

**SUPREME COURT OF NIGERIA**  
FRIDAY 11TH JULY, 2014. SC. 44/2013  
**CORAM:- W. S. N. ONNOGHEN, S. GALADIMA,**  
**B. RHOODES-VIVOUR, K. B. AKA'AH, J. I. OKORO, JJSC**

ABUBAKAR MAHMUD WAMBAI ..... APPELLANT  
AND  
1. DR. KIZAYA DONATUS  
2. INDEPENDENT NATIONAL  
ELECTORAL COMMISSION ..... RESPONDENTS  
3. CONGRESS FOR PROGRESSIVE  
CHANGE

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ELECTIONS - Pre election - Jurisdiction - Pre election matter filed prior to election subsists - And HC in which it was so instituted continues to have jurisdiction - Even after conduct of the election (H1)

ACTIONS - Lis pendens - Doctrine of - It prevents the transfer of right or taking of steps - Capable of foisting a state of helplessness on parties or court - During the pendency of an action in court (H2)

ELECTION PETITIONS - Nomination - Jurisdiction - After the conduct of an election - A person wishing to challenge result of the election on ground of nomination - Can do so at election tribunal under EA 2010 s. 138(1)(a) (H3)

COURTS - Jurisdiction - Absence of - Once trial court lacks jurisdiction on a matter - Court of Appeal will have no jurisdiction to hear and determine the matter on the merit (H4)

**FACTS**

Plaintiff/1<sup>st</sup> respondent instituted the action in the Federal High Court Yola, wherein he claims inter alia, that he is the duly nominated candidate of the Congress for Progressive Change (CPC) for the Federal House of Representatives election held on the 9<sup>th</sup> April 2011 for Mubi North/Mubi South/Maiha Federal Constituency of Adamawa State. Defendant/appellant in reaction raised an objection to the jurisdiction of the Court to hear and determine the matter on the

ground that the reliefs claimed by 1<sup>st</sup> respondent can only be granted by an Election Petition Tribunal. Appellant contends that the Federal High Court could only have jurisdiction over a pre election matter after the conduct of an election, if the matter was instituted before the conduct of the election.

Appellant maintained that since the action was filed after the conduct of the election in issue, the Federal High Court lacks jurisdiction to hear and determine same. In its judgment, the Court held that it lacks jurisdiction to hear and determine the action as constituted. Dissatisfied, 1<sup>st</sup> respondent appealed to the Court of Appeal Yola Division. The court was of the view that there is no law limiting the time within which a pre election matter can be initiated. The judgment of the Court of Appeal was thus set aside. Appellant felt unhappy with the judgment of the Court of Appeal. He therefore appealed to the Supreme Court.

### **ISSUES FOR DETERMINATION**

*“1. WHETHER the Court of Appeal decided rightly when it set aside the decision of the Federal High Court declining jurisdiction to hear and determine the 1<sup>st</sup> respondent’s suit and whether the 1<sup>st</sup> respondent’s suit as constituted come within the jurisdiction of a Federal High (Court) or an Election Petition Tribunal.*

*2. WHETHER the Court of Appeal acted rightly when it pronounced on the constitutionality or otherwise of the alleged substitution of the 1<sup>st</sup> respondent when in fact same was not the subject of appeal and*

*3. WHETHER the pronouncement by the court is not a breach of the appellant’s right to fair hearing when he was not heard by the court on the issue before the pronouncement.*

**HELD** (Unanimously allowing the appeal per **ONNOGHEN JSC**)

*ELECTIONS - Pre election - Jurisdiction*

**1. Going by the doctrine of judicial precedent as a source of Nigeria law, can it be right in saying that there is no law in Nigeria prescribing time limit within which to institute an action at the Federal or State High Court for a cause of action**

***founded on an issue of substitution or that such cases can be instituted after the conduct of election? Obviously there are such cases from this court. It is trite law that in election and election related matters time is of essence. In the instant matter which is a pre-election matter time is also of essence.***

***There is no doubt at all that a pre-election matter instituted prior to the conduct of an election subsists and the High Court in which it was so instituted continues to have jurisdiction to hear and determine same even after the conduct of the election to the pre-election matter and declaration of result etc, etc under the principle of lis pendens as held by this court in a number of cases***

***From the above, it is clear that there is the law in Nigeria which states that in election or election related matters including pre-election cases, time is of the essence and that where an election has taken place a High Court ceases to have jurisdiction over a pre-election matter except the action/matter/suit relating thereto was instituted prior to the holding of the election or declaration of result.***

***Where, however, the pre-election matter was filed before the election at the High Court which is clothed with the jurisdiction to hear same, the jurisdiction continues even after the conduct or conclusion of the election in question and declaration of result on the principle or doctrine of lis pendens, as decided by this court. (pp. 3178 A/3179 E/3182 E)***

***ACTIONS - Lis pendens - Doctrine of***

***2. The doctrine i.e. lis pendens - prevents any transfer of any right or the taking of any steps capable of foisting a state of complete helplessness and/or hopelessness on the parties or the court during the pendency of an action in a court of law, and even thereafter. (p.3178 E)***

***ELECTION PETITIONS - Nomination - Jurisdiction***

***3. I am of the considered view that the case of 1<sup>st</sup> respondent which challenges his substitution comes within the provision of section 138(1)(a) (supra), because it challenges the qualification of appellant to contest the election in issue particularly as***

*he is alleged not to be the duly nominated candidate of the political party in question. A person cannot be qualified to be a candidate of a political party for an election except and unless he is nominated and sponsored by a political party for which he is a member. It follows therefore that after the*  
B *conduct of an election if a person wishes to challenge the result of the election on ground of nomination - pre-election matter, he can legally do so before an election tribunal under section 138(1)(a) of the Electoral Act, 2010, as amended and it is*  
C *wrong to hold that an election tribunal does not have jurisdiction to hear and determine such a matter.*

*Where the Election Tribunal comes to the conclusion that the candidate was wrongly substituted and that the candidate who contested the election consequently was not quali-*  
D *fied to so contest, it has the power under section 140(1) of the said Electoral, Act, 2010, as amended to nullify the election.*

*Secondly where a candidate who contested an election and won is refused a certificate of return, as alleged in the instant case, but the certificate was rather issued to another*  
E *person (appellant in this case) who was not a candidate at the election, a case of undue return of appellant is clearly made out which has nothing to do with wrongful substitution or pre-election matter.*

*It is therefore clear and I hereby hold that it does not matter whether 1<sup>st</sup> respondent heard of the substitution close to the election or at the election or after the election in issue, the proper venue to ventilate his grievances when the election has been concluded and a return made or result declared is the*  
G *Election Tribunal, not the High Court as held by the lower court in the instant case. It is therefore not a correct statement of the law that in all cases, a pre-election matter must be instituted and heard and determined by the High Court as that principle admits of exceptions one of which is where the pre-*  
H *election matter is filed after the conduct and conclusion of an election, it is the relevant election tribunal that has the jurisdiction to hear and determine it. (p. 3181 D)*

*COURTS - Jurisdiction - Absence of*

**4. The resolution of issue 1 has made it unnecessary for me to go into a resolution of issue No.2. The above resolution of issue 1 has effectively disposed of the appeal since the issue of jurisdiction is fundamental to adjudication. It therefore does not matter whether the lower court decided the substantive matter before the trial court while considering the issue of jurisdiction of that court to hear the matter as such determination is of no moment. Once the trial court has been found to have no jurisdiction on the matter it follows that the Court of Appeal will have no jurisdiction to hear or determine the matter on the merit.** (p.3184 A) B  
C

