

SUPREME COURT OF NIGERIA
TUESDAY 20TH OCTOBER, 2015. SC. 665/2015
CORAM:- I. T. MUHAMMAD, M. S. MUNTAKA-
COOMASSIE, O. RHODES-VIVOUR, C. B. OGUNBIYI,
J. I. OKORO, C. C. NWEZE, A. SANUSI, JJSC

MEGA PROGRESSIVE PEOPLES
PARTY (MPPP)
AND

..... APPELLANT

1. INDEPENDENT NATIONAL
ELECTORAL COMMISSION
2. ALL PROGRESSIVES CONGRESS (APC) RESPONDENTS
3. SENATOR IBIKUNLE AMOSUN
4. MRS. YETUNDE ONANUGA

JURISDICTION - Fundamentality of - It is a question of law that can be raised as fresh issue on appeal even in SC - And there is no need for leave before it is properly raised (H1)

COURTS - Competence - Composition of court - Where there is defect in membership - Court is not properly constituted and it lacks jurisdiction to adjudicate - And any decision it reached is a nullity (H2)

ELECTION PETITIONS - Tribunal - Composition of - Constitution 1999 s. 285(4) - The Tribunal was not properly constituted to determine the petition - Hence any decision it reached was a nullity (H3)

APPEALS - Issue - Determination - Appellant's issue 1 on lack of jurisdiction of trial Tribunal - Is enough to dispose off the appeal (H4)

FACTS

This Election Petition was commenced by petitioner/appellant at the Governorship Election Petition Tribunal sitting at Abeokuta, Ogun State. Appellant was seeking in the main an order of the Tribunal to annul the gubernatorial election held on the 11th April 2015 in Ogun State. Appellant sponsored one Mrs. Iyabode Ogunmefun as

its candidate for the said election. 3rd and 4th respondents were sponsored by 2nd respondent for the same election. However, appellant was excluded in the exercise. At the end of the election, 3rd and 4th respondents were declared the winners of the election.

Dissatisfied with the result, appellant brought this petition before the Tribunal. The parties filed their respective processes in the matter. Pre hearing conference commenced. Thereafter, the Chairman of the Tribunal sitting alone struck out appellant's petition for being incompetent, on the ground that the same was filed outside the 21 days period prescribed by the law. Aggrieved with the stance of the Tribunal, appellant appealed to the Court of Appeal, Ibadan Division. The appeal was dismissed and the decision of the Tribunal was affirmed. Aggrieved further, appellant has appealed to the Supreme Court.

ISSUES FOR DETERMINATION

1. Whether the Chairman of the trial court, sitting alone, had the jurisdiction to have heard and determined the respondents' consolidated applications that gave rise to the ruling of the trial court delivered on 10/7/2015.

2. Whether the lower was right when it failed to consider its decision in the case of Kabir V. Action Congress (2012) All FWLR (pt. 647) C. A. 638 at pp. 657 - 658, paragraphs D - A, pp 670 673, paragraphs E - Band PDP V. CPC (2011) 10 SCNJ p.35, ratio 6, particularly p. 50, paragraphs 25 - 35, in computing and determining the final day for the filing of the Appellant's petition.

3. Whether the lower court was right when it considered the 3rd and 4th respondents' brief of argument which was filed out of time by virtue of the decision of this honourable court in Omisore & Anor. V. Aregbesola, suit No. SC. 204/2015 (Unreported), judgment delivered on 27th May, 2015.

HELD (Unanimously allowing the appeal per

MUNTAKA-COOMASSIE JSC)

JURISDICTION - Fundamentalality of

1. My lords, the issue of jurisdiction is over and above any legal manipulation. It has to be neatly observed and acted upon,

whether it was raised in any ground of appeal or not. The jurisdiction, I can boldly state, is a question of law which can be mentioned and raised for the first time in appellate courts or even this court. It is also clear that there is no need for any leave of any court, sought and obtained, before it could be said to have been properly raised. No matter in what manner it was raised, it can lawfully be raised as a fresh issue on appeal. (p. 3344 D)

COURTS - Competence - Composition of court

2. There is no doubt that a court of law is fundamentally competent when it is properly constituted. If a court is not properly constituted, when there is a defect in its membership then that court cannot be said to have been properly in place. It lacks jurisdiction to properly adjudicate. Whatever decision it reached is going to be a nullity. (p. 3344 F)

ELECTION PETITIONS - Tribunal - Composition of

3. My lords, it is in a nutshell, that the trial court was not properly constituted as regards membership. The relevant law says that Tribunal be constituted with Chairman and at least one member.

Any other law, Act or Regulations which says otherwise cannot be correct. It is my view without must ado, that the Trial Tribunal was improperly constituted when it considered and determined the petition brought to it. Whatever decision or decisions it reached is nullity no matter how beautifully the decision was written. That Trial Court could have heeded the challenge and complaint of the appellant's counsel and should have declined jurisdiction. The provisions of the constitution of the Federal Republic of Nigeria, 1999 as amended, by its S. 285 (4) no Tribunal can be properly constituted with the chairman alone. All other laws Act which provides that a chairman alone, without a member can sit and determine a petition is void for inconsistency.

That being the case, the lower court in this appeal cannot be right in dismissing the appeal before it and affirming the decision of the Trial Court. The learned justices of the lower

court, with respect, completely derailed. The appeal therefore deserved to be allowed on this issue one without more.
(p. 3345 D)

APPEALS - Issue - Determination

- B 4. After considering the Briefs of all the Respondents, I read thoroughly the Ground 1 of the Appellants appeal together with the 1st issue distilled by the Appellant in his Brief and I hold that the 1st Issue is capable, in law, in disposing of this appeal. There is no further pressing need to visit and analyse the remaining two issues left. That is to say issue one is enough to dispose of the entire appeal and I so hold. Issue one is hereby resolved in favour of the Appellant and this court grants all the reliefs sought by the Appellant.**
- C**
- D Appeal, for the avoidance of any possible doubt, is allowed. Issues two and three therefore become academic. I order that this appeal shall be remitted back to the Court of Appeal for it to reconstitute a different fresh panel to hear and determine the petition forthwith.** (p. 3346 D)

