appellant H

E. B. Abalaka, with Joe Aba Esq, F. F. Ejembi Esq., and Adujojo Aba, Esq., for the 7th respondent
L. A. Ikhuoriah, Esq., with G. C. Onyeakosi, Esq., for the 8th respondent

B CASES REFERRED TO

- Ogoja v. Offoboche (1996) 8 NWLR (pt. 458) 48
Katto v. CBN (1991) 9 NWLR (pt. 214) 126
ANPP v. R.O.A.S.S.D. (2005) 6 NWLR (pt. 920) 140
C C.C.B. Nig. Ltd v. Onwuchekwa (2000) 2 NWLR (pt. 647) 65
Efet v. INEC (2011) 1 SCNJ 179
Yaro v. Arewa Constr. Ltd (2007) 6 SCNJ 418
Sani v. Okene (2008) 5 SCNJ 246
Opebiyi v. Oshoboja (1976) 9 & 10 SC 198
D Nzom v. Jinadu (1987) 1 NWLR (pt. 5) 533
Abethe v. NDIC (1995) 7 NWLR (pt. 406) 228
SGB Ltd. v. Braimoh (1991) 1 NWLR (pt.108) 428
Ogunsola v. NICON (1999) 10 NWLR (pt. 123) 492
Aremu v. Adetoro (2007) 16 NWLR (pt. 1060) 244
E Awosile v. Sotunbo (1986) 3 NWLR (pt. 29) 471

STATUTES & RULES REFERRED TO

- Electoral Act, 2010 (as amended), ss. 78(1), 80, 84(5), 98
Interpretation Act Cap 123 LFN 2004, s. 2
F Supreme Court Rules 1999 (as amended), O. 2 r. 9(1)

LEAD RULING BY I. T. MUHAMMAD JSC

I consider it pertinent to reproduce from the record of appeal, background facts giving rise to the appeal on hand from which stemmed the application under consideration.

The Independent National Electoral Commission (INEC), 1st respondent, herein, commenced preparations in April, 2011, towards holding gubernatorial elections in Kogi State as well as in other affected states. The elections were scheduled to take place in such states on the 26th of April, 2011. Meanwhile, the former Governor of Kogi State, Alh. Ibrahim Idris, who was then the incumbent Governor of the State, instituted an action at the Federal High Court, Abuja (trial court), against the 1st respondent claiming inter alia, an injunction

restraining the 1st respondent from conducting any gubernatorial election in Kogi State in April, 2011, until the expiration of his four year tenure on April, 2012.

In its judgment of 23/02/2011, the trial court held that the tenure of the then Kogi State Governor which commenced from 5th April, 2008, shall terminate on 5th April, 2012. Consequent upon that, the 1st respondent halted, cancelled and abandoned all preparations concerning the proposed gubernatorial election in Kogi State. B

On an appeal to the Court of Appeal, Abuja Division, the decision of the trial court was affirmed.

There was a further appeal to this court by the 1st respondent which was later consolidated with other appeals on similar issues. C

In the meantime, 1st respondent conducted fresh gubernatorial election for Kogi State on the 3rd of December, 2011 in which the 3rd respondent emerged winner of the election. D

This court delivered its judgment on the consolidated appeals before it on the 27th of January, 2012 holding that the Terms of office of the then incumbent Governor of Kogi State, Ibrahim Idris, had indeed lapsed in May, 2011 and that he should vacate office immediately. This paved way for the swearing in of the 3rd respondent on 27th January 2012 on the basis of his victory at the December 3rd, 2011 poll. E

On the 7th of March, 2012, the appellant in the appeal on hand and the 8th respondent commenced an action at the Federal High Court via an Originating Summons which was later amended. F Each of the 1st, 2nd and 3rd respondents filed a Preliminary Objection challenging the jurisdiction of the Federal High Court to determine the 6th and 7th respondents' suit as it was not a pre-election matter, and that the appellant lacked the locus standi to maintain the action. The Preliminary Objections were upheld and the 6th and 7th respondents' amended Originating Summons was struck out. On appeal to the Court of Appeal, the appeal was dismissed by that court and it affirmed the decision of the Federal High Court that the latter lacked jurisdiction to entertain the appellant's case. The present appeal, now before this court, stemmed from the Court of Appeal's dismissal of the appellant's appeal. H

My lords, the true picture of the whole episode will remain

incomplete, if I omit to capture the new facts that emerged later, and that is: at the time of filing of the suit by the appellant, an Election Tribunal had been set up for Kogi State to deal with all challenges relating to the December 3rd 2011 election, and pending before the Tribunal was an Election Petition filed against the 3rd respondent B and others. At the end of trial, the Election Tribunal found and held that the gubernatorial election of December 3rd 2011 in Kogi State, was properly conducted and that the 3rd respondent was validly elected as Governor of Kogi State. On 14th July 2012, Court of Appeal affirmed the judgment of the Election Tribunal, holding that C the 3rd respondent was duly elected as Governor of Kogi State. On further appeal to the Supreme Court, the court affirmed the judgment of the Court of Appeal.

I should now consider the application before this court. It is D to be recalled, however, that the pending appeal is on the decision of the Court of Appeal which affirmed the trial court's decision that it (the trial court) lacked jurisdiction to entertain the appellant's case.

On the date scheduled for hearing the appeal (9/10/14), several applications including preliminary Objections were filed by the E respective senior counsel and other counsel in the matter. Some of the applications were withdrawn and struck out: other harmless ones were granted right away.

Mr. Okutepa, SAN, sought to move his motion on Notice F which he said was dated 2nd of October, 2014 and filed on the 3rd of the same month. He said the motion on Notice prays for an order substituting the appellant, Congress for Progressive Change (CPC) with the applicant, All Progressive Congress (APC) are for same substitution to appear wherever CPC appears.

G ***Soon thereafter, Mr. Uche, SAN, for the 3rd respondent, stood up to say that he filed a Notice of Preliminary Objection and counter-affidavit. Mr. Ajana, for 2nd respondent, stated that he too filed a Notice of Preliminary Objection. None of the other counsel for the respondents filed any objection.***
H ***This court granted permission to the objectors to proceed with their objections first. The trite law is that where there is an objection against consideration/continuation of a process that objection should be determined first.*** See: Ogoja v. Offoboche (1996) 8 NWLR (Pt.458) 48; Katto v. CBN (1991) 9 NWLR

(Pt.214) 126; ANPP v R.O.A.S.S.D. (2005) 6 NWLR (Pt.920) 140.

While moving his objection, Mr. Uche, SAN, stated that he filed the Notice of Objection on the 3rd of October, 2014 (dated same day). That it was accompanied by a 7 paragraph affidavit deposed to by one Mr. Kanayo Okafor. Four exhibits were attached, marked as Exhibits “A, B, C, and D”. Referring to some of the depositions made in the affidavits in support of exhibits “B” and “C” in particular, Mr. Uche, SAN, stated that the appellant deposed that the Certificate of Registration of CPC was withdrawn and that in ground 2 of the grounds in support of the said motions as in exhibits “B” and “C” it was admitted by the appellant that CPC ceased to exist by the withdrawal of its Certificate of Registration. That having admitted the non-existence of the appellant, Mr. Okutepa, SAN can’t be heard speaking from both sides of his mouth. B
C

Mr. Uche, SAN, stated that he also filed a counter-affidavit to which Exhibit “E”, which is the Certificate of Registration for the merger of CPC and other political parties was attached. Exhibit “E”, shows the effective date of the merger to be 31/07/2013. He drew the court’s attention to note that although the appellant reacted to the counter-affidavit, it failed to exhibit any document in support of its case. Mr. Uche, SAN, urged this court further to take cognizance that the appeal on hand was filed on the 7th day of August, 2013 (seven days after the death of the appellant). He urged us to dismiss the appeal on hand and the incompetent motion as it will serve no useful purpose. D
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Mr. Ajana of counsel for the 2nd respondent, stated that he too, filed a Notice of Preliminary Objection, premised on almost same grounds like that of the learned Senior counsel for the 3rd respondent/objector. He said that he aligned himself with the submissions made by Mr. Uche, SAN, for the 3rd respondent/objector and that he had nothing useful to add. He urged that the appeal be dismissed. G

Messrs. Fatogun, Abalaka, Ekpa, Mathew and Eshomegie, each of them stated that he did not file any Notice of Preliminary Objection on behalf of the party he represents. H

Making oral submission in response to the Notices of Preliminary Objections filed, Mr. Okutepa, SAN, stated that the appeal filed by the appellant (CPC) is competent. He argued in a paradoxical manner that the Notices of preliminary Objections filed by Mr. Uche,

SAN, and Mr. Ajana, would suffer the same fatal consequence if indeed the appellant (CPC) is dead and, the processes filed by them are also dead.

Mr. Okutepa, SAN, argued that APC (the applicant) is the party in the application before this court but not a party to the Preliminary
 B Objections now moved by the 2nd and 3rd respondents. He argued further that the issue now before this court on whether or not CPC (the appellant) died on 31/07/13 or on 8/8/13, can only be resolved by reference to the law, i.e. the Electoral Act, 2010 (as amended),
 C sections 78(1); 80 and 84(5) thereof. Mr. Okutepa, SAN, submitted that before the merger, CPC was a registered political party. The death of CPC will only become conclusive on the date INEC issued Certificate to the merged political parties and INEC issued that merger certificate on 8/8/2013. He sounded the point that until the issuance of
 D the certificate of merger, each of the political parties to the merger only became sick and not yet dead. The death of each of the merged parties came on the 8/8/2013. He cited in support, the case of *Corporate Commerce Bank Nig. Ltd v. Alex Onwihakwa* (2000) 2 NWLR (Pt.647) 65. Learned SAN urged that this court should hold
 E that since the certificate of merger was issued on the 8/8/2013 and the appeal on hand filed on 7/8/13, when CPC was yet to be wound up as a Political Party, the appeal on hand is competent by virtue of section 80 of the Electoral Act, 2010 (as amended) and that the
 F objections should be overruled.

It is significant to state from the out-set my lords, that an objection ordinarily is that act which is said or felt in opposition or disagreement; the reason or cause for disagreeing, or disputing. It is an adverse reason or argument. It is a way of saying that one does
 G not like or agree with what the other wants to do, or has indeed started doing it or has even done it. In legal parlance, however, objection represents a formal statement opposing something that has occurred, or is about to occur in court and the objector is seeking court's immediate ruling on the point. It may be in general or specific
 H form. An objection is general where no grounds in support of the objection are given. It is specific if it is supported by one or more grounds. Anything "Preliminary" denotes anything coming and usually leading up to the main part of that thing or something else. Thus, a Preliminary Objection in a case/suit before a court of law or tribunal

is that objection which if upheld would render further proceedings before that court or tribunal impossible or unnecessary. An example which readily comes to mind is an objection to the court's or tribunal's jurisdiction to entertain a matter placed or raised before it by any of the parties. It is the duty of the court to consider that objection and give a ruling on it without much ado. The importance of such an approach has been re-stated severally by this court. At the risk of being immodest, permit me, my lords, to quote what I said in the case of *Efet v. INEC* (2011) 1 SCNJ 179 at page 194:

"The aim/essence of a Preliminary Objection is to terminate at infancy, or as it were, to nip in the bud, without dissipating unnecessary energies in considering an unworthy or fruitless matter in a court's proceedings. It, in other words, forecloses hearing of the matter in order to save time." See further: *Yaro v. Arewa Constr. Ltd & Ors* (2007) 6 SCNJ 418; *Sani v. Okene* (2008) 5 SCNJ 246.

My Lords, I think the fundamental issue to be determined in this application as raised by the learned SAN for the applicant is whether or not CPC, the appellant, died on 31/7/13 or on 8/8/13.

In his grounds in support of the objection the 3rd respondent stated as follows:

"(2) The Appellant on record, Congress for Progressive Change (CPC) ceased to exist on 31st July, 2013 as admitted by the appellant on oath upon the withdrawal of its certificate of registration by the Independent National Electoral Commission on the said 31st July, 2013."

(3) The cancellation of the registration certificate of the appellant on 31st July, 2013 is confirmed by a certified true copy of an official letter from the Independent National Electoral Commission to the appellant on 31st July, 2013."

(4) Though, the judgment was delivered on 10th July, 2013 by the Court of Appeal, no appeal was filed by the deceased appellant before its demise on 31st July, 2013."

(5) This appeal was filed on 7th August, 2013, after the death of the appellant."

(6) The appeal is grossly incompetent."

(7) The appeal as constituted robs the Honourable court of jurisdiction to enter(sic) same."

