

SUPREME COURT OF NIGERIA
TUESDAY 20TH OCTOBER, 2015. SC. 676/2015
CORAM:- I. T. MUHAMMAD, M. MUNTAKA-COOMASSIE,
O. RHODES-VIVOUR, C. B. OGUNBIYI, J. I. OKORO,
C. C. NWEZE, A. SANUSI, JJSC

JAFAR ABUBAKAR APPELLANT
AND	
1. ALHAJI IBRAHIM	
HASSAN DANKWAMBO	
2. CHARLES ILIYA RESPONDENTS
3. PEOPLES DEMOCRATIC PARTY	
4. INDEPENDENT NATIONAL	
ELECTORAL COMMISSION	

APPEALS - Grounds - Leave - Where leave is a pre condition before filing notice of appeal - Containing grounds of mixed law and facts - Appellant who files a notice without leave - Will have his process thrown out (H1)

APPEALS - Grounds - Competence - Where there are incompetent and competent grounds in notice of appeal - The former would be struck out - While the latter would sustain the appeal (H2)

FACTS

Before the Gombe State Governorship Election Petition Tribunal, petitioner/appellant brought this petition seeking inter alia that defendant/1st respondent (Alhaji Ibrahim Hassan Dankwambo) of the Peoples Democratic Party was not duly elected as the Governor of Gombe State not having scored the highest number of lawful votes cast at the election. Appellant in the alternative ask that the gubernatorial election conducted in the State on the 11th of April 2015 be nullified and that 4th respondent be ordered to conduct a fresh election for the same post in the State. Event that led to the filing of the petition was that appellant was dissatisfied with the declaration of 1st respondent as the winner of the gubernatorial election held in the State on the 11th April 2015. Appellant and 1st respondent were sponsored by All Progressives Congress and Peoples Demo-

cratic Party respectively for the election. 1st respondent was adjudged as having secured the highest number of lawful votes cast at the election. 4th respondent consequently returned 1st respondent as the winner of the election. At the Tribunal 1st respondent filed a reply to the petition and followed it up with a Motion on Notice seeking leave to hear the application outside the pre hearing session and for order striking out the petition. One of the major grounds for the application is that the petition was signed by a person – ‘Sam Kargbo’ whose name is not on the Roll of Lawyers called to the Bar at the Supreme Court Registry.

Appellant filed counter-affidavit. The Tribunal in its ruling held that the aforementioned name cannot validly sign the petition, but that since the petitioner also signed the petition, the petition is competent. Appellant rather than moving on with his petition, appealed to the Court of Appeal. He later brought an application seeking among others for leave to amend his Notice of Appeal and leave to argue the appeal based on the amended Notice. In its two rulings, the appellate Court found that grounds 1, 2, 4, 5 and 6 in appellant’s Notice of Appeal are grounds of mixed law and fact which require leave of court. The grounds were struck out for being incompetent. The Court also found that ground 3 is a ground of law but observed that when the said ground of appeal is juxtaposed with the relief sought in the Notice of Appeal, the said ground cannot sustain the relief claimed and so there is no valid Notice of Appeal which can be amended. The prayer to amend the Notice of Appeal was accordingly refused and the appeal dismissed. Aggrieved, appellant has appealed to the Supreme Court.

ISSUES FOR DETERMINATION

“1. Whether the Court of Appeal was right in holding that Grounds 1, 2, 4, 5, and 6 of the Appellant’s Notice of Appeal filed on 17/7/2015 are at best grounds of mixed law and fact requiring leave of the court.

2. Whether in consideration of the facts and circumstances of this case, the Court of Appeal was right in dismissing the Appellant’s appeal.”

HELD (Unanimously allowing the appeal per

RHODES-VIVOUR JSC)

APPEALS - Grounds - Leave

1. Applying the principle earlier alluded to and the leading authorities, grounds 1, 2, 4, 5 and 6 contained in the Notice of Appeal are grounds of mixed law and facts, while ground 3 is a ground of law. Section 241 of the Constitution provides for appeals as of right while section 242 of the Constitution provides for appeals with leave.

The position of the law is that where leave which means permission is a pre-condition before an Appellant can file a Notice of Appeal, containing grounds of mixed law and fact, an Appellant who files a Notice of Appeal without satisfying or obtaining that pre-condition would have his process thrown out.

The Appellant having not obtained leave of the Court of Appeal is caught by the provisions of section 242 of the Constitution and grounds 1, 2, 4, 5 and 6 in the Notice of Appeal were correctly struck out by the Court of Appeal. Ground 3 still subsists. It is a ground of law and it sustains the appeal.
(p. 3213 H)

APPEALS - Grounds - Competence

2. The well settled position of the law is that where there are incompetent grounds and competent grounds in a Notice of Appeal the incompetent grounds would be struck out and the competent grounds would sustain the appeal.

It is not the business of the Court of Appeal at this stage to say that ground 3 is inconsistent with the reliefs sought in the Notice of Appeal. Relief is irrelevant in deciding if a ground of appeal is competent or incompetent. The court should order the Appellant to file his brief on the competent ground 3. Striking out a competent ground of appeal and the Notice of Appeal under whatever guise cannot be correct. An Appellant must be allowed to argue his appeal once he has, even a single competent Ground of Appeal. In the circumstances dismissing the appeal by the Court of Appeal was wrong. This

appeal is allowed.

