

SUPREME COURT OF NIGERIA
WEDNESDAY 13TH NOVEMBER, 2015. SC. 772/2015
CORAM:- W. S. N. ONNOGHEN, O. RHODES-VIVOUR,
N. S. NGWUTA, M. U. PETER-ODILI, O. ARIWOOLA,
M. D. MUHAMMAD, C. B. OGUNBIYI, JJSC

1. GENERAL BELLO SARKIN YAKI (RTD)
 2. PEOPLES DEMOCRATIC PARTY (PDP) APPELLANTS
AND
 1. SENATOR ABUBAKAR ATIKU BAGUDU
 2. ALL PROGRESSIVE CONGRESS (APC) RESPONDENTS
 3. INDEPENDENT NATIONAL ELECTORAL
COMMISSION (INEC)
-

ELECTION PETITIONS - Nature of - Time is of the essence in election petitions - Hence a slight infraction of the rules - Particularly those relating to time - Can be fatal to the process filed (H1)

APPEALS - Notice - Multiple filing - The mere fact of filing multiple notices does not render the appeal incompetent - As 1st respondent relied on one of the notices - And has not disclosed any injury he suffered (H2)

LEGAL PRACTITIONERS - Stamp & seal - Rules of Professional Conduct 2007 r. 10(1) - Effect of not fixing the approved seal & stamp - Is that document is deemed not to have been properly signed - But not incompetent (H3)

APPEALS - Right - Limit - No right including right of appeal is absolute - As pre action notice is a condition for exercise of right to bring action - And not an abridgment of that right (H4)

FACTS

Before the Kebbi State Governorship Election Petition Tribunal, petitioners/appellants instituted this action against the election and return of 1st respondent as the Governor of the State, following the gubernatorial election conducted in the State on 11th April 2015. Appellants are seeking inter alia, for a declaration that 1st respondent

was not qualified to contest the said election and that the election should be voided. 1st respondent filed his reply to the petition, 2nd respondent's reply to the petition was filed and served on appellants, while 3rd respondent filed and served its reply to the petition.

Later on, 1st respondent brought an application praying the Tribunal to strike out the petition as abandoned as the application for issuance of pre-hearing notice has not been filed within 7 days of the close of pleadings. The Tribunal in its ruling dismissed the petition as abandoned. Dissatisfied, appellants appealed to the Court of Appeal. The Court in its judgment held inter alia, that failure to affix the Nigerian Bar Association stamp and seal on a document does not render the document incompetent. The decision of the Tribunal was upheld and appellants' appeal dismissed on the ground that appellants' petition was abandoned and 1st respondent's reply to the petition had been filed within time. Aggrieved, appellants have appealed to the Supreme Court.

HELD (Unanimously dismissing the appeal and allowing the cross-appeal per **NGWUTA JSC**)
ELECTION PETITIONS - Nature of

1. Election matters are time-bound and provisions fixing time for taking any steps are strictly construed to emphasise that time is of the essence in election petitions. Without the strict compliance with Paragraph 18 (1) reproduced above, any application for the issuance of pre-hearing notice or conduct of pre-hearing session will be exercise in futility for failure to comply with the pre-condition for same.

Whether or not the motion to dismiss the petition was brought timely is a non-issue. The matter relates to the jurisdiction of the Tribunal to hear the petition and a challenge to jurisdiction can be brought at any stage of the proceedings.

Even if the motion to dismiss the petition was not filed the Tribunal could have dismissed the petition by virtue of subparagraph 4 of paragraph 18 of the 1st Schedule to the Act.

In a purely civil matter, the filing of a process a day after the period prescribed for the filing can be regularised on the

application of the defaulting party. But in election matters, even a slight infraction of the rules, particularly those relating to time, can be fatal to the process filed. An election petition is a proceeding sui generis.

In the circumstances, appellants could not have filed a motion for extension of time and if one had been filed it could not have been entertained by the Tribunal. (p. 3515 D)

APPEALS - Notice - Multiple filing

2. The complaint here is that the appellant did not indicate on which of his two notices of appeal he predicated his appellant's brief. Appellants conceded filing two different notices of appeal and did not elect to rely on either of the two processes. Appellants justified their action by reliance on the fact that the rules did not provide for election in such circumstances.

This argument is untenable. Order 2 Rule 4 provides for service of Notice of Appeal and not notices of appeal. The phrase "...after the Notice of Appeal..." does not envisage multiple notices of appeal. There are similar provisions in the High Court and Court of Appeal Rules. In any case, it is an affront to logic and common sense to argue that an appellant can file more than one notice of appeal without indicating on which one he relies.

