

SUPREME COURT OF NIGERIA

FRIDAY 27TH MARCH, 2015. SC. 714/2013

**CORAM:- W. S. N. ONNOGHEN, S. GALADIMA, M. U.
PETER-ODILI, M. D. MUHAMMAD, J. I. OKORO, JJSC**

1. VIVIAN CLEMS
AKPAMGBO-OKADIGBO
2. REBECCA UDOJI
3. JOHN OLIBIE APPELLANTS
4. CHRIS OBINNA EMENAKA
5. PAULINUS ONYEKA
AND
1. EGBE THEO CHIDI
2. SOLOMON EKWEOBA
3. CELESTINE CHIJJIOKE
OFOGBUNAM
4. UMERIE UCHENNA RESPONDENTS
5. BONIFACE OKONKWO
6. INDEPENDENT NATIONAL
ELECTORAL COMMISSION
7. THE CLERK TO ANAMBRA
STATE HOUSE OF ASSEMBLY

JURISDICTION - Objection - Determination - Basis - In suits fought on pleadings - Objection is resolved by examining plaintiff's claim - And in originating motion - Affidavit in support is considered (H1)

ELECTIONS - House of assembly - Jurisdiction - From the nature of the cause of action - 1st to 5th respondents' claim can only be maintained as a petition filed at the election petition tribunal (H2)

ELECTIONS - Action - Mandatory injunction - 1st to 5th respondents' quest for the injunction in respect of election matter - Filed at HC instead of election tribunal - Is not maintainable in law (H3)

SUPREME COURT - Judgment of - Supremacy, s. 287(1) 1999 Constitution - Earlier decision same day - That nullifies a lower court's decision - Binds SC in a subsequent same day matter - That can no

more be continuation of the nullified case (H4)

APPEALS - Grounds - CA Rules - Adherence to - Appellants having not been misled by content of the 1st & 2nd grounds - There has been substantial compliance with O. 6 r. 2(2)(3) of the Rules (H5)

FACTS

Before the Federal High Court Abuja, plaintiffs/1st – 5th respondents commenced suit no. FHC/ABJ/CS/574/2011 by way of judicial review (to enforce the decision of the court in suit no. FHC/ABJ/CS/199/2011). 1st – 5th respondents are seeking inter alia for an order of prohibition restraining 6th respondent (INEC) from issuing certificates of return to appellants in respect of the Anambra State House of Assembly elections for the Ekwusigo, Oyi, Anambra East, Dunukofia and Awka North constituencies. The suit was instituted some 50 days after the conduct of the April 2011 general election for the State House of Assembly. The National Working Committee of the Peoples Democratic Party (PDP) conducted primary elections for its candidates for the Anambra State House of Assembly for the constituencies. 1st – 5th respondents contested and won the said elections. Appellants did not participate in the elections. However, the State Executives of the PDP conducted its rival primaries in which appellants became victorious.

As a result of the existence of the two rival primary elections results, the State Executive of the party approached the State High Court and obtained an interim injunction compelling 6th respondent to accept appellants as the rightful candidates of PDP for the 2011 general election. Consequently, appellants were elected into the State legislature. 4th respondent along with the PDP had approached the court and obtained an order setting aside the interim order of injunction granted to appellants. Despite the order, 6th respondent refused to act on the list signed by the National Chairman and secretary of the party. In reaction, 1st – 5th respondents instituted this action by way of judicial review. The court in its ruling declined jurisdiction in the matter. It held that the proper place to litigate the action is before an Election Petition Tribunal as the matter is post election. Dissatisfied, 1st – 5th respondent appealed to the Court of Appeal. The court set aside the decision of the trial court. Aggrieved, appellants ap-

pealed to the Supreme Court. 6th and 7th respondents cross appealed on the basis of lack of jurisdiction as the matter is post election.

ISSUES FOR DETERMINATION

“(i) Whether in view of the Supreme Court’s decision in the case of Hassan v. Aliyu (2010) 17 NWLR Pt.1223 p.547, the trial Court had jurisdiction to entertain Suit No.FHC/ABJ/CS/574/2011 which was filed 50 days after the conduct of the 2011 House of Assembly Election in Anambra State.

(ii) Whether Suit No.FHC/ABJ/CS/574/2011 as constituted, filed on the 15th day of June, 2011 (50 days after the election) by the 1st to 5th Respondents herein and which questioned the return of the Appellants herein by INEC was a pre-election matter which the trial court had jurisdiction to hear and determine.

(iii) Whether grounds 1 and 2 of the 1st to 5th Respondents Notice and grounds of Appeal to the Lower Court (found on pages 980 to 985 of the Record of Appeal vol. 1) are competent in law.

HELD (Unanimously allowing the appeal and cross-appeal per **MUHAMMAD JSC**)

JURISDICTION - Objection - Determination - Basis

1. My lords, learned counsel to the appellants is right that in suits fought on pleadings an objection to the exercise of the court’s jurisdiction is resolved by examining the plaintiffs’ claim alone. Where plaintiffs’ action is commenced by an originating motion, the affidavit in support of the motion is equally relevant in determining whether or not the court has jurisdiction. (p. 769 C)

ELECTIONS - House of assembly - Jurisdiction

2. A community application of the foregoing clear and unambiguous statutory provisions to 1st - 5th respondents’ cause of action, which questions the election and return of the appellants by the 6th respondent, clearly shows that the claim is only maintainable as a petition commenced within twenty one days of the return being questioned and at an election petition tribunal. The trial court is obviously not such tribunal.

In the case at hand, the Federal High Court not being an Election Petition Tribunal constituted pursuant to Section 285 of the 1999 Constitution as amended does not have the jurisdiction of entertaining and determining 1st - 5th respondents' originating motion which questions appellants' election.

B Learned appellants' counsel is therefore right that the Lower Court is in grave error to have held otherwise. The principle is that any defect in competence of the trial court is fatal and persists to disallow the assumption by the appellate court of jurisdiction to determine a matter the trial court in the first place was incompetent to entertain and determine.

C (pp. 770 H/771 D)

Action - Mandatory injunction

D 3. Addedly, 1st - 5th respondents' claim is for mandatory injunction by way of judicial review of INEC's, the 6th respondent, administrative actions in respect of the election and return of the appellants. Learned counsel to the 1st - 5th respondents' desperate effort to down play these characteristics of the claim has not been successful. The Lower Court's unwillingness to accept these characteristics of the claim for what they are is a dismal feature of the court decision. The claim is electoral in nature and, having been specifically and specially provided for by statute, is in a class of its own.

E The claimants quest for mandatory injunction by way of judicial review in respect of an election or election related matter belatedly filed some fifty days after the election and at the trial court, instead of the election tribunal which by virtue of 133(1) of the Electoral Act 2010 as amended has exclusive jurisdiction to determine, is not maintainable in law. The action is grossly defective. (p. 771 G)

SUPREME COURT - Judgment of - Supremacy

H 4. Firstly, this court in its decision on appeal No. SC.713/2013 delivered earlier this morning had nullified the Lower Court's judgment appeal No. CA/A/593/2011 and suit No. FHC/ABJ/CS/199/2011, from which it arose for want of jurisdiction on the part of the trial court. All courts including this one, by

virtue of Section 287(1) of the 1999 Constitution, must enforce the apex Court's decision. By this court's decision in appeal No. SC.713/2013 therefore, learned respondents' counsel cannot be right to insist that the suit that brought about the instant appeal is a continuation of that other suit that no longer exists.

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It is partly for the foregoing that respondents' contention that the instant suit is continuation of suit No. FHC/CS/199/2011, and having been commenced prior to the election of the appellants is competent clearly collapses. You can only continue with that which is in existence and not otherwise.