## NOTABLE POINT OF INTEREST

### **ONNOGHEN JSC**

#### ***1. Judicial precedent – Doctrine of***

We have at this stage to remember that there are different sources of law in Nigeria. These include statute, common law, the Constitution, judicial precedent, customary law etc, etc. Judicial precedent or *stare decisis* is the foundation on which the court and a legal practitioner can decide what the law on a particular subject matter is, it is founded on interpretation of statutes, constitutional provisions, general application of principles of law, be they customary or common law; opinions of academic writers etc. The doctrine of precedent helps to establish certainty in the law. (p. 3177 F) D  
E  
F

### **REPRESENTATION**

F.K. Idepefo, Esq. with U.K. Okeke, Esq., for the Appellant  
J.N. Egwuonwu, Esq. with Oladapo Agboola, Esq., for the 1<sup>st</sup> Respondent  
Ibrahim K. Bawa, Esq. with Alhassan A. Umar and Ibrahim S. Mohammed, for the 2<sup>nd</sup> Respondent  
C.P. Nzedebe, Esq., for the 3<sup>rd</sup> Respondent G  
H

### **CASES REFERRED TO**

Ezeigwe v. Nwawulu (2010) 4 NWLR (pt. 1183) 159  
Amaechi v. I.N.E.C. (2008) 5 NWLR (pt. 1080) 227

- Hassan v. Aliyu (2010) All FWLR (pt. 539) 1007  
 sAkinfolarin v. Akinola (1994) 3 NWLR (pt. 335) 659  
 Lawan v. Governor Kwara State (2005) 3 WRN 171  
 A-G Anambra State v. A-G Federation (2007) All FWLR (pt. 379) 1218  
 B Magaji v. Magaji (2000) FWLR (pt. 18) 237  
 Dangana v. Usman (2012) All FWLR (pt. 627) 612  
 Oduko v. Government of Ebonyi State (2009) 9 NWLR (pt. 1147) 439  
 C Obi v. INEC (2007) 11 NWLR (pt. 1046) 560  
 Odedo v. I.N.E.C. (2008) 17 NWLR (pt. 1117) 554  
 Okadigbo v. Emeka (2012) 11 NWLR (pt. 1311) 237  
 P.D.P. v. Onwe (2011) 4 NWLR (pt. 1236) 166  
 Agbakoba v. I.N.E.C. (2008) 18 NWLR (pt. 1119) 489  
 D Uwagba v. FRN (2009) 13 NWLR (pt. 1163) 91

### **STATUTES REFERRED TO**

- Electoral Act 2010 (as amended), ss. 87(9), 138(1)(a)  
 Constitution of the Federal Republic of Nigeria 1999, ss. 6(6)(b),  
 E 251(1)

### **LEAD JUDGMENT BY ONNOGHEN JSC**

- This appeal is against the judgment of the Yola Division of the  
 F Court of Appeal delivered on the 29<sup>th</sup> day of November, 2012 in  
 appeal No. CAIYL/44/2011 in which the court allowed the appeal of  
 the 1st respondent against the ruling of the trial court in suit No. FHC/  
 YL/ CS/29/2011 delivered on the 27<sup>th</sup> day of August, 2011 in which  
 the court held that it has no jurisdiction to hear and determine the suit  
 G as constituted.

The 1<sup>st</sup> respondent instituted the action in the Federal High Court, Holden at Yola claiming the following reliefs:

- H *“1. The plaintiff was the duly nominated candidate and flag-bearer of the Congress for Progressive Change (CPC) for the election into the Federal House of Representatives held on the 9<sup>th</sup> April, 2011 for Mubi North/Mubi South/Maiha Federal Constituency of Adamawa State.*  
*2. After the election, the 1st defendant instead of returning the plaintiff as the winner of the election purportedly returned the 2<sup>nd</sup>*

*respondent, on the purported ground that the plaintiff had been substituted as candidate of the CPC on the 3rd day of April, 2011.*

*WHEREOF the plaintiff claims as follows:*

*(a) A declaration of this honourable court that the purported substitution of the plaintiff with the 2<sup>nd</sup> defendant for the April 9<sup>th</sup>, 2011, National Assembly Elections in Mubi North/Mubi South/Maiha Federal Constituency was illegal, null and void and of no effect whatsoever.*

*(b) A declaration of this honourable court that the purported return of the 2<sup>nd</sup> defendant as the winner of the April 9<sup>th</sup>, 2011 elections into the seat of Mubi North/Mubi South/Maiha Federal Constituency of the Federal House of Representatives, by the 1<sup>st</sup> defendant, was illegal, null and void and of no effect whatsoever.*

*(c) An order of this honourable court declaring that the plaintiff having fully participated in the April 9<sup>th</sup>, 2011 elections into the Mubi North/Mubi South/Maiha Federal Constituency of the Federal House of Representatives, under the platform of the Congress for Progressive Change, (CPC) was the winner of the said election, and the bona fide representative of Mubi North/Mubi South/Maiha Federal Constituency in the House of Representatives.*

*(d) An order of this honourable court directing the 1<sup>st</sup> defendant to issue a certificate of return to the plaintiff.*

*(e) An order of this honourable court restraining the 2<sup>nd</sup> defendant from parading himself as the honourable member of the House of Representatives, representing Mubi North/Mubi South/Maiha Federal Constituency.*

*(f) Cost."*

The appellant reacted to the above suit by raising an objection to the jurisdiction of the court to hear and determine the matter as constituted on the grounds that the reliefs claimed therein can only be granted by an Election Petition Tribunal and secondly that a Federal High Court or any High Court for that matter could only have jurisdiction to continue to hear and determine a pre-election matter after the conduct of an election if the matter was instituted before the conduct of the election; that since the instant case was instituted after the conduct of the election in issue, the Federal High Court lacks jurisdiction to hear and determine same.

The trial court ruled on the objection at page 171 of the record,

*inter alia*, as follows:

“In my view, the decision of the Supreme Court in *Odedo v. I.N.E.C. (supra)* referred to by the Court of Appeal (Yola Division), in the case of *Danladi Baido v. I.N.E.C. (supra)* adequately answers and resolves the issue posed by the present proceedings. In the present  
B proceedings, the complaint of wrongful substitution or replacement of the plaintiff by the 2<sup>nd</sup> defendant is undeniably a pre-election matter. However, the jurisdiction of the court was not invoked till after the conduct of the election and statutory return and the winner sworn in  
C or inaugurated. The jurisdiction of this court to hear and determine the complaint therefore is overtaken by events. The learned counsel to the plaintiff had argued that matters of wrongful substitution or withdrawal of a candidate are pre-election matters. That is correct. However, but for such a complaint to qualify as a pre-election case  
D over which the regular courts can exercise jurisdiction, the matter must be filed before the conduct of the election.”

As stated earlier in this judgment, the above decision was set aside by the Court of Appeal vide the views expressed by the court at page 338 - 339 of the record, thus:

“In another limb of the appellant’s argument whether the mere fact that the suit was instituted after the election of 9<sup>th</sup>, April, 2011 had been conducted and return made by the respondent, the trial judge agreed that the claim of the appellant was a pre-election. The learned  
E Judge nevertheless held that the same was overtaken by events since  
F it was not before the election. See page 171 of the record. I know of no law or statute upon which the trial court based its decision, there is no provision under the 1999 Constitution and the Federal High Court Act as to time limit within which a pre-election matter can be  
G initiated.”

This appeal, therefore, is in essence to determine the correct view position of the law as between the views expressed by the trial court and the court below, *supra*.

