

SUPREME COURT OF NIGERIA
THURSDAY 4TH NOVEMBER, 2010. SC. 90/2010
CORAM:- D. MUSDAPHER, M. MOHAMMED,
C. M. CHUKWUMA-ENEH, J. A. FABIYI,
O. O. ADEKEYE, JJSC

HON SANI SHA'ABAN & ANOR APPELLANTS
AND
ALHAJI NAMADI SAMBO & ORS RESPONDENTS

ELECTION PETITIONS - Gubernatorial - Final court - Constitution 1999 s. 246 deprives SC of jurisdiction - To deal with gubernatorial election petition - As CA is the final court (H1)

FACTS

Before the Supreme Court of Nigeria, 1st respondent raised preliminary objection to the hearing of the two appeals i.e. SC. 89/2010 and SC. 90/2010 pending before the court. The basis for the objection is that the Supreme Court has no jurisdiction to entertain the appeals under the provisions of section 246 (3) of the Constitution of the Federal Republic of Nigeria 1999.

On the other hand, appellant contends that the court has jurisdiction to entertain the appeals because the provision of section 246(3) must be given a very restrictive interpretation in order to allow a citizen to ventilate his grievances and invoke the judicial powers of the court as one of last resorts. Appellant equally relied on the provisions of judicial powers of the court enunciated under section 6(6) (a) and (b) of the Constitution. He maintained that the section gives the court the jurisdiction to come to the aid of a litigant who was denied a right by the Court of Appeal.

HELD (Unanimously striking out the appeals per
MUSDAPHER JSC)

ELECTION PETITIONS - Gubernatorial - Final court

1. In summary, the provision of section 6 of the Constitution does not confer on the Court jurisdiction to determine a matter where no other, specific provision grants such a power.

Section 246 of the Constitution is very clear and unambiguous and has been interpreted by this court to deprive this court of the jurisdiction and competence to deal with matters arising from a gubernatorial election petition. The Court of Appeal is the final court.

Having so decided, I do not deem it necessary to discuss the other objections raised by the 1st respondent. I accordingly uphold the preliminary objection and I hold that this Court has no jurisdiction to entertain the appeals in suits No.SC.89/2010 and SC.90/2010. (p. 2978 G)

NOTABLE POINT OF INTEREST

ADEKEYE JSC

1. Judicial power and Jurisdiction - Distinction

There is a clear distinction between judicial power and jurisdiction, while jurisdiction is defined as the power of the court to hear and determine the subject matter in controversy between parties to a suit. Jurisdiction is the authority of a court to exercise its judicial power - which is the total powers which a court exercises when it assumes jurisdiction to hear a case.

It boils down to the level that a court must first and foremost have jurisdiction over the subject matter of a suit before it can exercise any judicial powers that invoke its inherent powers under Section 6(6) a-b of the 1999 Constitution. (p. 2981 B)

REPRESENTATION

M. I. Ahamba SAN, Emeka Mozie, A. T. U Ibinolo (Mrs.), A. O. Onyedun (Mrs.), James Ugboho, Ngozi Owunwa, J. Abbas-Ibrahim, for the Appellants

E. Toro SAN, Y. U. Usman SAN, B. L. Aliyu Esq., S. Atung Esq., Y. Abdullahi Esq., C. Umar Esq., S. D. Mallan (Miss), M. I. Tola, for the 1st Respondent

I. S. Utuk, M. Gomwalk, for 2nd & 3rd Respondents

CASES REFERRED TO

Alao vs. A.C.B. Ltd. (2000) 9 NWLR (pt. 672) 264

Dangtoe v. C.S.C. Plateau State (2001) 9 NWLR (pt. 717) 132

Awoniyi v. Amorc (2000) 10 NWLR (pt. 676) 522
 Awuse v. Oditi (2003) 18 NWLR (pt. 851) 116
 Bronik Motors Ltd. v. Wema Bank Ltd. (1983) ISENLR 296
 Madukolu v. Nkemdilim (1962) 2 SCNLR 341
 Barclays Bank v. CBN (1976) 1 All NLR (pt. 1) 409

STATUTE REFERRED TO

Constitution of the Federal Republic of Nigeria 1999, ss. 6(6)(a)(b), 246 (3)

LEAD JUDGMENT BY MUSDAPHER JSC

The 1st respondent has filed preliminary objection to the hearing of the appeals herein on a number of grounds the principle of which is that this court has no jurisdiction to entertain the appeals under the provisions of section 246 (3) of the Constitution. The 1st respondent expatiated the objection in the respondent's brief in which he argued that this court has the competence to hear the appellants' appeals as filed in this court. Both senior learned counsel for the parties extensively addressed the court on their respective stands on the issues.

