

SUPREME COURT OF NIGERIA
MONDAY 5TH MARCH, 2012. SC. 34/2012
CORAM:- D. MUSDAPHER CJN, I. T. MUHAMMAD,
O. O. ADEKEYE, M. U. PETER-ODILI,
O. ARIWOOLA, JJSC

CONGRESS FOR PROGRESSIVE
CHANGE & ORS APPELLANTS
AND
MALLAM ISA YUGUDA & ORS RESPONDENTS

JUDGMENTS - Validity - CA judgment is in breach of Constitution 1999 s. 285(8) - As a judgment must show clear resolution of all issues - And end with ultimate verdict flowing from facts and law (H1)

APPEALS - Election petition - Time limit - SC cannot invoke SC Act s. 22 to save the appeal - As CA by effluxion of time lacks jurisdiction - To adjudicate on the appeal (H2)

FACTS

The trial tribunal in this matter delivered its judgment on the 10th day of November 2011. The matter went on appeal to the Court of Appeal which delivered its own judgment on 7th of January 2012. The court without giving reasons for its judgment resolved all the issues in favour of respondent and dismissed the appeal. The judgment of the Tribunal was thus affirmed and the Court of Appeal reserved a date to give reasons for its judgment.

The time for giving the reasons has now expired as the 60 days grace period prescribed by section 285(7) to hear and dispose of an appeal from the trial tribunal had elapsed without giving reasons for the judgment. Being aggrieved by the failure of the appeal court to deliver a valid judgment, appellants have appealed to the Supreme Court and urged the court to invoke section 22 of the Supreme Court Act to rehear the appeal as if it were the Court of Appeal.

HELD (Unanimously striking out the appeal per

MUSDAPHER CJN)

JUDGMENTS - Validity

1. It is common ground by all the parties, that this judgment is invalid. Ordinarily a judgment must demonstrate in full, a dispassionate consideration of all the issues properly raised and heard and must reflect of such an exercise. It must show a clear resolution of all the issues that arise for decision in the case and end up with the ultimate verdict which flows logically from the facts and the law. It is now beyond any dispute that such a judgment in an election matter falls in breach of section 285 (8) of the Constitution and is a null and void Judgment. (p. 2861 F)

Election petition - Time limit

2. This Court cannot invoke the provisions of section 22 of the Supreme Court Act to save this appeal, as the lower court by effluxion of time now lacks the jurisdiction to adjudicate on the appeal. To do so will amount to this court hearing the appeal complaining against the decision of the Tribunal for which this court would have no jurisdiction and indeed the 60 days within which to hear the appeal against the decision of the Tribunal had expired. In view of the earlier decisions of this Court on these matters which are binding upon us, we have no option other than to uphold the preliminary objections and strike the appeal. (p. 2862 H)

NOTABLE POINT OF INTEREST

ADEKEYE JSC

1. Limitation law – Effect of

The effect of a limitation law is that legal proceedings cannot be properly or validly instituted after the expiration of the prescribed period.

(p. 2864 E)

REPRESENTATION

O. Akoni SAN with O. Oshobi, K. C. Osuh, B. B. Lawal, O. I. Arasi, A.

O. Utake and O. Adewara, for the Appellants

L. O. Fagbemi SAN with A. S. Hassan, H. T. Fajimite, Olufemi Akintumiwa, Oladele Gbadeyan, Omosani Popoola, B. A. Ogun, Gbenga Ashaolu, for the 1st - 3rd Respondents

Hassan M. Liman SAN with A. B. K. Bello Esq., M. B. Usman Esq., I. M. Dikko Esq., Y. D. Dangana Esq., Fatima Bukar (Miss.) and Mahmud Usman Esq., for the 4th Respondent

CASE REFERRED TO

Ezeoke v. Nwagbo (1986) 1 NWLR 616

STATUTES REFERRED TO

Supreme Court Act, s. 22

Constitution of the Federal Republic of Nigeria 1999, s. 285

LEAD RULING BY MUSDAPHER CJN

On the 7/1/2012 the Court of Appeal wrote a Judgment in the following terms as per the decision of OWOADE, JCA which was concurred to by the other members who sat on the appeal panel as follows:-

"I have gone through the submission for and against the four issues nominated for determination by the learned senior counsel for the appellants. The four issues are resolved as against the appellants. Consequently, this appeal lacks merit and is accordingly dismissed. The Judgment of the Tribunal is affirmed. The question of Costs would be dealt with when Reasons for Judgment are given at a later date."

