

SUPREME COURT OF NIGERIA
MONDAY 22ND MARCH, 2013. SC. 40/2013
CORAM:- M. S. MUNTAKA-COOMASSIE, J. A. FABIYI,
S. GALADIMA, N. S. NGWUTA, O. ARIWOOLA,
M. D. MUHAMMAD, C. B. OGUNBIYI, JJSC

1. ACTION CONGRESS OF NIGERIA
2. PASTOR USANI UGURU USANI APPELLANTS
AND
1. INDEPENDENT NATIONAL
ELECTORAL COMMISSION
2. THE RESIDENT ELECTORAL
COMMISSIONER, CROSS RIVER STATE RESPONDENTS
3. PEOPLES DEMOCRATIC PARTY
4. SENATOR LIYEL IMOKE (CON)
-

STATUTES - Limitation law - Effect - Such a statute takes away right to seek remedy in enforcement of the accrued right in court - Leaving the right bare and untouched (H1)

ACTIONS - Crime - Allegation of - Proof - Evidence Act s. 135(1) - Allegation of fraud and conspiracy on which 1st appellant based his case - Has to be proved beyond reasonable doubt (H2)

ELECTION PETITIONS - Appeals - Hearing - Time limit - The appeal is statute barred by virtue of Constitution 1999 s. 285(7) - Hence Supreme Court has no jurisdiction to entertain it (H3)

CONSTITUTIONAL LAW - Constitution - Supremacy of - It is the norm validating norm - Being the yardstick by which the validity of legislations made thereunder can be tested and determined (H4)

APPEALS - Right - Condition - Appellant's right to appeal is not absolute - As procedures from the enforcement of the right must be complied with (H5)

FACTS

At the Governorship Election Petition Tribunal sitting at Cala-
3031

bar, petitioners/appellants filed this action seeking for an order disqualifying defendant/4th respondent as a candidate at the gubernatorial election conducted in the State on 25/02/2012 and an order declaring 2nd appellant as the validly elected candidate with lawful majority votes. Appellants alternatively seek for an order disqualifying 4th respondent as a candidate and an order for a fresh election to be conducted in the State. 2nd appellant was sponsored by 1st appellant to contest the gubernatorial election conducted by 1st respondent for the State. 4th respondent who was 3rd respondent's candidate won majority of the votes cast and was declared the winner by 1st respondent.

Appellants were dissatisfied with the result of the election. Hence, they commenced this action. At the end of the hearing in the petition, the Tribunal dismissed the action for lack of merit. Not happy with the outcome of their petition, appellants appealed to the Court of Appeal Calabar Division. 4th respondent filed a motion seeking for the dismissal of the appeal on the ground that the same has been caught up by the provisions of section 285(7) of the 1999 Constitution. This is because the time to enter judgment by the Court of Appeal had elapsed. The court in its ruling agreed with 4th respondent. It held that the appeal is statute barred by virtue of section 285(7) (*supra*). The appeal was dismissed. Aggrieved further, appellants appealed to the Supreme Court.

HELD (Unanimously striking out the appeals per

NGWUTA JSC)

STATUTES - Limitation law - Effect

1. In the context of the appeal before us and in the light of the meaning of limitation law, or statute, a cause of action includes a right to appeal. A limitation statute, once it has run out, takes away the right to seek remedy in the enforcement of the accrued right in Court, leaving the right bare and untouched. The right remains but the means to enforce it extinguished for all times. (p. 3043 D)

ACTIONS - Crime - Allegation of - Proof

2. Now, fraud and conspiracy are criminal offences. Conspiracy is an agreement by two or more persons to do or cause to be done an illegal act or a legal act by an illegal means.

Also, the term, fraud, from which the word “fraudulent” is derived, is a willful act on the part of anyone, whereby another person is sought to be deprived of, by illegal or inequitable means, what he is entitled to.

The allegation of fraud and conspiracy to truncate the provisions of the constitution with regard to the constitution of Governorship Election Tribunal is not only in issue, it is the sole basis of the invitation to the Court not to apply Section 285 (7) of the Constitution in this appeal. By Section 135 (1) of the Evidence Act, 2011 the allegation of crime on which the 1st Appellant founded his case has to be proved beyond reasonable doubt.

In my view, the allegation of fraud and conspiracy made against the then Acting President of the Court of Appeal in the conduct of his duty under the Constitution is a very serious one, bearing in mind that he, at the material time, was a judicial officer sworn to do justice without fear or favour, affection or ill-will to all manner of men and to uphold the Constitution.

Learned Counsel for the Appellant in his marathon submission, left his bare allegation without proof. Even if this Court has power to do so, it cannot, based on the materials placed before it by the appellant, exclude the application of Section 285 (7) of the Constitution from this appeal.

First Appellant argued that the failure of the Acting president of the Court of Appeal to perform his statutory duty under paragraph 2 (3) of the Sixth Schedule to the Constitution was responsible for his plight in this appeal. If it is so, he has my sympathy. However, where there is a right, there is a remedy – Ubi jus ibi remedium. He has to seek his remedy somewhere else, not in the abrogation of Section 285 (7) of the Constitution of the Federation 1999 (as amended) or in a departure from the plethora of cases emanating from the said Section. (p. 3044 D)

Appeals - Hearing - Time limit

3. Can the Court depart from its earlier decision on Section 285 (7) of the Constitution, or extend the time within which the Court of Appeal shall hear and dispose of the appeal? I
B answer both questions in the negative. This is election matter which is time-bound.

Section 285 (7) of the Constitution seeks to protect not only the right and interest of the parties to an election matter, but also those of the electorate, who have a right to expect that the matter be resolved expeditiously so that whoever has their collective mandate should settle down to discharge his/her duties instead of running in and out of Court for the better part of the term of four years. A departure from the Court's
D earlier decision on Section 285 (7) of the Constitution would amount to a violation of the Constitution which every Judge is bound by solemn oath to protect.

In view of all I have said above, the appeal is statute-barred by virtue of Section 285 (7) of the 1999 Constitution (supra).
E This Court has no jurisdiction to entertain it. The preliminary objection raised and argued by the 1st and 2nd Respondents is sustained.

The appeal is struck out for want of jurisdiction.
F (pp. 3045 E/3046 G)

Constitution - Supremacy of

4. Learned Counsel for the 1st appellant made the curious submission that section 285 (7) of the Constitution violates
G Section 36 (1) of the same Constitution as well as African Charter on Peoples and Human Rights. Perhaps, learned Counsel is not aware that a similar time-limiting provision was inserted in one of the repealed Electoral Acts and when the matter of its constitutionality came up, the Court said that
H provision of the Electoral Act was inconsistent with the Constitution.

The Constitution is the norm validating norm. It is the yardstick or standard by which the constitutionality and, ipso facto, validity of every legislation, subsidiary legislation or rules

made thereunder can be tested and determined. It is an affront to common sense to say that the standard by which the validity of any law in the country is determined is in conflict with itself. (p. 3046 A)

APPEALS - Right - Condition

5. In any case, appellant's right to appeal against the judgment of the Tribunal, like any other right under the law, is not absolute. Procedures from the enforcement of the right must be complied with. Even the ultimate right under the Constitution, the right to life, is not absolute. It is qualified.

Without law and its rules regulating the enforcement and enjoyment of rights under the law, chaos will reign supreme, with every man pursuing and enjoying his real or perceived right without regard to the right of others, and organised society may come to an end. (p. 3046 D)

NOTABLE POINT OF INTEREST

NGWUTA JSC

1. Preliminary objection – Purpose of

A preliminary objection to the hearing of appeal is a pre-emptive strike to scuttle the hearing of the appeal and dispose of same in limine.

The learned Silk for the 4th Respondent raised objections to specific grounds of appeal. If sustained, the cumulative effect will lead to the striking out of the appeal as incompetent. On the other hand, his brother Silk for the 1st and 2nd Respondents invoked the statute of limitation and this single issue, if sustained, will lead to the same effect. (p. 3040 E)

REPRESENTATION

Lazarus A. Izabi-Undie Esq. with B. I. U. Ugbizi Esq., Chief C. Okoi, J. A. Ashefel Esq and Nat Uche Esq., for the 1st Appellant.

Prof. Tony Ukam with Chris A. C. Ogbogu Esq, Linus P. Mbey Esq., Michael L. Udoh Esq., Godwin E. Asuquo Esq., J. C. Okafor Esq., Joseph Adie Ashefel Esq., Akpama Ekwe Esq. and Akin Ogunkumi

Esq.) for the 2nd Appellant

Dr. Onyechi Ikpeazu (SAN) with Tobechukwu Nweke Esq. and Maris Ekwechi, for 1st and 2nd Respondents.