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(p. 773 A/E)

APPEALS - Grounds - CA Rules - Adherence to

5. I am however unable to agree with learned appellants' counsel regarding their 3rd issue. I have closely examined the 1st and 2nd grounds of appeal in 1st - 5th respondents' Notice of Appeal at the Lower Court the appellants contend are incompetent and that the Lower Court has erred in its decision on the two grounds. It is my considered view that the Lower Court is right. Since the appellants have not been misled by the content of the two grounds, including their unwieldy particulars, there has been substantial compliance with order 6 rule 2 (2) and (3) of the Court of Appeal Rules. The trend these days is for courts to do substantial justice by refusing to cling to technicalities. Accordingly, appellants' 3rd issue is hereby resolved against them. (p. 775 C)

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NOTABLE POINT OF INTEREST

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MUHAMMAD JSC

1. Competence of court

A court of law is said to be competent to entertain and determine a matter placed before it if inter alia:-

(a) the subject matter of the case is within its jurisdiction and there is no feature in the case which prevents the court from exercising its jurisdiction and

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(b) the case comes before the court initiated by due process of

law and upon fulfillment of any condition precedent to the exercise of jurisdiction. (p. 771 B)

REPRESENTATION

- Paul Erokoro SAN with A. C Ozioko Esq., Michael Ajara Esq. and
 B Bright Odia, Esq., for the Appellants
 Ikechukwu Ezechukwu SAN with Enezie Ndeokwelu and Francis
 Nnabi, for 1st and 2nd Respondents
 G. C. Igbokwe with Peter Ekweume and Ijeoma Anaekwe, for the
 C 3rd respondents
 D. C. Enwelem with Nwafor Emeka and Emeka Chukudi, for the
 4th respondents
 Ifeanyi M. Nriallike with Nkiru Ofodile (Miss) and Chetachukwu
 Ezechigbo (Miss), for 5th Respondents
 D Adeola Adedipe with Chiamaka Anagu, Zekeri Garuba, A. A. Usman
 and Henry Nwakpa, for the 6th Respondents/Cross Applicants
 J. C. Njikonye, Esq. with Isaac Ita, Esq and I. A. Nnana, Esq., for the
 7th Respondents/Cross Applicants

E CASES REFERRED TO

- Hassan v. Aliyu (2010) 17 NWLR (pt. 1223) 547
 Aremu II v. Adekanye (2004) All FWLR (pt. 224) 2113
 Salim v. CPC (2013) 6 NWLR (pt. 1351) 501
 Laah v. Opaluwa (2004) 9 NWLR (pt. 879) 558
 F Odedo v. INEC (2008) 7 SC 75
 Okadigbo v. Emeka (2012) NSCQR 1026
 Agbakoba v. INEC (2008) 18 NWLR (pt. 1119) 489
 Ibori v. Agabi (2004) 6 NWLR (pt. 868) 78
 G Madukolu v. Nkemdilim (1962) 2 SCNLR 341
 Nneji v. Chukwu (1988) 3 NWLR (pt. 81) 184
 A.P.C. Ltd v. NDIC (N.U.B Ltd) (2006) 15 NWLR (pt. 1002) 404
 Ohakim v. Agbaso (2010) 12 (pt. 2) SCM 134
 Dangana v. Usman (2013) 6 NWLR (pt. 1349) 50
 H Gwede v. INEC (2014) 18 NWLR (pt. 1438)

STATUTES & RULES REFERRED TO

Electoral Act 2010, s. 133(1)
 Constitution of the Federal Republic of Nigeria 1999, ss. 6(6)(a),

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Court of Appeal Rules, O. 6 r. 2(2)(3)

LEAD JUDGMENT BY MUHAMMAD JSC

The 1st to the 5th respondents on the 5th day of June, 2011 commenced suit No. FHC/ABJ/CS/574/2011 by way of judicial review at the Federal High Court, Abuja division, hereinafter referred to as the trial court, seeking inter alia for an order of prohibition to restrain the 6th respondent, INEC, from issuing the appellants' certificates of return in respect of the Anambra State House of Assembly Elections for the Ekwusigo, Oyi, Anambra East, Dunu Kofia and Awka North constituencies. B
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In upholding the preliminary objection of the appellants, being then the defendants, the trial court at page 977 -978 of vol. 1 of the record of appeal held as follows:- D

“To conclude, I wish to add that this very suit where the plaintiffs want the certificates of return already issued to the defendants and also to compel INEC to swear them in (the plaintiffs) as members of the Anambra State House of Assembly, is a post election action, I earlier said in this judgment that this court cannot enforce the judgment of Kolawole J. by making a consequential orders (sic) for reasons stated above, I hold that this court has no jurisdiction to entertain the plaintiffs originating motion dated 15th June, 2011.” E

Dissatisfied with the foregoing decision, the plaintiffs filed appeal No. CA/A/177/2012 to the Court of Appeal, Abuja Division, hereinafter referred to as the Lower Court. In a considered judgment delivered on the 8th of November, 2013, the Lower Court allowed the appeal and proceeded to determine the suit in favour of the 1st - 5th respondents. F
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It is against that judgment of the court that the defendants at the trial court, 1st - 5th respondents at the Lower Court, have appealed to this court.

At the hearing of the appeal, counsel to parties thereto on identifying their respective briefs adopted and relied on same as their arguments for or against the appeal. H

The three issues formulated in the appellants' brief of argument as having arisen for the determination of the appeal read:-

“(i) Whether in view of the Supreme Court's decision in the

case of Hassan v. Aliyu (2010) 17 NWLR Pt.1223 p.547, the trial Court had jurisdiction to entertain Suit No.FHC/ABJ/CS/574/2011 which was filed 50 days after the conduct of the 2011 House of Assembly Election in Anambra State. (The issue relates to Ground of Appeal No. 1)

B (ii) *Whether Suit No.FHC/ABJ/CS/574/2011 as constituted, filed on the 15th day of June, 2011 (50 days after the election) by the 1st to 5th Respondents herein and which questioned the return of the Appellants herein by INEC was a pre-election matter which the trial court had jurisdiction to hear and determine. (This issue re-*
C *lates to Grounds of Appeal No. 2 and 3)*

(iii) *Whether grounds 1 and 2 of the 1st to 5th Respondents Notice and grounds of Appeal to the Lower Court (found on pages 980 to 985 of the Record of Appeal vol. 1) are competent in law.*
D *(This issue relates to Ground of Appeal No.4). ”*

The 1st - 5th respondents have either adopted the appellants' foregoing issues in their respective briefs as those calling for determination in the appeal or formulated similar issues differing only in slant. The 6th and 7th respondents did not file any briefs of argument in
E the appeal. Instead, they cross appealed.

Since it is the appellants who are dissatisfied with the judgment of the Lower Court and seek redress by way of the instant appeal, their grief will be addressed on the basis of the issues they distilled which issues encapsulate their complaints against the Lower Court's
F judgment. The Cross Appeals filed by the 6th and 7th respondents would be separately considered.

Arguing the appeal under their 1st and 2nd issues, learned appellants' counsel submits that in determining whether or not a court
G has jurisdiction in a matter, it is the plaintiff's claim that settles the issue. 1st - 5th respondents' claim at the trial court, it is contended, clearly seeks reliefs against the issuance of certificates of return to the appellants by the 6th respondent. The claim also shows that the suit was filed on 15/06/2011 some fifty days after the election. Such a
H complaint coming after the conduct of the election and not being a complaint about the nomination and sponsorship of the candidate of a political party for an election can only be post election complaints. Post election complaints, it is argued, are ventilated, by virtue of Section 285 of the 1999 Constitution and Section 133(1) of the Elec-

toral Act 2010 as amended, only at the election petition tribunal.

Besides, learned counsel further argues, the respondents cannot by way of the instant suit, enforce the reliefs they obtained in their earlier suit No.FHC/ABJ/199/2011 against and in the absence of the appellants.

As a whole, contends learned counsel, the Lower Court is wrong in holding that the action of the appellants is competent. The law, statutory and case wise, does not support the Lower Court's decision. Counsel relies on *Aremu II v. Adekanye* (2004) ALL FWLR (Pt.224) 2113 at 2119, *Hassan v. Aliyu* (2010) 17 NWLR (Pt.1223) 547 at 604 and *Salim v. CPC* (2013) 6 NWLR (Pt.1351) 501 and urges the resolution of both issues in their favour. He prays that the appeal be allowed as well.