In the counter-affidavit filed by the 3rd respondent, some of

the facts above have been repeated whereas other vital depositions were made as follows:

2. That the present appeal was filed on 7th August, 2013 and I annex a copy of the Notice of Appeal Exhibit “A”.

B 3. That in court on 2nd October, 2014, we were served with a copy of a fresh motion for substitution filed by the Appellant in the name of the All Progressive Congress (APC), and I have gone through the said process with our lead counsel, Gordy Uche, Esq.

C 4. That prior to filing of the present motion, the appellant had previously filed two similar motions on notice for substitution before this Honourable court, namely on 24th September, 2013 and on 26th September, 2014, and in both motions on notice, the affidavit in support was sworn to by the same deponent, namely, Alhaji Kashim Mabo, and I annex herewith copies of the said motions on D notice as Exhibits “B” and “C” respectively.

5. That in paragraph 14 of the affidavit in support of the motion on notice filed on 24th September, 2013 and in paragraph 14 also of the motion on notice filed on 26th September, 2014, the appellant through the said Alhaji Kashim Mabo had deposed “That E the Certificate of CPC was withdrawn on the 31st of July, 2013.

6. That also in ground No. 2 of the grounds in support of the two motions on notice, the appellant had stated unequivocally that the Congress for Progressive Change (CPC) ceased to exist on 31st F July, 2013.

7. That most importantly, the cancellation of the registration certificate of the appellant on 31st July, 2013 is confirmed by a certified true copy of an official letter by Independent National Electoral Commission issued to the appellant on 31st July, 2013, and I annex G herewith the said letter as Exhibit “D”.

H 8. That the same Alhaji Kashim Mabo has deposed to the affidavit in support of the present motion for substitution (which is the third one) and has turned around in paragraph 10 of the affidavit to state that the certificate of registration of CPC was cancelled on 8th August, 2013, after having deposed twice earlier that it was on 31st July, 2013.

9. That the paragraphs 10 and 12 of the affidavit in support are false.

10. That the appellant deliberately refused to annex and ex-

hibit the Certificate of Registration of the All Progressive Congress (APC), notwithstanding that it referred to it in paragraph 11 of the supporting affidavit.

11. That the said Certificate of Registration of the All Progressive Congress (APC) is explicit, unambiguous and clear on the fact that the merger producing APC took effect from 31st July, 2013, notwithstanding that the certificate was eventually issued on 8th August, 2013 as promised in INEC's letter earlier annexed herein as Exhibit "C" where the Commission stated that thus:

"4. The Commission shall issue a Certificate of Registration to ALL PROGRESSIVE CONGRESS (APC) in due course."

12. That I annex the certified true copy of the Certificate of Registration of the All Progressive Congress (APC) as Exhibit "E".

13. That I was advised by our lead counsel today at about 10am at our aforesaid office, and I verily believe him, that the present application is incompetent, and incapable of breathing life into or resurrecting an incompetent appeal.

14. That it is in the interest of justice to dismiss this application as incompetent and constituting an abuse of court process."

In the affidavit in support of the Preliminary Objection filed on 11/12/13 by Chief Ajana, same facts as in paragraphs 2 - 4 from 3rd respondent's counter-affidavit as well as from grounds of objection above, were averred to by the 2nd respondent.

In his reaction to the above depositions, the applicant, through one Mr. O. O. Obla, who swore to the facts contained in the further and better affidavit filed by the applicant on 8/10/14, made the following averments:

"2. That I was the Deputy National Secretary of the Congress for Progressive Change (CPC) up till 8th August, 2013 when the merger into APC was concluded and the Certificate of Registration issued to All Progressive Change (APC).

3. That I also acted as the Deputy National Legal Adviser of the Congress for Progressive Change (CPC) up till 8th August, 2013 when the merger into APC was concluded.

4. That as a result of the above I prayed(sic) a significant role in the processes that led to the merger of Action Congress of Nigeria (ACN), All Nigeria Peoples Party (ANPP), Congress for Progressive Change (CPC).

5. That I know as a fact that Congress for Progressive Change (CPC) did not cease to exist until the certificate of registration of All Progressive Congress (APC) (Exhibit E) was issued and substituted with that of Congress for Progressive Change (CPC), All Nigeria Peoples Party (ANPP) and Action Congress of Nigeria (ACN). I am seeing Exhibit D attached to the counter affidavit of Kanayo Okafor for the first time. I know however that the said Exhibit D is not a certificate and cannot be a substitute certificate to that of Congress for Progressive Change (CPC).

6. That I worked in my office as the Deputy National Secretary of Congress for Progressive Change (CPC) up till 8th of August, when the certificate of registration of All Progressive Change (APC) was issued substituting same with the certificate of registration of CPC, ANPP and ACN.

7. That I know as a fact that the power vested on INEC does not include back dating certificate of registration of any political parties rather the certificate of APC dated and issued on 8th August, 2013 takes effect from that date.

8. From the above, the 3 legacy parties remained recognized legal entities until 8th August, 2013 when their certificates were substituted.

9. I have also read the affidavit of Alhaji Kashim Mabo and I know as a fact that he was the Kogi State Chairman of Congress for Progressive Change (CPC) prior to and until the merger was concluded. I know as a fact that Alhaji Kashim Mabo not being a lawyer and not being a staff of National Secretariat of Congress for Progressive Change (CPC) would not know the knitty gritty of the steps taken during the merger until the certificate of registration of All Progressive Change (APC) was issued.

10. That while reading the counter affidavit of Kanayo Okafor I discovered that he has exhibited the earlier motions and affidavit sworn to by Alhaji Kashim Mabo on the 24th September, 2013 and 26th September, 2014 to the counter affidavit on similar motion for substitution.

11. That I have read inter alia the most recent affidavit of Alhaji Kashim Mabo sworn to on the 3rd October, 2014 and I affirm that same is very correct. However, the earlier ones filed on the 26th September, 2014 and 24th September, 2013 are not correct hence

the new motion was filed on the 2nd October, 2014.”

What appears to be apparent from the reaction of the applicant, significantly, are three fold:

a. that there was a merger between CPC and other Political Parties.

b. that the merger was concluded on the 8th of August 2013. B

c. that CPC did not cease to exist until when the Certificate of Registration was granted by INEC on the 8th August 2013.

Earlier, in the affidavit in support of the motion, the applicant averred to the fact of filing the appeal (on hand) as follows:

‘7. On the 10th of July, 2013 the Court of Appeal delivered judgment in respect of the Appeal and dismissed same. C

8. The appellant consequently filed an appealed(sic) against the judgment of the Court of Appeal to this court.

12. That I know as a fact that as at 7th August, 2013 when this appeal was filed, CPC as a Political Party was still in existence and its certificate was yet to be cancelled and substituted with the Certificate of Registration of All Progressive Congress (APC).’ D

In his oral submission before this court on Thursday the 9th of October, 2014, learned senior counsel for the applicant argued that in order to determine the existence or otherwise of the (appellant) CPC, on the date it filed its appeal, reference must be had to the provisions of the Electoral Act 2010 (as amended), Sections 78(1); 80 and 84(5). Permit me my lords, to reproduce these sections hereunder: F

“78(1) A political association that complies with the provisions of the Constitution and this Act for the purposes of registration shall be registered as a political party, provided that such application for registration as a political party shall be duly submitted to the Commission not later than 6 months before a general election. G

80. A political party registered under this Act shall be a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name.

84(5) where the request for the proposed merger is approved, H the Commission shall withdraw and cancel the certificates of registration of all the political parties opting for the merger and substitute a single certificate of registration in the name of the party resulting from the merger.”

My lords, above are the provisions of the Electoral Act which we were all referred to by the learned SAN for the applicant. The fundamental question still remains: Is CPC (the appellant on record), dead or alive, as at the time of filing its appeal to this court? Although the death of a political party cannot be similar to that of a natural human person, yet its death resembles, though with dissimilarities, the death of juristic/corporate entity. For instance, a company is said to have died finally and beyond resurrection when it is completely wound-up. Mere withdrawal, cancellation or recall of its certificate of registration does not bring its corporate existence to an end. See *Opebiyi v. Oshoboja* (1976) 9 & 10 SC 198; *Nzom v. Jinadu* (1987) 1 NWLR (Pt.5) 533; *Abethe v. NDIC* (1995) 7 NWLR (Pt.406) 228 at 240 C – D.

In our later case on similar issues, this court held:

“Now, winding up of a company involves the liquidation of the company/corporation so that assets are distributed to those entitled to receive them. Campbell Black, says, liquidation is quite distinguishable from dissolution which is the end of the legal existence of a corporation. Liquidation may precede or follow dissolution (p.839 of Black’s Law Dictionary 5th ed.), thus, mere revocation of banking license of a bank, without more, as claimed by the applicant cannot bring to an end the juristic life of a bank or corporation. Likewise where a bank or corporation ceases to operate or closes its business, that does not determine the legal existence of such a bank or corporation.” See the unreported case of *Oredola Okeya Trading Co. & Anor v. Bank of Credit & Commerce International & Anor in Re: Mr. Sikiru & 1 Anor*. Appeal No. SC.96/2003 delivered on 17th January, 2014.

In this application, the applicant, itself, admitted that the appeal on record was filed by it on the 7th of August, 2013 (see paragraph 8 of the supporting affidavit to this application) The bone of contention between the parties, however, is the date when merger of CPC and other political parties was sanctioned by the INEC. I remind myself here that I have already set-out averments from the affidavits, counter-affidavits, either in support or against the motion. I took a hard look at all of them and it is my humble view and findings that:

i. there is a pending appeal in this court: SC.477/2013, which was filed on the 7th August, 2013. This fact has been deposed to by

the applicant in paragraph 8 of the supporting affidavit of its motion on Notice filed on 3/10/14. It is also exhibited as Exhibit "A" by the 3rd respondent/objector in paragraph 2 of its counter-affidavit filed on 3/10/14. I had a quick look, curiously, at the Record of Appeal before this court and I found the same Notice of Appeal filed on 7/8/13 (pp.1565, vol.3 of the Record of Appeal). B

ii. I find that there was indeed a merger of the CPC, ACN and ANPP which gave rise to a new political party called "All Progressive Congress (APC)", the applicant, herein. This fact is contained in paragraph 9 of the affidavit in support of the applicant's motion. In fact the 3rd respondent/objector, not only agreed that there was such a merger but went on to exhibit certificate of registration of the new party, APC. It is deposed to and exhibited as Exhibit "E" in paragraph 12 of the counter affidavit. C

iii. The effective date of the merger, in my honest belief, is the 31st day of July, 2013. My belief is based on the following grounds: D

a. The Certificate of registration of CPC was cancelled, which cancellation was confirmed by INEC through an official letter by INEC, dated and signed by Secretary to the Commission, one Abdullahi A. Kaigama, on 31st July, 2013. This letter or document was exhibited by the 3rd respondent/objector as Exhibit "D" in paragraph 7 of his counter affidavit. E

Permit me my lords to quote what INEC said in paragraphs 3 and 4 of that document:

"3. The Registration Certificate of Congress for Progressive Change (CPC) is hereby cancelled and you are therefore requested to submit same to the Commission immediately. F

4, The Commission shall issue a Certificate of Registration to ALL PROGRESSIVE CONGRESS (APC) in due course. G

b. That INEC subsequently issued a Certificate of registration of the new party (APC) which INEC named as "Certificate of Merger of Political Parties."

That Certificate was exhibited in paragraph 12 as Exhibit "E" of the counter-affidavit of the 3rd respondent/objector. However, in paragraph 11 of its affidavit in support, the applicant acknowledged the fact that the Chairman of INEC signed, dated and issued the Certificate of Registration to APC, the applicant on the 8th of August, 2013. It is to be noted that the applicant did not exhibit the said H

certificate for the court to see. In the said certificate which was exhibited by the 3rd respondent, a lot has been revealed and I find it pertinent to reproduce almost the whole contents of the said certificate as follows:

B “INDEPENDENT NATIONAL ELECTORAL COMMISSION
Certificate of Merger of Political Parties

WHEREAS the Commission having verified the facts and information supplied to it by ACN, ANPP & CPC Political Parties is satisfied that the said Political Parties have fulfilled all the necessary conditions for merger as a Political Party.

C NOW THEREFORE, the Commission has, with effect from the 31st day of July, 2013 approved the merger of the aforesaid Political Parties as a Political Party to be known and called All Progressive Congress: pursuant to the Constitution of the Federal Republic of Nigeria, 1999 (as amended), and the Electoral Act, 2010 (as amended).