Now section 246(3) of the Constitution provides-

"The decision of the Court of Appeal in respect of appeals arising from election petitions shall be final."

The learned counsel for the appellant in his Reply brief concedes that an appeal in a gubernatorial election petition terminates at the Court of Appeal, but submits that this is not an appeal on an election petition, but an appeal against the refusal of the Court of Appeal to set aside its decision which was deemed to be a nullity. It is common ground that the court i.e. the Court of Appeal has the jurisdiction to set aside its null decisions or judgments. It is contended by the learned counsel for the appellants that this court has the jurisdiction to entertain these appeals because the provisions of section 246(3) should be given a very restrictive interpretation in order to allow a citizen to invoke the judicial powers of this court as the court of the last resort. Learned counsel also relied very heavily on the provisions of the judicial powers of the court as explained in Section 6(6) (a) and (b) of the Constitution and maintains that the section gives this court the jurisdiction to come to the aid of a litigant who was denied

the right of the review of its null judgments by the Court of Appeal. He asserts that UBI JUS IBI REMEDIUM - that is where ever there is a right, there is a remedy. He also argued that these provisions under section 6(6) can be invoked because it contains that phrase “notwithstanding the other provisions of this Constitution. In other words, the provisions can always be invoked to give access to a citizen to come to this court and to ventilate this grievance against such similar infractions. In the case ALAO vs. A.C.B. Ltd. (2000) 9 NWLR (Pt.672) 264, Ogundare JSC of blessed memory stated.

“Although this court is the Court of last resort, it is nevertheless a court of appellate jurisdiction. Its jurisdiction is clearly laid down in the constitution. Its jurisdiction is appellate only with incidental original jurisdiction conferred by section 6 of the Constitution for the purpose of exercising that appellate jurisdiction. The court is statutory and cannot, therefore, for the sake of doing justice confer on itself a jurisdiction that is not given to it by the constitution or by any statute. Moreover, it is in the public interest that there should be an end to litigation.”

See also the case of DANGTOE VS. C.S.C. PLATEAU STATE (2001) 9 NWLR (pt.717) 132 where Karibi-Whyte, J.S.C. stated -

“It is important to point out at once that the absence of jurisdiction accentuated the want of legal capacity and competence in the Court to hear and determine the subject matter before it, and does not raise at this stage, any issue as to the rights of the parties in the subject matter of the action. In the absence of jurisdiction there is no competence to exercise the judicial powers vested in the court by section 6(6)(b) of the 1979 Constitution. It has been frequently stated, and is now well settled that any such exercise of jurisdiction, which is an obvious futility is a nullity and the proceedings and judgment relating to are null and void.” See also AWONIYI VS. AMORC (2000) 10 NWLR (Pt.676) 522.

In summary, the provision of section 6 of the Constitution does not confer on the Court jurisdiction to determine a matter where no other, specific provision grants such a power. Section 246 of the Constitution is very clear and unambiguous and has been interpreted by this court to deprive this court of the jurisdiction and competence to deal with matters arising from a gubernatorial election petition. The Court of Ap-

peal is the final court.

Having so decided, I do not deem it necessary to discuss the other objections raised by the 1st respondent. I accordingly uphold the preliminary objection and I hold that this Court has no jurisdiction to entertain the appeals in suits No.SC.89/2010 and SC.90/2010.

The appeals are struck out. I make no order as to costs.

MOHAMMED JSC

The Preliminary objections filed by the 1st Respondent to the hearing of the Interlocutory Appeal No. SC.89/2010 and appeal against the final Judgment of the Court of Appeal in appeal No. SC.90/2010 is to the effect that this Court by virtue of the Provisions of Section 246(3) of the 1999 Constitution, has no jurisdiction to entertain the appeals. I entirely agree with the Ruling just delivered by my learned brother Musdapher JSC, that the Preliminary Objections have merit in that this court indeed has no jurisdiction to hear the two appeals. Accordingly the two appeals SC.89/2010 and SC.90/2010 are hereby struck-out with no order on costs.

FABIYI JSC

The 1st respondent raised preliminary objections in the two appeals that this court has no jurisdiction to hear the appeals vide, Section 246(3) of the 1999 Constitution.