The matter is hereby remitted to the Court of Appeal for hearing on the competent ground 3. (p. 3215 C)

REPRESENTATION

- B S.P. Kargbo for the Appellant with him N. Okatta
B.A. Oyefeso for the 1st Respondent
N.D. Gwaison for the 2nd Respondent with him G. M. Dioji (Miss)
F.S. Abiodun, P. Alibozi (Miss), A.Z. Abdulahi (Mrs.),
C A.O. Ayodeie, SAN for the 3rd Respondent
I. M. Dikko for the 4th Respondent with A. F. Amanzi

CASES REFERRED TO

- Nwadike v. Ibekwe (1987) 4 NWLR (pt. 67) 718
D Comex Ltd v. NAB Ltd (1997) 3 NWLR (pt. 643) 656
Ogbechie v. Onochie (1986) 2 NWLR (pt. 23) 484
NNSC v. E.S.V. (1990) 7 NWLR (pt. 164) 526
Amuda v. Adelodun (1994) 8 NWLR (pt. 360) 23
Enterprise Bank Ltd v. Aroso (2014) 3 NWLR (pt. 1394) 256
E Ekunola v. CBN (2013) 15 NWLR (pt. 1377) 224
Iyamu v. Aigbiremwen (1992) 2 NWLR (pt. 22) 233
Ojukwu v. Onyeador (1991) 7 NWLR (pt. 203) 286
Korede v. Adedokun (2000) 15 NWLR (pt. 736) 483
F Ogundoyin v. Adeyemi (2001) 13 NWLR (pt. 730) 403

STATUTE REFERRED TO

Constitution of the Federal Republic of Nigeria 1999, ss. 241, 242

LEAD JUDGMENT BY RHODES-VIVOUR JSC

- G Election into the office of Governor of Gombe State was held on the 11th day of April, 2015. At the end of the election the 1st Respondent was declared the winner, and duly elected Governor of Gombe State. He scored 285,369 votes. He contested on the platform of the Peoples Democratic Party (PDP), and the 2nd Respondent is the Deputy Governor of Gombe State. The Candidate of the All Progressives Congress, (APC) came in second with 205, 132 votes, while the Appellant scored 848 votes. He is the candidate of African Democratic Congress (ADC). Dissatisfied with the results announced
- H

by the 4th Respondent, the regulatory body in charge of conducting elections in Nigeria, he filed a petition before the Election Petitions Tribunal Gombe State. The Appellant as petitioner sought the following reliefs in his petition filed on the 2nd day of May 2015:

“1. That Alhaji Ibrahim Hassan Dankwambo of the Peoples Democratic Party, the 3rd Respondent, was not duly elected or returned as Governor of Gombe State not having scored the highest number of lawful votes cast at the election and he has not scored not less than one quarter of all the votes cast in each of at least two thirds of all the Local Government Areas in Gombe State.

2. The Certificate of return given to the 1st Respondent, Alhaji Ibrahim Hassan Dankwambo of the Peoples Democratic Party as Governor of Gombe State is null void and of no effect whatsoever.

3. That the election for the office of Governor of Gombe State held on the 11th day of April, 2015 is void on the ground that the election was not conducted substantially in compliance with the Electoral Act 2010 as amended, the INEC Manual for Election Officials 2015 (as updated) and the Guidelines issued by the 4th Respondent for the conduct of the general elections in 2015.

4. That the said election was vitiated by substantial non compliance with the mandatory provisions of the Electoral Act, 2010 (as amended), the INEC Manual for Election officials 2015 (as updated) and the Guidelines issued by the 4th Respondent for the conduct of the general elections in 2015, which substantially affected the validity of the said election.

AND IN THE ALTERNATIVE:

1. That the election for the office of the Governor of Gombe State held on the 11th day of April 2015 is void on the ground that the election was not conducted substantially in compliance with the provisions of the Electoral Act 2010 (as amended).

2. That the said election be nullified or cancelled and the 4th Respondent be ordered to conduct fresh election for the office of the Governor of Gombe State.”

The 1st Respondent filed a Reply to the Petition on the 30th H day of May, 2015 and on the 6th of July, 2015 he filed a Notice of Motion seeking the following reliefs:

“1. Leave to hear the application outside the prehearing session.

2. An Order striking out the Petition.”

The Grounds for the application were that:

“(a) *The Petition was prepared and signed by one SAM KARGBO as solicitor to the Petitioner.*

B *(b) The name, SAM KARGBO is not on the Roll of lawyers called to the Nigerian Bar and does not belong to a lawyer admitted to practice law in Nigeria.*

C *(c) Only a lawyer called to bar can, under the legal practitioner’s Act prepare, sign and file court processes and represent or appear for a litigant in court in Nigeria.*

(d) The application borders on the jurisdiction of the Honourable Tribunal.”

Affidavit and counter-affidavit were filed. In a considered Ruling delivered on the 9th day of July, 2015 the Tribunal found that the name Sam Kargbo which is not contained on the Roll of Legal Practitioners cannot validly sign the petition but that since the petitioner also signed the petition the petition is competent. Surprisingly rather than go ahead with his petition the petitioner/appellant decided to appeal. He filed a Notice of Appeal on the 14th day of July, 2015 which he withdrew. The Court of Appeal struck it out. The Petitioner then filed a Notice of Appeal on the 14th of July 2015. It contained six grounds of Appeal, and on the 17th day of August, 2015 he filed a Notice of Motion seeking ten orders. It is only order sought in 7 and 8 that are relevant in this judgment. They read

F *“7. An order granting leave to the Appellant/Applicant to amend his Notice of Appeal dated and filed on 17/7/2015 in the manner underlined in bold black and highlighted in “Exhibit B” and deeming the amended Notice of Appeal already filed and served as*
G *properly filed and served.*

8. An order granting leave to the Appellant/Applicant to argue this appeal based on the amended Notice of Appeal.”

In two considered Rulings delivered on the 25th of August 2015, the Court of Appeal found that grounds 1, 2, 4, 5 and 6 in the Notice of Appeal filed on the 17th July, 2015 are grounds of mixed law and fact which require leave of court. The court proceeded to strike out the said grounds because the appellant neither sought nor obtained the leave of court in respect of the said grounds of Appeal.

