

SUPREME COURT OF NIGERIA
THURSDAY 29TH OCTOBER, 2015. SC. 660/2015
**CORAM:- J. A. FABIYI, S. GALADIMA, M. U. PETER-
ODILI, O. ARIWOOLA, K. M. O. KEKERE-EKUN,
J. I. OKORO, A. SANUSI, JJSC**

1. RT. HON. EMEKA IHEDIOHA PETITIONERS/
2. PEOPLES DEMOCRATIC PARTY APPLICANTS
AND
1. OWELLE ROCHAS ANAYO
OKOROCHA
2. INDEPENDENT NATIONAL
ELECTORAL COMMISSION & 34 ORS RESPONDENTS
37. ALL PROGRESSIVES CONGRESS

COURTS - Decision - Functus officio - Registrar's statement on issue of service of processes - Is not a decision of CA for which it became functus officio and could not reopen it (H1)

COURT PROCESSES - Service - Importance of - Service of originating process is pre condition to exercise of jurisdiction - As where there is no service - Subsequent proceedings are nullity (H2)

RULES OF COURT - Non compliance - Effect - Every non compliance does not vitiate proceedings - But where court is robbed of jurisdiction - Processes and proceedings must be set aside (H3)

APPEALS - Parties - Interested parties - Petition against 3rd-36th respondents having been dismissed - Any appeal against the decision gives them sufficient interest (H4)

APPEALS - Jurisdiction - Having struck out appellants' appeal for being incompetent - CA ceased to have jurisdiction over the matter before it (H5)

FACTS

Before the Governorship Election Petition Tribunal sitting at Owerri Imo State, petitioners/applicants brought this petition chal-

lenging the return of 1st respondent as the Governor of Imo State. The Tribunal dismissed the petition for being abandoned by reason of non valid application for issuance of pre trial forms in line with paragraph 18 of the 1st schedule to the Electoral Act 2010 (as amended). Dissatisfied, appellants appealed to the Court of Appeal Owerri Division. Appellants in their Notice of Appeal left out the names of 2nd – 36th respondents from the list of parties directly affected by the appeal. Also appellants failed to endorse the Notice of Appeal with the addresses for service on the 2nd – 36th respondents.

In view of these omissions, 1st & 37th respondents in their brief of argument incorporated preliminary objection to the competence of the appeal. There were no affidavits of service of the Notice of Appeal on 2nd - 36th respondents. Appellants failed to serve 3rd, 4th, 6th, 12th, 15th - 24th, 26th-29th, 32nd - 36th respondents personally rather appellants' brief was dumped for the said respondents at the office of 37th respondents at Owerri. In its judgment, the Court held that appellants' notice of appeal was fundamentally defective for not being endorsed with the addresses for service. The Court further stated that the fact that 2nd to 36th respondents were parties directly affected by the appeal and that their exclusion from the list of parties in paragraph 5 of the Notice of Appeal was wrongful. The appeal was therefore struck out for being incompetent. Aggrieved, appellants have come before the Supreme Court on appeal.

ISSUES FOR DETERMINATION

1. Whether the Court of Appeal had the competence to revisit and re-adjudicate in their judgment of 3^d September, 2015, the issue of service of the Notice of Appeal on the respondents after confirming service on all the respondents on record on 21/8/15.

2. Whether there was a flagrant non-compliance with Order 2 Rule 3 and Order 6 Rule 2(1) of the Court of Appeal Rules by the appellants as held by the Court of Appeal or at all.

3. Whether failure to include the name and address of a respondent in an appeal in paragraph 5 of the Notice of Appeal is in law a fundamental vice capable of vitiating a notice of appeal or preventing the hearing of an appeal on merit.

4. Whether senior counsel for the appellants in the court below approbated and reprobated in his submission on Order 6 Rule

2(1) of the Court of Appeal Rules or suggested that any of the respondents was not entitled to fair hearing.

5. Whether the striking out of the notice of appeal on ground of incompetence was proper.

6. Whether the 3^d - 36th respondents were persons directly affected by the appeal which was specifically on the ruling on the joint interlocutory application filed in the Tribunal by the 1st and 37th respondents only.

7. Whether the failure of the court below to pronounce on the two motions fully heard by the Tribunal, and the report of the fully concluded pre-hearing session is proper in law.

HELD (Unanimously dismissing the appeal per **OKORO JSC**)

COURTS - Decision - Functus officio

1. Does the Registrar's statement fit into the said definition? I do not think so. Had the court independently ruled on the statement of the registrar as to whether it was satisfied or not that all the respondents were duly served, I would have held otherwise. It is trite that once an issue or issues have been raised and determined by the court between the litigating parties, the court becomes *functus officio* to either direct or allow the parties to re-open the same issues before it for re-litigation.

There is nothing on record to support the appellants' claim that the registrar's statement was a decision of the lower court on the issue of service of processes for which it became *functus officio* and could not reopen it. For me, the first issue does not avail the appellants at all and I accordingly resolve same against them. (p. 3298 H)

COURT PROCESSES - Service - Importance of

2. It is trite that service of originating process is a pre-condition to the exercise of jurisdiction by the court. Where there is no service or there is a procedural fault in service, the subsequent proceedings are a nullity *ab initio*. This is based on the principle of law that a party should know or be aware that

there is a suit against him so that he can prepare a defence. If after service he does not put up a defence, the law will presume and rightly too, that he has no defence. But where a defendant is not aware of a pending litigation because he was not served, the proceedings held outside him will be null and void.

I must emphasize that service of process is an important aspect of the judicial process. Failure to serve a named party with court process offends Section 36(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). As was rightly pointed out by the learned counsel for the 11th respondent, Chief Falade, the failure to serve those respondents constitutes a breach of the Rule of fair hearing and robs the court of its jurisdiction to hear the appeal. Any breach of this principle renders the proceedings a nullity. Service of process, I must say, is a fundamental issue and a condition precedent before the court can have competence to adjudicate. (pp. 3302 F/3305 A)

RULES OF COURT - Non compliance - Effect

3. For me, I agree that it is not every non-compliance with the rules of court that should vitiate the proceedings. However, where the non-compliance robs the court of its jurisdiction, the processes and the proceedings must be set aside.
(p. 3304 H)

Parties - Interested parties

4. Let me make one or two sentences on issue 6. It relates to whether the 3rd - 36th respondents were persons directly affected by the appeal. The parties so named were mentioned in the petition as having committed one misconduct or the other, some of which are criminal in nature. The lower court held that they were necessary parties because allegations of misconduct were made against them in the petition. Thus, the petition against them having been dismissed, I think any appeal which seeks to challenge or upturn that decision gives them sufficient interest to know its outcome which may affect them one way or the other. Assuming that the appeal was al-

lowed, would they not have been parties to the hearing of the petition on the merit? Thus, the argument by the learned senior counsel for the appellants that they were not parties directly affected by the petition was of no moment. And, in any case that was not a good excuse for failure to provide their addresses for service and moreso, failure to serve them. Issue Six is thus resolved against the appellants. (p. 3305 H) B

APPEALS - Jurisdiction

5. It is quite clear that the Court of Appeal struck out the appellants' appeal for being incompetent, for which it lacked jurisdiction to hear an incompetent appeal. It follows therefore, that the court below, by that singular pronouncement ceased to have jurisdiction over the matter before it. It was not possible for the court below to go ahead to hear the three motions. Concomitantly, this court also lacks the jurisdiction to hear and pronounce on those motions. It is therefore not possible to invoke Section 22 of the Supreme Court Act as prayed by the appellants. As it turns out, the 7th issue does not also avail the appellants. (p. 3307 G) C
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NOTABLE POINT OF INTEREST

OKORO JSC

1. Court – Decision – Meaning of F

1. Under Section 318 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) the word “*decision*” is defined in relation to a court as “*any determination of that court and includes judgment, decree, order, conviction, sentence or recommendation.*” (p. 3298 G) G

REPRESENTATION

Chief M. I. Ahamba, SAN, Chief Chris Uche, SAN, Chief Ndukwe Nnauchi SAN, for the Appellants/Cross Respondents, with Chief Ahamba SAN also are Chief (Dr.) A. N. Aguwa, L. 1. Nwaogwugwu, Esq., Charles Akwete Esq., E. N. Ichie, Esq., N. M. Aladum, (Mrs), Genevieve Onwunwa, (Miss), James Ugbogu, Esq., Chima W. Ndugbu, Esq., Udochukwu Meribe, Esq., Emeka H

- Nnawuchi, Esq., K. O. Ahamba, Esq., K. U. Alisigwe, Esq., Dr. Ken. Uzoechi, Odu Ajike Eze, Esq., Patrick Agu, Esq., Kanayo Okafor, Esq., Uzoma Chijioke, Esq., Uzoma Nwosu-Iheme, Esq., C. Okpala Esq.,
- Adeniyi Akintola, SAN, Okey Amechi, SAN, A. J. Owonikoko, SAN,
- B for the 1st and 37th Respondents/Cross Appellants, appearing with them are: Obinna Amagwula, Esq., C. O. C. Emeka-Izima, Esq., Ifeanyi Okechukwu Esq., Nelson Ezerioha, Esq., Emeka Okoro Esq., C. N. Chilaka-Igidi, (Mrs.), J. O. Aigbokhaevbolo, (Miss), Christian Okoh, Esq and A. Victor Esq.,
- C G. S. Pwul, SAN, with D. O. Agbo, Esq., V. M. G. Pwul, Esq., and A. A. Nyam, (Miss), for the 2nd respondent
- Chief Bankole Falade, with I. A. Falade, (Miss), for 11th respondent
- S. N. Nnadi, Esq., for the 5th, 13th & 14th Respondents who are the
- D 6th, 14th and 15th respondents in the Cross Appeal
- Olukayode Enitan, Esq., for the 15th respondent and 16th Cross respondent, with him is M. O. Enitan, Esq.,
- Victor Opara, Esq., for 17th respondent and 18th cross respondent
- E. 1. Nwugha, Esq., for the 25th, 30th & 31st respondents and 26th,
- E 31st and 32nd Cross respondents
- Doyin Rhodes-Vivour (Mrs.), for 33rd Respondent, Rotimi Rhodes-Vivour, Esq., and Ayodele Babalola, Esq., with her J. O. Odubola, Esq., for 34th respondent & 35th Cross respondent, A. Malgwi, Esq.,
- F with him

CASES REFERRED TO

- Okafor v. A-G Anambra State (1991) 6 NWLR (pt. 200) 659
- First Bank of Nigeria Plc. v. TSA Industries Ltd (2010) 15 NWLR (pt. 1216) 247
- G Ibori v. Ogboru (2004) 15 NWLR (pt. 895) 154
- Dike v. Aduba (2000) 3 NWLR (pt. 647) 1
- Kalu v. Odili (1992) 5 NWLR (pt. 240) 130
- Nnaji for v. Ukonu (1985) 2 NWLR (pt. 9) 686
- H Alor v. Ngene (2007) 17 NWLR (pt. 1062) 163
- Obi v. INEC (2007) 11 NWLR (pt. 1046) 643
- Aqua Ltd v. Ondo State Sports Council (1988) 4 NWLR (pt. 91) 622
- Abubakar v. Yar'adua (2008) 4 NWLR (pt. 1078) 465
- Katto v. CBN (1991) 9 NWLR (pt. 214) 26

Sterling Civil Engineering Nig. v. Nwosu (2008) All FWLR (pt. 413) 1399

Texaco Nig. Plc v. Lukoko (1997) 6 NWLR (pt. 510) 651

Wimpey v. Balogun (1986) 3 NWLR (pt. 28) 324

National Bank v. Guthrie Ltd (1987) 2 NWLR 255

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STATUTES & RULES REFERRED TO

Electoral Act 2010 (as amended), ss.

