

SUPREME COURT OF NIGERIA
FRIDAY 19TH DECEMBER, 2014. SC. 257/2012
CORAM:- J. A. FABIYI, B. RHODES-VIVOUR, M. D.
MUHAMMAD, C. B. OGUNBIYI, K. B. AKA'AH, JJSC

CHIEF ADEBISI ADEGBUYI APPELLANT
AND	
1. ALL PROGRESSIVES CONGRESS (APC)	
(Substituted for the defunct Action Congress	
of Nigeria by order of this Court dated	
5th May, 2014)	
2. ALHAJI SEFIU ADEGBENGA KAKA	
3. INDEPENDENT NATIONAL	
ELECTORAL COMMISSION (INEC) RESPONDENTS

APPEALS - Grounds - Validity of - The grounds are valid as they alleged misdirection in law - Hence the appeal is not academic - And preliminary objection is overruled (H1)

APPEALS - Issue - Determination of - CA being an intermediate court - Has duty to consider issue of jurisdiction and all others - And it should not restrict itself to one or more issues (H2)

ELECTIONS - Senatorial - Withdrawal letter - Validity of - Appellant not having denied authorship of the letter - Is presumed to admit content therein - And court can take same as established (H3)

ELECTIONS - Action - Locus standi - Appellant who withdrew from the contest - Cannot validly complain about conduct of the primary election - Or approach court to enforce any right from the primary (H4)

ELECTIONS - Primary - Conduct of - Is within the exclusive power of political party - And such power cannot be interfered with by courts (H5)

COURTS - Record of proceedings - Challenge to - Procedure - Party must swear to an affidavit - Setting out part of the proceedings omit-

ted - And the affidavit must be served on the Judge or registrar (H6)

JUDGMENTS - Mistake - Weight - For a mistake to result in setting aside judgment - The same must be substantial - In the sense that it affected the decision appealed against (H7)

JUDGMENTS - Mistake - Correction of - Court can rectify any slip in judgment - Provided that it does not amount to a miscarriage of justice (H8)

FACTS

Before the Federal High Court Abeokuta, plaintiff/appellant commenced this action via originating summons against defendants/respondents, claiming that 1st respondent did not conduct a primary election in the Senatorial District in accordance with section 87 of the Electoral Act 2010 (as amended), that appellant was the only person qualified to be the candidate being the only aspirant that complied with the party guidelines and that 2nd respondent was handpicked contrary to statutory provisions. Appellant therefore seeks inter alia that under the enabling, his name should be forwarded to 3rd respondent as the duly nominated candidate of 1st respondent representing Ogun East Senatorial District. Appellant also seeks for an order setting aside the purported nomination of 2nd respondent by 1st respondent as the candidate for the election.

Counter-affidavits were filed by respondents. 1st respondent's stand is that appellant withdrew his intention to be considered as a candidate vide Exhibits C and A. It was further asserted that 2nd respondent was the preferred candidate and a special congress held to confirm his candidature in line with section 87(6) of the Electoral Act 2010 (as amended). Appellant did not challenge the issue of his withdrawal from the election race. In its judgment, the court did not pronounce on appellant's withdrawal letter. The originating summons was dismissed and pleadings ordered to be filed. Dissatisfied, appellant appealed to the Court of Appeal Ibadan Division. The appeal was dismissed. Hence, appellant appealed to Supreme Court.

ISSUES FOR DETERMINATION

"8.1 Whether the Court of Appeal had answered extensively and conclusively the core and the fundamental question relating to

conduct of a primary election and other issues incidental to it -

(a) Who is to conduct primary election?

(b) Whether the letter of withdrawal was legally issued.

(c) Whether an aspirant who withdraws can validly complain about the election.

(d) Whether the courts can listen to such an aspirant.

(e) Whether an election can be done in accordance to section 87(6) of Electoral Act.

8.2 Whether the Court of Appeal was not right in its decision that judgment should be read together and that the use of the word 'dismissal' was a slip.

8.3 Whether the Court of Appeal was not right in holding that there is a presumption of correctness of the record of proceedings until contrary one is presented or proved."

HELD (Unanimously dismissing the appeal per **FABIYI JSC**)

APPEALS - Grounds - Validity of

1. A close look at the attacked grounds of appeal shows that the passages in the judgment complained about, were quoted in clear terms and then followed by particulars. The stated grounds alleged error or misdirection in law. They are, no doubt, valid grounds.

I cannot surmise how this appeal is academic.

