

SUPREME COURT OF NIGERIA
FRIDAY 20TH FEBRUARY, 2015. SC. 165/2013
CORAM:- J. A. FABIYI, O. RHODES-VIVOUR,
M. D. MUHAMMAD, C. B. OGUNBIYI,
K. B. AKAA'HS, JJSC

1. MICHAEL OGBOLOSINGHA
2. SAMUEL BOY APPELLANTS
AND
1. BAYELSA STATE INDEPENDENT
ELECTORAL COMMISSION
2. BENNETH IGBANI RESPONDENTS
3. PRINCE OKOLOBAOWEI A.
SHEIMOKUMOH & 9 OTHERS

RES JUDICATA - Plea - Condition - Party relying on the plea must establish inter alia that the parties and subject matter are the same - That the decision is valid and final - And that court has jurisdiction (H1)

APPEALS - Res judicata - Application - Parties and subject matter in present appeal being different from the previous appeal - CA was wrong to apply the principle of res judicata (H2)

ELECTIONS - LG chairmen - Expired tenure - Since tenure of appellants have been spent - There cannot be any benefit accruing to them - As the res had finished and became extinct (H3)

APPEALS - Right - Ground of law - Notice of the cross appeal hinged on grounds of law is competent - And cross appellants did not require leave to file same (H4)

ELECTIONS - LG chairmen - Tenure - Duration of - Three years period provided in the LG Law s. 27(3)(a) is immutable - And no political party can elongate the prescribed tenure (H5)

ELECTIONS - LG chairmen - Oath of office - Significance of - Subscription to the oath is used for purpose of computing tenure of

office - And for entering into office (H6)

FACTS

By way of originating summons filed before the High Court of Bayelsa State, plaintiffs/2nd, 3rd and 7th - 9th respondents instituted suit No. YHC/149/2010 wherein they inter alia sought to be declared as the nominated candidates of the People's Democratic Party in their respective Local Government Areas of the State for the Local Government Council Chairmanship elections then scheduled for 3rd April 2010. Following the preliminary objection raised by defendants/appellants, the court struck out the suit for want of jurisdiction. Dissatisfied, 7th, 8th and 9th respondents appealed to the Court of Appeal, Port Harcourt Division in Appeal No: CA/PH/166/2011 while 2nd and 3rd respondents did not pursue the appeal. The appeal was resolved in favour of 7th, 8th and 9th respondents and the judgment of the trial court set aside.

Appellants appealed to the Supreme Court in Appeal No. SC.127/2012 and the appeal was dismissed. 2nd and 3rd respondents could not enforce the Court of Appeal's judgment in their favour as they were not parties to the appeal. In the circumstance, 2nd and 3rd respondents returned to the Court of Appeal, Port Harcourt Division in Appeal No. CA/PH/304/2011 to pursue the appeal against the decision of the trial court in respect of which 7th, 8th and 9th respondents had reversed in their favour by the judgments of the Court of Appeal and the Supreme Court. In determining the appeal No. CA/PH/304/2011, the court stood by its decision in Appeal No. CA/PH/166/2011 and Appeal No. SC.127/2012. The appeal of 2nd and 3rd respondent was thus allowed. Aggrieved, appellants appealed to the Supreme Court.

ISSUES FOR DETERMINATION

1) Whether this honourable court can overrule itself in this appeal, with regards to the Decision in SC.127/2012. *Perutu V. Gariga* (2013) 3 NWLR (Pt.1348) pages 415 - 443? 2) Whether the lower court rightly exercised jurisdiction to determine the merits of the substantive Originating Summons proceedings and made findings and consequential orders in respect thereof?

3) Whether the parties in this case were given equal opportunity to be heard before the lower court?

(Cross-appeal) *"Whether in view of the provisions of Section 27(3)(a) of the Local Government Law Cap 110 Laws of Bayelsa State 2006 the tenure of office of the Cross-Appellants will only take effect from the day the oath of office and oath of allegiance is administered on them."*

HELD (Unanimously allowing the main appeal and dis-

missing the cross appeal per **OGUNBIYI JSC**)

RES JUDICATA - Plea - Condition

1. The law is trite in laying down the fundamental condition precedent to the application of the principles of estoppel and or res judicata wherein the parties and the subject matter of the previous proceedings must be the same with the present under consideration. Judicial authorities have enunciated the principles which are well pronounced in the case of Makun V. F.U.T. Minna (supra) wherein this court re-iterated that, for a plea of estoppel per rem judicatam to succeed, the party relying thereon must establish the following requirements or pre-conditions namely:-

(a) That the parties or their privies are the same in both the previous and the present proceeding.

(b) That the claim or issues in dispute in both actions are the same.

(c) That the res or the subject matter of litigation in the two cases is the same.

(d) That the decision relied upon to support the plea of estoppel per rem judicatam is valid, subsisting and final.

(e) That the court that gave the previous decision relied upon to sustain the plea is a court of competent jurisdiction.

It has also been held severally by this court that, unless all the above constitutional elements or requirements of the doctrine are fully established, the plea of estoppel per rem judicatam cannot sustain. (p. 474 D)

Res judicata - Application

2. As rightly submitted by the counsel representing the appel-

lants, in the matter under consideration, the parties and the subject matter of the previous appeals (i.e. Appeals Nos. CA/PH/166/2012 and SC.127/2012) are different and not the same as the parties and subject matter of the one before us. In other words and for instance, the 2nd and 3rd respondents
B (in the persons of Benneth Igbani and Prince Okoloaawei A. Seimokumoh) now before us were not parties to the previous matters (i.e. Appeals Nos. CA/PH/166/2012 and SC.127/2012).

C Furthermore, it is pertinent to state that the subject matter of the previous appeals were the Chairmanship of Sagbama, Ekeremor and Kolukuma/Opokuma Local Government Councils and or the rights of the appellants in those cases to be nominated as the candidates of the PDP for the elec-
D tions to the said offices.

To the contrary, the subject matter before us, relates to the Chairmanship of the Yenagoa and Ogbia Local Government Councils and or the alleged right of the 2nd and 3rd Respondents to be nominated as the PDP candidates for elec-
E tion to the said offices. The submissions by the respondents' learned counsel therefore cannot be comprehended but held as a gross misconception of facts on ground.

In other words, I am in complete agreement with the contention held by the learned counsel for the appellants when
F he submitted that the lower court was not bound to apply or rely on its decision and also that by this court in Appeals Nos. CA/PH/166/2012 and SC.127/2012 respectively. Conse-
G quently therefore, I hold a considered view that their Lordships of the lower court were in great error in their conclusion held at page 1096 of the record of appeal reproduced supra. In the result, the said issue is hereby resolved in favour of the appellants. (p. 476 B)

H ELECTIONS - LG chairmen - Expired tenure

3. In its place, I will make an order that, since the tenure of the appellants have been spent, they cannot now have the benefit of the office which was enjoyed by the 7th, 8th and 9th respondents, who were within the tenure allocated the party

by law at the time they obtained judgment. The appellants came at a time when the three years period had since come to an end. They came too late; there cannot therefore be any benefit accruing to them. The res had finished and also became extinct by reason of effluxion of time. The appeal has become spent and academic. (p. 478 H) B

APPEALS - Right - Ground of law

4. In my view, it is not far-fetched to say that the entire cross appeal is hinged on grounds of Law alone, and which does not require the seeking of leave before same could be filed. The confirming provision is section 233(2)(a) of the 1999 Constitution of the Federal Republic of Nigeria which provides thus:- "An Appeal shall lie from the decisions of the Court of Appeal to the Supreme Court as of Right in the following cases: a. Where the grounds of Appeal involves questions of Law alone, decisions in any Civil or Criminal proceedings before the Court of Appeal."The preliminary objection raised by the 1st and 2nd cross respondents is, in the circumstance grossly misconceived and same is hereby overruled. In other words, the notice of cross appeal is hinged on grounds of law, it is not therefore incompetent as alleged by the said cross respondents; the cross appellants did not therefore require any leave of court before filing same. (p. 482 D) C D E F

ELECTIONS - LG chairmen - Tenure - Duration of

5. The necessary consequential effect following Amaechi's case is that, a political party who wins an election is mandatorily entitled only to the term of office allowed by law; such as a term of 3 years allowed by section 27(3)(a) of the Local Government Law of Bayelsa State. The provision as it were, cannot now in anyway or by any wisdom or guise be interpreted to extend the tenure won by the PDP in the said election, for additional three years or more as is wrongly canvassed, conceived, anticipated or envisaged by the cross appellants. It should, sound loud and clear, like the church bell, that the three years fixed by section 27(3)(a) is unmovable like mount Zion. No political party can, by, any stretch of imagi- G H

nation, ingenuity of action, as the one now taken by the cross appellants, who are members of the same political party, can be made to have an elongated tenure of office for its candidates, that is longer than that prescribed by law i.e. a term of three years. To do otherwise for purpose of interpreting the law in the context advocated by the cross appellants, who are taking over as it were from their brothers of the same party, is to do great violence to the interpretation of the enactment in the face of the party i.e. PDP as the same party that has been in office. The desire and move can best be described as a wishful thinking and a mirage.