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REPRESENTATION

Omereonye Morgans with Anthony Itedjere for the Appellant
A. M. Kayode for the 1st respondent with him; O. F. Akinsanmi (Mrs.)
George Oyeniyi for 2nd respondent
F Dr. Olumide Ayeni for the 3rd and 4th respondent with him; Olutunde Abegude, Esq.; Otengabun Ebose; Olawale Oyeboode; Ayodeji Olanipekun and Affis Matanmi

G CASES REFERRED TO

- Kabir v. Action Congress (2012) All FWLR (pt. 647) 638 (CA)
PDP v. CPC (2011) 10 SCNJ 35
A. G. Anambra State v. A. G. Federation (2007) All FWLR (pt. 379)
Madukolu v. Nkemdilim (1962) 2 NLR 341
H Akere v. Governor of Oyo State (2012) 12 NWLR (pt. 1314) 240
Lastma v. Ezezobo (2012) 3 NWLR (pt. 1286) 49
Sea Trucks Ltd v. Anigboro (2011) 1 SC (pt. 1) 56
C.G.C. Nig Ltd v. Aminu (2015) 8 NWLR (pt. 1459) 577
Ekulo Farms Ltd v. Union Bank of Nigeria Plc (2006) 4 SC (pt. II) 1

National Union of Electricity Employees Anor. v. Bureau of Public Enterprises (2010) 7 NWLR (pt. 1194) 538)

Military Governor of Ondo State v. Adewunmi (1988) 3 NWLR (pt. 82)

Ubwa v. Tiv ATC (2004) LPELR - 3285 (SC) 7-8

Chime v. Hikwu (1985) 2 NWLR (Reprint) 16

Adeigbe v. Kushimo (1965) ANLR (Reprint) 260

B

STATUTES REFERRED TO

Constitution of the Federal Republic of Nigeria 1999, s. 285(4)

Electoral Act 2010 (as amended), para. 27(1) of the 1st Schd.

C

BOOK REFERRED TO

Blacks Law Dictionary, 5th ed. p. 1350

D

LEAD JUDGMENT BY MUNTAKA-COOMASSIE JSC

This is an appeal by the appellant, Mega Progressive People's Party, against the judgment of the Court of Appeal, Ibadan Division delivered on the 27th day of August, 2015. In the Court of Appeal, hereinafter called the court below which dismissed the Appellant's appeal and upheld the Ruling of the Governorship Election Tribunal sitting at Abeokuta, Ogun State, chaired by Hon. Justice Henry Olusiyi, herein after referred to as "Trial Court", which delivered its decision on the 10/7/2015. See page 352 of the record of proceedings. The Trial Court held thus:

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"This petition, having been filed outside the 21 days period prescribed by law, is incompetent and cannot be entertained beyond this stage by this Tribunal as so doing will tantamount to embarking on a wild goose chase and a worthless pursuit".

G

The Chairman of the Tribunal further held that, *"the lone issue for determination, as formulated by the Tribunal, is resolved in the affirmative, In favour of all the respondents / applicants. There is considerable merit in each of the applications of the 1st respondent, 2nd respondent and the 3^d and fourth respondents. Each of the applications (sic) succeeds on the ground of limitation of time, and is accordingly granted. The petition coded EPT/GOV/ABK/002/2015, filed on 4/5/2015, is hereby struck out for being incurably incompetent".*

H

Being aggrieved by the decision of the above Tribunal the petitioner/appellant appealed to the Court of Appeal Ibadan Division on the following seven grounds of appeal. They are hereby reproduced without their particulars:-

GROUND ONE

- B The trial tribunal erred in law when it heard and determined in limine the respondents' objective to the appellants petition, having regards to the provisions of paragraph 12(5) of the first schedule for the electoral Act, 2010, (as amended) by Section 38 (c) of the Electoral (amended) Act 2010.

GROUND TWO

The Governorship Election Petition Tribunal in Ogun State misdirected itself when it chose not to give priority to the latest amendment of the first schedule to the Electoral Act 2010 (as amended).

- D **GROUND THREE**

The Governorship Election Petition Tribunal erred in law by not allowing the petition to go on full trial in-spice of the contention on the date the 2015 Governorship Election was declared in Ogun State by the parties in the petition to establish the truth.

- E **GROUND FOUR**

The Honourable Tribunal erred in law in distinguishing and refusing to follow the case of Alhaji Gbadamosi Kabir & Ors V. Action Congress & 238 Ors (2012) All FWLR (pt. 647) at pages 687 - 659, paras E - H.

- F **GROUND FIVE**

The Honourable Tribunal erred in law by allowing the respondents to bring an objection to the appellant's petition using two procedures which was not provided for in the Electoral Act in Re: PDP V. INEC & ORS 2012) 6 SCM, 179 or (2012) 7 NWLR (pt. 1300) P. 543.

- G **GROUND SIX**

The Honourable Tribunal erred in law when it failed to properly distinguish the case of Omisore V. Aregbesola SC/204/2015 unreported judgment delivered on 27/5/2015 and the appellant's petition in resolving the computation of time.

- H **GROUND SEVEN**

The Tribunal misdirected itself where it held on the page 16 of the ruling that only the presentation of form EC8E that could be

used to prove the result of an election.

The court below in my view considered relevant issues presented before them though it has gone a little bit astray and in a considered judgment held thus:-

“It is instructive to note that even if the last date for filing the election petition had fallen on a Sunday as was asserted by the Appellant, the provisions of the Interpretation Act cannot be applied to move the grace date to the Monday following, as was contended by learned counsel for the appellant. In the case of Okechukwu V. INEC (2014) 17 NWLR (pt. 1436), the Supreme Court, per Ariwoola, JSC, at page 285, succinctly said that the interpretation Act may not apply strictly in the computation of time in the filing of processes. Ngwuta, JSC in his contributory opinion at page 311, was even more direct thus:-

“Election petitions are distinct from civil proceedings, see Obah V. Mbakwe (1984) 1 SCNLR 192 at 200. An election matter is time bound and any provision relating to time must be strictly applied. It does not permit a resort to Interpretation Act”.