Be that as it may, the mere fact of filing multiple notices of appeal does not render the appeal incompetent. The 1st Respondent read the appellants' brief and made a decision to rely on one of the two notices filed within time. Not only was the 1st Respondent not misled by the two notices of appeal, he did not disclose any injury he suffered for which he could seek redress. He cannot be heard to argue that another respondent elected to rely on the other notice of appeal.

That the 2nd Respondent elected to rely on a different notice of appeal does not constitute an injury for which the 1st Respondent could seek redress. 1st Respondent made a knowing and understanding waiver of his right to demand on being served the appellants' brief, on which of the two notices of appeal the appellants predicated their brief if he was in doubt.

Cross-appeal of the 1st Respondent lacked- substance and it was dismissed as unnecessary. (p. 3516 C)

LEGAL PRACTITIONERS - Stamp & seal

3. What is the consequence of a legal document signed and filed in contravention of Rule 10 (1) in the Rules?

The answer is as provided in Rule 10 (3) to the effect that “...the document so signed or filed shall be deemed not to have been properly signed or filed.” It is my humble view that the legal document so signed and/or filed is not null and void or incompetent like the case of a Court process signed in the name of a corporation or association (even of lawyers). The document, in terms of the Rule, is deemed not to have been properly signed or filed, but not incompetent as the 2nd Respondent assumed.

It has been signed and filed but not properly so signed and filed for the reason that the condition precedent to its proper signing and filing had not been met. It is akin to a legal document or process filed at the expiration of the time allowed by the rules or extended by the Court.

In such cases, the filing of the process can be regularised by extension of time and a deeming order. In the case at hand, the process filed in breach of Rule 10 (1) can be saved and it’s signing and filing regularised by affixing the approved seal and stamp on it. It is a legal document improperly filed and the fixing of the seal and stamp would make the filing proper in law. Since this was not done the Court cannot take cognizance of a document not properly filed and the filing not regularised.

I do not subscribe to the Respondent’s view that the rule does not provide any punishment for its breach. That the legal document is deemed not properly signed and filed is enough sanction for the breach of the rule. (p. 3517 H)

APPEALS - Right - Limit

4. There is also the argument that the rule constitutes a curtailment of the right of appeal under the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

No right, including the right of appeal, is absolute. A pre-action notice has been held to be a condition for the exercise of the right to bring the action and not as abridgement of that right. (p. 3518 G)

NOTABLE POINTS OF INTEREST

ONNOGHEN JSC

1. NBA Stamp & Seal – CJN circular is not a practice direction

It is clear that the first part of the above ruling deals with the effects of the circular issued by the Honourable the Chief Justice of Nigeria, which the court held does not have the status of a Practice Direction. The court is right in that the said circular is purely an administrative exercise by the Honourable, the Chief Justice of Nigeria directed at effective administration of the relevant Rules of professional Conduct, 2007 by the various judiciaries in the country.

It was not meant to bring into effect the provisions of the said Rules of Professional Conduct, 2007 neither is the enforcement of the said Rules dependent on the Chief Justice of Nigeria issuing such a circular or Practice Direction. The Rule haven been made by the appropriate authority with an assigned date of its coming into effect, does not need any further action by anyone to bring it into force, as there is no provision therein to suggest such a requirement.

2. Legal Practice – Qualification

It should be noted that the qualification to practice law as a legal practitioner is as provided under the Legal Practitioners Act which includes being called to Bar and enrolled at the Supreme Court of Nigeria as a legal practitioner. It is that qualification that entitles a legal practitioner to sign/frank any legal document either for filing in a Court of Law in a proceeding or otherwise. The above requirements constitute the substantive law on the issue.

It follows, therefore, that the Provisions of Rules of Professional Conduct, 2007 is directed at the Legal Practitioner to provide evidence of his qualification to practice law in Nigeria in addition to his name being in the Roll at the Supreme Court of Nigeria. It there-

fore saves time needed for a search at the Supreme Court to determine the authenticity of the claim of the Legal Practitioner for being so qualified. The provisions of the Rules, I must repeat, is not a substitute for the substantive law on the matter that is why non compliance thereto renders the document involved/concerned voidable, not void or a nullity. In the circumstance it is only fair to the client, the legal profession and in the interest of justice that the Legal Practitioner involved be given opportunity to prove his call to Bar and enrolment at the Supreme Court of Nigeria by affixing his seal to the document involved at any stage in the proceeding including appeal or whenever an objection to the authenticity of the document is raised under the provisions of the said Rules of Professional conduct, 2007. (p. 3512 C)