The final resolution of vital issues will confer benefit on one of the parties and the entire controversy will be resolved once and for all times. I strongly feel that the preliminary objection is not maintainable. It is accordingly overruled. The appeal shall be considered on its merit; anon. (p. 3742 E)

APPEALS - Issue - Determination of

2. The core and fundamental issue of the withdrawal of the appellant from the Senatorial race as contained in page 250 of the record deserves a definite determination as seriously canvassed by the learned counsel for the 1st respondent. As stated by him, it is correct that as contained in the 1st

respondent's brief of argument before the Court of Appeal, at pages 371-375 the issue was properly canvassed. But the court below did not consider same. It erroneously maintained that there was no argument in support of same. The court below had an abiding duty to consider such a determinant issue
B **which touches on jurisdiction, as it were. The court should pronounce on all issues as an intermediate court. It should not restrict itself to one or more issues which in its opinion may dispose of the matter. (p. 3744 E)**

C *ELECTIONS - Senatorial - Withdrawal letter - Validity of*
3. **The only point raised by the appellant in respect of his letter of withdrawal from the Senatorial race of the stated District is that the letter was not dated. The letter, no doubt, is**
D **not dated. But it refers to the 2011 election. As such, the intention of the appellant is clear. With due regard to the appellant, such a prank did not catch the fancy of this court. Such a child's play that can inhibit a due determination of such a substantial issue must be shunned.**
E **It is significant that the appellant did not deny that he wrote the letter of withdrawal. It must be presumed that he admits the content and intendment of the letter. A court of record can conveniently take same as established and act on it.**
F (p. 3745 E)

Action - Locus standi

4. **It is basic that the appellant who withdrew from the contest cannot validly complain about the conduct of the primary election. He has no competence and authority to complain or**
G **institute an action. He cannot be allowed to blow hot and cold at the same time. He has no capacity to approach the court to enforce any right from the same primary. (p. 3746 C)**

H *ELECTIONS - Primary - Conduct of*
5. **The appellant must realize that it is the political party that has exclusive power to conduct primary election. A court of record should not dabble into political question which remains the exclusive preserve of political parties that should be al-**

lowed to do their things. Such powers cannot be interfered with by the courts. (p. 3746 E)

COURTS - Record of proceedings - Challenge to - Procedure

6. Learned counsel for the appellant should appreciate that the act of recording proceedings in court is a judicial act which enjoys presumption of regularity under the law to use the language of Mallam Yusuf Ali, SAN for the 2nd respondent.

The appellant who wants to impugn the integrity of the learned trial Judge has a binding duty to prove the contrary. It is incumbent on the appellant to realize that the court and the parties are bound by the record of appeal as certified and it is presumed correct unless the contrary is proved. A party who challenges the correctness of the record of proceedings must swear to an affidavit setting out the facts or part of the proceedings omitted or wrongly stated in the record. Such affidavit must be served on the judge or registrar of the court concerned.

The court below found that the affidavit of Oluwakemi Wey was not served on the learned trial judge or the Registrar of the court for them to react to same. It found that there is absolutely no evidence to fault the printed Record of Appeal. Further more, in so far as the learned trial judge was not given any opportunity to be heard on the complaints made by the appellant's counsel, the complaint and/or accusation is incompetent and is therefore discountenanced. I agree completely with the decision of the court below.

The appellant failed to prove his allegation in tune with the required procedure and the law. The invitation to this court to censor the learned trial judge hit the rock. It is hereby refused. A party along with his counsel should be wary of attempting to destroy the court unjustly. I say no more. The issue is resolved against the appellant. (p. 3747 D)

JUDGMENTS - Mistake - Weight

7. The court below found that 'the trial judge could not have intended to use the word 'dismissal' after stating clearly that the issues are triable and evidence would have to be taken.' It

rightly found that it is not every slip of a judge that can result in the judgment being set aside. For a mistake to so result, it must be substantial in the sense that it affected the decision appealed against. (p. 3748 D)

B *JUDGMENTS - Mistake - Correction of*

8. I cannot fault the approach of the court below. The reasoning process of the judge before the use of the word ‘dismissed’, to my mind, after a slow and careful reading of same, shows that it is a slip. The law allows a court to rectify any slip in a judgment as long as it does not amount to a miscarriage of justice.

A party should not employ technicality to frustrate the justice of a case.