The Court of Appeal found that ground 3 is a ground of law

but observed that when the said ground of appeal is juxtaposed with the relief sought in the Notice of Appeal, the said ground cannot sustain the relief claimed and so there is no valid Notice of Appeal which can be amended. The prayer to amend the Notice of Appeal was accordingly refused and the appeal dismissed. This Appeal is against that Ruling. This court is to determine if the reasoning of the Court of Appeal was flawed. In accordance with Rules of this court briefs of argument were filed. B

Learned counsel for the Appellant S. P. Kargbo Esq., filed the Appellant's brief on the 23rd of September 2015. Two Issues were formulated for determination of the appeal. They are: C

"1. Whether the Court of Appeal was right in holding that Grounds 1, 2, 4, 5, and 6 of the Appellant's Notice of Appeal filed on 17/7/2015 are at best grounds of mixed law and fact requiring leave of the court. D

2. Whether in consideration of the facts and circumstances of this case, the Court of Appeal was right in dismissing the Appellant's appeal."

Learned counsel for the 1st Respondent, B.A. Oyefeso Esq., also formulated two issues in his brief filed on the 28th of September 2015. E

"1. Whether the lower court was right in its decision that the Notice of Appeal from the decision of the Election Tribunal was not competent and, if not, whether it could allow an amendment to the same. F

2. Whether having regard to the circumstances of this matter, the lower court was right in dismissing the appeal."

Learned counsel for the 2nd Respondent N. D. Gwaison Esq., formulated three issues in the 2nd Respondents brief filed on the 2nd of October, 201 5. They are: G

"1. Whether the Appellant's Notice of Appeal filed on the 17th July, 2015 is competent having regards to the nature of the grounds contained therein.

2. Whether the learned Justices of the Court of Appeal were right in law in refusing the appellant's prayer for leave to amend their Notice of Appeal filed on the 17th of July, 2015 and consequently dismissing the Appellant's Appeal. H

3. Whether the Appellant's Notice of Appeal dated and filed

on the 17th July, 2015 is competent having regards to the nature of the grounds contained therein.”

A.O. Ayodele SAN, learned counsel for the 3rd Respondent formulated two issues in the 3rd Respondent’s brief filed on the 28th of September, 2015.

B *“1. Whether the Court of Appeal was not right in stating that grounds 1, 2, 4, 5 and 6 are at best grounds of mixed law and fact requiring leave of the court.*

C *2. Whether the Court of Appeal was not right in stating that when the valid ground three in the Notice of Appeal is juxtaposed with the relief sought by the Appellant it does not seem proper to grant the reliefs claimed by the Appellant.”*

D Learned counsel for the Appellant filed replies to the 1st and 3rd Respondents’ briefs on the 2nd of October, 201 5. He did not file replies to the 2nd and 4th Respondents’ brief.

E I have examined the issues formulated for determination of this appeal. I am satisfied that the issue formulated by the Appellant address his real grievance and apparently justify his filing of this appeal. The issues are clearly expressed, straight to the point and devoid of frivolities. The two issues formulated by the Appellant shall be considered.

F At the hearing of the appeal on the 12th of October, 201 5 learned counsel for the Appellant adopted the Appellant’s brief filed on the 23rd of September 2015. Reply to 1st and 3rd Respondents briefs filed on 2nd of October, 201 5 and urged this court to allow the appeal.

G Learned counsel for the 1st Respondent adopted the 1st Respondent’s brief filed on the 28th of September, 2015 and urged this court to dismiss the appeal.

Learned counsel for the 2nd Respondent adopted the 2nd Respondent’s brief filed on the 2nd of October, 2015 and urged the court to dismiss the appeal.

H Learned counsel for the 3rd Respondent adopted the 3rd Respondent’s brief filed on the 28th of September 2015, and urged this court to dismiss the appeal.

Finally, Learned counsel for the 4th Respondent, adopted the 4th Respondent’s brief filed on the 2nd of October, 201 5 and urged this court to dismiss the appeal.

ISSUE 1

Whether the Court of Appeal was right in holding that Grounds 1, 2, 4, 5 and 6 of the Appellant's Notice of Appeal filed on 17/7/15 are at best grounds of mixed law and fact requiring leave of the court.

Learned counsel for the Appellant S.P Kargbo Esq., observed that none of the grounds of appeal complains about facts, contending that they are grounds of law. He further observed that the Court of Appeal was wrong to have christened them as grounds of mixed law and facts. He urged this court to resolve the issue in favour of the Appellant. Reliance was placed on *Nwadike v Ibekwe* (1987) 4 NWLR (pt.67) p.718 *Comex Ltd v. NAB Ltd* (1997) 3 NWLR (Pt.643) p.656 *Ogbechie v. Onochie* (1986) 2 NWLR (Pt.23) p.484. B C

Learned counsel for the 1st Respondent, B.A. Oyefeso Esq., observed that grounds 1, 2, 4, 5 and 6 are grounds of mixed law and fact, and since the Appellant failed to obtain leave the Court of Appeal was right to strike them out. As regards ground 3 he submitted that the said ground and the relief sought cannot complement each other. Relying on *NNSC v. E.S.V.* (1990) 7 NWLR (Pt.164) p.526, *Ogbechie v. Onochie* (1986) 2 NWLR (pt.23) p.484. D

He urged the court to resolve the issue in favour of the 1st Respondent and strike out the Petition. E

Learned counsel for the 2nd Respondent N. D. Gwaison Esq., observed that the Appellant's Notice of Appeal filed on the 17th of July, 2015 is incompetent because grounds 1, 2, 4, 5 and 6 of the grounds of appeal are mixed law and facts and the Appellant never obtained leave of court. As regards ground 3 he further observed that the said ground is inconsistent with the reliefs sought in the Notice of Appeal. Reference was made to *Nwadike v. Ibekwe* (1987) 2 NSCC p.1219, *Amuda v. Adelodun* (1994) 8 NWLR (Pt.360) p.23. F G

Concluding his argument, he submitted that grounds 1,2,4,5 and 6 are grounds of mixed law and fact, and they are incompetent since leave was not sought before they were filed. As regards ground 3 he submitted that the said ground cannot sustain the reliefs sought by the Appellant in the Notice of Appeal. He urged this court to resolve this issue in favour of the 2nd Respondent. H

Learned counsel for the 3rd Respondent, A.O. Ayodele, SAN observed that grounds 1, 2, 4, 5 and 6 are grounds of mixed law and facts and since leave was not obtained the Court of Appeal was right

to strike them out. He placed reliance on *Enterprise Bank Ltd v. Deaconess F. Bose Aroso & 5 ors* (2014) 3 NWLR (Pt.1394) p.256. *Alhaji R. A. Ekunola v. CBN & Anor* (2013) 15 NWLR (pt.1377) p. 224.