Constitution of the Federal Republic of Nigeria 1999, ss. 36(1), 318

Supreme Court Act, s. 22

Court of Appeal Act, s. 15

Court of Appeal Rules, O. 6 r. 2(1)

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LEAD JUDGMENT BY OKORO JSC

This is an appeal against the judgment of the Court of Appeal sitting at Owerri wherein the lower court struck out the appellants' appeal for the incompetence of the notice of appeal. The said notice of appeal can be found on pages 631-640 of the record of appeal.

The appellants' appeal at the lower court was against the ruling of the Governorship Election Tribunal, Owerri delivered on 22/7/2015 which dismissed their petition for being abandoned by reason of non-valid application for issuance of pre-trial forms in line with paragraph 18 of the 1st Schedule to the Electoral Act, 2010 (as amended).

The facts leading to this appeal further disclose that during the hearing of the objection before the Tribunal, the 11th respondent supported the preliminary objection while the 13th, 14th, 25th, 30th and 31st respondents supported the contrary position held by the petitioners. That despite the open expression of interest by the 11th, 13th, 14th, 25th, 30th and 37th respondents in the outcome of the objection, the appellants in their notice of appeal, left out the names of the 2nd - 36th respondents from the list of parties directly affected by the appeal as required by Order 6 Rule 2 of the Court of Appeal Rules 2011.

Also the appellants equally failed to endorse the notice of appeal with the addresses for service on the 2nd - 36th respondents.

It was partly for the above failings that the 1st and 37th respondents, in filing their brief of argument to the substantive appeal at the

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lower court, incorporated therein, a preliminary objection to the competence of the appeal.

On 21st August, 2015 when both the preliminary objection and the appeals came up for hearing by the court below, the Registrar of the Court, immediately after the court had taken appearances of counsel, announced to the court as follows:

“Confirmed that all the respondents were served”

Moreso, even the brief of argument the appellants “served” on the 3rd, 4th, 6th, 12th, 15-24th, 26th - 29th, 32nd - 36th respondents were simply deposited at the office of the 37th respondent at Owerri. The court below in its judgment observed that it was shown an affidavit which showed that the Bailiff dumped copies of the notice of appeal for the 3rd, 4th, 6th, 12th, 15th - 24th, 26th - 29th, 32nd - 36th respondents with the Protocol Officer of the APC, the 37th respondent on 28th July, 2015.

The hearing notices for the proceedings of 21/8/15, which was the day the preliminary objection and the appeals were heard, were equally served in the same manner as above as can be seen on pages 899 - 905 of the record.

In its judgment delivered on 3/9/15, the lower court held that the notice of appeal was fundamentally defective for not being endorsed with the addresses for service. The court below equally made vital findings in the judgment including the fact that the 2nd to 36th respondents were parties directly affected by the appeal and that their exclusion from the list of parties in paragraph 5 of the notice of appeal who were said to be directly affected by the appeal was wrongful. The court below therefore, struck out the appeal for being incompetent.

Dissatisfied with the order of the lower court striking out their appeal, the appellants filed three notices of appeal on 4/9/15, 10/9/15 and 14/9/15 respectively. However, at the hearing of this appeal the appellants adopted the notice of appeal filed on 14/9/15 which contains thirteen grounds of appeal for the prosecution of this appeal. Out of these grounds of appeal, the learned senior counsel for the appellants, Chief M. I. Ahamba, SAN, leading other counsel, has distilled seven issues for the determination of this appeal.

The issues are as follows:-

1. *Whether the Court of Appeal had the competence to revisit*

and re-adjudicate in their judgment of 3rd September, 2015, the issue of service of the Notice of Appeal on the respondents after confirming service on all the respondents on record on 21/8/15. (Grounds 7 and 12)

2. Whether there was a flagrant non-compliance with Order 2 Rule 3 and Order 6 Rule 2(1) of the Court of Appeal Rules by the appellants as held by the Court of Appeal or at all. (Grounds 1, 2, 3, 4, and 5)

3. Whether failure to include the name and address of a respondent in an appeal in paragraph 5 of the Notice of Appeal is in law a fundamental vice capable of vitiating a notice of appeal or preventing the hearing of an appeal on merit. (Grounds 6 and 8)

4. Whether senior counsel for the appellants in the court below approbated and reprobated in his submission on Order 6 Rule 2(1) of the Court of Appeal Rules or suggested that any of the respondents was not entitled to fair hearing. (Ground 9)

5. Whether the striking out of the notice of appeal on ground of incompetence was proper. (Ground 10)

6. Whether the 3rd - 36th respondents were persons directly affected by the appeal which was specifically on the ruling on the joint interlocutory application filed in the Tribunal by the 1st and 37th respondents only. (Ground 11)

7. Whether the failure of the court below to pronounce on the two motions fully heard by the Tribunal, and the report of the fully concluded pre-hearing session is proper in law. (Ground 13)

In the brief of the 1st and 37th respondents, learned senior counsel Adeniyi Akintola, SAN, leading others had adopted the seven issues formulated by the appellants. There is no need to reproduce them again having done so earlier:

For the 2nd respondent, its senior counsel. G. S. Pwul, SAN., with others distilled four issues thus:

1. Whether the lower court 'was wrong in considering and determining the issue of service which is a threshold matter bordering on jurisdiction.

2. Whether the court below was in error in its holding that the notice of appeal before it, not being in compliance with Order 2 Rule 3 and Order 6 Rule 2(1) was incompetent.

3. Whether 3rd - 36th respondents, being named parties in the

appeal before the lower court and the Trial Tribunal:

- (a) *were not persons directly affected by the appeal; and*
- (b) *entitled to be served with the notice of appeal.*

4. Having regard to the fact that:

- a. *The notice of appeal before the lower court was held to be*
B *incompetent; and*
- b. *The Tribunal did not make any pronouncement on the merit*
C *of the 2 motions, whether it was necessary for the court below to*
D *pronounce on same therein.*

Chief Bankole Falade, representing the 11th respondent in this appeal, has submitted three issues for the determination of this appeal, the first of the issues being:

- “Whether non service of the Notice of Appeal and other processes in this appeal on the 11th respondent did not constitute breach*
D *of the Rule of fair hearing and rob the Supreme Court of the necessary jurisdiction to entertain the appeal”*

Issues 2 and 3 are really as couched and contained in the appellants’ brief.

- Also the 15th respondent represented by Olukayode Enitan,
E Esq., the 17th by Victor Opara, Esq., the 33rd by Doyin Rhodes-
Vivour (Mrs.) and the 34th represented by John Olusegun Odubela
Esq., all filed their briefs and raised similar issues which I shall resist
the temptation of reproducing them here. This is to avoid making
F this judgment unnecessarily verbose. I shall however refer to any of
the issues where need arises in the course of this judgment.

The 5th, 13th, 14th, 24th, 30th and 31st respondents though represented by counsel at the hearing of the appeal, did not file any brief and had nothing to urge on the court.

- However, these respondents i.e. 3rd, 4th, 6th - 10th, 12th, 16th,
G 18th - 24th, 26th - 29th, 32nd, 35th - 36th were absent and adjudged not
to have been served with hearing notice and other processes. The
learned senior counsel for the appellants applied orally to withdraw
the appeal against them. As there were no objections from counsel in
H the appeal, this court on 22/10/15 being the date this appeal was
taken, dismissed the appeal against those respondents. Thus, this
appeal was heard between the appellants and the respondents who
were in court already highlighted above. I shall determine this appeal
based on the appellants’ seven issues.

In his argument on the first issue learned senior counsel for the appellants submitted that striking out notice of appeal is not a sanction envisaged in Order 2 Rule 3 of the Court of Appeal Rules and that, to offend the said rule of court, there would have been no proof of service of the notice of appeal. It is his further assertion that the purpose of inserting that particular rule is to ensure that parties are served the process and no more. The learned SAN opined that it is not about the content of a notice of appeal or any other notice to be served under the Rules of the Court of Appeal. B

On whether the respondents were found by the court to have been served, he referred to page 907 of the record where at it was stated by the registrar that all the respondents were served. He noted that none of the 3rd - 36th respondents complained about non-service but that it was counsel for the 1st and 37th respondents who raised the issue of lack of endorsement of address for service on the 3rd - 36th respondents who are not his clients. C
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In conclusion, senior counsel submitted that, having concluded the investigation on service and placed the result from the judicial inquiry on record, and there being no respondent protesting non-service, the court below had become *functus officio* on the issue of service, and should not have delved into it at the instance of counsel for the 1st and 37th respondents or *suo motu*. He cited and relied on the cases of Okafor V. Attorney General of Anambra State (1991) 6 NWLR (pt. 200) 659 at 672, and First Bank of Nigeria Plc V. TSA Industries Ltd (2010) 15 NWLR (pt. 1216) 247 at 296 C - D. E
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In his response, the learned silk for the 1st & 37th respondents Adeniyi Akintola, SAN, submitted that there is nowhere in the record of appeal where the court below made any comment either before or after the registrar made the above announcement. He argued that it is fallacious for the appellants to read from nowhere into the proceedings of 21/8/15 the assertion that the court below conducted an open inquiry as to the service of notice of appeal in issue. G

The learned SAN contended that considering that the 1st & 37th respondents had long before 21/8/15 raised an objection to the competence of the notice of appeal, based on the ground that it was not endorsed with addresses for service in line with Order 2 Rules 2 & 3 of the Court of Appeal Rules 2011, and that the objection was coming up for hearing that day, the only probable meaning to the H

registrar's statement is that the hearing notice for the day's hearing was served on all the respondents referring to the affidavit of service in the record of appeal on pages 899 - 905 thereof.

The learned senior counsel submitted finally that the statement of the registrar cannot by any stretch of the imagination be interpreted to mean a decision of the court. And, on what constitutes a decision of the court, he cites and relies on the case of Ibori v. Ogboru & Ors (2004) 15 NWLR (pt. 895) 154 at 178 - 181. Moreso, that the appellants never raised this issue at the court below. It is a new issue, he asserted and wondered why it can be raised here without leave, resting on the case of Kwayaffa & Ors V. Bank of the North Ltd 18 NSCQR 543 at 560. He urged the court to rule against the appellants on this issue.

The 2nd respondent and others have touched on this issue and their views are as expressed by the 1st and 37th respondents.

Now, the pith and substance of issue one is a complaint by the appellants that the court below, having taken a decision that all the respondents were served, had become *functus officio* and has no jurisdiction to reopen the matter as was allegedly done by the court below. The said decision is that contained on page 907 of the record. It states:

“REGISTRAR: Confirmed that all the respondents were served.”

Was the above statement a decision of the court? Let us examine the record to see what happened immediately before the registrar's statement alluded to above. The record bears out that just before the statement was made, appearances of counsel are recorded. There is neither an enquiry by the court nor from any counsel before the statement of the registrar. Again, after the statement, there is no comment by the court in respect of the said statement.