D ***The court below was right when it found that the word ‘dismissal’ employed by the trial judge at the material point in her Ruling is a mere slip. The issue is also resolved against the appellant. (p. 3748 G)***

E **NOTABLE POINT OF INTEREST**

FABIYI JSC

1. Ground of appeal – Purpose of

F It should be noted that the whole purpose of a ground of appeal is to give notice to the other side and the court the nature of the grouse or complaint which the appellant has against the decision of the lower court. (p. 3742 D)

REPRESENTATION

G Taiwo Kupolati, for the Appellant

Yomi Siwoniku, for 1st Respondent

Yusuf Ali SAN with A.K. Adeyi, Esq., Rasaq Okesiji, Esq., K.K. Eleja, Esq., Ajibola Kaka, Esq., Alex Akoja, Esq., P.I. Ikpegbu (Mrs.), Patience Adejoh (Miss), A.O. Usman, Esq. and Obumneke Onuoha,

H Esq., for 2nd respondent

S.O. Ibrahim, for 3rd respondent

CASES REFERRED TO

- Abdullahi v. Oba (1998) NWLR (pt. 554) 420
 Adeleke v. Ajani (2002) 8 NWLR (pt. 768) 26
 First Bank of Nigeria v. Njoku (1995) 3 NWLR (pt. 384) 457
 Nwora v. Nwabueze (2011) 12 SC (pt. III) 1
 Amajideogu v. Ononaku (1988) 2 NWLR (pt. 78) 614 B
 Silencer & Exhaust Pipes Co. v. Farah (1998) 12 NWLR (pt. 579) 624
 Babba v. Tafashiya (1999) 5 NWLR (pt. 603) 468
 Agbanebo v. UBN Ltd. (2000) 7 NWLR (pt. 666) 534 C
 Edokpolo & Co. Ltd. v. Ohenhen (1994) 7 NWLR (pt. 358) 511
 Bello v. Eweka (1981) 1 SC 101
 Buhari v. INEC (2008) 18 WRN 36
 Bamigboye v. Saraki (2010) 14 WRN 125
 Onuoha v. Okafor (1983) 2 SCNL 244 D
 Effiom v. CRS INEC (2012) 43 NSCQR 346
 Shitta-Bay v. A-G Federation (1998) 10 NWLR (pt. 570) 392

STATUTES REFERRED TO

- Electoral Act 2010 (as amended), s. 87(6) E

LEAD JUDGMENT BY FABIYI JSC

This is an appeal against the judgment of the Court of Appeal, Ibadan Division ('the court below' for short) delivered on 24th May, 2012. Therein, the decision of the Federal High Court, Abeokuta (trial court) delivered by Ajumogobia, J. on 1st day of April, 2011 was affirmed. The appellant has decided to further appeal to this court. F

It is apt to state briefly the salient facts of this matter. The appellant as plaintiff at the trial court instituted his action against the respondents, as defendants, by way of Originating Summons on 8th February, 2011. Thereat, he claimed that:- G

(a) The 1st respondent did not conduct a primary election in the Senatorial District in accordance with section 87 of the Electoral Act 2010 (as amended). H

(b) That he (the plaintiff) was the only person qualified to be the candidate being the only aspirant that complied with the party guidelines.

(c) That the 2nd respondent was handpicked contrary to statutory provisions.

Sequel to the above, the appellant, as plaintiff, made supplication for three declarations, put briefly, as follows:-

B *“1. That by virtue of being the only Senatorial aspirant for the District who complied with provisions of section 87 of the Electoral Act, 2010 and relevant guidelines of the 1st respondent, his name should be forwarded to the 3rd respondent as the duly nominated candidate representing Ogun East Senatorial District.*

C *2. That the handpicking or imposition of the 2nd defendant by the 1st defendant is null and void.*

The plaintiff then prayed for three Orders as follows:-

D *3. An order setting aside the purported nomination of the 2nd defendant by the 1st defendant as the Senatorial Candidate for the stated District.*

4. An order directing the defendant to recognize and accept the plaintiff as the bona fide Senatorial candidate of the District on the platform of the 1st defendant.

E *5. An order of perpetual injunction restraining the 3rd defendant from recognizing the 2nd defendant as Senatorial candidate of the stated District in the general election fixed for 2nd April, 2011.”*

F The respondents filed counter-affidavits. Two officials of the 1st respondent maintained that the appellant withdrew his intention to be considered as a candidate vide his letter marked Exhibit ‘C’ to the first counter-affidavit and Exhibit ‘A’ in the 2nd one. They asserted that the 2nd respondent was the preferred candidate who emerged as the sole candidate. A special congress was held to confirm his candidature in tune with section 87(6) of the Electoral Act, G 2010 (as amended).

It is of moment to note that the issue of the appellant’s withdrawal from the Senatorial race was not challenged or controverted at any time by the appellant. He did not deny the issuance of the withdrawal letter but he maintained that same was not dated.

H The trial court did not make any pronouncement in respect of the withdrawal letter signed and sent by the appellant to the 1st respondent. The trial court considered the affidavits and counter-affidavit before it and dismissed the Originating Summons and thereafter ordered pleadings to be filed and set a date for hearing.