On ground 3 he argued that the grant of the relief sought will contradict the ground of Appeal. He urged the court to dismiss the appeal.

Learned counsel for the 4th Respondent I. M. Dikko Esq., observed that the Court of Appeal was right to strike out grounds 1,2,4,5 and 6 in the Notice of Appeal because they are grounds of mixed law and facts and leave was not obtained. On ground 3 he observed that it was at cross purpose with the Reliefs sought by the Appellant. He relied on *Metal Construction (WA) Ltd v. Migliore* (1990) 1 NWLR (pt.126) p.299 *NNSC v. Establishment of Vaduz* (1990) 7 NWLR (Pt.164) p.526 and urged this court to dismiss the appeal.

In *Enterprise Bank Ltd v. Deaconess Florence Bose Aroso & 5 ors* (2014) 3 NWLR (pt.1394) p.256

I said that:

“At times the difference between a ground of law and a ground of mixed law and fact can be very narrow. Labelling a ground of appeal error of law, or misdirection may not necessarily be so. The appellation is irrelevant in determining whether a ground of appeal is of law or mixed law and fact.”

On how to make the distinction I said that:

“The court should examine the grounds and their particulars and identify the substance of the complaint. In that way the issue of whether a ground of appeal is of law or mixed law and fact would be resolved. Identifying a ground of appeal on facts is easier...”

“Before making the distinction between grounds of law, mixed law and facts, and facts, first of all read carefully the ground of appeal and its particulars to understand thoroughly the substance of the complaint. Find out if the ground of appeal contests facts. If it does it can only be a ground of facts or mixed law and facts.

*Once facts are not in dispute. That is to say facts are settled, a ground of appeal can never be on facts or mixed law and facts. The ground of appeal can only complain of the wrong application of the law to settled facts and that is a ground of law. See *Ogbechie v. Onochie* (1986) 2 NWLR (pt.23) p.484 *Nwadike v Ibekwe* (1987) 4 NWLR (pt.67) p.718 *Opuiyo v. Omoniwari* (2007) 6 SC (pt. 1) p.35.”*

I shall now examine the six grounds of Appeal in line with the above to see if the Court of Appeal was correct in its classification of the said Grounds of Appeal.

GROUND 1

The lower Tribunal erred in law when in the face of uncontroverted evidence that Sam Kargbo who signed the petitioners Petition is one and the same person as the Samuel Peter Kargbo on the Roll of Legal Practitioners called to the Nigerian Bar, it still went ahead to hold as follow:

“We hold the view that there is a world of difference between the names Sam Kargbo and Samuel Peter Kargbo. Whilst Sam may be an abbreviation of the name Samson, Samuel or even a female Samantha, there is also a total omission of the name Peter in the name Sam Kargbo which is contained in the name Samuel Peter Kargbo that is on the roll of Legal Practitioners. Clearly the same section 2 (1) of the Legal Practitioners Act on the name of the Roll of Legal Practitioners not any other name. Now that we have found that there is a world of difference between Sam Kargbo who signed the Petition and Samuel Peter Kargbo we hold that the name Sam Kargbo which is not contained on the roll of legal practitioners cannot validly sign the petition in this case. On this, the case of Esonowo v. Ukpong (1999) 6 NWLR (Pt.60B) P.611, cited to us by the 1st Respondent’s counsel is quite apposite. In that case Belgore JSC, held at page 1 9, paragraph H that -

“A person cannot at random rearrange his initials or order in which his names are written for the purpose of registering a name in a professional register sanctioned by law. There is a world of difference between J.E. Esonowo and E. J. Esonowo for the purpose of registering a name.”

PARTICULARS

i. The issue before the Tribunal was not the difference between the names Sam Kargbo and Samuel Peter Kargbo.

ii. The issue before the Tribunal was whether Sam Kargbo, who signed the Petition is the same person as Samuel Peter Kargbo on the Roll of Legal Practitioners.

iii. The petitioner/applicant by his counter affidavit led evidence as proof that the person who signed the petition as Sam Kargbo was not impersonating but rather is a person called to the Nigerian Bar

being same person as Samuel Peter Kargbo.

iv. The 1st Respondent who filed the Motion under consideration did not file any reply to controvert or disprove that piece of evidence.

v. In the circumstances the only evidence before the tribunal on the issue was that Sam Kargbo is the same person as Samuel Peter Kargbo.

vi. The Case of Esenowo v. Ukpung (supra) relied upon by the Tribunal established that affidavit evidence is sufficient to establish that two apparently different names belong to one and the same person.

vii. In this case, there was unchallenged evidence that the names Sam Kargbo belonged to one and the same person.

viii. Section 2(1) of the Legal Practitioners Act did not prohibit a legal practitioner from signing processes with an abridged version of the names on the Roll of Legal Practitioners.

GROUND 2

The Tribunal misdirected itself and came to a perverse decision when it held as follows:

"It is instructive to observe that in his counter-affidavit the Petitioner/Respondent did not controvert the averment as to the non-existence of the names Sam Kargbo on the Roll of legal practitioners as averred by the 1st Respondent. Rather he averred that the name Sam Kargbo is one and the same as Samuel Peter Kargbo stated to be contained on the Roll of legal Practitioners by the 1st Respondent.

In essence the averments and indeed exhibits of the counter-affidavit of the petitioner/Respondent confirm the averment of the 1st Respondent as to the non existence of Sam Kargbo as a legal practitioner."