Under appellants' 3rd issue, learned counsel contends that grounds 1 and 2 in 1st - 5th respondents' Notice of Appeal at the court below, viewed against the background of Order 6 Rule 2(2) and (3) of the Court of Appeal Rules 2011, are incompetent. The particulars of the two grounds, it is contended, are unwieldy and totally unconnected with the complaints in the grounds of Appeal. The particulars supplied in both grounds do not give insight into the nature of the errors complained in the grounds. Being bereft of valid particulars, it submitted, the grounds have become incompetent and liable to be struck out. The Lower Court's finding in relation to the two grounds at pages 1665 - 1666 of vol. 2 of the record of Appeal, it is contended, being erroneous must be set-aside. Counsel relies on *Laah v. Opaluwa* (2004) 9 NWLR (Pt 879) 558 in insisting that the two grounds and all arguments proffered pursuant to the two incompetent grounds be struck out.

On the whole, learned appellants' counsel prays that the appeal be allowed.

In arguing the appeal under their two issues, learned counsel to the 1st - 2nd respondents submits that suit No. FHC/ABJ/CS/574/2011 is a continuation of suit No. FHC/ABJ/CS/199/2011 wherein the 1st - 5th respondents though non-suited in respect of some of their reliefs were all the same granted others. The reliefs granted the 1st - 5th respondents in the earlier suit include the trial court's declaration that the said respondents are their party's lawful candidates in the particular elections. Suit No. FHC/ABJ/CS/574/2011 from which

the instant appeal emanated, it is submitted, remains a pre-election cause.

The essence of the subsequent suit, learned counsel contends, is to obtain the consequential reliefs the trial court denied them suit No. FHC/ABJ/CS/199/2011. The trial court, submits learned counsel, has the power under Section 6(6)(a) of the 1999 Constitution to grant the orders being sought. Citing *Amaechi v. INEC* 7-10 SC 172 and *Odedo v. INEC* (2008) 7 SC 75 and further relying on *Okadigbo v. Emeka* (2012) NSCQR (49) 1026 learned counsel contends that the granting of the orders by the trial court is justifiable. After all, the respondents cannot invoke section 138 of the Electoral Act as amended to obtain the reliefs they otherwise set out to.

In further argument, learned counsel concedes that suit FHC/ABJ/CS/574/2011, was filed some fifty days after the election. He also further concedes that this Court in *Hassan v. Aliyu* precludes a plaintiff from seeking reliefs in respect of pre-election disputes after the election. The facts of the case at hand, learned counsel however argues, are outside the facts that led to the decision in *Hassan v. Aliyu* (supra). Learned counsel buttresses his submissions with the decision in *Odedo v. INEC* (supra).

Concluding, learned counsel submits that in deciding whether or not the trial court has jurisdiction over their claim commenced by way of judicial review, the current position of the law is that, with pleadings having been filed on both sides, the affidavits filed by both sides are to be considered. The Lower Court, it is argued, is right to have assumed jurisdiction on the basis of these processes. Learned counsel commends the decisions of this court in *Lado v. CPC* (2012) 12 WRN 1 at 14 and *Agbakoba v. INEC* (2008) 18 NWLR (Pt.1119) 489 as being supportive of these submissions. He urges that the issue be resolved against the appellants.

Under their 2nd issue, learned counsel to the 1st - 2nd respondents submits that the 1st and 2nd grounds in their Notice of Appeal at the court below fully comply with order 6 rule 2(2) and (3) of the Rules of the Court of Appeal 2011. The Lower Court, it is submitted, is correct to have so held. The particulars of the two grounds clearly show that 1st - 5th respondents' application for judicial review is a pre-election dispute commenced before the elections that took place on 25/5/2011. The particulars of the grounds highlight the trial

court's errors of law in regarding the respondents' application as a post election issue. In any event, learned counsel contends, no surprise was thrust on the appellants herein who were respondents at the Lower Court. The appellants fully grasped the complaints raised in the two grounds and cannot, it is submitted, rely on the cases they cited to support their contention. The issue and indeed the appeal, urges learned counsel for the 1st - 2nd respondents, should be resolved submitted, against the appellants. B

Arguments proffered by the 3rd, 4th and 5th respondents in their respective briefs are tailored along the same lines as those of the 1st - 2nd respondents. We should not bother to reproduce them again. C

My lords, learned counsel to the appellants is right that in suits fought on pleadings an objection to the exercise of the court's jurisdiction is resolved by examining the plaintiffs' claim alone. Where plaintiffs' action is commenced by an originating motion, the affidavit in support of the motion is equally relevant in determining whether or not the court has jurisdiction. Learned counsel's reliance on this court's decision in *Aremu II v. Adekanye* (supra) is well informed. See also *Western Steel Works v. Iron & Steel Workers* (1987) 1 NWLR (Pt.49) 284 and *Ibori v. Agabi* (2004) 6 NWLR (pt. 868) 78. D

In the case at hand, the claim of the 1st - 5th respondents, see their originating process at pages 95 - 96 of vol. 1 of the record of appeal, is inter-alia for:- F

"1 (i) An order of prohibition restraining the 1st defendant from issuing to the 2nd to 6th defendants/respondents Certificate of Return in respect of elections into the Anambra State House of Assembly for Ekwusigo, Oyi, Anambra East, Dunukofia and Awka North State Constituencies respectively. G

(ii) In the event that the Certificates of Return for the constituencies mentioned in paragraph (1) above are already issued to the 2nd to 6th respondents respectively, an order of Certiorari removing the said Certificate into this Court for the purposes of being quashed. H

(iii) An order of mandamus compelling the 1st respondent to issue to the applicants their Certificates of Return for their various constituencies listed in paragraph (1) above."

Paragraphs 8 and 9 of the affidavit in support of the originat-

ing motion being equally relevant are herein under reproduced for ease of reference:-

“8. That the plaintiffs campaigned vigorously for the said elections and that while the suit No. FHC/ABJ/SC/199/2011 was pending, the elections was conducted and the plaintiffs and their party, the PDP, won the elections into the Anambra State House of Assembly for the various constituencies listed in paragraph 3 above,

9. That following their success in the elections, the plaintiffs demanded for their respective Certificate of Return from the INEC to no avail.”

I am inclined to agree with learned appellants’ counsel that given the foregoing reliefs and facts on the basis of which the reliefs are canvassed, 1st - 5th respondents’ claim, being against the issuance of certificates of return to the appellants by the 6th respondent, is one that questions appellants’ election and return. It is worth the while at this point to reproduce Section 285(1)(b) and (5) of the 1999 Constitution and Section 133(1) and (2)(b) of the Electoral Act 2010 as amended which provide for 1st - 5th respondents’ claim and the tribunal to determine same.

“285(1) There shall be established for each State of the Federation and the Federal Capital Territory one or more election tribunals to be known as the National and State House of Assembly Election Tribunals which shall, to the exclusion of any Court or tribunal, have original jurisdiction to hear & determine petitions as to where - (b) any person has been validly elected as a member of the House of Assembly of a State.”

(5) An election petition shall be filed within 21 days after the date of the declaration of result.”

“133(1) No Election and return at an election under this Act shall be questioned in any manner other than by a petition complaining of an undue election or undue return (in this Act referred to as an election petition) presented to the competent tribunal of court in accordance with the provisions of the Constitution or of this Act, and in which the person elected or returned is joined as a party.

(2) In this part “tribunal or court” means:-

(b) In the case of any other elections under this Act, the election tribunal established under the Constitution or by this Act.”

A community application of the foregoing clear and un-

ambiguous statutory provisions to 1st - 5th respondents' cause of action, which questions the election and return of the appellants by the 6th respondent, clearly shows that the claim is only maintainable as a petition commenced within twenty one days of the return being questioned and at an election petition tribunal. The trial court is obviously not such tribunal. B

A court of law is said to be competent to entertain and determine a matter placed before it if inter alia:-

(a) the subject matter of the case is within its jurisdiction and there is no feature in the case which prevents the court from exercising its jurisdiction and C

(b) the case comes before the court initiated by due process of law and upon fulfillment of any condition precedent to the exercise of jurisdiction.

In the case at hand, the Federal High Court not being an Election Petition Tribunal constituted pursuant to Section 285 of the 1999 Constitution as amended does not have the jurisdiction of entertaining and determining 1st - 5th respondents' originating motion which questions appellants' election. Learned appellants' counsel is therefore right that the Lower Court is in grave error to have held otherwise. The principle is that any defect in competence of the trial court is fatal and persists to disallow the assumption by the appellate court of jurisdiction to determine a matter the trial court in the first place was incompetent to entertain and determine. See D F
Madukolu v. Nkemdilim (1962) 2 SCNLR 341; Western Steel Works Ltd v. Iron & Steel Workers Union (1986) 3 NWLR (Pt.30) 617 and A.P.C. Ltd v. NDIC (N.U.B Ltd) (2006) 15 NWLR (Pt.1002) 404.