- B E. O. E. Ekong Esq., with Barth Izato Esq. and Idongesit M. Anana Esq., for the 3rd Respondent

C Paul Erokoro, SAN with Chief Solo Akuma, SAN; Kenneth Ikonne Esq., Mba E. Nkweni Esq., Okwudili Anozie Esq., Michael Ajara Esq., Ifeyinwa Arum (Miss), Kingsley Odey Esq., Barbara Omosun (Miss), Patrick Abang Esq., Swaben Audu Esq., Eric Ekere Esq., Chinonso Anozie Esq., Alice Uboh (Miss) and Uchenna Ogunedede (Miss) for the 4th Respondent

D

CASES REFERRED TO

Galadima v. Tambia (2000) 6 SC (pt. 1) 196

Amadi v. INEC (2012) 2 MJSC (pt. 1) 1

Rossek v. ACB Ltd (1993) 8 NWLR (pt. 312) 382

- E Odi v. Osatile (1985) All NLR 20

Ifezue v. Madugha (1984) 5 SC 29

Hassan v. Aliyu (2010) 7 MJSC (pt. 1) 30-36 para. C-F

Nwankwo v. Yar'Adua (2010) 3 MJSC (pt. IV) 1

- F Texaco Panama Incorporation v. SPDC (Nig) Ltd (2002) FWLR (pt. 96) 579 SC

Ibrahim v. Judicial Service Committee Kaduna State (1998) 14 NWLR (pt. 584) 1 SC

P. N. Uddoh Trading Co Ltd v. Abere (2001) FWLR (pt. 57) 900 SC

- G Ikemson v. State (1989) 3 NWLR (pt. 110) 455

Adimora v. Ajufo (1988) 3 NWLR (pt. 80) 1

Egbo v. Nwali (1998) 6 NWLR (pt. 553) 201

Nnachi v. Ibom (2004) 16 NWLR (pt. 900) 614

Nwobodo v. Onoh (1984) 1 SCNLR 1

H

STATUTES REFERRED TO

Constitution of the Federal Republic of Nigeria 1999, ss. 33 (1)(2)(a)(b)(c), 36(1), 285(7), 294(1)

LEAD JUDGMENT BY NGWUTA JSC

This appeal is against the ruling delivered by the court of Appeal, Calabar Judicial Division on 25th January, 2013. The 1st Respondent, the Independent National Electoral Commission, conducted the Governorship election in cross River State on 25th February 2012. The 1st Appellant, a political party registered in Nigeria by the 1st Respondent, sponsored the 2nd Appellant at the said election. B

The 3rd Respondent, also a registered political party, sponsored the 4th Respondent at the said election. The 2nd Respondent, the Resident Electoral Commissioner, Cross River State, conducted the election on behalf of the electoral umpire, the 1st Respondent. C

In the result of the election, the 2nd Respondent as agent of the 1st Respondent, declared the 4th Respondent winner of the Governorship election. The appellants were aggrieved at the declaration of the 4th Respondent as the winner of the election. They filed an election Petition to the Governorship Election Tribunal constituted for Cross River State and sitting at Calabar wherein they sought the following reliefs: D

“Wherefore your Petitioners pray the Tribunal for determination as follows: E

a. That the Third Respondent did not conduct Congress/primaries for Governorship elections of 25/2/2012 in Cross River State in accordance with the Electoral Act and the INEC Time Table/Guidelines released on 31st January, 2012.

b. That the Fourth Respondent was not nominated, nor validly nominated by the Third Respondent or any political party for the Governorship election of 25/2/2012 in Cross River State. See S.87 (1) and 138 (1) (a) (b) of the Electoral Act, 2010 (As Amended). F

c. An order disqualifying the 4th Respondent as candidate at the last Gubernatorial election of 25th February, 2012 in Cross River State and from standing or contesting any Governorship election in Cross River State by virtue of s.138 (1) (a) and (b) of the Electoral Act, 2010 (As Amended). G

d. An order declaring the second petitioner as the validly elected candidate with lawful majority votes. H

e. An order declaring the second petitioner as the winner of the elections of 25th February, 2012 and should immediately be issued with the Certificate of Return by the First and Second Respon-

dents and sworn-in as the validly elected Governor of Cross River State.

OR IN THE ALTERNATIVE

f. Disqualifying the 4th Respondent as a candidate and order fresh Governorship election.”

B The relevant processes were filed and exchanged by the parties through their respective counsel. Interlocutory applications filed were disposed of. At the end of the trial, the Tribunal reviewed the case of the parties and arrived at the following conclusion:

C *“The said election in our view was conducted in substantial compliance with the provision of the Electoral Act 2012, and where-upon he the 4th Respondent emerged as the returned winner with the lawful majority of votes cost of the election.”* (See page 940 of the record (V.II).

D Aggrieved by the judgment of the Tribunal, each of the two appellants filed a separate notice of appeal in the lower Court. From the records, each respondent filed a notice of preliminary objection to the hearing of the appeal. However, the lower Court singled out, and dealt with, the preliminary objection said to have been filed by E the 4th Respondent on 3/10/2012 praying for:

“1. An order dismissing Appeal No. CA/C/NAEA/181/2012 filed by the 1st and 2nd Appellants for being statute barred. The order sought was predicated on the ground: ‘that the appeal has been caught up by the provisions of Section 285 (7) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) as the time or period allowed the Court of Appeal to hear and dispose of the appeal from the judgment of the Tribunal has since lapsed.” See page 1741 F of the record.

G The Lower Court considered the affidavit evidence and submission of learned Counsel for the parties and in its ruling delivered on 25th January, 2013 the Court below concluded thus:

“In the result, I find merit in the motion which therefore succeeds. For being statute barred, the appeal No. CA/C/NAEA/Gov/781/H 2012 is hereby dismissed.”

Again, Appellants were aggrieved and each filed a separate Notice of Appeal against the same judgment of the Court below. The 2nd appellant filed his notice of appeal on 5/2/2013 while the 1st appellant filed its own notice on 8/2/2013. Second appellant chal-

lenged the judgment of the Court below on seven (7) grounds whereas the 1st appellant appealed on ten (10) grounds. Learned Counsel for the parties filed and exchanged briefs of argument.

The learned Silk for the 1st and 2nd Respondents filed a notice of preliminary objection to the hearing of the appeal on the merit on the following grounds: B

“1. The appeal is incompetent and ought to be struck out in that -

(i) Relief (1) of the Notice of Appeal does not arise from the Election Petition which originated the matter, and amounts to introduction of fresh relief into the case. C

(ii) Relief (2) and (3) which ultimately seek the hearing of the appeal against the decision of the Governorship Election petition Tribunal delivered on 7th July, 2012, outside the period of 60 days which violates the clear provision of Section 285 (7) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).” D

The learned senior counsel for the 4th Respondent was more elaborate in his own preliminary objection. The grounds are reproduced hereunder:

“(1) Ground of Appeal No.1 is not a challenge of the ratio decidendi of the decision appealed against. It is a challenge to a comment or at best an obiter dictum which cannot form the basis of an appeal. E

(2) Grounds of appeal Nos. II, III, IV, V, VI, VII, VIII and IX together with their particulars are liable to be struck out as they are verbose, argumentative, repetitive, narrative, contradictory in terms and thus offend the provisions of Order 8 Rule 2 (3) of the Supreme Court Rules. F

(3) Grounds of Appeal Nos. X and XI are incompetent and ought to be struck out as they do not arise from the decision appealed against, neither do they disclose any reasonable ground of appeal. G

(4) All issues formulated by the 1st Appellant for the determination of this appeal, that is to say, issues 1, 2, 3, 4 and 5 at page 6 and 7 of the 1st Appellant’s brief of argument are incompetent and should be struck out. The arguments based on the issues should also be discountenanced as they are based on incompetent grounds of appeal from which no issue should be formulated. H

(5) *Consequently, the appeal should be struck out for being incompetent as there is no competent ground of appeal to sustain it.*”

The learned Senior Counsel for the 1st and 2nd Respondents and the learned Senior Counsel for the 4th Respondent incorporated the argument on the preliminary objection in their respective briefs. Also, learned Counsel for the 1st and 2nd Appellants filed reply briefs in which he responded to the arguments on preliminary objection.

At the hearing of the appeals on 18/3/2013, learned Counsel for the parties adopted and relied on their briefs in urging the Court to decide in favour of their respective clients.

There are two appeals before us, one filed by each of the 1st and 2nd Appellants and there are two sets of briefs; one set for each appeal. Both appeals originated from the same ruling of the Court of Appeal in Appeal No.CA/C/NAEA/GOV/181/2012 delivered by the Court of Appeal, Calabar Division on 25/1/2013. The parties are the same. At the hearing of the appeal, learned Counsel for the parties agreed that the 1st Appellant’s appeal be determined while the 2nd Appellant’s appeal should abide by the decision reached in the 1st Appellant’s appeal.

A preliminary objection to the hearing of appeal is a pre-emptive strike to scuttle the hearing of the appeal and dispose of same in limine. See *Galadima v. Tambia* (2000) 6 SC (Pt.1) 196 at 207.

The learned Silk for the 4th Respondent raised objections to specific grounds of appeal. If sustained, the cumulative effect will lead to the striking out of the appeal as incompetent. On the other hand, his brother Silk for the 1st and 2nd Respondents invoked the statute of limitation and this single issue, if sustained, will lead to the same effect.