PARTICULARS

i. The Tribunal clearly and completely misapprehended the law and this led them to misdirect themselves.

ii. The crux of 1st Respondent's contention is that Sam Kargbo is not a person called to the Nigerian Bar and qualified to practice as legal practitioner in Nigeria and as such cannot sign processes filed in a court as a legal practitioner.

iii. The requirement of the law is for a person to be called and enrolled in the Nigerian Bar to enable the person practice as a legal

practitioner.

iv. The gravamen of the deposition in the Appellant's counter-affidavit is that Sam Kargbo is qualified to practice as a Legal Practitioner in Nigeria because he is the same person as Samuel Peter Kargbo which is a name on the Roll of legal practitioners.

v. The deposition that Sam Kargbo is the same person as Samuel Peter Kargbo was not challenged or denied as the 1st Respondent did not file any further affidavit to join issues on the identity of Sam Kargbo being the same person as Samuel Peter Kargbo.

vi. The Tribunal misconstrued the counter-affidavit of the Appellant and thereby misdirected itself and arrived at a perverse decision.

GROUND 3

The tribunal erred in law when all the three members of the tribunal jointly heard and delivered ruling on the application of the 1st respondent dated 6th July, 2015 and brought pursuant to sections 2(1) and 24 of the Legal Practitioners Act and paragraph 4(3)(b) of the First Schedule to the Electoral Act, 2010 as amended.

PARTICULARS:

i. By virtue of paragraph 27(1) of the First Schedule to the Electoral Act 2010 as amended, only the Chairman has the power and jurisdiction to hear and determine interlocutory applications.

ii. The Court of Appeal in the cases of Hon. Ayo Adeseun & anor. v. Chief Luqman Oyeibisi Ilaka & ors. (unreported) Appeal No. CA/1/EPT/NA/3/11 delivered on 12/9/2011; Okediran v. Ayoola & ors. (2011) LPELR - 4063 (CA); Apapa & anor. v. INEC & ors. (2011) LPELR-3607 (CA); Adewale & anor v. Ali & ors. (2011) LPELR-4243 (CA) held that a hearing and determination of any interlocutory application other than by chairman alone strikes at the root of the jurisdiction of the lower Tribunal and renders its proceedings and ruling a nullity.

iii. The three members of the Tribunal heard and determined the 1st Respondent's application contrary to the decisions of the Court of Appeal in Hon. Ayo Adeseun and anor. V. Chief Luqman Oyeibisi Ilaka and ors (unreported) Appeal No. CA/1/EPT/NA/3/11 delivered on 12/9/2011 ; Okediran v. Ayoola & ors. (2011) LPELR - 4063 (CA); Apapa & anor. v. INEC & ors. (2011) LPELR - 3607 (CA); Adewale & anor v. Ali & ors. (2011) LPELR-4243 (CA).

iv. The absence of jurisdiction therefore renders the proceedings of the Tribunal on the 8th of July, 2015 respectively in determining the application of the 1st Respondent a nullity.

GROUND 4

B The Tribunal erred in law and came to a perverse decision when it heard and determined the 1st Respondent's application dated 6th July, 2015 outside the pre-hearing session without first granting leave to the 1st Respondent.

PARTICULARS:

C i. There was no pronouncement on the application by the 1st Respondent for leave to hear his application outside the prehearing session.

ii. The Pre-hearing session in the Petition closed on the 4th of July, 2015.

D iii. Under the Electoral Act 2010 all motions must be heard and determined at the pre-hearing conference except in special circumstances with leave of court or Tribunal.

E iv. The said application was heard outside the pre-hearing conference and without any special circumstance shown or demonstrated in the affidavit in support of the application.

GROUND 5

F The lower Tribunal erred in law when in justifying the hearing and determination of the 1st Respondents application at the time it did it held as follows:

"Meanwhile before going into the application it is pertinent for us to consider the first issue raised by the Petitioner/Respondent on the competence of the application having been filed after the pre-hearing session. Straightaway, we hold the view that the objection on jurisdiction is not one of mere irregularity covered by paragraph 53(2) of the 1st Schedule to the Electoral Act 2010, but one that is fundamental to the foundation of the case itself and the competence of the court or tribunal to entertain same. It is trite such an objection that can be raised at any stage of the proceedings and even on appeal. Thus the issue of the expiry of the pre-hearing session or taking steps in the proceedings by the 1st Respondent which is being canvassed by the petitioner does not arise."

PARTICULARS:

i. An objection to the competence of the petition must be em-

bedded in the Reply of the 1st Respondent as mandatorily required by paragraph 12 (5) of the First Schedule to the Electoral Act 2010 (as amended).

ii. Paragraph 12 (5) of the First Schedule to the Electoral Act 2010 (as amended) mandatorily dictates the hearing of any objection to the competence of the petition along with the substantive hearing of the Petition. B

iii. The hearing and determination of the 1st Respondent's application dated 6th July 2015, after close of pre-hearing and instead of along with the substantive Petition is in violation of paragraph 12 (5) of the First Schedule to the Electoral Act 2010 (as amended). C

GROUND 6

The lower Tribunal erred in law and acted without jurisdiction when it heard and determined the question of whether or not Sam D Kargbo is on the Roll of Legal Practitioners admitted to practice law in Nigeria.

PARTICULARS:

i. Under Section 285 (2) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) the lower Tribunal's jurisdiction is limited to hearing and determining petitions as to whether any person has been validly elected to the office of Governor or Deputy Governor of Gombe State. E

ii. Hearing and determining any question whatsoever under F Legal Practitioners Act is outside jurisdiction of the Lower Tribunal.

iii. The lower Tribunal acknowledged that the 1st Respondent's application was anchored on sections 2 (1) and 24 of the Legal Practitioners Act Cap. LII, LFN, 2004 and paragraph 4 (3) (b) of the First Schedule to the Electoral Act 2010 (as amended). G

The Court of Appeal examined the grounds of appeal contained in the Notice of Appeal filed on 17th July 2015 reproduced above and came to the conclusion that grounds 1, 2, 4, 5 and 6 are grounds of mixed law and fact requiring leave of the court, while H ground 3 is a ground of law.