The appellant felt unhappy with the position taken by the trial judge and appealed to the court below.

Thereat, he maintained that:-

(a) The trial court cannot order pleadings to be filed after dismissing the suit.

(b) The Court in its ruling said primary election was not conducted. B

(c) The judgment of the court was modified after being (sic) read in the open court.

The court below heard the appeal and dismissed same in its judgment handed out on 24th May, 2012. The court below found that - C

(a) it cannot be said that the learned trial judge made a specific finding that primary election was not held in accordance with section 87 of the Electoral Act. D

(b) that the use of the word 'dismissal' in dismissing the Originating Summons was a 'slip' when reading the whole judgment together and that the appellant could not have been prejudiced by the slip.

(c) The appellant had not proved that the record of the court was modified having not shown a contrary record and there is a presumption of correctness of the court records until the contrary is proved. E

The appellant still felt irked with the position taken by the court below and appealed to this court. F

It is appropriate at this point to observe that the 2nd respondent, in his Notice of Preliminary Objection, challenged the competence of grounds 1, 3, 4 and 5 as contained in the Amended Notice of Appeal filed by the appellant on 12th May, 2014. G

Senior counsel for the 2nd respondent maintained that the stated grounds are not complaints against the reasons for the decisions of the Court below. He felt that the grounds are prolix, verbose, unwieldy and argumentative. He stressed that the complaints in the stated grounds are academic and superfluous and the offensive grounds of appeal are liable to be struck out. In support, he cited the cases of Abdullahi v. Oba (1998) NWLR (Pt. 554) 420 at 428; Adeleke v. Ajani (2002) 8 NWLR (Pt. 768) 26 at 43; First Bank of Nigeria v. Njoku (1995) 3 NWLR (Pt. 384) 457 and Nsirim v. Nsirim H

Senior counsel observed that the substantive suit at the trial court is no longer alive as same was struck out on 8th March, 2012 for want of diligent prosecution. He stated that there is a pending appeal at the court below challenging the striking out of the suit. He strongly asserted that the legal plank upon which this appeal rests on has been removed. The appeal, senior counsel submits, has become academic. In support, he cited the case of Nwora & 3 Ors v. Nwabueze & Ors (2011) 12 SC (Pt. III) 1 at 22. He urged that the suit be dismissed in its entirety.

On behalf of the appellant, learned counsel submitted that the objection is unfounded in all respect. He maintained that each of the stated grounds with their particulars attacked specific findings and decision of the Court of Appeal. He maintained that there is no difficulty in identifying the precise complaint of the appellant. He cited the case of Amajideogu v. Ononaku (1988) 2 NWLR (Pt. 78) 614 at 621.

It should be noted that the whole purpose of a ground of appeal is to give notice to the other side and the court the nature of the grouse or complaint which the appellant has against the decision of the lower court.

A close look at the attacked grounds of appeal shows that the passages in the judgment complained about, were quoted in clear terms and then followed by particulars. The stated grounds alleged error or misdirection in law. They are, no doubt, valid grounds. Refer to Silencer & Exhaust Pipes Co. v. Farah (1998) 12 NWLR (Pt. 579) 624 and Babba v. Tafashiya (1999) 5 NWLR (Pt. 603) 468 at 474. I cannot surmise how this appeal is academic.

The final resolution of vital issues will confer benefit on one of the parties and the entire controversy will be resolved once and for all times. I strongly feel that the preliminary objection is not maintainable. It is accordingly overruled. The appeal shall be considered on its merit; anon.

When the appeal was heard on 3rd of December, 2014, learned counsel/senior counsel to the respective parties adopted and relied on briefs of argument which were filed. The appellant's counsel urged that the appeal be allowed. Senior counsel for the 2nd

respondent as well as counsel for the 3rd respondent stressed that the appeal should be dismissed. On behalf of the appellant, three issues formulated for the determination of the appeal read as follows:-

“3.1 Whether, upon its holding that it was ‘not sufficiently convinced that primary election was held in accordance with Electoral Act’, and this being the core question in the appellant’s Originating Summons, the Court of Appeal was right in upholding the trial court’s directive to the parties to file pleading when -

(i) No other issue which derogates from the core question or raise any dispute/controversy concerning its determination was directly/specifically identified by the trial court and the Court of Appeal;

(ii) Sufficient materials needed to determine the admissibility of Exhibit ‘A’ (Page 250 of the Record of Appeal) was before the trial court and no further occasion for calling oral evidence had arisen (Grounds 1 and 4 of the Notice of Appeal).

