

**SUPREME COURT OF NIGERIA**  
THURSDAY 22ND FEBRUARY, 2007. SC. 78/2005  
**CORAM:- S. U. ONU, N. TOBI, D. MUSDAPHER,**  
**G. A. OGUNTADE, S. A. AKINTAN, A. M. MUKHTAR,**  
**I. F. OGBUAGU, JJSC**

ALL NIGERIAN PEOPLES PARTY ..... APPELLANT  
AND  
THE RETURNING OFFICER  
ABIA STATE & ORS ..... RESPONDENTS

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ELECTION PETITIONS - Jurisdiction - 1999 Constitution s. 285 -  
FHC lacks jurisdiction to entertain appellant's suit - As the matter  
clearly belongs to Election Petition Tribunal (H1)

**FACTS**

Plaintiff/appellant commenced this action at the High Court of the Federal Capital Territory Abuja, challenging the return made by respondents in the 2003 Senatorial Election. The court declined jurisdiction. The Court of Appeal equally held that the High Court does not possess jurisdiction in the matter.

In the present appeal to the Supreme Court, the court is also of the opinion that the matter being an election matter, exclusive jurisdiction is by virtue of section 285(1) vested on the Election Petition Tribunal.

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

*ELECTION PETITIONS - Jurisdiction*

**1. In the nature of the reliefs sought, and on the arguments of counsel in their briefs, I have no difficulty in coming to the conclusion that this is an election matter clearly outside the jurisdiction of High Courts. In my humble view, the Federal High Court lacks the jurisdiction to entertain the appellant's suit and the Court of Appeal was correct in so holding. A relief on certiori smuggled into this matter cannot change the character of the matter as an election matter clearly belongs**

***to the appropriate Election Tribunal. Section 285 of the Constitution is clear on this.*** (p. 2856 C)

### **REPRESENTATION**

Chief M. I. Ahamba, SAN with V. I. Ikeonu, for the Appellant  
Chief A. Idigbe, SAN with K. C. Nwifo, Ralph Uwechue Esq., Tochi Nwosu, Bunmi Ope-Agbe, (Miss), N. J. Kamuche (Miss), for the Respondents

### **STATUTE REFERRED TO**

Constitution of the Federal Republic of Nigeria 1999, s. 285(1)

### **LEAD JUDGMENT BY TOBI JSC**

***In the nature of the reliefs sought, and on the arguments of counsel in their briefs, I have no difficulty in coming to the conclusion that this is an election matter clearly outside the jurisdiction of High Courts. In my humble view, the Federal High Court lacks the jurisdiction to entertain the appellant's suit and the Court of Appeal was correct in so holding. A relief on certiori smuggled into this matter cannot change the character of the matter as an election matter clearly belongs to the appropriate Election Tribunal. Section 285 of the Constitution is clear on this.*** In the light of the above, I do not see any need for this court to ask counsel for the respondents to reply. The appeal lacks merit and it is dismissed. I award N 10,000.00 costs to each set of respondents.

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### **ONU JSC**

We do not intend to call on the other side to reply. Having been privileged to read the judgment of my learned brother Niki Tobì, JSC, I agree with him that this appeal lacks merit. I will not hesitate to dismiss the appeal as it lacks any iota of merit vide section 285(1) of the 1999 Constitution with N10,000.00 costs to each set of respondents. I too affirm the judgment of the court below.

**MUSDAPHER JSC**

We do not deem it necessary to call the respondents to reply to the argument of counsel for the appellant in this matter. Clearly in my view the proper forum for the appellant to vindicate his complaint is the tribunal established for the purposes of the election, that is the National Assembly Election Tribunal established for Abia State. I entirely agree with the lower courts election matter as filed by the appellant. The writs of certiorari and mandamus, being common law remedies, could not be invoked in a purely election matter in the Federal High Court. Election matters are in a class of their own and are entirely statutory. I affirm the decisions of the courts below and accordingly dismiss the appeal as lacking in merit and award the sum of N10,000.00 costs to each set of the respondents.

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**OGUNTADE JSC**

A perusal of the reliefs which the appellant as plaintiff had claimed from the High Court, Abuja amply reveals that this suit was to query the return made by the respondents in the 2003 Senatorial Election. Section 285(1) of the 1999 Constitution vests exclusive jurisdiction in an election matter in the Election Tribunals. There is no doubt that the time limit imposed by law for bringing such election related suits can impose grave injustice on a person where the results are not declared before the expiry of the time limit. Such was the case in this matter. The solution to such mischief lies in reforming law. Not in giving the High Court a jurisdiction it does not possess. I affirm the judgment of the court below. I also dismissed the appeal. I affirm the order for costs as stated in the lead judgment.

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**AKINTAN JSC**

The appeal is against the judgment of the court below declining jurisdiction to entertain a matter that should have been commenced in an election tribunal, the dispute purely an election matter. There is therefore totally no merit in the appeal and it is accordingly dismissed. N10,000.00 costs is awarded to each set of respondents. Appeal dismissed.