

# **KINGS LAW REPORTS**

## **(ALL SC/NOVEL CA)**

**(2014) KLR VOL 9-11 PART 353 pp. 3167-3512**

**SEPTEMBER - NOVEMBER 2014**

**Dedicated to the King of kings**

**O. O. NOEL ESQ. Founder/Publisher**

C. L. Onwuegbuna Esq. Chief Editor

### **INDEX OF CASES REPORTED**

1. Aikhadueki v. State p. 3179 - June 2013
2. All Progressive Congress v. Independent National Electoral Commission p. 3203 - Nov
3. Aromolaran v. Agoro p. 3261 - Nov
4. Danladi v. Dangiri p. 3295 - Nov
5. Enterprise Bank Ltd. v. Aroso p. 3355 - April 2013
6. Gwede v. Independent National Electoral Commission p. 3389 - Oct
7. Peoples Democratic Party v. Independent National Electoral Commission p. 3475 - Sept

ACTIONS - Detinue - Damages - Measure of damages in detinue is inter alia - Market value of the goods detained - And money representing the normal loss through detention of the goods (H7) Enterprise Bank Ltd. v. Aroso p. 3355

ACTIONS - Detinue - Proof - Plaintiff must inter alia plead evidence that - He is owner of the property - He has right to possession - And that defendant is in actual possession of the property (H6) Enterprise Bank Ltd. v. Aroso p. 3355

ACTIONS - Parties - Joinder of - A person is made party to an action - If the action cannot be effectually and completely settled unless he is a party (H2) Enterprise Bank Ltd. v. Aroso p. 3355

ADMINISTRATIVE LAW - Justice - The haste with which the investigation was conducted - And the presentation of edited report upon which appellant was removed - Are travesty of justice (H10) Danladi v. Dangiri p. 3295

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) APC v. INEC p. 3203

APPEALS - Filing - Legal capacity - CPC lacked the capacity to file the appeal - As it has ceased to exist as a political party - From 31<sup>st</sup> July 2013 when it metamorphosed into APC (H2) APC v. INEC p. 3203

APPEALS - Fresh issue - Leave - It is against the law to raise for the first time such issue - Without first seeking and obtaining leave of the appellate court (H1) Gwede v. INEC p. 3389

APPEALS - Grounds - Competence of - As time is of essence - Any ground found to be incompetent - Shall be struck out along with issue distilled from it - Without the need for motion on notice (H3) PDP v. INEC p. 3475

APPEALS - Grounds - Obiter dictum - Objection on ground 3 is sustained - As it is clear that the ground challenges obiter dictum of the Court of Appeal (H9) Gwede v. INEC p. 3389

APPEALS - Grounds of law - The ground being on jurisdiction of trial court to hear and determine the matter - Is a ground of law for which leave of court is not required before it is filed (H8) Gwede v. INEC p. 3389

APPEALS - Issue - Fair hearing - Despite the lapses in counsel's brief - SC will not fail to resolve the obvious issue of denial of fair hearing - Otherwise it will amount to a return to era of technical justice (H3) Danladi v. Dangiri p. 3295

APPEALS - Issue - Validity of - Where an issue does arise from any of the grounds of appeal - The issue is incompetent and liable to be struck out (H2) Gwede v. INEC p. 3389

APPEALS - Issues - Determination - Once an issue joined by parties is clear - Court in order to do substantial justice - Should not restrict itself to the manner of presentation of counsel's argument (H2) Danladi v. Dangiri p. 3295

APPEALS - Issues - Suo motu raising - CA wrongfully raised the issue of irregular nomination of appellant - Without calling for addresses of counsel on the matter - And proceeding to arrive at a decision on same (H6) Gwede v. INEC p. 3389

APPEALS - Jurisdiction - Damages - In absence of appeal the trial court's judgment remains inviolate - And SC has no jurisdiction since it handles appeals from CA and not from HC (H8) Enterprise Bank Ltd. v. Aroso p. 3355

APPEALS - Preliminary objection - Determination - Where there is objection against consideration/continuation of a process - The objection should be determined first (H1) APC v. INEC p. 3203

APPEALS - Reply brief - The essence of a reply brief is not for repeti-

**3170 INDEX OF SUBJECT MATTER IN (2014) 9-11 KLR**

tion of issues joined - Or improvement of argument in appellant's brief (H1) Danladi v. Dangiri p. 3295