Under Section 318 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) the word “*decision*” is defined in relation to a court as “*any determination of that court and includes judgment, decree, order, conviction, sentence or recommendation.*” See L. O. Dike & Ors V. Dr. Osita Aduba & Anor (2000) 3 NWLR (pt. 647) 1, Kalu V. Odili (1992) 5 NWLR (pt. 240) 130 at 189. ***Does the Registrar's statement fit into the said definition? I do not think so. Had the court independently ruled on the statement of the registrar as to whether it was satisfied or not that all the***

respondents were duly served, I would have held otherwise. It is trite that once an issue or issues have been raised and determined by the court between the litigating parties, the court becomes *functus officio* to either direct or allow the parties to re-open the same issues before it for re-litigation. See John Andy Sons & Co. Ltd V. National Cereals Research Institute (1997) 3 NWLR (pt. 491) I, Nnajofofor V. Ukonu (1985) 2 NWLR (pt. 9) 686 at 688, Chief Ozo Nwankwo Alor & anor. V. Christopher Ngene & Ors (2007) 17 NWLR (pt. 1062) 163.

There is nothing on record to support the appellants' claim that the registrar's statement was a decision of the lower court on the issue of service of processes for which it became *functus officio* and could not reopen it. For me, the first issue does not avail the appellants at all and I accordingly resolve same against them.

The learned senior counsel for the appellants argued issues 2, 3 and 6 together. However, the 1st & 37th respondents' senior counsel responded by taking issues 2, 3, 4, 5 and 6 together. After reading the issues once again, I think it is very convenient and reasonable to take issues 2, 3, 4, 5 and 6 together since the arguments in support of them are inter woven and interrelated.

As to whether there was a flagrant non-compliance with Order 2 Rule 3 and Order 6 Rule 2(1) of the Court of Appeal Rules as held by the lower court, the learned senior counsel for the appellants submitted that the decision of the court below that Order 6 Rule 2(1) requires that every notice of appeal shall have endorsed on it an address for service of the notice of appeal on every respondent in the appeal is a gross misdirection of both law and fact. According to him, it is a misdirection of law in that it substituted the words of the provisions i.e. "persons directly affected by the appeal" with "every respondent". He submitted that a judge cannot completely substitute its own words for the words of the statute or document being interpreted, relying on the cases of Obi V. INEC (2007) 11 NWLR (pt. 1046) 643 C - F, Aqua Ltd V. Ondo State Sports Council (1988) 4 NWLR (pt. 91) 622 at 641 E. He argued that this substitution coloured the minds of the Justices of the court below who ignored the names and addresses of persons directly affected by the appeal duly endorsed in paragraph 5 of the notice of appeal in search of names

and addresses of every respondent in the appeal which informed the ultimate decision of the court.

Learned senior counsel further submitted that the court below erroneously read into Order 6 Rule 2(1) the words of Order 2 Rule 3 of the Court of Appeal Rules 2011, which provides that “where under these Rules any notice or other process is required to have an address for service endorsed on it shall not be deemed to have been properly filed unless such address has been endorsed on it.”

It was contended for the appellants that the act of the lower court in striking out the notice of appeal suggests that even in a situation where all the respondents were shown to have been served, the non endorsement of addresses would still render the notice of appeal void. This, according to him amounts to applying rules of court slavishly, relying on *Atiku Abubakar V. Yar’adua & ors* (2008) 4 NWLR (pt. 1078) 465. He opined that rules of court though meant to be obeyed, are not sacrosanct like provisions of statutes even where mandatory, citing the case of *Katto v. CBN* (1991) 9 NWLR (pt. 214) 26 at 147 A-D.

Furthermore, he argued that even if the names and addresses of persons directly affected by the appeal were not endorsed on the notice of appeal, it cannot vitiate the process. That as long as the respondent is served with the process, non-endorsement of address for service is an irregularity, citing the following cases. *Sterling Civil Engineering Nig. V. Philip Nwosu* (2008) ALL FWLR (pt. 413) 1399 at 1418 paras A - B, *Texaco Nig. Plc V. Lukoko* (1997) 6 NWLR (pt. 510) 651. He urged the court to resolve these issues in favour of the appellants and hold that since all the respondents were served, the non-endorsement of names and addresses for service were a non issue.

In response to the above arguments, the learned senior counsel for the 1st & 37th respondents submitted that although an aggrieved party who lost a valid decision of a court has a constitutional right to appeal against that decision, such right is not absolute or at large. It must be exercised within provisions of all the enabling laws which, according to him the appellants herein have failed to do, referring to the cases of *Attorney-General of the Federation V. ANPP & Ors* (2003) 15 NWLR (pt. 844) 600 and *TRO V. Ech-Ewendu* (1996) 8 NWLR (pt. 468) 629 at 635 para. H.

Referring to Order 2 Rules 2 & 3 of the Court of Appeal Rules 2011, he submitted that the provision is emphatic on the effect of not endorsing an address for service on a notice of appeal which is: that such process “*shall not be deemed to have been properly filed unless such address has been endorsed on it.*” He submitted that the implication of failure to endorse the address for service is that the notice of appeal is incurably defective. B

Furthermore, it was argued that it does not lie in the mouth of the appellants to determine those directly affected by the appeal as the court below held that all the respondents were parties directly affected and that was why the lower court equated “all parties” with “every respondent” as rendered in Order 6 Rule 2(1). C

According to learned senior counsel, service of court process is a *sine qua non* to the adjudicatory competence of the court. That any adjudication without service of process is a nullity, citing these cases: Wimpey V. Balogun (1986) 3 NWLR (pt. 28) 324, National Bank V. Guthrie Ltd (1987) 2 NWLR 255. He further submitted that a person is not given fair hearing if he is shut out of the proceedings he is made a party, referring to Tunbi V. Opawole (299) 1 SCNQR I. D

Learned senior counsel finally submitted that the remark by the court below that the failure to serve the 2nd - 36th respondents was calculated to delay the hearing of the petition is an obiter and not a decision to be appealed against. He urged the court to resolve these Issues against the appellants. E

Learned senior counsel for the 2nd respondent submitted in the main that notice of appeal is an originating process and therefore must not only have endorsed on it addresses for service as an essential component, but must also be served personally on the respondents. That where notice of appeal is not served, as in this case, the court is bound to strike it out. Learned senior counsel cited the following cases: Wimpey V. Balogun (supra), Tunbi V. Opawole (supra) Anadi V. Okoli (1977) 7 SC 57, Okonkwo V. INEC (2004) 1 NWLR (pt. 854) 242 etc, etc. F

He urged this court to hold that the court below was right in striking out the notice of appeal because it lacked jurisdiction to hear the appeal, the 2nd respondent having not been served at all. H

The learned counsel for the 11th respondent and other counsel were so emphatic that the failure to serve notice of appeal on 11th,

15th, 17th, 26th - 30th, 31st, 33rd and 34th respondents constitute breach of the Rule of fair hearing and robbed both the Court of Appeal and this court of the jurisdiction to entertain this appeal. They all urged this court to resolve all the issues against the appellants.

Two rules of the Court of Appeal are often referred to throughout the argument of all parties to this appeal i.e. Order 2 Rule 3 and Order 6 Rule 2(1) of the Court of Appeal Rules, 2011. I shall therefore reproduce them in this judgment for ease of reference.

Order 2 Rule 3 states:

“where under these Rules, any notice or other process is required to have an address for service endorsed on it, it shall not be deemed to have been properly filed unless such address has been endorsed on it.”

Also, Order 6 Rule 2(1) of the said rules states:

“2(1) All appeals shall be by way of rehearing and shall be brought by notice (hereinafter called “the notice of appeal”) to be filed in the registry of the court below which shall set forth the grounds of appeal, stating whether the whole or part only of the decision of the court below is complained of (in the later case specifying such part) and shall state also the exact nature of the relief sought and the names and addresses of all parties directly affected by the appeal, which shall be accompanied by a sufficient number of copies for service on all such parties; and it shall also have endorsed on it an address for service.”

I shall return to these rules anon.

It is trite that service of originating process is a precondition to the exercise of jurisdiction by the court. Where there is no service or there is a procedural fault in service, the subsequent proceedings are a nullity ab initio. This is based on the principle of law that a party should know or be aware that there is a suit against him so that he can prepare a defence. If after service he does not put up a defence, the law will presume and rightly too, that he has no defence. But where a defendant is not aware of a pending litigation because he was not served, the proceedings held outside him will be null and void. See Emiskip Ltd V. Exquisite Industries Nig. Ltd (2003) 4 NWLR (pt. 809) 898, Skenconsult Nig. Ltd V. Ukey (1981) 1 SC 6, Craig V. Kanseen (1943) 1 QB 256, Oke V. Aiyedun (1986) 2 NWLR

(pt. 23) 548.

In the instant appeal, there is abundant evidence in the record to show that the 2nd to 36th respondents were not served with notice of appeal at the court below which necessitated the 1st & 37th respondents to raise a preliminary objection to the competence of the appeal on three grounds. B

The second ground thereof states:

“(II) The failure to put the 2nd - 36th respondents on notice and serve the appeal process on them robs the Court of Appeal of jurisdiction to entertain same. Paragraph 52 of the 1st Schedule to the Electoral Act, 2010 (as amended).” C

(1) PPA V. INEC (2012) 13 NWLR (pt. 1317) 215 SC at 237 paras C - D per Ngwuta JSC;

(2) S.S. Nig. Ltd V. AS & Nig. Ltd (2011) 4 NWLR (pt. 1238) 596 at 620 paras B - D.” D

The appellants had argued before the lower court that they complied with Order 6 Rules 2(1) & (9) of the Court of Appeal Rules and that, that was enough to ensure the competence of the appeal. They had also argued that the 2nd - 36th respondents were not parties directly affected by the appeal and that was why their addresses for service were not endorsed on the notice of appeal. To make matters worse, the processes, including the notice of appeal (being the originating process) were dumped at the office of the 37th respondent, the APC. At the hearing of this appeal, there was no evidence that there was an order of the lower court for substituted service. Under this state of affairs, the lower court had no difficulty in holding the notice of appeal incompetent. On pages 934 - 935 of the record, the lower court held as follows: E

“In the instant case, the notice of appeal does not have endorsed thereon address for service of each of the 3rd - 36th respondents. It offends Order 2, Rule 3. Accordingly, therefore I hereby invoke the sanction for this incompetent process contained in Order 2 Rule 3 of the Rules of this court and the said notice of appeal filed on 26th July, 2015 is hereby struck out. The filing of this notice of appeal in flagrant disobedience of Order 2 Rule 3 and Order 6 Rule 2(1) was intended not to promote the tenets and purports of Section 36(1) and 285(7) of the 1999 Constitution, as amended...” F

The lower court went on to say further on page 935:

"I notice from the bailiffs report of service in the records of the court that this incompetent notice of appeal was dumped on the Protocol Officer of APC, the 37th respondent on 28th July, 2015 as a purported service of the same on the 3^d, 4th, 6th - 12th, 15th - 24th, 26th - 29th and 32nd - 36th respondents; whereas there was no order for such a substituted service. The purported service is incompetent and of no effect."