Addedly, 1st - 5th respondents' claim is for mandatory injunction by way of judicial review of INEC's, the 6th respondent, administrative actions in respect of the election and return of the appellants. Learned counsel to the 1st - 5th respondents' desperate effort to downplay these characteristics of the claim has not been successful. The Lower Court's unwillingness to accept these characteristics of the claim for what they are is a dismal feature of the court decision. The claim is electoral in nature and, having been specifically and specially provided for by statute, is in a class of its own. The G H

claimants quest for mandatory injunction by way of judicial review in respect of an election or election related matter belatedly filed some fifty days after the election and at the trial court, instead of the election tribunal which by virtue of 133(1) of the Electoral Act 2010 as amended has exclusive jurisdiction to determine, is not maintainable in law. The action is grossly defective. See ANPP v. Returning Officer, Abia State (2007) 11 NWLR (Pt.1045) 431 at 434 - 435.

In Ohakim v. Agbaso & Ors (2010) 12 (Pt.2) SCM 134 at 169 this court per Onnoghen JSC stated the principle on the point more succinctly thus:-

“It is therefore my view that since the matter went to the Federal High Court by way of judicial review with a prayer for mandatory injunction which is akin to mandamus in the circumstance of this case, and, having regard to the fact that the 1st respondent failed to make a prior demand on the 2nd and 3rd respondents to perform the duty now sought to be compelled, the application for judicial review was consequently fundamentally defective which defect affected the competence of the court to entertain same. By the authority of Madukolu vs. Nkemdilim, supra, a court is competent inter-alia, when the case comes before it initiated by due process of law, and upon fulfillment of any condition precedent to the exercise of jurisdiction. It is also settled law that any defect in competence is fatal for the proceedings are a nullity however well conducted and decided; the defect being extrinsic to the adjudication.”

The Lower Court should have so insisted in relation to 1st - 5th respondents’ action. The court’s contrary decision is manifestly perverse.

Again, learned counsel to the four sets of respondents cannot be allowed to talk from both sides of their mouth. It is their further contention that since the instant suit is a continuation of their earlier suit No. FHC/CS/199/2011 which suit was commenced prior to the election of the appellants, the cause is maintainable as a pre-election matter. It is argued that the subsequent suit from which the instant appeal arose is necessary for the purpose of acquiring the consequential reliefs respondents applied for but were non-suited in the earlier suit. For more reasons than one, these arguments remain unavailing to the 1st - 5th respondents.

Firstly, this court in its decision on appeal No. SC.713/2013 delivered earlier this morning had nullified the Lower Court's judgment appeal No. CA/A/593/2011 and suit No. FHC/ABJ/CS/199/2011, from which it arose for want of jurisdiction on the part of the trial court. All courts including this one, by virtue of Section 287(1) of the 1999 Constitution, must enforce the apex Court's decision. By this court's decision in appeal No. SC.713/2013 therefore, learned respondents' counsel cannot be right to insist that the suit that brought about the instant appeal is a continuation of that other suit that no longer exists. In Senator Abubukar Saddiq Yar'adua & Ors v. Senator Abdu Umar Yandoma & Ors (2014) LPELR - 24217 (SC) I restated the principle thus:-

"The nullification by this court's decision in Lado & Ors v. C.PC & Ors (supra), of the proceedings trial court in suit No. FHC/ABJ/CS/126/2011 therefore, from the angle of the law, means that those proceedings, including all the orders made in the course or consequence of the proceedings, never took place. They are completely wiped off, rendered extinct and deemed never to have existed."

It is partly for the foregoing that respondents' contention that the instant suit is continuation of suit No. FHC/CS/199/2011, and having been commenced prior to the election of the appellants is competent clearly collapses. You can only continue with that which is in existence and not otherwise. See Labour Party v. INEC (2009) 1 - 2 SC 43.

1st - 5th respondents' claim in the suit that brought about the instant appeal, as already delineated from their reliefs and facts in support of their originating summons, does not come within the very narrow purview of Section 87 (9) of the Electoral Act 2010 as amended which provides:-

"87. (9) Notwithstanding the provisions of this Act or rules of a political party, an aspirant who complains that any of the provisions of this Act and the guidelines of a political party has not been complied with in the selection or nomination of a candidate of a political party for election, may apply to the Federal High Court or the High Court of a State or FCT, for redress."

In interpreting the foregoing, this court has insisted that complaints on the basis of the section must be commenced prior to the

conduct of election otherwise a party's right thereunder abates except same persists as a ground on which an election or return may be questioned by way of a petition at an election tribunal under Section 138(1) of the Election Act as amended. See *Hassan v. Aliyu and Dangana v. Usman* (2013) 6 NWLR (pt 1349) 50. In *Salim v. C.P.C* B (2013) 6 NWLR (Pt.1351) 501 at 524- 525, this court per Peter-Odili JSC held thus:-

“...it has to be stated that the issue of disqualification, nomination, substitution and sponsorship of candidates for an election precede election and are therefore pre-election matters. The instant situation where the appellant as plaintiff did not complain to court before election and even then 38 days after the election to talk of a pre-election matter for the first time, is a pill too difficult to swallow. He by his lack of consciousness took his matter out of the domain of pre-election can only go before the Election Tribunal to try his luck since the status of the matter was post election clearly outside the ambit of either the Federal High Court, State High Court or High Court of the FCT. The other way to say it is that the matter had become spent or no longer alive to be adjudicated upon by any of those courts above E mentioned as in this instance.”

In *Gwede v. INEC* (2014) 18 NWLR (Pt.1438) the court at pages 102-103 has even been more forthcoming, It held:-

“It is clear that there are pre-election matters which can come within the grounds for challenging an election under section 138(1) of the Electoral Act, 2010 as amended and other that may not. Where a pre-election matter is one which can be dealt with under section 138(1) (supra), the proper venue, after election, is the tribunal. Where, however the pre-election matter cannot so be accommodated after G an election and the cause of action arose in the election or declaration of results and action is instituted timeously, the proper venue remains the High Court. In other words, an issue of qualification to contest an election under the Electoral Act, 2010 (as amended), is both pre-election and an election matter which both the High Court H and the relevant Election Tribunals have jurisdiction to hear and determine. See *Dangana v. Usman* (2013) 6 NWLR (Pt. 1349) 50 at 89-90. However, the pre-election matter must be filed in the High Court timeously. See *Hassan v. Aliyu* (supra).”

The logic in the submissions of learned appellants' counsel that

whichever way one views 1st - 5th respondents' claim, whether as a pre-election or post election cause, it remains incompetent flows naturally from the foregoing decisions of this court. Their cause is not a pre-election matter having been commenced post the appellants' election. Again as a ground that can possibly be litigated upon by virtue of section 138 of the Electoral Act but filed well outside the twenty one days within which such petitions should be filed and at the tribunal rather than the trial court which lacks jurisdiction, the action for that further reason remains incompetent. The Lower Court is wrong to have found otherwise. Appellants' 1st and 2nd issues are resolved against the respondents.

I am however unable to agree with learned appellants' counsel regarding their 3rd issue. I have closely examined the 1st and 2nd grounds of appeal in 1st - 5th respondents' Notice of Appeal at the Lower Court the appellants contend are incompetent and that the Lower Court has erred in its decision on the two grounds. It is my considered view that the Lower Court is right. Since the appellants have not been misled by the content of the two grounds, including their unwieldy particulars, there has been substantial compliance with order 6 rule 2 (2) and (3) of the Court of Appeal Rules. The trend these days is for courts to do substantial justice by refusing to cling to technicalities. See Nneji v. Chukwu (1988) 3 NWLR (Pt.81) 184 SC. Accordingly, appellants' 3rd issue is hereby resolved against them.

I find merit in the appeal and allow same.

The 6th and 7th respondents' cross appeals both of which raise the very issues determined in the main appeal are hereby discounted.

On the whole the action at the trial court being incompetent is hereby struck out.