If the cross appellants' tenure is to be extended by the fact that they needed to take further oaths, what then should happen to the period occupied by PDP, their own party, - as against the citizenry of their respective local government areas and the opposition parties? The effect will certainly yield injustice to them, especially where the law is trite that no provision of a statute is to be interpreted to cause injustice. To do so is to defeat the very foundational intent and purpose of justice itself as well as the provision of section 27(3)(a) of the Local government law Bayelsa State.

From all deductions, there is no where provided by the Local Government Law or any other statute that section 27(3)(a) under reference did clothe any court with the powers to grant an extension of tenure to a chairman whose term has been expended, truncated or is spent by another candidate of the same party.

Therefore, it is not within the court's competence and indeed not even this court, as the apex court, to set the precedent by extending the tenure of any political party beyond the time specified by the Constitution.

In the circumstance, the cross appeal is in my view devoid of any merit and same is hereby dismissed.

(pp. 490 D/493 B)

ELECTIONS - LG chairmen - Oath of office - Significance of

6. In other words, the subscription of oath of office and oath of Allegiance has dual functions:- While it could be used for

purpose of computing the tenure of office, it is also used for the purpose of entering into the office. (491 E)

NOTABLE POINTS OF INTEREST

OGUNBIYI JSC

1. Res judicata – Plea of – Nature

The plea of res judicata is of a special nature as it operates not only against the parties but also the court itself and robs it of its jurisdiction to entertain the same cause of action on the same issues previously determined between the same parties by a court of competent jurisdiction. (p. 475 E)

2. Ration decidendi & obiter dictum – Meaning of

On the question of an objection as to whether or not the cross appeal is against an obiter dictum of the lower court, it is pertinent to state that the two constituent parts in a judgment of a court are Ratio Decidendi and obiter Dictum. An opinion of a court upon which no issue had been joined by the parties amounts to obiter dictum and cannot therefore constitute a ground of appeal.

However, a Ratio decidendi according to the Black's Law Dictionary simply means;

“Reason for deciding.” The principle or rule of law on which the court’s decision is founded.” It could also mean the rule of law on which a later court thinks that a previous court’s judgment is founded.”

The same Black's Law Dictionary also defines Obiter Dictum as, *“something said in passing.”* (p. 484 A)

REPRESENTATION

Samuel Brisibe, for the Appellants and 1st and 2nd cross respondents appearing with Tare Anyankpele, Ebiboye Erebi Preye Agedah for the 1st respondents and for the 3rd cross respondent, appearing with Emmanuel Yin Faowei and I.M. Max-Alagoa (Miss)

Festus Keyamo, Esq., appearing for 2nd, 3rd, 7th, 8th and 9th respondents in the main appeal and for the cross appellant appearing with Benedicta Obanye (Miss), John Aineter Esq., Festus Ukpe Esq., S. John Bull for the 4th respondent in the main appeal and also for

the 4th cross respondent in the cross appeal

Chief F.F. Egele appearing with Chief F.N. Igodo, F.T. Okorotie, E.O. Ameh appearing for 5th respondent in the original appeal also for 5th cross respondent in the cross appeal

F. Zimighan for the 6th respondent in the main appeal also the 6th cross respondent in the cross appeal, M.A. Atta for the 10th respondent in main appeal and for 7th cross respondent in the cross appeal appearing with J.W. Nimfas

Mr. D.W. Wuku for the 11th respondent in the main appeal and for 8th cross respondent in the cross appeal appearing with Abili J. Abili, Benneth Wuku and Rachael Spiff (Mrs.)

T.O.P. Afage for the 12th respondents and 12th cross respondents in the cross appeal

D CASES REFERRED TO

Peretu v. Gariga (2013) 3 NWLR (pt. 1348) 415

Makun v. F.U.T. Minna (2011) 18 NWLR (pt. 1278) 19

Dokubo v. Omoni (1999) 8 NWLR (pt. 616) 647

Oshoboja v. Amida (2009) 18 NWLR (pt. 1172) 188

E Bakare v. L.S.C.S.C. (1992) 8 NWLR (pt. 262) 641

Ekperokun v. University of Lagos (1986) 4 NWLR (pt. 34) 162

Owie v. Igiwi (2005) 5 NWLR (pt. 917) 184

Yoye v. Olalode (1974) 10 SC 209

F Alase v. Olori-Ilu (1965) NMLR 66

Fadiora v. Gbadebo (1978) 3 SC 219

Udo v. Obot (1989) 1 SC (pt. 1) 64

Marwa v. Nyako (2012) 6 NWLR (pt. 1296) 356

Obi v. INEC (2007) 11 NWLR (pt. 1046) 644

G Okorochoa v. PDP (2014) 7 NWLR (pt. 1406) 213

Bamgboye v. University of Ilorin (1999) 10 NWLR (pt. 622) 290

STATUTES REFERRED TO

Constitution of the Federal Republic of Nigeria 1999, s. 233(2)(3)

H Local Government Laws of Bayelsa State Cap L10 2006, s. 27(3)(a)

LEAD JUDGMENT BY OGUNBIYI JSC

The appeal is against the judgment of the Court of Appeal, Port Harcourt Division in Appeal No. CA/PH/304/2011 delivered on

the 15th day of March, 2013.

Briefly, the statement of relevant facts in this appeal are that the 2nd, 3rd and 7th - 9th respondents as claimants filed suit No. YHC/149/2010 by way of originating summons in the Bayelsa State High Court by which they, inter alia sought to assert their alleged respective rights to be nominated as candidates of the People's Democratic Party in their respective Local Government Areas in Bayelsa State for the Local Government Council Chairmanship Elections then scheduled for 3rd April 2010. B

Defendants at the trial court raised a preliminary objection which was heard and determined along with the originating summons on the merit. The trial court struck out the suit for lack of jurisdiction. Dissatisfied with the ruling of the trial court, the 7th, 8th and 9th respondents herein appealed to the Court of Appeal, Port Harcourt Division in Appeal No: CA/PH/166/2011 while the 2nd and 3rd respondents herein did not pursue the same appeal expeditiously. C D

The court below resolved the appeal in favour of the 7th, 8th and 9th respondents herein and the judgment of the trial court was thereupon set aside and the reliefs sought by the plaintiffs before the trial court were granted accordingly. The Defendants at the trial court who were respondents at the Court of Appeal, appealed to this Court in Appeal No. SC.127/2012 and the said appeal was dismissed while upholding the judgment of the Court of Appeal in Appeal No. CA/PH/166/2011 in favour of the 7th, 8th and 9th respondents herein, in the judgment reported as *Peretu V. Gariga* (2013) 3 NWLR (Pt.1348) page 415-443. E F

The 2nd and 3rd respondents herein, who did not pursue the appeal from the trial court to the Court of Appeal, right to this court were not part of the judgment by this court and unlike their counterpart the 7th 8th and 9th respondents could not enforce same in their favour, even though they were co-plaintiffs at the trial court. G

Put differently, the 2nd and 3rd respondents herein ought to have been part of the judgment mentioned above, but for the fact that they did not pursue the appeal from the trial court to the Court of Appeal and thereafter to this court. Unlike their counterpart therefore, they could not enforce the judgment in their favour. In the result, the same 2nd and 3rd respondents herein returned to the Court of Appeal, Port Harcourt Division in Appeal No. CA/PH/304/ H

2011 to pursue the appeal against the decision of the trial court in respect of which the 7th, 8th and 9th respondents herein had reversed in their favour by the judgments of the Court of Appeal and the Supreme Court. The lower court in determining the appeal No. CA/PH/304/2011 simply abided by its decision in Appeal No. CA/PH/166/2011 and Appeal No. SC.127/2012 reported as *Peretu V. Gariga* (supra) in upholding the appeal of the 2nd and 3rd respondents herein, hence the appeal now before us which was filed on the 15th day of March, 2013 and raised ten grounds of appeal.

In accordance with the rules of court, briefs were filed in the main appeal on behalf of the appellants and 2nd, 3rd, 7th, 8th, 9th and 10th respondents while the 1st, 4th, 5th, 6th, 11th, 12th respondents and also the 2nd set of cross respondents did not deem it fit to file any brief in the main appeal; they, however filed briefs in the cross appeal which was filed by the cross appellants. I shall return to the cross appeal shortly.