Applying the principle earlier alluded to and the leading authorities, grounds 1, 2, 4, 5 and 6 contained in the Notice of Appeal are grounds of mixed law and facts, while ground 3 is a ground of law. Section 241 of the Constitution provides for

appeals as of right while section 242 of the Constitution provides for appeals with leave.

The position of the law is that where leave which means permission is a pre-condition before an Appellant can file a Notice of Appeal, containing grounds of mixed law and fact, an Appellant who files a Notice of Appeal without satisfying or obtaining that pre-condition would have his process thrown out.

The Appellant having not obtained leave of the Court of Appeal is caught by the provisions of section 242 of the Constitution and grounds 1, 2, 4, 5 and 6 in the Notice of Appeal were correctly struck out by the Court of Appeal. Ground 3 still subsists. It is a ground of law and it sustains the appeal.

ISSUE 2

Whether in consideration of the facts and circumstance of this case, the Court of Appeal was right in dismissing Appellant's appeal.

Justifying its decision to dismiss the appeal the Court of Appeal had this to say on ground 3.

"...However when this ground of appeal is juxtaposed with the relief sought in the Notice of Appeal there are questions that arise as to whether the said ground of appeal can sustain the relief sought in paragraph 4 of the Notice of Appeal. Where it cannot so sustain the relief claimed then there would be no valid Notice of Appeal which can be amended."

Concluding the Court of Appeal said:

"...the inherent inconsistency in the sole valid ground of appeal and relief claimed leads to the inexorable conclusion that the appeal be act is hereby dismissed."

Learned counsel for the Appellant submitted that where there are competent and incompetent grounds of appeal in one notice of appeal the appeal can be heard on the competent grounds. Reliance was placed on 1st Bank Plc v. Ejikeme (1996) NWLR (pt.462) p.597.

He urged the court to resolve this issue in favour of Appellant.

Learned counsel for the 1st Respondent observed that ground 3 cannot sustain the relief sought. He urged this court to dismiss the appeal.

Learned counsel for the 2nd Respondent observed that the Court of Appeal was correct since the Notice of Appeal was incompetent.

Reliance was placed on *Iyamu v. Aigbiremwen* (1992) 2 NWLR (Pt.22) p.233. He further observed that dismissing the Appellant's appeal was correct.

Learned counsel for the 3rd Respondent observed that the Court of Appeal was correct because to grant the relief sought will contradict the grounds of Appeal. B

Learned counsel for the 4th Respondent observed that the Court of Appeal was right to have dismissed the appeal having found that the ground of appeal is at cross purpose with the Reliefs sought by the Appellant. He urged this court to uphold the decision of the Court of Appeal and dismiss the appeal. C

The well settled position of the law is that where there are incompetent grounds and competent grounds in a Notice of Appeal the incompetent grounds would be struck out and the competent grounds would sustain the appeal. See *Ojukwu v. Onyeador* (1991) 7 NWLR (pt. 203) p. 286. D

It is not the business of the Court of Appeal at this stage to say that ground 3 is inconsistent with the reliefs sought in the Notice of Appeal. Relief is irrelevant in deciding if a ground of appeal is competent or incompetent. The court should order the Appellant to file his brief on the competent ground 3. Striking out a competent ground of appeal and the Notice of Appeal under whatever guise cannot be correct. An Appellant must be allowed to argue his appeal once he has, even a single competent Ground of Appeal. In the circumstances dismissing the appeal by the Court of Appeal was wrong. This appeal is allowed. E F

The matter is hereby remitted to the Court of Appeal for hearing on the competent ground 3. G

There shall be no order on costs.

MUHAMMAD JSC

I read in a draft form before now, the Judgment just delivered by my learned brother Rhodes-Vivour, JSC. I agree with my learned brother that the appeal has some merit and it should be allowed. What appears to be a vexing issue is the manner in which the court below treated Ground of Appeal No.3. The court below, indeed, H

found that Ground 3 of appellant's Grounds of Appeal is a ground of law. The court however, became in affix when it stated, inter alia:

B *"With respect to ground three of the Notice of Appeal which raises the issue of paragraph 27(1) of the 1st Schedule; this ground seems to be a ground of law simpliciter. However, when this ground of appeal is juxtaposed with the relief sought in the Notice of Appeal there are questions that arise as to whether the said ground of appeal can sustain the relief sought in paragraph 4 of the Notice of Appeal. Where it cannot so sustain the relief claimed then there would be no valid Notice of Appeal which can be amended. In the circumstances we invite counsel to further address us on whether ground three which raises the competence of the Tribunal as constituted can sustain the relief claimed which seeks to set aside part only of the decision of the Tribunal"* (underlining supplied by me)

D After addresses by learned counsel for the respective parties, the court below took a definitive stand and it held:

"The valid ground three of the Notice of Appeal shorn of its particulars which is at page 452 of the Records reads:

E *"The Tribunal erred in law when all the three members of the Tribunal jointly heard and delivered Ruling on the application of the 1st respondent dated 6th July, 2015 and brought pursuant to Section 2(1) and 24 of the Legal Practitioners Act and paragraph 4(3)(b) of the First Schedule to the Electoral Act, 2010 as amended."*

F *It is trite law that the relief in a Notice of Appeal is founded on the grounds of appeal couched: Anamco v. First Marina Trust Ltd.. (1999) LPELR (5341) 1 at 13. It is rudimentary and handbook law that a Notice of Appeal is akin to a writ of summons and the relief sought therein determines the competence of the court to adjudicate. See: Fayemi v. Oni (2010) LPELR (4145) 1 AT 99.*

H *The settled legal position is that neither the party nor the court can approbate and reprobate. See: Ngere v. Okurukev (2014) LPELR (22883) 1 at 30 and Abeke v. Odunsi (2013) LPELR (20640) 1 at 25. The essence of the valid ground is that the proceeding of the Tribunal are a nullity. A nullity in law is an act, which has no legal consequence: Saleh v. Monguno (2006) LPELR (2992) 1 AT 37-38. To necessarily follow a void act is that no legal effect attaches thereto. Accordingly the direct consequence of the complaint in the valid ground three is that no effect can attach to the proceedings of the*

Tribunal. The relief claimed in the Notice of Appeal however seeks that court uphold proceedings said to be a nullity by setting aside only part of the decision.

