

SUPREME COURT OF NIGERIA
TUESDAY 20TH OCTOBER, 2015. SC. 675/2015
**CORAM:- I. T. MUHAMMAD, M. S. MUNTAKA-
COOMASSIE, N. S. NGWUTA, C. B. OGUNBIYI,
J. I. OKORO, C. C. NWEZE, A. SANUSI, JJSC**

MR. JOSEPH KOLAWOLE

OLUJIMI AGBAJE

..... APPELLANT

AND

1. INDEPENDENT NATIONAL

ELECTORAL COMMISSION

2. MR. DAPO AKINWUNMI AMBODE RESPONDENTS

3. ALL PROGRESSIVES CONGRESS

4. THE RESIDENT ELECTORAL

COMMISSIONER FOR LAGOS STATE

ELECTIONS - Political party - Importance of - Amaechi v. INEC - Political parties and not candidates are the most important in an election (H1)

ELECTION PETITIONS - Judgment - Validity - Res judicata - As judgment of trial Tribunal is valid and not set aside - Appellant cannot appeal on same subject matter without his political party (H2)

FACTS

Petitioner/appellant and his political party – Peoples Democratic Party (PDP) brought this petition before the Lagos State Governorship Election Petition Tribunal, seeking for the return of appellant as the duly elected Governor of Lagos State. 1st respondent had conducted election to the office of the Executive Governor of the State on 11th April 2015. The Peoples Democratic Party sponsored appellant, while All Progressives Congress (3rd respondent) sponsored 2nd respondent for the said election. At the end of the exercise, 2nd respondent was declared the winner thereof, having secured the majority of lawful votes cast at the election. 1st respondent therefore returned 2nd respondent as the elected Governor of the State.

Reacting to appellant's petition, 2nd and 3rd respondents separately filed notice of objection to the petition and notice of prelimi-

nary objection, respectively. The court heard the objection and relied on same to strike out the petition. Dissatisfied, appellant and PDP filed a joint appeal to the Court of Appeal Lagos Division. However, PDP on the hearing day applied to discontinue the appeal. The appeal was thus dismissed as it concerns PDP. In its judgment, the Court dismissed appellant's appeal and upheld the decision of the trial Tribunal. Aggrieved, appellant appealed to the Supreme Court without joining his political party.

HELD (Unanimously striking out the appeal per **OGUNBIYI JSC**)

ELECTIONS - Political party - Importance of

1. The law is trite and well settled on the importance of a political party over and above a candidate in an election in our Constitutional Democracy. The far reaching decision arrived at in the case of *Amaechi v. INEC (2005) 5 NWLR (Pt. 1080) 227* is conclusive in sounding loud and clear that political parties and not candidates are significantly the most important in an election.

It is within reason and contemplation of section 221 of the Constitution therefore that section 44 of the Electoral Act 2010 as amended has mandatorily prescribed that the format of ballot papers shall include the symbol adopted by the political party of a candidate. (pp. 3230 G/3231 H)

Judgment - Validity - Res judicata

2. The law is further well entrenched in sections 169 and 173 of the Evidence Act as well as in plethora of cases that an existence of a binding judgment between parties or their privies will constitute *res judicata*, which legal effect is to operate as an estoppel or a bar to further litigious proceedings between the same parties.

The judgment appellant and his political party were both parties at the trial tribunal(sic). Therefore, adjudication on the instant appeal while the earlier judgment subsists against the appellant will render the outcome as academic even if suc-

cessful. The rights of both PDP and the appellant as parties present in Appeal No. CA/L/EP/GOV/762A/2015 have been conclusively determined with regards to the striking out of the joint petition at the trial tribunal. It follows therefore that while that judgment is still extant, valid and not set aside, the appellant cannot validly maintain this appeal on the same subject matter without PDP. (pp. 3232 D/3233 A)

NOTABLE POINTS OF INTEREST

OGUNBIYI JSC

1. Preliminary objection – Purpose of

The law is trite and well settled that a preliminary objection when raised, is either upheld or overruled. When it is the former, the effect is to terminate prematurely the life span of a proceeding; the outcome of the latter however, will impact no consequence whatsoever. It is not far-fetched therefore that early consideration is given for the determination of a preliminary objection whenever it is raised in a proceeding. (p. 3228 E)