In the recent case of Omisore V. Aregbesola SC. 204/2015 (unreported) delivered on May 27, 2015, the Supreme Court, per C. C. Nweze, JSC, relying on the earlier case of Okechukwu V. INEC (supra) unequivocally said at page 55 of the judgment:

“The simple answer is that the said Interpretation Act is inapplicable to this matter being an election matter, Okechukwu V. INEC and Ors (supra)”.

Interestingly, Section 15(4) and (5) of the Interpretation Act provides that where an enactment provides for an act to be done within a particular period which does not exceed - SIX days, holidays shall be left out of account in computing the period. The holiday would mean Sundays and public holidays. Twenty one days by far exceed six days it goes without saying. The Interpretation Act, if applicable, would therefore not even have availed the appellant.

In all, this appeal has been shown to be completely without merit. The issues raised for determination having all been resolved against the appellants, the appeal fails and is hereby dismissed. The Ruling of the Governorship Election Petition Tribunal sitting at Abeokuta, Ogun State, chaired by Hon. Justice Henry A. Olusiyi, J., delivered on July 10, 2015 is hereby affirmed.”

Thus the court below affirmed the decision of the Tribunal which was delivered on July, 2015 by Olusiyi J.

The lead judgment of the court below was prepared and read by Onyekachi Aja Otisi, JCA and unanimously agreed to by other learned Justices on the panel.

B The appellant being dissatisfied, again, with the decision of the court below, further appealed to the Supreme Court on a Notice of Appeal containing three grounds of appeal. They are reproduced hereunder without their particulars.

C GROUND ONE

The lower court erred in law when it affirmed the ruling of the governorship election Tribunal sitting In Abeokuta, Ogun State (Chairman: honourable Justice Henry A. Olusiyi) delivered on 10/7/2015, which was made without jurisdiction as the Tribunal was not properly constituted to hear and determine the consolidated applications which culminated in the Ruling of the Tribunal.

GROUND TWO

E The lower court erred in law when it refused and failed to consider and apply its decision in the case of Kabir V. Action Congress (2012) All FWLR (pt. 647) C. A. 638 at pp 657 - 658, paragraphs D - A, pp. 670 - 673, paragraphs E - B and the decision of this honourable court in the case of P. D. P. V. C. P. C (2011) 10 SCNJ., p. 35, ratio 6, particularly p. 50, paragraphs 25 - 35, in computing and determining the final day for .the filing of the appellant's
F petition when the 21 day period constitutionally *deis non juridicus*, that is a non juridical day.

GROUND THREE

G The lower court erred in law when it considered the 3rd and 4th respondents' brief of argument dated and filed on 12/08/2015, which was incompetent, null and void as same was filed out of time without any subsisting order of the lower court extending time for the 3rd and 4th respondent which to do so.

H Parties and their respective counsel filed and exchanged briefs of argument. The appellant adopted his brief of argument which contains three (3) issues.

1. Whether the Chairman of the trial court, sitting alone, had the jurisdiction to have heard and determined the respondents' consolidated applications that gave rise to the ruling of the trial court

delivered on 10/7/2015. (this issue is distilled from ground 1 of the appellant's Notice of appeal).

2. Whether the lower was right when it failed to consider its decision in the case of Kabir V. Action Congress (2012) All FWLR (pt. 647) C. A. 638 at pp. 657 - 658, paragraphs D - A, pp 670 673, paragraphs E - Band PDP V. CPC (2011) 10 SCNJ p.35, ratio 6, particularly p. 50, paragraphs 25 - 35, in computing and determining the final day for the filing of the Appellant's petition. (This issue is distilled from Ground 2 of the Appellant's Notice of Appeal). ^B

3. Whether the lower court was right when it considered the 3rd and 4th respondents' brief of argument which was filed out of time by virtue of the decision of this honourable court in Omisore & Anor. V. Aregbesola, suit No. SC. 204/2015 (Unreported), judgment delivered on 27th May, 2015. (This issue is distilled from ground 3 of the appellant's Notice of Appeal). ^C

The learned counsel for the 1st Respondent, A. Kayode, formulated one lone issue thus:- ^D

The 1st respondent humbly 'submits that the lone issue for determination of this appeal is:-

"Whether the courts below were right or wrong in their concurrent decisions dismissing the appellant's petition on the ground that same which was filed outside the prescribed 21 days, from the date when the results of the Election was announced, is time barred". ^E

LEGAL ARGUMENTS

The appellant contended that the Chairman of the Trial Court had no jurisdiction to have heard and determined the respondents consolidated applications that gave rise to the ruling of the Trial Court delivered on 10/07/2015. It is his submission that the Trial Court had no jurisdiction to hear and determine the matter as the Trial court was not properly constituted to do so. He further submitted that the Trial Court lacked jurisdiction at all to entertain the matter before it. He continued to submit that jurisdiction is a fundamental, intrinsic and threshold issue - and once raised, the court has to determine same before proceeding to any other thing. He cited in support" the case of A. G. Anambra State V. A. G. Federation (2007) All FWLR (pt. 379). ^F

It is clear that the issue of jurisdiction, counsel continues, can be raised at any stage because of importance, it can be raised at any ^G ^H

stage and manner, even for the first time on appeal before the Supreme Court without seeking leave.

a) Access Bank Plc V. G. L. O. Consult (2009) 12 NWLR (pt. 1156) 534

b) Nuhu V. Ogele (2003) 18 NWLR (pt. 852) 251 SC at 279, paragraphs G. I also agree that issue of Jurisdiction can also be raised *suo motu* by this Hon. Court i.e. Supreme Court.

c) Nasir V. C. S. C, Kano State (2010)25 WRN P. 1 at 15 - 16, 23 - 24, line 40.