In my humble view, it is prudent to deal with the 1st and 2nd Respondents’ second ground of objection first. For ease of reference, I reproduce the ground once more:

“(ii) The appeal is incompetent and ought to be struck out in that Reliefs (2) and (3) which ultimately seek the hearing of the appeal against the decision of the Governorship Election Petition Tribunal delivered on 7th July, 2012 outside the period of 60 days which violates the clear provision of Section 285 (7) of the Constitution of the Federal Republic of Nigeria, 1999 as amended.”

In his argument on the preliminary objection reproduced above, the learned Silk for the 1st and 2nd Respondents referred to S.285 (7) of the Constitution (supra) and submitted that the Court of Appeal had 60 days from the date of delivery of the judgment by the trial Tribunal to dispose of the appeal. He relied on *Amadi v. INEC & ors* (2012) 2 MJSC (Pt.1) 1 at 35. He said that the effect of 1st Applicant's prayer, if granted, will be to empower the Supreme Court to proceed with the hearing of the appeal in violation of s.285 (7) of the Constitution. B

He relied on the judgment of this Court delivered on 14/2/2012 in SC.23/2012, *Action Alliance v. INEC & Ors* (unreported). Learned Counsel contended that in an appropriate case, the Supreme Court may depart from its earlier decision but submitted that the appellant had not made a case to warrant a departure from the earlier decisions in this case. C

He relied on *Rossek v. ACB Ltd* (1993) 8 NWLR (Pt.312) 382 at 442; *Odi v. Osatile & Anor* (1985) All NLR 20; *Ifezue v. Madugha* (1984) 5 SC 29 on the time constraint with in which the Court shall dispose of a matter pending before it and the consequences of failure to dispose of the case within the stipulated time frame. He cited Section 285 (6) of the 1999 Constitution, Section 258 (1) of the 1979 Constitution and Section 294 (1) of the 1999 Constitution and submitted that they have the effect of limiting the time within which the Court shall accomplish the task before it. D

Learned Senior Counsel submitted, inter alia, that even if the decision of the court of Appeal is set aside without any further orders, the judgment of the Tribunal will still subsist as the time allowed for hearing appeal against it has long lapsed. He urged the court to strike out the appeal. E

In reply, learned Counsel for the 1st Appellant urged the Court to over-rule the objection based on section 285 (7) of the constitution (supra) in view of the 1st Appellant's allegation of "*fraudulent conspiracy against 3rd and 4th Respondents with the former acting PCA.*" He relied on *Hassan v. Aliyu* (2010) 7 MJSC (pt.1) 30-36 para. C-F and submitted that in view of the allegation of fraud and conspiracy, the limitation law will not apply. F

He argued that the 1st and 2nd Respondents' failure to reply to the issue raised by the 1st Appellant on the conflict between sec- G

tion 285(7) of the constitution and Article 7 of African Charter on Peoples and Human Rights means that the 1st and 2nd Respondents conceded that point raised by the 1st Appellant. He relied on *Nwankwo v. Yar'Adua* (2010) 3 MJSC (Pt.IV) p.1 at 28 on the consequences of failure to counter opponent's argument.

B He submitted that Section 285 (7) of the Constitution (supra) will not apply in the case as the acting PCA failed to act pursuant to the mandatory provision contained in paragraph 2 (3) of the Sixth Schedule to the constitution which he said is equivalent to a condition precedent to the hearing of the Appellant's appeal or suit. He C relied on *Agip Nig. Ltd v. Agip Petroleum Int.* (2010) V.I (Pt.III) MJSC 98 at 139. He referred to *Amadi v. INEC & ors* (supra) where the Court held:

D *"...Everything needed to deliver the judgment must be done and the judgment delivered within 60 days of the date of delivery of the judgment on appeal..."* and argued that the failure of the acting PCA to comply with para. 2 (3) of the sixth schedule to the constitution is fatal to the application of section 285 (7) of the Constitution.

E He argued that the authorities relied on by the 1st and 2nd Respondents are inapplicable to the facts of this case. He urged the court to depart from its earlier decisions in view of the fact that hearing of the appeal was frustrated by the 3rd and 4th Respondents who were responsible for the former PCA's default in setting up a F panel pursuant to para. 2 (3) of the sixth schedule to the 1999 constitution (as amended).

In any case, he argued that section 285 (7) of the constitution has a negative effect on the concept of natural justice and has adverse effect on section 36 (1) of the constitution and Article of African G charter on Peoples and Human Rights and that these were not raised in the cases relied on by the 1st and 2nd Respondents.

He urged the Court to hold that the preliminary objection is inappropriate. He urged us to dismiss same for lack of merit and substance.

H I have carefully considered the exhaustive submissions made by learned Counsel for the parties as well as authorities cited. The controversy centres on Section 285 (7) of the Constitution of the Federal Republic of Nigeria (as altered). The Section provides:

"S.285 (7): An appeal from a decision of an election tribunal

or Court of Appeal in an election matter shall be heard and disposed of within 60 days from the date of the delivery of judgment of the tribunal or Court of Appeal.”

The provision of the Constitution reproduced above, in my humble view, falls within the meaning of statute of limitation as defined by this Court in *Texaco Panama Incorporation v. SPDC (Nig) Ltd* (2002) FWLR (Pt.96) 579 SC. In the said case, Mohammed, JSC, stated that:

“A statute of limitation is one which provides that no Court shall entertain proceedings for the enforcement of certain right if such proceedings were set on foot after the lapse of a definite period of time... A cause of action is statute-barred if it is brought beyond the period laid down by the Statute within which such action must be filed in Court.” See *supra* at page 611, paras E-F.

In the context of the appeal before us and in the light of the meaning of limitation law, or statute, a cause of action includes a right to appeal. A limitation statute, once it has run out, takes away the right to seek remedy in the enforcement of the accrued right in Court, leaving the right bare and untouched. The right remains but the means to enforce it extinguished for all times. See *Ibrahim v. Judicial Service Committee Kaduna State* (1998) 14 NWLR (pt.584) 1 SC where this Court, per Iguh, JSC, said:

“It suffices to state that a statute of limitation... removes the right of action, the right of enforcement and the right to judicial relief in a plaintiff and this leaves him with a bare and empty cause of action which he cannot enforce if the alleged cause of action is statute-barred, that is to say, if such a cause of action is instituted outside the statutory period allowed by such law.” See also *P.N. Uddoh Trading Co Ltd v. Abere* (2001) FWLR (Pt.57) 900 SC.

Appellants do not dispute the fact that the period stipulated in section 285 (7) of the Constitution 1999 within which the Court Appeal shall hear and dispose of the appeal has run against them, leaving them with a right of appeal which they can never enforce. It is the same as if the right to appeal against the judgment of the trial Tribunal to the Court of Appeal is extinguished for all times.

Learned Counsel for the 1st Appellant urged us to hold that section 285 (7) of the Constitution (*supra*) is inapplicable to this ap-

peal because, according to learned Counsel, the 3rd and 4th defendants in the Tribunal fraudulently conspired with the then Acting President of the Court of Appeal for the latter to withhold action under paragraph 2 (3) of the 6th Schedule to the Constitution.

The said paragraph headed “*Governorship Election Tribunal*”
B reads:

“2 (3): *The Chairman and other members shall be appointed by the President of the Court of Appeal in consultation with the Chief Judge of the State, the Grand Khadi of the Sharia Court of Appeal or the President of the Customary Court of Appeal of the State, as the case may be.*”
C

Later on, I will deal with the question whether or not the Court has power to declare, for any reason whatsoever, that Section 285 (7) is not applicable to an appeal brought beyond the 60 days provided for in the Section. For now, I will assume, though not conceding, that the Court has power to grant the appellant’s request.
D

Now, fraud and conspiracy are criminal offences. Conspiracy is an agreement by two or more persons to do or cause to be done an illegal act or a legal act by an illegal means. See
E Patrick Ikemson & ors v. The State (1989) 3 NWLR (Pt.110) 455 at 477.

Also, the term, fraud, from which the word “fraudulent” is derived, is a willful act on the part of anyone, whereby another person is sought to be deprived of, by illegal or inequitable means, what he is entitled to. See Adimora v. Ajufo (1988)
F 3 NWLR (pt.80) 1; Egbo v. Nwali (1998) 6 NWLR (Pt.553) 201.

The allegation of fraud and conspiracy to truncate the provisions of the constitution with regard to the constitution of Governorship Election Tribunal is not only in issue, it is the sole basis of the invitation to the Court not to apply Section 285 (7) of the Constitution in this appeal. By Section 135 (1) of the Evidence Act, 2011 the allegation of crime on which the 1st Appellant founded his case has to be proved beyond reasonable doubt. See Nnachi v. Ibom (2004) 16 NWLR (Pt.900)
G 614; Nwobodo v. Onoh (1984) 1 SCNLR 1.
H

In my view, the allegation of fraud and conspiracy made against the then Acting President of the Court of Appeal in the conduct of his duty under the Constitution is a very seri-

ous one, bearing in mind that he, at the material time, was a judicial officer sworn to do justice without fear or favour, affection or ill-will to all manner of men and to uphold the Constitution.

Learned Counsel for the Appellant in his marathon submission, left his bare allegation without proof. Even if this Court has power to do so, it cannot, based on the materials placed before it by the appellant, exclude the application of Section 285 (7) of the Constitution from this appeal.