This clearly amounts to approbating and reprobating which cannot be done. It is our informed view that juxtaposed with the valid ground of appeal, the relief sought in the Notice of Appeal is not such that conduces (sic) to the competence of the Court of adjudicate: Fayemi v. Oni supra.

The necessary consequence is that where the on (sic) final Notice of Appeal found to be incompetence (sic) is as in this instance, no amendment can be founded on it. Furthermore, no utilitarian value would flow from proceedings with the appeal. Accordingly the prayer to amend the Notice of Appeal is refused and the complaining of the inherent inconsistency in the sole valid ground of appeal and the relief claimed leads to the inexorable conclusion that the appeal be and is hereby dismissed.”

Learned counsel for the appellant made the following submission in paragraphs 4.1 - 4.3 of his brief of argument before this court:

“4.1 Having held that Ground Three of the appellant’s Notice of Appeal is competent, justice would have been better served by granting the appellant leave to amend his Notice of Appeal first before considering the merit of the said ground. By considering the merit of ground three first before considering the appeal for leave to amend, the Court of Appeal acted in error and arrived at the wrong decision of throwing away the baby with the bath water.

4.2 The law is well settled that where there exists competent grounds of appeal and also incompetent grounds of appeal in one notice of appeal, the Court of Appeal has jurisdiction after so declaring the incompetent grounds of appeal and striking them out, to entertain the appeal on the grounds of appeal found to be competent. See: First Bank of Nigeria Plc v. Ejikeme (1996) 7 NWLR (Pt.462) 597; Ojukwu v. Onyeador (1991) 7 NWLR (Pt.203) 286; Obaja of Otan-Aiyegbaju v. Adesina (1999) 2 NWLR (Pt.590) 163 at pages 179 and 180. This is consistent with the duty of the court to do substantial justice devoid of legal technicalities.

4.3 We accordingly urge your Lordships to hold that the Court of Appeal was in error when it failed to save the Notice of Appeal and/or the appeal on the basis of the Ground it had held to be com-

petent. By considering the merit and strength of the said Ground first before considering the prayer for the amendment of the Notice of Appeal, the Court of Appeal fell into the error of indulging in technicalities at the expense of substantial justice.”

I am in agreement with the learned counsel for the appellant
 B that the law is well settled that where there exists a competent ground of appeal, same can sustain the appeal. See *Dr. Abdullahi Baba Abdul v. Congress for Progressive Change (CPC) & Ors* (2013) 5 SCNJ 378; *Vab Petroleum Inc. v. Mr. Mike Momah* (2013) 1 SCNJ 289.

C It is not for the court at that point in time to delve into whether the appeal would succeed or not. See: *7Up Bottling Co. Ltd. v. Abiola & Sons Ltd.* (2001) 13 NWLR (Pt. 730) 169.

Consequent upon that, the court is then bound to dispassionately consider all applications pending before it including one which
 D asks for leave to amend the Notice and Grounds of Appeal. Filing of two or more notices of appeal is not prohibited by the law. All the appellant needs to do is to settle his mind on which of the notices he will choose in pursuing his appeal. See *Korede v. Adedokun* (2000) 15 NWLR (Pt. 736) 483.

E If a court will refuse to listen to an applicant who proposes an amendment to his notice of appeal which will afford him greater opportunity to put his appeal in proper shape, then that is certainly violating the time honoured principle of fair hearing. See *Ogundoyin v. Adeyemi* (2001) 13 NWLR (Pt. 730) 403.

F Thus, reliefs 7 and 8 of the appellant’s application filed on 7th August, 2015 ought to have been considered on the merit by the court below. It was too early for the court below to extend its beam light in search of faults in the said valid ground of appeal. And, for
 G that court to juxtapose that valid ground of appeal with the reliefs claimed by the appellant in his Notice of Appeal, would, in my view, amount to putting the horse before the cart. Each party in a case should, as far as it is practically possible, be allowed the opportunity to present or pursue his case in the best way he believes. That would
 H of course, go along way in disabusing his mind that the court did not want to afford him a fair hearing/trial.

For this and the more detailed reasons of my learned brother Rhodes-Vivour, JSC, I too allow the appeal. I abide by the consequential orders made in the lead judgment.

MUNTAKA-COOMASSIE JSC

This is an appeal by the appellant, Jafar Abubakar, against the dismissal of the Appellant's appeal by the Court of Appeal Yola Division hereinafter called lower court.

The Tribunal of the Governor ship Election sitting in Gombe State delivered its ruling on 9/7/ 2015 in petition No. EPT/GMB/GOV/2/2015. In the said ruling the Tribunal declared that the name SAM KARGBO is different from SAMUEL PETER KARGBO which is on the roll of legal practitioners and that the name SAM KARGBO which is not on the Roll cannot validly sign the appellant's petition.

As it can be recalled that the election into the office of Governor of Gombe State was held on the 11th of April 2015. The appellant was the candidate of the African Democratic Congress (ADC) whilst the 1st and 2nd Respondents were respectively sponsored at the election by the 3rd Respondent P.D.P. At the end or close of the election, the 4th Respondent INEC, declared and returned the 1st respondent Alhaji Ibrahim Hassan Dankwambo as the winner of the said election. The appellant being dissatisfied with the return and result of the 1st respondent filed a petition against the returning of the 1st Respondent in the Governorship Election Tribunal holden in Gombe State hereinafter called the trial court.

Dissatisfied with the result of the election the petitioner filed a petition before the Election Tribunal Gombe State sought four (4) reliefs and two (2) alternative reliefs. They are well stated in the lead judgment of my learned brother Bode Rhodes-Vivour, JSC.

In a considered ruling which was delivered on 9/7/2015 the Tribunal held in favour of the name Sam Kargbo, which was not contained on the Roll of Legal Practitioners cannot lawfully and validly sign the petition. However since the petition was signed as such the petition is competent.