C Learned counsel referred to the decision of this court as depicted in the judgment of Hon. Justice Tanko Muhammad, JSC at p. 196 paragraphs A - D, thus:-

D *“It is trite that the issue of jurisdiction by whatever names and under any shade can be raised at any stage. It can be raised viva voce or the court can raise it suo motu, see also Oniah V. Onyia (1989) NWLR (pt. 99) 514 at 540. See also A-G of Oyo State v. Fairlakes Hotel Ltd (1988) 5 NWLR (pt. 92) 1 at p. 59”.*

E **My lords, the issue of jurisdiction is over and above any legal manipulation. It has to be neatly observed and acted upon, whether it was raised in any ground of appeal or not. The jurisdiction, I can boldly state, is a question of law which can be mentioned and raised for the first time in appellate courts or even this court. It is also clear that there is no need for any leave of any court, sought and obtained, before it could be said to have been properly raised. No matter in what manner it was raised, it can lawfully be raised as a fresh issue on appeal. There is no doubt that a court of law is fundamentally competent when it is properly constituted. If a court is not properly constituted, when there is a defect in its membership then that court cannot be said to have been properly in place. It lacks jurisdiction to properly adjudicate. Whatever decision it reached is going to be a nullity.** See *Madukolu v. Nkemdilim* (1962) 2 NLR 341. This court has this to say and state thus:-

H *“1. It is properly constituted as regards numbers and qualifications of the members of the bench and no member is disqualified for one reason or another, and*

2. The subject matter of the case is within its jurisdiction, and there is no feature in the case which prevents the Court from exercis-

ing its jurisdiction; and;

3. *The case comes before the court initiated by due process of law, and upon fulfilment of any condition precedent to the exercise of jurisdiction”.*

Learned counsel for the Appellant urged this court to hold that the Trial Court was not properly constituted when the matter before it was tried and determined by the Chairman of the Tribunal alone.

Without having lengthy discussions and analysis of the matter, I wish to state as follows:-

i) Having considered all the illuminating authorities above can it be right for one single judge to have considered a matter before the Governorship Election Tribunal sitting at Abeokuta, Ogun State or anywhere. It was chaired by Honourable Justice members sat with the chairman.

My lords, it is in a nutshell, that the trial court was not properly constituted as regards membership. The relevant law says that Tribunal be constituted with Chairman and at least one member.

Any other law, Act or Regulations which says otherwise cannot be correct. It is my view without must ado, that the Trial Tribunal was improperly constituted when it considered and determined the petition brought to it. Whatever decision or decisions it reached is nullity no matter how beautifully the decision was written. That Trial Court could have heeded the challenge and complaint of the appellant’s counsel and should have declined jurisdiction. The provisions of the constitution of the Federal Republic of Nigeria, 1999 as amended, by its S. 285 (4) no Tribunal can be properly constituted with the chairman alone. All other laws Act which provides that a chairman alone, without a member can sit and determine a petition is void for inconsistency.

That being the case, the lower court in this appeal cannot be right in dismissing the appeal before it and affirming the decision of the Trial Court. The learned justices of the lower court, with respect, completely derailed. The appeal therefore deserved to be allowed on this issue one without more.

I have carefully gone through the submissions of all the respondents and I hold that none of the Respondents ably addressed

the issue of jurisdiction of the trial court. None of them had lawful answer to the appeal. Each and every respondent agreed with the jurisdictional stance of the matter before the Trial Court.

The issue is clear and strong, the fact that the matter was taken, tried and determined by the trial court with only the chairman without any member or members with him made the decision null and void. This is a fact which cannot be altered.

The Court of Appeal, hereinafter called the lower court, inadvertently took the appeal as such and delivered a unanimous decision, wrongly dismissing the appeal before it and affirmed the decision of the trial court. The lower court for the reason best known to them, boldly ignored the correct submissions clearly stated by Omereonye Morgan Esq., learned counsel for the Appellant herein. The chairman of the Tribunal has no power to say and act on the fact that paragraph 7 of the Electoral Act permitted him to determine such matter alone its Provisions are inconsistent with S. 285 (4) of the 1999 constitution as amended. It is void ab initio.

After considering the Briefs of all the Respondents, I read thoroughly the Ground 1 of the Appellants appeal together with the 1st issue distilled by the Appellant in his Brief and I hold that the 1st Issue is capable, in law, in disposing of this appeal. There is no further pressing need to visit and analyse the remaining two issues left. That is to say issue one is enough to dispose of the entire appeal and I so hold. Issue one is hereby resolved in favour of the Appellant and this court grants all the reliefs sought by the Appellant.

Appeal, for the avoidance of any possible doubt, is allowed. Issues two and three therefore become academic. I order that this appeal shall be remitted back to the Court of Appeal for it to reconstitute a different fresh panel to hear and determine the petition forthwith.

H **MUHAMMAD JSC**

My learned brother, Muntaka-Coomassie, JSC, afforded me the opportunity to read in advance, the Judgement just delivered. My learned brother has, ably, set out the salient facts of the case and counsel's relevant submissions. It is unnecessary for me to repeat

same. In agreeing with my learned brother, I find it pertinent to say a word or two on appellant's issue one of the issues for determination. The issue is on whether the chairman of the trial ("Court") tribunal had the Jurisdiction to hear and determine, while sitting alone, respondents' consolidated applications that gave rise to the ruling of the tribunal of 10th July, 2015. B

As captured in the lead Judgement, the following processes were filed before the tribunal on different dates by the respondents.

a. First respondent's motion on notice (undated) filed on 15th June, 2015;

b. Second respondent's motion on notice dated 13th May, 2015 and filed on 14th May, 2015. C

c. Third and fourths respondent's motion on notice dated and filed on 14th May, 2015.

These motions were consolidated, taken together and determined single handedly by the chairman of the tribunal alone. D

It is my belief, My Lords, that a very important spring board of starting my consideration of this appeal is from page 260 of the record of appeal. It was on a Friday (19th June 2015) when the tribunal sat with full coram consisting of the chairman and two other members of the tribunal. After taking appearances of learned senior and other counsel for the respective parties, below is what transpired: E

"Fagbemi: We have two of the motion (Sic) listed for hearing today. We are ready

Akinsola: We are also ready. F

Osipitan: We have two applications.

Fagbemi: My applications is dated 10/6/2015 and filed on 15/6/2015. They are in (Sic) the same subject matter. They both target the same thing. We suggest that both should be heard together. G

Oyeniyi: Our own application is dated and filed on 10/6/2015. It is similar to the other ones referred to. It is rape for hearing. I align with my learned senior's suggestion. H

Akinsola: We concede.

Fagbemi: We have agreed 1/7/2015.

Tribunal: Application for adjournment is granted. All the motions so far filed in this petition, i.e. EPT/GON/ABK/002/2015, are adjourned to Wednesday, July

1, 2015, for definite hearing by God's grace.