First Appellant argued that the failure of the Acting president of the Court of Appeal to perform his statutory duty under paragraph 2 (3) of the Sixth Schedule to the Constitution was responsible for his plight in this appeal. If it is so, he has my sympathy. However, where there is a right, there is a remedy – Ubi jus ibi remedium. He has to seek his remedy somewhere else, not in the abrogation of Section 285 (7) of the Constitution of the Federation 1999 (as amended) or in a departure from the plethora of cases emanating from the said Section.

Can the Court depart from its earlier decision on Section 285 (7) of the Constitution, or extend the time within which the Court of Appeal shall hear and dispose of the appeal? I answer both questions in the negative. This is election matter which is time-bound.

Section 285 (7) of the Constitution seeks to protect not only the right and interest of the parties to an election matter, but also those of the electorate, who have a right to expect that the matter be resolved expeditiously so that whoever has their collective mandate should settle down to discharge his/her duties instead of running in and out of Court for the better part of the term of four years. A departure from the Court's earlier decision on Section 285 (7) of the Constitution would amount to a violation of the Constitution which every Judge is bound by solemn oath to protect.

In the case of PDP v. Okorochoa & ors (Appeal No.SC.17/2012) in which ruling was delivered by this Court on 2nd March, 2012, the Court of Appeal pronounced its judgment within the 60 days allowed in Section 285 (7) of the Constitution but did not state their

reasons until after the expiration of the said period. The Court declined to hear the appeal as it was statute-barred.

Learned Counsel for the 1st appellant made the curious submission that section 285 (7) of the Constitution violates Section 36 (1) of the same Constitution as well as African Charter on Peoples and Human Rights. Perhaps, learned Counsel is not aware that a similar time-limiting provision was inserted in one of the repealed Electoral Acts and when the matter of its constitutionality came up, the Court said that provision of the Electoral Act was inconsistent with the Constitution.

The Constitution is the norm validating norm. It is the yardstick or standard by which the constitutionality and, ipso facto, validity of every legislation, subsidiary legislation or rules made thereunder can be tested and determined. It is an affront to common sense to say that the standard by which the validity of any law in the country is determined is in conflict with itself.]

In any case, appellant's right to appeal against the judgment of the Tribunal, like any other right under the law, is not absolute. Procedures from the enforcement of the right must be complied with. Even the ultimate right under the Constitution, the right to life, is not absolute. It is qualified. See s. 33 (1) and (2) (a), (b), (c) of the Constitution (supra).

Without law and its rules regulating the enforcement and enjoyment of rights under the law, chaos will reign supreme, with every man pursuing and enjoying his real or perceived right without regard to the right of others, and organised society may come to an end.

In view of all I have said above, the appeal is statute-barred by virtue of Section 285 (7) of the 1999 Constitution (supra). This Court has no jurisdiction to entertain it. The preliminary objection raised and argued by the 1st and 2nd Respondents is sustained.

The appeal is struck out for want of jurisdiction.

For the same reasons, the appeal of the 2nd appellant is also struck out.

Parties to bear their costs.

MUNTAKA-COOMASSIE JSC

The appeal is against the ruling of the Court of Appeal, Calabar Division delivered on the 25/1/2013. Hon. Justice Lawal Garba JCA, delivered the lead judgment of that court. The Chairman of the Cross-River State Governorship Election Tribunal Calabar delivered its decision on 17/7/2012. B

The 2nd appellant, Pastor Usani Uguru Usani, promptly filed his Notice and Grounds of appeal within time, on 6th day of August, 2012. C

The 1st and 2nd Appellants also filed their briefs of argument within time. However, according to the appellants the then President of the Court of Appeal Hon. Justice Adamu JCA *“blatantly refused to set up the Appeal Panel”* to hear the appeal despite repeated demands, pressure and petitions. To show their wariness, the appellants filed a motion urging that they be heard on the main appeal. In the mean time, the 4th Respondent, Senator Liyel Imoke filed a preliminary objection to the hearing of the appeal on the ground that the appeal is statute barred, going by the provisions of section 285 (7) of 1999 Constitution of the Federal Republic of Nigeria (as amended). D

The Court of Appeal ruling in a nut-shell, is that since 60 days has expired from the date the trial Tribunal delivered its judgment the appeal will be declared a nullity as it is statute barred. That court declined to go further and declined jurisdiction. The two appellants therefore appealed against the above ruling of the Court of Appeal herein after called lower court. E

This is not one appeal but two separate appeals. This court and all the learned counsel in this appeal agreed that the decisions in this appeal will abide the sister one as both have the same facts and issues. F

That being the case I will continue and state that the two appellants were not satisfied with the ruling of the lower court in dismissing the appeal before it. The Appellants therefore filed a Notice of appeal containing a number of grounds of appeal and formulated five issues for the determination of this appeal. G

a) Whether the time frame contemplated by section 285 (7) of the 1999 constitution (as amended) is static in nature, and cannot be H

regulated by the courts, and permit of no exception whatsoever.

b) whether failure of the lower court to consider all issues of law and all applications/matters before it, but proceeded to consider the later motion of the 4th Respondent amounted to a miscarriage of justice.

B c) whether section 285 (7) of the constitution permit official misconduct with impunity, even where it deprived a citizen of his basic fundamental rights to fair hearing and rights under Article 7 of the African Charter on Human and Peoples Rights.

C d) Whether the Supreme Court can invoke section 22 of its Act to hear and determine this appeal, upon the failure of the lower court to state the peculiarity of this case to the Supreme Court as requested by the Appellants.

D e) Whether it is constitutional to use legislation to control the exercise of judicial functions.

The 1st, 2nd, 3rd and 4th Respondents herein preliminary objection to the hearing of this appeal urging as follows:-

"i. The appeal is incompetent and ought to be struck out in that.

E *ii. Relief (1) of the Notice of Appeal does not arise from the Election Petition which originated the matter, and amounts to introduction of fresh relief into the case.*

F *iii. Reliefs (2) and (3) which ultimately seek the hearing of the appeal against the decision of the Governorship Election Petition Tribunal delivered on 7th July, 2012, outside the period of 60 days which violates the clear provision of Section 285 (7) of Constitution of the Federal Republic of Nigeria (1999 (as amended))".*

G Various reply to the preliminary objection were filed and argued. The main preliminary objection of all the respondents, centered around the fact that the appeal is incompetent, statute barred therefore this Court must decline jurisdiction to hear the said appeal. Definitely the submissions offered in the preliminary objections are sound enough to make this court hold that it lacks jurisdiction by H virtue of the provisions of Section 285 (7) which provides:-

"An appeal from a decision of an Election Tribunal or Court of Appeal in an election matter shall be heard and disposed of within 60 days from the date of the delivery of judgment of the Tribunal or court of Appeal".

I was privileged to have read before now the all encompassing lead judgment of my learned brother Ngwuta JSC, I agree entirely with his reasoning and conclusion. I adopt them as mine. I too strike out this appeal as this court is not saddled with jurisdiction to entertain the appeal of the two appellants. I abide by the consequential orders made by my Lord Ngwuta JSC.

B

FABIYI JSC

I have had a preview of the judgment just delivered by my learned brother - Ngwuta, JSC. I agree with the reasons therein advanced to arrive at the conclusion that the appeal deserves to be struck out.

C

The facts of the matter have been clearly set out in the lead judgment. Put briefly, the 2nd appellant was sponsored by the 1st appellant to contest the election conducted by the 1st respondent on 25th February, 2012. The 4th respondent who was the 3rd respondent's candidate won majority of the votes cast and was declared the winner by the 1st respondent. The appellants felt aggrieved and filed their petition at the trial Tribunal. The petition was dismissed on 17th July, 2012 for lack of merit.

E

The appellants felt unhappy and appealed to the Court of Appeal (court below) vide a notice filed on 6th August, 2012. On 3rd October, 2012, the 4th respondent filed a motion at the court below in which he prayed for:

F

“An order dismissing Appeal No.CA/CNAEA/181/2012 filed by the 1st and 2nd appellants for being statute barred.”

The ground for the relief is that the appeal has been caught up by the provisions of section 285(7) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) as the time to enter judgment by the Court below had lapsed.

G

In its ruling of 25th January, 2013, the court below considered the applicability of the provisions of section 285(7) and found that since the period of 60 days stipulated in the said section had lapsed the appeal before it was statute barred and eventually ‘dismissed’ it.

H

This is a further appeal to this court by the two appellants to wit, the party and its candidate at the stated election.

It is not in contention that the period of 60 days for hearing of

the appeal by the court below had lapsed. Indeed, section 285(7) of the 1999 Constitution (as amended) provides as follows:-

“S.285(7) : An appeal from a decision of an election tribunal or Court of Appeal in an election matter shall be heard and disposed of within 60 days from the date of the delivery of judgment of the tribunal or Court of Appeal.”

Let me observe it here that the word ‘shall’ has been employed by the lawmakers in the Constitution which is the grund norm. It signifies a command. Since it is made in mandatory terns, the envisaged act must be complied with. There appears to be no escape route in the matter. See: Onochie v. Odogwu (2006) 6 NWLR (Pt. 975) 65 at 89.