It is common ground by all the parties, that this judgment is invalid. Ordinarily a judgment must demonstrate in full, a dispassionate consideration of all the issues properly raised and heard and must reflect of such an exercise. It must show a clear resolution of all the issues that arise for decision in the case and end up with the ultimate verdict which flows logically from the facts and the law. See EZEOKES VS. NWAGBO 1986 1 NWLR 616. It is now beyond any dispute that such a judgment in an election matter falls in breach of section 285 (8) of the Constitution and is a null and void Judgment.

By leave of this Court, the appellant applied to amend the Notice of Appeal by complaining on the failure for the Court of Ap-

peal to deliver a valid Judgment and applies to this Court to invoke the provisions of section 22 of the Supreme Act to rehear the appeal and enter judgment which the Court of Appeal would have legitimately entered.

The learned counsels for the respondents filed Preliminary
 B Objections to the hearing of the appeal. They relied on the decisions of this court delivered on 2/3/2012 in the case of SC.17/2012 that is PDP vs. OKOROCHA and OTHERS and also suit No. SC.18 and 18A/2012. CHIEF GREAT OGBORU and another vs. DR.
 C EMMANUEL EWETAN UDUAGHAN. Which decided that since there was no valid Judgment there cannot be valid appeal in the instant matter. In his judgment Hon. Justice I. T. Muhammad, JSC in the lead Judgment in the OGBORU case supra stated:-

“Therefore, as the reasons for the Judgment of the Court below were delivered on the 27/1/2012 outside the 60 days limited by the Constitution, there is no valid Judgment worthy of pursuing on appeal. Accordingly I declare the judgment for the court of below delivered on 6/1/2012, including its reasoning delivered on 27/1/2012 as null and void. It amounts to a nullity.

E *I sustain the preliminary objection of the 3rd respondent”.*

Also in the ROCHAS OKOROCHA’S case, NGWUTA, JSC who read the lead Judgment had this to say:-

“It would have been an act of disservice to the administration of justice if the Court had closed its eyes to the defect in the Judgment appealed against and proceed to determine the appeal on its merit. This would be in conflict with other recent decisions of this Court on section 285 of the Constitution and the conflicting Judgments would have made the law uncertain, see SC.141/2011, SC.766/2011, SC.267/2011, SC.282/2011 etc”.

In view of the several decisions of this Court on this issue, though it may be hard on Litigants, yet it is matter beyond dispute deliberately set up by the Constitution on electoral matters to avoid prolonged and protracted litigations.

H ***This Court cannot invoke the provisions of section 22 of the Supreme Court Act to save this appeal, as the lower court by effluxion of time now lacks the jurisdiction to adjudicate on the appeal. To do so will amount to this court hearing the appeal complaining against the decision of the Tribunal***

for which this court would have no jurisdiction and indeed the 60 days within which to hear the appeal against the decision of the Tribunal had expired. In view of the earlier decisions of this Court on these matters which are binding upon us, we have no option other than to uphold the preliminary objections and strike the appeal.

The appeal is accordingly struck out. I make no order as to cost.

ADEKEYE JSC

The Court of Appeal wrote their decision in the appeal against the Judgment of the trial tribunal on the 7th of January, 2012. The trial tribunal delivered the judgment on the 10th of November, 2011. The Court of Appeal in the judgment of 7th of January given without reasons resolved all the issues in favour of the respondent and dismissed the appeal. The lower court affirmed the judgment of the tribunal. The court however failed to give the reasons for this judgment on the 7th of January, 2012 and reserved same to a later date. The time for giving the reasons had now expired as the 60 days prescribed by section 285 (7) to hear and dispose of an appeal from the trial tribunal had lapsed without giving reasons for the judgment. The parties now before this court unanimously agreed that the judgment delivered on the 7th January, 2012 by the Court of Appeal is not a valid judgment as it does not possess all the attributes of a good and valid judgment - which are:-

- (1). Introduction of issues between the parties
- (2). State cases of either side to the litigation going by the pleadings.
- (3). Evaluate adduced by either side
- (4). Resolution of issues of fact and law
- (5). The courts decision and reasons for arriving at the decision.