In the appellant brief filed on 11<sup>th</sup> April, 2013, learned counsel  
H for appellant, F.K. Idepefo Esq., formulated the following two issues for the determination of the appeal:

“1. *WHETHER* the Court of Appeal decided rightly when it set aside the decision of the Federal High Court declining jurisdiction to hear and determine the 1<sup>st</sup> respondent’s suit and whether the 1<sup>st</sup>



*respondent's suit as constituted come within the jurisdiction of a Federal High (Court) or an Election Petition Tribunal. (Distilled from Grounds 1, 2, 3 and 4 of the appellant's Grounds of Appeal)*

2. *WHETHER the Court of Appeal acted rightly when it pronounced on the constitutionality or otherwise of the alleged substitution of the 1st respondent when in fact same was not the subject of appeal and* B

3. *WHETHER the pronouncement by the court is not a breach of the appellant's right to fair hearing when he was not heard by the court on the issue before the pronouncement. (Distilled from ground 5 of the appellant's grounds of Appeal)"* C

On the other hand, learned counsel for 1<sup>st</sup> respondent, J.N. Egwuonwu, Esq. initially formulated four issues for determination in the 1<sup>st</sup> respondent's brief filed on 28/16/13 but withdrew issues (c) and (d) during the argument of the appeal on 14/4/14 as a result of which the said issues were struck out. The surviving issues (a) and (b) are as follows:

*"(a) Whether the lower court was right when it held that the trial court had jurisdiction to entertain the suit being a pre-election matter.*

2. *Whether from the circumstances of the case, the lower court was right when it held that even though an election had been held the jurisdiction of the High Court was not impaired thereby to entertain the suit bordering on the replacement or substitution of a candidate in the election."* E

However, despite the withdrawal and consequent striking out of 1<sup>st</sup> respondent's issues (c) and (d), I will, in the course of considering arguments on appellant's issue 2, if need be, consider 1<sup>st</sup> respondent reaction thereto as contained in his issue (d) in the interest of justice. F

On behalf of the 2<sup>nd</sup> respondent, Ibrahim K. Bawa, Esq formulated two issues for determination in the 2<sup>nd</sup> respondent's brief deemed filed on 14/4/14 which issues are substantially the same with those for appellant. G

The issues are as follows:

*"1. Whether the Court of Appeal was right to have set aside the decision of the trial Federal High Court on the ground that the Federal High Court had jurisdiction to hear or try or determine a pre-election matter commenced and/or instituted after the actual or main election. (Distilled from grounds 1, 2, 3 and 4 of the grounds of appeal)* H

*2. Whether the Court of Appeal was correct when it made pronouncement on the unconstitutionality of the substitution of the 1<sup>st</sup> respondent. (Distilled from ground 5)”*

In arguing issue 1, learned counsel for appellant submitted that the reliance by the lower court on the case of *Ezeigwe v. Nwawulu* B (2010) 4 NWLR (Pt. 1183) 159 at 206; *Amaechi v. I.N.E.C.* (2008) 5 NWLR (Pt. 1080) 227 to support the holding that the trial court has jurisdiction to entertain pre-election matter which jurisdiction is not ousted by the mere fact that an election had taken place or that the party who purportedly won the election had been declared or returned or inaugurated, is erroneous as those decisions relate to pre-election matters instituted in the courts before the conduct of election and remained pending in court after the conduct of election which is different from the facts and circumstances of the instant case; that D where a pre-election matter is commenced after the conduct of election, the jurisdiction of the High Court to entertain the matter is ousted, relying on the case of *Hassan v. Aliyu* (2010) All FWLR (Pt. 539) 1007 at 1046; 1050; (2010) 17 NWLR (Pt. 1223) 547; that the decision of the lower court that there is no law in Nigeria stipulating the E time limit within which to institute a pre-election matter in the Federal High Court is erroneous as it failed “*to take into account the different sources of Nigerian Law of which judicial precedent enjoys primacy*”.

It is the further submission of counsel that it is the claim of the plaintiff that determines the jurisdiction of the court, relying on F *Akinfolarin v. Akinola* (1994) 3 NWLR (Pt. 335) 659; *Lawan v. Governor, Kwara State* (2005) 3 WRN 171; *A.-G., Anambra State v. A.-G., Federation* (2007) All FWLR (Pt. 379) 1218; (2007) 12 NWLR (Pt. 1047) 1; *Magaji v. Magaji* (2000) FWLR (Pt. 18) 237; (2000) 8 G NWLR (Pt. 670) 722; that the claims on the writ question the election and return of appellant as duly elected member of the National Assembly which claims are not within the jurisdiction of the Federal High Court as stipulated in section 285(7) of the Constitution of the Federal Republic of Nigeria, 1999, as amended; in any event that H where a principal and ancillary reliefs are inextricably tied or bound a court cannot adjudicate over them where it has no jurisdiction to entertain the main claim, which in the instant case is the return of 1<sup>st</sup> respondent as the winner of the election etc; that an Election Petition Tribunal is the competent court to question the election and return of

a candidate at an election and that where there is a question of nomination of a candidate at the election, it becomes an issue of the qualification of the candidate returned to have stood for the election, relying on the case of *Dangana v. Usman* (2012) All FWLR (Pt. 627) 612 at 647- 648; (2013) 6 NWLR (Pt. 1349) 50.

It is also submitted on behalf of the appellant that since at the time of filing the action the election in issue had taken place and a winner declared and inaugurated, the proper venue to challenge the nomination, election and return of appellant is the Election Petition Tribunal since the High Court ceased to have jurisdiction in the matter; that the action was even instituted after the period limited for institution of an election petition that the decision of the lower court that the learned trial Judge somersaulted and that there is no law in Nigeria prescribing time limit within which to institute an action at the Federal High Court for a cause of action founded on issue of substitution with the peculiarities of the 1<sup>st</sup> respondent's case and that such cases can be instituted after the conduct of election are in conflict with the decisions the Supreme Court in *Odedo v. INE.C.* (supra) and *Ohakim & Anor v. Agbaso & Ors* (supra) and the express provisions of the Electoral Act such as section 138(1)(a) of the 2010 Act (as amended).

On his part, learned counsel for 1<sup>st</sup> respondent submitted that the main claims of 1<sup>st</sup> respondent at the trial court borders on his unlawful substitution and replacement with tile appellant in the election in issue. Learned counsel then referred the court to the averments of 1<sup>st</sup> respondent in paragraphs 4 - 19 of the statement of claim at pages 8 - 11 of the record; that it is the averments in the statement of claim that determines the jurisdiction of the court relying on *Oduko v. Government of Ebonyi State* (2009) 9 NWLR (Pt. 1147) 439 at 452; *Obi v. I.N.E.C.* (2007) 11 NWLR (Pt. 1046) 560.

Learned counsel agreed with the lower court that the action as constituted is a pre-election matter but that exhibit KD1, the letter of substitution of the respondent with appellant dated 3<sup>rd</sup> April, 2011 was not brought to the notice of the respondent till the date of the election on 9<sup>th</sup> April, 2011 and as such 1<sup>st</sup> respondent has no opportunity to commence the action before the election; that being a pre-election matter the Federal High Court has the jurisdiction to entertain the case under section 6(6)(b) of the Constitution of the Federal Republic of

Nigeria, 1999 as amended.

Learned counsel also relied, on this submission, on the case of *Odedo v. I.N.E.C.* (2008) 17 NWLR (Pt. 1117) 554 at 624; *Amaechi v. I.N.E.C.* (2008) 5 NWLR (Pt. 1080) 227 at 315; *Okadigbo v. Emeka* (2012) 11 NWLR (Pt. 1311) 237. It is a further contention of  
 B counsel that once the claim of a plaintiff discloses the issue of nomination, substitution or sponsorship of a candidate in an election, it is only the Federal High Court or State High Court that has jurisdiction to entertain the matter being a pre-election matter and not  
 C an election petition tribunal established under section 285(1) of the 1999 Constitution, as amended, relying on *P.D.P. v. Onwe* (2011) 4 NWLR (Pt. 1236) 166; *Agbakoba v. I.N.E.C.* (2008) 18 NWLR (Pt. 1119) 489 at 554.