COURT PROCESSES - Parties - Striking off - Estoppel - Where counsel is allowed to delete party from his process - And all counsel proceed to do so and the case is concluded without objection - All sides are deemed satisfied (H3) Enterprise Bank Ltd. v. Aroso p. 3355

COURTS - Affidavit - Issue - Resolution - Having found that entire records are not before it - And that originating summons are heard on affidavit - CA ought to have resolved the issue on affidavit (H6) Danladi v. Dangiri p. 3295

COURTS - Document - Tendering of - In pursuit of justice and resolution of the issue - The lower courts ought to have ordered the production of - Unedited records of respondents' proceedings (H5) Danladi v. Dangiri p. 3295

COURTS - Fair hearing - Breach - Resolution of - Based on the undisputed affidavits of appellant - CA ought to have resolved the issue against respondents - And nullify the proceedings of the panel (H12) Danladi v. Dangiri p. 3295

COURTS - FHC - Jurisdiction - The fact that the COP was once a party and is an agency of FG - Is not enough for the case to be tried by FHC - As there was no claim against him (H1) Enterprise Bank Ltd. v. Aroso p. 3355

COURTS - Records - Fair hearing - Issue - Resolution of - CA ought to have called for complete records of the panel - For in the absence of same - The courts cannot determine issue of denial of fair hearing (H7) Danladi v. Dangiri p. 3295

CRIMINAL PROCEDURE - Proof - Failure of - Conviction of appellant is set aside - As it was not properly affirmed by CA - Since prosecution failed to prove its case beyond reasonable doubt (H7) Aikhadueki v. State p. 3179

CRIMINAL PROCEDURE - Proof - Reasonable doubt - Where such doubt exists in a criminal case - The same must be resolved in favour of accused (H6) Aikhadueki v. State p. 3179

DAMAGES - Award - Entitlement to - Having not succeeded in the case - Respondent is not entitled to the award of N2,500,000 (H3) Aromolaran v. Agoro p. 3261

DOCUMENTS - Admissibility - Copy of the letter issued to 25<sup>th</sup> respondent was properly tendered - As there was no need for certification - The same not being a public document (H14) PDP v. INEC p. 3475

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) APC v. INEC p. 3203

DOCUMENTS - Public document - Admissibility s. 90(1) EA - No other secondary evidence of public document is admissible - Other than a certified true copy - Hence Exhibit 7 is inadmissible (H1) Aromolaran v. Agoro p. 3261

DOCUMENTS - Public document - Types - Evidence Act s. 102 - They are documents forming official acts - And public records kept in Nigeria of private documents (H13) PDP v. INEC p. 3475

ELECTION PETITIONS - Appeals - Brief - Failure to file within time - The brief having been filed in violation to para. 6 of Practice Directions - Is incompetent and is struck out (H2) PDP v. INEC p. 3475

ELECTION PETITIONS - Appeals - Hearing - 1999 Constitution s. 285(7) - Being of sui generic nature - Election matters must be by the rules - As any act done outside prescribed period - Is a nullity (H1) PDP v. INEC p. 3475

ELECTIONS - Crime - Allegation of - Proof - By Evidence Act s. 135(1) - Allegation of false statement on INEC form - Must be proved

beyond reasonable doubt (H12) PDP v. INEC p. 3475

ELECTIONS - Gubernatorial - Qualification - 1999 Constitution s. 177 - A person is qualified for the election if inter alia - He is a citizen of Nigeria by birth - And has attained the age of 35 years (H9) PDP v. INEC p. 3475

ELECTIONS - Hearing - Limit - Time is of essence in election matters - And where a party is guilty of undue delay in instituting pre election matter - Court will decline jurisdiction to entertain same (H10) Gwede v. INEC p. 3389

ELECTIONS - List of candidates - Publication of - Status - Publication of such list for election by INEC - Does not confer or take away validity from a duly nominated or substituted candidate (H5) Gwede v. INEC p. 3389

ELECTIONS - Multiple registrations - Appeals - Concurrent findings - Findings having been made on the issue by lower courts - SC cannot interfere save where the findings are perverse (H10) PDP v. INEC p. 3475