NGWUTA JSC

2. Appeals – Meaning of

Appeal is an invitation to a higher Court to review the decision of a lower Court to find out whether on proper consideration of the facts placed before it and the applicable law that Court arrived at a correct decision. (p. 3235 D)

REPRESENTATION

Chief Richard Oma Ahonaruogho with Anozie O. Obi and 12 Ors., for the Appellant

Mr. E. R. Emukpoeruo Esq., Olabode Olanipekun, Bolarinwa Awujoola, Adebayo Majekolagbe, S. A. Muraina, Nkem Malia, Samuel P. Karigbo, R. A. O. Adegoke, Dare Oketode, Ayotunde Ogunleye and Dayo Asonibaru, for the Respondents

CASES REFERRED TO

Amaechi v. INEC (2008) 5 NWLR (pt. 1080) 227

Abegunde v. Ondo State House of Assembly (2015) 4-5 SC (pt. 1) 1

- Saraki v. Kotoye (1992) NWLR (pt. 264) 156
- S.C.C. Nig. Ltd. v. Anya (2012) 9 NWLR (pt. 1305) 213
- Brown v. Adebajo (1986) 1 NWLR (pt. 16) 383
- Ajiboye v. Ishola (2006) 13 NWLR (pt. 998) 628
- Yammede v. Zarewa (2010) 11 NWLR (pt. 1204) 58
- ^B Ikeni v. Efamo (2001) 10 NWLR (pt. 720) 1
- Plateau State v. A-G Federation (2006) 3 NNLR (pt. 967) 346
- Odedo v. INEC (2008) 17 NWLR (pt. 1117) 554
- Adeogun v. Fasogbon (2008) 17 NWLR (pt. 1115) 149
- ^C Oredafin v. Arowolo (1989) 4 NWLR (pt. 114) 172
- Chinwendu v. Mbamali (1980) 3-4 SC 31
- Ikpang v. Edoho (1978) 6-7 SC 221

STATUTES REFERRED TO

- ^D Electoral Act 2010 (as amended), s. 137
- Constitution of the Federal Republic of Nigeria 1999, s. 221

LEAD JUDGMENT BY OGUNBIYI JSC

The 1st respondent herein conducted election to the office of Governor of Lagos State on 11th April, 2015. Whilst the appellant was the candidate of the Peoples Democratic Party (PDP), the 2nd respondent was the candidate of 3rd respondent. Having scored the majority of lawful votes cast at the said election and also satisfied all requisite Constitutional requirements as to geographical spread of victory, the 2nd respondent was returned as the duly, elected Governor of Lagos State.

Dissatisfied with the declaration of the 2nd respondent as Governor, the appellant, jointly with his sponsoring political party, PDP, filed a petition at the trial tribunal, specifically seeking the ultimate relief for the return of the appellant as duly elected Governor of Lagos State. The 2nd and 3rd respondents separately filed notice of objection to the petition by way of motion on notice and notice of preliminary objection respectively. On 25th June, 2015, the tribunal took arguments on the during pre-hearing or take it at the close of hearing of the substantive sequence of proceedings as to whether to determine the motion filed petition. In view of the fact that a separate motion had been filed, the trial tribunal ruled on 26th June, 2015 that the application challenging its jurisdiction would be heard and

determined during the pre-hearing stage. The said application was determined and its success invariably led to the striking out of the petition. Upon the striking out of the petition by the trial tribunal, the appellant and his political party filed a joint appeal to the Court of Appeal. After filing and exchange of briefs of argument and the setting down of the appeal for hearing the appellant's political party, on the day fixed for hearing applied to discontinue the appeal and the Court of Appeal dismissed the appeal as it concerns the PDP. By a judgment delivered on 26th August, 2015 the Court of Appeal affirmed the decision of the trial tribunal which struck out the petition for incompetent. The lower court in other words dismissed the appellant's appeal as lacking in merit and upheld the view held by the trial tribunal.