In the main appeal therefore, the appellants filed their brief of argument on the 21st November, 2013 but same was properly deemed filed on the 19th May, 2014. From the ten grounds of appeal filed, four issues were distilled by the appellants as follows:-

1) Whether the lower court had the jurisdiction to have determined the merits of the substantive originating summons proceedings and make findings and consequential orders in respect thereof, in the face of conflicting affidavit evidence before the court? The issue is distilled from grounds 1, 2, 4 and 7.

2) Whether the lower court in the determination of the matter before it, infringed upon the appellants' right to fair hearing? Distilled from grounds of appeal Nos: 5, 6 and 9.

3) Whether the lower court was bound to apply or rely on the decisions of the Court of Appeal and the Supreme Court in Appeals Nos; CA/PH/166/2012 and SC.127/2012 when the parties and subject matter of the said cases are different from the parties and subject matter of the present matter. Distilled from grounds of appeal Nos. 3 and 8.

4) Whether the lower court had the jurisdiction to make the consequential orders in issue in this appeal? Distilled from ground of appeal No. 10.

In response to the appellants' brief of argument, the 2nd, 3rd, 7th, 8th and 9th respondents all filed their joint brief of argument on the 28th May, 2014 wherein they also raised three issues as follows:-

1) Whether this honourable court can overrule itself in this appeal, with regards to the Decision in SC.127/2012. *Perutu V. Gariga* (2013) 3 NWLR (Pt.1348) pages 415 - 443? This issue is distilled from grounds 3 and 8 of the Notice of Appeal and is corresponding with appellants' issue no. 3. B

2) Whether the lower court rightly exercised jurisdiction to determine the merits of the substantive Originating Summons proceedings and made findings and consequential orders in respect thereof? The issue which is distilled from grounds 1, 2, 4, 7 and 10 of the Notice of Appeal is also corresponding with the appellants' issues 1 and 4 taken together. C

3) Whether the parties in this case were given equal opportunity to be heard before the lower court? The issue which tallies with appellant's issue 2 is formulated from the totality of the grounds of appeal nos. 5, 6 and 9 of the notice of appeal. D

The 10th respondent's brief of argument in the main appeal was filed on the 1st December, 2014 but properly deemed filed on the 3rd December 2014 with only lone issue raised as follows:- E

"Whether on the facts and or circumstances of this case, the lower court was right when it applied the decisions of the Supreme Court in Appeal No: SC.127/2012 and the Court of Appeal in Appeal No: CA/PH/166/2011 in the resolution of the Appeal before her which like the other appeals herein stated arose out of Suit No. YHC/140/2010 of the Bayelsa State High Court sitting at Yenagoa." F

On the 3rd December, 2014 at the hearing of this appeal, G counsel identified their respective briefs of arguments supra which were adopted and relied thereon for the prosecution of the appeal. They also addressed the court viva voce in expatiating their briefs. On the one hand, while the counsel Mr. Samuel Brisibe represented the appellants and urged that the appeal be allowed' it was the ardent contention of Mr. Festus Keyamo on the other hand that the appeal be dismissed in favour of his clients, the 2nd, 3rd, 7th, 8th and 9th respondents accordingly. In the same vein and supporting the submission by Mr. Keyamo, the counsel Mr. I. O. Kamalu also H

submits that the appeal against his client, the 10th respondent should be dismissed.

For purpose of this judgment, I shall use the 2nd, 3rd, 7th, 8th and 9th respondent's three issues which have adumbrated the appellants' four issues and also incorporated the one raised by the 10th respondent. I shall now deal with the submissions of counsel to the parties as contained in their respective briefs.

The 1st issue raised is based on the principles of estoppel and res judicata and which raises the question whether this court can overrule itself in this appeal sequel to the decision in SC.127/2012; Perutu V. Gariga (2013) 3 NWLR (Pt.1348) page 415 - 443?

It is the contention of the appellants that the lower court was not bound to apply or rely on its decision and also that of this court in Appeals nos. CA/PH/166/2012 and SC.127/2012, respectively.

In further submission, the learned counsel re-iterates a fundamental condition precedent to the application of the principles of estoppel and or res judicata, wherein the parties and the subject matters of the previous adjudication must be the same with the present matter under consideration; that the situation presently at hand does not tally with the previous appeals which were earlier disposed of and hence did not come within the ambit of the desired principle. Specific emphasis was related to the remarkable distinction of the subject matter of the suit before the court as well as the individuals involved. In other words the two different local governments and locations are neither the same nor the personalities or parties involved. In buttress of his submission, copiously to the decision in the cases of Makun V. F.U.T. Minna (2011) 18 NWLR (Pt.1278) page 19 and Dokubo V. Omoni (1999) 8 NWLR (Pt.616) page 647. Counsel therefore urged that the court should resolve the issue in favour of the appellants.

The learned counsel Mr. Keyamo on behalf of his clients submitted vigorously and urged this court not to depart but abide by its judgment in SC.127/2012 which was reported as Perutu V. Gariga in reference supra. It is the counsel's contention that, a careful perusal of the facts and substance of this appeal will reveal that it arose from the same cause of action and is of the same substance as Appeal No. SC.127/2012 reported as Perutu V. Gariga (supra); counsel referred to the settled trite law that, this court can only overrule itself, or set

aside its previous decision when such was reached per incuriam, or is erroneous and occasions injustice. To substantiate his position, the counsel Mr. Keyamo cited a number of authorities inclusive of *Oshoboja V. Amida* (2009) 18 NWLR (Pt.1172) page 188; *Bakare V. L.S.C.S.C.* (1992) 8 NWLR (Pt. 262) 641; *Eperokun V. University of Lagos* (1986) 4 NWLR (Pt.34) P.162 and *Owie V. Igiwi* (2005) 5 NWLR (Pt.917) 184. B

It is the counsel's firm submission also that the decision in SC.127/2012 *Perutu V. Gariga*, (Supra) was not wrong, neither was it reached per incuriam nor perpetuating injustice. It is his view further that this appeal being of the same cause of action and substance as SC.127/2012 *Perutu V. Gariga*, (supra), it ought to be resolved in favour of the respondents. Finally, counsel therefore urged the court to desist from overruling itself in this appeal in the circumstance and rule in favour of his clients. C D

In response to the appeal, Mr. I. O. Kamalu, counsel representing the 10th respondent vehemently rejected the totality of the thrust of appellants' submission, which facts counsel deem as an attempt to re-open issues that have been effectively resolved by this court. It is the counsel's submission that the facts which are raised as issues by the appellants were the same facts which were before the Court of Appeal and also this Court in the earlier appeals with the appellants who were also parties in the respective appeals and had the opportunity to have raised the issues being canvassed presently; that they should therefore be discountenanced. E F

While urging for the dismissal of the appeal, the counsel submits that the issues raised by the appellants have been dealt with earlier and resolved by this court; that the matter having been resolved to finality therefore, the lower court was in order when it applied the decision of this court to the resolution of the issues in this case, as the parties, issues and or subject matter are all the same. On a final note, counsel endorses the consequential orders made by the court as necessary for purpose of giving effect to its judgment. G

The substance of the appellant's case is that the parties having filed affidavits which are in conflict, it was the responsibility of the lower court to call for oral evidence to resolve the conflict and that the failure to do so occasioned a miscarriage of justice as the appellants were denied their right to fair hearing and or trial. It was a fur- H

ther contention by the appellants also that the lower court was in great error in applying the decisions of the Court of Appeal in Appeal No: CA/PH/166/2011 and that of this court in Appeal No. SC.127/2012, without the resolution of the conflicts in affidavit evidence that was before the court. On behalf of the respondents however, their
B respective counsel did not regard with any merit or substance, the contention held by the appellants counsel. It was viewed as a gross misconception of the issues that were before the lower court.

It is pertinent to re-iterate the pronouncement by the lower
C court in its judgment wherein it held that it was bound by its own decision and also of this court in Appeals Nos. CA/PH/166/2012 and SC.127/2012 based inter alia on the principles of estoppel res judicata etc. Specifically at page 1096 of the record of Appeal, their Lordships of the lower court said:-

D *“It should be settled in the face of this authority that this court between the doctrines of res judicata and stare decisis has a duty to apply the decisions in CA/PH/166/2012 and SC/127/2012 to this case and I so do.”*

***The law is trite in laying down the fundamental condition
E precedent to the application of the principles of estoppel and or res judicata wherein the parties and the subject matter of the previous proceedings must be the same with the present under consideration. Judicial authorities have enunciated the principles which are well pronounced in the case of Makun V. F.U.T. Minna (supra) wherein this court re-iterated that, for a
F plea of estoppel per rem judicatam to succeed, the party relying thereon must establish the following requirements or pre-conditions namely:-***

G ***(a) That the parties or their privies are the same in both the previous and the present proceeding.***

(b) That the claim or issues in dispute in both actions are the same.