GIVEN under the hand of the Chairman and Seal of the Commission at Abuja.

This 8th day of August, 2013.

E SIGNED
PROF. ATTAHIRU MUHAMMADU JEGA, OFR CHAIRMAN, INDEPENDENT NATIONAL ELECTORAL COMMISSION”

F From the contents of Exhibit “E”, my lords, three things are clear beyond dispute:

1. that having been satisfied with the facts and information supplied to it by ACN, ANPP and CPC, for their merger into a new party, INEC has, with effect from 31st day of July, 2013 APPROVED the merger of the said parties into a political party by name “All progressive Congress.”

2. that the effective date of the merger of the said political parties including CPC is 31st day of July, 2013.

3. that it was on the 8th of August, 2013, when authentic information of the merger was released by INEC i.e. the date when INEC Chairman appended his signature on the said Certificate of Merger.

It is, therefore, beyond dispute that the effective date the merger of the said political parties took place was on the 31st of July, 2013 and not as contended by learned SAN for the applicant, on the

8th of August 2013.

These are the main grounds.

Perhaps I need to be clearer in my reasoning process. Firstly, it is deposed to in paragraph 7 of the affidavit in support of the motion that the Court of Appeal delivered its judgment which gave rise to the appeal filed by CPC, on the 10th of July, 2013. From that date to the 31st of July, CPC was still alive but it did not file the said appeal within that time (as there is no evidence to that effect). B

On 31st July, 2013, INEC passed "death sentence" on CPC which was to take effect from that date. Thus, anything done by CPC, any day after the 31st of July, 2013, was done by a dead person whether in the grave or in the mortuary (see Exh. "E"). The position of the law on the status of a dead person has been severally stated by this court and other courts. I C
I will only cite few instances: D

1. in the case of SGB Ltd. V Braimoh (1991) 1 NWLR (pt.108) 428 at p.434 - D-G, it was held that:

"It is settled law that a dead person ceases to exist in the eyes of the law and any cause or action pending against such a person automatically abates unless it is one that survives the person." E

2. In the case of Nzom v. Jinadu (1987) 1 NWLR (pt.51) 533 at p.539, this court, per late Oputa, JSC, held, inter alia:

"the dissolution of legal person is analogous to the death of an ordinary human person... dead men are no longer legal persons in the eye of the law as they have laid down their legal personality with their lives at death. Being destitute of rights or interest they can neither sue nor be sue of." F

Commenting on the above dictum, my learned brother, M. D. Muhammad, JCA (as he then was), stated that: G

"I unhesitatingly add that such dead man cannot equally appeal against decisions not in their favour nor can they respond in an appeal, attempting to sustain such decisions which during their life-span, favoured them. Whether at trial in first instance courts or on appeal, dead men lack legal existence which parties must have to give them the competence."... see CCB (Nig.) Plc. V. O'silverwax Int. Ltd. (1999) 7 NWLR (Pt.609) 97 at p.103 G - H." H

I agree with Mr. Okutepe, SAN that an appeal or a suit (in some circumstances) can survive the person that initiated

it. That of course is subject to the condition that the person filing or initiating such an appeal or suit is, from the outset, imbued with competence to do so, equally, the subject matter of the appeal or suit must itself pass the test of validity. Where such conditions are lacking, even if the appeal process or the suit is commenced, it will have to abate once that militating fact has been brought to the attention of the court. Where Mr. Okutepa, SAN, missed the point in this application is that, CPC lacks the capacity as the mere fact of its death before filing the appeal on record deprived it of such competence/capacity. The courts, too, I am sure, must be wary, loathe, reluctant or scared of accepting the appeal from a dead person.

My lords, the learned SAN for the applicant, was himself not denying or doubting the death of CPC as a party. In applications which he filed before this court for same substitution which he is asking for now, agreed in his own words, that CPC, before filing the said appeal was dead. The applications together with their affidavits and attachments were exhibited by the 3rd respondent/objector in this counter affidavit. This was termed as Exhibit “B”. In the written address which accompanied Exh. “B”, the learned SAN opened his argument by the following words:

“My lords, the law is settled that this Honourable Court has the power under Order 8 Rule 9(1) to grant an order for substitution of a DEAD PARTY.... We submit that an incorporated body such as the appellant can only be substituted once it ceases to exist. We urge your Lordships to so hold... It is our humble submission that it is common knowledge the fact that the Action Congress of Nigeria (ACN), All Nigeria Peoples party (ANPP) and Congress for progressive Change (CPC) being erstwhile Political Parties have merged to come up with All Progressive Congress (APC).

The membership of these three defunct parties have wholly been transformed to that of the new emerging party, APC.... As shown in the affidavit in support, the Certificate of CPC after the merger was withdrawn on the 31st of July, 2013.”

There were potent averments in the affidavit accompanying Exh. “B” quoted above on the status of CPC as a dead/defunct political party. The same thing has been replicated in the 2nd motion exhibited as Exh. “C” along with its affidavit and attachments.

It is to be noted that in paragraphs 10 and 11 of the further and better affidavit of the applicant (quoted earlier), the applicant, through Barrister Obla, conceded to the filing of the two motions referred to by the 3rd respondent/objector as captured above. He however, stated on oath that those motions were not correct hence the new motion which was filed on 2/10/14 to replace them. B

Be that as it may, I am convinced beyond doubt that CPC (the appellant on record) was dead before the filing of the appeal in its name.

Secondly, ***throughout the application under consideration and the further affidavit in support of the motion filed by Mr. Okutepa, SAN, no document was attached as an exhibit to support what was prayed for. For instance, the documents for merger of the political parties, the Notice of Appeal filed; the certificate of Registration of the new party, if any, etc are in my view, strong supporting documents which ought to have been exhibited by the applicant. It is the practice in all the courts of law that an applicant who fails to furnish the court with all necessary and vital document(s) for the due consideration of his application does so at his own peril as his application may likely be refused and he cannot be heard to complain.*** See: NNSC Ltd v. Alhaji Hammajoda Sabana Co. Ltd. (1988) 2 NWLR (Pt.74) 33; Ogunsola v NICON (1999) 10 NWLR (Pt.123) 492. C D E

Not only that, my lords, I tend to agree with Mr. Uche, SAN, that refusal by the applicant to exhibit such vital documents such as the certificate of merger may, in fact, tantamount to withholding of evidence. Section 167(d) of the Evidence Act is very clear on that where it provides that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it. See: Eboh v. Progressive Insurance Co. Ltd. (1987) 2 QLRN 167; George v. State (2009) 1 NWLR (Pt.1122) 325; Akintola v. Anyiam (1961) All NLR 508; Aremu v. Adetoro (2007) 16 NWLR (Pt.1060) 244; Awosile v. Sotunbo (1986) 3 NWLR (Pt.29) 471. F G H

Thirdly, I think it stands to reason that where a document has been signed and in it is provided a specific date of commencement or date when effect is to be given or action to

be taken, that date must be taken to be the ‘effective’ or commencement date irrespective of the date when the officer signing the document on behalf of the authority appended his signature. That specific date of commencement can be with retrospective effect, it may commence immediately after or on the date of signing or it may even be in the future. In public and civil services and of course, with private corporations, appointments, promotions or demotions may be done with retrospective effect or immediately. If it is retrospective, the officers concerned take arrears of their entitlements attached to that office. On the other hand, if the document is silent on the commencement date, then it will be presumed that effect is to be given to it from the date the officer signed the document.

D In dealing with enactments generally, the Interpretation Act as contained in Cap 123, LFN 2004, section 2 thereof provides:

“2(1) An Act is passed when the president assents to the Bill for the Act whether or not the Act then comes into force.

E *(2) where no other provision is made as to the time when a particular enactment is to come into force, it shall, subject to the following subsection come into force...*

a. In the case of an enactment contained in an Act of the National Assembly, on the day when the Act is passed,

F *b. In any other case, on the day when the enactment is made.*

(3) Where an enactment is expressed to come into force on a particular day, it shall be construed as coming into force immediately on the expiration of the previous day.”

Thus, the effective date as per Exh. “E”, when the coalition of the 3 political parties ACN, ANPP and CPC, metamorphosed into All Progressive Congress (APC), and which signaled the final death of each of the 3 parties is the 31st of July, 2013. CPC, from that date was no more a political party and lacked the capacity to carry out any legal business transaction including filing an appeal.

My noble lordships, consequent upon the final and irretrievable death of CPC on the 31st of July, 2013 no appeal or any process for that matter is maintainable in the name of CPC before any court of law. If there is or (are) then that ap-

peal or process or anything hinged on the appeal, is afflicted by the death of its initiator (the appellant). Such an appeal or process is as well dead and lacks legal capacity to be maintained. The well known dictum of Lord Denning is that one cannot put something on nothing and expect it to stand. It will certainly collapse. U.A.C. V Macfoy (1961) 3 All E. R 1169 at p.1172. ***The application before this court is unmeritorious and unmaintainable. It is accordingly dismissed.*** B

The pending appeal which is by this ruling incompetent is hereby struck out, N100,000.00 costs to be paid by the applicant to each of the 2nd and 3rd respondents. C

FABIYI JSC

I have had a preview of the Ruling just handed out by my learned brother - I. T. Muhammad, JSC. I agree with the reasons therein advanced to arrive at the inescapable conclusion that the application is not maintainable and should be dismissed. A fortiori, the pending incompetent appeal should be struck out. D

I seek leave to chip in a few words of my own in support. It beats one's imagination that the Senior Counsel for the applicant opined that if the CPC is dead, the processes filed to challenge its competence to file appeal are also dead. To put it bluntly, it sounds strange to me. This is because the Rules of Court support the processes filed to persuade the Court that the appeal filed by a dead person is incompetent and should be struck out. Senior counsel should be careful with respect to any position taken by him as well as his submissions in the presence of his juniors before this Court. E F

The crux of this matter is the real date the CPC 'died'. The CPC desired to merge with ACN and ANPP. The three political parties contacted the 1st respondent - INEC. Section 84(5) of the Electoral Act, 2010 (as amended) provides as follows:- G

"(5) Where the request for the proposed merger is approved the Commission shall withdraw and cancel the certificates of registration of all the political parties opting for the merger and substitute a single certificate of registration in the name of the party resulting from the merger." H

As extant in Exhibit D attached to the 3rd respondents'

counter affidavit, the 1st respondent - INEC took steps to withdraw and cancel the certificate of registration of the CPC on 31/7/2013.

With this step taken, it is clear that the CPC became extinct on 31/7/2013. Exhibit E attached to the counter affidavit of the 3rd respondent is the certificate of merger dated 8/8/2013 wherein it is stated without any shred of equivocation that the merger takes effect from 31/7/2013. The applicant tried to put up a bold face as it attempted to resile from its previous position in the applications filed on 24/9/2013 and 26/9/2014. That was not good enough. It cannot be taken seriously for being inconsistent in stating its case. See: *Ajide v. Kelani* (1985) 3 NWLR (Pt. 12) 248.

It goes without saying that as at 7/8/2013, there was no competent appeal on ground filed by a 'living person'. For this reason, I agree that the application filed seeking to substitute the deceased CPC by APC rests on nothing. It cannot stand, as crafted by Lord Denning. My learned brother, in the lead ruling, said it all and cited *Macfoy v. UAC Ltd.* (1961) 3 All ER 1169 at 1172. It is very apt herein. See: also *Sken Consult (Nig) Ltd. v. Godwin Ukey* (1981) 12 MCC 1.

For the above remarks and of course the detailed reasons carefully set out in the lead ruling which I seek leave to adopt, I too, feel that the preliminary objections are, no doubt, sustainable. They are, accordingly, hereby sustained. The application is hereby dismissed. The appeal filed by the 'late' CPC is incompetent. It is hereby struck out.

I endorse the order relating to costs in the lead Ruling of my learned brother.

G

NGWUTA JSC

Having had the honour of reading in draft the lead ruling of my Lord, Muhammad, JSC I entirely agree with everything that has fallen from His Lordship. I would like only to add my humble support to the ruling.