3.2 Was the trial court’s decision dismissing the appellant’s action begun by Originating Summons a slip as held by the Court of Appeal? If not, having dismissed the originating summons, was there any action the trial judge could further hear by pleadings? (Grounds 2 and 3 of the Notice of Appeal)

3.3 Whether the addition made privately in chambers to the decision of 1st April, 2011 by which the parties were directed to file pleadings after the dismissal of the action, was not proved, given that:-

(i) The trial judge was well notified of the affidavit deposition of Oluwakemi Wey of counsel, the trial judge being the sole judge (administrative and presiding) of Abeokuta Division, who had custody, control and knowledge of all processes filed in her Registry;

(ii) the respondents did not legally contradict or deny the fact in the said affidavit (Ground 5 of the Notice of Appeal).”

On behalf of the 1st respondent, the three issues decoded for determination of the appeal read as follows:-

“8.1 Whether the Court of Appeal had answered extensively and conclusively the core and the fundamental question relating to conduct of a primary election and other issues incidental to it -

(a) Who is to conduct primary election?

(b) *Whether the letter of withdrawal was legally issued.*

(c) *Whether an aspirant who withdraws can validly complain about the election.*

(d) *Whether the courts can listen to such an aspirant.*

(e) *Whether an election can be done in accordance to section B 87(6) of Electoral Act.*

8.2 *Whether the Court of Appeal was not right in its decision that judgment should be read together and that the use of the word ‘dismissal’ was a slip.*

C 8.3 *Whether the Court of Appeal was not right in holding that there is a presumption of correctness of the record of proceedings until contrary one is presented or proved.”*

The two issues submitted for determination on behalf of the 2nd respondent, read as follows:-

D “1. *Whether the Court of Appeal was right in its conclusion that there was no evidence to contradict the printed record of appeal and that the accusation of alteration of record against the trial judge was incompetent and unproved.*

E 2. *Whether the Court of Appeal was not right having regards to the materials contained in the printed record in affirming the trial court’s decision that issues are in controversy and that filing of pleadings and calling of oral evidence was necessary and further that the use of the word ‘dismissal’ in the trial court’s ruling is a mere slip.”*

F ***The core and fundamental issue of the withdrawal of the appellant from the Senatorial race as contained in page 250 of the record deserves a definite determination as seriously canvassed by the learned counsel for the 1st respondent. As stated by him, it is correct that as contained in the 1st***
 G ***respondent’s brief of argument before the Court of Appeal, at pages 371-375 the issue was properly canvassed. But the court below did not consider same. It erroneously maintained that there was no argument in support of same. The court below had an abiding duty to consider such a determinant issue***
 H ***which touches on jurisdiction, as it were. The court should pronounce on all issues as an intermediate court. It should not restrict itself to one or more issues which in its opinion may dispose of the matter.*** See *Xtoudos Ser. Nig. Ltd. v. Taisei W. A. Ltd.* (2006) WRN 46 at 37.

Since it is an issue touching on jurisdiction, it has again been brought to the fore before this court. It shall be considered, anon.

The said letter of withdrawal is contained on page 250 of the record of appeal. It reads as follows:-

“Action Congress of Nigeria

OGUNSTATE

B

Dear Sir,

NOTICE OF WITHDRAWAL OF MY CANDIDATURE

I hereby voluntarily withdraw as a candidate of the Action Congress of Nigeria for the post of SENATOR in the April, 2011 election for personal reasons.

C

I express my gratitude to the party and my supporters. I assure the party of my continuous loyalty.

Thank you.

Yours Faithfully,

D

Signature

ADEGBUYI ADEBISI

Name

In the presence of:

National Secretary: Oluwaranti Oyebade

E

National Organizing Secretary: David Oluwole Adeniyi.”

The only point raised by the appellant in respect of his letter of withdrawal from the Senatorial race of the stated District is that the letter was not dated. The letter, no doubt, is not dated. But it refers to the 2011 election. As such, the intention of the appellant is clear. With due regard to the appellant, such a prank did not catch the fancy of this court. Such a child’s play that can inhibit a due determination of such a substantial issue must be shunned. See *Oloruntoba-Ojo v. Abdulraheem & Ors* (2009) 26 WRN 1.

F

It is significant that the appellant did not deny that he wrote the letter of withdrawal. It must be presumed that he admits the content and intendment of the letter. A court of record can conveniently take same as established and act on it. See: *Agbanebo v. UBN Ltd.* (2000) 7 NWLR (Pt. 666) 534 at 549; *Edokpolo & Co. Ltd. v. Ohenhen* (1994) 7 NWLR (Pt. 358) 511 at 513; *Bello v. Eweka* (1981) 1 SC 101.