Being aggrieved by the failure of the court to deliver a valid judgment, the appellants appealed to this Court and urged the court to invoke section 22 of the Supreme Court Act to rehear the appeal as if it were the Lower Court.

The learned senior counsel for the Respondent filed prelimi-

nary objections to this application. The germane reason being that there were no valid judgment on which an appeal of that nature can be predicated. They buttressed their submission with the latest cases of this court. The unreported decisions in SC.17/2012 PD.P & Ors v. Rochas Okorocha & Ors and SC.18/2012 and SC.18A/2012 delivered on 3rd February, 2012. Any judgment which did not comply with the 60 days stipulated in section 285(7) of the 1999 Constitution as altered is not a valid judgment however well written, as it was written without jurisdiction. This court also lacks jurisdiction to hear any appeal emanating from an invalid judgment. An appeal is against the complaints in a valid judgment - which is not the position here.

This Court has maintained also in our previous judgments delivered on the interpretation of Section 285(7) and 285(8) that Section 22 of the Supreme Act cannot be invoked in the circumstances of this case to hear an appeal directly against the decision of the trial Tribunal. It is unconstitutional being against the provisions of the 1999 Constitution, as altered as embedded in Section 285(7). We have to remind litigants that Section 285 sub section (7) and (8) of the 1999 Constitution as altered are meant to operate as limitation law.

The effect of a limitation law is that legal proceedings cannot be properly or validly instituted after the expiration of the prescribed period. This court cannot depart from its earlier decisions on similar issues, the interpretation of the constitution must be consistent.

With fuller reasons giving in the Lead Ruling, I also uphold the preliminary objections and dismiss the appeal.

PETER-ODILI JSC

On the 7th January 2012, the Court of Appeal delivered its judgment without reasons which reasons were up to the date of appeal not produced. The appellant is asking this court to invoke Section 22 of the Supreme Court Act and do rehear the Court of Appeal proceedings. That is to do what the Court of Appeal ought to have done.

Two preliminary objections have been filed before this court, one by the 1st - 3rd respondents and the other by the 4th respondent which in the main are that there is no judgment upon which an appeal can be based, the judgment of the Court of Appeal being

invalid. On this invalidity of the judgment of the Court of Appeal both appellants and respondents agree.

In arguing the objection, Prince Fagbemi SAN contends that there being no valid judgment of the Court of Appeal, there is no ground upon which this court can do what the appellants are asking for. He referred to the recent judgments of this court in SC.17/12 - B PDP v Anayo Rochas Okorocha and SC. 18/12 - Great Ovedje Ogboru v Dr. Emmanuel Ewetan Uduaghan delivered on 2/3/12.

Mr. Liman SAN for 4th respondent went along the same lines as Prince Fagbemi and added that since the Court of Appeal lost its jurisdiction doing what it was not authorized to do under Section C 285(8) of the 1999 Constitution as amended this court cannot have jurisdiction to remedy the error.

Mr. Akoni SAN for the appellant said there was no shackle on this court to hear the appeal as if it is the Court of Appeal based on D Section 22 of the Supreme Court Act.

The situation in my view is clear enough, firstly based on the fact that all parties are agreed that the judgment of the Court of Appeal delivered on 7/1/12 being not valid, there is no appeal from the Court of Appeal to this court. Secondly the issue that has reared E its head is if in the circumstance stated above, this court can step in and hear the appeal from the trial tribunal which is the only valid and subsisting judgment in the Record based on section 22 of the Supreme Court Act.

With this simple scenario on ground and with the recent posi- F tions of this court stated in several judgments the most recent being SC.17/12 - PDP v Anayo Rochas Okorocha and SC.18/12 Great Ovedje Ogboru v Dr. Emmanuel Ewetan Uduaghan delivered on 2/ 3/12 in the interpretation of Section 285(7) & (8) of the Constitu- G tion. That position being that it is not for the Court of Appeal to deliver a judgment so called and adjourn for reasons, since it is not the final destination in an appeal over the Governorship disputed election nor can such a reason be made available beyond the 60 days within which the Court of Appeal can hear and dispose of the H appeals from the trial tribunal. It is even a worse case scenario in this instance where no reason has been proffered and the 60 days have elapsed and that since 8/1/12. Therefore at the risk of repetition, there is no valid judgment of the Court of Appeal since what was

purported to be the judgment lacked the qualification of a judgment and the 60 days for the Court of Appeal having elapsed, it no longer has jurisdiction. If the Court of Appeal lacks jurisdiction then there is no vires upon which there can be an invocation of powers under Section 22 of Supreme Court Act. The situation would have been different if it was any other matter not electoral where there really is no time frame or statute of limitation. In this instance Section 285 of the Constitution is a statute of limitation and when it says stop, that is the watch word and there cannot be a debate or speculation as to what is intended.