SGD

Hon. Justice H.A. Olusiya

Chairman 19/6/2015

SGD

SGD

B Hon. Justice M.A. Sadeq

Hon. Justice A.O.U. Usman

Member I

Member 2

16/6/2015

19/6/2015

C Sitting of the Tribunal resumed on the 3rd day of July, 2015, full coram of the Tribunal was indicated at the beginning of that day's sitting. Pre-election sessions commenced. After recording appearances, the following proceedings followed:

"Coram: Full Tribunal for the pre-hearing session However, only the Chairman shall take interlocutory applications."

D Learned Counsel went ahead to move their various motions. There were arguments as to whether the Tribunal should consider applications challenging the competence of the Tribunal at pre-hearing stage. Fagbemi SAN, drew attention of the Tribunal:

E *"We have gone past the stage of agreement as to which motions should come first. The tribunal has already ruled that all applications will be taken in the pre-hearing session Your Lordship cannot sit on appeal over its (Sic) own ruling..."*

The Tribunal ruled:

F *"I have carefully considered the submissions of learned counsel on the issue of whether the applications challenging the competence of the petition should be heard now or not. I agree entirely with The submissions of learned counsel for the 2nd respondent, learned counsel for the 3rd respondent and the submissions of learned senior counsel for the 3rd and 4th respondents that they should be heard and determined at this pre-hearing session..."*

There is no better time to take the applications challenging the competence of the petition than now... The applications in question shall be taken now.

H SGD

H. A. OLUSIYA

JUDGE

CHAIRMAN 3/7/2015"

Learned senior counsel and other counsel for the respective

parties proceeded to make their submissions.

On the 10th of July, 2015. Ruling was delivered by Olusiyi, J. It was held, inter alia, as follows:

“The lone issue for determination as formulated by the tribunal, is resolved in the affirmative, in favour of all the respondents/ applicants. There is considerable merit in each of the applications of the 1st respondent, 2nd respondent. Each of the applications succeeds on the ground of limitation of time, and is accordingly granted.

The petition coded EPT/GON/ABKI002/2015, filed on 4/5/ 2015, is hereby struck out for being incurably incompetent.

SGD

H. A. OLUSIYI

JUDGE

CHAIRMAN

10/7/2015”

It is to be observed, your Lordships, that on the 16/6/15, when the Tribunal sat for the first time, a full Coram was constituted and the Coram entertained and granted an application by learned counsel for the petitioner, Kayode Akinsola, Esq, for him and for any counsel of the respondents who so desired to inspect the polling or electoral documents. The ruling was signed by the tribunal Chairman and two members of the Tribunal. Equally, when all the motions were adjourned to July 1st for a definite hearing, the full Coram was reflected and the ruling was signed by the chairman and the other two members of the Tribunal. When the motions were to be heard, the names of the chairman and the two members were reflected on top page of that proceeding. When the motions were to be taken and determined, the following was recorded.

“Coram: Full Tribunal for the pre-hearing session However, only the Chairman shall take interlocutory applications. (Underlining for emphasis)

Thus, the chairman went ahead to hear and determine all the applications. At the end (i.e. on 10/7/2015), he granted the applications and consequently, struck out the petition. He signed and dated the ruling alone in his capacity as the chairman of the Tribunal. The Court below, on appeal to it affirmed the Tribunal’s decision.

Now, the challenge posed by the petitioner/appellant is encapsulated in issue one of the three issues he formulated in his brief of

argument, to which I referred to earlier.

It is appellant's learned counsel's submission that the trial tribunal had no jurisdiction to hear and determine the respondents' consolidated applications that gave rise to its ruling delivered on July, 2015, as the trial tribunal was not properly constituted to do so as it
 B was constituted by only a single member of the three man Governorship Election Tribunal sitting at Abeokuta, Ogun State, to wit: Hon. Justice Henry A. Olusiyi. This is a jurisdictional issue which is in disregard and in non compliance with the mandatory provision of section
 C 285(4) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). This, learned counsel for the appellant said, occasioned a miscarriage of justice to the appellant. He supported his submissions with a lot of decided authorities. He urges this Court to hold that the proceedings were incompetent, null and void ab initio
 D and liable to be set aside.

I carefully beamed my search light on all respondents' several briefs in order to afford me have a glimpse of a satisfying strong and pungent answer/answers but I was taken aback. I was amazed by the contradictions submissions and complete evasion of the all important
 E first issue raised by the appellant. The first respondent, for instance decided to raise a single issue on whether the Courts below were right or wrong in their concurrent decisions in dismissing the appellants petition on the ground that same was filed outside the pre-
 F scribed 21 days when the results were announced. He made several submissions on jurisdiction. It is only in paragraph 4.4 of his brief that the learned SAN for the 1st respondent (on the brief of argument) made the following submissions in respect of the Ruling of the Tribunal:

G *"4.4. Furthermore there is a well considered Ruling of the Tribunal on the issue of number of members of the Tribunal who can hear the objection. There is no appeal against that decision. Appellant is therefore estopped from raising the issue of composition of the Tribunal which heard the objection and dismissed appellant's claim."*

H Earlier on, however, in paragraphs 4.2 and 4.3, the learned SAN had alluded to the trite position of the Law that the issue of Jurisdiction is fundamental and can be raised at any stage of the proceedings at any time and even for the first time on appeal and, or, even suo motu. He cited the decisions in *Akere V. Governor of Oyo*

State (2012) 12 NWLR (pt. 1314) 240 at 294 E-H; Lastma v. Ezezobo (2012) 3 NWLR (pt 1286) 49 at 57 E.