I have already stated the importance of service of process on respondents. The question which I wish to attempt an answer is whether the proven failure by the appellants to serve the named respondents the notice of appeal is a mere irregularity or whether it goes to the root of the appeal.

Let me state categorically that although the court is not a slave to its rules, it shall at all times ensure that its rules are obeyed. I am tended to be persuaded with the views expressed in *Odua Investment Co. Ltd V. J. T. Talabi* (1991) 1 NWLR (pt. 170) p. 761 at 781 - 782 paras G - B per Tobi, JCA (as he then was) that:

*"In all non-compliance cases, the court must draw a dichotomy between non-compliance arising directly from non-service of the court process as opposed to and distinct from non-compliance arising from other procedural aberrations like non-endorsement of court process... An indiscriminate loading of the statutory provisions with the available case law without drawing this fundamental and factual dichotomy will end in a blurry appreciation of the legal forecast surrounding this fairly troublesome area of our adjectival law. In my view, while non-service of a court process is an incurable defect for all times, I am prepared to hold and I do hold that failure to comply with other procedural requirements, like non-endorsement of the writ and all that, is an irregularity, which is curable. While the former situation is within the contemplation of SKENCONSULT and the group of cases, the later situation is within the contemplation of EZOMO and the group of cases. It is not every defect in service that will affect the jurisdiction and competence of the court to adjudicate on the matter. It depends upon the type or nature of the defect, whether it is fundamental or not. See *Management Enterprises Ltd V. Otusanya* (1987) 2 NWLR (pt. 55) 179."*

For me, I agree that it is not every non-compliance with the rules of court that should vitiate the proceedings. How-

ever, where the non-compliance robs the court of its jurisdiction, the processes and the proceedings must be set aside. I must emphasize that service of process is an important aspect of the judicial process. Failure to serve a named party with court process offends Section 36(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). As ^B
was rightly pointed out by the learned counsel for the 11th respondent, Chief Falade, the failure to serve those respondents constitutes a breach of the Rule of fair hearing and robs the court of its jurisdiction to hear the appeal. Any breach of ^C
this principle renders the proceedings a nullity. See Chime V. Onyia (2009) All FWLR (pt. 480) 673 at 730 - 731 paras H - B.
Service of process, I must say, is a fundamental issue and a condition precedent before the court can have competence to adjudicate. See Eke V. Ogbonna (2007) All FWLR (pt. 351) ^D
 1456 at 1482 para. H.

From what I can glean from this appeal, the confusion of the appellants appear to lie in their erroneous belief that the 3rd - 36th respondents were not persons directly affected by the outcome of the appeal and because of that there was no need to endorse their ^E
 addresses for service. I must say that the appellants made a serious blunder in this appeal by treating the issue of service of originating process with levity. Even before this court, the appellants still dumped their processes meant for some respondents on the Protocol Officer of the 37th respondent. Appellants ought to know that those respondents ^F
 were to be served personally and where that fails, by substituted service by an order of the court sought and obtained. There is no doubt that the appellants failed to comply with the rules of the lower court alluded to above and this failure, sadly, has turn up to hunt ^G
 them. The appeal was not commenced by due process of law as conditions precedent to assumption of jurisdiction by the court were absent. It was not an ex parte proceedings. Therefore, failure to put the named respondents on notice was fatal to the appeal. See Madukolu V. Nkemdilim (1962) 2 SCNLR 341. Ajao V. Obele (2005) ^H
 5 NWLR (pt. 918) 400, Skenconsult V. Ukey (supra).

Let me make one or two sentences on issue 6. It relates to whether the 3rd - 36th respondents were persons directly affected by the appeal. The parties so named were mentioned

in the petition as having committed one misconduct or the other, some of which are criminal in nature. The lower court held that they were necessary parties because allegations of misconduct were made against them in the petition. Thus, the petition against them having been dismissed, I think any appeal which seeks to challenge or upturn that decision gives them sufficient interest to know its outcome which may affect them one way or the other. Assuming that the appeal was allowed, would they not have been parties to the hearing of the petition on the merit? Thus, the argument by the learned senior counsel for the appellants that they were not parties directly affected by the petition was of no moment. And, in any case that was not a good excuse for failure to provide their addresses for service and moreso, failure to serve them. Issue Six is thus resolved against the appellants.

The main complaint of the appellants in issue 7 which was argued separately is that the court below failed to pronounce on the two motions heard by the trial Tribunal and the concluded pre-hearing session, the court having been invited to do so on record by the appellants.

According to the argument of the learned senior counsel for the appellants, three motions, two by the 1st & 37th respondents and one by the appellants were consolidated, heard and adjourned for ruling. There was no ruling until the petition was dismissed for abandonment. According to learned senior counsel, the court below was invited to invoke its powers under Section 15 of the Court of Appeal Act, should the appeal succeed, to deliver the due but undelivered ruling. The court below failed to do so. This is the basis of the complaint in ground 13 in the notice of appeal which has given birth to this issue. It is learned senior counsel's plea that in view of the short time left for the hearing of the petition at the Tribunal, this court should invoke its powers under Section 22 of the Supreme Court Act and determine the motions.

In response, learned senior counsel for the 1st & 37th respondents and senior counsel for the 2nd respondent argued that since the request by the appellants was dependent upon the appeal being allowed, it was not necessary for the lower court to pronounce on the three motions since the appeal was not sustained.

Without much ado, I agree with the respondents. The power granted the Court of Appeal under Section 15 of the Court of Appeal Act is available in order to do substantial justice in deserving cases. It is not power that should be exercised at large. The appellants in paragraph 4.05D of their brief in this appeal admitted that they prayed the court below to invoke its powers under Section 15 of the Court of Appeal Act:

“Should the appeal succeed, and to deliver the undelivered ruling and the pre-hearing report which the Tribunal failed to deliver and was instead completely silent on the matter.”

As it turned out, the appeal did not succeed. I agree that the complaint of the appellants in this issue is of no moment.

The appellants have also invited this court to invoke its powers under Section 22 of the Supreme Court Act to hear those motions. I agree that this court has “a plenitude of powers” to do that which the justice of the case demands but I must say that such power like any other statutory power is to be exercised with certain parameters set by the law. See *Amaechi V. INEC* (2008) 5 NWLR (pt. 1080) 227 at 325 paras H - P, *Shettima V. Goni* (2011) 18 NWLR (pt. 1279) 413 at 452, *Olowokere V. African Newspapers of Nigeria Ltd* (1991) 5 NWLR (pt. 293) 583 at 586, *Inakoju V. Adeleke* (2007) 4 NWLR (pt. 1025) 425.

In *Shettima V. Goni* (supra) at 452 paras C - G, this court held as follows:

“It is settled law that this court can only exercise its powers under the said Section 22 by exercising the jurisdiction of the lower court where that court has the jurisdiction to act, not where that court has ceased to have jurisdiction over the matter. In short, the jurisdiction of this court under Section 22 of the Supreme Court Act depends completely on the Court of Appeal having jurisdiction to deal with the matter in issue and pending before it.”

It is quite clear that the Court of Appeal struck out the appellants’ appeal for being incompetent, for which it lacked jurisdiction to hear an incompetent appeal. It follows therefore, that the court below, by that singular pronouncement ceased to have jurisdiction over the matter before it. It was not possible for the court below to go ahead to hear the three motions. Concomitantly, this court also lacks the jurisdiction

to hear and pronounce on those motions. It is therefore not possible to invoke Section 22 of the Supreme Court Act as prayed by the appellants. As it turns out, the 7th issue does not also avail the appellants.

The summary of all I have said above is that the statement of the Registrar that there was service on all respondents was not a decision of the court and did not preclude the lower court from satisfying itself from the record available whether or not the 26 absent respondents were actually served. Secondly, Notice of appeal, being an originating process, is fundamental to jurisdiction and must be served personally on the respondents, unless otherwise directed or ordered by the court or exempted by the provisions of the law. In this case, there was no such order of the Court or exemption. Thirdly, the court below had no jurisdiction to invoke Section 15 of the Court of Appeal Act to hear the three motions having struck out the appeal for incompetence. It follows that this court cannot invoke Section 22 of its Act to hear the motion as the lower court lacked jurisdiction to do so.

On the whole, there is no merit in this appeal at all. Accordingly, it is hereby dismissed by me. Thus the judgment of the Court of Appeal delivered on 3rd September, 2015 at Owerri which struck out the appeal of the appellants, is hereby affirmed. The parties to this appeal shall bear their respective costs.

CROSS APPEAL

The 1st and 37th respondents filed a cross appeal in this matter. The said cross appeal was taken along with the main appeal on 22nd October, 2015 when it was heard. Briefs were filed, exchanged and adopted by respective senior counsel. However, in view of the outcome of the main appeal, the benefit of which majorly enures to the 1st and 37th respondents (cross-appellants), the cross appeal has become academic and spent. It shall therefore abide the outcome of the main appeal. There shall be no order as to costs.

H

FABIYI JSC

I have had a preview of the judgment just delivered by my learned brother - John Inyang Okoro, JSC. I agree entirely with all the reasons advanced therein to arrive at the conclusion that the

appeal lacks merit and, no doubt, deserves an order of dismissal.

I wish to chip in a few words of my own in support. Basically, this appeal relates to the complaint of non-service of process on the respondents. Service of process is a threshold issue. It is very important in adjudicatory functions. Same is an issue that touches on the jurisdiction which is very fundamental. If a court has no jurisdiction to hear and determine a case, the proceedings remain a nullity ab initio no matter how well conducted and decided. A defect in competence is not only intrinsic but extrinsic. See *Madukolu v. Nkemdilim* (1963) 2 SCNLR 341; *Oloba v Akereja* (1988) 3 NWLR (Pt. 84) 508.

Let me reiterate the settled law that a party cannot be said to have been given a fair hearing when he is not given a chance to be heard. If Notice of Appeal is not served on the respondent, the appeal cannot take off. It remains a non-starter. The court is bound to dismiss same. The decision of this court in *Akinloyev. Adelokun* (2000) 5 NWLR (Pt. 657) 530 is in point.

It is not in dispute that the appellants did not endorse the addresses for service on the 2nd to 36th respondents in the Notice of Appeal. The reason given by the appellants is that they did not regard them as parties directly affected by the appeal. The appellants did not intend to have the respondents served. It must be stressed that the failure to serve the stated respondents personally rendered the appeal incompetent. See *Madukolu v. Nkemdilim (supra)* and *Sken Consult v. Ukey* (1981) 1 SC 6.

For the above reasons and of course, those clearly set out in the lucid decision of my learned brother, I too, hereby form the view that the appeal lacks merit and it should be dismissed. I order accordingly. The appeal is dismissed by me, as well.

I too feel that the cross appeal appears superfluous and spent. It is of no moment.

I make no order on costs.

GALADIMA JSC

I have been obliged in advance a copy of the lead Judgment Okoro JSC, just delivered. I agree with him that the appeal lacks merit and should be dismissed.

The cross Appeals of the 1st and 37th Respondents is of no

moment as it is merely superfluous in view of the fact that the main Appeal has been dismissed.

The Appeal is against the judgment of the Court of Appeal Owerri Division delivered on 3/9/2015, striking out the appellants appeal for incompetence.