A preliminary objection as taken in this case is initiated at the earliest opportunity. See *Sani v. Okene Local Government Traditional Council & Anor* (2008) 5-6 SC (pt. 11) 131. It is taken if the respondent intends to rely on same to scuttle the hearing of the appeal on

grounds of incompetence. See *Ohadugba v. Garba* (2000) FWLR (pt. 16) 2721 at 2732-33. It is a special procedure and its success spells the end of the appeal. See *Galadima v. Tanbia* (2000) 6 SC (pt. 1) 196 at 207. It is the duty of the Court to rule on it one way or the other once raised. See *Onyekwuluje v. Animashaun* (1996) 3 SCNJ 24 at 35. B

It is a common ground that the appeal to which this application relates was initiated by the Congress for progressive Change (CPC) on 7th August, 2013 and that said party is “dead” and that the case does not survive its death. The bone of contention is the date of death of the CPC that is the date it ceased to be a legal entity with capacity to sue and be sued. C

I do not share the view of the learned Silk for the applicant that if the CPC is dead the processes filed to challenge its competence to file an appeal are also dead. The processes are meant to persuade the court that the appeal filed by a dead entity is incompetent and cannot share the same fate with the process sought to be struck out as incompetent. D

The question is when did the CPC die? The Certificate of Merger of ACN, ANPP and CPC, Exhibit E, was issued on 8th August, 2013. However, the merger is “with effect from the 31st day of July, 2013. The merging entities - ACN, ANPP and CPC ceased to exist as legal entities on the date their application for merger was approved by INEC - that is 31/7/2013 and not on the 8th August, 2013 when the Certificate of Merger, Exhibit E, was issued. E F

To argue that the CPC whose merger with other parties was approved on 31/7/2013 remains alive until 8/8/2013 when the Certificate of Merger was issued is the same as saying that a man pronounced dead on 31/7/2013 did not die until 8/8/2013 when the death certificate was issued. Exhibit E issued on 8/8/2013 is evidence that ACN, ANPP and CPC having merged to form a new entity, APC, have individually ceased to exist from the date their application for merger was approved and not when the Certificate of Merger was signed. G H

For the above and the fuller reasons in the lead ruling, I entirely agree that the appeal commenced on 7th August, 2013 by CPC which ceased to exist on 31/7/2013 is grossly incompetent and ought to be struck out and ipso facto the application seeking to put

something on nothing as it were will fail like a pack of cards. See *UAC v. Macfoy* (1961) 3 All ER 1169 appropriately cited and relied on in the lead ruling.

The preliminary objection does not preclude the applicant from starting the process afresh on an appropriate footing but on the B fact of this case that option does not avail the applicant.

In conclusion, the preliminary objections are sustained. The motion is dismissed for want of merit. Also the appeal filed by a dead entity - the CPC - is incompetent and is hereby struck out.

C I endorse the order for costs of N100,000.00 to each of the 2nd and 3rd respondents. Motion dismissed; appeal struck out.

M. D. MUHAMMAD JSC

D By its motion on Notice filed on the 3rd of October, 2014, the applicant seeks the following reliefs:-

“1. An *ORDER* of the Honourable court substituting the ap-
pellant in Appeal No. SC.477/2003, (CPC) with the Applicant, All
Progressive Congress. (APC) and for the same substitution to be made
E anywhere CPC appeared in the process (sic) filed in this Honourable
Court.

“2. An *ORDER* striking out the 4th and 6th Respondents
from the Appeal.

F 3. Any *ORDER* or *FURTHER ORDERS* the Honourable court
may deem just to make in the circumstances.”

The application rests on the grounds that:-

“(1) By a merger arrangement between the All Nigeria Peoples
Party (ANPP), the Action Congress of Nigeria (ACN) and the Con-
gress For Progressive Change (CPC), the Independent Electoral Com-
mission registered the All Progressive Congress (APC) being the re-
sult of the merger.

(2) The Appellant in this Appeal has become part and parcel
of the APC by virtue of the merger.

H (3) The Applicant is desirous of being substituted in place of
the CPC since its rights will be greatly affected by the outcome of the
appeal.

(4) That the substitution sought in this appeal does not affect
the substance of the appeal.

(5) That the respondents will not be prejudiced in anyway by the grant of this application.

(6) That it is in the interest of justice to grant this application.”

Paragraphs 5, 6, 7, 8, 9, 10, 11 and 12 of the affidavit in support of the application to which this ruling relates, being germane to the reliefs the applicant seeks, are hereinunder reproduced for ease of reference:-

“5. On the 7th of March, 2012 the Appellant and their candidate in the aforementioned election Ocholi James, SAN commenced an action at the Federal High Court, Abuja. The matter was subsequently transferred to Lokoja by the Honourable Chief Judge of the Federal High Court.

6. On the 24th of September, 2012 the Federal High Court, Lokoja dismissed the Appellant’s claim. The Appellant subsequently filed a Notice of Appeal against the judgment of the court.

7. On the 10th of July, 2013 the Court of Appeal delivered judgment in respect of the Appeal and dismissed same.

8. The appellant consequently filed an appealed (sic) against the judgment of the Court of Appeal to this Court.

9. That I know as a fact that ANPP, CAN, and CPC merged to become a new Political Party called All Progressive Congress (APC).

10. That the Certificate of Registration of CPC was submitted to INEC (1st Respondent) on the 31st of July, 2013 and same was only cancelled on 8th August, 2013 after the Notice of Appeal in this Appeal was filled (sic).

11. That I know as a fact that the Chairman of the 1st Respondent Prof. Attahiru Jega signed, dated and issued the Certificate of Registration to All Progressive Congress (APC), the Applicant herein, on 8th August, 2013.

12. That I know as a fact that as at 7th August, 2013 when this Appeal was filed, CPC as a Political Party was still in existence and its certificate was yet to be cancelled and substituted with the Certificate of Registration of All Progressive Congress (APC).”

In opposition to the application, the 3rd respondent particularly relies on paragraphs 1, 2, 4, 5, 6, 7, 8 and 9 of his counter-affidavit sworn to by one Kanayo Okafor Esq. The paragraphs are hereinunder also reproduced for their appropriateness:-

“1. That I am in the legal team of lawyers representing the

3rd Respondent in this appeal, and as such very conversant with the facts deposed herein, and I depose to this Counter-Affidavit with the consent and authority of the 3rd Respondent and on his behalf.

2. That the present appeal was filed on 7th August 2013 and I annex a copy of the Notice of Appeal as Exhibit "A".

B *3. That in Court on 2nd October 2014, we were served with a copy of a fresh motion for substitution filed by the Appellant in the name of the All Progressive Congress (APC), and I have gone through the said process with our lead Counsel, Gordy Uche Esq.*

C *4. That prior to filing of the present motion, the Appellant had previously filed two similar motions on notice for substitution before this Honourable Court, namely on 24th September 2013 and on 26th September 2014, and in both motions on notice, the affidavit in support was sworn to by the same deponent, namely,*
D *Alhaji Kashim Mabo, and I annex herewith copies of the said motions on notice as Exhibits "B" and "C" respectively.*

5. That in paragraph 14 of the affidavit in support of the motion on notice filed on 24th September 2013 and in paragraph 14 also of the motion on notice filed on 26th September 2014, the
E *Appellant through the said Alhaji Kashim Mabo had deposed 'That the Certificate of CPC was withdrawn on the 31st of July 2013.'*

6. That also in around No. 2 of the grounds in support of the two motions on notice, the Appellant had stated unequivocally that
F *the Congress for Progressive Change (CPC) ceased to exist on 31st July 2013.*

7. That most importantly, the cancellation of the registration Certificate of the Appellant on 31st July 2013 is confirmed by a certified true copy of an official letter by Independent National Electoral
G *Commission issued to the Appellant on 31st July 2013, and I annex herewith the said letter as Exhibit "D".*

8. That the same Alhaji Kashim Mabo has deposed to the affidavit in support of the present motion for substitution (which is the third one) and has turned ground in paragraph 10 of the affida-
H *vit to state that the certificate of registration of CPC was cancelled on 8th August 2013, after having deposed twice earlier that it was on 31st July 2013.*

9. That the paragraphs 10 and 12 of the affidavit in support are false."

The 2nd ground in support of applicant's two earlier applications, Exhibits "B" and "C" annexed to 3rd respondent's counter-affidavit, is hereinunder reproduced for ease of reference too.

"Ground(s) in support of the application

2. By the registration of the All Progressive Congress (APC), the trio of ANPP, ACN and CPC being the appellant in this appeal ceased to exist and function on their own as individual Political Parties as the Independent National Electoral Commission (INEC) withdrew their certificate on that 31st of July, 2013." B

Paragraph 1-4 common to both affidavits in support of applicant's two earlier motions reads:- C

"14. That the certificate of CPC was withdrawn on 31st of July, 2013."

Exhibit "D" referred to in paragraph 4 of the 3rd respondent's counter-affidavit (supra) is hereinunder reproduced in its entirety for its relevance as well:- D

*"INDEPENDENT NATIONAL ELECTORAL COMMISSION
Zambezi Crescent, Maitama District, P.M.B. 0184,
Garki-Abuja.*

Federal Capital Territory E

Telephone Ref No. INEC/EPM/PPM/504/Vol.1/50

31st July, 2013

The National Chairman,

Congress for Progressive Change (CPC), F

Plot 1132, Festus Okotie-Ebo Crescent,

Utako District,

Abuja.

RE: REQUEST FOR MERGER OF ACTION CONGRESS OF NIGERIA (ACN), ALL NIGERIA PEOPLES PARTY (ANPP) AND CONGRESS FOR PROGRESSIVE CHANGE (CPC) G

Your request for merger dated 1st July, 2013 refers.

2. The Commission at it meeting held on 31st July, 2013 approved the merger of Action Congress of Nigeria (ACN), All Nigeria peoples party (ANPP) and Congress for Progressive Change (CPC) as a political party with the name All Progressive Congress (APC). H

3. The Registration Certificate of Congress for Progressive Change (CPC) is hereby cancelled and you are therefore requested to submit same to the Commission immediately.

4. *The Commission shall issue a Certificate of Registration to ALL PROGRESSIVE CONGRESS (APC) in due course.*

5. *Please accept the assurance of the Commission's highest regard.*

Congratulations.

B **ABDULAH A. KAUGAMA**
SECRETARY TO THE COMMISSION"

Exhibit "E" also annexed to the 3rd respondent's counter-affidavit in opposition to the instant application is hereinunder equally reproduced:-

C **"INDEPENDENT NATIONAL ELECTORAL COMMISSION**
Certificate of Member of Political Parties

WHEREAS the Commission having verified the facts and information supplied to it by ACN, ANPP & CPC Political Parties, is
D *satisfied that the said Political Parties have fulfilled the necessary conditions for merger as a Political Party.*

NOW THEREFORE the Commission has, with effect from the 31st day of July, 2013 approved the merger of the aforesaid Political Parties as a Political Party to be known and called All Progressive Congress pursuant to the Constitution of the Federal Republic of Nigeria 1999 (as amended) and the Electoral Act, 2010 (as amended)
E *GIVEN under the hand of the Chairman and seal of the Commission at Abuja.*

This 8th day of August, 2013
F **PROF. ATTAHIRU MUHAMMADU JEGA OFR**
Chairman

INDEPENDENT NATIONAL ELECTORAL COMMISSION"

Reproduced hereinunder are paragraphs 7 to 11, both numbers inclusive, of the applicant's contradictory further and better affidavit filed on 8th October, 2014 for ease of reference:-

"7. That I known as a fact that the power vested on INEC does not include back dating certificate of registration of any political parties rather the certificate of APC dated and issued on 8th August,
H *2013 takes effect from that day.*

8. From the above, the 3 legacy parties remained recognized legal entities until 8th August, 2013 when their certificate were substituted.

9. I have also read the affidavit of Alhaji Kashim Mabo and I

know as a fact that he was the Kogi State Chairman of Congress of Progressive Change (CPC) prior to and until the merger was concluded, I know as a fact that Alhaji Kashim Mobi not being a lawyer and not being a state of National Secretariat of Congress for Progressive Change (CPC) would not know the knitty gritty of the steps taken during the merger until the certificate of registration of All Progressive Change (APC) was issued. B

10. That while reading the counter affidavit of Kanayo Okafor I discovered that he has exhibited the earlier motions and affidavit sworn to by Alhaji Kashim Mabo on the 24th September, 2013 and 26th September, 2014 to the counter affidavit on similar motion for substitution. C

11. That I have read inter alia the most recent affidavit of Alhaji Kashim Mabo swore to on the 3rd October, 2014 and I affirm that same is very correct. However the earlier ones filed on the 26th D September, 2014 and 24th September, 2013 are not correct hence the new motion was filed on the 2nd October, 2014. ”

The 3rd Respondent also relies on a preliminary objection filed on 3rd October, 2014 to urge the dismissal of appeal No. SC.447/ 2013 on which the instant application predicates. It is averred thereby E that the appeal which constitutes an abuse of the process of this Court is grossly incompetent. 3rd Respondent’s preliminary objection is on the grounds that:-

“(1) The appeal was filed in the name of a deceased party, F who had ceased to exist at the time of the filing of appeal.