ELECTIONS - Nomination - Appellant from the records was the nominated candidate of 4<sup>th</sup> respondent - Who participated in the election - And ought to have been issued a certificate of return (H4) Gwede v. INEC p. 3389

ELECTIONS - Nomination - Right of political party - Nomination of candidate for election - Remains within the domestic affairs of political party - And courts have no jurisdiction over same (H7) Gwede v. INEC p. 3389

ELECTIONS - Non compliance - Proof - Onus of - Petitioner must give evidence to the effect - That the election was not conducted substantially in accordance with the principles of the Act (H16) PDP v. INEC p. 3475

ELECTIONS - Participation - Basis - No one contests election in the

country - Without first being member of a registered political party - And being sponsored by that party as candidate for the election (H13) Gwede v. INEC p. 3389

ELECTIONS - Pre election - Judgment - Appellant is declared to be the duly nominated candidate of 4<sup>th</sup> respondent - And is to be issued with certificate of return forthwith (H15) Gwede v. INEC p. 3389

ELECTIONS - Pre election - Jurisdiction - Such matter instituted prior to election subsists - And the HC where it was instituted - Continues to have jurisdiction over same - Even after election (H12) Gwede v. INEC p. 3389

ELECTIONS - Pre election - Justice - Where such matter is instituted timeously in HC - But cause of action cannot be accommodated within Electoral Act s. 138(1) - HC still has jurisdiction - Otherwise party is left without a remedy (H14) Gwede v. INEC p. 3389

ELECTIONS - Pre election matters - Filing time - Such suit must be filed before election - Since it is only then that can court issue an order - Disqualifying candidate from election (H6) PDP v. INEC p. 3475

ELECTIONS - Pre election matters - Jurisdiction - By Electoral Act s. 31(5)(6) - A person intending to challenge information given by candidate in election - May file suit at FHC or HC of State/FCT (H5) PDP v. INEC p. 3475

ELECTIONS - Qualification - Challenge - Where a person who ought not to have contested election was allowed to do so - Remedy available to challenge him at election tribunal lies in Electoral Act s. 138(1)(a) (H7) PDP v. INEC p. 3475

ELECTIONS - Registration - Validity - Exhibit WO2 from INEC is to the effect that only one voter's card was issued to 25<sup>th</sup> respondent - Hence the matter should be laid to rest on that statement (H11) PDP v. INEC p. 3475

ELECTIONS - Result - Challenge - Proper court - Where cause of action in pre election matter - Constitutes one of the grounds to challenge the result - The proper venue is the Election Petition Tribunal (H11) Gwede v. INEC p. 3389

ELECTIONS - Results - Regularity of - Where an election has been held - And the result declared by the election body - That result is prima facie correct (H17) PDP v. INEC p. 3475

ELECTIONS - Substitution - CA wrongfully dismissed appellant's suit at trial court - There being no claim before the court - Challenging the validity of nomination by substitution of appellant (H3) Gwede v. INEC p. 3389

ELECTIONS - Validity of - By Electoral Act s. 139(1) - Election shall not be invalidated by non compliance - If court is of opinion that it was conducted substantially in accordance with the Act - And that non compliance did not affect substantially the result (H15) PDP v. INEC p. 3475

EVIDENCE - Confession - Effect on co accused - Allegations made by accused against co accused - Will not constitute evidence against the co accused - Unless the co accused adopted the statement (H4) Aikhadueki v. State p. 3179

FAIR HEARING - Denial - Proof - Respondents' mere assertion that appellant was not denied fair hearing - Is of no moment - They ought to have exhibited their report - Showing compliance with Constitution s. 36(1) (H4) Danladi v. Dangiri p. 3295

GOVERNMENT - Elected officials - Impeachment of - Rules of due process must be strictly followed - And the procedure for removal must be jealously guarded by the courts (H11) Danladi v. Dangiri p. 3295

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) APC v. INEC p. 3203

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) APC v. INEC p. 3203

MURDER - Circumstantial evidence - Weight - For such evidence to ground conviction - It must only lead to the guilt of appellant - Otherwise appellant cannot be convicted of the murder of deceased (H3) Aikhadueki v. State p. 3179

MURDER - Ingredients - Proof - To secure conviction prosecution must prove - That deceased died - That the death was caused by accused - That the act or omission of accused was intentional (H1) Aikhadueki v. State p. 3179