B At the Court below the Appellant's appeal was against the ruling of the Governorship Election Tribunal sitting at Owerri which was delivered on 22/7/2015. This appeal was dismissed for being abandoned, having failed to apply for issuance of pre-trial Forms in line with paragraph 18 of the 1st schedule to the Electoral Act 2010 as amended.

C After hearing argument of the parties on the preliminary objections and substantive appeal, the lower Court held at pp.934-435 held thus:

D *"In the instance case the Notice of Appeal does not have endorsed therein addresses for service of each of the 3^d - 36th Respondent's. It offends Order 2 of Rule 3. Accordingly, therefore I hereby invoke the sanction for this incompetent process contained in Order 2 Rule 3 of the Rules of this Court and the said Notice of Appeal filed*
 E *on 26th July, 2015 is hereby struck out."*

Against this judgment the Appellants have appealed against the part of judgment striking out Notice of Appeal and the failure of the lower Court to exercise its power under section 15 of the Court of Appeal Act in respect of the duty head but not decided motions
 F and the report of pre-hearing session.

Although appellant filed 3 Notices of Appeal it is the third Notice contained in the additional Record that the Appellants have adopted for the prosecution of this appeal. From the 13 grounds of
 G Appeal filed on 14/9/2015, Appellants raise 7 issues for determination as follows:

"Issue 1

H *Whether the Court of Appeal had the competence to revisit and re-adjudicate in their judgment of 3^d September, 2015, the issue of service of the Notice of Appeal on the respondents after confirming service on all the respondents on record on 21/8/15. (Grounds 7 and 12)*

Issue 2

Whether there was a flagrant non-compliance with Order 2

Rule 3 and Order 6 Rule 2(1) of the Court of Appeal Rules by the appellants as held by the Court of Appeal or at all. (Grounds 1, 2, 3, 4 and 5)

Issue 3

Whether failure to include the name and address of a respondent in an appeal in paragraph 5 of the Notice of Appeal is in law a fundamental vice capable of vitiating a notice of appeal or preventing the hearing of an appeal on merit. (Grounds 6 and 8). B

Issue 4

Whether senior counsel for the appellants in the Court below approbated and reprobated in his submission on Order 6 Rule 2(1) of the Court of Appeal Rules or suggested that any of the respondents was not entitled to fair hearing. (Ground 9). C

Issue 5

Whether the striking out of the Notice of Appeal on ground of incompetence was proper. (Ground 10) D

Issue 6

Whether the 3^d - 36th Respondents were persons directly affected by the appeal which was specifically on the ruling on the joint interlocutory application filed in the Tribunal by the 1st and 37th Respondents only. (Ground 11) E

Issue 7

Whether the failure of the Court below to pronounce on the two motions fully heard by the Tribunal, and the report of the fully concluded pre-hearing session is proper in law. (Ground 13) F

Appellants also filed the following documents for determination of the appeal. (1) Appellants' Reply Brief to 1st-37th Respondents' Brief.

(2). Appellants Reply Brief to 2nd Respondent's brief.

(3). Appellants Reply Brief to 11th & 15th Respondents Brief

(4). Appellants' Reply Brief to 17th Respondent.

(5). Appellants' Reply Brief to 33^d Respondent.

(6). Appellants' Reply Brief to 34th Respondents.

(7). Appellants'/Cross Respondents Brief.

In the 1st-37th Brief of Argument filed on 22/9/2015, the seven issues formulated for determination are clearly those of the Appellants. The following processes were also filed by the 1st - 37th Respondents. H

1. *1st and 37th Respondents'/Cross - Appellants' Reply Brief*

2. *Cross-Appellants' Reply Brief to Appellants'/Cross Respondents.*

3. *1st and 37th Notice of Appellants'/ Cross Respondents.*

B The 2nd Respondent in their brief filed on 8/10/2015, 4 issues were put up for determination, namely:

1. Whether the lower court was wrong in considering and determining the issue of service which is a threshold matter bordering on jurisdiction. (Grounds 7 and 12)

C 2. Whether the court below was in error in its holding that the notice of appeal before it, not being in compliance with Order 2 Rule 3 and Order 6 Rule 2 (1) was incompetent. (Grounds 1, 2, 3, 4, 5, and 10)

D 3. Whether 3 - 36th respondents, being named parties in the appeal before the lower court and the trial Tribunal:

(a) Were not persons directly affected by the appeal; and

(b) Entitled to be served with the notice of appeal. (Grounds 6, 8, 9, and 11)

4. Having regard to the fact that:

E a. The notice of appeal before the lower court was held to be incompetent; and

b. The Tribunal did not make any pronouncement on merit of the 2 motions, whether it was necessary for the court below to pronounce on same therein. (Ground 13)"

F The 5th, 13th, and 14th Respondents neither filed any Brief in the main Appeal nor in the Cross-Appeal. They have nothing to urge.

11th Respondent's Brief of argument was filed on 22/9/2015.

G Having been adopted, learned counsel Chief Bankole Folade Esq. urged us to dismiss the appeal, associating himself completely with the arguments and submissions of learned counsel to the 2nd and 37th Respondents.

H 15th Respondents Brief was filed on 22/9/2015 and 15th Cross-Respondents Brief filed on 2/10/2015. Both having been adopted, Learned Counsel O. ENITAN Esq., has urged the court to dismiss the appeal on the ground of non-service of Notice of Appeal on the 15th Respondents.

17th Respondent as 18th Cross-Respondents filed both Briefs on 22/9/2015 and 2/10/2015 respectively. Learned Counsel for hav-

ing adopted the two urge the Court to dismiss the Appellants' appeals on the grounds that there was non-service of the Notice of Appeal on 17th Respondents.

Learned Counsel for 25th Respondent in the main appeal and 30th and 31st Respondents in the Cross-Appeal, having adopted the briefs urged the court to dismiss the appeal. B

Learned Counsel for the 33rd Respondent's brief filed on 22/9/2015 was adopted same date. He urged the court to dismiss the appeal. Referring to p.855 of the Records, learned counsel has submitted that the 33rd Respondent against whom serious misconduct was levied was not personally served with the Appellants' Notice and Ground of Appeal. Three issues raised for determination are as follows: C

i. Whether non service of the Notice of Appeal and other processes in this appeal on the 11th Respondent did not constitute breach of the Rule of fair hearing and rob the Supreme Court of the necessary jurisdiction to entertain the appeal. D

ii. Whether the non service of the Notice of Appeal on the 11th Respondent is not in breach of Order 2 Rule 3 [i] [b] of the Supreme Court Rules 1999 (as amended). E

iii. Whether the Court of Appeal was wrong by upholding the Respondents' preliminary objection and struck out the Appeal of the Appellants.

34th Brief of Argument by his learned counsel J. O. Odubela Esq., was filed on 9/10/2015. Three issues formulated for determination are as follows: F

“(i). Whether failure to serve the Notice of Appeal and other processes in this appeal on the 34th Respondent did not constitute breach of the Rule of fair hearing and rob the Supreme Court of the necessary jurisdiction to entertain the appeal. G

(ii). Whether failure to serve the Notice of Appeal on the 34th Respondent is not in breach of Order 2 Rule 3 (i) (b) of the Supreme Court Rules 1999 (as amended).

(iii). Whether the Court below was wrong by upholding the Respondents' preliminary objection and struck the Appeal of the Appellants.” H

1st and 37th Respondents/Cross-Appellant. This is against part of the decision of the Court below delivered on 3/9/2015. The por-

tion being challenged is the dismissal of 1st and 37th Respondents' Cross-Appeal against the decision of the trial Tribunal declining to dismiss the petition of the 1st and 2nd Petitioners/Appellants'/Cross-Respondents on grounds that same was an abuse of Court process: apart from the fact that it was held abandoned and dismissed under
 B paragraph 18(1) of the first schedule to the Electoral Act 2010 as amended as also prayed in the motion. The Notice of Cross appeal to this Court contains 6 grounds of appeal. 4 issues submitted for determination read as follows:

C ISSUE NO. 1
WHETHER REFUSAL OF COUNSEL TO COMPLY WITH RULE 10 (1) OF THE RULES OF PROFESSIONAL CONDUCT ON AFFIXING OF SS TA MP AND SEAL ON LEGAL DOCUMENT IS EXCUSABLE BY REFERENCE TO EXECUTORY NATURE OF C/JN D CIRCULAR NO. NJC/CIR/HOC/171 DATED 1ST JUNE, 2015 (Ground 1)

ISSUE NO.2
WHETHER THE COURT OF APPEAL RIGHTLY CAME TO THE CONCLUSION THAT THE TRIBUNAL DID NOT FAIL TO PRO- E NOUNCE A DECISION ONE WAY OR THE OTHER ON THE PRAYER FOR DISMISSAL OF THE PETITION FOR BEING AN ABUSE OF COURT PROCESS. (Ground 6)

ISSUE NO. 3
WHETHER HAVING HELD THAT THE NOTICE OF APPEAL F OF PETITIONERS/APPELLANTS/CROSS-RESPONDENTS WAS INCOMPETENT, THE COURT OF APPEAL CAME TO A CORRECT ALTERNATIVE DECISION THAT THE PETITION WAS WRONGLY DISMISSED PURSUANT TO PARAGRAPH 18(1) AND (3) OF THE G FIRST SCHEDULE TO THE ELECTORAL ACT 2010 (AS AMENDED). (GROUNDS 2 AND 3)

ISSUE NO. 4
WHETHER THE COURT OF APPEAL CORRECTLY IN- H VOKED PARAGRAPH 53(2) OF THE FIRST SCHEDULE TO THE ELECTORAL, ACT, 2010, IN HOLDING THAT CROSS APPEL- LANTS HAD WAIVED THEIR RIGHT TO HAVE THE PETITION DIS- MISSED UNDER PARAGRAPH 18(3) OF THE FIRST SCHEDULE TO THE ELECTORAL ACT, 2010 (as amended). (Grounds 4 and 5).

I have noted that the 3rd, 4th, 6th - 10th, 12th, 16, 18th-24th, 26th - 29th, 32nd, 35th-36th Respondents were absent. They had not been served with hearing notice and other processes. The learned silk deemed it necessary, in the circumstance to apply orally to withdraw the appeal against them. Accordingly, the appeal was dismissed against the said Respondents. B

Having withdrawn the appeal against those respondents', the battle is now between the Appellants and the respondents who were represented by the counsel.

The issues presented before the Court by the respective counsel for determination of this appeal are similar. Learned Senior Counsel for the appellants has argued that the striking out of the Notice of Appeal by Court of Appeal was unnecessary sanction not envisaged by Order 2 Rule 3. That as it offends the rule it must be proved that there was no service. Learned counsel has contended that the registrar has stated that all the respondents were served referring to page 907 of the Record. He observed that none of the 3rd - 36th respondents complained about non-service except counsel for the 1st and 37th Respondents who have taken up the matter and complained that there was no endorsement of address for service on the 3rd - 36th Respondents who are not the counsel's client. C D E

On the part of the 1st and 37th Respondents their learned counsel submitted that the assertion that the court below conducted an open inquiry as to the service of notice of appeal was an issue that was nowhere found in the proceedings of the Court of 21/8/2015. That the respondents had long before that date raised an objection on the ground that the Notice of Appeal was not endorsed with addresses for service in compliance with Order 2 Rules 2 & 3 of the Court of Appeal Rules 2011. The counsel submitted that the statement of the registrar cannot be taken to mean a decision of the court. It is contended that the issue was never raised at the court below and cannot be raised in this Court. F G

The learned senior counsel for the 2nd Respondent and other counsel for their respective parties have advanced arguments in line with that of the 1st and 37th Respondent respectively. H

I must say right away that the statement of the Registrar that all the respondents were served did not attract the comment of the court below. It is not its decision.