It is contended by the learned counsel for the appellant that this court has jurisdiction to entertain these appeals because the provision of Section 246(3) must be given a very restrictive interpretation in order to allow the citizen to ventilate his grievances and invoke the judicial powers of this court as one of last resort. He also relied very heavily on the provisions of judicial powers of the court enunciated under Section 6(6) (a) and (b) of the Constitution. He maintained that the section gives this court the jurisdiction to come in, in aid of a litigant who was denied a right by the court below. He assets the principle of ubi jus ibi remedium. That is, wherever there is a right, there is a remedy. He also argued that the provision under section 6(6) can be invoked because it contains the phrase 'not with-

standing the other provisions of this Constitution.’ In other words, the provisions can only be invoked to give access to a citizen to come to this court and ventilate his grievance.

In the case of *Alao v. ACB Ltd.* (2000) 9 NWLR (pt. 670) 264, Ogundare, JSC (of blessed memory) stated that although this court is the court of last resort, it is nevertheless, a court of appellate jurisdiction, its jurisdiction is regulated by the Constitution. Its jurisdiction is basically appellate apart from first instance restricted matters. The court is statutory and cannot for the sake of doing justice confer on itself a jurisdiction where none is given to it by the constitution or by any statute. See also the case of *Dangtoe v. C. S. C. Plateau State* (2001) 9 NWLR (Pt.717) 132 at 150 where Karibi-Whyte, JSC (as he then was) had the same opinion. Section 6 of the Constitution does not imbue courts with jurisdiction at large.

Section 246 (3) which is pertinent herein is clear and unambiguous. The employment of the word ‘shall’ points to mandatory realm. It imbues the court of Appeal with ultimate and final jurisdiction. It has been interpreted by this court to deprive the court of jurisdiction and competence in appeals from gubernatorial election petition. The Court of Appeal is the final court. See *Awuse v. Odit* (2003) 18 NWLR (Pt 851) 116.

It is no longer of moment to touch on the other heads of objection. The preliminary objection is sustained. The two appeals are hereby struck out. No order as to costs.

ADEKEYE JSC

I agree with the leading Ruling and associate myself with the reasoning and conclusion in the preliminary objection in the two appeals SC/89/2010 and SC. 90/2010 - Hon. Sani Sha’aban and Ors. V. Alhaji Namadi Sambo and 2 Ors.

The gravaman of the objection in the two appeals which Mr. E. Toro SAN vehemently argued is hinged on the jurisdiction of this court to entertain these appeals. Chief M. I. Ahamba in his reply expatiated on the fact that these appeals flow from and are therefore based on the inherent powers of this court.

In describing the scope and extent of jurisdiction of court under section 6(6) a - b of the 1999 Constitution, it has to be explained

that the judicial powers vested in the courts in accordance with this section shall extend notwithstanding anything to the contrary in the Constitution to all inherent powers and sanctions of a court of law. In effect, the inherent powers extend to and can be expressed over all matters between government, or authority and citizens of Nigeria in all actions and proceedings relating to the determination of any questions as to the civil rights and obligations of anyone. B

There is a clear distinction between judicial power and jurisdiction, while jurisdiction is defined as the power of the court to hear and determine the subject matter in controversy between parties to a suit. Jurisdiction is the authority of a court to exercise its judicial power - which is the total powers which a court exercises when it assumes jurisdiction to hear a case. C

Bronik Motors Limited vs. Wema Bank Limited 1983 ISENLR 296 at pgs. 278 - 279. D

It boils down to the level that a court must first and foremost have jurisdiction over the subject matter of a suit before it can exercise any judicial powers that invoke its inherent powers under Section 6(6) a-b of the 1999 Constitution. The courts particularly Election Petition Tribunal, the Court of Appeal in its Appellant jurisdiction over election matters and the Supreme Court are all creation of the Constitution. Though they have great powers, yet the powers are limited by the Constitution. Their jurisdiction is defined by the provisions of the Constitution. E

In the instant appeals the constitution specified in clear and unambiguous terms under section 246 (3) that:- F

"The decisions of the Court of Appeal in respect of appeal arising from election petitions shall be final."

A court can only be competent when the subject matter of a case is within its jurisdiction. Madukolu v. Nkemdilim (1962) 2 SCNLR 341, Barclays Bank v. CBN (1976) 1 All NLR (pt. 1) pg. 409. G

A court must first and fore most have and assume jurisdiction in a suit before it can exercise its judicial powers under section 6 (6) a - b of the 1999 constitution. This court by virtue of the 1999 Constitution has no jurisdiction to entertain these appeals SC/89/2010 and SC/90/2010 - in line with the Leading Ruling, they are accordingly struck out. H