H ***(c) That the res or the subject matter of litigation in the two cases is the same.***

(d) That the decision relied upon to support the plea of estoppel per rem judicatam is valid, subsisting and final.

(e) That the court that gave the previous decision relied upon to sustain the plea is a court of competent jurisdiction.

It has also been held severally by this court that, unless all the above constitutional elements or requirements of the doctrine are fully established, the plea of estoppel per rem judicatam cannot sustain. See also the decisions in Yoye V. Olalode

(1974) 10 SC 209; Alase V. Olori-Ilu (1965) NMLR 66; Fadiora V. Gbadebo (1978) 3 SC 219 and Udo V. Obot (1989) 1 SC (Pt. 1) 64. B

Further still, his Lordship Onu, JSC re-affirmed the principle in the case of Dokubo V. Omoni (supra) wherein he held at page 659 and said:-

“It is settled that for the doctrine of estoppel per rem judicatam to apply, it must be shown that the parties, issues and subject matter in the previous action were the same as those in the action in which the plea is raised. See Alashe V. Olori Ilu (1964) 1 All NLR 390 at 394; Balogun V. Adejobi (1995) 2 NWLR (Pt.376) 131, and Faleye V. Otapo (1995) 3 NWLR (Pt. 381) 1.” C

From the cumulative summary of the foregoing authorities, it is clear that the existence of the principle is entirely a question of fact for purpose of establishing whether the parties and their privies, the facts in issue and the subject matter of the claim are the same in both the previous and the present suits. D

The plea of res judicata is of a special nature as it operates not only against the parties but also the court itself and robs it of its jurisdiction to entertain the same cause of action on the same issues previously determined between the same parties by a court of competent jurisdiction. E

For the determination of the issue at hand, the relevant materials for consideration are the parties in both the previous and the present proceedings, also the pleadings for purpose of ascertaining the similarity of the subject matter of the claim or issues in dispute. F

The learned counsel Messrs. Keyamo and Kamalu opposed the appeal vigorously and submitted at great extent on the inapplicability of the principle of res judicata to the case at hand in view of the facts and substance of this appeal which arose from the same cause of action at the appeal no. SC/127/2012 reported as Perutu V. Gariga (supra). It is the counsel's submission therefore that the court should in no wise overrule itself in this appeal which is on all fours with the earlier case for which decision had been given. G

With all respect to the submissions made by learned counsel H

for the two sets of respondents (supra), the point for consideration before this court is not questioning the decision in *Perutu V. Gariga* supra. Rather, it is for purpose of ascertaining whether or not the case can be used as a reference point to invoke the principle of *res judicata*, which is sought to operate against the success of the appellant's appeal. It follows squarely that the numerous authorities cited by Mr. Keyamo, though relevant they may be in the context of the appropriate reference, they are not however supporting to this case.

As rightly submitted by the counsel representing the appellants, in the matter under consideration, the parties and the subject matter of the previous appeals (i.e. Appeals Nos. CA/PH/166/2012 and SC.127/2012) are different and not the same as the parties and subject matter of the one before us. In other words and for instance, the 2nd and 3rd respondents (in the persons of Benneth Igbani and Prince Okoloaowei A. Seimokumoh) now before us were not parties to the previous matters (i.e. Appeals Nos. CA/PH/166/2012 and SC.127/2012.

Furthermore, it is pertinent to state that the subject matter of the previous appeals were the Chairmanship of Sagbama, Ekeremor and Kolukuma/Opokuma Local Government Councils and or the rights of the appellants in those cases to be nominated as the candidates of the PDP for the elections to the said offices.

To the contrary, the subject matter before us, relates to the Chairmanship of the Yenagoa and Ogbia Local Government Councils and or the alleged right of the 2nd and 3rd Respondents to be nominated as the PDP candidates for election to the said offices. The submissions by the respondents' learned counsel therefore cannot be comprehended but held as a gross misconception of facts on ground.

In other words, I am in complete agreement with the contention held by the learned counsel for the appellants when he submitted that the lower court was not bound to apply or rely on its decision and also that by this court in Appeals Nos. CA/PH/166/2012 and SC.127/2012 respectively. Consequently therefore, I hold a considered view that their Lordships of the lower court were in great error in their conclu-

sion held at page 1096 of the record of appeal reproduced supra. In the result, the said issue is hereby resolved in favour of the appellants.

The 2nd and 3rd issues will be taken together for convenience. In summary, the 2nd issue questions the propriety of the lower court in the exercise of its jurisdiction to determine the merits of the substantive or originating summon proceedings and thus making findings and consequential orders in respect thereof. The following 3rd issue which is closely related is, whether the parties were given equal opportunity to be heard in the determination of their case.

The learned counsel for the appellants submitted at great extent and re-iterated the conflicting nature of the facts deposed to on the affidavit of parties and the reason why the lower court ought to have declined jurisdiction and allowed the case to proceed to trial on the merit. Therefore the totality of the submission by the said counsel was summarized in the following terms:-

That the lower court had no jurisdiction to have determined the merits of the substantive originating summons proceedings and make findings and consequential orders in respect thereof, in the face of conflicting affidavit evidence before the court, it is also argued by counsel further that the lower court in the determination of the matter before it, infringed upon the appellants' right to fair hearing.

On the totality, counsel submits that the court below had no jurisdiction in making the consequential orders as it did in this case. He therefore urged in favour of allowing the appeal.

Responding to the foregoing two issues, the learned counsel Mr. Keyamo called for the dismissal of the appeal and submitted on the totality that the lower court rightly exercised its jurisdiction in determining the merits of the substantive originating summons proceedings and made findings and consequential orders in respect thereof; that contrary to the contention conceived by the appellants, parties in this appeal were given fair hearing before the lower court.

He finally urged that the appeal be dismissed with substantial costs in favour of the 2nd, 3rd, 7th, 8th and 9th respondents.

Principally, and in view of the conflicting nature of the affidavits, the submissions by counsel on the two issues were centered on whether or not the lower court rightly exercised jurisdiction in its determination on the merit, the substantive originating summons pro-

ceedings and thus arriving at the findings and making the consequential orders in respect thereof.

At pages 1095 and 1096 of the record of appeal, the court below in its reasoning said;-

“In the instant case, these appellants who were among the plaintiffs at the trial court ought to have enjoyed the fruit of that decision before today but for the fact that they opted out of the appeal in CA/PH/166/2012. Since that decision is on the cause of action hoisting the instant appeal, it stands to reason that the cause of these Appellants shall follow the earlier decision of this court..”

It should be settled that this court between the doctrines of res judicata and stare decisis has a duty to apply the decisions in CA/PH/166/2012 and SC.127/2012 to this case and I so do.”

It is clear to me from the record that the court below applied the principle of the doctrines of res judicata and stare decisis and concluded that it had a duty to apply the decisions in CA/PH/166/2012 and SC.127/2012 to the appeal before it.

The confirmation of this is obvious with reference made to the pronouncements which were reproduced from the record of appeal supra. It is on record for instance that the judgment of the lower court was premised on the earlier decisions arrived at and under reference. Consequently, the elaborate and detailed submissions made by counsel on the conflicting nature of the affidavits in support of the originating summons are not desirable for the consideration of this appeal. Put differently, with the determination of the 1st issue which resolved that the lower court erred in applying the principle of res judicata to the matter before it, the resolution of the other issues will also succeed on the outcome of the 1st issue being the central crux of the entire appeal. In other words, with the 1st issue being resolved in favour of the appellants, the same also applies to the other issues 2 and 3.

The appeal in the result is allowed and I make an order setting aside the judgment made by the lower court on the 15th March 2012.

In its place, I will make an order that, since the tenure of the appellants have been spent, they cannot now have the benefit of the office which was enjoyed by the 7th, 8th and 9th respondents, who were within the tenure allocated the party

by law at the time they obtained judgment. The appellants came at a time when the three years period had since come to an end. They came too late; there cannot therefore be any benefit accruing to them. The res had finished and also became extinct by reason of effluxion of time. The appeal has become spent and academic.

I also make no order as to costs.

The Cross Appeal

The cross-appeal is against the same judgment of the Court of Appeal, Port Harcourt Division delivered on the 15th day of March, 2013, following the appeal filed by the 1st and 2nd Cross-Respondents also against the said judgment.

In other words, while the 1st and 2nd Cross-Respondents in the Cross-Appeal filed an appeal against the judgment of the lower court, the cross-appellants also cross-appealed against portions of the same judgment. The notice of cross-Appeal dated 2nd April, 2013 was filed on the 3rd April, 2013 and can be found at pages 1119 - 1124 of the records.

The facts of the case are well spelt out in the main appeal and need not be repeated here.

Pursuant to the rules of this court, parties filed and exchanged briefs of arguments. The respective briefs were adopted and relied upon on the 3rd December, 2014 at the hearing of both the appeal and the cross-appeal.