I agree with the learned counsel for Respondents that there is nothing on record to support the appellants' claim that the registrar's statement was a decision of the lower court on the issue of service of processes for which that court had become *functus officio* and could not be opened.

B On the effect of not endorsing an address for service of a Notice of appeal, from the tenor of Order 2 Rules 2 & 3 of the Court of Appeals Rules 2011, such Notice of Appeal is incurably defective.

C Service of processes of Court is very important to the adjudicatory competence of the Court. There cannot be valid adjudication without service of process. *See WIMPEY v. BALOGUN*(1986) 3 *NWLR* (pt.28) 324.

The Court below was right in striking out the Notice of appeal because it lacked jurisdiction to hear the appeal.

D In this case there is abundant evidence in the record that the 2nd to 36th Respondents were not served with the Notice of Appeal at the Court below. This accounts for the reason why the 1st & 37th respondents had to raise a preliminary objection to the competence of the appeal. The Appellants had argued that the 2nd - 36th respondent were not parties directly affected by the appeal hence, their addresses were not endorsed on the notice of appeal.

F On pp. 934 - 935 the lower court held that notice of appeal was not endorsed with addresses for service on 3rd - 36th Respondents and there this offended Order 2 Rules 2 & 3. The court also noticed on page 935 that from the bailiffs report of service in the records of Court that the incompetent notice was dumped on the Protocol Officer of APC, the 37th respondents on 28/7/2015 same as well on 3rd, 4th, 6th - 12th, 15th - 24th, 26th - 29th and 32nd - 36th Respondents and there was no Order for substituted service. I am of the opinion that the appeal of the Appellants was not commenced by due process of law. The failure to put the named Respondents on notice was fatal to their appeal.

H The question is whether the 3rd - 36th respondents were person directly affected by the appeal. No doubt there were several serious misconduct criminal in nature levied against them. I agree with the court below that they were necessary parties because allegations of misconduct were made against them.

With these contributions and the more detailed consideration

of other relevant reasons in the lead judgment, I too agree that the appeal lacks merit. It is dismissed.

The decision of the court below is affirmed. It is needless considering the Cross-Appeal. The 1st and 37th Respondents have derived benefits from the main appeal.

B

PETER-ODILI JSC

I am in total support with the judgment just delivered by my learned brother, John Inyang Okoro JSC, and to place on record this support for the reasoning I shall make some comments.

This is an appeal against that part of the judgment of the Court of Appeal, Owerri Division delivered on the 3rd of September, 2015 striking out the appellants' appeal for the incompetence of the Notice of Appeal. The appellants' appeal at the lower court was against the ruling of the Governorship Election Tribunal sitting at Owerri, delivered on 22/7/2015 which dismissed their petition for being abandoned by reason of non valid application for issuance of pre-trial forms in line with paragraph 18 of the 1st schedule to the Electoral Act, 2010 (as amended).

At the hearing of the said objection before the Tribunal, the 11th respondent appearing for himself supported the preliminary objection while the 13th, 14th, 25th, 30th and 31st respondents represented by counsel supported the contrary position held by the Petitioners. In spite of the open expressions of interest by the 11th, 13th, 14th, 25th, 30th & 31st respondents in the outcome of the objection, the appellants in their Notice of Appeal left out the names of the 2nd – 36th respondents from the list of parties directly affected by the appeal. Also the appellants failed to endorse the Notice of Appeal with the addresses for service on the 2nd – 26th respondents.

For the failings above mentioned the 1st & 37th respondents in filing their respondents' Brief of Argument to the substantive appeal at the court below incorporated therein a preliminary objection to the competence of the appeal. There were no affidavits of service of the Notice of Appeal on the 2nd - 36th respondents except for such processes like Briefs of Argument and hearing notices but even then the appellants failed to serve the 3rd, 4th, 6th, 12th, 15th - 24th, 26th-29th, 32nd-36th respondents personally rather the Brief was dumped for the

H

said respondents at the office of the 37th respondents at Owerri.

The hearing notices for the proceedings of 21/8/2015 when the preliminary objection and appeals were heard were served not personally- on those stated respondents but dumped at the premises of the 37th respondent. The court below heard arguments and on the 3/9/2015 delivered its judgment to the effect that the Notice of Appeal was fundamentally defective for not being endorsed with the addresses for service. Also that the fact that 2nd to 36th respondents were parties directly affected by the appeal and that their exclusion from the list of parties in paragraph 5 of the Notice of Appeal who were said to be directly affected by the appeal was wrongful and so the appeal was struck out for being incompetent.

On the 22nd October 2015 date of hearing, learned counsel for the appellants, Chief Mike Ahamba SAN adopted their Brief of Argument filed on 17th September, 2015 in which he raised seven issues for determination which are as follows:

1. Whether the Court of Appeal had the competence to revisit and re-adjudicate in their judgment of 3rd September, 2015, the issue of service of the Notice of Appeal on the respondents after confirming service on all the respondents on record on 21/8/15 (Grounds 7 and 12).

Issue 2

Whether there was a flagrant non-compliance with Order 2 Rule 3 and Order 6 Rule 2(1) of the Court Rules by the appellants as held by the Court of Appeal or at all (Grounds 1, 2, 3, 4, and 5).

Issue 3

Whether failure to include the name and address of a respondent in an appeal in paragraph 5 of the Notice of appeal is in law a fundamental vice capable of vitiating a notice of appeal or preventing the hearing of an appeal on merit. (Grounds 6 and 8).

Issue 4

Whether senior counsel for the appellants in the court below approbated and reprobated in his submission on Order 6, Rule 2(1) of the Court of Appeal Rules or suggested that any of the respondents was not entitled to fair hearing. (Ground 9).

Issue 5

Whether the striking out of the Notice of Appeal on ground of incompetence was proper. (Ground 10).

Issue 6

Whether the 3rd – 36th respondents were persons directly affected by the appeal which was specifically on the ruling on the joint interlocutory application filed in the Tribunal by the 1st and 37th respondents only. (Ground 11)

Issue 7

B

Whether the failure of the Court below to pronounce on the two motions fully heard by the Tribunal, and the report of the fully concluded pre-hearing session is proper in law. (Ground 13)

For the 1st and 37th respondent Chief Adeniyi Akintola SAN adopted their Brief of Argument filed- on 22/9/15 and therein formulated seven issues for determination, viz: C

Issue 1

Whether the Court of Appeal had the competence to revisit and re-adjudicate in their judgment of 3rd September, 2015, the issue of service of the Notice of Appeal on the respondents after confirming service on all the respondents on record on 21/8/15. (Grounds 7 and 12). D

Issue 2

Whether there was a flagrant non-compliance with Order 2 Rule 3 and Order 6 Rule 2(1) of the Court of Appeal Rules by the appellants as held by the Court of Appeal or at all. (Grounds 1, 2, 3, 4 and 5). E

Issue 3

Whether failure to include the name and address of a respondent in an appeal in paragraph 5 of the Notice of Appeal is in law a fundamental vice capable of vitiating a Notice of Appeal or preventing the hearing of an appeal on merit. (Grounds 6 and 8). F

Issue 4

G

Whether Senior Counsel for the appellants in the court below approbated and reprobated in his submission on Order 6 Rule 2(1) of the Court of Appeal Rules or suggested that any of the respondents was not entitled to fair hearing. (Ground 9).

Issue 5

H

Whether the striking out of the Notice of appeal on ground of incompetence was proper. (Ground 10).

Issue 6

Whether the 3rd – 36th respondents were persons directly af-

fectured by the appeal which was specifically on the ruling on the joint interlocutory application filed in the Tribunal by the 1st and 37th respondents only. (Ground 11).

Issue 7

Whether the failure of the court below to pronounce on the two motions fully heard by the Tribunal, and the report of the fully concluded pre-hearing session is proper in law. (Grounds 13).

G. S. Pwul SAN, learned counsel for the 2nd respondent adopted their Brief of Argument filed on 8/10/15 and in it identified four issues for determination which are thus:

1. Whether the lower court was wrong in considering and determining the issue of service which is a threshold matter bordering on jurisdiction (Grounds 7 and 12).

2. Whether the court below was in error in its holding that the notice of appeal before it, not being in compliance with Order 2 Rule 3 and Order 6 Rule 2(1) was incompetent. (Grounds 1, 2, 3, 4, 5, and 10

3. Whether 3rd – 36th respondents, being *named parties in the appeal before the lower court* and the trial Tribunal:

a. Were not persons directly affected by the appeal; and
b. Entitled to be served with the notice of appeal. (Grounds 6, 8, 9 and 11).

4. Having regard to the fact:

a. The notice of appeal before the lower court was held to be incompetent; and

b. The Tribunal did not make any pronouncement on the merit of the 2 motions, whether it was necessary for the court below to pronounce on same therein (Ground 13).

Chief Bankole Falade, learned counsel for the 11th respondent adopted his Brief of Argument filed on 22/9/15 and raised three issues for determination which are as follows:

1. Whether non service of the Notice of Appeal and other processes in this appeal on the 11th respondent did not constitute a breach of the Rule of fair hearing and rob the Supreme Court of the necessary jurisdiction to entertain the appeal.

2. Whether the non-service of the Notice of Appeal on the 11th respondent is not in breach of Order 2 Rule 3(i)(b) of Supreme Court Rules 1999 (as amended).

3. Whether the Court of Appeal was wrong by upholding the respondents' preliminary objection and struck (sic) the appeal of the appellants.

Mr. Olukayode Enitan, learned counsel for the 15th respondent adopted his Brief of Argument filed on 2/10/15 and in it adopted the issues as identified by the 1st and 37th respondents. B

Victor Opara of counsel for the 17th respondent adopted his Brief of Argument filed on 22/9/2015 and confined himself to a single issue, viz:

Whether this Honourable Court can assume jurisdiction in this appeal despite the non service of the originating process and other processes on the 17th respondents. C

Mrs. Doyin Rhodes-Vivour, learned counsel for the 33rd respondent adopted her Brief of Argument filed on 22/9/15 and drafted three issues for determination which are: D

1. Whether non-service of the Notice of Appeal and other processes in this appeal on the 33rd respondent did not constitute breach of the Rule of fair hearing and rob the Supreme Court of the necessary jurisdiction to entertain the appeal.

2. Whether the non service of the Notice of Appeal on the 33rd E respondent is not in breach of Order 2 Rule 3 (i)(b) of the Supreme Court Rules 1999 (as amended).

3. Whether the Court of Appeal was wrong by upholding the respondents' preliminary objection and struck the appeal of the appellants. F

Mr. J. O. Odubela, learned counsel for the 34th Respondent adopted his Brief of Argument filed on 9/10/15 and drafted three issues for determination which are as follows:

1. Whether failure to serve the Notice of Appeal and other G processes in this appeal on the 34th respondent did not constitute breach of the Rule of fair hearing and rob the Supreme Court of the necessary jurisdiction to entertain the appeal.