Parties are to bear their respective costs.

ONNOGHEN JSC

I have had the benefit of reading in draft, the lead Judgment of my learned brother, MUSA DATTIJO MUHAMMAD JSC just delivered.

I agree with his reasoning and conclusion that the action as constituted and giving rise to this appeal is incompetent and that the courts have no jurisdiction to hear and determine same.

The facts of the case have been stated in detail in the lead Judgment and I do not intend to repeat them herein except as may be needed to emphasize the point being discussed/made. This appeal, however, arose from the decision of the Lower Courts in relation to suit No.FHC/ABJ/CS/574/2011 in which the 1st - 5th respondents/Cross-respondents claimed the following reliefs:-

C *“(i) An order of prohibition restraining the 1st defendant from issuing to the 2nd to 6th defendants/respondents certificate of Return in respect of elections into the Anambra State House of Assembly for Ekwusigo, Oyi, Anambra East, Dunukofia and Awka North State Constituencies respectively.*

D *“(ii) In the event the Certificate of Return for the constituencies mentioned in paragraph (1) above are already issued to the 2nd to 6th respondents respectively, an order of certiorari removing the said certificate into this court for the purpose of being quashed.*

E *“(iii) An order of mandamus compelling the 1st respondent to issue to the applicants their certificates of Return for their various constituencies listed in paragraph (1) above”*

The jurisdiction of the Federal High Court was challenged at the trial in which the court held, on the 9th day of March, 2012, *inter alia* as follows:-

F *“To conclude, I wish to add that this very Suit where the Plaintiffs want the certificate of return already issued to the defendants and also to compel INEC to swear them in (the plaintiffs) as members of the Anambra State House of Assembly, is a post election action. I earlier said in this Judgment that this court cannot enforce the Judgment of Kolawole J. by making a consequential orders for reasons stated above, I hold that this court has no jurisdiction to entertain the plaintiffs’ Originating Motion dated 15th June, 2011.”*

H It is not in dispute that Suit No. FHC/ABJ/CS/574/2011 was instituted on the 8th day of June, 2011, a month and some weeks after the election to the Anambra State House of Assembly had been held and results declared. The above being the case, can it be said that Federal High court has the requisite vires to hear and determine the matter as constituted, the same being a post election matter pa-

rating as a pre-election matter.

Secondly, there is the issue raised by the 6th respondent/Cross appellant also touching on the jurisdiction of the court to entertain an election or election related matter instituted by way of judicial review procedure.

I hold the considered view that this appeal can be determined by considering the issue of jurisdiction which is very fundamental to adjudication. In respect of the 1st issue, it is clear that the trial Judge is right in holding that the court has no jurisdiction to hear and determine a post-election matter which was commenced about two months after the general election in issue on the authority of the case of *Hassan v. Aliyu* (2010) 17 NWLR (Pt.1223) 547. Even though the plaintiffs presented and argued their case as a pre-election matter, the reliefs claimed, which had earlier been reproduced in this Judgment let the cat out of the bag. A certificate of Return cannot be issued to any contestant in an election until after an election and declaration of results of same. Such a certificate is usually issued to the successful candidate in the election in issue. B
C
D

Regarding the second issue which was raised by 6th Respondent/Cross-Appellant and to which none of the relevant respondents really addressed the court on, it is settled law that in the case of *ANPP Vs. Returning Officer Abia State & Ors* (2007) 11 NWLR (Pt.1045) 431 at 434. *Ohakim v. Agbaso* (2010) 19 NWLR (Pt.1226) 172 etc, etc, this court has held and maintained that prerogative writs such as mandamus, prohibition, certiorari cannot be used in commencing election or election related matters as same are not subject of judicial review. E
F

The instant case was commenced by a motion for judicial review and consequently incompetent in invoking the jurisdiction of the courts to hear and determine same. On that basis Suit No. FHC/ABJ/CS/574/2011 is liable to be struck out for being incompetent. G

Finally, it should be noted that suit No.FHC/ABJ/574/2011 is a follow up on Suit No.FHC/ABJ/CS/199/2011 which gave rise to appeal No.SC./713/2013 which appeal was allowed by this court in a Judgment delivered also on the 27th day of March, 2015 thereby setting aside the Judgment of the Federal High Court which the instant Suit No. FHC/ABJ/574/2011 sought to enforce. It follows that with the setting aside of the Judgment of the trial court in FHC/ABJ/ H

CS/199/2011, the bottom has been knocked off the instant appeal as the Judgment of the Lower Court in FHC/574/2011 no longer has legs with which to continue to stand.

It is for the above reasons and the more detailed reasons assigned in the lead Judgment of my learned brother that I find merit in the appeal and cross appeals and consequently set aside the Judgment of the Lower Court and strike out Suit No. FHC/ABJ/574/2011 for being incompetent.

Appeal and Cross-appeal allowed. I abide by the consequential orders made in the lead Judgment including the order as to costs.

GALADIMA JSC

I have been obliged a copy of the draft judgment just delivered by my learned brother, MUSA DATTIJO MUHAMMAD JSC. I agree with his reasoning leading to his conclusion that this appeal is meritorious and it is allowed.

This appeal emanated from the decision of the two courts below in respect of Suit No.FHC/ABJ/CS/574/2011. In that suit the 1st - 5th Respondents/Cross-Respondents sought for an order of prohibition to restrain the 1st defendant from issuing to the 2nd to 6th Defendants/Respondents certificate of Return in respect of elections into the Anambra State House of Assembly for Ekwusigo, Oyi, Anambra East, Dunukofia and Akwa North State Constituencies respectively. In the alternative not done, an order of certiorari removing the said Certificate for the purpose of being quashed. They also prayed for an order of Mandamus to compel the 1st respondent to issue to the applicants the said certificate of Return for their various constituencies aforementioned.

The jurisdiction of the Federal High Court was challenged. Viewing the circumstances of the case, the trial court rightly declined jurisdiction. But the court below viewed this differently and set aside the judgment. In addition it proceeded to determine the suit in favour of the 1st - 5th respondent.

The 1st - 5th Respondents instead of going to the Election Petition Tribunal to challenge the declaration of the Appellants as the rightful winners of the election, decided to file this suit at the Federal High court, which clearly lacks jurisdiction to entertain the matter.

I do not and cannot fathom the reason why the 1st - 5th respondents approached the court by way of Judicial Review, when the suit is not maintainable in that court, even though they have argued that suit No. FHC/ABJ/CS/574/2011 as a different suit is a continuation of suit No.FHC/ABJ/CS/199/2011 which was filed before the holding of election. The suits give rise to appeal No.SC.713/2013 which appeal was allowed by this court on 27/3/2015 when it set aside the judgment of the Federal High Court which the instant suit No.FHC/ABJ/574/2011 sought to enforce. I too agree that with the setting aside of the judgment of the trial court in FHC/ABJ/CS/199/2011. The instant case has no firm ground to rest on. Its foundation is knocked off.

In view of the foregoing and the full reasoning in the lead judgment, I too find merit in the appeal and cross-appeal by the 6th and 7th respondents which relate to the same issues which I have dealt with in the main appeal. I make no order as to costs.

PETER-ODILI JSC

I am in total agreement with the judgment just delivered by my learned brother, Musa Dattijo Muhammad JSC and to show my support with the reasoning I shall make some comments.

This appeal arose from the judgment of the Court of Appeal, Abuja Division or Lower Court for short, Coram Uwa, Bada and Adumein JJCA delivered on the 8th day of November, 2013 which decision set aside the judgment of the Federal High Court, Abuja Division which had held that it lacked jurisdiction to entertain the suit of the 4th respondent on the ground that it was a post election suit which should have been handled by the Election Tribunal.

FACTS

The 4th respondent had contested and along with other respondents won the primary election of the Peoples Democratic Party (PDP) for the Anambra State House of Assembly conducted by Architect Aduku panel set up by the National Working Committee/Executives of the PDP. The appellants did not participate in the said primaries. However the Anambra State Executives of the PDP had conducted its rival primaries in which the appellants were said to have won.

With the two contending results existing the Anambra State Executives of the PDP approached a State High court and obtained an interim injunction compelling INEC to accept the present appellants as the candidates of the party for the 2011 general election into the Anambra State House of Assembly. That order enabled the appellants and the 6th respondent to derive the benefit at the 2011 election into the House of Assembly till date.