On behalf of the cross-appellants a joint cross appellants' brief of argument was filed on the 2nd May, 2013. Reply briefs were also filed in response to the various cross respondents' briefs of arguments in the following terms:-

In respect of the 1st and 2nd cross respondents their brief was filed on the 28th May, 2014 while that of the 3rd, 4th and 5th also 6th and 7th were filed on the 10th December, 2013, 8th July 2014 and 28th May, 2014 respectively, with the briefs of the 3rd and 4th cross respondents filed on the same day and 6th and 7th also on the same date.

In his submission, the learned counsel Mr. Keyamo on behalf of his clients, the cross appellants urged that the cross appeal be allowed on the totality of their briefs of arguments. The crux of the cross appellants arguments is centred on Section 27(3)(a) of Local

Government Law Bayelsa State which learned counsel submits is in pari materia with the decision in the case of *Marwa Vs. Nyako* (2012) 6 NWLR (Pt.1296) at 356 also *Obi v. INEC* (2007) 11 NWLR Pt.1046 p.644.

B On behalf of the 1st and 2nd cross respondents the learned counsel Mr. Samuel Brisibe adopted and relief on their cross respondents' brief of argument filed 21st November, 2013 but deemed Filed 19th May, 2014 and urged that the cross appeal be dismissed as lacking in merit.

C Also and on behalf of the 3rd cross respondent, the counsel Mr. Preye Agedah related copiously and relied on the 3rd cross respondent's brief filed on 11th September, 2013 and also deemed filed on 19th May, 2014. The learned counsel sought, adopted and relied on the said brief inclusive of the preliminary objection argued D and raised against the cross appeal. On the totality, it is the counsel's submission that the cross appeal be dismissed because PDP, as a party, cannot have an elongated period of six years for a statutory term of three years tenure by reason of their internal wrangling.

E John Bull, Esq. was a counsel who represented the 4th respondent in the cross appeal. In adopting and also relying on the 4th cross respondents brief filed on the 30th May, 2013 the court's attention was drawn to the preliminary objection raised therein and the counsel urged vehemently for the dismissal of the entire cross F appeal for the same reason advanced by the 3rd cross respondent's counsel. In other words a wrongful advocating for a tenure elongation over and above that provided for by the statutes.

In an all inclusive brief filed on 19th June 2014, Chief F. F. Egele adopted the lone issue formulated by the cross appellants and G submitted also in favour of dismissing the cross appeal.

The counsel Mr. F. Zimughan who represented the 6th cross respondent adopted and relied on the brief of argument filed on 10th December, 2013 but deemed filed on 19th May, 2014. Also for the same reason advanced by his learned brothers for the cross H respondents, it is the counsel's submission that the cross appeal should be dismissed as lacking in merit.

The 7th cross respondent's brief of argument in respect of the cross appeal was filed on the 23rd May, 2014 and a preliminary objection was raised therein against the competence of the cross ap-

peal. The counsel, Mr. I. O. Kamalu contends on the totality therefore that the cross appeal should, either be struck out on the preliminary objection or be dismissed on the merit.

The 8th cross respondent's brief of argument was also filed on the 19th June, 2014. On behalf of the said cross respondent, his counsel Mr. D.W. Wuku adopted and relied on the brief of argument and urged that the cross appeal be dismissed. B

The learned counsel Mr. T. O. P. Afagha who represented the 9th cross respondent also in the same tone like his brother for the 8th cross respondent, duly submitted in favour of dismissing the cross appeal. C

The last brief of argument is the one filed on behalf of the 2nd set of cross-Respondents on the 12th November, 2014 but deemed filed on the 3rd December, 2014 and contains a notice of preliminary objection. Their counsel Mr. Felix T. Okorotie adopted D and relied on the said 2nd set of cross respondents' brief of argument and urged on the preliminary objection that the cross appeal be dismissed for being an abuse of court process. Counsel also cited the case of Okorocha v. PDP (2014) 7 NWLR (Pt. 1406) 213 in support of his submission. E

The lone issue formulated in this cross appeal is:-

"Whether in view of the provisions of Section 27(3)(a) of the Local Government Law Cap 110 Laws of Bayelsa State 2006 the tenure of office of the Cross-Appellants will only take effect from the day the oath of office and oath of allegiance is administered on them." F

It is pertinent to state that the 1st and 2nd cross respondents also 3rd, 4th, 5th, 6th, 7th, 8th, 9th as well as the 2nd set of cross respondents have all adopted the lone issue raised for determination by the cross appellants; I seek to add that in the case of the 3rd cross respondent, its adoption of the issue, although with slight modification, it is however same in principle and substance with the lone issue raised on the cross appeal. G

As a preamble to the determination of the issue raised, it is paramount first to have recourse to the preliminary objections raised by the 1st and 2nd, 3rd, 4th, 7th and 2nd set of the cross respondents in their respective briefs of arguments. H

The 1st preliminary objection which will be considered is the one raised by the 1st and 2nd cross respondents. The argument in

support challenges the notice of cross appeal which is adjudged as incompetent for failure in seeking first, the leave of court before filing same in accordance with Section 233(2) and (3) of the Constitution of the Federal Republic of Nigeria, 1999. It is further submitted that the order cross Appealed against is borne out of the discretion of the lower court.

From a careful perusal of the entire substance of the cross appeal before us, it is calling for the interpretation of Section 27(3) of the Local Government Law, Cap. L10, Laws of Bayelsa State, 2006 which provides thus:- *“Subject to the provisions of subsection 1 of this section, the chairman shall vacate his office at the expiration of a period of 3 years commencing from the date when- a. In the case of a person first elected as chairman under this law he took the oath of allegiance and the oath of office...”*

In my view, it is not far-fetched to say that the entire cross appeal is hinged on grounds of Law alone, and which does not require the seeking of leave before same could be filed. The confirming provision is section 233(2)(a) of the 1999 Constitution of the Federal Republic of Nigeria which provides thus:- “An Appeal shall lie from the decisions of the Court of Appeal to the Supreme Court as of Right in the following cases: a. Where the grounds of Appeal involves questions of Law alone, decisions in any Civil or Criminal proceedings before the Court of Appeal.” The preliminary objection raised by the 1st and 2nd cross respondents is, in the circumstance grossly misconceived and same is hereby overruled. In other words, the notice of cross appeal is hinged on grounds of law, it is not therefore incompetent as alleged by the said cross respondents; the cross appellants did not therefore require any leave of court before filing same.

The next set of preliminary objection is the one raised by the 3rd cross respondent which in summary is to the effect that the judgment of the lower court delivered on 15th March, 2013 upon which this appeal and cross appeal are based was in favour of the 1st and 2nd cross respondents only and thus, the 3rd, 4th and 5th cross appellants, being not aggrieved persons, have no locus standing to cross appeal now before us.

As rightly submitted on behalf of the cross appellants, in the

matter before the trial court, the 3rd, 4th and 5th cross - appellants were parties to the originating summons in Suit No. YHC/149/2010 from which the appeal and cross appeal originated. They cannot therefore be alien to the cross appeal as wrongly envisaged by the 3rd cross respondent. The preliminary objection is an utter misconception and is hereby also overruled. B

Furthermore and on behalf of the 4th cross respondent, the preliminary objection was taken from three dimensional angles of perception. The summary of the argument in support thereof is that the tenure of office for which the cross appellants seek re-instatement was meant for the period of 5th April, 2010 - 4th April, 2013; that the cross Appeal is against an obiter dictum of the lower court and also that the 3rd - 5th cross Appellants are not aggrieved persons in respect of the judgment of the lower court. The learned counsel Mr. Keyamo disagrees with the 4th cross respondent's view of objection D and submitted that, in substance, the cross appeal alleges that the said tenure of office was unlawfully occupied. As a result, that the cross appellants cannot be said to have occupied the tenure of office in absentia, and are thus entitled to be reinstated to serve their valid tenure. E

On whether or not the cross appeal is against an obiter dictum, Mr. Keyamo re-affirms that the lower court abided by the Decision of this court in SC.127/2012 which arose from the CA/PH/304/2011 which considered the entire appeal on the merit, including the issue of tenure elongation, before arriving at its conclusion. F

In considering this preliminary objection, I wish to state quickly that the 3rd leg of objection on the locus status of the 3rd - 5th cross appellants had been taken care of and therefore dealt with in the earlier objection raised by the 3rd cross respondent and it needs no further over flogging. I need to add only that the status of the appellants is not constituting an abuse of court process as wrongly conceived by the 4th cross respondent. G

In a nutshell, the substance of the cross appellants' complaint is the refusal for them to occupy the office for the period from 5th April 2010, the date the oath of office was taken, which said period, they submit, is a nullity. In the circumstance therefore, I hold that the cross appeal cannot be academic as wrongly conceived by the 4th cross respondent. This is in view of the settled principle of law that H

where there is a wrong, there must be a remedy.