2. Whether failure to serve the Notice of Appeal on the 34th H respondent is not in breach of Order 2 Rule 2(i)(b) of the Supreme Court Rules 1999 (as amended).

3. Whether the Court below was wrong by upholding the respondents' preliminary objection and struck out the Appeal of the appellants.

ARGUMENTS

The dispute in this appeal is really centered on whether the Court of Appeal had the competence to revisit and re-adjudicate in their judgment of 3rd September, 2015 the issue of service of the Notice of Appeal on the respondents after confirming service on them.

B Also whether there was a flagrant non-compliance with Order 2 Rule 3 and Order 6 Rule 2(1) of the Court of Appeal Rules by the appellants as held by the court below. Also nagging for determination is whether the failure to include the name and address of a respondent in an appeal is in law a fundamental vice capable of vitiating a Notice of Appeal or preventing the hearing of an appeal on merit.

C The answers to those questions which were the basis of the issues that ran across the Briefs of Argument of the appellants and the respective respondents would put to rest the appeal before this court.

D From his standpoint, learned Senior Counsel, Chief Ahamba contended that the Court of Appeal having concluded its investigation on service with the Registrar confirming proof of service on all the respondents, the lower court had become functus officio on the issue to go back in saying the endorsement of addresses for service being absent on the Notice of Appeal there was in effect no service. He cited *Okafor v A. G. Anambra State* (1991) 6 NWLR (Pt. 200) 659 at 672, *First Bank of Nigeria Plc v TSA Industries Ltd* (2010) 15 NWLR (Pt. 1216) 247 at 296.

F That the Court below in holding that there was flagrant non-compliance with Order 6 Rule 2(1) of the Rules of the Court of Appeal was that court going outside what was before them. That it was not within the realm of the court to search for names and addresses of the respondents not endorsed since the appellant reserved the right to decide which respondent was directly affected by the appeal and who was not.

G Chief Ahamba SAN of counsel for appellants held the view that the non endorsement of the addresses for service on some of the respondents was not a fundamental vice and was not sufficient to vitiate the Notice of Appeal. That the Court of Appeal acted slavishly in applying the Rules of court that is Order 6 Rule 2(1) and Order 2 Rule 3 of the Court of Appeal Rules and was in misdirection since those whose names and addresses were not endorsed were persons

not directly affected by the appeal. Also that assuming but not conceding the persons were directly affected and their names and addresses not endorsed was not a situation that would be fatal to the Notice of Appeal as that would be enthroning technicality justice above the substantial. He cited several judicial authorities.

For the appellants was further contended that though the effect of failure to serve processes on a party to be served renders any order or decision made in his absence liable to be set aside it is not the same as absence of endorsement of names and addresses when the service was in fact made. B

Responding, Chief Akintola SAN for the 1st & 37th respondent said nothing on the record supported the assertion that the Court itself confirmed that all the respondents were served and so the arguments of the learned counsel for the appellants that the court later stating there was no service on some of the respondents had nothing to hang on nor does the principle of *functus officio* apply to the court. That the statement of the Registrar confirming service of the respondents cannot be equated as statement of court. That Order 2 Rule 3 of the Court of Appeal Rules is emphatic on the effect of non service of a Notice of Appeal. C D E

Learned Senior Counsel for 1st & 37th respondents said that service of court process has been held to be a *sine qua non* to the adjudicatory competence of the court and so without that service of process the adjudication is a nullity. He cited *Wimpey v Balogun* (1986) 3 NWLR (Pt. 28) 324. F

He went on for 1st and 37th respondents to submit that the court below striking out appellants' appeal for being incompetent thereby taking away the jurisdiction of the court, it followed that the court had no jurisdiction to actuate Section 15 of the Court of Appeal Act to enter into the two motions argued before the Tribunal as sought by the appellants. He cited *Olowokere v African Newspaper of Nigeria Ltd* (1993) 5 NWLR (Pt. 293) 583 at 586. G

Learned counsel to the other respondents in their arguments were clearly of the same frame of mind as learned counsel for the 1st and 37th respondents. H

In a nutshell the grouse of the appellants has to do with the pronouncement of the Court of Appeal as anchored by *Ejembi Eko JCA* when that court struck out the Notice of Appeal. The learned

Justice said:

“In the instant case the notice of appeal does not have endorsed thereon address for service of each of the 3rd - 36th respondents. It offends Order 2 Rule 3. Accordingly, therefore I hereby invoke the sanction for this incompetent process contained in Order 2 Rule 3 of the Rules of this court, and the said notice of appeal, filed on 26th July is hereby struck out”

The said Order 2 Rule 3 of the Court of Appeal Rules is hereunder recaptured in quote and thus:

“2. Any reference in these Rules to an address for service means a physical or postal address within the Federal Republic of Nigeria or an electronic-mail address or a facsimile number or telephone number or any other mode of communication as may become available to where notices and other processes, which are required to be served personally, may be left or sent or posted or transmitted.

3. Where under these Rules, any notice or other process is required to have an address endorsed on it, it shall not be deemed to have been properly filed unless such address has been endorsed on it”.

Order 6, Rule 2 (1) of the Rules of the Court of Appeal:-

“2(1) All appeals shall be by way of rehearing and shall be brought by notice (hereinafter called the notice of appeal”) to be filed in the registry of the court below which shall set forth the grounds of appeal, stating whether the whole or part only of the decision of the Court below is complained of (in the later case specifying such part) and shall state also the exact nature of the relief sought and the names and addresses of all parties directly affected by the appeal, which shall be accompanied by a sufficient number of copies for service on all such parties; and it shall also have endorsed on it an address for service”.

The long and short of what I see in this dispute or appeal before this Court is the import of the non-service of the originating process at the Court of Appeal or properly called, the Notice of Appeal. At this cross-road would be a definition of a Notice of Appeal and in my humble view, it is the root, the foundation of the appeal and if it does not qualify as such in a situation where that process has not been brought to the attention of the relevant party who would defend the assertion embedded in the proposed appeal then the

defect cannot be let off as an irregularity which is curable.

Rather what would ensue is that the so called Notice of Appeal is fundamentally flawed and the only avenue open is for the Court to strike it out. This is because by that defect the jurisdiction of the Court cannot be activated or stated differently the Court lacks the jurisdiction upon which it would enter into the adjudication. That is, when the question is asked if the Court has jurisdiction the answer in accordance with the age long test as encapsulated in *Madukolu v Nkemdilim* (1962) 2 NLR 341 would be a resounding NO. The test as has been a guide is if the said process has met the four elements for the Court to assume jurisdiction which are:-

1. The proper parties are before the Court.
2. The subject matter falls within the jurisdiction of the Court.
3. The composition of the Court as to members and qualification.

4. The Suit is commenced by due process of law and upon fulfilment of any conditions precedent to assumption of jurisdiction.

In this instance, the fourth condition is absent since service of this originating process for the appeal before the Court of Appeal is absent and it needs be re-emphasised that none of the four elements can be lacking and jurisdiction of court enure since all the four elements must be present and cohere to confer the jurisdiction. In such a case as has happened herein the Court had no option than to strike out the said incompetent process or Notice of Appeal in keeping with the authoritative mandate of Order 2 Rules 2 and 3 of the Rules of the Court of Appeal. It is with that grave situation which cannot be rectified by an amendment as the implication of the non-compliance is that the process was not in existence and so nothing can be done to bring into being what is not in existence. See *Sken Consult v Ukey* (1981) 1 SC 6; *Iyamu v Aigbir-Mwen* (1992) 2 NWLR (Pt. 222) 233 at 242; *Nurses Association v A. G. Federation* (1981) 11-12 SC 1.

Bearing in mind the fact of the matter of incompetence of the originating process and the attendant fallout of a lack of jurisdiction by the Court of Appeal, that court being asked to adjudicate on the two motions of the Appellant is difficult to understand as the power under Section 15 of the Court of Appeal Act to do anything which the Tribunal had power to do is not power that can be exercised without some qualification. That is, the Court of Appeal was asked to

rehear the case before the trial Tribunal and do the needful when the enabling vires of the Court was not available to it with the flawed and properly struck out Notice of Appeal. Another way of putting it is that the power exercisable under Section 15 of the Court of Appeal Act is not one just for the asking or on every occasion.

B Again to be touched on is the call by the Appellant for this Court to invoke its powers under Section 22 of the Supreme Court Act bearing in mind the restrictive time frame of 180 days available to the Tribunal to hear and determine the Petition. In answering that call, I shall refer learned counsel to the Appellant to this Court's decision in the case of: *Shettima v Goni* (2011) 18 NWLR (Pt. 1279) 413
C at 452 Pars. C - G, the Court held as follows:

"The Supreme Court can only exercise its powers under Section 22 of the Supreme Court Act in respect of the jurisdiction of the Court of appeal only where the Court of Appeal has jurisdiction to act, not where the Court of Appeal has ceased to have jurisdiction over a matter. In other words, the jurisdiction of the Supreme Court under Section 22 of the Supreme Court Act depends completely on the Court of Appeal having jurisdiction to deal with the matter in issue and pending before it..."
D
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In the circumstances, it would amount to an exercise in futility for the Supreme Court to invoke its powers under Section 22 of the Supreme Court Act as the Court of Appeal no longer had the jurisdiction to hear and determine the appeal against the decision of the tribunal delivered on 10th August, 2011".
F

The effect of the explanation in the *Goni* case (supra) is that the Court can only do that which the Court of Appeal could do and as in two motions on its jurisdiction having been ousted, it follows that this case where the jurisdiction of the Court of Appeal to rehear the jurisdiction that would have enured to this court had the Court of Appeal the necessary vires is also absent. This is because the jurisdiction of this court is anchored on the jurisdiction of the Court of Appeal and so that court being bereft of the vires, the same infection has disqualified this court from venturing forth, the elegant prose in the language of learned counsel for the Appellants' arguments notwithstanding.
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In conclusion, this appeal lacks merit and I have no difficulty in dismissing it from the foregoing and the better and fuller reasonings

in the lead judgment of my learned brother, John Inyang Okoro JSC.

By the same token the cross-appeal of the 1st and 37th Respondents is dismissed as being academic and a waste of time of this Court.

I abide by the consequential orders as made.

B

ARIWOOLA JSC

I had the privilege of reading in draft the lead judgment of my learned brother, John Inyang Okoro, JSC just delivered. My learned brother has meticulously treated all the issues raised in the said appeal in the lead judgment and I need no repeat same. C

However, I need to chip in a few words in support as follows:

One of the main issues that arose for treatment in the appeal D was - whether the lower court was wrong in its holding that the notice of appeal before the court, not being in compliance with Order 2 Rule 3 and Order 6 rule 2(1) of the Court of Appeal was incompetent.