The second respondent did not help matters. Learned counsel for the 2nd respondent made submissions on his lone issue on the striking out of the petition of the appellant as it was filed out of time prescribed by Section 285(5) of the Constitution. B

On issue number 1 canvassed by the appellant, learned counsel's contention is that being an issue of jurisdiction, it never arose from the decision of the Court below, nor was it raised or argued before the Tribunal or the Court below; nor did the appellant seek the leave of the Court below to so raise and argue same. Learned counsel contended further that the chairman of the Tribunal pursuant to paragraph 27(1) of the First Schedule to the Electoral Act 2010 (as amended) sat alone in the determination of the consolidated interlocutory applications of the various respondents which led to the striking out of the petition which is the subject matter of this appeal. Learned senior counsel for the 3rd and 4th respondents (on the brief of argument) Prince L. O. Fagbemi, SAN, formulated a lone issue for determination. The issue is as well, on whether the petition was validly and competently dismissed on account of its incompetence occasioned by limitation of time. He too, dwelt deeply in his submission on this issue. He concedes that the position of the law has always been that jurisdictional issues and matters in any proceedings including the present appeal can be raised at any stage of any particular proceedings and as early as possible. He cited several decisions of this court. He argued that it would not be open to the appellant to contend or agitate the puerile case that the trial Tribunal sitting in Abeokuta was not properly constituted or that it was itself bereft of requisite jurisdiction to consider the clear case before it in the entire circumstances of this appeal. The learned SAN submitted further that the appellant, apart from not raising any jurisdiction .to contest the supposed jurisdiction of the trial Tribunal before the tribunal itself, did not raise the issue as fresh one at the Lower Court of Appeal sitting at Ibadan nor has he sought to obtained any leave of the said Lower Court of Appeal or this Honourable Court so raise it. C D E F G H

I think it did not lie in the mouths of the respondents to say that appellant did not apply for leave to raise issue of jurisdiction. Appellant's application of 17th September was duly served on all the

respondents. Counter affidavits thereof, were filed by the 2nd, 3rd and 4th respondents. In both counter affidavits it was deposed to that no issue of jurisdiction or other “serious and fundamental issue of law” were raised in Exhibit 2 (Notice of Appeal dated 4th September, 2015). (see paragraph 5 (ii) of the 2nd respondent’s counter affidavit of 25/9/2015 and Paragraph 3 (i) of the 3rd and 4th respondents’ counter affidavit of 28/9/2015). Certainly, if there was no application to that effect, the respondents could not have responded by filing counter affidavits. It was this application that was considered by the Court on the 12th day of October. Same was granted which paved the way for hearing the appeal.

Now, Election Tribunals are, generally, established under section 285 (i) and (2) of the Constitution. The composition of such Tribunals is spelt out in section 285(3) of the Constitution. Section 285(4) provides for the Coram of such Tribunals. For the avoidance of doubt, the two subsections read as follows:

“285(3) The composition of the National and State Houses of Assembly Election Tribunal and Governorship Election Tribunal respectively, shall Be as set out in 6th Schedule to this Constitution.

(4) The quorum of an election established tribunal under this Section shall be the chairman and one other member.” (underlining for emphasis)

The sixth scheduled of the Constitution referred to in section 285(3) of the Constitution, part thereof provides:

“2(1) A Governorship Election Tribunal shall consist of a Chairman and two other members.

(2) The Chairman who shall be a Judge of High Court and two other members shall be Appointed from among Judges of a High Court Kadis of Sharia Court of Appeal or members of the Judiciary not below the rank of a Chief Magistrate.”

Thus, the composition and quorum have been stipulated by the Constitution. By the Supremacy of the Constitution, the two cannot be altered or removed. They are permanent features of the Constitution except where same have been amended by the Legislature. Any attempt to change, alter or remove anything from the provision as it is in the Constitution, will run foul or contrary to the Constitution and would result into non-compliance with the Constitution and same would be a nullity.

It was submitted by the learned counsel for the re respondent that the Chairman of the Tribunal sat and determined the Consolidated applications pursuant to paragraph 27(1) of the first schedule to the Electoral Act 2010 (as amended). It is to be noted that from the Tribunal's proceedings of 3rd day of July, 2015, as quoted above and as contained on P.329 of the record of appeal, the Tribunal Chair-
man has not stated anywhere, that he sat alone in pursuance of the
said Paragraph. Paragraph 27 of the First Schedule (Rules of Proce-
dure for Election Petitions) provides for the Power of Chairman of
the Tribunal or the Presiding Justice of the Court to dispose of inter-
locutory matters. The paragraph reads thus:

"27 All interlocutory questions and matters may be heard and disposed of by the Chairman of the Tribunal or the Presiding Justice of the Court who shall have control over the proceedings as a Judge in the Federal High Court."

A tribunal represents a seat of a judge, a place where a Judge administers Justice. It may consist of a body of Judges who compose a Jurisdiction. (Blacks Law Dictionary, 5th edition page 1350). It is akin to a Court of Justice which decides between persons. Any deci-
sion of a Court of Law - and a decision-according to the Constitu-
tion, means any determination of that Court and includes Judge-
ment, decree, order, conviction, sentence or recommendation. Be-
fore any Court/Tribunal can determine an) of the above listed indi-
ces, it must have been conferred with Jurisdiction which must be
exercised by the Judge/Judges (which include Chairman and mem-
bers of any tribunal). In order 10 hand down any valid decision a
court/tribunal must be properly constituted. In *Madukolu V. Nkemdilim* (1962) 1 All NLR 587 at 595 or, as reported in (1962) 2
NSCC P.372: (1962) 2 SCNCR 31, this Court, per Bairamian, FJ, G
held inter alia:

A Court is competent when:

1. *It is properly constituted as regard numbers and qualifications of the member of the bench and no member is disqualified for one reason or another;*

2. *The subject matter of the case is within its jurisdiction and there is no feature in the case which prevents the court from exercising jurisdiction; and*

3. *The case comes before the Court initiated b)' due process*

of Law, and upon fulfilment of any condition precedent to the exercise of jurisdiction.

The requirement in Section 285(4) of the Constitution for a tribunal to form a quorum is that, the tribunal must consist of the chairman and another member of the tribunal. The section uses the word “SHALL”, denoting necessity, mandatoriness and or compulsion. Further, the section does not exempt any other situation(s) where the tribunal can pick and choose which of the processes before it can be entertained by a FULL quorum of the tribunal or only by the chairman. Certainly, when a law provides a particular way/method of doing a thing, and unless such a law is altered or amended by legitimate authority, then whatever is done in contravention, it amounts to a nullity. The constitution has provided that for the tribunal to form a quorum the chairman and a member must be present, take the proceedings together and deliver its Judgement or Ruling together. Thus, where the tribunal chairman sat alone and considered the consolidated motions alone and delivered his Ruling alone, he only succeeded in wasting his precious judicial time, that of the parties and then counsel and any other person or institution that has one thing to do or another in relation to that proceeding. Paragraph 27 of the First Schedule of the Electoral Act has no relevance to the Jurisdiction of the tribunal. It is covered by section 285(4) of the Constitution. That is the essence of doctrine of covering the field such that where a main, principal or superior law has covered a given field or area; any other subsidiary law made in that area cannot operate side by side with the main/principal/superior law. If it is inconsistent, it has to be declared void to the extent of its inconsistency. The supremacy of the constitution must be obeyed and respected.