H

The appellant, having withdrawn from the race, the 2nd re-

spondent became the preferred candidate. The State Chairman of the 1st respondent swore to an affidavit that the primary election was conducted by a special congress which was in accord with the dictates of section 87(6) of the Electoral Act, 2010 (as amended) which stipulates as follows:-

B *“Where there is only one aspirant in a political party for any of the selective positions mentioned in sub-section 4 (a), (b), (c), and (d), the party shall convene a special convention or congress at a designated centre on a specific date for confirmation of such aspirant and the name of the aspirant shall be forwarded to the Commission as the candidate of the party.”*

C ***It is basic that the appellant who withdrew from the contest cannot validly complain about the conduct of the primary election. He has no competence and authority to complain or institute an action. He cannot be allowed to blow hot and cold at the same time. He has no capacity to approach the court to enforce any right from the same primary.*** See: Buhari v. INEC & Ors (2008) 18 WRN 36; Bamigboye v. Saraki (2010) 14 WRN 125 cited by 1st respondent’s counsel.

E ***The appellant must realize that it is the political party that has exclusive power to conduct primary election. A court of record should not dabble into political question which remains the exclusive preserve of political parties that should be allowed to do their things. Such powers cannot be interfered with by the courts.*** See Onuoha v. Okafor (1983) 2 SCNLR 244; Effiom v. CRS INEC (2012) 43 NSCQR 346.

F The appellant had no answer in respect of this very crucial and determinant issue. It is accordingly resolved in favour of the respondents.

G The next issue that is worthy of consideration reads as follows:-

H *“Whether the Court of Appeal was right in its conclusion that there was no evidence to contradict the printed record of appeal and that the accusation of alteration of record against the trial judge was incompetent and unproved.”*

The allegation of the appellant in respect of this issue is a very grave one. He alleged that the trial judge tinkered with her Ruling in chambers. The affidavit of Oluwakemi Wey maintained that the trial

judge altered or modified her record by adding the following, which was not part of the ruling delivered in the open court -

“Accordingly, the plaintiff is ordered to file his pleadings within 14 days from date hereof. The defendant is given 7 days to file their defence from the date of service of the plaintiff’s pleadings.”

The allegation is a very weighty one which touches on the integrity of the learned trial judge. The appellant maintained that this court should apply due courage by denouncing the trial court’s style of altering a judgment in chambers after same had been delivered in the open court. According to counsel, such practice is alien to our jurisprudence and ought to be censored by this court in strong expression in order to send the right message to other judicial officers with such proclivity. What a sagacious call by a counsel to this court? The counsel urged the court to use the learned trial judge as a ‘scape goat’ so that other judges involved in such unwholesome practice would get the right message.

Learned counsel for the appellant should appreciate that the act of recording proceedings in court is a judicial act which enjoys presumption of regularity under the law to use the language of Mallam Yusuf Ali, SAN for the 2nd respondent.

The appellant who wants to impugn the integrity of the learned trial Judge has a binding duty to prove the contrary. See Shitta-Bay v. Attorney-General Federation & Ors. (1998) 10 NWLR (Pt. 570) 392 at 426; Sommer v. Federal Housing Authority (1982) 1 NWLR (Pt. 219) 548.

It is incumbent on the appellant to realize that the court and the parties are bound by the record of appeal as certified and it is presumed correct unless the contrary is proved. A party who challenges the correctness of the record of proceedings must swear to an affidavit setting out the facts or part of the proceedings omitted or wrongly stated in the record. Such affidavit must be served on the judge or registrar of the court concerned.

The court below found that the affidavit of Oluwakemi Wey was not served on the learned trial judge or the Registrar of the court for them to react to same. It found that there is absolutely no evidence to fault the printed Record of Appeal. Further more, in so far as the learned trial judge was not given

any opportunity to be heard on the complaints made by the appellant's counsel, the complaint and/or accusation is incompetent and is therefore discountenanced. I agree completely with the decision of the court below.

The appellant failed to prove his allegation in tune with the required procedure and the law. The invitation to this court to censor the learned trial judge hit the rock. It is hereby refused. A party along with his counsel should be wary of attempting to destroy the court unjustly. I say no more. The issue is resolved against the appellant.

The last issue which should be touched briefly reads as follows:-

"Whether the Court of Appeal was not right in its decision that judgment should be read together and that the use of the word 'dismissal' was a slip."

The court below found that 'the trial judge could not have intended to use the word 'dismissal' after stating clearly that the issues are triable and evidence would have to be taken.' It rightly found that it is not every slip of a judge that can result in the judgment being set aside. For a mistake to so result, it must be substantial in the sense that it affected the decision appealed against. The case of Onajobi v. Olanipekun (1985) 11 SC (Pt. 2) 156 is in point.