D REPRESENTATION

HENRY MICHAEL-IHUNDE ESQ for appellant with him are Messrs. I. MOHAMMED ESQ; B.B ORPIN; B.O. ONAMUSI ESQ; D.M. CEPHAS, ESQ; I.M. OLUWASINA (MRS.) ESQ; S.E. TOBI (MISS) ESQ; KEFFAS GADZAMA, ESQ; D. I. ONYEKWERE, ESQ C.U. ONYEDIM (MISS) ESQ; and M. S. YUSUF (MISS), ESQ.
RICKY TARFA SAN for 1st respondent with him are Messrs. Y.C. MAIKYAU SAN; J. O. ODUBELA; O. JOLAAWO; K. U. UWAGBODE; M. A. OSIGWE; N. OBASI-Obi; T.A. RADU; and M. ADELODUN.
A. J. OWONIKOKO, SAN for 2nd respondent/cross appellant with him LAGALO D. LAGALO ESQ
S. O. IBRAHIM ESQ for 3rd respondent with him are Messrs. A. SANI; I. S. MOHAMMED; AKINYOSOYE AROSANYI; JUDE D. ODI; OGBA, C.S.

G CASES REFERRED TO

Fawehinmi v. NBA (No. 2) (1989) 2 NWLR (pt. 105) 558
Okafor v. Nweke (2007) 10 NWLR (pt. 1043) 521
Okolo v. Union Bank (2004) 1 SC (pt. 1)
Onik Motors v. Wema Bank (1983) 6 SC 158
Benson v. Allison (1955-56) WRNLR 58
Emerue v. Nkerenwen (1966) 1 All NLR 63
Ige v. Olunloyo (1984) 1 SCNLR 158
Buhari v. Yusuf (2003) 6 SC (pt. 11) 156

Akuneziri v. Okenwa (2000) 12 SC (pt. 11) 25

Anambra State Govt. v. Marcel (1996) 9 NWLR (pt. 213) 115

Sa'eed v. Yakowa (2013) 7 NWLR (pt. 1352) 124

Umaru v. Aliyu (No. 1) (2010) 3 NWLR (pt. 1180) 135

Okechukwu v. INEC (2014 17 NWLR (pt. 1100) 95

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STATUTES & RULES REFERRED TO

Constitution of the Federal Republic of Nigeria 1999

Legal Practitioners Act

Interpretation Act, s. 18(1)

Electoral Act 2010, para. 18 of the 1st Schd.

Rules of Professional Conduct 2007, r. 10 (1)(2)(3)

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LEAD JUDGMENT BY ONNOGHEN JSC

I agree with the reasons given by my learned brother, D
NGWUTA, JSC and conclusions reached in the main appeal and the
cross appeals and have nothing to add except in respect of the cross
appeal of the 2nd respondent, which was allowed by the Court. The
issue formulated by learned senior counsel for the 2nd respondent/
cross appellant, A. J. OWONIKOKO, SAN in the brief of argument E
filed on 7/10/15 is as follows:-

*“Whether the Court of Appeal was right to hold that failure a
legal document to have affixed to it a stamp/seal as mandated by
Rule 10(1) of the Rules of Professional Conduct did not carry with it F
the consequence of rendering such legal document incompetent
(Grounds 1 and 2)”*

The decision of the lower court giving rise to this appeal is as
rendered at page 1108 of vol. 2 of the record of appeal, inter alia:

*“On the 2nd respondent’s preliminary objection, I also agree that nei- G
ther the Rules of Professional conduct nor the circular issued by the
Hon. Chief Justice of Nigeria on the use of stamps and seals by legal
practitioners dictates the consequence of incompetence to the failure
of the legal practitioner to apply his stamp and seal.*

*The appellant’s failure to comply with the Rules of Professional H
Conduct does not however, whittle down their fundamental right to
appeal under the Constitution of the Federal Republic of Nigeria 1999
(as amended) and certainly do not render the notice of appeal in-
competent.”*

To begin with, it should be noted that rule 10 (1), (2) and (3) of the Rules of Professional Conduct 2007 is relevant to the determination of the issue under consideration and that there is no dispute between the parties as to the validity or constitutionality of the provisions of the Rules of Professional Conduct 2007. In other words, both parties are in agreement that the said rule is valid. What then does Rule 10 (1), (2) and (3) provide? It states thus:

“10(1) A lawyer acting in his capacity as a legal practitioner, legal officer or adviser of any Government department of ministry or any corporation, shall not sign or file a legal document unless there is affixed on any such document a seal and stamp approved by the Nigerian Bar Association.

10(2) For the purpose of this rule “legal documents” shall include pleadings, affidavits, depositions, applications instruments, agreements, deeds, letters, memoranda, reports, legal opinions or any similar documents

*10(3) If, without complying with the requirements of this rule, a lawyer signs or files any legal documents as defined in sub-rule (2) of this rule, and in any of the capacities mentioned in sub rule (1), the document so signed or filed shall be deemed not to have been properly signed or filed.”*Emphasis supplied by me.