The respondents have clamoured that this Court can assume the position of the Lower Court or even that of the trial tribunal. Yes, that is true as per the provision of section 22 of the Supreme Court Act, 1960. But I do not share the view that this is one of the rare situations where this Court can assume such a jurisdiction. This is because, even the consolidated motions were not heard and determined by the trial tribunal.

The main petition was never considered on its merit. I think there is need, of course absolute need for the tribunal and the Court below to express their views thereon. I am not unaware of the time

lapse, but that cannot, in my humble view, push this Court to assume original jurisdiction on an election petition that was not heard and determined by the two Courts below.

In the final analysis, I too, allow this appeal. I remit the matter to the Hon. President of the Court of Appeal for further directives to a reconstituted tribunal for taking the matter DE NOVO. I make no order as to costs. B

RHODES-VIVOUR JSC

I have had the advantage of reading in draft the judgment prepared by my learned brother, Muntaka-Coomassie, JSC. I agree with His lordship's conclusions. In view of the importance of the jurisdiction point I add a few words of my own. C

The Appellant, a registered political party in Nigeria sponsored Mrs. Iyabode Ogunmefun as its gubernatorial candidate for Ogun State of Nigeria at the General Elections which were held on the 11th of April 2015. They were excluded from the elections. That is to say the Appellant and its candidate did not take part in the election. The 3rd Respondent, and his running mate, the 4th Respondent 'were declared winners of the election. D

Aggrieved with the turn of events the Appellant filed a Petition on the 4th of May, 2015 seeking in the main an order of the Elections Tribunal to annul the said election. The Parties filed their respective processes. Pre-hearing conference commenced, and on the 10th day of July 2015, the Chairman of the Governorship Election Tribunal, the Hon. Justice H.A. Olusiyi, sitting alone struck out the Appellant's Petition. E

The simple issue for determination is: G

Whether the Governorship Election Tribunal was properly constituted when its chairman, Hon. Justice H.A. Olusiyi sat alone on the 10th of July, 2015 and struck out the Appellant's Petition.

Section 285 (4) of the Constitution states that:

"285(4) The quorum of an election tribunal established under this section shall be the chairman and one other member."

In *Madukolu & ors. v. Nkemdilim* (1962) 2 NSCC p. 319 *Bairamlan F. J.* made some observations on jurisdiction and the competence of a court which are the correct position of the law on juris-

diction and competence of a court to adjudicate. His lordship said that:

A court is competent when:

(1) it is properly constituted as regards numbers and qualifications of the members of the bench, and no member is disqualified
B for one reason or another; and

(2) the subject matter of the case is within its jurisdiction, and there is no feature in the case which prevents the court from exercising its jurisdiction; and

(3) the case comes before the court initiated by due process of
C law, and upon fulfilment of any condition precedent to the exercise of jurisdiction.

Any defect in the composition of an Election Tribunal is fatal, for the proceedings are a nullity no matter how well they were handled and decided. The defect is extrinsic to the proceedings. See *Sea Trucks Ltd v. Anigboro* (2011) 1 SC (pt. 1) p.56, *C.G.C. Nig Ltd v. Aminu* (2015) 8 NWLR (pt 1459) p. 577.
D

There can be no doubt after reading section 285 (4) of the Constitution, that an Election Tribunal is properly constituted when
E the chairman and one other member hear proceedings before it. The proceeding of the 10th of July, 2015 when the chairman sat alone and struck out the Petition was done without jurisdiction since the Election Tribunal was not properly constituted. The proceedings of
F 10th of July, 2015 before the Election Tribunal are a complete nullity.

Also, the Court of Appeal had no jurisdiction to adjudicate over an appeal that was a nullity even before it was seized of it. The proceedings before the Election Tribunal and the Court of Appeal are nullities. I concur in the decision to allow the appeal.
G

OGUNBIYI JSC

I have had the benefit of reading in draft the lead judgment of my learned brother Muntaka Coomassic, JSC just delivered.

H I agree with his reasoning and conclusion that the appeal has merit and should be allowed.

The main and only issue for determination is:

“Whether the chairman of the trial court, sitting alone, had the jurisdiction to have heard and determined the Respondents’ consoli-

dated applications that gave rise to the Ruling of the Trial court delivered on 10 July, 2015?"

Section 285(4) of the Constitution governs the composition of the tribunal and same states as follows:-

"(4) The quorum of an election tribunal established under this section shall be the chairman and one other member." B

The use of the word shall presupposes that the composition must comply with the constitutional provision and the effect of a departure therefrom will occasion a fundamental breach of same.

By the chairman hearing the applications single-handedly, it is a serious departure from the constitutional mandate and therefore rendering the proceedings as null and void and of no positive legal effect whatsoever. C

Section 27(1) of the 1st schedule to the Electoral Act 2010 is a law passed by the National Assembly and which is inconsistent with the Constitution. The provision of the Act which allows for the chairman of the tribunal or the Presiding Justice of the court to dispose on interlocutory matters is unconstitutional and therefore misleading. The tribunal, as constituted had no jurisdiction and likewise the Court of Appeal. D E

I agree with the conclusion arrived at by my learned brother Muntaka-Coomassie, JSC, that the appeal has merit and same is allowed. I make an order that the matter be remitted to the President Court of Appeal who should constitute a fresh panel to hear the consolidated applications and to determine the petition. F

OKORO JSC

I read before now the judgment of my learned brother, G MUNTAKA-COOMASSIE, JSC, just delivered and I agree that this appeal is meritorious and deserves to be allowed. All parties to this appeal agree that the Chairman of the Governorship Election Tribunal sitting in Abeokuta, Ogun State, sat alone and struck out the petition of the appellant. The record of proceedings at page 326 H thereof clearly supports this assertion wherein it states:

"Coram: Full Tribunal for the pre-hearing session. However, only the Chairman shall take interlocutory applications."