(2) The Appellant on record, Congress for Progressive Change (CPC) ceased to exist on 31st July, 2013, as admitted by the Appellant on oath upon the withdrawal of its certificate of registration by the Independent National Electoral Commission on the said 31st July, G 2013.

(3) The cancellation of the registration certificate of the Appellant on 31st July, 2013 is confirmed by the certified true copy of an official letter from the Independent National Electoral Commission to the Appellant on 31st July, 2013. H

(4) Though the judgment was delivered on 10th July 2013 by the Court of Appeal, no appeal was filed by the deceased Appellant before its demise on 31st July 2013.

(5) This appeal was filed on 7th August 2013, after the “death”

of the Appellant.

(6) *The appeal is grossly incompetent.*

(7) *The appeal as constituted robs the Honourable Court of jurisdiction to entertain same."*

In paragraph 2, 3 and 4 in support of 3rd respondent's preliminary objection it is restated on oath thus:-

"2. *That this appeal was filed on 3rd August 2013, and I annex a certified true copy of the Notice of Appeal as Exhibit "A".*

3. *That this appeal was filed in the name of Congress for Progressive Change (CPC) at a time the said party had ceased to exist, which party had ceased to exist on 31st July 2013 as stated and confirmed by the Appellant in around No. 2 of the grounds in support of its two applications for substitution, and as deposed on oath in paragraph 14 of the supporting affidavits of the Motions on Notice dated 24th September 2013 and 26th September 2014 respectively, and I annex the motions herewith as EXHIBITS "B" and "C".*

4. *That I annex the certified true copy of letter of cancellation of the registration of the Congress for Progressive Change (CPC) herewith as EXHIBIT "D."*

It is significant to note that other Respondents, particularly the 1st, the Independent National Electoral Commission (INEC) and the 2nd, the Peoples Democratic Party (PDP), the Sponsor of the 3rd Respondent, Captain Idris Ichalla Wada, whose election and return the applicant by the instant Motion on Notice essentially seeks to contest, similarly oppose the application vide their respective counter-affidavits. They further raise preliminary objections to the competence of the appeal by virtue of which the instant application has been brought.

On the 9th of October, 2014 when applicant's motion came up for hearing, the court decided to hear the preliminary objections raised by the 2nd and 3rd respondents against the appeal by virtue of which the applicant seeks to move the court too. Being on a common jurisdictional issue, as a matter of practice, the objections were heard first with learned senior counsel for the applicant thereafter, while responding to the objections, moving his motion as well.

The crucial nature of the issue of jurisdiction in the adjudication process explains the resort to this procedure. A resort to an otherwise procedure amounts to waste of the time of the court and the

parties should the Court lack the jurisdiction to proceed and determine the appeal on the basis of which the applicant's motion has been brought. Courts do not indulge in vain acts. In *AG Lagos State v. AG of the Federation*, (2014) 3 NWLR (pt. 1412) 217, this Court at page 249 of the report restated the principle thus:-

*“Courts, including the apex court, lack the jurisdiction of entertaining incompetent claims and/or those that constitute abuse of their processes. They proceed in vain if they do. Being bereft of the necessary vires or with their processes having being abused, the decisions which eventually arise, lack the authority and so remain unenforceable no matter how well conducted the proceedings that brought them about were. A judgment given without jurisdiction creates no legal obligation and does not confer any rights to any of the parties. Being a challenge to the jurisdiction of this Court to entertain plaintiff's action, therefore, 1st defendant's preliminary objection has to be determined first. Having been raised, all proceedings must abate until the issue is resolved. See *Adeyemi v. Opeyori* (1976) 9 - 10 SC 31; *A.G., Lagos State v. Dosunmu* (1989) 3 NWLR (Pt.111) 552; *Jeric (Nig.) Ltd. v. U.B.A. Plc* (2000) 12 SC (Pt. 11) 133; (2000) 15 NWLR (Pt. 691) 447; *Nnonye v. Anyichie* (2005) 2 NWLR (Pt.910) 623 and *Diapialong v. Dariye* (2007) 8 NWLR (Pt.1036) 332.”*

In arguing their preliminary objection, learned senior counsel for the 3rd respondent Chief Chris Uche further identified, adopted and relied on the written address in support of their preliminary objection filed on 3rd October 2014. It is submitted that the preliminary objection is brought pursuant to order 2 rule 9(1) of the Supreme Court Rules 1999 as amended. The preliminary objection, he submits, is accompanied by a seven (7) paragraph affidavit deposed to on behalf of the 3rd respondent/objector by Mr. Kanayo Okafor. Four Exhibits, namely Exhibit “A”, the Notice of appeal on which the instant application predicates, the two Motions on Notice filed by the “Appellant” on 24th September 2013 and 26th September 2014, Exhibits “B” and “C” respectively, and Exhibit “D” the certified true copy of the official document from the Independent National Electoral Commission confirming the cancellation of the registration certificate of the appellant on 31st July 2013. Learned counsel cited the grounds for their objection as well as their counter-affidavit in opposition to Applicant's Motion on Notice filed on the 3rd of October

2014 for its substitution of the appellant in Appeal No. SC/477/2013. The germane aspects of all these documents and/or averments have earlier been reproduced in this ruling.

It is further submitted by learned senior counsel for the 3rd respondent/objector that the appellant on record ceased to exist on 31st July 2013 with the cancellation of its registration certificate, through Exhibit “D”, by the Independent National Electoral Commission. This fact, learned senior counsel further submits, has been admitted by the applicant in paragraph 14 common to the two affidavits in support of applicant’s two earlier applications, Exhibits “B” and “C”, and in the grounds in support of both applications. Exhibit “A”, the Notice of Appeal, on which applicant’s Motion rests, it is further submitted, was filed on the 7th August, 2013 by which date the purported appellant therein, the CPC, was no longer in existence, its registration certificate having been cancelled and withdrawn, as evidenced by Exhibit “D”, on 31st July, 2013. At the time the Notice of Appeal, Exhibit “A”, was filed, the appellant having died and ceased to exist, contends learned senior counsel, lacked the vires to file or authorize the filing of the appeal. The appeal having been filed in the name of a deceased party is grossly incompetent. The applicant cannot, therefore, argues learned senior counsel for the 3rd respondent/objector, predicate its Motion on Notice on a non-existing appeal. Relying on *Ezenwosu v. Ngonadi* (1988) 3 NWLR (Pt. 81) 163 at 183 and *In Re Otuedon* (1995) 4 NWLR (Pt. 392) 655 at 667, learned senior counsel urges that the incompetent Notice of Appeal as well as the application it purportedly carries be dismissed.

Counsel for the other respondents/objectors proffered similar arguments, identified and/or adopted the foregoing submissions of learned senior counsel for the 3rd respondent/objector.

In responding to the preliminary objections and simultaneously moving applicant’s motion for the substitution of the appellant, learned senior counsel J. S. Okutepe relies on the affidavit in support of the application filed on 2nd October, 2013 and their further and better affidavit filed on the 8th of October, 2014 and contends that the appeal on which their application rests is valid and competent. The issue the application raises, learned Senior Counsel submits, is whether the Congress for Progressive Change (CPC), the

appellant, had died on 31st July, 2013 or on the 8th of August, 2013. The issue, he submits, can only be resolved by reference to Sections 78(1), 80 and 84(5) of the Electoral Act 2010 (as amended). The appellant, learned senior counsel argues, enjoyed a distinct juristic personality before its merger with the other political parties; the Action Congress of Nigeria, (ACN), and the All Nigeria Peoples Party, (ANPP). The death of the appellant, it is submitted, took place on the 8th of August, 2013, the date the merger certificate was issued and not the 31st of July 2013 as asserted by the respondents. Since the appeal on which the instant application is brought was filed on the 7th of August 2013, a day before the “death” of the appellant, the appeal, learned Senior Counsel contends, survives the appellant. The applicant having stepped into the shoes of the appellant, learned senior counsel concludes, becomes a valid substitute. Relying on *C.C.B. (Nig) Ltd v. Onwuchekwa* (2000) 3 NWLR (Pt. 647) 65, learned Senior Counsel urges that the preliminary objections be overruled and the order for the substitution of the appellant by the applicant be granted.

Now, to what extent do the decisions parties herein cited and relied upon avail them? The principle enunciated by this Court in *Ezenwosu v. Ngonadi* (supra) and in *Re Otuedun* (supra) which the Court of Appeal applied inter-alia in *C.C.B. (Nig) Ltd v. Onwuchekwa* (supra), is that dead persons whether natural or artificial, lack the vires of initiating and/or maintaining an action, including an appeal, in the Law court, Only living persons do. In *Tesi Opebiyi v. Shittu Oshoboja* (1976) 9 and 10 SC 195 and *Nzom v. Jinadu* (1987) 1 NWLR (Pt. 51) 533, this Court had earlier further stated when an artificial person, a body corporate created pursuant to the Companies and Allied Matters Act, dies, such a Corporate body, the apex court held, dies at its dissolution.

Learned senior counsel for the applicant, Mr. Okutepa appears to rely on the Court of Appeal decision in *C. C. B. (Nig) Ltd v. Onwuchekwa* (supra) in the mistaken belief that it is a significant and lawful deviation from the Supreme Court’s decisions inter-alia in *Ezenwosu v. Ngonadi* (supra) and *In Re Ituedun* (supra). It is not. The position is that *C. C. B. (Nig) Ltd v. Onwuchekwa* (supra) persists as the intermediate Court’s dutiful submission to the apex Court’s binding authority. Having faltered while at the Court of Appeal by

holding, contrary to the Supreme Court's decisions, in C.C.B. (Nig) Plc v. O'silvawax (1999) 7 NWLR (Pt 609) 97, that the revocation of the banking licence of company and a court's order for the winding-up of the company, rather than the company's dissolution, constitutes the death of the company, I made a graceful detour at the earliest opportunity in C. C. B. (Nig) Ltd v. Onwuchekwa (supra) at page 73 -74 of the report firstly thus:-

"This Court's decision in C.C.B. (Nig) Plc. V. O'Silvawax (Supra) stands in clear and violent conflict with the Supreme Court decisions in Tesi Opebiyi v. Shittu Oshoboja (1976) 9 and 10 SC 195 and Nzom v. Jinadu (1987) 1 NWLR (Pt. 51) 533 which it sought to apply. In Nzom v. Jinadu (Supra) Oputa J.S.C. as he then was, reiterated thus:

"The dissolution of legal person is analogous to the death of an ordinary human person. Now dead men are no longer persons in the eye of the law as they have laid down their legal personality with their lives at death. Being destitute of rights or interest, they can neither sue nor be sued."

I dutifully further capitulated thus:-

"It is clear from the principle enunciated in Tesi Opebiyi v. Shittu Oshoboja & Anor (1976) 9 and 10 SC 195 and Nzom v. Jinadu (Supra) and by virtue of S. 454(1) and (2) reproduced above, a Company dies on it's dissolution. The revocation of the licence of that Company where it is a bank, and the further order of court winding some up may indicate the acute disposition, and extreme position of ineffectiveness of the Company but not so that fact of it's "death". The liquidator who may be likened to an undertaker, by virtue of the company's total ill disposition goes into preparation for the "burial" of the company but the actual "burial" of the company takes place on it's "death" at it dissolution."

Reiterating the law relevant to the facts of the instant application, I stated in CCB (Nig) Plc V. O'silverwax (Supra) particularly at page 103 G-H of the law report thus:-

"I unhesitatingly add that such dead men cannot equally appeal against decisions not in their favour nor can they respond in an appeal, attempting to sustain such decisions which, during their lifespan, favoured them. Whether at trial in first instance courts or appeal, dead men lack legal existence which parties must have to

give them the competence.”