The appellant is dissatisfied with the decision of the Court of Appeal and hence has filed Notice and grounds of Appeal on 8th September, 2015 to this court. Briefs of argument were subsequently filed and exchanged between parties. The appellant's brief of argument and reply brief to all the respondents were settled by Chief Richard Oma Ahonaruogho and filed on the 23rd September, 2015 and 6th October, 2015 respectively; that of 1st and 4th respondents in turn was settled by E. Robert Emukpoeruo; Esq and filed on the 2nd October, 2015. Mr. Olabode Olanipekun, also on behalf of the 2nd respondent settled their brief on the 2nd October, 2015. Last but not the least, is the brief settled by R. A. O. Adegoke, Esq. on behalf of the 3rd respondent and filed on the 5th October; 2015. All counsel representing the parties adopted and relied on their respective briefs of argument on the 13th October, 2015 being the day fixed for the hearing of the appeal.

By a notice of preliminary objection filed on the 29th September, 2015, the 2nd respondent herein is raising an objection against the hearing of this appeal and urges for the dismissal thereof. There are two main grounds predicating the objection as follows:-

1) That the entire appeal is academic for the reasons that:

(i) The appellant was sponsored by a political party, People Democratic Party (PDP).

(ii) The appellant and PDP were joint appellants at the Court below in Appeal No. CA/L/EP/GOV/744/15 which gave rise to this appeal.

(iii) After the filing and exchange of briefs of argument, PDP withdrew from appeal No. CA/L/EP/GOV/744/2015 and same was dismissed in respect of PDP.

(iv) PDP separately appealed the striking out of the petition by the lower tribunal in PDP V. INEC & Ors. in appeal No. CA/L/EP/GOV/762A/2015.

(v) The Court of Appeal dismissed Appeal No. CA/L/EP/GOV/762A/2015 on 26th August, 2015 and affirmed the striking out of the petition by the lower tribunal.

(vi) The appellant and his political party were parties in Appeal No. CA/L/EP/GOV/762A/2015.

(vii) There is no appeal against the decision of the Court of Appeal in Appeal No. CA/L/EP/GOV/762A/2015.

(viii) The decision of the Court of Appeal in Appeal No. CA/L/EP/GOV/762A/2015 constitutes *res judicata* against all the parties in that appeal which includes all the five parties in this appeal.

(ix) PDP and the appellant were parties in CA/L/EP/GOV/762A/2015 but PDP is not a party to this appeal.

2) That the entire appeal is incompetent.

In support of the notice of preliminary objection, the 2nd respondent filed an affidavit of eleven paragraphs. The judgment of the lower court appealed against was also exhibited as Exhibit 1.

The law is trite and well settled that a preliminary objection when raised, is either upheld or overruled. When it is the former, the effect is to terminate prematurely the life span of a proceeding; the outcome of the latter however, will impact no consequence whatsoever. It is not far-fetched therefore that early consideration is given for the determination of a preliminary objection whenever it is raised in a proceeding.

The governing central focus of concentration in this objection is anchored on ground 1(v) of the grounds supporting the application wherein the lower court dismissed Appeal No. CA/L/EP/GOV/762A/2015 on 26th August, 2015 and therefore endorsed the striking out of the petition by the trial court. Thus a concurrent decision which will require a strong supporting reason for its dislodgement.

In support of the objection and for purpose of espousing the point being made, the objectors on behalf of the 2nd respondent are relying heavily on the decision of the court in the case of *Amaechi v.*

INEC (2008) 5 NWLR (pt. 1080) 227 for an appreciation of the importance of a political party over and above a candidate in an election under the Nigeria's Constitutional democracy. The learned counsel Olabode Olanipekun, Esq further cited a number of related cases in buttress of his contention. Inclusive also it he decision held in *Abegunde v. The Ondo State House of Assembly* (2015) 4-5 SC (pt. 1) 1, a judgment of this court constituted of seven man panel which was presided over by the Hon. Justice Mahmud Mohammed, CJN. Counsel submits further that, were there is a binding judgment between parties or their privies, it constitutes *res judicata* or estoppel against further litigation; that the effect of the existence of a judgment affirming the striking out of the petition at the trial tribunal and in which judgment appellant and his political party were both parties, has rendered the present appeal as academic, such that even if it succeeds, the earlier judgment still subsists against the appellant; that the special circumstance of the facts in this appeal is that the appellant and the PDP were inseparable partners and accredited as Siamese twins. Consequently, the finality of the dismissal of PDP's appeal in an unappealed judgment where the appellant herein was a party, must definitely negatively impact on the fortunes of this appeal whereby the appellant alone is a party without the PDP. The counsel therefore urges that the preliminary objection be upheld while the appeal should either be struck out or dismissed as being academic, incompetent and of no useful purpose.