Since all the parties and the record agree on this issue, I shall

not say more on it.

The salient issue which cans for determination is whether the Chairman of the Tribunal, sitting alone, had the jurisdiction to have heard and determined the Respondents/consolidated applications that gave rise to the striking out of the petition. I think the Chairman of the Tribunal may have derived his “power” from paragraph 27(1) of the 1st Schedule to the Electoral Act 2010 (as amended). The paragraph states:

“27(1) All interlocutory questions and matters may be heard and disposed of by the Chairman of the tribunal or the Presiding Justice of the Court who shall have control over the proceedings as a judge in the Federal High Court”

I had occasion to examine the above provision while I was in the Court of Appeal in the case of Ayoola V. Okediran (2012) All FWLR (pt. 614) 6(, at 126 wherein I stated as follows:

As I said earlier, the two applications which the Chairman of the tribunal heard and determined clearly asked that the petition be dismissed. On pages 416-417 of the record the Chairman of the tribunal clearly states that both motions were seeking the dismissal of the petition, If the Chairman can sit alone, hear and determine an application seeking to dismiss a petition, of what use are the other two members? This is not what paragraph 27(1) of the First Schedule to the Electoral Act 2010 (as amended) contemplates. Where such a serious issue or application which seeks to terminate or dismiss the appeal *in limine* is filed before the tribunal, it is my considered view that the Chairman cannot sit alone to determine such a weighty issue. At least two members including the Chairman cannot sit together to consider such an application. What the Chairman did, with due respect, was a ‘violation of Section 285(4) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). It is on this note that I agree with my learned brother that the Chairman of the Tribunal was in error when he sat alone, heard and determined the two sets of applications which sought to dismiss the petition *in limine*.”

The above opinion which I expressed in 2012 on the issue is as potent today as it was then. Section 285(4) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) is quite clear on the issue. It states: “285(4) The quorum of an election tribunal established under this section shall be the Chairman and one other mem-

ber."

It is elementary knowledge of the law that the Constitution is the supreme law of the land and its provisions soar far above every other legislation. The intendment of the constitutional provision is that the quorum for an election petition tribunal shall be the Chairman and one other member: That is to say, at least two members shall constitute a quorum for an election petition tribunal. There is no suggestion that the constitution had intended that one member or even the Chairman can alone constitute a quorum for tile tribunal I am surprised that in spite of the decisions of the appellate court on this issue, ejection tribunals still continue to interpret paragraph 27(1) of the First Schedule to the Electoral Act negatively. B
C

I think the time has come for this court to take a second look at the said paragraph 27(1) of the First Schedule to the Electoral Act That provision, in my opinion, irrespective of its intention, runs foul to the clear and unambiguous provision of Section 285(4) of the 1999 Constitution (as amended). Whereas the Constitution prescribes the quorum for election tribunals to be two, the said paragraph 27(1) prescribes the Chairman alone. This later provision is inconsistent with the provision of the Constitution and to the extent of that inconsistency, it is null and void. What I am saying in effect is that paragraph 27(1) of the First Schedule to the Electoral Act 2010 (as amended) is null and void, same being contrary to the provision and intendment of Section 285(4) of the Constitution of the Federal Republic of Nigeria 1999 (as amended). It must be emphasized that if any provision of an existing law is inconsistent with any provision of the Constitution of the Federal Republic of Nigeria. 1999 (as amended), such provision is void to the extent of that inconsistency. See *Ekulo Farms Ltd V. Union Bank of Nigeria Plc* (2006) 4 SC (pt. II) 1; (2006) 1, LPELR – 1101 (SC); *National Union of Electricity Employees Anor. V. Bureau of Public Enterprises* (2010) 7 NWLR (pt. 1194) 538, (2010) LPELR 1966 (SC) *Military Governor of Ondo State V. Adewunmi* (1988) 3 NWLR (pt. 82). D
E
F
G

The stun total of all I have said above is that the Ruling of the Chairman of the Tribunal which struck out the petition is a nullity as he had no jurisdiction to do so. It is accordingly set aside. Having set it aside, there was nothing upon which an appeal to the Court of Appeal could lie. Therefore, the judgment of the Court of Appeal in H

this matter delivered on 27th August, 2015 is also set aside. The appeal has merit and is hereby allowed. The appellant's petition is hereby remitted to the Election Tribunal for hearing de novo. The President of the Court of Appeal shall constitute another panel to hear the said petition. I abide by the order as to costs.

B

NWEZE JSC

I had the advantage of reading the draft of the leading which my Lord, Muntaka-Coomassie, JSC, just delivered now. I am in complete agreement with His Lordship that only issue one is determinative of this appeal. *Afortiori*, its resolution would obviate the need for the dissipation of valuable judicial energy on the remaining two issues.

As already, noted in the leading judgement, section 285 (4) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) prescribes the quorum of an Election Petition Tribunal to be the Chairman and one other member. It, simply, means that for the hearing and determination of an election petition, the tribunal can only be properly constituted where its Chairman sits with, at least, one other member, *Wayo Ubwa v. Tiv ATC and Ors* (2004) LPELR - 3285 (SC) 7-8; (2004) 11 NWLR (pt 884) 427; *Okolie Chime and Anor v Hikwu and Anor* (1985) 2 NWLR (Reprint) 16; *Adeigbe and Anor v Kushimo and Ors* (1965) ANLR (Reprint) 260.

The effect of the above position is that on July 10, 2015, when Olusiye J, Chairman of the Trial Tribunal, sat and determined the appellant's petition by striking it out, His Lordship acted in contravention of the inviolable principle consecrated in the above section of the Constitution. In consequence, the lower court ought to have spurned the said proceedings. On the contrary, [the lower court] purported to assume jurisdiction to entertain the said appeal that eventuated from the said proceedings which were not only vacuous but, entirely, void. Neither of the proceedings would, therefore, be permitted to endure. Accordingly, like the leading judgement, I, too, shall allow this appeal. I abide by the consequential orders in my Lord, Muntaka-Coomassie, JSC's judgment.