One hastens to restate that a case is authority for what it actually decided. See Ibrahim V. JSC (1998) 14 NWLR (Pt. 584) 1 and Dangote v. C.S.C. Plateau State (2001) 9 NWLR (Pt 717) 132 at 155. For a previous decision of this Court to bind any court, the apex court not excepted, the facts and the law in the subsequent case must be the same or similar to those which informed the court’s earlier decision. B

The decision cited and relied upon by counsel on both sides in the instant application, therefore, apply to the matter at hand to the extent that the facts and applicable law in respect of the issue being determined herein are same or similar to those in the earlier decisions. C

Decisions of courts must, therefore, irredeemably relate to the facts which inform them. Justice suffers whenever decisions of courts proceed not on the basis of the facts which should otherwise inform those decisions. See C. C. B. Plc V. Onwuchekwa (supra); Okulate v. Awosanya (2000) 2 NWLR (pt 646) 530; Offoboche v. Ogoja LG. (2001) 16 NWLR (Pt 739) 458 and Odogbo v. Abu (2001) 14 NWLR (pt 732) 45. D E

This Court in Adegoke Motors Ltd V. Adesanya (1989) 3 NWLR (Pt. 109) 250 at 266 per Oputa JSC of blessed memory opined that “*Court’s decisions and pronouncements derive their strength, persuasive potency, inspiration and value as precedents from the facts of the case as pleaded and as presented*” and “*consequently, citing those pronouncements without relating them to the facts that induced them would be citing them out of their proper context.*” F

I agree with learned counsel for the respondents/objectors, particularly Chief Chris Uche SAN for the 3rd respondent/objector, G that the relevant facts in the instant application are brief and beyond dispute for two main reasons.

Firstly, the averments in the affidavits in support of the 3rd respondent’s preliminary objection as well as those in his counter affidavit in opposition to the application to which this ruling also relates, remain uncontroverted. This Court, it is the practice, has to accept those averments as true. See Badejo V. Minister of Education (1996) 9-10 SCNJ 51 at 69, Amgbare V Sylva (2007) 18 NWLR (Pt 1065) 109 and Dokubo-Asari V FRN (2007) 12 NWLR (Pt 1048) H

320.

Secondly and much more importantly, facts deposed to by a party and admitted by an opponent require no further proof from the party who made the deposition. The admitted facts are deemed established. See *Jolasun V Bamgboye* (2010) 19 NWLR (Pt 1225) 285 and *Taiwo V. Adegboro* (2011) 11 NWLR (Pt 1259) 562.

Applying the foregoing principles to the issues at hand, the undisputed facts in this matter are inter-alia as follows:-

(1) The appellant, a political party, the applicant by its Notice of Motion seeks to substitute had had its registration certificate withdrawn and cancelled by the statutory regulatory authority, the Independent National Electoral Commission (INEC), vide Exhibit “D”, on 31st July 2013.

(2) Appellant’s Notice of Appeal Exhibit “A”, on which the applicant’s Notice of Motion rests, was filed on the 7th August, 2013.

(3) The applicant came into being on 31st July, 2013 following the merger between the appellant, the Action Congress of Nigeria (ACN) and the All Nigeria Peoples Party (ANPP) its subsequent registration and the issuance of its registration certificate, Exhibit “E” by INEC on the 8th August, 2013.

(4) 1, 2 and 3 above have been admitted by the applicant herein in paragraph 14 of the affidavits in support of its earlier motions Exhibits “B” and “C”, ground 2 of these same applications.

Exhibits “D” and “E”, paragraph 14 in Exhibits “B” and “C” as well as the 2nd ground thereof have earlier been reproduced in this ruling. Mr. Okutepe, learned senior counsel for the applicant, is equally right to insist that the instant application must be determined within the purview of the Electoral Act 2010 as amended, the Legislation which empowers the 1st respondent herein, the Independent National Electoral Commission, (INEC), to register, issue political parties their registration certificates and, in appropriate cases, deregister them, cancel and withdraw the registration certificates. It is undoubtedly the duty of courts to interpret and apply the Laws of the land. Thus in the case at hand it is necessary, in determining the existence and legal capacity of the appellant the applicant herein seeks to substitute, to look at the very instrument under which the former is established. See *Fawehinmi v. N.B.A.* (No. 2) (1989) 2 NWLR (pt 105) 558 at 600, 602 and 612. In Sections 80, 84 (1), (4) and (5) and 98

of the Electoral Act 2010 as amended, the law provides as follows:-

“80. A political party registered under this Act shall be a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name.

84. (1) Any two or more registered political parties may merge on approval by the Commission following a formal request presented to the Commission by the political parties for that purpose.

(4) On receipt of the request for merger of political parties, the Commission shall consider the request and, if the parties have fulfilled the requirements of the Constitution and this Act, approve the proposed merger and communicate its decision to the parties concerned before the expiration of 30 days from the date of the receipt of the formal request-PROVIDED that if the Commission fails to communicate its decision within 30 days, the merger shall be deemed to be effective.

(5) Where the request for the proposed merger is approved, the Commission shall withdraw and cancel the certificates of registration of all the political parties opting for the merger and substitute a single certificate of registration in the name of the party resulting from the merger.

98. A political party registered by the commission in accordance with the provisions of any law in force immediately before the coming into force of the constitution and this Act shall be deemed to have been duly registered under this act.”

A community reading of the foregoing grants the appellant, being a registered political party, the corporate status, nay the necessary legal personality and competence to sue and be sued at whatever court in the country’s judicial hierarchy.

Before us, Mr. Okutepa, learned senior counsel for the applicant, contends that the appellant was alive as at 7th July 2013 when Exhibit “A” the notice of appeal, in relation to which the instant application has been brought, was filed. The respondents contend to the contrary.

The respondents are on a very firm terrain in this regard.

The law is trite that he who asserts must prove. The onus rests squarely on the applicant herein who contends that as at 7th July 2013 the appellant was alive and capable of initiating the appeal on which the instant application stands. See *IMNL V. Pegofor Ind Ltd*

3244 APC v. INEC (2014) 9-11 KLR M.D. Muhammad JSC
(2005) 15 NWLR (Pt. 947) 1 and NNPC V. Lutin Inv. Ltd. (2006) 2
NWLR (Pt. 965) 506.

Again, the law is that the best evidence of the proof of the
existence of the appellant, a registered political party, is the produc-
tion of a genuine certificate of its registration by the Independent
B National Electoral Commission, (INEC), the 1st respondent herein.
See The Registered Trustees of Apostolic Church Ilesha Area V. Attor-
ney-General Mid-Western State (1985) 6 SC 1 and ACB Plc V. Emos
trade Ltd (2002) 8 NWLR (Pt. 770) 501. The applicant did not make
C this certificate available to us and resultantly failed to provide the
proof that the appellant was alive as at 7th July 2013 when Exhibit
“A”, its Notice of Appeal on which the instant application purports to
stand was filed.

The applicant has failed to provide the proof of the legal
D existence of the appellant. The failure to discharge this legal burden
alone disentitles the applicant from the reliefs it canvasses. In Reptico
S. A. Geneva V. Afribank (Nig) Plc (2013) 14 NWLR (Pt. 1373) 172
at 211-212 this Court in similarly considering the consequence of the
failure of a plaintiff who sues as a juristic person to establish that fact
E stated thus:-

*“The appellant as plaintiff, not having been proved to be a
legal entity or juristic person entitled to sue and be sued in law, does
not exist, so to speak, in the eye of the law. As a result, the whole
F action in the trial court is, to say the least incompetent...”*

Beyond applicant’s failure to establish appellant’s juristic ex-
istence, the 3rd respondent has by virtue of Exhibit “D” annexed to
his counter-affidavit in opposition to the instant application, estab-
lished the fact of the “withdrawal” and “cancellation” of the appellant’s
G certificate of registration by the 1st Respondent, INEC, in the exer-
cise of the latter’s statutory powers under S 84(5) of the Electoral Act
2010 as amended. Having “withdrawn” and “cancelled” the registra-
tion certificate of the appellant on the 31st July 2013, INEC had on
that date effectively killed the appellant. The appellant that died on
H the 31st July 2013 ceased to have the legal competence it necessarily
required to file an appeal on 7th August 2013. On the authorities,
dead persons, including unnatural ones, lack the competence of su-
ing or defending any suit, here an appeal, in courts. See C. C. B.
(Nig) Plc V. Osilvawax (Supra) C. C. B. Ltd V. Onwuchekwa (supra)

Opebiyi V. Oshoboja (supra) and Nzom V Jinadu (supra).

It is for the foregoing and more so the fuller reasons contained in the lead ruling of learned brother I. T. Muhammad JSC, which I had preview of, that I sustain the preliminary objections of the respondents, adjudge appeal No. SC 477/2013 incompetent and find the instant application unsustainable. I strike out the appeal and dismiss the unmeritorious application. I also abide by the order of costs made in the lead ruling.

OGUNBIYI JSC

I had the privilege of reading in draft the lead Ruling just delivered by my learned brother I. T. Muhammad, JSC. I agree that the application is totally devoid of any merit and same should be dismissed. As a consequence, the purported appeal should also be struck out for incompetence.

The facts which gave rise to this case are well captured in the lead ruling.

The subject matter of the application filed 3rd October, 2014 seeks for the two following reliefs principally:-

“1. An order of the Honourable court substituting the appellant in Appeal No. SC. 477/2003, (CPC) with the applicant, All Progressive Congress (APC) and for the same substitution to be made anywhere CPC appeared in the process filed in this Honourable court.

2. AN ORDER striking out the 4th and 6th Respondents from the Appeal.”

The application is predicated upon six grounds and supported by affidavit and also a counter affidavit in particular that by the 3rd respondent. In further opposing the application, identical notices of preliminary objection were filed on behalf of the 2nd and 3rd respondents wherein they both challenged the competence of the appeal before the court. In otherwords, the objection is seeking for an order dismissing the appeal for gross incompetence as well as constituting an abuse of court process. Specifically, the seven grounds predicated the objection by the 3rd respondent as the principal objector are that:-

“(1) The appeal was filed in the name of a deceased party, who had ceased to exist at the time of the filing of appeal.

(2) *The Appellant on record, Congress for Progressive Change (CPC) ceased to exist on 31st July 2013, as admitted by the Appellant on oath upon the withdrawal of its certificate of registration by the Independent National Electoral Commission on the said 31st July 2013.*

B (3) *The cancellation of the registration certificate of the Appellant on 31st July 2013 is confirmed by a certified true copy of an official letter from the Independent National Electoral Commission to the Appellant on 31st July 2013.*

C (4) *Though the judgment was delivered on 10th July 2013 by the Court of Appeal, no appeal was filed by the deceased Appellant before its demise on 31st July 2013.*

(5) *This appeal was filed on 7th August 2013, after the “death” of the Appellant.*

D (6) *The appeal is grossly incompetent.*

(7) *The appeal as constituted robs the Honourable Court of jurisdiction to enter same.*

TAKE FURTHER NOTICE that at the hearing of this application, the 3rd Respondent shall rely on the Notice of Appeal, the applications for substitution filed by the Appellant on 24th September 2013 and 26th September 2014, the record of appeal and all other processes filed in this Appeal.”

F Also on the same date, the 3rd October, 2014, the 3rd respondent filed a counter affidavit to oppose the application and paragraphs 4, 5, 6 and 7 had this to say:-

G “4. *That prior to filing of the present motion, the Appellant had previously filed two similar motions on notice for substitution before this Honourable Court, namely on 24th September 2013 and 26th September 2014, and in both motions on notice, the affidavit in support was sworn to by the same deponent, namely, Alhaji Kashim Mabo, and 1 annex herewith copies of the said motions on notice as Exhibits “B” and “C” respectively.*

H 5. *That in paragraph 14 of the affidavit in support of the motion on notice filed on 24th September 2013 and in paragraph 14 also of the motion on notice filed on 26th September 2014, the Appellant through the said Alhaji Kashim Mabo had deposed “That the Certificate of CPC was withdrawn on the 31st of July 2013.”*

6. *That also in ground No. 2 of the grounds in support of the*

two motions on notice; the Appellant had stated unequivocally that the Congress for Progressive Change (CPC) ceased to exist on 31st July, 2013.

7. That most importantly, the cancellation of the registration certificate of the Appellant on 31st July 2013 is confirmed by a certified true copy of an official letter by Independent National Electoral Commission issued to the Appellant on 31st July, 2013, and I annex herewith the said letter as EXHIBIT "D".

The deposition in the foregoing paragraph 7 calls for a careful analysis of Exhibit D which cannot be taken in isolation but ought to be read in conjunction with Exhibit E, the certificate of merger of political parties which took effect from the 31st day of July, 2013. Contrary to the submission by the learned appellant's counsel therefore, the date 8th August, 2013 also shown on exhibit "E" could not possibly hold as the effective date. This is especially where the appellant conclusively declared the true position in paragraph 14 of the affidavit supporting the two earlier motions filed 24th and 26th September, 2013 and 2014 respectively:-

"14. That the Certificate of CPC was withdrawn on the 31st of July, 2013."

Put differently, the contention held by the appellant's counsel in holding unto the 8th August as the effective date is in my view, an afterthought which should not be allowed to hold.