In response to the foregoing preliminary objection raised, the appellant's counsel, Chief Richard Oma Ahonaruogho submits that it is totally misconceived and same should be dismissed as being unfounded in law.

In substantiating his submission further, the learned counsel posed a question as to whether the appellant herein who was a party to appeal No. CA/L/EP/GOV/744/15 has a right of appeal to this court? Counsel sought to answer the question by making reference to section 233(5) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). The section relates to an appeal to this court as of right. It is the contention of counsel that the Constitution provides for every single party to a litigation, before the Court of Appeal, an individual right of appeal to this court; that the right enures to that party independently even if his co-parties refused to

appeal against the same judgment. Counsel relied heavily on the authority of the case of Saraki vs. Kotoye (1992) NWLR (Pt. 264) 156 among others to show that a litigant's denial to a right of appeal is tantamount to a violation of his fundamental right to fair hearing. Further corroboration was sought from the provision of section 137 of the Electoral Act 2010 (as amended). Learned Counsel urged the court to discountenance the objection raised by the 2nd respondent as same would amount to a violation of the appellant's constitutional right herein.

The determination of the preliminary objection raised will necessitate the stating briefly, of the antecedent back ground facts as recapped by the 2nd respondent which are not in issue - In otherwords, it is a fact that the appellant's sponsoring political party, PDP, withdrew its challenge on the day fixed for hearing of the appeal before the Court of Appeal; that the said PDP filed a separate appeal against the same decision of the trial tribunal of 1st July, 2015 striking out the petition in appeal No. CA/L/EP/GOV/762A/2015; that judgment was given in that appeal, in which the present appellant was the 5th respondent, on 26th August, 2015; that by the said judgment, the striking out of the petition was affirmed and it implies that the challenge to the election of the respondent as Governor of Lagos state was dismissed; that it is obvious from the appeal now before us that the appellant's sponsoring political party who had an appeal in which the appellant herein was a party, is neither a co-appellant nor a respondent to this appeal; that this appeal did not arise from the decision in Appeal No. CA/L/EP/GOV/762A/2015 whereat PDP and the appellant were parties. That the appeal under consideration and Appeal No. CA/L/EP/GOV/762A/2015 were decided on the same set of facts.

The law is trite and well settled on the importance of a political party over and above a candidate in an election in our Constitutional Democracy. The far reaching decision arrived at in the case of Amaechi v. INEC (2005) 5 NWLR (Pt. 1080) 227 is conclusive in sounding loud and clear that political parties and not candidates are significantly the most important in an election.

Section 221 of the Constitution for instance prohibits political activities by certain associations and it states thus:-

"221. No association, other than a political party shall canvass

for votes for any candidate at any election or contribute to the funds of any political party to the election expenses of any candidate at an election.”

This court also in arriving at its decision in the case of Amaechi V. INEC (supra) was guided by the foregoing provision of section 221 of the Constitution. At page 317 of the report, the court had this to say:-

“The above provision effectually removes the possibility of Independent candidacy in our elections; and places emphasis and responsibility in elections on political parties. Without a political party, a candidate cannot contest. The primary method of contest for elective offices is therefore between parties. If as provided in section 221 above, it is only a party that canvases for votes, it follows that it is the party that wins an election... whereas candidates may change in an election but parties do not ...in consonance with section 221 of the Constitution: it is his party that has won the election.”

The learned appellant’s counsel in his reply brief sought to distinguish Amaechi’s case, a pre-election matter and the circumstance in which it was decided as against the case before us. Counsel contends that the case under reference did not decide that an independent candidate cannot on his own pursue an election petition or a subsequent appeal emanating therefrom. Counsel relied also on the case of Abegunde v. The Ondo State House of Assembly (supra) which was a suit filed to declare a seat vacant in respect of a legislator who defected from his political party. From all indications, it would appear that the submission by the appellant’s counsel was a total misconception of his understanding of the interpretation of section 221 of the Constitution by this court in Amaechi’s case (supra).

The case of Abegunde v. The Ondo State House of Assembly is a decision of this court which was constituted of seven justices and presided over by his lordship Hon. Justice Mahmud Mohammed, CJN. The court affirmed the earlier decision arrived at in Amaechi (supra) and re-iterated again the importance of political parties as spelt out clearly by section 221 of the Constitution.