Another reason why learned counsel contends that it is the  
 D Federal High Court that had jurisdiction in this matter is the fact that the 2<sup>nd</sup> respondent, INEC is a federal agency within the provision of section 251(1)(p)(q) and (r) of the 1999 Constitution as amended as 1<sup>st</sup> respondent seeks declarations and injunction against appellant and 2<sup>nd</sup> and 3<sup>rd</sup> respondents.

E It is also the contention of learned counsel for 1<sup>st</sup> respondent that the jurisdiction of the Federal High Court or State High Court over pre-election matters is constitutional by virtue of the provisions of sections 6(6)(b) and 251(1) of the 1999 Constitution, as amended,  
 F and that the right thereby vested cannot be taken away by an act of the parties, or the court or the court or the Constitution itself; that in interpreting the provisions of the Constitution or statute the courts have no jurisdiction to read into the Constitution or statute what the legislature did not provide for, relying on *B.M. Ltd. v. Woermann -*  
 G *Line & Anor.* (2009) 13 NWLR (Pt. 1157) 149 at 179; *Eguamwense v. Amaghizemwem* (1999) 9 NWLR (Pt. 315) 1; *Uwagba v. FRN.* (2009) 13 NWLR (Pt. 1163) 91 at 108; that there is no law that limits the time within which a pre-election matter ought to be instituted and that all that is required of a plaintiff in such a situation is to act  
 H reasonably upon becoming aware of his substitution; that there is nothing under section 6(6)(b) of the 1999 Constitution, as amended, which has introduced the fact or could be interpreted to mean or imply that after an election has taken place, the right of a party to a pre-election matter is extinguished and that he must go to the election

petition tribunal to ventilate his grievance; that the Federal High Court was wrong when it held that an election having taken place the 1<sup>st</sup> respondent's right to contest his substitution in that court had been extinguished while the lower court was right in setting aside that decision.

It is the further contention of counsel that it is not strictly the law that once an election has taken place the issue of nomination or substitution ceases to be a pre-election matter thereby robbing the High Court of the jurisdiction to entertain the matter; that it is the circumstances of the case that determine whether the High Court ceases to have jurisdiction in a particular case or the Election Tribunal; that the case of *Hassan v. Aliyu* (supra) referred to and relied upon by learned counsel for appellant is distinguishable from the facts of this case as in *Hassan's* case he was well aware of his replacement about two months before and even after the election it took him about eight months to initiate the proceedings. Referring to the decision of the court in *Dangana v. Usman* (2013) 6 NWLR (Pt. 1349) 50 at 89 - 90 learned counsel submitted that the 1<sup>st</sup> respondent has a right either to challenge his substitution in the High Court which is the appropriate court for pre-election matters or at the Election Tribunal if he wanted to challenge the election itself but opted to challenge the substitution at the High Court, soon after being aware of the substitution; that the cause of action arose on 3<sup>rd</sup> April, 2011 when exhibit KDI sought to replace 1<sup>st</sup> respondent as candidate for an election scheduled for 9<sup>th</sup> April, 2011 but the said exhibit was not brought to the notice of 1<sup>st</sup> respondent until 9<sup>th</sup> April, 2011 after votes had been cast in the election thereby making it impossible for 1<sup>st</sup> respondent to institute the action before the conduct of the election

Learned counsel for 1<sup>st</sup> respondent finally urged the court to resolve the issue in favour of 1<sup>st</sup> respondent and affirm the decision of the lower court on the issue under consideration.

On his part, learned counsel for 2<sup>nd</sup> respondent, Ibrahim K. Bawa, Esq. in the 2<sup>nd</sup> respondent's brief of argument deemed filed on 14/4/14 concedes the appeal and stated that once there is an election, a State High Court or Federal High Court ceases to have jurisdiction to entertain and/or determine a pre-election matter filed after the conduct of the election; that the pre-election matter must be filed in the appropriate High Court before and not after the material election,

relying on *Hassan v. Aliyu* (supra) at 599 and 606; *Salim v. C.P.C.* (2013) 6 NWLR (Pt. 1351) 501 at 527.

It is the further contention of counsel that in a situation where an election had been conducted and a winner declared and presented with a certificate of return, but not the nominated candidate for the election, the return so made becomes “an undue return” as against the duly nominated candidate and that the appropriate court to seek redress in the circumstance is the election tribunal, relying on *Olufu v. Itodo* (2010) 18 NWLR (Pt. 1225) 545; that the jurisdiction to grant the reliefs claimed in this suit is vested exclusively in the Election Petition Tribunal pursuant to section 285(1)(a) of the Constitution of the Federal Republic of Nigeria, 1999 (hereinafter referred to as the 1999 Constitution) as amended and urged the court to resolve the issue in favour of appellant.

In the reply brief deemed filed on 14/4/14, learned counsel for appellant submitted that the cases of *Odedo v. I.N.E.C.* (supra); *Amaechi v. I.N.E.C.* (supra) and *Agbakoba v. I.N.E.C.* (supra) relied upon by counsel for 1st respondent are irrelevant to this case as they relate to cases filed in the Federal High Court before the conduct of election and the claims were basically that of unlawful substitution; that even if the claim of 1st respondent arose from the conduct of the party primaries, the claims before the trial court can only be granted by an election tribunal and urged the court to resolve the issue in favour of appellant.

The question is whether the Federal High Court has jurisdiction to entertain the action of the 1<sup>st</sup> respondent as constituted. While the High Court said it has no jurisdiction, the Court of Appeal said the High Court has jurisdiction in the matter. It should be borne in mind that everyone including the courts agree that the action is a pre-election matter and that the High Court normally has the jurisdiction to hear and determine pre-election matters. However, where the parties and the courts disagree is on the question as to whether in an action filed after the conduct of an election and declaration of the result thereof, the High Court still has jurisdiction to entertain the action so founded on a pre-election claim. Here, while the High Court held that the court ceases to have jurisdiction in such a matter except the action had been instituted before the conduct of the election in issue, the Court of Appeal set aside that decision holding that there is no statutory

provision in our laws prescribing time limit for the institution of pre-election actions and as such the High Court has jurisdiction to hear and determine the matter as constituted.

The question, once again, is which of the two courts is correct?