There was an appeal from the tribunal by the instant appellants to the court below against all the respondents herein. It was however strongly contended that the Notice of Appeal as the originating process of the appeal to the court below was not served on some of the respondents. They are the 3rd, 4th, 6th, 12th, 15th, 24th, 26th, 29th, 32nd – 36th respondents. Indeed the said Notice of appeal was said to have been merely dumped by the Bailiff with the protocol Officer of the 37th respondent on the 28th July; 2015. E F

It is noteworthy that other processes in the said appeal including the Preliminary Objection and the briefs of Argument of the appellants were served on the said respondents in similar manner. G

The learned Senior Counsel for the appellants had argued that none of the respondents being alleged not to have been served with the Notice of Appeal was complaining of none service but that the complainants had been the 1st and 37th respondents who themselves were duly served. He wondered why the said 1st and 37th respondents were crying more than the bereaved. It was however not contested by the appellants that the respondents were not served personally with the processes being complained about. H

It is also on record that the Notice of Appeal was struck out by the court below for failure to comply with the requirement of the rules that address of parties affected directly shall be endorsed on the Notice and other processes meant for service on respondents.

There is no doubt, by the rules of the court below, all appeals shall be by way of rehearing and shall be brought by notice (hereinafter called "the notice of appeal") to be filed in the registry of the court below which *"shall set forth the grounds of appeal, stating whether the whole or part only of the decision of the court below is complained of (in the latter case specifying such part) and shall state also the exact nature of the relief sought and the names and addresses of all parties directly affected by the appeal, which shall be accompanied by a sufficient number of copies for service on all such parties, and it shall also have endorsed on it an address for service."* See Order 6 rule 2(1) of the Court of Appeal Rules, 2011.

However, it is also provided in the Rules that *"where under the Rules, any notice or other processes is required to have an address for service endorsed on it, it shall not be deemed to have been properly filed unless such address has been endorsed on it."* See Order 2 Rule 3 of the Rules of the Court of Appeal, 2011.

The law is trite and already established that service of an originating process, such as Writ of summons, Petition, originating Motion or Notice of Appeal is fundamental and a pre-condition to the exercise of jurisdiction by the court. Where there is no service of such process on the party affected the court seized with the case lacks the required jurisdiction or necessary competence to hear or determine the matter. In other words, it follows that even where an appearance is entered, the trial court has no jurisdiction to entertain the claim and should decline to hear the plaintiff. And where a Notice of Appeal is not served on the parties affected as respondents to the appeal, is not served, the Court of Appeal cannot assume jurisdiction. Any proceedings embarked upon without required service of originating process will amount to nothing. It will be services in futility. See; National Bank of Nigeria Ltd Vs Guthrie Nigeria Ltd & Anor (1993) 3 NWLR (Pt.284) 643; (1993) 4 SCNJ 1; (1993) 24 NSCC (Pt.1) 401; (1993) LPELR 1952 (SC).

Ordinarily, the form of service required is personal service unless otherwise directed by the court. In other words, where personal

service is required and service is effected without leave of court for substituted service, any such service will be void and will not be countenanced by the court.

What is more, the requirement of endorsement of address for service on the process meant for service to ensure that service is effected on the address supplied. It is therefore wrong and improper not to have, endorsed on the process, the address for service of the process on the parties affected and who are mentioned in the process.

In Mohammed Mari Kida Vs A. D. Ogunmola (2006) 10-11 SCM 3361 (2006) All FWLR (Pt.327) 402; (2006) 6 SCNJ 165, the action was instituted at the Borno State High Court of Justice sitting in Maiduguri. At the time of instituting the action the claimant gave the appellant's residential address within jurisdiction as No. 10A Ahmadu Bello Close, Damboa Road, GRA, Maiduguri Borno State. But at that time the appellant had relocated to Ibadan, Oyo State with his family. The claimant obtained leave of court to serve the writ of summons on the appellant outside the jurisdiction. But surprisingly, the bailiffs effected service by posting the processes at his residential address in Maiduguri, Borno State. This court held that there was no service on the appellant as it was manifestly clear that he was no longer resident within jurisdiction in Maiduguri.

In the instant case, first and foremost, there was no compliance with the Rules of court requiring endorsement of address for service. In which case, it does appear that the appellants never meant to serve the processes on the above mentioned respondents. Yet, it is clear and not disputed that the said processes requiring service were not served on the respondents but were merely dumped with the Protocol Officer of the 37th respondent who itself was a respondent. In the same vein, the Notice of Appeal, for failure to have endorsed on it addresses of service of the respondents, and failure to show or prove by affidavit of service that they were served the court below struck out the said Notice of Appeal. There is no doubt that service of the Notice of Appeal meant for the 2nd respondent to 36th respondents was not effected personally on them. It was dumped at the Secretariat of the 37th respondent. This is not service at all as required. It will be an understatement to describe it as an improper service. There was no report by the court's bailiff that the respondents were served.

Indeed, the report of the bailiff as clearly shown on the records is that the processes were dumped at the Secretariat of 37th respondent a Political Party (APC).

It is noteworthy that these respondents that were not served though made as parties, had alleged against each one of them serious electoral acts bothering on crimes that could land them to term of imprisonment. Therefore, for the learned senior counsel for the appellant to submit that the addresses for service of the 2nd – 36th respondents were not given nor served personally because they consider them not persons directly affected by the outcome of the appeal, is an embarrassing misconception. The said parties were said to have committed one misconduct or another in the petition which was dismissed by the tribunal which led to the appeal to the court below, which notice of appeal was found to be incompetent and as such struck out.

I hold no hesitation in coming to that conclusion that the court below was correct and it rightly held that the Notice of Appeal not having been endorsed as required with the addresses for service of the 2nd – 36th respondents and failure to serve same on them renders the appeal itself incompetent and accordingly dealt with.

For the above brief comments and the fuller reason of my learned brother which I adopt as mine, I hold that the appeal is unmeritorious and liable to dismissal in its entirety. Accordingly, it is dismissed by me. I abide with the order on costs made in the lead judgment.

Cross Appeal

As rightly adjudged in the lead judgment which reason I adopt as mine that with the result of the appeal which is in favour of the cross appellants herein, their cross appeal becomes unnecessary, superfluous and mere academic which this court should not and does not indulge in. The cross appeal has therefore become spent and shall be left as such.

I also make no order on costs.

KEKERE-EKUN JSC

I have had the privilege of reading in advance the judgment of my learned brother, JOHN INYANG OKORO, JSC just delivered.

For the exhaustive reasons lucidly advanced in the lead judgment, I agree entirely that the appeal is devoid of merit and should be dismissed. I accordingly dismiss it. I also agree with him that having dismissed the appeal, the cross appeal has become superfluous and a mere academic exercise.

I abide by the consequential orders made including the order on costs.

SANUSI JSC

This Appeal is against the judgment of the Court of Appeal, Owerri Division delivered on 3/9/2015, wherein the appeal by the appellants herein, was struck out due to the incompetence of the Notice of Appeal. The appellant as petitioners, had earlier petitioned at the Governorship Election Tribunal which struck out the petition, hence they appealed to the lower court against the ruling of the Governorship Election Tribunal sitting in Owerri delivered on 22/7/2015 dismissing their petition for being abandoned by reason of non-valid application for issuance of pre-trial forms as required by Paragraph 18 of First Schedule to the Electoral Act, 2010, as amended.

Following the dismissal of the appellants' petition by the tribunal, the appellant appealed to the lower court. On 21/8/2015, the lower court heard the appeal after briefs were filed and exchanged. The 1st and 37th Respondents also filed Cross Appeal against the Ruling of the Tribunal which struck out the petition for incompetence. They however, did not appeal against the striking out of the cross appeal before the lower court. The appellants then appealed to the lower court but in their Notice of Appeal they left out the names of the 2nd to 36th Respondents from the list of parties directly affected by the appeal as required by Order 6 Rule 2 (1) of the Court of Appeal Rules 2011. The appellants also failed to endorse on the Notice of Appeal, the addresses for service of 2nd to 36th Respondents.

It is in view of this omission and non-endorsement of the Notice of Appeal with addresses of service even though their names were listed, which triggered the learned silk for 1st and 36th Respondents to file a Preliminary Objection which incorporated in his Brief of Argument.

At the hearing of both the Preliminary Objection and the petition, the Tribunal's Registrar announced to the court as follows:- "*Confirmed that all the Respondents were served*".

However, from the record of appeal the following evidence in the issue of service emerged namely:-

B (a) *No affidavit of service of the Notice of Appeal in 2nd to 36th Respondents except ruling service of briefs of Argument hearing notice allegedly personally served on 3rd to 36th Respondents.*

C (2) *The Appellants' brief only said at pp. 647- 676 that Appellants only endorsed their Briefs of Arguments with address of service of 2nd to 36th Respondents.*

D (3) *Appellant failed to serve 3rd, 4th, 6th, 12th, 15th, 24th, 26th, 29th, 32nd – 36th Respondents personally but simply dumped brief of the said Respondents at the office of 37th Respondents the lapse was made on ground of Preliminary Objection in the Tribunal.*

The lower court after hearing the Preliminary objection on 21/8/15, delivered its judgment on 3rd July 2015 in which it held that the Notice of Appeal was defective fundamentally for same not being endorsed with addresses of service of some of the Respondents. It also held that 2nd to 36th Respondents were parties directly affected by the appeal and were wrongly excluded from the list of parties directly affected by the appeal, by listing only 1st & 37th Respondents. For that reason, the lower court struck out the appeal.

F I think the gravamen of this appeal is the non-endorsement of the Notice of Appeal with addresses of some of the Respondents as well as the non-service of the Notice of Appeal and other processes on some of the respondents in the appeal, by the appellant which led to striking out of the appeal. The Respondents have complained that G by not being served with the processes, they were excluded from the proceedings.

There are also ample evidence that the processes were simply dumped in the office of the 37th Respondents.

H I have rummage through the Record and I am unable to see anywhere therein, where the appellants sought and obtained leave to effect substituted service of process as of any sort on the affected respondents let alone by dumping in the 37th Respondent's office. Therefore, if the dumping of the processes in the office of the 37th Respondent was meant to be a valid service, I am afraid it is not so, as

leave to do such service must be with leave of the tribunal and such leave was not so sought and obtained.

The law is trite, that Notice of Appeal is the foundation of an appeal. If it is proved that it has not been served on person affected, it touches the root of the appeal and as such the court or tribunal is bereft of jurisdiction to adjudicate on or hear the matter. See the case of OBIMONIVE v ERINOSHO (1966), All NLR 250 to 252; Dr. ALPHONSUS OJO v INEC & Anor (2008) LPELR - 4705. B

Therefore, I agree with the lower court that the failure to serve the originating process on the 2nd and 36th Respondents makes the appeal incompetent and liable to be struck out as rightly done by the court below. To my mind, the announcement of the Registrar of the tribunal that “all the processes were served on respondents” as shown in the Record was not backed by any evidence, because the Protocol officer of the 37th Respondent clearly showed that the processes were in fact, dumped on him (Protocol Officer) and leave was not obtained by appellants/petitioners to do so as they are required to so obtain. C D

I am of the view, that the non-endorsement of addresses of some of the Respondents and the non-service of the processes, especially the Notice of appeal which is the originating processes, on the named of affected respondents, who were necessary parties as required by law, had rendered the appeal incompetent and that made the lower court to be bereft of jurisdiction, which consequently made the appeal liable to be struck out as rightly done by the lower court. F Thus, for these and the fuller and more detailed reasons contained in the leading judgment of my learned brother John Inyang Okoro, JSC, which I also adopt as mine, I also see no merit in this appeal.

I accordingly dismiss it and affirm the judgement of the lower court which struck out the appeal. G

I decline to make any order on costs so the parties herein should bear their own costs.