The 1st appellant placed reliance on the provisions of section 36 of the stated Constitution. The Legislature was aware of same when the later provision of section 285(7) was made to limit the time for the completion of an appeal by the court below. Specific time frame was made for a purpose which the court and parties cannot wish away. It is my view that the provision relating to fair hearing is not at large. It can only apply to a live matter. Let me further make the point again that section 36 of the Constitution should not be interpreted in a way that makes the later section 285(7) of the Constitution moribund. See: Shelim v. Gobang (2009) 12 NWLR (Pt.1156) 435 at 453.

I wish to further state it that the provisions of the Constitution should be read together so as to produce a harmonious result. See: Akaighe v. Idama (1964) 1 All NLR 322. A broad interpretation or liberal approach leading to a global view should be employed so as to appreciate the intention of the lawmakers. See: Rabi v. The State (1980) 8-11 SC 130 at 151, 195. The intention of the Lawmakers is that election matters should be completed in good and reasonable time.

Learned counsel for the 1st appellant also attempted to rely on African Charter on Peoples and Human Rights. It is necessary to say it in passing that same passed through the domestication test’ by the National Assembly before it became applicable as an Act. I cannot surmise how it can be employed to supplant the provision of section 285 (7) of the 1999 Constitution (as amended).

Finally, let me say it without any equivocation that this court

has pronounced on this issue in many cases of recent. I still find it difficult to change my stance as no further viable arguments have been canvassed to persuade me to the contrary.

For the above reasons and those carefully set out in the lead judgment, I too feel that the appeal is without merit. It is hereby struck out for want of jurisdiction. I abide with all consequential orders contained in the lead judgment. B

For the same reasons stated above, the appeal of the 2nd appellant is also struck out.

C

GALADIMA JSC

I have read before now the Judgment of my learned brother NGWUTA JSC just delivered. I entirely agree. This is an appeal by the 2nd Appellant against the decision of the Calabar Court of Appeal Division, delivered on 25/01/13, which dismissed the Appellant's appeals against the Judgment of the Governorship Election Petition Tribunal sitting in Calabar dated 17/07/2012. The 4th Respondent was the candidate of the 3rd Respondent (Peoples Democratic Party), while the 2nd Appellant was the 1st Appellant's candidate at the said elections. The 4th Respondent was declared and returned as duly elected Governor of Cross Rivers State having scored the majority of lawful votes cast and accordingly, issued with the certificate of return and sworn into office. E

Being dissatisfied with the declaration, the Appellants on 16/3/2012 filed a petition against the Respondents on several grounds and seeking several reliefs. On 17/7/2012, the Governorship Election Petition Tribunal, its judgment upheld the challenge to its jurisdiction to entertain the petition predicated on a pre-election matter. F However, the Tribunal *ex-abundanti cautela*, (in the event that the conclusion reached on the jurisdictional challenge turned out to be erroneous) proceeded to determine the petition on its merit and accordingly dismissed the petition. Aggrieved by the Tribunal decision, the 1st and 2nd Appellants herein, on 6/8/2012 separately appealed H against the said judgment.

The 1st and 2nd Appellants filed their briefs of argument on 23/8/2012 and 24/8/2012 respectively. All the Respondents filed their respective briefs of argument including their Notices of Preliminary

Objection timeously, while the Appellants filed their respective Reply briefs accordingly. It must be noted that all these processes were filed while the Court of Appeal was on Annual vacation.

Worried and anxious, the 2nd Appellant 24/09/2012, filed a Motion On Notice Seeking to set down the appeal for hearing and for an order of accelerating hearing of the Appeal. However on the 27/9/2012 the 3rd Respondent filed a counter-affidavit to the 2nd Appellant's Motion of 24/9/2012, wherein it was expressly stated that the appeal has lapsed as the requisite sixty (60) days mandatory to the hearing and determination of the appeal had expired on 15/9/2012. Again in a ding-dong "battle"; but in a funny kiddie game of hide-and-seek, the 4th Respondent filed a Motion on Notice on 3/10/2012, seeking for the dismissal of the Appeal on the ground that it was statute-barred. On his part and in an apparent reaction to the 4th Respondent's Motion seeking to dismiss the appeal, the 1st Appellant on 14/1/2013, 120 days after 60 days statutorily required for hearing and determination of the appeal, filed Motion On Notice Seeking for the following reliefs:

1. *An order setting down this appeal for hearing and determination.*
2. *An order granting 1st Appellant/Applicant leave and extension of time to hear and determine this appeal in the interest of justice.*
3. *Alternatively, an order stating a case to Supreme Court of Nigeria to determine whether S.285(7) of the 1999 Constitution (as amended) applied in the circumstance of this case where there is evidence of fraudulent conspiracy of 3rd and 4th Respondents with PCA in setting up a Panel to determine this appeal within 60 days from the date of Judgment of the trial Tribunal.*
4. *Any other order (S) as this Honourable Court may deem fit to make in the circumstance of this case."*

On 15/1/2013 and 18/1/2013, when the appeal came up for hearing the lower court decided to hear the 4th Respondent's Motion on Notice, seeking to dismiss the appeal for want of jurisdiction. On 25/1/2013, the court, in an unanimous decision found merit in the 4th Respondent's Motion and accordingly dismissed the appeal. See pp 1739 - 1784 of the record. Aggrieved by this decision the 1st Appellant filed two Notices of Appeal; the first Notice was filed on 5/

2/2013 and the second Notice fired on 8/3/2013.

When this appeal came up for hearing on 18/3/2013, learned counsel for the 1st Appellant, LAZARUS A. ISABI-UNDIE Esq. sought leave of this Court to abandon 1st Appellant's Notice of 5/2/2013 and placed reliance on that of 8/2/2013, wherein 1st Appellant formulated Five issues for determination as in his Brief of argument filed on 25/2/2013 as follows:

“(1) Whether the distinguished justices of the Court below judiciously and judicially appraised when 1st Appellant was served with the 4th Respondent's motion filed on 3/10/2012 and where the answer is in the negative, whether distinguished justices of the court below were right in holding that 1st Appellant was served the 4th Respondent's motion more than a month before 1st Appellant reacted to same by filing his motion of 14/1/2013. (Ground 1)

(2) Whether Appellants through their motion filed on 14/1/2013 challenged the constitutionality of S.285(7)-of 1 999 Constitution and where the answer is in the affirmative was the court below right when they neglected to consider the constitutional question validly raised in the course of the court's ruling of 25/1/2013. (Grounds II & III)

(3) Whether in the circumstances of established fraudulent conspiracy against the former Acting PCA with 3rd & 4th Respondents, S. 285(7) (supra) applies to Appellants' appeal in view of non satisfaction of SS.6(1) &(3), 6(6)(a) & (b), 36(1) of the constitution (supra) and article 7 of African Charter on Peoples and Human Rights by former acting PCA and where the answer is in the negative, whether the court below was right when it held that Appellants' appeal is statute barred on the basis of which the appeal was dismissed. (Grounds IV, V, VI and IX)

(4) Whether the distinguished justices of the court below fairly appraised Appellants argument filed in support of counter affidavit on 17/1/2013 and where the answer is in the affirmative, whether 4th Respondent's motion filed on 3/10/2012 was regularly heard. (Grounds VIII)

(5) Whether Appellants were right when they invited the distinguished justices of the court below to consider and determine all applications including the merit of the appeal and where the answer is in the affirmative, whether this Honourable Court has the jurisdic-

tion to determine the merit of this appeal without the necessity of remitting this appeal back to the court below in the over all interest of justice. (Grounds VII, X & XII)”

The 2nd Appellant filed his Notice and Grounds of Appeal and in his brief of argument filed on 25/2/2013 set out also FIVE issues
B for determination as follows:

“(a) Whether the time frame contemplated by section 285(7) of the 1999 Constitution (as amended) is static in nature, and cannot be regulated by the courts, and permit of no exception whatsoever.

*(b) Whether failure of the lower court to consider all issues of
C law and all applications/matters before it, but proceeded to consider the later motion of the 4th Respondent amounted to a miscarriage of justice.*

*(c) Whether Section S. 285(7) of the constitution permit offi-
D cial misconduct with impunity, even where it deprived a citizen of his basic fundamental rights to fair hearing and rights under Article 7 of the African Charter on Human and Peoples Rights.*

*(d) Whether the Supreme Court can invoke section 22 of its
E Act to hear and determine this appeal, upon the failure of the lower court to state the peculiarity of this case to the Supreme Court as requested by the Appellants.*

(e) Whether it is constitutional to use legislation to control the exercise of judicial functions.”