In coming to the decision, the Court of Appeal, at pages 338 - 339 of the record of appeal as follows:

*"In another limb of the appellant's argument whether the mere fact that the suit was instituted after the election of 9<sup>th</sup> April, 2011 had been conducted and return made by the 3<sup>rd</sup> respondent, the trial Judge agreed that the claim of the appellant was pre-election, the learned judge nevertheless held that the same was overtaken by events since it was not before the election, see page 171 of the record.*

*I know of no law or statute upon which the trial court based its decision, there is no provision under the 1999 Constitution and the Federal High Court Act as to time limit which a pre-election matter can be initiated."*

Further on at page 339 of the record, the lower court continued thus:

*"The jurisdiction of the court to entertain a pre-election matter is not ousted by the mere fact that an election has taken place or that the party who purportedly won the election had been declared or returned or inaugurated. None of these can rob the court of its jurisdiction guaranteed under the Constitution. See Ezeigwe v. Nwawulu (2010) 4 NWLR (Pt. 1183) 159 at 206; Amaechi v. I.N.E.C. (supra); Zaranda v. Tilda (supra) at 208 paras. C - D - G - H."*

To begin with, is it correct to say that there is no law in Nigeria stipulating the time within which to institute a pre-election matter at the State or Federal High Court? We have at this stage to remember that there are different sources of law in Nigeria. These include statute, common law, the Constitution, judicial precedent, customary law etc, etc. Judicial precedent or *stare decisis* is the foundation on which the court and a legal practitioner can decide what the law on a particular subject matter is, it is founded on interpretation of statutes, constitutional provisions, general application of principles of law, be they customary or common law; opinions of academic writers etc. The doctrine of precedent helps to establish certainty in the law. Lord Denning, (MR) in his book, *The Discipline of Law* defined the doctrine of precedent as:

*“Stand by your decision and the decision of your predecessors, however wrong they are and whatever injustice they inflict.”*

**Going by the doctrine of judicial precedent as a source of Nigeria law, can it be right in saying that there is no law in Nigeria prescribing time limit within which to institute an action at the Federal or State High Court for a cause of action founded on an issue of substitution or that such cases can be instituted after the conduct of election? Obviously there are such cases from this court. It is trite law that in election and election related matters time is of essence. In the instant matter which is a pre-election matter time is also of essence.**

**There is no doubt at all that a pre-election matter instituted prior to the conduct of an election subsists and the High Court in which it was so instituted continues to have jurisdiction to hear and determine same even after the conduct of the election to the pre-election matter and declaration of result etc, etc under the principle of *lis pendens* as held by this court in a number of cases** including *Amaechi v. I.N.E.C.* (2008) All FWLR (Pt. 407) 1; (2008) 5 NWLR (Pt. 1080) 227; *Odedo v. I.N.E.C.* (2008) 17 NWLR (Pt. 1117) 554 at 622-623. ***The doctrine i.e. lis pendens - prevents any transfer of any right or the taking of any steps capable of foisting a state of complete helplessness and/or hopelessness on the parties or the court during the pendency of an action in a court of law, and even thereafter.*** See *Dan-Jumho v. Dan-Jumho* (1999) 11 NWLR (Pt.627) 445.

In the instant case, however, the action was instituted after the conduct of the election and the declaration of results. In fact the winner had been sworn in before the action was instituted, not in an Election Tribunal seeking the reliefs earlier reproduced in this judgment but in the Federal High Court.

In the case of *Hassan v. Aliyu* (2010) All FWLR (Pt. 539) 1007 at 1046; (2010) 17 NWLR (Pt. 1223) 547 at 599, I had the following to say, *inter alia*:

*“I hold the view that at the time appellant decided to go to court in the circumstance of this case, the question of nomination by way of substitution which is a pre-election matter had ceased to exist leaving only the election proper to be questioned and the proper place to do so is the election tribunal.”*



The basis of the above holding can be found immediately before the said holding where I stated as follows:

*"It is settled law that in an election or election related matter, time is of essence. I will add that the same applies to pre-election matters. Election matters are sui generis, very much unlike ordinary civil or criminal proceedings. Appellant ought to have instituted the action soon after the substitution to keep his interest in the political contest alive but he did not. If he had, but the election went on and the 1<sup>st</sup> respondent sworn in as the governor, by the authority of the decision in Amaechi v. I.N.E.C. (supra), section 308 of the 1999 Constitution would have been rendered a toothless bull dog."*

In the case of *Salim v. CP.C.* (2013) 6 NWLR (Pt. 1351) 501 at 527, Aka'ahs, JSC had this to say on the issue:

*"The redress must be sought in either the Federal or State High Court prior to the holding of the election. Where the election has taken place, any grievance arising from the nomination exercise can only be entertained by the Election Tribunal on the ground that the petitioner or its candidate was validly nominated but was unlawfully excluded from the election (section 138 (1)(d) of the Electoral Act, 2010, (as amended))."*

**From the above, it is clear that there is the law in Nigeria which states that in election or election related matters including pre-election cases, time is of the essence and that where an election has taken place a High Court ceases to have jurisdiction over a pre-election matter except the action/matter/suit relating thereto was instituted prior to the holding of the election or declaration of result.**

It is the contention of learned counsel for 1<sup>st</sup> respondent that the action was instituted soon after 1<sup>st</sup> respondent became aware of his substitution at the Federal High Court and that in the circumstance that court has jurisdiction, not the Election Tribunal. The argument, I must confess is beautiful and well presented. However, it should be noted that the action was instituted after the expiration of the time allowed 1<sup>st</sup> respondent to challenge the election at the Election Tribunal. The above notwithstanding is it correct to say that the Election Tribunal has no jurisdiction to entertain the action of 1<sup>st</sup> respondent as constituted? Pages 6 - 7 of the record of appeal contain the endorsement in the 1<sup>st</sup> respondent's summons which had earlier

been reproduced in this judgment to wit:

*“Endorsement*

1. *The plaintiff was the duly nominated candidate and flag-bearer of the Congress for Progressive Change (CPC) for the election into the Federal House of Representatives held on the 9th April, 2011, for Mubi North/Mubi South/Maiha Federal Constituency of Adamawa State.*

2. *After the election, the 1<sup>st</sup> defendant instead of returning the plaintiff as the winner of the election purportedly returned the 2<sup>nd</sup> respondent, on the purported ground that the plaintiff had been substituted as candidate of the CPC on the 3<sup>d</sup> day of April, 2011.*

3. *WHEREFORE the plaintiff claims as follows:*

(a) *A declaration of this honourable court that the purported substitution of the plaintiff with the 2nd defendant for the April 9<sup>th</sup>, 2011, National Assembly elections in Mubi North/Mubi South/Maiha Federal Constituency was illegal, null and void and of no effect whatsoever.*

(b) *A declaration of this honourable court that the purported return of the 2<sup>nd</sup> defendant as the winner, of the April 9<sup>th</sup>, 2011 elections into the seat of Mubi North/Mubi South Maiha Federal Constituency of the Federal House of Representatives, by the 1<sup>st</sup> defendant, was illegal, null and void and of no effect whatsoever.*

(c) *An order of this honourable court declaring that the plaintiff having fully participated in the April 9<sup>th</sup>, 2011 elections into the Mubi North/Mubi South/Maiha Federal Constituency of the Federal House of Representatives under the platform of the Congress for Progressive Change (C.P.C.) was the winner of the said election, and the bona fide representative of Mubi North/Mubi South/Maiha Federal Constituency in the House of Representatives.*

(d) *An order of this honourable court directing the 1<sup>st</sup> defendant to issue a certificate of return to the plaintiff.*

(e) *An order of this honourable court restraining the 2<sup>nd</sup> defendant from parading himself as the honourable member of the House of Representatives, representing Mubi North/Mubi South/Maiha Federal Constituency.*

(f) *Costs. ”*

The question is whether having regard to the above reliefs and the facts of this case, the Federal High Court is the proper venue for

the hearing and determination of the action. It is clear that one of the reliefs sought by 1st respondent is that the election in question be annulled and he be declared the winner of the election yet he is contending that the matter is purely a pre-election one to be heard by the Federal High Court.