From the provision of sub-rule (3) of rule 10 supra, it is very clear that the lower court is in error in holding that the Rules of Professional Conduct 2007 does not make provision for the consequences of failure by a legal practitioner to affix his seal and stamp to a document filed. The consequence, as provided therein is that “...the document so signed or filed shall be deemed not to have been properly signed or filed.”

I have to emphasize that the legal status of the rules of professional conduct pursuant to section 1 of the Legal Practitioners Act, Laws of the Federation of Nigeria 2004 is that of a subsidiary legislation since it is made by provision in a statutory enactment - see Fawehinmi vs NBA (No. 2) (1989) 2 NWLR (pt. 105) 558 at 614; (1989) 20 NSCC (pt. 11) 43 at 69.

By virtue of Section 18(1) of the Interpretation Act, a subsidiary legislation has the force of law.

My attention has been drawn to the decision of this Court in a

ruling rendered on the 12th day of October, 2015 in appeal No. SC/665/2015 in which the Court held, inter alia, as follows:-

“The issue of BAR stamp raised by Dr. Ayeni is in a circular which has been issued by the Hon. The Chief Justice of Nigeria to all Heads of Courts for the betterment of the Legal Practice in Nigeria. The circular has not metamorphosed into a Practice Direction. It cannot be a compulsory requirement for filing process in a court of law as of now. Section 10 of the Legal Practitioners Rules of Professional Conduct (supra) relied upon by Dr. Ayeni is directory and not mandatory in nature. Failure to affix the Nigerian Bar Association stamp cannot, in my view, invalidate process filed in a court of law.”

It is clear that the first part of the above ruling deals with the effects of the circular issued by the Honourable the Chief Justice of Nigeria, which the court held does not have the status of a Practice Direction. The court is right in that the said circular is purely an administrative exercise by the Honourable, the Chief Justice of Nigeria directed at effective administration of the relevant Rules of professional Conduct, 2007 by the various judiciaries in the country.

It was not meant to bring into effect the provisions of the said Rules of Professional Conduct, 2007 neither is the enforcement of the said Rules dependent on the Chief Justice of Nigeria issuing such a circular or Practice Direction. The Rule haven been made by the appropriate authority with an assigned date of its coming into effect, does not need any further action by anyone to bring it into force, as there is no provision therein to suggest such a requirement.

The next question has to do with the legal effect of non compliance as stated in sub rule (3) of Rule 10, inter alia *“...the document so signed or filed shall be deemed not to have been properly signed or filed.”* It must be borne in mind that the provision of the Rules of professional Conduct, 2007 are no substitute for substantive laws being a subsidiary legislation/enactment.

What sub rule (3) supra is saying is that such non compliance renders the document so signed or filed voidable that is why it is said the document is “deemed not to have been properly signed or filed.” In other words, the offending document/instrument can be remedied at any stage in the proceedings by an application for and production and fixing of the seal. That is what My Lord, NGWUTA, JSC meant by saying that the situation is like filing a document out of time which

can be subsequently remedied.

It is for the above reasons that we held that the lower court was in error in holding the view that neither the Rules nor the Chief Justice of Nigeria circular dictates the consequence of the failure of a legal practitioner to apply his stamp and seal having regard to the provisions of sub rule (3) of Rule 10 of the Rules of Professional Conduct, 2007 and consequently allowed the appeal. However, the consequence of the said non compliance renders the document so filed voidable, not void which is subject to regularization upon application, even orally in the open court at any stage in the proceedings involved, even on appeal.

It should be noted that the qualification to practice law as a legal practitioner is as provided under the Legal Practitioners Act which includes being called to Bar and enrolled at the Supreme Court of Nigeria as a legal practitioner. It is that qualification that entitles a legal practitioner to sign/frank any legal document either for filing in a Court of Law in a proceeding or otherwise. See *Okafor vs Nweke* (2007) 10 NWLR (pt. 1043) 521 etc. The above requirements constitute the substantive law on the issue.

It follows, therefore, that the Provisions of Rules of Professional Conduct, 2007 is directed at the Legal Practitioner to provide evidence of his qualification to practice law in Nigeria in addition to his name being in the Roll at the Supreme Court of Nigeria. It therefore saves time needed for a search at the Supreme Court to determine the authenticity of the claim of the Legal Practitioner for being so qualified. The provisions of the Rules, I must repeat, is not a substitute for the substantive law on the matter that is why non compliance thereto renders the document involved/concerned voidable, not void or a nullity. In the circumstance it is only fair to the client, the legal profession and in the interest of justice that the Legal Practitioner involved be given opportunity to prove his call to Bar and enrolment at the Supreme Court of Nigeria by affixing his seal to the document involved at any stage in the proceeding including appeal or whenever an objection to the authenticity of the document is raised under the provisions of the said Rules of Professional conduct, 2007. In the instant case, there was no application to regularize the documents objected to. The learned counsel for appellant/1st cross respondent to this cross appeal treated the provisions of the Rules with disdain

and/or contempt.