It is intriguing to say also that paragraph 6 of the counter affidavits supra, lends a further support to paragraph 14 of the supporting affidavits to the earlier two motions Exhibits "B" and "C", that CPC had since ceased to exist on 31st July, 2013.

A careful scrutiny of the application before us will reveal that the applicant's stronghold reliance is on the facts deposed to in paragraphs 10, 11 and 12 of the supporting affidavit as follows:-

"10. That the Certificate of Registration of CPC was submitted to INEC (1st Respondent) on the 31st of July, 2013 and same was only cancelled on 8th August, 2013 after the Notice of Appeal in this Appeal was filed.

11. That I know as a fact that the Chairman of the 1st Respondent Prof. Attahiru Jega signed dated and issued the Certificate of Registration to All Progressive Congress (APC), the Applicant herein, on 8th August, 2013.

12. That I know as a fact that as at 7th August, 2013 when this Appeal was filed, CPC as a Political party was still in existence and its certificate was yet to be cancelled and substituted with the Certificate of Registration of All progressive Congress (APC)."

On the totality of the facts deposed in the paragraphs supra,
 B it is within reach to recognize the missing links as a result of the contradiction in the statements made by the self same deponent. The fact that the appellant abandoned the earlier motions (Exhibits B and C) did not in any way diminish the effect of his deposition which
 C legal effect is firmly binding.

In summary, it is the contention by the learned counsel Mr. Okutepa, SAN for the applicant that the fact that CPC ceased to exist as a result of the withdrawal of its certificate by the Independent National Electoral commission, does not relinquish the existing rights of
 D political office holders on its platform.

With all respect to the learned senior counsel, I beg to differ from his view and say that the scenario of the situation at hand is peculiar and totally distinct from the contention held by him. This is because the question in issue is whether an appeal filed in the name
 E of a sole deceased party is competent and valid in law? The notice of Appeal Exhibit "A" was filed by Congress for progressive Change (CPC), a sole appellant and there is no evidence of other surviving appellants.

Exhibit E, the certificate of Registration for the merger of
 F CPC and other political parties gives the effective date as 31st July, 2013. It is sufficient to restate also that the notice of Appeal, the subject of contention, was filed on 7th day of August 2013. On a cross reference to Exhibit E, a simple mathematical deduction will
 G show that the appeal was filed within seven days of the death of the appellant. In otherwords, it is correct therefore to say that as at the date of filing the notice of appeal, the appellant had since died on 31st July, 2013.

The contents of the document Exhibit E have been reproduced in the lead ruling by my learned brother. In my candid opinion, the interpretation of the contents of exhibit "E" is very clear, straight forward and unambiguous. In short, the merger of the three political parties, that is to say Action Congress of Nigeria (ACN), All Nigeria Peoples Party (ANPP) and Congress for progressive Change

(CPC) was approved on 31st July, 2013 by the Independent National Electoral Commission. As a consequence and sequel to the merger, the Registration certificate of congress for progressive change (CPC) was cancelled. A further directive was made on the Appellant/Applicant the same date to submit the cancelled certificate to the commission immediately. There cannot be a clearer and better understanding of the expressions that a certificate of registration will be issued in the name of the newly amalgamated party in due course. B

Even at the risk of repeating myself, I see it pertinent to recapitulate ground 2 supporting the appellant/applicant's application in the motion filed on 26th September 2014 which stated thus:- C

"By the registration of the All Progressive Congress (APC), the trio of ANPP, ACN and CPC being the Appellant in this Appeal ceased to exist and function on their own as individual political parties as the Independent National Electoral Commission (INEC) withdrew their D certificate on that 31st of July 2013."

In the light of the foregoing, it is intriguing and indeed self defeating that the learned counsel for the appellant/applicant should argue as existing, a party which he conceded earlier had ceased to exist. E

The party is, in otherwords defunct. I am in complete agreement and more with the counsel for the 2nd and 3rd respondents that at the time the purported notice of Appeal was filed, the appellant herein was long dead, ceased to exist and had neither legal existence nor vires to file or authorize the filing of the appeal. In the circumstance, the appellant's counsel should not be allowed to appropriate and re-probate the concluded matter. F

I further wish to emphasize that the applicant by paragraph 10 of its further affidavit filed 8/10/14 conceded to the filing of two earlier motions Exhibits B and C; regrettably however it sought to deny the facts deposed to on the affidavits in support of the motions for not being correct. It is interesting to note also that the deponent of the affidavits in Exhibits B and C is the same in the affidavit supporting the present motion filed to replace them. The development in my view is extremely unfortunate especially where the depositions were all made on oath. Retracting at this stage will neither aid the appellant's case nor be in its interest. H

The application for substitution presupposes the existence of

a valid and competent appeal pending before the court. It is also a matter of settled principle that one cannot put something in place of that which is nonexistent. By analogy, it follows therefore that the consequential effect of an absence of a living person to exercise a right of appeal is very fundamental and detrimental as it renders the purported appeal incompetent.

In similar cases of the nature before us, this court did affirm the incompetence of an appeal purportedly filed by a dead person. In reference, the bone of contention in the case of Ezenwosu Vs. Ngonadi NSCC 9(1988) Part 1 page 1071 was whether a dead person can appeal a judgment obtained against him while he alive? The situation in that case was on all fours with the case under consideration. In other words, the appeal was also filed after the death of the supposed appellant. This court held against the substitution of the applicant, who could have sought for and obtained leave of court to exercise the right of appeal as an interested party. At page 180 of the report the learned jurist Oputa JSC (of blessed memory) held the following view and said:-

“A dead man having no legal personality and capacity cannot file a Writ of Summons. By the same token a dead man cannot appeal against a judgment given against him when he was alive...”

The right to appeal may survive, but such right has to be exercised by living persons. Such living person or persons cannot be brought in by mere substitution...

Where an appeal is incompetent because it was brought in the name of a dead person such an appeal cannot be vivified and given life for the first time by substituting a living person as appellant.”

Under our law therefore, a dead person ceases to be a legal person or possess legal personality and can neither sue nor be sued personally. See *Nzom V. Jinadu* (1987) 1 NWLR 533.

With the demise of the applicant on the 31st July, 2013, in law, it ceases to exist and therefore lacks the locus standi to maintain any action at all in court. It could not also have had any legal capacity to file a competent notice of appeal, which act was an utter abuse of court process. In the result I concur with the reasoning and conclusion arrived thereat by my learned brother Hon. Justice I. T. Muhammad, JSC that, while the application should be dismissed as

an abuse of court process, the purported notice of appeal filed 7th August 2013 should be struck out for incompetence. I also abide by order made as to costs.

KEKERE-EKUN JSC

B

This is a motion on notice filed on 3/10/2014 on behalf of the Appellant/Applicant for

1. An order of the Honourable Court substituting the Appellant in Appeal No. SC.477/2013 CONGRESS FOR PROGRESSIVE CHANGE (CPC) with the Applicant, ALL PROGRESSIVES CONGRESS (APC) and for same substitution to be made anywhere CPC appeared in the processes filed in this Honourable Court. C

2. An order striking out 4th and 6th Respondents from the Appeal. D

3. Any order or further orders the Honourable Court may deem just to make in the circumstances.

Application supported by 19 paragraph affidavit.

Preliminary Objection filed on behalf of 3rd Respondent, Grounds of Preliminary Objection. E

1. The appeal was filed in the name of a deceased party.

2. The Appellant on record, CPC ceased to exist on 31/7/2013 as admitted on oath upon the withdrawal of its certificate of registration by INEC on the said 31/7/2013.

3. The cancellation of the registration certificate of the Appellant on 31/7/2013 is confirmed by a Certified True Copy of an official letter from INEC to the Appellant on 31/7/2013. F

4. Though the judgment was delivered on 10/7/2013 by the Court of Appeal, no appeal was filed by the deceased Appellant before its demise on 31/7/2013. G

5. This appeal was filed on 7/8/2013 after the “death” of the Appellant.

6. The appeal is grossly incompetent.

7. The appeal as constituted robs the Honourable Court of H jurisdiction to entertain same.

The notice of preliminary objection is supported by 7 paragraph affidavit and 4 exhibits. Also a counter affidavit filed on 3/10/2014.

The principle in *Ezenwosu Vs Ngonadi* (1988) 3 NWLR (Pt.81) 163 @ 180 is that there can be no substitution in the absence of a competent appeal. The issue in this application is whether there is a competent appeal pending in respect of which the order for substitution could be made.

B It is the contention of the 3rd Respondent (supported by 1st and 2nd Respondents) that at the time the Notice of Appeal in this appeal was filed the Appellant was dead, had ceased to exist, had no legal existence and had no vires to file or authorize the filing of the appeal.

C Learned senior counsel stresses the fact that there was a sole Appellant in the appeal who had died before the filing of the appeal.

Exhibit A attached to Preliminary Objection is the notice of appeal dated and filed on 7/8/2013.

D Exhibit B is a copy of the motion on notice filed on 24/9/2013 by the Appellant for an order for substitution.

Ground 2 categorically states that the three parties that now make up the Appellant ceased to exist and function as individual parties as INEC withdrew their certificates on 31/7/2013.

E Paragraph 14 of supporting affidavit avers thus:

"That the certificate of CPC was withdrawn on the 31st of July 2013."

F This fact is reiterated in the penultimate paragraph of the written address in support.

G Exhibit C is a motion on notice filed on 26/9/2014 seeking the same relief. The same ground is also relied on i.e. that CPC ceased to exist after the withdrawal of its license by INEC on 31/7/2013. See paragraph 14 of the supporting affidavit and written address on behalf of 3rd respondent.

Exhibit E is a Certified True Copy of a letter from INEC to the Chairman of CPC on the request for merger stating in paragraph 3:

H *"3. The registration certificate of Congress for Progressive Change (CPC) is hereby cancelled and you are therefore requested to submit same to the Commission immediately.*

4. The Commission shall issue a certificate of registration to ALL PROGRESSIVES CONGRESS (APC) in due course."

Learned counsel for the Applicant contends that the death of

CPC would only become conclusive on the date INEC issued the certificate of merger, which is 8/8/2013.

He relies on Sections 84(5), 78(1) and 80 of the Electoral Act 2010 (as amended) and CCB NIG. LTD. Vs ONWUCHEKWA (2000) 2 NWLR (647) 65 and contends that the appeal is competent since it was filed on 7/8/2013. B

Sections 78(1) and 80 of Electoral Act not relevant. Section 78(1) deals with general powers of INEC to register political parties. Section 80 deals with the legal personality of political parties.

Sec. 84(5) deals with steps to be taken in the merger process. It provides: C

“Where the request for the proposed merger is approved the Commission shall:

- 1) Withdraw and cancel the certificates of registration of all the political parties opting for the merger and* D
- 2) Substitute a SINGLE certificate of registration in the name of the party resulting from the merger.”*

Exhibit E is proof that INEC took the appropriate steps by withdrawing and canceling the certificate of CPC on 31/7/2013.

Exhibit E attached to the 3rd Respondent’s counter affidavit shows the certificate of merger dated 8/8/2013 stating specifically that it takes effect from 31/7/2013. It follows therefore that as at 7/8/2013 when the notice of appeal was filed, CPC had ceased to exist. E

The authority of CCB Nig. LTD Vs Onwuchekwa (supra) is not applicable because election matters are sui generis. The situation in CCB Nig. Ltd (supra) is not analogous to the situation in this case. F

Therefore the preliminary objections are upheld. There is no competent appeal before the court upon which the application for substitution could be anchored. The application is accordingly dismissed. G

Appeal No. SC.477/2013 founded on an incompetent Notice of Appeal is also incompetent and hereby struck out.

N100,000.00 costs awarded in favour of the 2nd and 3rd Respondents each against the applicant. H

OKORO JSC

I have had a preview of the ruling of my learned brother, I. T.