Can an Election Tribunal hear a pre-election matter after the conclusion of an election and declaration of results as in the instant case? The answer can be found in section 138(1)(a) and (d) which provide as follows:

*“138(1) An election may be questioned on any of the following grounds, that is to say-*

*(b) that the person whose election is questioned was, at the time of the election not qualified to contest the election;*

*(d) that the petitioner or its candidate was validly nominated but was unlawfully excluded from the election.”*

***I am of the considered view that the case of 1<sup>st</sup> respondent which challenges his substitution comes within the provision of section 138(1)(a) (supra), because it challenges the qualification of appellant to contest the election in issue particularly as he is alleged not to be the duly nominated candidate of the political party in question. A person cannot be qualified to be a candidate of a political party for an election except and unless he is nominated and sponsored by a political party for which he is a member. It follows therefore that after the conduct of an election if a person wishes to challenge the result of the election on ground of nomination - pre-election matter, he can legally do so before an election tribunal under section 138(1)(a) of the Electoral Act, 2010, as amended and it is wrong to hold that an election tribunal does not have jurisdiction to hear and determine such a matter.***

***Where the Election Tribunal comes to the conclusion that the candidate was wrongly substituted and that the candidate who contested the election consequently was not qualified to so contest, it has the power under section 140(1) of the said Electoral, Act, 2010, as amended to nullify the election.***

***Secondly where a candidate who contested an election and won is refused a certificate of return, as alleged in the instant case, but the certificate was rather issued to another***

**person (appellant in this case) who was not a candidate at the election, a case of undue return of appellant is clearly made out which has nothing to do with wrongful substitution or pre-election matter.**

**It is therefore clear and I hereby hold that it does not matter whether 1<sup>st</sup> respondent heard of the substitution close to the election or at the election or after the election in issue, the proper venue to ventilate his grievances when the election has been concluded and a return made or result declared is the Election Tribunal, not the High Court as held by the lower court in the instant case.** See also *Olofu v. Itodo* (2010) 18 NWLR (Pt. 1225) 545 at 594 - 595.

**It is therefore not a correct statement of the law that in all cases, a pre-election matter must be instituted and heard and determined by the High Court as that principle admits of exceptions one of which is where the pre-election matter is filed after the conduct and conclusion of an election, it is the relevant election tribunal that has the jurisdiction to hear and determine it.**

**Where, however, the pre-election matter was filed before the election at the High Court which is clothed with the jurisdiction to hear same, the jurisdiction continues even after the conduct or conclusion of the election in question and declaration of result on the principle or doctrine of *lis pendens*, as decided by this court** in many cases including *Amaechi v. I.N.E.C.* (supra), etc.

In the case of *Dangana v. Usman* (2013) 6 NWLR (Pt. 1349) 50 at 89 - 90, I expressed the view that by virtue of section 138(1)(a) of the Electoral Act, 2010 (as amended) an election may be questioned on the ground that a person whose election is questioned was at the time of the election, not qualified to contest the election.

In that case the ground for disqualification was that appellant was not validly nominated by the political party as its candidate for the election, exactly as in the instant case.

At page 89 of the report, I stated inter alia thus, after citing section 138(1)(a) of the said Electoral Act, 2010, as amended:

*“With the above provision in view, it will be very unsafe to agree with the submission of learned senior counsel for the appellant that the*

*issue involved in this case was strictly a pre-election matter in which an Election Tribunal has no jurisdiction to hear and determine and that only the High Courts have jurisdiction to deal with the matter. I do not agree that the matter envisaged in section 138(1)(a) of the Electoral Act, 2010 (as amended), is a pre-election matter over which an Election Tribunal has no jurisdiction. I however agree that the qualification/disqualification to contest an election is both a pre-election and an election matter.*

*However, in the instant case, section 138(1)(a) of the Electoral Act has already made the particular pre-election matter entertainable by an election tribunal by expressly making the issue of qualification of a candidate to contest an election a ground in an Election Petition challenging or questioning the return of the winner of the said election. I therefore hold the considered view that an issue of qualification of a candidate to contest an election under the Electoral Act, 2010 (as amended) is both a pre-election and an election matter which both the High Court and the relevant Election Tribunals have jurisdiction to hear and determined."*

Learned counsel for 1<sup>st</sup> respondent has referred to the case of Dangana v. Usman (supra), as his authority for instituting the action at the Federal High Court instead of the Election Tribunal, after the conclusion of the election in issue in that the case held that pre-election matter can either be commenced at the High Court or at the Election Tribunal and therefore the institution of the action at the Federal High Court was in order.

Though the decision in that case is that the issue of qualification of a candidate to contest an election is both a pre-election and an election matter to be instituted either at the High Court or Election Tribunal, it did not decide that a pre-election matter which falls under section 138(1)(a) and (d) can be instituted at the Federal High Court after the completion/conclusion of an election and the winner declared, as in the instant case. What it decides is that an action on pre-election can be instituted at the High Court before the conduct of an election but after the election it can also be raised in an Election Tribunal. It does not give one a choice between the two courts/tribunal but that where a party failed to institute or raise the matter before the election at High Court, he still has the opportunity to do so after the election in the Election Tribunal, under section 138(1) (a) and (d).

In the circumstances and having regard to the state of the law, it is clear and I hold that issue No. 1 be and is hereby resolved in favour of appellant and that the Federal High Court has no jurisdiction to entertain the action of 1st respondent as constituted.

***The resolution of issue 1 has made it unnecessary for me to go into a resolution of issue No.2. The above resolution of issue 1 has effectively disposed of the appeal since the issue of jurisdiction is fundamental to adjudication. It therefore does not matter whether the lower court decided the substantive matter before the trial court while considering the issue of jurisdiction of that court to hear the matter as such determination is of no moment. Once the trial court has been found to have no jurisdiction on the matter it follows that the Court of Appeal will have no jurisdiction to hear or determine the matter on the merit.***

In conclusion I hold that the appeal has merit and should consequently be allowed. The judgment of the lower court in appeal No. CA/YL/44/2011 delivered on 29/11/2012 is hereby set aside CS/29/2011 delivered on the 27<sup>th</sup> day of August, 2011 is hereby restored and affirmed by me.

I however order parties to bear their cost. Appeal allowed.

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### **GALADIMA JSC**

I have the privilege of reading in draft the judgment just delivered by my learned brother, Onnoghen, J.S.C. I am in complete agreement with his reasons leading to the conclusion that there is merit in the appeal. I too allow same and affirm the decision of the learned trial judge when the declined jurisdiction to entertain the matter. Appeal allowed.

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### **RHODES-VIVOUR JSC**

I read in draft the leading judgment delivered by my learned brother, Onnoghen, J.S.C. I, too would allow the appeal against the judgment of the Court of Appeal delivered on the 29<sup>th</sup> day of November, 2012 and restore the ruling of the trial Judge where that could held that the Federal High Court had no jurisdiction to hear and

determine the plaintiff/1<sup>st</sup> respondent's claim. In view of the fundamental nature of jurisdiction, I add a few words of mine.

According to the plaintiff/1<sup>st</sup> respondent he was duly nominated as the candidate and flag bearer of the Congress for Progressive Change for the election into the Federal House of Representatives for the Mubi North/Mubi South/Maiha Federal Constituency of Adamawa State. The elections were held on the 9<sup>th</sup> day of April, 2012. The Congress for Progressive Change won the election, but instead of INEC declaring the 1<sup>st</sup> respondent the winner, the appellant, also a member of the 1<sup>st</sup> respondents party was declared the winner. What appears so obvious on these facts is that the 1<sup>st</sup> respondent had been substituted with the appellant as the candidate of the CPC before the elections were held. As far as INEC was concerned the appellant was the candidate representing the CPC. Aggrieved with the turn of events the 1<sup>st</sup> respondent as plaintiff filed an action in a Federal High Court (Yola Division) claiming the following reliefs:

*"1. A declaration that the purported substitution of the plaintiff with the 2<sup>nd</sup> defendant for the April 9<sup>th</sup> 2011, National Assembly Election in Mubi North, Mubi South and Maiha Federal Constituency was illegal, null and void and of no effect whatsoever.*