It is within reason and contemplation of section 221 of the Constitution therefore that section 44 of the Electoral Act 2010 as amended has mandatorily prescribed that the format of ballot papers shall include the symbol adopted by the po-

litical party of a candidate.

For all intents and purposes, the communal deduction of the foregoing conclusion is a situation where a sponsoring political party has accepted the dismissal of its challenge to an election as binding on it. Also inclusive in the said decision is the party's candidate (appellant in this appeal). It is significant to restate further that the judgment given in CA/L/EP /GOV/762A/2015 has not been appealed.

On the legal effect of an unappealed decision, therefore, this court in the case of Akere v. Governor of Oyo State (2012) 12 NWLR (Pt. 1314) 240 had this to say at page 278:-

"In the circumstance, it is very clear and as settled in a long line of cases by this court that a decision of a court/tribunal not appealed against is deemed accepted and remains binding on the parties and all and sundry."

The authorities in the cases of S.C.C. Nig. Ltd. V. Anya (2012) 9 NWLR (Pt. 1305) 213 at 222 and Brown V. Adebajo (1986) 1 NWLR (Pt. 16) 383 also are on the same principle.

The law is further well entrenched in sections 169 and 173 of the Evidence Act as well as in plethora of cases that an existence of a binding judgment between parties or their privies will constitute res judicata, which legal effect is to operate as an estoppel or a bar to further litigious proceedings between the same parties. An authority in point is where this court in the case of Ajiboye v. Ishola (2006)13 NWLR (Pt. 998) 628 at 643 - 644, had this to say:-

"As a general rule, once one or more of any such issues have been distinctly raised in a cause of action and determined between the same parties in a court of competent jurisdiction! neither party, his privies, agents or servants is allowed to re-open or relitigate any of such issues all over again in another action between the parties, agents or privies ... This is so because where a cause of action or an issue has been determined in a previous suit between the same parties, the said parties are, as a matter of public policy and in the interest of common good to the effect that there should be an end to litigation, stopped from bringing a fresh - action in any court in the same cause on issue already pronounced upon by a court of competent jurisdiction in the previous action. This, in a nut - shell, is the principle of res judicata."

See also the cases of Yammedi v. Zarewa (2010) 11 NWLR (Pt. 1204) 58 at 82 and Ikeni v. Efamo (2001) 10 NWLR (Pt. 720) 1 at 11.

The judgment appellant and his political party were both parties at the trial tribunal(sic). Therefore, adjudication on the instant appeal while the earlier judgment subsists against the appellant will render the outcome as academic even if successful. The rights of both PDP and the appellant as parties present in Appeal No. CA/L/EP/GOV/762A/2015 have been conclusively determined with regards to the striking out of the joint petition at the trial tribunal. It follows therefore that while that judgment is still extant, valid and not set aside, the appellant cannot validly maintain this appeal on the same subject matter without PDP.

As rightly submitted by the counsel for the 2nd respondent, this appeal would serve no practical utilitarian purpose and is, as such academic. See Plateau State v. Attorney General of the Federation (2006) 3 NNLR (pt. 967) 346, wherein this court held and said:-

“A suit is academic where it is merely theoretical, makes empty sound, and of no practical utilitarian value to the plaintiff even if judgment is given in his favour, A suit is academic if it is not related to practical solution of human nature and humanity.” See also other related authorities in the cases of Odedo v. INEC (2008) 17 NWLR (Pt. 1117) 554 at 600 and Adeogun v. Fasogbon (2008) 17 NWLR (Pt. 1115) 149 at 180.

With all said and done and for the sake of emphasis, the conclusion holds true as rightly submitted by the 2nd respondent’s counsel that the finality of the dismissal of PDP’s appeal in an unappealed judgment where the appellant herein was a party, has obviously negatively impacted on the fortunes of the appeal where just the appellant is a party without the PDP.

The appellant has failed to dislodge the preliminary objection raised by the 2nd respondent and which same I hold is upheld and sustained. Consequently, the appeal herein is struck out for incompetence. The judgment of the lower court which upheld that of the trial tribunal and striking out the petition is also affirmed by me. There shall be no order made as to costs.

MUHAMMAD JSC

My learned brother, Ogunbiyi, JSC made available to me before now, a draft copy of the judgment just delivered.