It is for the above reasons that the cross appeal of the 2nd respondent was allowed. Cross appeal allowed with parties to bear their costs. Cross appeal allowed.

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RHODES-VIVOUR JSC

On the 27th day of October, 2015 we heard this appeal and my learned brother Onnoghen JSC delivered judgment on the same day. The appeal was adjourned to the 13th day of November, 2015 to enable this court give reasons for the judgment. I read in draft, reasons for the judgment given by my learned brother, Ngwuta, JSC. I agree with, the reasons given by His lordship. I would, though say a thing or two on the issue raised in the 2nd Respondent's cross-appeal. The issue is

D

Whether the Court of Appeal was right to hold that failure of a legal document to have affixed to it a stamp/seal as mandated by Rule 10 (1) of the Rules of Professional Conduct did not carry with it the consequence of rendering such legal document incompetent.

Rule 10 (1), (2) and (3) of the Rules of Professional Conduct, 2007 state that:

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“(1) A lawyer acting in his capacity as a legal practitioner legal officer or adviser of any department of Ministry or any corporation, shall not sign or file a legal document unless there is affixed On any such document a seal and stamp approved by the Nigeria Bar Association.

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(2) For the purpose of this rule “legal documents” shall include pleadings, affidavits, depositions, applications, instruments, agreements, deeds, letters, memoranda, reports legal opinions of any similar documents.

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(3) If, without complying, with the requirements of this rule a lawyer signs or files any legal documents as defined in sub-rule 2 of this rule, and in any of the capacities mentioned in sub-rule (2), the document so signed or filed shall be deemed not to have been properly signed or filed.”

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These provisions are designed to check and stop the alarming influx into the profession of fake lawyers masquerading as genuine legal practitioners.

In SC.665/2015 Mega Progressive Peoples Party v. INEC & 3 Ors. decided by this court on the 12th of October, 2015, on the issue of affixing seal, stamp to legal documents etc, this court said that:

“Failure to affix the Nigerian Bar Association stamp cannot invalidate processes filed in Court.”

B The clear interpretation of the above is that processes without the Nigerian Bar Association stamp etc are valid. Is there a conflict with the decision in this appeal?

C In this appeal this Court says that legal processes without stamp or seal are voidable. That is to say such documents are deemed not to have been properly signed and not that they are invalid. Such documents are redeemed and made valid by a simple directive by the judge or the relevant authority at the time of filing the voidable document for erring counsel to affix stamp and seal as provided for D in Rule 10 of the Legal Practitioners Act.

The 2nd Respondent cross-appeal was allowed because an objection to the validity of the process, it being without stamp, etc was made, and it was not rectified. It becomes abundantly clear that there is no conflict between SC.665/2015 and this appeal. This Court has E remained consistent.

Failure to affix stamp, seal to a legal process, renders such a process voidable. A voidable legal process is made valid when counsel affixes the stamp and seal to the said legal process.

F For this, and the detailed reasons given by my learned brother Ngwuta JSC the cross-appeal of the 2nd Respondent is allowed. Parties to bear their costs.

G **NGWUTA JSC**

This appeal involves the consequence of failure to comply with the provisions of paragraph 18 (1) of the 1st schedule of the Electoral Act, 2010 as amended. It provides:

Para. 18 (1):

H *Within 7 days after the filing and service of the petitioner’s reply as the Respondent or 7 days after the filing and service of the Respondent’s reply, as the case may be, the petitioner shall apply for the issuance of pre-hearing notice as in Form TF 008.”*

It is not in dispute that the last date for the appellants as peti-

tioners to apply for the issuance of the pre-hearing notice was the 7th day of June 2015 nor is it in doubt that the appellants actually filed the application for the issuance of the pre-hearing notice on 8/6/2015. Paragraph 18 (3) gives the respondent a choice in case of failure by the petitioner to comply with paragraph 18 (1), between bringing the application for the issuance of pre-hearing notice or a motion on notice for an order dismissing the petition. B

Where both the petitioner and the respondent fail to bring the application, the Court or Tribunal shall dismiss the petition as abandoned. See paragraph 18 (4) which also provides that no application of extension of time to make the application shall be entertained. Paragraph 18 (5) forecloses the reopening of the petition once dismissed. It provides: C

“1/18(5):

Dismissal of a petition pursuant to sub-paragraphs 3 and 4 is final and the Tribunal or Court shall be functus officio.” D

Election matters are time-bound and provisions fixing time for taking any steps are strictly construed to emphasise that time is of the essence in election petitions. Without the strict compliance with Paragraph 18 (1) reproduced above, any application for the issuance of pre-hearing notice or conduct of pre-hearing session will be exercise in futility for failure to comply with the pre-condition for same. See Okolo v. Union Bank (2004) 1 SC (Pt. 1) for effect of failure to comply with condition precedent provided by law or rule. E F

Whether or not the motion to dismiss the petition was brought timely is a non-issue. The matter relates to the jurisdiction of the Tribunal to hear the petition and a challenge to jurisdiction can be brought at any stage of the proceedings. See Onik Motors v. Wema Bank (1983) 6 SC 158. G

Even if the motion to dismiss the petition was not filed the Tribunal could have dismissed the petition by virtue of sub-paragraph 4 of paragraph 18 of the 1st Schedule to the Act.