*2. A declaration that the purported return of the 2<sup>nd</sup> defendant as the winner of the April 9<sup>th</sup> 2011, election into the seat of Mubi North, Mubi South and Maiha Federal Constituency of the Federal House of Representatives by the 1<sup>st</sup> defendant was illegal, null and void and of no effect whatsoever.*

*3. An order declaring that the plaintiff having fully participated in the April 29<sup>th</sup> 2011, elections into the Mubi North, Mubi South and Maiha Federal Constituency of the Federal House of Representatives under the platform of the Congress for Progressive Change (CPC) was the winner of the said election and the bona fide representative of Mubi North, Mubi South and Maiha Federal Constituency of the Federal House of Representatives.*

*4. An order directing the 1<sup>st</sup> defendant to issue a certificate of return to the plaintiff.*

*5. An order restraining the 2<sup>nd</sup> defendant from parading himself as the Hon. Member of the House of Representative, representing Mubi North, Mubi South and Maiha Federal Constituency."*

Jurisdiction is the center piece in this appeal. Was the Federal

High Court right to decline jurisdiction to hear and determine the plaintiff/1<sup>st</sup> respondent's claims, or was the Court of Appeal right in upsetting that decision and finding that the Federal High Court had jurisdiction to hear the claims? Jurisdiction is a question of law.

B Jurisdiction is a threshold issue and so courts must assume jurisdiction to determine whether they have jurisdiction to hear the case. Jurisdiction must be determined at the onset of proceedings but where this is not done it can be determined at any stage of the proceedings, on appeal, and even in the Supreme Court for the first time. See: C *Goldmark (Nig.) Ltd. & 3 Ors. v. Ibafon Co. Ltd. & 4 Ors.* (2012) 3 SC (Pt. 111) p. 72; (2012) 10 NWLR (Pt. 1308) 297; *B.N.U.R.T.W. & Anor. v. R.T.EAN. & 5 Ors.* (2012) 1 SC (Pt. 11) p. 119; (2012) 10 NWLR (Pt. 1307) 170; *Braithwaite v. Skye Bank Plc* (2012) 12 SC (Pt. 1) p.1; (2013) 5 NWLR (Pt. 1346) 1.

D It is apposite at this stage that I examine the respective jurisdictions of the Federal High Court and an Election Petition Tribunal, having regard to the claims alluded to above, and bearing in mind that it is the claim before the court that determines the jurisdiction of the court. Jurisdiction is determined by examining the writ of summons, E statement of claim and the reliefs claimed. No other document should be examined. Thereafter an examination of the Constitution, Legislation, and Statute etc must be made to see which of the courts has jurisdiction over the claims before the court. See: *Tukur v. Governor of Gongola State* (1989) 4 NWLR (Pt. 117) p. 517; *P.D.P. v. T. Sylva & 2 Ors.* (2012) All FWLR (Pt. 637) p. 606; (2012) 13 NWLR (Pt. 1316) 85.

Section 6(1) of the Constitution states that:

G “6(1) *The judicial powers of the Federation shall be vested in the courts to which this section relates being courts established for the federation.*”

H Section 6(6) *supra* prevents the courts from assuming powers which they do not have. The jurisdiction of the Federal High Court can be found in section 251 (1) of the Constitution and section 87(9) of the Electoral Act, while the jurisdiction of an Electoral Tribunal can be found in Section 285(1) of the Constitution which states that:

“285(1) *There shall be established for the Federation one or more Election Tribunals to be known as the National Assembly Election Tribunals which shall, to the exclusion of any other court or*



*tribunal, have original jurisdiction to hear and determine petitions as to whether-*

*(a) any person has been validly elected as a member of the National Assembly;*

*(b) the term of office of any person under this Constitution has ceased;*

*(c) the seat of a member of the Senate or a member of the House of Representatives has become vacant.*

*(d) A question or petition brought before the election tribunal has been properly or improperly brought.”*

The unlawful substitution of the 1<sup>st</sup> respondent and replacement with the appellant is the center piece of the 1<sup>st</sup> respondents' claims. Unlawful substitution is claim 1. It is a pre-election matter. Only a Federal High Court or a State High Court or a Federal Capital Territory High Court has jurisdiction by virtue of section 87(9) of the Electoral Act, 2010 to hear such a claim. Claims 2, 3 and 4 are post election matters that can only be heard by an Election Tribunal since the claims fall within the warm embrace of section 285(1)(a) of the Constitution. Claim is always necessary to give effect to claims 2, 3 and 4 if they succeed.

The position of the law from decided cases of this court is that the Federal High Court has jurisdiction to hear and determine pre-election matters but where a pre-election matter is filed after the election, a Federal High Court would no longer have jurisdiction to hear such a pre-election matter. The proper venue for such an action would be an Election Tribunal. See *Hassan v. Aliyu* (2010) All FWLR (Pt. 539) p. 1007; (2010) 17 NWLR (Pt. 1223) 547; *Salim v. C.P.C.* (2013) 6 NWLR (Pt. 1351) p. 501.

The reasoning being that in election matters time is of the essence. The courts are concerned with considering the conduct of the election, whether it was conducted properly or not. Consequently if a candidate files his action before the election a Federal High Court would have jurisdiction to continue with the hearing to finality. But if a pre-election matter is filed after the election has taken place complaining about the conduct of his party primaries as regards his nomination, substitution etc, such an action can only be heard by an election tribunal. The elections were held on 9/4/2011, the 1<sup>st</sup> respondents suit was filed on 9/5/2011. Claim 1 is a pre-election

matter which ought to have been claimed in a suit filed before 9/4/2011 in a Federal High Court or State High Court or High Court of FCT. Since the 1<sup>st</sup> respondent was unable to file a suit seeking claim 1, before 9/4/2011 the claim can only be heard by an election tribunal. The 1<sup>st</sup> respondent has a cause of action that can be heard by an election tribunal and not one of the High Courts in view of the fact that at the time he filed the action on 9/5/2011, elections had been concluded on 9/4/2011 and the winner declared and sworn in to office. Claims 2, 3, 4 and 5 are post election claims or reliefs that can only be heard and determined by an election tribunal. 1<sup>st</sup> respondents action is a pre-election matter wherein he seeks post election reliefs. The Federal High Court was right to decline jurisdiction.

Before I conclude these few words of mine I most comment on the observation of the Court of Appeal when the court said:

*"I know of no Law or Statute upon which the trial court based its decision, there is no provision under the 1999 Constitution and the Federal High Court Act as to time limit which a pre-election matter can be initiated."*

Hassan v. Aliyu (supra) and Salim v. C.P.C. (supra) answers the above observation. Both decisions are authority on time limitation for pre-election matters, and all courts must stand by the decisions. The doctrine of precedent enjoins all Judges sitting in courts inferior to the Supreme Court to stand by the decisions of the Supreme Court, no matter what they may think and even if the decision is wrong.

For this and the much more fuller reasoning in the leading judgment of my learned brother, Onnoghen, J.S.C. the judgment of the Court of Appeal is hereby set aside while the judgment of the Federal High Court is affirmed. Appeal allowed.