Muhammad, JSC, just delivered with which I am in total agreement that the instant application is without merit at all. The detailed facts leading to the application before this court are well captured in the lead ruling. I shall resist the temptation of repeating the exercise. But suffice it to say that the Congress for Progressive Change is the appellant in this appeal. Following its merger with the Action Congress of Nigeria and All Nigeria People's Party to form the All Progressives Congress (the applicant herein), the said applicant applied via a motion on notice filed on 3rd October, 2014, for the following reliefs:-

"1. *AN ORDER of the Honourable Court substituting the appellant in Appeal No. SC.477/2003 Congress for Progressive Change (CPC) with the applicant All Progressives Congress (APC) and for same substitution to be made anywhere CPC appeared in the process filed in the Honourable Court.*

2. *AN ORDER striking out 4th and 6th respondents from the appeal.*

3. *ANY ORDER OR FURTHER ORDERS the Honourable Court may deem just to make in the circumstances.*"

The grounds in support of the application are as follows:-

"1. *By a merger arrangement between the All Nigeria Peoples Party (ANPP), the Action Congress of Nigeria (ACN) and the Congress for Progressive Change (CPC), the Independent National Electoral Commission registered the All Progressives Congress (APC) being the result of the merger.*

2. *The appellant in this appeal has become part and parcel of the APC by virtue of the merger.*

3. *The Applicant is desirous of being substituted in place of CPC since its rights will be greatly affected by the outcome of the appeal.*

4. *That the substitution sought in this appeal does not affect the substance of the appeal.*

5. *That the respondents will not be prejudiced in any way by the grant of the application,*

6. *That it is in the interest of justice to grant this application."*

In support of the said application the applicant filed a 19 paragraph affidavit. On the 9th of October, 2014 when this application was to be heard, the learned senior counsel for the 3rd respondent Chief Chris Uche, SAN drew the attention of the court to the

counter affidavit against the application filed on 3rd October, 2014 and a Notice of Preliminary objection also filed on the same date. Chief Olajide Ajana, of counsel for the 2nd respondent also filed Notice of Preliminary objection. The other respondents did not file notice of preliminary objection.

In moving the preliminary objection, the learned senior counsel for the 3rd Respondent, Chief Uche, SAN referred to a 7 paragraph affidavit in support of the preliminary objection and exhibits A, B, C & D annexed. He also referred to the grounds for the objection which shows that the Appellant which filed this appeal on 7th August 2013 had ceased to exist since 31st July, 2013. According to him, this application cannot be granted because the applicant had died or ceased to exist as a juristic person as at 31st July, 2013 and as such lacked the capacity to file an appeal or any process in a court of law. That such an appeal filed by it is a nullity ab initio and that any application based on it cannot be granted. He then urged the court to dismiss the application.

Chief Ajana who also filed notice of preliminary objection on behalf of the 2nd respondent also moved the court to dismiss the application on the same ground already marshaled by Chief Uche, SAN. He also urged the court to dismiss the appeal. The other respondents did not file any notice of objection and so had nothing to urge the court.

In his response, the learned senior counsel for the applicant, Mr. Okutepa SAN submitted that the application to substitute CPC by the APC is competent. He contended that as at the 7th day of August, 2013 when the Congress for Progressive Change (CPC) filed this appeal, it was still alive since the certificate of merger was not issued until 8th August, 2013. It is his argument that although Independent National Electoral Commission said that CPC ceased to exist on 31st July, 2013, that could not be the case since the certificate of merger was yet to be issued. Relying on the case of *Co-operative & Commerce Bank Nigeria Ltd V. Alex Onwuchekwa* (2000) 2 NWLR (Pt.647) 65, he urged this court to accept his submission that the death of the CPC and other parties in the merger took place on 8/8/13 when the certificate was actually issued.

The crux of this application hinges on the date which the appellant, (CPC) ceased to exist or ceased to have legal personality.

If it is determined that CPC died on 31st July, 2013 when its certificate of registration was withdrawn and cancelled, then it had no legal capacity to file this appeal upon which this application is predicated. The said appeal was filed on 7th August, 2013. However, if it be determined that CPC ceased to exist or died on 8th August, 2013
 B when the Independent National Electoral Commission issued the certificate of merger, then CPC would be adjudged to have been alive with full legal capacity to sue or appeal as at 7th August, 2013 when the appeal was filed. The two situations each has separate,
 C distinct and far reaching legal implications. The law is well settled that a dead man having no legal personality and capacity cannot file a writ of summons and by the same token, a dead man cannot appeal against a judgment given against him when he was alive. See *Ezenwosu v. Ngonadi* (1988) 3 NWLR (Pt.81) 163, *I. O. Eyesan v. Y.O. Sanusi*
 D (1984) 4 SC 115.

In the case of *IN RE: OTUEDON* (1995) 4 NWLR (Pt.392) 655 at 668 paragraphs C - D, this court held, inter alia, that:

*"A notice of appeal which is filed on behalf of or in the name of a dead appellant after his death is incompetent and null and void
 E and the court cannot be asked to amend such a notice by substituting a living person or persons in place of the dead litigants. See Clement Ezenwosu V. Peter Ngonadi supra. It is not a mere procedural defect or irregularity that an appeal has been filed in the name of a
 F dead person. It is a radical and fundamental error which borders on the issue of jurisdiction. Accordingly, there must be a competent and pending appeal before one party may be substituted for another and in the absence of a pending appeal or suit, the issue of substitution becomes an exercise in futility as ex nihilo nihil fit."*

G The issue is as serious as stated above. Maybe I need to add that notice of appeal against any decision or judgment complained of is the foundation of a proper appeal. Thus where notice of appeal was filed by a dead person or an unauthorized person, it is incompetent, null and void. Therefore, there can be no valid appeal pending
 H upon which an application for substitution can be entertained. See *Tukur v. Government of Gongola State* (1988) 1 NWLR (Pt.68) 39, *Odojin v. Agu* (1992) 3 NWLR (Pt.2291) 350, *Opebiyi v. Oshoboja* (1976) 9 - 10 SC 95.

I shall now consider the status of the Appellant (CPC) at the

time the appeal was filed. The counter affidavit filed by the 3rd respondent and some exhibits attached are very instructive and illuminating. Paragraphs 4, 5, 6, 7, 8, 9, 10, 11 and 12 of the said counter affidavit deposed to by one Kanayo Okafor Esq., state as follows:-

“4. That prior to filing of the present motion, the Appellant had previously fled two similar motions on notice for substitution before this Honourable Court, namely on 24th September, 2013 and on 26th September, 2014, and in both motions on notice, the affidavit in support was sworn to by the same deponent, namely, Alhaji Kashim Mabo, and I annex herewith copies of the said motions on notice as EXHIBITS “B” And “C” respectively.

5. That in paragraph 14 of the affidavit in support of the motion on notice filed on 24th September, 2013 and in paragraph 14 also of the motion on notice filed on 26th September, 2014, the Appellant through the said Alhaji Kashim Mabo had deposed “That the Certificate of CPC was withdrawn on the 31st of July, 2013.”

6. That also in ground No. 2 of the grounds in support of the two motions on notice, the appellant had stated unequivocally that the Congress for Progressive Change (CPC) ceased to exist on 31st July, 2013.

7. That most importantly, the cancellation of the registration certificate of the Appellant on 31st July, 2013 is confirmed by a certified true copy of an official letter by Independent National Electoral Commission issued to the Appellant on 31st July, 2013 and I annex herewith the said letter as EXHIBIT “D”

8. That the same Alhaji Kashim Mabo has deposed to the affidavit in support of the present motion for substitution (which is the third one) and has turned around in paragraph 10 of the affidavit to state that the certificate of registration of CPC was cancelled on 8th August, 2013, after having deposed twice earlier that it was on 31st July, 2013.

9. That the paragraphs 10 and 12 of the affidavit in support are false.

10. That the appellant deliberately refused to annex and exhibit the Certificate of Registration of the All Progressives Congress (APC), notwithstanding that it referred to it in paragraph 11 of the supporting affidavit.

11. That the said Certificate of Registration of the All

Progressives Congress (APC) is explicit, unambiguous and clear on the fact that the merger producing APC took effect from 31st July, 2013, notwithstanding that the certificate was eventually issued on 8th August, 2013 as promised in INEC's letter earlier annexed herein as Exhibit "C" where the Commission stated that thus:

B *"4. The Commission shall issue a Certificate of Registration to ALL PROGRESSIVES CONGRESS (APC) in due course."*

12. That I annex the certified true copy of the Certificate of Registration of the All Progressives Congress (APC) as EXHIBIT "E".

C Again, in the second ground in support of applicant's two earlier motions i.e. exhibits B and C attached to the 3rd respondent's counter-affidavit, the applicant stated unequivocally that the appellant ceased to exist on 31st July, 2013. For the avoidance of doubt, I hereby reproduce the said ground No. 2. It states:

D *"By the registration of the All Progressives Congress (APC), the trio of ANPP, ACN and CPC being the appellant in this appeal ceased to exist and function on their own as individual political parties as the Independent National Electoral Commission (INEC) withdrew their certificate on that 31st of July, 2013."*

E There are two other documents mentioned in and annexed to the counter affidavit of the 3rd respondent which appear to have settled the matter beyond any conjecture. The documents are exhibits D and E mentioned in paragraphs 7 and 12 respectively. Exhibit D states:

F *"INDEPENDENT NATIONAL ELECTORAL COMMISSION
Zambezi Crescent, Maitama District. P.M.B. 0184. Garki,
Abuja Federal Capital Territory*

*Telephone..... Ref No. INEC/EPM/PPM/504/VOL.1/40
31st July, 2014*

G *The National Chairman,
Congress for Progressive Change (CPC),
Plot 1132, Festus Okotie-Ebo Crescent,
Utako District,*

H *Abuja.*

RE: REQUEST FOR MERGER OF ACTION CONGRESS OF NIGERIA (ACN), ALL NIGERIA PEOPLES PARTY (ANPP) AND CONGRESS FOR PROGRESSIVE CHANGE (CPC)

Your request for merger dated 1st July, 2013 refers.

2. *The Commission at its meeting held on 31st July, 2013 approved the merger of Action Congress of Nigeria (ACN), All Nigeria Peoples Party (ANPP) and Congress for Progressives Change (CPC) as a Political Party with the name All Progressive Congress (APC).*

3. *The Registration Certificate of Congress for Progressives Change (CPC) is hereby cancelled and you are therefore requested to submit same to the Commission immediately.*

4. *The Commission shall issue a Certificate of Registration to ALL PROGRESSIVES CONGRESS (APC) in due course.*

5. *Please accept the assurance of the Commission's highest regard.*

Congratulations.

ABDULLAHIA A. KAUGAMA

SECRETARY TO THE COMMISSION"

Also Exhibit E states:

"INDEPENDENT NATIONAL ELECTORAL COMMISSION

Certificate of Merger of Political Parties

WHEREAS the Commission having verified the facts and information supplied to it by ACN, ANPP & CPC Political Parties, is satisfied that the said Political Parties have fulfilled all the necessary conditions for merger as a Political Party.

NOW THEREFORE the Commission has, with effect from the 31st day of JULY, 2013 approved the merger of the aforesaid Political Parties as a Political Party to be known and called ALL PROGRESSIVES CONGRESS pursuant to the Constitution of the Federal Republic of Nigeria 1999 (as amended) and the Electoral Act, 2010 (as amended)

GIVEN under the hand of the Chairman and Seal of the Commission at Abuja.

This 8TH day of AUGUST, 2013

SIGNED

PROF. ATTAHIRU MUHAMMADU JEGA. OFR

Chairman

INDEPENDENT NATIONAL ELECTORAL COMMISSION"

There are many other features of the application which I can go on and on to reproduce in order to show when the CPC actually ceased to exist. But suffice it to say that I have brought to the fore enough evidence to demonstrate unequivocally that the CPC, ap-

pellant in this case ceased to exist on 31st July, 2013. In Exhibit D, a document made on 31st July, 2013, paragraph three thereof states:

“The Registration Certificate of Congress for Progressive Change (CPC) is hereby cancelled and you are therefore requested to submit same to the Commission immediately.”

B Clearly, the above quotation from Exhibit D shows that CPC’s certificate was cancelled on 31st July, 2013. The cancellation means that the life it had, had been sniffed out of it with effect from that date. The refusal of the promoters of CPC to return the cancelled
C certificate to Independent National Electoral Commission did not breathe fresh life into it any longer. It had died. In fact Exhibit E states clearly that the All Progressives Congress came into being “with effect from the 31st day of July, 2013”. I do not think I need to say more on this issue.

D From what have been stated above, one thing is crystal clear, and that is, that the appellant in this appeal ceased to exist with effect from 31st July, 2013. That being the case, ii lacked legal capacity to sue or be sued in a court of law in a terrestrial Nigeria. May be he can do so in the spiritual world. A corollary to this is that, the appellant
E could not file any appeal against a judgment given against it when it was alive.

From the position of the law adumbrated earlier in this ruling, the appeal filed by the appellant on 7th August, 2013, is incompetent, null and void having been filed by a dead party. The consequence of this is that an application to substitute the dead appellant
F in the circumstance of this case cannot be granted.

Accordingly, the preliminary objections are hereby upheld. The unmeritorious application is hereby dismissed. Consequently, the
G null and void appeal is hereby struck out. I abide by the order as to costs as contained in the lead ruling.

H