In a purely civil matter, the filing of a process a day after the period prescribed for the filing can be regularised on the application of the defaulting party. But in election matters, even a slight infraction of the rules, particularly those relating to time, can be fatal to the process filed. See Benson v. Allison H

(1955-56) WRNLR 58, Emerue v. Nkerenwen (1966) 1 All NLR 63, Ige v. Olunloyo (1984) 1 SCNLR 158. **An election petition is a proceeding sui generis.** See Buhari v. Yusuf (2003) 6 SC (Pt. 11) 156.

In the circumstances, appellants could not have filed a motion for extension of time and if one had been filed it could not have been entertained by the Tribunal. See paragraph 18 (5) of the 1st Schedule to the Act (*supra*).

Based on the above, the appeal was dismissed and the judgment of the Court below affirmed.

1st Respondent's Cross-Appeal:

The complaint here is that the appellant did not indicate on which of his two notices of appeal he predicated his appellant's brief. Appellants conceded filing two different notices of appeal and did not elect to rely on either of the two processes. Appellants justified their action by reliance on the fact that the rules did not provide for election in such circumstances.

This argument is untenable. Order 2 Rule 4 provides for service of Notice of Appeal and not notices of appeal. The phrase "...after the Notice of Appeal..." does not envisage multiple notices of appeal. There are similar provisions in the High Court and Court of Appeal Rules. In any case, it is an affront to logic and common sense to argue that an appellant can file more than one notice of appeal without indicating on which one he relies.

Be that as it may, the mere fact of filing multiple notices of appeal does not render the appeal incompetent. See Akuneziri v. Okenwa (2000) 12 SC (Pt. 11) 25, First Bank of Nigeria Plc v. T.S.A. Industries Ltd (2010) 4-7 SC (Pt. 1) 242. **The 1st Respondent read the appellants' brief and made a decision to rely on one of the two notices filed within time. Not only was the 1st Respondent not misled by the two notices of appeal, he did not disclose any injury he suffered for which he could seek redress. He cannot be heard to argue that another respondent elected to rely on the other notice of appeal.**

That the 2nd Respondent elected to rely on a different notice of appeal does not constitute an injury for which the 1st

Respondent could seek redress. 1st Respondent made a knowing and understanding waiver of his right to demand on being served the appellants' brief, on which of the two notices of appeal the appellants predicated their brief if he was in doubt.

Cross-appeal of the 1st Respondent lacked- substance and it was dismissed as unnecessary. B

2nd Respondent's Cross-Appeal:

In his cross-appeal, the 2nd Respondent raised this single issue for resolution:

"Whether the Court of Appeal was right to hold that failure of a legal document to have affixed to it a stamp/seal as mandated by Rule 10 (1) of the Rules of Professional Conduct did not carry with it the consequence of rendering such legal document incompetent..." C

The issue calls for application of Rule 10 (1) (2) and (3) of the Rules of Professional Conduct, 2007 effective from 1st April, 2015. D

The 2nd Respondent placed reliance on said rule hereunder reproduced:

"Rule 10: (1)

A lawyer acting in his capacity as a legal practitioner legal officer or adviser of any governmental department of Ministry or any Corporation, shall not sign or file a legal document unless there is affixed on any such document a seal and stamp approved by the Nigerian Bar Association. E

(2) For the purpose of this rule "legal documents" shall include pleadings, affidavits, depositions, applications, agreements, instruments, deeds, letters, memoranda, reports, legal opinions or any similar documents. F

(3) If, without complying with the requirements of this rule a lawyer signs or files any legal documents as defined in sub-rule 2 of this rule, and in any of the capacities mentioned in sub-rule (2), the document so signed or filed shall be deemed not to have been properly signed or filed." G

The documents in question here purportedly signed and filed by a lawyer in his capacity as legal practitioner did not have on it "a seal and stamp approved by the Nigerian Bar Association." The process so signed and filed is a legal process within the intendment of Rule 10 (2) of the Rules. H

What is the consequence of a legal document signed and

filed in contravention of Rule 10 (1) in the Rules?