The petitioner appealed to the Court of Appeal hereinafter called lower court. He filed a notice of appeal and asked for ten (10) orders. In the two considered rulings by the lower court the lower court held that grounds 1, 2, 4, 5 and 6 are grounds of mixed law and facts which require leave of court. That court went ahead and strikes out the said grounds on the ground that the appellant neither sought nor obtained the leave of court to file them. In its judgment

the lower court also struck out the third ground because it cannot sustain the appeal when it was put side by side with the relief claimed. That being the case there was no valid notice of appeal to be amended and the application to so amend was rejected. The appellant was aggrieved by the ruling above and it appealed to this court.

B Briefs of argument were filed. Learned counsel for the appellant S. P. Kargbo Esq., filed his brief and adopted it. Two issues were distilled by the appellant. They were reproduced in the lead judgment. I do not think I should reproduce them here in this judgment.
C Learned counsel for the 1st, 2nd and 3rd respondents similarly filed issues for determination and argued them separately. They were reproduced in the lead judgment.

Learned counsel also filed a reply brief in response to the 1st and 3rd respondents brief. Learned counsel for the appellant did not
D file a response or reply to the brief filed by the 2nd respondent.

The learned respondent's counsel filed their respective briefs of argument.

Learned counsel for the appellant, Samuel Peter Kargbo, adopted his brief of argument and his replies and urged this court to
E allow the appeal.

Both learned counsel for the 1st and 3rd respondents similarly adopted their respective briefs of argument and collectively urged this court to dismiss this appeal. The 2nd respondent also adopted his
F brief of argument on the said 2/10/2015 and urged this court to dismiss the appeal.

Finally, learned counsel for the 4th respondent adopted the 4th respondents brief filed and argued on 2/10/2015 and urged this court to dismiss this appeal.

G I was highly privileged to have read in advance the all encompassing lead judgment of my learned brother Olabode Rhodes- Vivour he painstakingly considered the issues sent to us for our consideration. I have closely gone through the reasons for allowing the appeal and I agree entirely with the reasons adduced in allowing this appeal.
H For the above reasons adumbrated in the lead judgment which I adopted as mine and my little contribution that the appeal is allowed by me. It is further ordered that the matter is remitted to the court below for hearing of the ground three (3) on its own merit. No order as to costs.

OGUNBIYI JSC

My learned brother Bode Rhodes-Vivour, JSC and I Vivour, JSC and I concur that the appeal IS meritorious and should be allowed.

I agree that while grounds 1, 2, 4 and, 5 of the grounds of appeal are all grounds of mixed law and facts and therefore governed by the provision of S. 242 of the Constitution 1999 as amended, ground 3 alone however stands out as a ground of law which by section 241 of the Constitution needs no leave of court but is of right.

The law is well settled that an appeal is competent and can be sustained on a single ground of appeal only.

In otherwords, an omnibus ground of appeal alone without more is sufficient, as competent and valid, a notice of appeal before a court.

In the appeal at hand therefore, the striking out of grounds 1, 2, 4 and 5 of the grounds of appeal to the exclusion of ground 3 sustains the appeal as valid and therefore competent.

On the merit of the appeal, the lower court's reason for dismissing same was predicated on the question raised in the judgment thus:- *"...whether the said ground of appeal can sustain the reliefs sought in paragraph 4 of the notice of appeal."*

I agree with judgment of my brother Olabode Rhodes-Vivour JSC that the appeal be allowed and same should be remitted back to the Court of Appeal for hearing. I also abide by the order made as to costs.

OKORO JSC

I had the privilege of reading in advance the judgment of my learned brother, Olabode Rhodes-Vivour, JSC just delivered with which I agree that this appeal has merit and I join him to allow same.

It is a cardinal principle of our jurisprudence that one valid ground of appeal can sustain an appeal irrespective of the fact that other grounds are incompetent or invalid. In other words, where it can be determined that there is a valid ground of appeal in a notice of appeal, that valid ground is enough to sustain the appeal. See Alh.

Abubakar v. Abubakar Waziri (2008) 14 NWLR (pt. 1108) 507.

It is my view that the court below, having struck out grounds 1, 2, 4, 5 and 6, on the notice of appeal, and adjudging ground 3 as competent, it was wrong to dismiss the appellant's appeal without giving a hearing on the only competent ground of appeal. Whether the appeal will succeed or not on the said valid ground is not the business of the court at this stage.

It is on the above reason that I agree with my learned brother in the lead judgment that this appeal is meritorious. It is hereby allowed by me also. I abide by all the consequential orders made in the lead judgment, that relating to costs, inclusive.

NWEZE JSC

My noble Lord, Rhodes-Vivour, JSC, obliged me with the draft of the leading judgement just delivered now. I agree with the conclusion that this appeal should be allowed with an order remitting it to the lower court for hearing on the competent Ground 3.

As this court has had occasion to re-iterate again and again, our courts must be wary of depriving litigants of the due exercise of their constitutional rights of appeal on technical or narrow grounds which mock the substance of justice. It is no longer open to debate that the long settled position is that one valid ground can sustain an appeal. *Abubakar v. Waziri and Ors* (2008) LPELR -54 (SC) 24, D; *Dairo v UBN and Anor* (2007) 16 NWLR (pt 1059) 99; *Mohammed v. Olawunmi* (1990) 2 NWLR (pt 1330) 458; *Nwaolisah v Nwabufor* (2011) LPELR -2115 (SC) 27.

It is against this background that I agree with the leading judgment that the lower court erred in dismissing the appeal in its entirety instead of allowing the appellant to canvass arguments on the competent Ground Three, being a jurisdictional ground, *Ojukwu v. Onyeador* (1991) 7 NWLR (pt. 203) 286.

For these, and the more elaborate reasons in the leading judgment, I too shall allow this appeal. Appeal allowed with an order that it should be remitted to the Court of Appeal for hearing on the competent Ground Three.