On behalf of the 1st and 2nd Respondents, their learned Se-
F nior Counsel, Dr. Onyeachi Ikpeazu settled a Brief of Preliminary Objection to the hearing of the appeal on the following grounds:

“1. The appeal is incompetent and ought to be struck out that-

*(i) Relief (1) of the Notice of Appeal does not arise from the
G Election Petition which originated the matter, and amounts to intro-duction of fresh relief into the case.*

*(ii) Relief (2) and (3) which ultimately seek the hearing of the
H appeal against the decision of the Governorship Election Petition Tri-bunal delivered on 7th July, 2012, outside the period of 60 days which violates the clear provision of Section 285(7) of the Constitu-tion of the Federal Republic of Nigeria, 1999 (as amended).”*

Lengthy arguments are canvassed on the preliminary objec-
tion from paragraph 4.00 - 4.34 of the Brief. Without prejudice to
the preliminary objection raised, learned Senior Counsel presents

sole issue for determination as follows:

“Was the Court of Appeal correct when it held that the provisions of Section 285(7) of the Constitution are valid and subsisting and that the appeal was statute barred.”

On his part the 3rd Respondent’s learned counsel, E.O.E. Ekong, Esq. filed a brief of argument on 4/3/2013 in which a Notice of Preliminary Objection was raised and argued from paragraphs 4.01 - 4.03. He submits that in the unlikely event that this Court is desirous of determining this appeal on the merit, the two issues for determination according to the learned counsel should be:-

“01. Whether the Court of Appeal was right when it dismissed the Appellants’ Appeal by reason of effluxion of the time under Section 285(7) of the 1999 Constitution of the Federal Republic of Nigeria (as amended).”

I have already set out the grounds upon which the 1st and 2nd Respondents’ Notice of Preliminary Objection was based:

In the 3rd Respondents’ Brief of Argument, the Preliminary Objection was raised in respect of the 2nd Respondent’s appeal. It has been noted that on 18/3/2013 when this appeal was heard learned counsel for the 2nd Appellant, Professor Tony Ukam Esq. has agreed to abide by the outcome of our decision in respect of the 1st Appellant’s appeal. A fortiori, I do not think he will express a different view in respect of the Preliminary Objections raised regarding the 1st Appellant brief.

However, the learned senior counsel for the 4th Respondent in the brief elaborately set out his preliminary objection. The ground upon which it is predicated are as follows:

“(1) Ground of Appeal No. 1 is not a challenge of the ratio decidendi of the decision appealed against. It is a challenge to a comment or at best an obiter dictum which cannot form the basis of an appeal.

(2) Grounds of appeal Nos. II, III, IV, V, VI, VII, VIII and IX together with their particulars are liable to be struck out as they are verbose, argumentative, repetitive, narrative, contradictory in terms and thus offend the provisions of Order 8 Rule 2(3) of the Supreme Court Rules.

(3) Grounds of Appeal Nos. X and XI are incompetent and ought to be struck out as they do not arise from the decision ap-

pealed against, neither do they disclose any reasonable ground of appeal.

(4) All issues formulated by the 1st Appellant for the determination of this appeal, that is to say, issues 1, 2, 3, 4 and 5 at pages 6 and 7 of the 1st Appellant's brief of argument are incompetent and should be struck out. The arguments based on the issues should also be discountenanced as they are based on incompetent grounds of appeal from which no issue should be formulated.

(5) Consequently, the appeal should be struck out for being incompetent as there is no competent ground of appeal to sustain it."

I am disposed to consider first the preliminary objection to the hearing of the appeal since this is a pre-emptive strike to scuttle the hearing of the appeal and dispose of same in limine See: GALADIMA V. TAMBAL (2000) 11 NWLR (Pt. 677) 1 at 18, and OKAFOR V. ADIG ANAMBRA STATE (1991) 6 NWLR (Pt. 200) 659.

The learned counsel for the 4th Respondent, in his wisdom raised objections to specific grounds of Appeal. It is note-worthy that if the objections succeed and sustained this will result in striking out of the appeal as incompetent. On his own part, the learned counsel for the 1st and 2nd Respondent invoked the statute of limitation, This single objection, if considered and sustained, will lead to the same result or conclusion. This is their second ground of objection. It is further reproduced thus:

"1. The Appeal is incompetent and ought to be struck out in that:-

"(ii) Reliefs (2) and (3) which ultimately seek the hearing of the appeal against the decision of the Governorship Election Petition Tribunal delivered on 7th July, 2012 outside the period of 60 days which violates the clear provision of Section 285(7) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)."

In his argument on this preliminary objection learned counsel for the 1st and 2nd Respondents referring to section 285(7) of the Constitution submitted that the court below had 60 days from the date of delivery of the Judgment by the trial Tribunal to dispose of the Appeal. It contended that the granting of the Appellant's prayer has the effect of enabling this Court to proceed with the hearing of the appeal clear violation of s. 285(7) of the Constitution. Reliance was placed on the cases of AMADI V. INEC & ORS. (2012) 2 MJSC

(Pt. 1) 1 at 35 and SC.23/2012 ACTION ALLIANCE V. INEC & ORS. (Unreported) delivered on 14/2/2012. Relying further on Rossek V. ACB Ltd. (1993) 8 NWLR (Pt 312) 382 at 442, ODI V. OSATILE & ANOR (1985) All NLR 20 and IFEZUE V. MBADUGHA (1984) 5 SC 29, learned counsel further contended there is time stipulated within which the court is disposed of a matter pending before it. B

In reply, learned counsel for the 1st Appellant urged the court to over-rule the objection based on section 285(7) of the Constitution (supra) in view of the 1st Appellant's allegation of fraudulent conspiracy against the 3rd and 4th Respondents with the former Ag. President of the Court of Appeal. He relied on the case of HASSAN V. ALIYU (2010) 7 MJSC (Pt. 1) 30 - 36 and submitted that in view of the allegation of fraud and conspiracy the limitation law will not apply. C

Learned counsel argued that the 1st and 2nd Respondents have failed to reply to the issues raised by the 1st Appellant on the conflict between Sections 285 (7) of the Constitution and Article 7 of African Charter on Peoples and Human Rights, means that the 1st and 2nd Respondents conceded to the point raised by the 1st Appellant. He relied on NWANKWO V. YAR'ADUA (2010) 3 MJSC (Pt. iv) p.1 at 28 on the consequences of failure to counter opponent's argument. D

He further submitted that section 285(7) of the Constitution will not apply in the case as the Acting President of the Court of Appeal failed to act pursuant to the mandatory provision contained in paragraph 2(3) of the sixth schedule to the constitution which he has contended equivalent to a condition precedent to the hearing of the Appellant's appeal or suit. He relied on AGIP (NIG.) LTD. V. AGIP PETROLEUM (2010) (Pt iii) MJSC 98 at 139, and AMADI V. INEC & ORS. Supra and argued that the failure of the Ag. President of the Court of Appeal to comply with paragraph 2(3) of the sixth schedule to Constitution is fatal to the application of S.285(7) of the constitution. It is argued that S.285(7) of the Constitution has a negative effect on the concept of natural justice and has adverse effect on S.36(1) of the constitution and Article of African Charter on Peoples and Human Rights and these were not raised in the case relied on by the 1st and 2nd Respondents. Learned counsel finally urged the court F

to dismiss the objection for lacking in merit and substance.

I have considered this matter in the light of elaborate submissions made by the learned counsel for the respective parties as well as the cases cited in reliance of those submissions. Clearly, the fulcrum of the whole matter is centred on S.285(7) of the Constitution of the Federal Republic of Nigeria 1999 (as amended). This is reproduced herein.

“285(7): An appeal from a decision of an election tribunal or court of Appeal in an election matter shall be disposed of within 60 days from the date of the delivery of judgment of the tribunal or Court of Appeal.”

This provision falls within the meaning of statute of limitation as defined on *TEXACO PAMAMA INCORPORATION V. SPPC (NIG.) LTD.* (2002) FWLR (Pt. 96) 579 SC. A statute of limitation is one which provides that no court shall entertain proceedings for the enforcement of certain right if after the lapse of a defined period of time. A cause of action instituted or brought beyond the time limited by the statute is said to be statute-barred. The instant appeal by virtue of section 285(7) of the constitution (*supra*) cannot be entertained as it is incompetent. The Appellant has right of action but it remains unenforceable and the right is extinguished for all times. See *IBRAHIM V. JUDICIAL SERVICE COMMITTEE KADUNA STATE* (1988) 14 NWLR (Pt. 584) 1 SC and *P.N. UDDOH TRADING GO. LTD. V. ABERE* (2001) FWLR (Pt. 57) 900 SC. The stark fact of this case that indisputably the period stipulated in Section 285(7) of the 1999 Constitution within which the Court of Appeal shall hear and dispose of the appeal has lapsed. Similarly, the right to appeal against the Judgment of the trial Tribunal to the Court of Appeal, is as well extinguished for all times.

The argument of the learned counsel for the 1st Appellant that section 285(7) of the Constitution (*supra*) is inapplicable to this appeal because the 3rd and 4th defendants in the Tribunal fraudulently conspired with the then Ag. President of the Court of Appeal for the latter to withhold action under paragraph 2(3) of the 6th schedule to Constitution cannot be taken serious. It is baseless. If the 1st Appellant claims he has a right he must pursue the abrogation of section 285(7) of the Constitution of 1999 (as amended) or in a departure from the plethora of cases emanating from the said Section 285(7).

This is one case far too many. One would have with a plethora of decisions of this Court on provisions of S.285(7) the learned Appellants' counsel should have known that it is a waste of time of this Court and theirs to embark on a fruitless venture just as in this matter.