I am contented with her reasoning and conclusion. The appeal is properly struck out. The appellant, a political member of the Peoples Democratic Party (PDP) cannot be more interested in Party affairs than the PDP. His zeal to occupy any position in the political dispensation is solely dependent on PDP. It is no more news that Independent candidacy has no place in the Nigerian politics. See Rt. Hon. Rotimi Chibuike Amaechi v. Independent National Electoral Commission & 2 Ors (2008) 5 NWLR (Pt. 1 080) 227 at pp.318 - 3190 - C. Thus, where a political party wins a case, the success goes to party member or members. Where it loses it is a loss to party member or members.

Section 221 of the Constitution provides that no association, other than a political party, shall canvass for votes for any candidate at any election or contribute to the funds of any political party or to the election expenses of any candidate at an election.

It is thus, a futile effort by the appellant to insist on appealing when he, indeed, has no cause of action. The decision handed over to PDP must, whilly-nilly, affect the appellant as a member of that party. The cobweb of res judicata has caught-up with the appellant. I, too, strike out this appeal with no order as to costs.

MUNTAKA-COOMASSIE JSC

I have had the privilege of reading in draft the Lead Judgment of my learned brother, Clara Ogunbiyi, JSC just delivered. I agree with his reasoning and conclusion that the appeal be struck out for incompetence. The Preliminary Objection is relevant and is hereby sustained by me.

The Judgment of the lower court in which the Judgment of the trial court was upheld, for striking out the petition, is further affirmed by me. I abide by the consequential order made in the Lead Judgment.

NGWUTA JSC

I had the privilege of reading in draft the lead judgment just delivered by my learned brother, Ogunbiyi, JSC and I entirely agree that the preliminary objection to the hearing of the appeal is well-taken and ought to be sustained.

This appeal is against the judgment of the Court of Appeal in which that Court dismissed the appeal against the order of the trial tribunal striking out the appellant's petition for being incompetent. Appeal No. CA/L/EP/GOV./762A/2015 challenged the decision of the trial tribunal striking out the petition. Appellant was a party in the said appeal which was dismissed for want of merit by the Court below, thus affirming the order of the trial Tribunal striking out the petition.

There was no appeal against the judgment of the Court of Appeal. That judgment of the Court of Appeal endorsing the order of the trial Tribunal striking out the appellant's petition is subsisting. It is binding on the parties hereto, including the appellant.

Appeal is an invitation to a higher Court to review the decision of a lower Court to find out whether on proper consideration of the facts placed before it and the applicable law that Court arrived at a correct decision. See *Oredafin v. Arowolo* (1989) 4 NWLR (Pt. 114) 172 at 211 per Oputa, JSC.

Appellant could have challenged the decision in Appeal No. CA/L/EP/GOV./762A/2015 in this Court if he so desired, but he cannot file a new appeal raising the same Issue settled in CA/L/EP/GOV./762A/2015 against which he did not appeal. The procedure he adopted borders on abuse of process of Court. Appellant's appeal is caught by the principle of *estoppel per rem judicatam* or issue *estoppel*. See *Chinwendu v. Mbamali* (1980) 3-4 SC 31; *Ikpang v. Edoho* (1978) 6-7 SC 221; *Chiekwe v. Obiora* (1960) 5 JSC 258.

For the above and the fuller reasons in the lead judgment I also sustain the preliminary objection to the hearing of the appeal. Consequently, the appeal is hereby struck out. In effect, the judgment of the Court of Appeal affirming the order of the trial Tribunal striking out the appellant's petition subsists.

Parties shall bear their respective costs.

OKORO JSC

My learned brother, Clara Ogunbiyi, JSC, obliged me a copy of the judgment she has just delivered. I agree that the preliminary objection is meritorious and ought to be upheld. The reasons marshalled for the upholding of the preliminary objection in the lead
B judgment are hereby adopted as mine.

Having upheld the preliminary objection, I hereby hold that this appeal is incompetent and is accordingly struck out. I abide by consequential orders made in the lead judgment. I also make no
C order as to costs.

NWEZE JSC

I had the advantage of reading the draft of the leading which
D my Lord, Ogunbiyi, JSC, just delivered now. I am in agreement with the eloquent reasoning that yielded the conclusion that the appeal is incompetent. I abide by the consequential orders in the said leading judgement.

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