This court said it clearly in Adebayo v. Attorney-General, Ogun State (2008) 2 SCNJ 352 at 366-367 per Niki Tobi, JSC that:-

"In order to pick faults in judgment of a trial judge, appellate court should not take paragraphs or pages in isolation or in quarantine but must take the whole judgment together as a single decision of the court. An appellate court cannot allow an appellant to read a judgment in convenient installments to underrate or run down the judgment."

I cannot fault the approach of the court below. The reasoning process of the judge before the use of the word 'dismissed', to my mind, after a slow and careful reading of same, shows that it is a slip. The law allows a court to rectify any slip in a judgment as long as it does not amount to a miscarriage of justice.

See Yakubu v. Omolaboje (2006) WRN 23 at 176. **A party**

should not employ technicality to frustrate the justice of a case.

See Falobi v. Falobi (1976) 9-10 SC. 1, (1976) 1 NMLR 169.

The court below was right when it found that the word ‘dismissal’ employed by the trial judge at the material point in her Ruling is a mere slip. The issue is also resolved against the appellant.

I come to the conclusion that the appeal lacks merit. It is hereby dismissed by me. The Originating Summons is dismissed. The appellant shall pay the sum of N100,000.00 as costs to each of the 1st and 2nd respondents.

RHODES-VIVOUR JSC

For the reasons given by my learned brother, Fabiyi, JSC which I was privileged to read in draft I agree that this appeal should be dismissed with cost as proposed by his lordship. This suit was instituted on the 8th day of February, 2011. It was filed to determine who won the primaries of the defunct Action Congress Party (now APC). The primaries were conducted to select the party’s candidate for Ogun East Senatorial Seat for the General Elections of 2011. This is a pre-election matter. The General Elections conducted in 2011 was to elect senators for senate for a tenure which ends in 2015. Primaries to select candidates to contest the 2015 General Elections have been conducted and concluded by all Political Parties.

It is slowly becoming comical that the courts are still considering and trying to determine who won primaries in 2011 in 2014. It is about time a time limit is placed on such actions. It is seriously suggested that pre-election matters should be determined before the elections are conducted. In that regard such causes of action should be fast tracked with time limitations of two weeks for hearing in each tier of our court system.

This, no doubt is in the best interest of all concerned.

MUHAMMAD JSC

I read in draft the very succinct lead judgment of my learned brother Fabiyi, JSC before now. I agree with his lordship’s reasoning and conclusion therefrom that the appeal lacks merit.

It is significant to observe that appellant's petition is yet to be heard on the merits. Parties thereto were ordered to file pleadings in respect of the appellant's suit commenced by way of an originating summons. The trial court had found that in spite of the affidavits for and against the summons, facts have remained in serious contention.

B The affirmation of the trial court's judgment by the lower court cannot be faulted. The principle has become trite that the originating summons procedure is not for causes in which facts remain hostile and in conflict. The procedure is ideal for the determination of short and straight forward questions of construction and interpretation of documents or statutes. It is never the applicable procedure in controversial cases where the facts on which the court is invited to construe or interpret the document or legislation in relation to remain violently in conflict. See *National Bank of Nigeria v. Alakija* (1978) D 9-10 SC 59. The appellant must realize that there is presumption of regularity in respect of court records and where a party sets out to impugn the record he must abide the procedure known for so doing. Most importantly, the record must be considered holistically to avoid doing violence to its real content and injustice to the judge and the court. It is for this reason that the appellant's complaint regarding the trial court's record must be ignored.

The concurrent findings of the two courts cannot be interfered with as neither is perverse.

F For the foregoing but more so the fuller reasons marshaled in the lead judgment I also dismiss the unmeritorious appeal. I abide by consequential orders made in the said judgment including the order of costs.

G

OGUNBIYI JSC

I read in draft the lead judgment just delivered by my learned brother John Afolabi Fabiyi, JSC. I agree that the appeal is devoid of any merit for the reasons and conclusions arrived therein. Just for purpose of emphasis, I wish to say a word or two on the appellant's letter of withdrawal from the Senatorial race which same had been reproduced in the lead judgment of my learned brother and the following opening phrase is worthy of note:-

"I hereby voluntarily withdraw as a candidate of the Action

Congress of Nigeria for the post of SENATOR in the April, 2011 election for personal reasons.”