In view of all I have said above and in the light of detailed reasons given by my learned brother NGWUTA JSC, I too have come to the conclusion that this appeal is statute-barred by virtue of Section 285(7) of the 1999 Constitution. Accordingly the preliminary objection raised by the 1st and 2nd Respondents is sustained and the 1st Appellant Appeal is struck out for want of jurisdiction. For the reasons espoused above the appeal of the 2nd Appellant is equally struck out. Parties to bear their own costs.

ARIWOOLA JSC

I had the opportunity of reading in draft the lead judgment of my learned brother, Ngwuta, JSC just delivered.

The appeal is against the ruling of the Calabar Division of the Court of Appeal, herein after called Court below, delivered on 25th January, 2013.

The appellants herein were petitioners before the Election Tribunal wherein they had challenged the declaration of the 4th respondent as the winner of the Governorship Election which was conducted by the 1st and 2nd respondents. The 4th respondent being the candidate of the 3rd respondent in the said election. At the end of the proceedings before the tribunal, the petitioners' case was dismissed having held that the election was conducted in substantial compliance with the provisions of the Electoral Act and that the 4th respondent was properly declared the winner having won the majority of lawful votes cast at the said election.

On appeal to the court below and upon a preliminary objection to the hearing of the appeal by the respondents, the court below found that the appeal was statute barred and dismissed same. That has led to the instant appeals.

Before us now, the respondents have again raised objection to the hearing of the appeals. In particular, the 1st and 2nd respondents objected to the hearing on the ground, inter alia, that reliefs (2) and

(3) sought on the appeals are against the decision of the Election Tribunal on the appellants' petition which was delivered on 7th July, 2012 outside the prescribed period of 60 days and in violation of Section 285 (7) of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

B There is no doubt that the appellants have right of appeal to the court below against the decision of the Election Tribunal. They surely cannot be denied such constitutionally guaranteed right. They are also entitled to appeal to this court. However, to enjoy this right
C and prosecute an appeal against the decision of the Election Tribunal as in the instant case, an appeal must be filed, heard and disposed of within the prescribed time set in the Constitution. Section 285 of the 1999 Constitution of the Federal Republic of Nigeria provides for
D *"the establishment of Election Tribunals and Time for Determination of Election Petitions"*.

Subsection 7 of Section 285 thereof goes thus:

"An appeal from a decision of an Election Tribunal or Court of Appeal in an election matter shall be heard and disposed of within 60 days from the date of delivery of judgment of the Tribunal or Court of Appeal."
E

There is no doubt and the appellants are not contesting the fact that after the judgment of the tribunal, which they appealed to the court below, was delivered on 7th July, 2012, the court below
F was unable to "hear and dispose of" their appeal within sixty (60) days as required by the Constitution. But their argument, inter alia, was that, in view of the allegation of *"fraudulent conspiracy against the 3rd and 4th respondents with the former acting President of the Court below by the 1st appellant"*, the law, that is, the Constitutional
G provisions on time limit should not be allowed to operate in the instant case.

However, learned counsel to the 1st appellant conceded that by virtue of section 285(7) of the constitution, the court of Appeal is entitled or bound to deliver its judgment within 60 days but he con-
H tended that this will only apply where the President of the court of Appeal acts pursuant to the mandatory provisions of paragraph 2(3) of the sixth Schedule to the Constitution in the appointment of the Chairman and other members of Governorship Election Tribunal.

Learned counsel submitted that the argument of the respon-

dents' counsel that this court cannot set aside Section 285(7) is misplaced. He urged the court to declare it unconstitutional and overrule or dismiss the objection of the 1st and 2nd respondents.

It is clear from the constitutional provisions above that it is a Limitation provision outside which time the court shall not be competent to adjudicate or exercise jurisdiction on any such matter before it. Any proceedings concluded outside the time limit, no matter how very well decided, will certainly amount to nothing and will be so declared a nullity. Generally, statute of limitation begins to run from the moment the cause of action arises. See *John Eboigbe Vs NNPC* (1994) 6 SCNJ 71; (1994) NWLR (Pt.347) 649; *Sanda Vs Kukawa Local Government* (1991) 2 NWLR (Pt.174) 379. B
C

In the instant case, the limitation law began to run from 7th July, 2012 when the Election Tribunal delivered its judgment on the appellants' petition. In other words, the 50 days within which an appeal must be filed, heard and determined by the court below started to run from the 7th day of July, 2012. Therefore, whatever may cause delay in the hearing and determination of the appeal within 50 days will not be material and cannot extend or cause to be extended by a single day, the prescribed sixty (60) days within which the appeal must be disposed of. D
E

It has been held that the moment the cause of action begins to run, it will be immaterial that a party was absent from the jurisdiction or there was no court within the jurisdiction to entertain his claim. As in this case, it was of no moment that the Panel of Judges that was to hear the appeal was not put in place or constituted by the appropriate authority. Time, they say, waits for no man. See; *Egboigbe Vs NNPC* (supra); *Solomon Vs. African Steamship Company* 9 NLR 99; *Chief Amadi & Anor Vs INEC & Ors* (2012) 2 SCM 1 (2012) LPELR; *Aremo II Vs Adekanye & Ors* (2004) 13 NWLR (Pt.891) 476 at 572. F
G

In effect, by virtue of the provisions of Section 285 (7) of the 1999 Constitution (as amended), the appellants' appeal before the court below had become statute barred and was accordingly so properly held by the court. The reference to African Charter on Peoples and Human Rights by the appellants is rather unnecessary to say the least. In other words, this court on this matter cannot and will not overrule itself for any reason. It interprets the law as it is and has no competence to amend any law. This court will not consider the merit H

of an appeal that has become statute barred.

For the above reason and the very well articulated reasoning in the lead judgment of my learned brother, which I wholly adopt as mine, I too will sustain the objection raised by the 1st and 2nd respondents that the two appeals of both 1st and 2nd appellants are statute
B barred and this court lacks jurisdiction to entertain them.

Accordingly, the appeals are struck out. Parties are to bear their respective costs.

C

MUHAMMAD JSC

I have read in draft the lead judgment of my learned brother Ngwuta, JSC. I agree substantially with his reasoning and conclusion that the preliminary objections raised by the respondents challenging
D the jurisdiction of this Court to entertain the appeal are well founded. I sustain the objections in part. I take the liberty of emphasizing his lordship's position in my words. In passing, I will state why I am unable to fully sustain respondents' entire preliminary objections.

The 1st appellant sponsored the 2nd appellant in the election
E for the office of the Governor of Cross River State. The said election was conducted by the 1st respondent on the 25th day of February, 2012. The 4th respondent who was the 3rd respondent's candidate at the election having won majority of the votes cast at the election was declared the winner of the election by the 1st respondent ag-
F grieved by the appellants filed their petition before the Cross Rivers State Governorship Election Petition Tribunal sitting at Calabar challenging the declaration and return. The petition was dismissed by the tribunal in its judgment dated 17th July, 2012, having found it to be
G lacking in merit.

Dissatisfied with the tribunal's decision, the appellants appealed to the Calabar Division of the Court of Appeal (hereafter referred to as the court below) vide a notice filed on 6th August, 2012.

By his motion filed on the 3rd October, 2012, the 4th respon-
H dent sought of the court below a sole relief thus:-

"1 An Order dismissing Appeal No. CA/C/NAEA/181/2012 filed by the 1st and 2nd appellants for being statute barred."

The relief was sought on the ground *"that the appeal has been caught up by the provisions of Section 285 (7) of the Constitution of*

the Federal Republic of Nigeria 1999 (as mended) as the time or period allowed the Court of Appeal to hear and dispose of the appeal from the judgment of the tribunal has since lapsed.”

In a well considered ruling dated 25th January, 2013, the court before “dismissing” appellants’ appeal made some crucial findings. At pages 1754 - 1756 of the record the court enthused as follows:- B

“In the premises of these authorities, the 1st Appellant is deemed in law to have admitted these facts which are in controvertible any way. I say the facts are incontrovertible because of the following;

(a) In the notice of appeal filed by the 1st Appellant on 6/8/12 which appears at pp.942-955 of the record of the appeal, the judgment of the tribunal was stated to have been delivered on the 17th day of July, 2012. C

(b) Copy of the judgment appealed against which is at PP. 900-940 of the record of appeal was dated the 17th day of July, 2012. D

b) The motion by the 1st Appellant filed on the 14/1/13 seeks for inter-alia, setting down the appeal for hearing and determination on the merit in prayer 1. This means that by the 14/1/13 when the motion was filed, the appeal was yet to be heard and determined. This was more than one month after the 4th Respondent’s motion was filed and served on the 1st Appellant. E

(d) By the provisions of Section 285(7), the court has sixty (60) days from the date the judgment of the tribunal was delivered to determine the appeal against it. “ F

The court continued at page 1759 as follows:-

“Since the judgment of the tribunal was delivered on the 17/7/12, the sixty (60) days prescribed in the provisions of Section 285(7) within which the court must hear and determine an appeal against it, started to run from that date. By simple arithmetic or ordinary calculation, sixty (60) days from the 17/7/12 were to run from that date to the 15th day of September, 2012 because both the months of July and August, 2012 had thirty-one (31) days each. The 15th September, 2012, was therefore the last of the sixty (60) days within which the court must hear and determine the appeal against the decision of the tribunal pursuant to the provisions of Section 285 (7),” H

It concluded at pages 1768 - 1769 as follows:-

“Before I end this short Ruling, it is expedient to commend to learned counsel the advice by the Supreme Court in the case of

Adewunmi v. Plastex Ltd. (1986) 3 NWLR (32) 767 where it said that:-

‘where counsel is confronted with an inescapable and sustainable legal position, the proper counsel for him to adopt in the discharge of his duty to his client and to uphold the dignity and integrity of his office as an officer of the court, it to submit to judgment in accordance with the law.’