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### **AKA' AHS JSC**

I read in draft the judgment of my learned brother, Onnoghen, J.S.C. just delivered and I entirely agree with him that the appeal has merit and I accordingly allow it. The lower court completely went off tangent in overruling the Federal High Court which had declined jurisdiction on the premise that the action was pre-election and had been overtaken by events but the lower court held that there is no

provision under the 1999 Constitution and the Federal High Court Act as to time limit within which a pre-election matter can be initiated. Learned counsel for the respondent while acknowledging that the action was a pre-election matter sought to justify the commencement of the action at the Federal High Court after the election on the ground that the respondent's substitution was not brought to his attention until on the date of the election which was 9<sup>th</sup> April, 2011 and so it was impossible for him to challenge the substitution at Federal High Court before the conduct of the election. Where it is not possible to challenge the substitution of a candidate before the holding of the election, under section 138(1)(a)(d) of Electoral Act, 2011 (as amended), the candidate who was substituted can challenge the candidate who emerged the winner of the election if he was the person who benefited from the wrongful substitution. The section provides as follows:

*"138(1) An election may be questioned on any of the following grounds, that is to say-*

*(a) That a person whose election is questioned was at the time of the election, not qualified to contest the election;*

*(d) That the petitioner or its candidate was validly nominated but was unlawfully excluded from the election."*

See: *Salim v. C.P.C.* (2013) 6 NWLR (Pt. 1351) 501 at 527.

In paragraph 21 of the statement of claim the plaintiff (now 1<sup>st</sup> respondent) sought the following reliefs:

*"21. WHEREOF the plaintiff claims as follows:*

*(a) A declaration of this honourable court that the substitution of the plaintiff with the 2<sup>nd</sup> defendant for the April, 9<sup>th</sup> 2011 National Assemblies Elections in Mubi North/Mubi South/Maiha Federal Constituency was illegal, null and void and of no effect whatsoever.*

*(b) A declaration of this honourable court that the purported return of the 2<sup>nd</sup> defendant as the winner of the April, 9<sup>th</sup> 2011 elections into the seat of Mubi North/Mubi South/Maiha Federal Constituency of the Federal House of Representatives, by the 1<sup>st</sup> defendant, was illegal, null and void and of no effect whatsoever.*

*(c) An order of this honourable court declaring the plaintiff having fully participated in the April, 9<sup>th</sup> 2011 elections into the Mubi North/Mubi South/Mubi South/Maiha Federal Constituency of the Federal House of Representatives, under the platform of the Congress*

*for Progressive Change (CPC) was the winner of the said election, and the bona fide representative of Mubi North/Mubi South/Maiha Federal Constituency in the House of Representatives.*

(d) *An Order of this honourable court restraining the 2nd defendant from parading himself as the honourable member of the House of Representatives, representing. Mubi North/Mubi South/Maiha Federal Constituency.*

(e) *Costs”.*

The principal reliefs sought in the action are those contained in paragraphs 21 (b) and (c) of the statement of claim and these can be granted only by an Election Tribunal. The time for presenting the petition as stipulated in section 134(1) of the Electoral Act is within 21 days after the date of the declaration of results of the elections. Although it was not stated when the results for the Mubi North/Mubi South/Maiha Federal Constituency election result was declared, it is a notorious fact that results of the election for all the National Assembly seats in all the States of the Federation were declared immediately or at the latest on the 10<sup>th</sup> April, 2011. So at the time the action was filed on 9/5/2011, the 1<sup>st</sup> respondent was out of time in filing it. So, apart from the fact that Federal High Court could not entertain the principal claims, even if the petition had been filed before the National Assembly Election Tribunal, the petition would have been stale and liable to be struck out as incompetent. It is needless to further state as has been emphasised in the judgment of my learned brother, Onnoghen, J.S.C. that time is of the essence in the filing of election petitions and even more so for pre-election matters which should be disposed of before the holding of the election.

In the result I also find that the appeal has merit and I accordingly allow it. I hold that the Federal High Court Yola rightly declined jurisdiction to entertain the action. The judgment of the Court of Appeal Yola delivered on 29/11/2012 in Appeal No: CA/YL/44/2011 is wrong and is hereby set aside while the judgment of the Federal High Court in suit No. FHCIYLICS/2912011 delivered on the 27/8/2011 striking out the suit for want of jurisdiction is hereby restored.

I abide by the order made in the leading judgment of my learned brother, Onnoghen, JSC.

**OKORO JSC**

I read before now the illuminating judgment of my learned brother, Onnoghen, J.S.C. just delivered with which I am in complete agreement both on the reasons advanced and the conclusion that this appeal is meritorious and deserved to be allowed.

In this matter, the first respondent, as plaintiff before the Federal High Court sitting in Yola, by a writ of summons and statement of claim filed at the registry of that court on 9/5/11, brought an action challenging the election and return of the appellant on the ground that he was the candidate of the 3rd respondent in the election into the Mubi North/Mubi South/Maiha Federal Constituency seat of Adamawa State in the House of Representatives. He also complained that despite being the candidate of the 3rd respondent at the election, the 2<sup>nd</sup> respondent issued the appellant a certificate of return, instead of issuing same to him. It was his prayer that the said certificate be issued to him. Based on the facts above, the Federal High Court declined jurisdiction, stating that the claim of the appellant was a pre-election matter which ought to have been filed before the date of the election. An appeal to the Court of Appeal was allowed. The lower court reversed the decision of the trial court and held that there is no law which limits when pre-election matters can be filed in court. The appellant has now appealed to this court and has distilled two issues for the determination of this appeal.

The issues are:

1. Whether the Court of Appeal decided rightly when it set aside the decision of the Federal High Court declining jurisdiction to hear and determine the 1<sup>st</sup> respondent's suit and whether the 1<sup>st</sup> respondent's suit as constituted come within the jurisdiction of a Federal High Court or an Election Petition Tribunal.

2. Whether the Court of Appeal acted rightly when it pronounced on the constitutionality or otherwise of the alleged substitution of the 1<sup>st</sup> respondent when in fact same was not the subject of appeal and whether the pronouncement by the court is not a breach of the appellant's right to fair hearing when he was not heard by the court on the issue before the pronouncement.

The respondents also formulated similar issues as elaborately reproduced in the lead judgment. I need not repeat the exercise. I shall comment briefly on the jurisdiction of the Federal High Court to

entertain this matter. It is trite that whenever the Supreme Court has given a decision on any issue, all lower courts and parties having similar issues so decided upon, are bound by it. This is much more so, whether they like it or not. It does not speak well of any lower court to brush aside the judgment of this court on any issue and purport to make a fresh decision of its own on the matter. The doctrine of binding precedents or stare decisis are basic elementary principles of law which make the law certain and the society well guided. It should not be otherwise, else, anarchy may set in.

All parties to this appeal and the courts agree that the case of the first respondent was a pre-election matter though they seek post-election reliefs. This court has decided in quite a number of cases that pre-election matters can only be filed in the High Court before the holding of the election and declaration of results. After the election has been held and result declared, such matters have ceased to be pre-election matters and the High Courts no longer have jurisdiction. However, where such matters are filed before the election, the hearing may continue in the High Court and even on appeal to the Supreme Court notwithstanding the holding of the election. This is so because by the doctrine of *lis pendens*, it prevents any transfer of any right or the taking of any steps capable of foisting a state of helplessness and/or hopelessness on the parties or the court during the pendency in court of an action and even after. I must state that after the election, it is the Election Tribunals that have jurisdiction to hear complaints arising from the conduct of the election, definitely, not the Federal High Court. See generally the following cases: *Hassan v. Aliyu* (2010) All FWLR (Pt. 539) 1007; *Odedo v. I.N.E.C.* (2008) 17 NWLR (Pt. 1117) 554; *Amaechi v. I.N.E.C.* (2008) All FWLR (Pt. 407) 1.

From all I have stated above, I do not know from where the lower court was coming when it held that there is no law which limits the period when pre-election matters can be filed in court. I affirm that the learned trial Judge was right when he declined jurisdiction to entertain the matter which was based on sound reason and decided cases of this court. The Court of Appeal was very wrong to set aside that decision. That is why I agree with my learned brother, Onnoghen, J.S.C. that this appeal is meritorious and I hereby allow same. I also order parties to bear their costs.