MURDER - Proof - Common intention - Criminal Code ss. 7 & 8 - Is not applicable as no evidence exists - To justify decision of CA that appellant and others - Acted in concert to kill the deceased (H5) Aikhadueki v. State p. 3179

MURDER - Proof - Means of - Evidence relied upon to establish murder - May be direct or circumstantial - And must establish guilt of accused beyond reasonable doubt (H2) Aikhadueki v. State p. 3179

PLEADINGS - Averments - Failure to controvert - Facts averred by appellant stand unchallenged - And are deemed admitted by respondents - Who chose not to react (H9) Danladi v. Dangiri p. 3295

PLEADINGS - Binding nature - Parties are bound by their pleadings - And a party will not be allowed to set up new case on appeal - Other than that which was ventilated at the trial court (H18) PDP v. INEC p. 3475

STATUTES - Interpretation - Expressio unis est exclusio alterius - Express mention of something is to the exclusion of all others - Which

**3176 INDEX OF SUBJECT MATTER IN (2014) 9-11 KLR**

otherwise would have applied by implication (H8) PDP v. INEC p. 3475

STATUTES - Interpretation - Principle - Court is to interpret words contained in statute - And not to go outside the clear words - In search of interpretation which is convenient to it or to the parties (H2) Aromolaran v. Agoro p. 3261

STATUTES - Interpretation - Principle - Literal rule of interpretation is preferable - Unless it would lead to absurdity and inconsistency - With provisions of the statute as a whole (H4) PDP v. INEC p. 3475

SUPREME COURT - Powers - The court can pursuant to its powers in s. 22 of its Act - Do what the Court of Appeal ought to have done - But failed to do (H8) Danladi v. Dangiri p. 3295

WRIT OF SUMMONS - Service of - Objection - Irregularity in issuance/service of the writ - Will not nullify the proceedings/judgment - Since appellant took fresh steps therein (H5) Enterprise Bank Ltd. v. Aroso p. 3355

WRIT OF SUMMONS - Service of - Outside jurisdiction - Ekiti HC Rules O. 5 r. 1 - The writ is issued by Registrar - And such a process can only be served outside jurisdiction after leave is obtained (H4) Enterprise Bank Ltd. v. Aroso p. 3355

## **INDEX OF STATUTES & RULES**

Constitution of the Federal Republic of Nigeria 1999 (as amended), ss. 36(1), 186, 188(4), 271(4)(5) *Danladi v. Dangiri* p. 3295, ss. 177, 182, 285(7) *PDP v. INEC* p. 3475, ss. 233(2), 251 *Enterprise Bank Ltd. v. Aroso* p. 3355

Court of Appeal Act, s. 16 *Danladi v. Dangiri* p. 3295

Criminal Code Cap 30 vol. II Laws of Eastern Nigeria 1963, ss. 271, 319(1) *Aikhadueki v. State* p. 3179

Electoral Act 2010 (as amended), s. 32(4), 33, 35, 87(10), 138(1), 141 *Gwede v. INEC* p. 3389, ss. 24(1), 31(5)(6), 138(1), 139, 149 *PDP v. INEC* p. 3475, ss. 78(1), 80, 84(5), 98 *APC v. INEC* p. 3203

Evidence Act 1990, s. 97(2) *Aromolaran v. Agoro* p. 3261

Evidence Act 2011, ss. 100, 201, 231 *Aromolaran v. Agoro* p. 3261, ss. 102, 103, 128, 168(1) *PDP v. INEC* p. 3475, s. 142 *Danladi v. Dangiri* p. 3295, s. 178(2) *Aikhadueki v. State* p. 3179

High Court (Civil Procedure) Rules of Ekiti State, O. 2 rr. 1 & 2(i), O. 5 rr. 1 & 6 *Enterprise Bank Ltd. v. Aroso* p. 3355

Interpretation Act Cap 123 LFN 2004, s. 2 *APC v. INEC* p. 3203

Supreme Court Act, s. 22 *Danladi v. Dangiri* p. 3295, s. 22 *Gwede v. INEC* p. 3389

Supreme Court Rules 1999 (as amended), O. 2 r. 9(1) *APC v. INEC* p. 3203, O. 6 r. 1 *Enterprise Bank Ltd. v. Aroso* p. 3355