The answer is as provided in Rule 10 (3) to the effect that “...the document so signed or filed shall be deemed not to have been properly signed or filed.” It is my humble view that the legal document so signed and/or filed is not null and void or incompetent like the case of a Court process signed in the name of a corporation or association (even of lawyers). See Okafor v. Nweke (2007) 10 NWLR (Pt. 1043) SC 521 cited by the learned Silk for 2nd Respondent/Cross-Appellant. The document, in terms of the Rule, is deemed not to have been properly signed or filed, but not incompetent as the 2nd Respondent assumed.

It has been signed and filed but not properly so signed and filed for the reason that the condition precedent to its proper signing and filing had not been met. It is akin to a legal document or process filed at the expiration of the time allowed by the rules or extended by the Court.

In such cases, the filing of the process can be regularised by extension of time and a deeming order. In the case at hand, the process filed in breach of Rule 10 (1) can be saved and it’s signing and filing regularised by affixing the approved seal and stamp on it. It is a legal document improperly filed and the fixing of the seal and stamp would make the filing proper in law. Since this was not done the Court cannot take cognizance of a document not properly filed and the filing not regularised.

I do not subscribe to the Respondent’s view that the rule does not provide any punishment for its breach. That the legal document is deemed not properly signed and filed is enough sanction for the breach of the rule. There is also the argument that the rule constitutes a curtailment of the right of appeal under the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

No right, including the right of appeal, is absolute. A pre-action notice has been held to be a condition for the exercise of the right to bring the action and not as abridgement of that right. See Anambra State Government & Ors v. Marcel & Ors (1996) 9 NWLR (Pt. 213) 115.

It is for the above that we allowed the cross-appeal and set

aside the judgment of the Court of Appeal.

In conclusion, we dismissed the appeal as well as the 1st respondent's cross-appeal and allowed the cross-appeal of the 2nd respondent. It was ordered that parties bear their respective costs.

B

PETER-ODILI JSC

I agree with the judgment just delivered per Onnoghen JSC which reasons are presented and delivered by my learned brother Sylvester Ngwuta JSC and to place on record the reasoning I shall make some remarks. C

This an appeal from the judgment of the Sokoto Division of the Court of Appeal which court dismissed the appellants' appeal against the Ruling of the trial Tribunal delivered on the 11th August, 2015 which Tribunal had dismissed the appellants' petition as abandoned. D

BACKGROUND FACTS

The facts relevant for our purpose in this appeal will be briefly stated as follows:

The 1st respondent contested on the platform of 2nd respondent and won the election conducted by 3rd respondent on 11th April, 2015 into the office of Governor of Kebbi State. The 1st respondent polled 477,376 votes as against 293,443 votes polled by 1st petitioner/appellant, his closest rival who contested, on the platform of the 2nd petitioner/appellant (Peoples Democratic Party). E F

On 2nd May, 2015 the petitioners/appellants filed a joint petition against the election and return of the 1st respondent where they prayed the trial Tribunal, inter alia, to hold that 1st respondents was not qualified to contest the election and void his election, citing an alleged non-judicial indictment of s e companies believed to be associated with the 1st respondent. Appellants also relied on the ground that the election was *"marred by irregularities, violence, over-voting and non-compliance with the provision of the Electoral 2011 (as amended)..."* G H

1st Respondent filed his reply to the petition on 3rd June, 2015; 2nd respondent's Reply to the petition was filed and served on the petitioners on 26th May, 2015 while 3rd respondent filed and served its reply to the Petition on 24th May, 2015. This was the primary

finding and premise of the ruling of the Tribunal which was the basis of the appellant's appeal at the lower court.

Appellants at the Tribunal had conceded that their Replies to 2nd and 3rd respondents' replies to the petition were filed out of time. They also conceded that the Replies having been filed out of time, B the Tribunal lacked jurisdiction to grant extension of time to regularize them. They accordingly withdrew an application brought praying the Tribunal to grant extension of time within which appellants could file their replies to the Replies by 2nd and 3rd respondents. Respect- C fully see page 783 of the record where prayer to withdraw the motion was granted.

With respect to the Petitioners' Reply to the 1st respondent, it was conceded by appellants that 1st Respondent's Reply to the petition was served on petitioners/appellants on 3rd June, 2015. That left D petitioners/appellants with 5 days within which to validly file a Reply to the 1st Respondent's Reply. The 5th day was 7th June, 2015 which fell on a Sunday. Petitioners/Appellants however chose to rest on Sunday. They only resumed work on Monday 8th June, 2015 when they filed the said reply. Thereafter, petitioners/appellants by a letter E dated 10th June, 2015 but filed on 12th June, 2015 applied for issuance of prehearing notice. In effect, appellants reckoned that pleadings closed on 8th June, 2015 with their Reply to the 1st respondent's reply due for filing on 7th June, 2015 but actually filed out of time F on 8th June, 2015.