On the question of an objection as to whether or not the cross appeal is against an obiter dictum of the lower court, it is pertinent to state that the two constituent parts in a judgment of a court are Ratio Decidendi and obiter Dictum. An opinion of a court upon which no issue had been joined by the parties amounts to obiter dictum and cannot therefore constitute a ground of appeal. See Bamgboye V. University of Ilorin (1999) 10 NWLR (Pt.622) 290.

However, a Ratio decidendi according to the Black's Law Dictionary simply means;

"Reason for deciding." The principle or rule of law on which the court's decision is founded. It could also mean the rule of law on which a later court thinks that a previous court's judgment is founded."

The same Black's Law Dictionary also defines Obiter Dictum as, *"something said in passing."* In the case of United Bank for Africa Limited Vs. Stahlban GMBH & Co. KG. (1989) 3 NWLR (Pt.110) 374 at 402 for instance, this court held and said:-

"The ratio decidendi of a case is not determined from isolated dictum in the judgment. It is determined on considerations of the issues in the dispute between the parties and the facts pleaded and found in support of the contention of the issues. Hence, every judgment ought to be read as applicable to the particular facts proved."

The cross appellants' grouse on the tenure of office is predicated on the interpretation of section 27(3)(a) of the Local Government Law, Cap 110, Laws of Bayelsa State, 2005, i.e. whether the tenure of office takes effect from the date they took their oaths of allegiance and oaths of office and shall so hold office for a period of 3 years. The substance of the grounds of appeal, in my view, is not against an obiter dictum but against a ratio decidendi of the court below i.e. to say, the ground is, seeking an interpretation of a provision of a statute. The preliminary objection raised in that behalf does not, in my view, also hold water but is again, hereby overruled.

The 7th Cross Respondent's preliminary objection is squarely in conformity with the one raised by the 1st and 2nd cross respondents. In summary, the objection is to the effect that the notice of cross appeal is academic and incompetent for failure to seek the leave of court before filing same. With the disposal of the objection raised earlier by the 1st and 2nd cross respondents, the same conclusion

arrived at therein should also apply in this situation and consequent to which the preliminary objection raised herein is hereby also overruled while the notice of cross appeal being ground of law, is held as competent and no prior leave is required before filing same.

The 2nd set of cross-respondents' brief of argument was filed on 12th November, 2014 but deemed properly filed and served on the 3rd December, 2014 by order of court, on the very day the cross appeal was duly heard. Contained therein the brief, was a motion on notice by way of a preliminary objection. The objection seeks for an order that the cross-appeal, as it relates to the 4th and 5th cross-appellants/respondents, should be struck out and or dismissed for want of jurisdiction.

In summary, it is the objectors' contention that by filing this cross-appeal vis-à-vis the earlier suits and appeals, seeking for substantially the same reliefs, the cross-Appellants have adopted two processes concurrently or *pari pasu* to achieve the same aim. Put differently, that, with the same issue raised in the cross-appeal having been determined by the Bayelsa State High Court and the appeal of the cross-appellants, particularly the 4th and 5th cross-appellants/respondents have been dismissed with no appeal against same, the cross-appeal now before us is an abuse of court process.

In the light of the foregoing therefore, the 2nd set of cross respondents/applicants have urged for the dismissal of the cross appeal particularly that of the 4th and 5th cross-appellants.

Without belabouring the arguments raised on the current preliminary objection, I seek to draw reference on the substantive appeal wherein the issue now raised by the objectors was considered and held not applicable. In otherwords, since the principle of *res judicata* did not apply to dispose of the main appeal, the cross-appeal without more cannot be an abuse of court process. The preliminary objection is therefore misconceived and without merit. It is also overruled accordingly.

The lone issue raised for the determination of the cross appeal relates to the tenure of office of the cross-appellants and which calls for the interpretation of the provision of section 27(3)(a) of the Local Government Law CAP L10 Laws of Bayelsa State, 2006. In other words, whether the tenure of office of the cross-appellants will only take effect from the day the oath of office and oath of allegiance

are administered on them.

The grudging point of contention by the cross appellants is centred around the pronouncement made by the lower court at pages 1097 - 1098 of the record of appeal wherein it held thus:-

“The appellants came to court without delay to fight for their rights. During the pendency of this case the tenure of the appellants is almost expended. The law is never helpless in remedying any wrong. The maxim is Ubi jus ibi remedium. If the court is satisfied that a person has suffered a legal injury, it will surely provide a remedy. The court cannot do otherwise. The court will duly give a remedy where the facts as disclosed fall within a remedy recognized by law. See the cases of Bello v. Attorney-General, Oyo State (1985) 5 NWLR (Pt. 45) 828,890; Attorney-General Lagos State v. Eko Hotels Ltd. (2006) 18 NWLR (Pt. 1011) 378; Amaechi v. INEC (2008) 5 NWLR (Pt. 1080) 227.

In the instant case, the appellants are to assume their respective positions as chairpersons of their respective Local Government Councils forthwith. Then they are to be paid their salaries and allowances for the period they were out of office during their tenure.”

With the foregoing conclusions arrived at by the lower court, it is the submission of the cross appellants’ counsel that the learned Justices of the Court of Appeal failed to avert their minds to the provisions of Section 27(3)(a) of the Local Government Law Cap. L10 Laws of Bayelsa State 2006. Counsel therefore sought to interpret the phrase *“bath of allegiance and oath of office”* in the light of the case of Marwa v. Nyako Supra at page 356 which he submits is in pari material with section 27(3)(a) of the Local Government Law; it is also the submission of counsel that from the foregoing decision, the cross-appellants can only assume their respective positions as Chairpersons upon the taking of oath of allegiance and oath of office. Counsel further made reference to the position taken by this court in re-establishing the principle in the case of Nwankwo v. Yar’adua (2010) 12 NWLR (Pt. 1209) p.589.

In total sum, the learned counsel Mr. Keyamo has urged on us to allow the cross-appeal and set aside that part of the judgment of the lower court which held that, during the pendency of the cross-appellants’ case, their tenure of office were almost expended; and to hold that the tenure of office of the cross-appellants will only take

effect, the day the oath of allegiance and oath of office are administered on them. Finally, that the cross-appeal has merit because the part of the judgment of the lower court complained against, by the cross-appellants, was given per incuriam, without taking into cognizance the provisions of section 27(3)(a) of the Local Government Law Cap. L10 Laws of Bayelsa State 2006. B

In response to the foregoing submission, it was contended on behalf of the 1st and 2nd cross respondents that by the present proceedings, the cross-appellants are attempting to foist themselves on the party as its elected candidates even after the expiration of the term of three years, which the party won in 2010. In further submission it was argued also that a member of a party such as the cross-appellants have no legal right to force a political party to make him the candidate of the party in an election. The case of PDP v. Sylva (2012) 13 NWLR (Pt. 1316) p.85 at 125 was cited in reference; that, by obliging the cross-appellants, the PDP would be deprived of its legal right to participate in election for the said offices for the period, by fielding candidates of its choice for the said positions; that a decision resolving the issue in favour of the cross-appellants would give the PDP an additional three years tenure for its candidate arising from the same election held in April, 2010 i.e. several years beyond the period allowed by the Bayelsa State Local Government Law; that based on the decision of this court in the case of Amaechi v. INEC (supra), a provision such as section 27(3)(a) of the Bayelsa State Local Government Law, only specifies the maximum period a candidate of a party can serve after taking oaths of office and of allegiance. It is further contended that the case of Obi v. INEC (supra) cited by the cross-appellants, is inapplicable to this matter as the facts of this case are different from those of that case. E F G

In summary and on behalf of the 1st and 2nd cross respondents, their learned counsel Mr. Brisibe urged for the dismissal of the cross appeal as the term of office won by the PDP had since expired.

Also in response to the cross appeal, on behalf of the 3rd, 4th, 5th, 7th, 8th, and 9th cross respondents as well as the 2nd set of cross-respondents all their respective briefs of arguments are submitted in consonance with the contention advanced on behalf of the 1st and 2nd cross-respondents supra. In other words, is their consensus arguments that the cross appellants have given a wrong interpreta- H

tion to the provision of section 27(3)(a) of the Local Government Law Bayelsa State 2006; that since the 1st and 2nd cross-appellants were unlawfully substituted as the PDP chairmanship candidates for Yenagoa and Ogbia Local Government area, their tenure of office would be longer than the term which their political party is entitled to
 B if the cross appeal should be allowed to succeed. In other words, that it is not justice for the cross appellants and members of the same party to cause internal squabbles in the party and subsequently turn around to take benefit and advantage of their own misdeeds.