The 4th respondent along with the PDP went to the court seeking to set aside the said interim order and on the 28th day of February, 2011 the said order was set aside. However the 6th respondent, INEC refused to act on the list signed by the National Chairman and secretary of the party. This made the 4th and other respondents sponsored by the National Executives of PDP to institute suit No.FHC/ABJ/CS/574/2011 seeking a declaration that 6th respondent cannot reject the names of the nominated candidates of the National Executives Committee of the PDP. During the pendency of this suit, the 6th respondent conducted the 26th April, 2011 general election but on the success of PDP the 6th respondent issued the certificate of return to the appellants.

The 4th respondent and the other candidates during the election sought to enforce the decision of the trial High court in suit FHC/ABJ/CS/574/2011 through an order of judicial review proceedings for on order of mandamus to compel INEC, 6th respondents and colleagues with the certificates of return. The learned trial Judge held that the court lacked jurisdiction as the election had taken place and the proper forum being the Election Petition Tribunal. On appeal that decision was set aside and the appellants being dissatisfied have come before the Supreme Court citing a lack of fair hearing as they were not made parties to the initial action even though they were necessary and interested parties.

The 6th respondent/INEC equally dissatisfied has cross-appealed. The 7th respondents, the clerk of the Anambra State House of Assembly has also cross-appeals on the basis of a lack of jurisdiction by the court as the matter is a post election matter.

At the hearing on the 9th day of February, 2015, learned counsel for the appellants, Mr. Paul Erokoro SAN adopted their Amended Appellants' joint Brief of Argument settled by A. C. Ozioko Esq., filed on the 28/10/14 and deemed filed on the 30/10/14. The appellants

therein formulated three issues for determination which are as follows:

“(i) Whether in view of the Supreme Court’s decision in the case of Hassan v. Aliyu (2010) 17 NWLR Pt.1223 P.547, the trial court had jurisdiction to entertain Suit No.FHC/ABJ/CS/574/2011 which was filed 50 days after the conduct of 2011 House of Assembly Elections in Anambra State. (The issue relates to Ground of Appeal No.1).

(ii) Whether Suit No. FHC/ABJ/CS/874/2011 as constituted, filed on the 15th day of June, 2011 (50 days after the election by the 1st to 5th respondents herein and which questioned the return of the appellants herein by INEC was a pre-election matter which the trial court had jurisdiction to hear and determine. (This issue relates to Grounds of appeal No. 2 and 3).

(iii) Whether grounds 1 and 2 of the 1st to 5th respondents Notice and grounds of appeal to the Lower Court (found on pages 980 to 985 of the Record of Appeal vol. 1) are competent in law. (This issue relates to Ground of Appeal No.4).”

For the 1st and 2nd respondents, Ikechukwu Ezechukwu SAN of counsel adopted their Amended Brief of Argument filed on the 25/11/14. Learned Senior counsel raised three issues for determination which are, viz:

1. Whether the Court of Appeal was in error when it held that the Federal High Court had jurisdiction to entertain the suit, subject matter of this appeal. (Ground 1)

2. Whether having regard to the claim of the herein respondents, the totality of the pleadings of the herein appellants and the evidence tendered at the trial (affidavit evidence), the trial court and indeed the Court of Appeal have jurisdiction to entertain the suit. (Grounds 2 and ...)

3. Whether grounds 2 and 3 of 1st and 2nd respondents’ grounds of appeal at the Court of Appeal are competent (Ground).

Mr. G. C. Igbokwe, learned counsel for the 3rd respondent adopted his Brief of Argument filed on 25/11/14. He crafted three issues for determination of the appeal similar to those as identified by the 1st and 2nd respondents and these are thus:

1. Whether the Court of Appeal was right in holding that the trial court had jurisdiction to hear the plaintiffs (herein respondents)

as the suit is rooted in pre-election matters (Ground 1)

2. Whether having regard to the claim of the herein respondents, the totality of the pleadings of the herein appellants and the evidence tendered at the trial (affidavit evidence), the trial court and indeed the Court of Appeal have jurisdiction to entertain this suit.
B (Grounds 2 and 3)

3. Whether Grounds 2 and 3 of 1st and 2nd respondents ground of appeal at the Court of Appeal are competent in law (Ground 4).

C Learned counsel for the 4th respondent, D. C. Enwelum adopted his Brief filed on 27/11/14 and in it drafted two issues for determination which are as follows:

1. Whether having regards to the originating suit as constituted, the Federal High Court is vested with the jurisdiction to hear
D the suit. (Grounds 1, 2, and 3)

2. Whether grounds 2 and 3 of 4th respondent's grounds of appeal of the Court of Appeal are competent in law. (Ground 4)

For the 5th respondent, Mr. Ifeanyi M. Nriallike of counsel adopted his Brief of Argument filed on the 27/11/14 and in it he
E raised two issues for determination which are thus:-

1. Whether the Count of Appeal was in error when it held that the Federal High Court had jurisdiction to entertain the suit, subject matter of this appeal. (Ground 1)

2. Whether having regard to the claim of the herein respondents, the totality of the pleadings of the herein appellants and the evidence tendered at the trial (affidavit evidence), the trial court and indeed the Court of Appeal have jurisdiction to entertain this suit.
F (Grounds 2 and 3)

G Mr. Adedipe for the Respondent/Cross-Appellant adopted its Brief of Argument filed on 26/1/15 and deemed filed on the 9 - 2-15 which Brief was settled by Ahmed Raji SAN. In the Brief of Argument were formulated four issues for determination which are viz:

1. Having regards to the decision in Hassan v Aliyu (2010) 17
H NWLR (Pt. 1223)547, whether the lower court was right to hold that the Federal High Court had jurisdiction to entertain the Originating Motion which was filed on 8th June, 2011, 2 months after the 25th April, 2011 general election. (Grounds 2)

2. Whether the Court of Appeal was right after it had already

invoked its powers as a court of first instance under Section 16, Court of Appeal Act to rely on the reliefs sought in the Notice of Appeal instead of the Originating Motion in holding that the Appeal was not academic. (Ground 3)

3. Whether the Court of Appeal did not fail to appreciate the objection of the 1st respondent when it held that the appeal did not constitute an abuse of court process because the appellant had a constitutional right of appeal. (Ground 4) B

4. Whether the Court of Appeal was right when it relied on the case of *Odedo v INEC & Anor.* (2008) 7 SCNJ; (2008) 17 NWLR (Pt. 1117) 554 to hold that the prerogative reliefs sought in the case can issue against INEC who did not act in a judicial capacity. (Ground 1 & 5) C

Mr. J. C. Njikonye, learned counsel for the 7th respondent/cross-appellant adopted, the Brief of Argument filed on 3/11/14 and deemed filed on the 9/2/15. A lone issue was crafted, viz: D

Whether the lower court was correct in reversing the decision of the Federal High Court declining jurisdiction to entertain the 1st - 5th Respondents/Cross-respondents Originating Motion.

Two issues taken from those crafted by the 3rd respondent seem good enough for the determination of this appeal and these are issues 2 and 3 therefrom, the same as the two issues identified by the 4th respondent which shall be used being apt. E

ISSUE ONE

Whether having regards to the claim of the herein respondents, the totality of the pleadings of the herein appellants and the evidence tendered at the trial (affidavit evidence), the trial court and indeed the Court of Appeal have jurisdiction to entertain this suit. F

For the appellants was submitted that the trial court had no jurisdiction to entertain suit No. FHC/ABJ/CS/574/2011 on the ground that whether the suit was pre-election or post election, the trial court had no jurisdiction to hear same. G

That the case was filed 50 days after the election and there was no suit filed by the plaintiffs in the case against the 2nd to 6th defendants in the case (appellants herein) before the election was conducted. That suit No. FHC/ABJ/CS/99/2011 filed by the 1st to 5th respondents in this case was not against the appellants. He cited *Hassan v Aliyu* (2010) 17 NWLR (Pt.1223) 547 at 604: *Salim v CPC* (2013) H

6 NWLR (Pt. 1351) 501.

It was stated for the appellants that the action in question was against PDP's selection of its candidates and so being INEC as the principal party seeking to restrain it from issuing a certificate of return after election or to quash the certificates of return already issued to the appellants is in the realm of election petitions. He cited section 133(1) of the Electoral Act, 2010 as amended and section 285 of the 1999 Constitution as amended.