The extant position of the law as expounded by the Supreme Court in the cases cited supra on the application of the provisions of section 285 (7) (for our purpose) of the constitution, has been that an appeal not determined within the prescribed period would be statute barred thereby robbing the court of the necessary vires, jurisdiction, to entertain it... in the result, I find merit in the motion which therefore succeeds. For being statute barred, the appeal No. CA/C/NAEA/Gov/181/2012 is hereby dismissed.”

The instant appeal is informed by the foregoing decision of the court below.

At the hearing of the appeal, parties who had earlier filed and exchanged their brief of argument adopted and relied on their respective briefs including appellants’ reply briefs in answer to the respondents’ arguments in furtherance of their preliminary objections to the competence of the appeal as contained in the latter’s briefs. Being a challenge to the jurisdiction of this Court to entertain the appeal, the objections must be addressed first and if any succeeds and is sustained the hearing of the appeal out rightly abates.

Learned counsel for the 1st and 2nd respondents aver that the appeal is incompetent on the grounds that:-

“I. Relief (1) of the Notice of Appeal does not arise from the election petition which originated the matter and amounts to introduction of fresh relief into the case.

II. Reliefs 2 & 3 which ultimately seek the hearing of the appeal against the decision of the Governorship Election Petition Tribunal delivered on 7th July, 2012, outside the period of 60 days which violates the clear provision of Section 285 (7) of the Constitution of the Federal Republic of Nigeria (as amended).”

Now, looking at appellants’ grounds of appeal, their particulars as well as the reliefs canvassed in their virtue, it is beyond dispute that some persist in spite of the respondents’ objection to their com-

petence. Abiding these persistent grounds and reliefs is appellant's real grouse as to whether or not, given the facts of their situation, vis-à-vis Section 285 (7) of the 1999 Constitution (as amended), the court below is right to have held that it is without the jurisdiction to hear and determine their appeal.

I do not have the slightest doubt that the lower court is right in its application of the provision of S 285 (7) of the 1999 Constitution to the appellant's circumstance. The ruling of the court earlier reproduced in this judgment clearly shows the period the appellants notice was filed, the fact that 60 days had elapsed and the appeal was yet to be determined. And Section 285 (7) Provides:-

"An appeal from a decision of an Election tribunal or Court of Appeal in an election matter shall be heard and disposed of within 60 days from the date of the delivery of judgment of the tribunal or Court of Appeal."

The foregoing provision limits the time within which appellants right of appeal is to be exercised. The right abates as same cannot be enjoyed outside the time provided by the section. This is exactly what the court below holds in its ruling. This finding remains unassailable since, as held by this Court, a limitation statute removes from the plaintiff his right of action, enforcement and judicial relief leaving him with a bare and empty cause of action. See Ibrahim v. Judicial Service committee, Kaduna State (1998) 14 NWLR (Pt.584) 1st Udoh Trading co Ltd v. Abere (2001) FWLR (Pt 57) 9005. It is for this reason that I also strike out the appeal.

Parties are to bear their respective costs.

OGUNBIYI JSC

There are two appellants in this appeal against the decision of the Court of Appeal Calabar Division contained in the Ruling by Hon Justices Mohammed Lawal Garba (JCA); Uzo I. Ndukwe Anyanwu (JCA) and Joseph Tine Tur (JCA) delivered on 25th January 2013. Their Lordships on a motion filed by the 4th Respondent dismissed the appeal of the appellants against the judgment of the Election Petition Tribunal, Calabar on the ground that the time within which the appeal can validly be entertained had lapsed.

Dissatisfied with the decision of the Court of Appeal, each of

the two appellants in addition in filing a separate notice of appeal also filed a notice of preliminary objection to the hearing of the appeal.

Somehow and as a result of a confusion, it does appear that each notice which should have normally represent a separate appeal, did not happen in this case but rather, both appeals were entered on SC.40/2013. As a consequence therefore it was agreed by all parties that in view of the nature of the appeals which are similar, the 1st appellant's appeal was argued while the 2nd appellant was to abide by the decision arrived there of in the first appeal.

I hasten to add at this point that two sets of respondents to wit 1st and 2nd and also 4th respondent filed separate notices of preliminary objections to the hearing of this appeal and the nature which will dispose of the entire appeal without more. The objection raised by the 1st and 2nd respondents is Constitutional which some if sustained would have a consequential irredeemable effect. In other words the set of respondents' second ground of objection relates to limitation of time and some had been reproduced by my learned brother in the lead judgment which I needed not repeat.

The central focus of controversy in the preliminary objection relates to the provision of section 285(7) of the Constitution of the Federal Republic of Nigeria, 1999 as amended; and the reproduction states:-

"An appeal from a decision of an election tribunal or Court of Appeal in on election matter shall be heard and disposed of within 60 days from the date of delivery of judgment of the tribunal or Court of Appeal."

From all indications, the implication of the provision is not far fetched as it invokes effluxion of time. The calculation in my opinion is very simple as it centres on numbers and does not pose any ambiguity. The provision which is Constitutional therefore does not involve any hidden interpretation different from what it states in black and white. It poses a jurisdictional issue which has been held as very fundamental as it affects the very foundation of the entire proceedings of the court. The jurisdiction of all courts is constitutional and any exercise outside that conferred by the law is of no effect. It is also significant to restate that neither the court itself nor any of the parties can confer jurisdiction on the court. To insist on a court to assume jurisdiction where there is none, amounts to an exercise in futility.

Plethora of authorities avails in support of this ancient principle of law.

The jurisdiction of this court which is a creation of a statute is completely ousted by the clear cut Constitutional provision. The learned appellant's counsel from all indications is seeking to impose on academic exercise upon the court; which it will not engage itself therein. I further wish to state that an appeal is a continuation of hearing the case. Where a cause of action is extinguished by operation of law, no appeal can subsist with respect to a spent cause of action.

For purpose of recapitulation, the Tribunal delivered its judgment on the 17th July, 2012 and by reason of section 285(7) of the Constitution it is incumbent upon the Court of Appeal to deliver its judgment within a period of 60 days from the date the judgment was delivered. By the use of the word shall, it precludes the exercise of any discretion. Our brother Onnoghen (JSC) did not mince his words on the interpretation of the foregoing section in the case of Amadi V. INEC & Ors (2012) 2 MJSC (Pt.1) 1 at 35 when, he said:-

"The provision of section 285(7) of the 1999 Constitution as amended is very clear and unambiguous and therefore simply means what it says; that an appeal against the decision of an election tribunal or Court of Appeal in an election matter must be heard and determined within 60 days of the date of the delivery of the judgment in question. The Constitutional provision and the words employed in crafting the provision commands mandatory compliance. There is no room for the exercise of any discretion in relation to the allotted time. Everything needed to deliver the judgment must be done and the judgment delivered within 60 days of the date of delivery of the judgment on appeal."

For purpose of emphasis I wish to state that following from the foregoing authority, it goes without further saying that the life of a case, once terminated, it cannot by any Stretch of imagination be resurrected. It is deemed dead and gone and ought to be buried. The law is also trite that two essential factors which must clothe a court with jurisdiction to adjudicate on a matter are that:-

- (1) There is no feature in the case which prevents the court from exercising jurisdiction; and
- (2) The case comes before the court upon fulfillment of condi-

tion precedent to the exercise of jurisdiction.

I hasten to say that both features are lacking in the case at hand which had long been terminated and should not have found its way to this court. The Constitutional provision intends to put an end to election matters and I reckon it is deliberate for purpose of forestalling sanity. There must be an end to litigation. See the cases of A-G Lagos State V. Dosunmu (1989) 3 NWLR (Pt. 111) 552; Sofekun V. Akinyemi (1981) 1 NCLR 135 and F.B.N. Plc V. T.S.A. Industries Ltd (2010) 15 NWLR (Pt.1216) 247 and 274.

It goes without saying therefore that in sustaining the preliminary objection raised, this court is bereft of any jurisdiction and it is needless to dwell into the merit of the appeal as it will amount to an academic exercise in futility.

My learned brother Nwali Sylvester Ngwuta has adequately dealt with the appeal; with the few words of mine supra and more particularly on the fuller reasoning and conclusion arrived at in the lead judgment I also hereby strike out the entire appeal for want of jurisdiction and abide by orders made as to costs.

The outcome of this appeal also applies and binds the second appellant.

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