The said letter was duly signed by the appellant himself in the presence of two principal officers of the party to wit: National Secretary and National Organizing Secretary. The making of the letter as well as the substance thereof were not denied by the appellant. Also for purpose of confirmation, reference can be made to the counter affidavit filed by the 1st respondent wherein Ogun State Chairman of the Party, Action Congress of Nigeria, Alhaji Tajudeen Bello deposed to at pages 298-299 of the record of appeal and said thus at paragraphs 8, 9, 10 and 11.

“8. That the party in an attempt to avoid internal disputes and strife called all aspirants and advised them to step down for the favoured candidate. This they all agreed to do.

9. That as a result of the discussion mentioned in the above paragraph 8, the plaintiff/applicant also at a time withdrew his intention to be considered for nomination as candidate under the Action Congress of Nigeria Ogun State. (Copy of his withdrawal letter is hereby attached and marked Exhibit C).

10. That the withdrawal of all other aspirants made Sefiu Adegbenga Kaka the only aspirant.

11. That on Tuesday, January 11, 2011, the party convened a special congress to confirm the nomination of Sefiu Adegbenga Kaka as the Party candidate for the position of Ogun East Senatorial Seat. This is in line with Section 87(6) Electoral Act, 2010.”

On a communal reading of the foregoing, it leaves no one in doubt that the appellant's withdrawal from the political race was on his own volition. This is evidenced at page 250 of the record wherein he appended his signature on the withdrawal letter in the presence of the party dignitaries.

It is not shown also on the record that the appellant denied the averments on the counter affidavit reproduced supra. The scenario is therefore intriguing that the same appellant should now emerge as if from a world of deep slumber and suddenly realized that he ought not to have withdrawn from the race. The attitude, I hold is very strange and which this court will not subscribe thereto.

The appellant sought to disassociate himself from the undated notice of withdrawal which counsel submits has no evidential

value. The submission I hold has no basis and the court will not be used as an instrument of trial and see. This I say because the court is a place of serious business. On this note, the appellant's counsel is hereby well advised.

I further wish to stress that from the grounds of appeal filed by the appellant, it is manifestly clear that the substratum of his complaints relate to the concurrent decisions premised upon concurrent findings by the two lower courts. This court has positioned in a long line of authorities that concurrent findings of two lower courts would not ordinarily be interfered with. See *Gbafé v. Gbafé* (1996) 6 NWLR (Pt. 455) 417 at 436 and *Nwose v. Board of Customs and Excise* (1998) 12 SC (Pt. 111) 77 at 88. See also *Tiza v. Begha* (2005) 5 SC 1 at 17; *Akpagbue v. Ogu* (1976) 6 SC 63; *Amadi v. Nwosu* (1992) 5 NWLR (Pt. 241) 273 and *Ezekwesili v. Agbapionwu* (2003) 9 NWLR (Pt. 825) 337.

As rightly submitted on behalf of the respondents, the appellant has not established that the concurrent findings complained against are either perverse unsupported by credible evidence or that they were rendered in violation of any salient principle of law or that they have occasioned any miscarriage of justice.

Consequently therefore, I hold a firm view that the concurrent findings by the two lower courts are on a solid foundation and no reason has been advanced for this court to interfere therewith. The appeal on the totality has no merit and the reason which I also subscribe to the judgment of my learned brother John Afolabi Fabiyi, that it should be dismissed on the totality. I also abide by the order made therein the lead judgment as to costs.

G

AKA'AH'S JSC

My learned brother, **FABIYI, JSC** made available to me before now a copy of his leading judgment dismissing the appeal. I agree with my Lord's reasoning and conclusion.

Although the Learned Trial Judge dismissed the originating summons, he clearly indicated that the issues are triable and evidence would have to be adduced and considered to make a finding. Even if the Learned Trial Judge was not sufficiently convinced that a Primary Election was held, there was the averment in the counter-

affidavit of Alhaji Tajudeen Bello, the Ogun State Chairman of the party which made it imperative for the Trial Judge to hear oral evidence. In paragraph (i) of the counter-affidavit of Alhaji Tajudeen Bello; he stated:-

“(i) That as a result of the discussion mentioned in the above paragraph 8, the plaintiff/applicant also at a time withdrew his intention to be considered for nomination as candidate under the Action Congress of Nigeria Ogun State (copy of his withdrawal letter is hereby attached and marked Exhibit “C”). B

A holistic reading of the ruling by the Learned Trial Judge reveals that the use of the word “dismissal” of the originating summons was a mere slip as the Learned Trial Judge clearly evinced an intention to hear oral evidence on the matter. The Lower Court was therefore right in dismissing the appeal. C

I too find no merit in the appeal and I accordingly dismiss it. D
I abide by the order made on costs in the leading judgment.

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