The conclusion therefore is that there is no jurisdiction on which Section 22 of the Supreme Court Act can be utilized to hear the appeal from the tribunal or to do what the Court of Appeal should have done. The appeal is struck out and the judgment of the Court of Appeal set aside while the judgment of the trial tribunal remains the only valid and subsisting judgment on ground. The two preliminary objections are upheld. From the above and the lead judgment of the Chief Justice of Nigeria, Dahiru Musdapher.

I make no order as to costs.

ARIWOOLA JSC

This is a ruling on the Preliminary Objection raised by the 1st-3rd and 4th Respondents against the appeal.

The appeal is against the decision of the court below delivered on 7/01/2012 wherein it said it was going to give reasons later.

The learned Senior Counsel to the 1st-3rd Respondents in its preliminary objection had contended that the brief of argument and or the appeal is incompetent and liable to be dismissed on a listed grounds including that the appellant can only complain against the findings and reasoning of the lower court. The Court of Appeal has not given the reasons for its judgment of 7/01/2012 against which this appeal was filed. Appellants' argument in the brief of argument did not give from any reasoning of the Court of Appeal. The court lacks the jurisdiction to entertain an incompetent appeal.

The Preliminary Objection of the 4th Respondent is also based on similar grounds.

Both Counsels urged the court to strike out the appeal. They

relied on the decisions of this court delivered last Friday 02/3/12 on the same issue of Section 285 (8) of 1999 Constitution as amended. PDP Vs. Okorocha: Appeal No.SC.17/2012 and Ogboru Vs Uduaghan: SC.18 & 18A/12.

In his response to the Preliminary Objection of the Respondents, learned appellants Senior Counsel, Mr. Akoni, SAN submitted that the cases cited and relied on by the Respondents are distinguishable from the instant appeal. He contended that in this case, the appeal is against the failure of the court below to deliver a judgment within the Constitutional period. He urged the court to come under Section 22 of Supreme Court Act to assume jurisdiction, hear the appeal and deliver judgment as if the matter was just before them.

In the cases of PDP Vs. Okorocha and Chief Ogboru Vs. Uduaghan (supra) delivered by this court on 2/3/12 wherein the court below in the said appeals delivered and gave reasons for their judgment outside the prescribed 60 days, this court had held that the decisions were given in breach of S.285 (8) of 1999 Constitution. This court already decided that, where there is no valid judgment of the court below there cannot be an appeal. Once there is no longer time for the court below to exercise jurisdiction on a matter, there cannot be competence in the Supreme Court to assume jurisdiction.

In PDP v. Okorocha's case, Ngwuta JSC who read the lead judgment stated thus:-

"It would have been an act of disservice to the administration of justice if the court has closed its eyes to the defect in the judgment appealed against proceed to determine the appeal on its merit. This would be in conflict with other recent decisions of this court on Section 285 of the Constitution and be conflicting judgments would have made the law uncertain. See SC.14/2011, SC.766/2011, SC.267/2011, SC.282/2011 etc."

In view of the several decisions of this court on the same issue, though it may be hard on the litigants, yet it is an issue limited deliberately by the Constitution to Electoral matters to which the framers of the Constitution want to put an end to protected litigation.

On the issue of Section 22 Supreme Court Act, this court cannot invoke the provisions of the Supreme Court Act, S.22 to save this appeal. The court below lacked jurisdiction by effluxion of time to adjudicate on the appeal. To do so will amount to this court hearing

the appeal complaining against the decision of the tribunal for which this court would have no jurisdiction and indeed the sixty days within which to hear the appeal, against the decision of the tribunal had expired. We are bound by our previous decisions.

The Preliminary Objections of the Respondents are hereby
B upheld and the appeal is struck out. No order as to costs.

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