C It is also the submission by the cross respondents, particularly the 2nd set of cross respondents, that the tenure of office of the cross-appellants, specifically the 5th and 6th cross-appellants, is deeply tied to the victory of Peoples Democratic party (PDP) that won the election. Albeit, it therefore meant that when the 4th-6th cross-re-
 D spondents were sworn in under the platform of the peoples Democratic Party (PDP), as the chairman of their respective Local Government councils, it was assumed that the tenure of office of the cross-appellants have started running since they have no term exclusive to themselves apart from the one won by the Party (PDP). The support-
 E ing authority is derived from the provision of section 56(1)(a) of the Local Government Law, Bayelsa State which provides thus:-

“A person shall not be qualified as a candidate of any local government election unless:-

F *(a) He is sponsored by a registered political party”;*

It is pertinent to say that the foregoing provision is in pari materia with section 221 of the Constitution of the Federal Republic of Nigeria 1999 (as amended). The import and intent of the provision is conclusive in that, it is a political party that contests and wins
 G elections; the implication is a candidate cannot be qualified to assume an elective office unless he has been sponsored by a party that won the election.

In the result, all the cross respondents have urged that the cross appeal lacks merit and should be dismissed without more.

H The central issue raised by the cross appeal is a question, when the tenure of a person, who is unlawfully substituted as a candidate in an election won by his political party, begins to run? The cross appellants related this question pointedly to the judgment of the lower court at pages 1097-1.098 reproduced supra, particularly

the order made therein. In other words, it is their submission that the order made is perverse and should be set aside because, no consideration was given to section 27(3)(a) of the Local Government Law of Bayelsa State. Copious reliance in fortification was made on the decisions arrived at in *Marwa v. Nyako* at 356 also *Obi v. INEC* supra.

The crux of focus in this cross appeal therefore, is section 27(3)(a) of the Local Government Law under reference which states as follows:-

“Section 27(3)(a)

(3) subject to the provisions of subsection (1) of this section, the chairman shall vacate his office at the expiration of a period of 3 years commencing from the date when -

(a) in the case of a person first elected as chairman under this law he took the oath of Allegiance and the oath of office...”

From the said provision supra, it is clear that the term of office of a person first elected as chairman would begin to run from the date the oath of Allegiance and oath of office were taken or subscribed to.

There are two main issues arising from the foregoing statutory section. Firstly, a determination of who is a person first elected and secondly when was the oath of Allegiance and oath of office taken or subscribed? The case of *Amaechi v. INEC* (2003) 1 SC (Pt. 1) 36 has put the two questions to rest wherein this court per Oguntade, JSC had this to say at page 110.

“Now section 221, of the 1999 Constitution provides:

No association other than a political party shall canvass for votes for any candidate at any election or contribute to the funds of any party or to the election expenses of any candidate at an election. The above provision effectually removes the possibility of independent candidacy in our elections; and places emphasis and responsibility in elections on political parties. Without a political party a candidate cannot contest. The primary method of contest for elective offices is therefore between parties. If as provided in section 221 above, it is only a party that canvass for votes, it follows that it is a party that wins an election. A good or bad candidate may enhance or diminish the prospect of his party in winning but at the end of the day, it is the party that wins or loses an election.”

In continuation, their Lordships further said:-

“In mundane or colloquial terms we say that a candidate has won an election in a particular constituency but in reality and in consonance with section 221 of the Constitution, it is his party that has won the election.”

It is the contention of the cross appellants that their term of office would start to run from the date they take the oath of office and oath of allegiance irrespective of the date the party won the election. It is a fact that the tenure of their party which won the election in April, 2010 expired in March, 2013. The paramount question is, whether they can, by virtue of this cross-appeal, be entitled to a fresh term of three years outside their due statutory tenure which have since been expended? i.e. to say after the expiration of the term won by their party? This is, bearing in mind the principle laid down in *Amaechi v. INEC* (supra) that, in our political system, elections are won by the political parties and not by the candidates. ***The necessary consequential effect following Amaechi’s case is that, a political party who wins an election is mandatorily entitled only to the term of office allowed by law; such as a term of 3 years allowed by section 27(3)(a) of the Local Government Law of Bayelsa State. The provision as it were, cannot now in anyway or by any wisdom or guise be interpreted to extend the tenure won by the PDP in the said election, for additional three years or more as is wrongly canvassed, conceived, anticipated or envisaged by the cross appellants. It should, sound loud and clear, like the church bell, that the three years fixed by section 27(3)(a) is unmovable like mount Zion. No political party can, by, any stretch of imagination, ingenuity of action, as the one now taken by the cross appellants, who are members of the same political party, can be made to have an elongated tenure of office for its candidates, that is longer than that prescribed by law i.e. a term of three years. To do otherwise for purpose of interpreting the law in the context advocated by the cross appellants, who are taking over as it were from their brothers of the same party, is to do great violence to the interpretation of the enactment in the face of the party i.e. PDP as the same party that has been in office. The desire and move can best be described as a wishful thinking and a mirage.***

The case of Obi v. INEC cited and relied on by the cross appellants (supra) is of no moment and inapplicable to this case for the reasons that the elections giving rise to the suit were fought by different parties. The case at hand was however between the same political party. Moreover, the election which gave rise to the suit in Obi's case was annulled and a re-run election which was ordered and conducted, following which a candidate from another party, different from the party in Government won. (The case at hand was between the same party in Government) (Emphasis is provided.)

For all intent and purpose, the cross appellants are entitled only to exhaust the unexpired tenure (if any) of the three years and not otherwise; this view has its judicial support in the case of Ladoja v. INEC (2007) 12 NWLR (Pt. 1047) 119 where this court refused to elongate the term of Governor Rasheed Ladoja, whose tenure was broken by reason of the impeachment saga in Oyo State. This court held that his impeachment and removal from office were unconstitutional, null and void. The governor, who had been out of office for almost one year did not succeed in his action whereby he sought to regain the lost period of his four year tenure as guaranteed under section 180(2) of the Constitution. Also in the case of Marwa v. Nyako, relied upon by the cross appellant, supra, this court held that the oath sought to be subscribed to was not for the purpose of computation of tenure of office but to merely enter into the office.

In other words, the subscription of oath of office and oath of Allegiance has dual functions:- While it could be used for purpose of computing the tenure of office, it is also used for the purpose of entering into the office. Section 22 of the Local Government Law of Bayelsa State is in reference and it states:-

"A person elected to the office of chairman shall not begin to perform the functions of that office until and unless he has declared his assets and liabilities as prescribed by the code of conduct for public officers in the fifth schedule to the Constitution of the Federal Republic of Nigeria, 1999 and has subsequently taken and subscribed, before the Chief Judge, the Oath of Allegiance and the oath of office as prescribed in the schedule of this law."

The supporting authority is again the case of Marwa v. Nyako (supra) where this court held per Onnoghen, JSC and said:-

"It is therefore clear and I hereby hold that the second oath

of Allegiance though necessary to enable them continue to function in that office, were clearly superfluous in the determination of the four years tenure under section 180(2) of the 1999 Constitution.”

In the said same authority at page 82 of the report, this court also said:-

B “It is very clear from the relevant provisions that no person
elected under the 1999 Constitution can remain in that office a day
longer than as provided otherwise the intention of the framers of the
Constitution would be defeated. If the interpretation favoured by the
C Respondents is adopted and the four years tenure is to be calculated
from the second oaths taken in 2008 while in fact and law the 1st
Respondent took oaths of allegiance and of office on 29th May, 2007,
and remained and functioned in office as Governors of their various
states would their period of office not exceed the Constitutionally
D provided tenure of four years? The answer is clearly in the positive...”

For purpose of recapitulation, the Peoples Democratic Party,
the contestant of the election won a three (3) year term in 2010, the
question to pose is whether it would not be incongruous that such a
term should be extended to almost six years because of an error
E committed by the same party? For all intent and purpose, the deci-
sion in *Obi v. INEC* (supra) is clearly and obviously inapplicable to
the cross appellants’ case because the winner of the said foregoing
election in Anambra State was APGA, while in the present case, it
F was the PDP candidate that took the two oaths of Allegiance and
office. The principle established in *Obi’s* case states that the term of a
candidate, would not be shorter than the term acquired by his politi-
cal party as a result of winning the elections. Therefore, it follows that
a candidate of a political party cannot acquire a term of office more
G than that won by his political party, as a result of winning the election.