It was contended for the appellants that it was the lower court that entered into a case not before it by holding that the trial court was wrong in declining jurisdiction.

In response, learned counsel for the 1st and 2nd respondent contended that the appellants not having been party either to the valid primaries of the party or the general election did not need to be taken into consideration in the matter of the issuance of the certificates of return within the contemplation of section 141 of the Electoral Act. He referred to *Ezeigwe v Nwawulum* (2010) 4 NWLR (Pt. 1183) 159 at 170.

For the 3rd respondent it was canvassed that the cause of action of the plaintiffs relates to the nomination and sponsorship of candidates by PDP and their claim grounded on the pre-election disputes and so the fact of election having taken place before the judgment was concluded, the jurisdiction of the court was not ousted. He cited *Ucha v Onwe* (2011) 4 NWLR (Pt. 1237) 386.

That the trial court having failed to rule properly, the court below was right to consider both the claim and defence of the parties in arriving at the conclusion that the trial court had jurisdiction and the appellate court was correct in making the consequential orders naturally flowing from that judgment.

It was submitted for the 4th respondent that the proper party that won the election is the PDP which meant that it was its proper candidates that were entitled to be so issued with the certificates of return in accordance with section 75 (1) of the Electoral Act and so the Court of Appeal was right in so holding.

For the 5th respondent it was submitted that they did not stand by as they were steadfast and timeously fighting against the interim order wrongly awarded the appellants at the trial court by instituting suit No. FHC/ABJ/CS/199/2011.

Learned counsel for the respondent, INEC submitted that the Court of Appeal made its decision in error and submitted further that the court of trial was correct in declining jurisdiction. That the court below wrongly invoked its powers under Section 16 of the Court of Appeal Act.

Learned counsel for the 7th respondent contended that the case of the 1st - 5th respondents rested on post election being anchored on the certificate of return by 6th respondent, INEC and so was for the Election Tribunal and outside the ambit of the jurisdiction of the trial High Court.

Having set out in short, the facts and submissions before this court, the summary of which in my view is the claim at the trial court was for the High Court to restrain INEC from issuing certificates of return to the appellants or to quash the said certificates that had already been issued. The trial court declined jurisdiction to hear and determine the suit, the Court of Appeal set aside that decision of court of first instance holding there was jurisdiction which is the crux of what is before this Apex Court since the Court of Appeal in asserting jurisdiction consequentially made a prohibitive order restraining INEC from issuing certificates of return in respect of the election into the State House of Assembly for the respective constituencies of Anambra State and if already so issued to the appellants to have them quashed and by order of mandamus have 6th respondent issue certificates of return to the 1st to 5th respondents.

In tackling this matter of whether or not jurisdiction resided in the trial court to entertain this matter and also to enter into the distinction of whether or not the matter was pre-election or post election. For guidance I shall seek refuge in *Hassan v Aliyu* (2010) 17 NWLR (Pt. 1223) 547 at 604 where this court stated thus:

“Substitution and nomination being pre-election matters, the candidate must approach the competent court to seek for the enforcement of his rights before the real election takes place. This was the position in Amaechi v INEC (2008) 5 NWLR (Pt. 1080) 227.

Immediately the candidate was substituted, Amaechi did not wait for the election thereafter took place after the filing of the action having become subjudice, it remains a pre-election matter even if the matter is fought to this court. On the other hand where the candidate who was substituted did not take steps to seek redress before the

election took place, and a candidate declared as the winner, and thereafter seeks to be declared as the winner of the election, it is my view that the matter is no longer a pre-election matter. That is, his right to pursue a pre-election matter ceases after the holding of the election except only, if the action is instituted before the holding of the election.”

Placing the case of *Hassan v Aliyu* (supra) in focus and alongside the facts on this case in hand which suit was filed 50 days after the election seeking these judicial remedies of prohibition and mandamus, it is clear that though what threw up the grouse of the plaintiffs/1st - 5th respondents was pre-election being the matter of the rightful candidates of the party which incident occurred before the election, the 1st - 5th respondents having started the action, bad enough after the election worse still 50 days after the election, the matter clearly left the realm of pre-election into the domain of post election with moral weakness in the 1st - 5th respondents who slept on their rights for 50 days after the general election before initiating the legal process against the appellants. The case of *Salim v CPC* (2013) 6 NWLR (Pt. 1351) 501, a decision of the Supreme Court is apposite.

Furthermore, it needs be said that it is the plaintiff's claim that determines the jurisdiction of the court and it is not the defence that sets the stage of whether or not there is jurisdiction in the court. In the case in hand the claims presented by the 1st to 5th respondents at the trial court as plaintiffs were thus:

“1 (i) An Order of prohibition restraining the 1st defendant from issuing to the 2nd to 6th defendants/respondents certificates of Return in respect of elections into the Anambra State House of Assembly for Ekwusigo, Oyi Anambra East, Dunukofia and Awka North State Constituencies respectively.

(ii) In the event that the certificates of return for the constituencies mention in paragraph (1) above are already issued to the 2nd to 6th respondents respectively, an order of certiorari removing the certificate into this court for the purpose of being quashed.

(iii) An Order of mandamus compelling the 1st respondent to issue to the applicants their certificates of return for their various constituencies listed in paragraph (i) above.

2 And for such further other orders as the Honourable court

may deem fit to make in the circumstances.”

From the reliefs of the plaintiffs at the trial court in a suit complaining about PDP’s selection of its candidates and in that suit seeking to have INEC as the principal party to be restrained from issuing certificates of return after the general election and in this instance having already so issued now seeking to have those certificates of return quashed the matter certainly had strolled into the realm of election petitions pursuant to section 133(1) of the Electoral Act 2010 (As Amended) and so being outside the protective boundary of a pre-election matter for which the High Court would have been suited to give succour, the hands of the High Court clearly was herein shackled and it lacked the necessary vires to do what the plaintiff/1st - 5th respondents had asked of it. Therefore the court below doing what it did was to make out a case for the parties and creating jurisdiction which did not exist. In this regard I adapt what my learned brother Okoro JCA (as he then was) did in *Muniyas (Nig.) Ltd v. Ashafa* (2011) 6 NWLR (Pt.1242) 85 at 105 when he said:

“It is now well settled that a trial court will not depart from the case pleaded and proved by parties to give judgment on matters which are neither pleaded nor constitute issues as settled in the pleadings.”

From the above I have no difficulty in holding that the reliefs claimed in the said suit i.e. nullifying or quashing the certificates of return already issued by INEC are reliefs grantable by the election tribunal as established pursuant to Section 285 of the 1999 Constitution of the Federation as amended in the context of the facts before this court.

Therefore the trial court was right in declining jurisdiction which cannot be said for the Court of Appeal.

The issue herein is resolved in favour of the Appellants.

ISSUE TWO:

Whether grounds 1 and 2 of 1st - 5th Respondents Notice and Grounds of Appeal at the Court of Appeal are competent in law.

For the appellants was contended that grounds 1 and 2 of the Notice of Appeal to the lower court are incompetent.

That the particulars supplied are unwieldy facts not connected to the complaint in the grounds of appeal. That the grounds of appeal complain of error in law while the particulars supplied are stories

of what led to the filing of the suit. Learned counsel for the appellants submitted that the particulars supplied in both grounds one and two complained of do not give insight into the nature of the error complained of in the grounds of appeal. That being bereft of valid particulars the said grounds of appeal are incompetent and liable to be struck out. He cited Order 6 Rule 2(2), (3) and *Laah v Opaluwa* (2004) 9 NWLR (Pt.879) 558.

Learned senior counsel for 1st and 2nd respondents disagrees with the appellants stating that grounds 2 and 3 of the 1st and 2nd respondents ground of appeal at the court below were competent and met with the requirements of Order 6 Rule 2 (2) and 3 Rules of that Court 2011. That the essence of particulars of error is to avoid springing a surprise on the respondent by bringing out facts which will sufficiently explain the complaint made in the ground of appeal.

For the 3rd respondent it was submitted that the particulars needed were for the appellants in the court below to show that their application for judicial review was grounded in a pre-election dispute commenced before the conduct of the elections and all that was needed was the enforcement of the judgment of the pre-election intra party dispute. That the particulars in Ground 1, therefore show the nature of the trial court's error of law in regarding the appellants' application for judicial review as a post election issue.

Learned counsel for the 4th respondent argued along the same lines as the 3rd respondent in that they posit that the appellants were not left in doubt as what the complaints were since the particulars of error were explicit in showing the matter to be pre-election and not post election.

The 5th respondent also submitted that the particulars adequately explained to the appellants the gist of the respondents' complaint in that appeal at the lower court.

The 6th respondent, INEC who had cross-appeal argued that the instant appeal is an election related matter which was commenced by way of Judicial Review thereby violating the well settled decisions of this court in *ANPP v Returning Officer Abia State & Ors* (2007) 11 NWLR (Pt.1045) 431 at 434 - 430; *Ohakim v Agbaso* (2010) 19 NWLR (Pt.1226) 172.

That the prerogative reliefs sought in the Originating Motion could not lie against the 6th respondent/cross-appellant/INEC being

not a judicial or quasi-judicial body as INEC issued certificates to returned candidates in its administrative capacity. He referred to *Fasade v Babalola* (2003) 8 NWLR (Pt.830) 26; *Nwaoboshi v MILAD Delta State* (2003) 11 NWLR (Pt. 831) 305.

For the 7th respondent/cross-appellant being the Clerk of the Anambra State House of Assembly was contended that the 1st - 5th respondent/cross-respondents were not sure of their rights or where they could have them ventilated and so went forum shopping. Also that the 1st - 5th respondents/cross-respondent were indolent, having long known their cause of action and the prospective parties the current appellants but waited till after the general election of 26th April, 2011 and so disentitled themselves to the equitable remedies they later sought and even then left out appellants. He cited *Gwede v INEC & Ors* decided on 24th October, 2014 (SC) per Onnoghen JSC.

The grouse of the appellants herein who were respondents in the Court of Appeal is that the lower court came to a wrong conclusion when it dismissed the objection of the appellant herein on the competence of the Ground of Appeal even though that court conceded to the grounds being not lucid and brief. The guiding rules of the Court of Appeal 2011, Order 6 Rule 2(2) and 3 provides as follow:

“(2) Where a Ground of Appeal alleges misdirection or error in law, the particulars and the nature of the misdirection or error shall be clearly stated.

(3) Any ground which is vague or general in terms or which discloses no reasonable Ground of Appeal shall not be permitted, save the general ground that the judgment is against the weight of evidence, and Ground of Appeal or any part thereof which is not permitted under this rule may be struck out by the court of its own motion or an application by the respondent”

It is clear that the Grounds 1 and 2 of the Notice of appeal went contrary to the mandatory provisions of Order 6 Rule 2 (2) and (3) of the Court of Appeal Rules and so when the lower court so found them as such should have declined them incompetent and had them struck out. The provisions of the Rules were not discretionary. See *Laah v Opaluwa* (2004) 9 NWLR (Pt. 879) 558.

This issue is resolved in favour of the appellants. The Appeal is

therefore allowed in the light of the foregoing.

With regard to the cross-appeals of the 6th & 7th Respondents, the findings in the main appeal have provided adequate material in answer thereof and it is not difficult to find that the Court of Appeal wrongly invoked its powers under Section 16, Court of Appeal Act to assume the powers of the trial court in granting the prerogative reliefs sought by 1st - 5th respondents/cross/respondents as plaintiff. This is because in taking on those powers sequel to section 16 of the Court of Appeal Act, that court could only do that if the trial court had powers to do what the Court of Appeal had sought to do in a remedial process. I rely on *Uduma v. Arunsi* (2012) 7 NWLR (Pt. 1298) 140.

Also the prerogative reliefs sought in the Originating motion could not lie against the 6th respondent/cross-appellant/INEC as this court had settled that area of the law with regard to election matters as the 6th cross-appellant is not a tribunal, inferior court or body having a duty to act judicially or who had acted in a judicial capacity when it issues or issued certificates of return to winners of an election it had conducted as INEC's role is merely administrative. See *Ohakim v Agbaso* (2010) 19 NWLR (Pt. 1226) 172, the dictum of Onnoghen JSC very instructive. See also *Fasade v Babalola* (2003) 8 NWLR (Pt.830) 26; *Nwaoboshi v MILAD Delta State* (2003) 11 NWLR (Pt. 831) 305.

The cross-appeal of the 7th respondent were along the same lines as already dealt with in the main appeal and the cross-appeal of the 6th respondents and there is no difficulty in finding meritorious these two cross appeals which I uphold along the better articulated lead judgments, reasoning.

I abide by the consequential orders as made by my learned brother, M. D. Muhammad JSC.

OKORO JSC

I read in draft the judgment just delivered by my learned brother, Musa Dattijo Muhammad, JSC. I agree that there is merit in this appeal. I shall accordingly allow this appeal.

The 6th - 5th respondents herein had approached the trial court in Suit No. FHC/ABJ/CS/574/2011 filed on 15th June, 2011

for the following orders:

“1. (i) *An order of prohibition restraining the 1st defendant from issuing to the 2nd to 6th defendants/respondents Certificate of Return in respect of elections into the Anambra State House of Assembly for Ekwusigo, Oyi, Anambra East, Dunukofia and Azuka North State Constituencies respectively.* B

(ii) *In the event that the Certificates of Return for the constituencies mentioned in paragraph (1) above are already issued to the 2nd to 6th respondents respectively, an order of Certiorari removing the said Certificate into this Court for the purposes of being quashed.* C

(iii) *An order of mandamus compelling the 1st respondent to issue to the applicants their Certificates of Return for their various constituencies listed in paragraph (1) above.”*

Clearly, the above reliefs are couched in post election terms and the suit having been filed about 50 days after the election, it is clearly a post election matter. The learned trial judge, rightly in my view, declined jurisdiction. The lower court however, took a different position and set aside the said judgment. It not only set aside the judgment but proceeded to determine the suit in favour of the 1st - 5th respondents. E

It is now well settled that issue of nomination and/or substitution of candidates by political parties are pre-election matters which must be filed in the appropriate High Court before the holding of the election. Such matters can be ventilated up to the Supreme Court even after the holding of the election and the result declared. However, after the holding of the election, the result announced and the winner is declared, the appropriate court to ventilate one's complaints against the election is the election tribunal established under Section 285(1) of the 1999 Constitution of the Federal Republic of Nigeria G (as amended). See *Amaechi V. INEC* (2008) 7 - 10 SC, 172, *Hassan V. Aliyu* (2010) 17 NWLR (Pt.1223) 547. F

In the instant case, the 1st - 5th respondents instead of approaching the election petition tribunal to challenge the declaration of the appellants as winners of the election, chose to file this matter in the Federal High Court which, without any modicum of doubt, does not possess the requisite foundation to entertain the matter. H

For me, the learned trial judge was right when he read between the lines of the reliefs sought and declined jurisdiction. No

matter the ingenuity of filing the suit by way of judicial review, it does not change its character and was not maintainable in that court. See ANPP V. Returning Officer, Abia State (2007) 11 NWLR (Pt. 1045) 431 at 434 - 435.

B In my view, the lower court was, with due respect, wrong to set aside the judgment of the trial Federal High Court which to my mind was in line with judicial pronouncements of this court. The 1st - 5th respondents had argued that Suit No. FHC/ABJ/CS/574/2011, giving birth to this appeal was not a fresh suit but a continuation of suit C No. FHC/ABJ/CS/199/2011 which was filed before the holding of the election. Be that as it may, this court having set aside the decision in suit No. FHC/ABJ/CS/199/2011, the said Suit No. FHC/ABJ/CS/574/2011, purported to enforce the earlier judgment is of no moment.

D All I have stated above is to support the lead judgment that the lower court was wrong to set aside the decision of the trial Federal High Court that it lacked jurisdiction to hear the suit. Accordingly, I also allow this appeal; having found same to be meritorious.

E In view of the fact that the cross-appeals by the 6th and 7th respondents relate to the same issues which have been dealt with in the main appeal, I shall allow them to abide by the outcome of the main appeal. I make no order as to costs.

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