The cases of *Marwa* and *Obi supra*, are both very distin-
guishable from the position now before us in this cross appeal, be-
cause the facts and contexts under which decisions were reached in
those cases were different from the instant case. In the former cases
H for instance, the contestants were inter party and not intra party as it
is with the cross appeal at hand. Importantly, and for purpose of
emphasis, even if at the risk of repeating myself, it has clearly been
held out on the facts of this cross appeal that both the cross appel-
lants and also the cross respondents herein are of a common party,

the Peoples Democratic Party (PDP) and it is this party that won the election and thus, in occupation of the offices. This court had stated clearly in Marwa's case that oath taking cannot be used as a means of tenure extension or elongation. Again the intriguing question to pose at this juncture is:-

If the cross appellants' tenure is to be extended by the fact that they needed to take further oaths, what then should happen to the period occupied by PDP, their own party, - as against the citizenry of their respective local government areas and the opposition parties? The effect will certainly yield injustice to them, especially where the law is trite that no provision of a statute is to be interpreted to cause injustice. To do so is to defeat the very foundational intent and purpose of justice itself as well as the provision of section 27(3)(a) of the Local government law Bayelsa State.

From all deductions, there is no where provided by the Local Government Law or any other statute that section 27(3)(a) under reference did clothe any court with the powers to grant an extension of tenure to a chairman whose term has been expended, truncated or is spent by another candidate of the same party. Again see Ladoja v. INEC and also Marwa v. Nyako (supra). ***Therefore, it is not within the court's competence and indeed not even this court, as the apex court, to set the precedent by extending the tenure of any political party beyond the time specified by the Constitution.***

In the circumstance, the cross appeal is in my view devoid of any merit and same is hereby dismissed.

On the totality therefore, I make an order that, while the main appeal has merit and succeeds, it does not however accrue any benefit to the appellants as it has become academic and therefore spent by reason of the effluxion of time. Also in respect of the cross appeal, consequent upon overruling all the preliminary objections raised, it is devoid of any merit and is hereby dismissed. There shall be no order made as to costs but parties are to bear their respective costs.

FABIYI JSC

I have had a preview of the judgment just delivered by my learned brother - Ogunbiyi, JSC. I agree with the reasons therein adumbrated to arrive at the conclusions that the main appeal is meritorious and should be allowed while the cross-appeal lacks merit and
B deserves an order of dismissal.

In respect of the main appeal, my Lord said it all. I do not have anything new to say. I respectfully adopt the reasons adumbrated in the lead judgment to allow the main appeal.

C With respect to the cross-appeal, the crux of same is the due construction to be placed upon and the application of section 27(3) (a) of the Local Government Law, Bayelsa State which provides as follows:-

“Section 27(3)(a)

D *(3) Subject to the provisions of subsection (1) of the section, the Chairman shall vacate his office at the expiration of a period of 3 years commencing from the date when -*

(a) In the case of a person first elected as Chairman under this law he took the Oath of Allegiance and the Oath of Office...”

E As extant in the record, the Peoples Democratic Party (PDP) won the election conducted in 2010. It had a three year tenure and nothing more than that. The PDP cannot, in all clear conscience, lay claim to six years for the statutory 3 year tenure through the back
F door to the detriment of other political parties by reason of its internal wrangling. There can be no tenure elongation by design or via political subterfuge. It occurs to me that section 27(3) (a) of the Local Government Law, Bayelsa State, 2006 does not in any way contemplate such a state of affairs. Same was not the intention of the law
G makers. I dare say. The decision of this court in the case of Peter Obi v. INEC & Ors (2007) 11 NWLR (Pt. 1046) 644 is not applicable to this case. It is clearly distinguishable as the parties of the contestants therein were not the same.

H For the above remarks and based on the plausible reasons advanced in the lead judgment, I have no atom of doubt in me that the cross-appeal is devoid of merit and should be dismissed.

On the whole, I too hereby allow the main appeal while the cross-appeal is dismissed without any shred of equivocation. I endorse the order on costs as contained in the lead judgment.

RHODES-VIVOUR JSC

I have had the benefit of reading in draft the judgment of my learned brother Ogunbiyi, JSC. I agree with the reasoning and conclusion therein.

The facts in this case are on all forms with the facts in *Perutu v. Gariga* (2013) 3 NWLR (Pt. 348) 415. In that case, and on identical facts with this case this court per Ngwuta, JSC ordered as follows:

“Respondents are to assume their respective positions as Chairman of respective Local Government Councils forthwith...”

Why can’t similar orders be made when the facts in this case are identical with the facts in *Perutu v. Gariga* (supra).

Section 27(3)(a) of the Local Government law, of Bayelsa State, reads as follows:

“(3) Subject to the provisions of subsection (1) of the section, the chairman shall vacate his office at the expiration of a period of 3 years commencing from the date when -

(a) In the case of person first elected as chairman under this law he took the Oath of Allegiance and the oath of office.”

The Local Government elections were held on the 3rd day of April 2010 while judgment in *Perutu v. Gariga* supra was delivered on the 14th day of December, 2012. According to section 27 of the Local Government Law of Bayelsa State, the tenure under consideration is for 3 years. The tenure came to an end in 2013. At the time judgment was delivered in *Perutu v. Gariga* (supra) there was six months left on the three years tenure, and so this court was right to order the Respondent to assume their respective positions in their respective Local Government Councils to complete the unexhausted tenure. In this appeal the main appeal succeeds but sadly those to benefit from the judgment are unable to enjoy the fruit of the judgment because the RES seized to exist since 2013. Their tenure is for three years which came to an end in 2013, and there is no provision for tenure extension in the Local Government Law of Bayelsa State. The above ought to have been obvious to learned counsel before such an appeal which is a clear waste of precious judicial time is brought to this court.

For this and the comprehensive reasoning in the leading judgment I also allow the main appeal and dismiss the cross- appeal.

MUHAMMAD JSC

I had the privilege of reading in draft the lead judgment of my learned brother Ogunbiyi, JSC with whose reasoning and conclusion I entirely agree that while the appeal which succeeds stands
B allowed the cross appeal being unmeritorious stands dismissed.

The three year tenure for the offices enjoyed by the cross-appellants is as provided for under Section 27(3)(a) of the Bayelsa State Local Government Law. It begins to run from the very moment
C the candidate of the political party that won the election subscribes to the oath of office after the party had been returned along with that particular candidate. If the candidate so declared along with the party turns out not to be the party's lawful candidate, the term of office relevant to the election does not abate and starts afresh from the
D subsequent date the lawful candidate of the very party subscribes to the oath of office. Tenure commences on the date the earlier unlawful occupant of that office subscribed to his oath and comes to an end three years thereafter. See *Amaechi v. INEC* (2008) 1 SC (Pt. 1) 36.

Ingenious as the argument of the cross appellants seem to be, they remain un-sellable because the law as pronounced by this Court on the point does not support them. The law remains, as held in *Ladoja v. INEC* (2007) 12 NWLR (Pt. 1047) 119, that the cross-appellants are only entitled to the unexpired term of the three year
F tenure provided by Section 27(3)(a) of the Local Government Law. No court can extend this term. Not even this Court! See *Marwa v. Nyako* (2012) 6 NWLR (Pt. 1296) 356 and *Obi v. INEC* (2007) 11 NWLR (Pt. 1046) 644.

For this and the fuller reasons outline in the very thorough lead judgment of my learned brother Ogunbiyi, JSC, I allow the appeal and dismiss the cross appeal. I make no order as to costs also.

H **AKA'AH S JSC**

I was privileged to read in advance the judgment of my learned brother, Ogunbiyi JSC. The lower court was wrong to have invoked the principle of *res judicata* in dismissing the appellants appeal. Although the interest of the appellants was the same as the 2nd, 3rd,

7th, 8th and 9th respondents in the Originating summons in Suit No. YHC/149/2010 since they sought to assert their alleged respective rights to be nominated as the candidates of the Peoples Democratic Party in their respective Local Government Council Chairmanship Elections then scheduled for 3rd April, 2010, their right to appeal against the decision of the trial court was not extinguished when 2nd, 3rd, 7th, 8th and 9th respondents appealed and obtained judgment in CA/PH/166/2011, which was affirmed by this Court in *Peretu v. Gariga* (2013) 5 NWLR (Pt. 1348) 415. The interest though similar was not common to all like members of the same family seeking declaration of title to a disputed parcel of land.

On the invocation of section 27(3) (a) of the Local Government Law, Bayelsa State, this cannot avail the cross-appellants since the tenure ended in 2013 and even those who sub-planted the cross-appellants were members of the same party and the decision in *Obi v. INEC* (2007) 11 NWLR (Pt. 1046) 644 is not applicable because when the court declared that it was Obi that won the Anambra Governorship election, the seat was being occupied by Ngige who was sponsored by the PDP while Obi was the candidate of APGA and so his tenure started to run from the date he took the oath of office. The nearest case to the present appeal is what happened between Amaechi and Omehia who both belonged to the PDP and Amaechi's tenure was for the unexpired period calculated from when Omehia took the oath of office.

The main appeal succeeds while the cross-appeal fails and is dismissed. I abide by the orders made in the judgment of my brother, Ogunbiyi JSC.

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