The 1st respondent consequently brought a motion on notice praying that the Tribunal do strike out the petitioners/appellants' reply to the 1st respondent reply; and, in consequence, striking out the petition as abandoned the application for issuance of pre-hearing G notice having not been filed within 7 days of the close of pleadings reckoned from then the last competent pleading was filed - that is on 3rd June, 2015.

The application was consequently argued. In a well considered ruling delivered by the Tribunal on 11th August, 2015, the petition H was dismissed as abandoned. The appellants dissatisfied with the ruling of the Tribunal proceeded to appeal at the lower court.

The Court of Appeal upheld the decision of the Tribunal and dismissed the appellants' appeal on the ground that the appellants' petition was abandoned and the 1st respondent's reply to the petition

had been filed within time.

Unhappy with that decision of the Court below the petitioners/appellants has come before the Supreme Court. The respondents 1st and 2nd cross-appealed.

On the 27th day of October 2015 date of hearing, learned counsel for the appellants adopted the Appellants' Brief of Argument settled by Joe-Kyari Gadzama SAN, filed on the 28/9/15. In the brief, learned counsel formulated four issues for determination which are, viz

1. Whether it was open to the Court of Appeal to have failed/ refused to follow its earlier decision in Senator Smart Adeyemi & Anor. v Hon. Dino Melaye & Ors. (Unreported appeal No. CA/A/ EPT 1350/2015) AND THE Supreme Court's decision in Sa'eed v Yakowa (2013) 7 NWLR Pt. 1352 P. 124; on the question of whether prehearing having commenced and parties having participated, the petition could still be deemed abandoned? This issue relates .to Grounds 1 and 6 of the Notice of Appeal.

2. Whether the Court of Appeal was right, in the circumstances of this case, to have held that there was no pre hearing session before the Lower Tribunal? This is relates to Ground 2 of the Notice of Appeal.

3. Whether the Court of Appeal was right to have, on one hand, failed to consider the appellants' alternative argument under Issue 1, and on other hand, (in the alternative to issue 2 above) failed to find that the Tribunal was incompetent to hear the 1st respondent's motion? This issue relates to Grounds 3 and 4 of the Notice of Appeal.

4. Whether the Court of Appeal was right to have held that the 1st respondent was not guilty of tardiness or unreasonable delay? This issue relates to Ground 5 of the Notice of Appeal.

The learned counsel for the 1st respondent adopted his Brief of Argument settled by Rickey Tarfa SAN and filed on 2/10/15. He also adopted for use the issues as crafted by the appellants.

For the 2nd respondent I learned counsel on its behalf adopted the Brief of Argument settled by A. J. Owonikoko SAN and filed on 2/10/15. He raised two issues for determination which are stated hereunder as:

1. Whether the Court of Appeal was right to uphold the deci-

sion of the Tribunal that the petition in this case was abandoned and liable to dismissal when the application for pre-hearing Notice was found to have been made on 12th June 2015 outside the mandatory 7 days from the close of pleadings (Grounds 2, 3, 4 and 5.

2. Whether Court of Appeal was right in holding that the petitioners' Reply to 1st respondent's reply was incompetent and that failure to apply for pre hearing notice within the statutory time limit meant there was no pre-hearing session which rendered the petition liable to dismissal (Grounds 1 and 6).

Learned counsel for the 3rd respondent adopted the Brief of Argument settled by Ibrahim K. Bawa SAN and filed on the 2/10/15. He identified four issues for determination which are as follows:

1. Whether it was open to the Court of Appeal to have failed/refused to follow its earlier decision in Senator Smart Adeyemi & Anor. v. Hon. Dino Melaye & Ors. (Unreported appeal No. CA/A/EPT 1350/2015) AND THE Supreme Court's decision in Sa'eed v Yakowa (2013) 7 NWLR Pt. 1352 P. 124; on the question, of whether pre hearing having commenced and parties having participated, the petition could still be deemed abandoned. (Grounds 1 and 6 of the Notice of Appeal)

2. Whether the Court of Appeal was right, in the circumstances of this case, to have held that there was no pre hearing session before the Lower Tribunal (Ground 2 of the Notice of Appeal)

3. Whether the Court of Appeal was right to have refused to consider the appellants' alternative argument incorporated under Issue 1, and on other hand, (in the alternative to issue 2 above failed to find that the Tribunal was incompetent to hear the 1st respondent's motion on Notice filed on the 19th day of June, 2015 (Grounds 3 and 4 of the Notice of Appeal.

4. Whether the Court of Appeal was right to have held that the 1st respondent was not guilty of tardiness or unreasonable delay? (Ground 5 of the Notice of Appeal)

I shall utilise the issues as drafted by the appellants for ease of reference.

ISSUES 1 AND 2

Whether it was open to the Court of Appeal to have *failed/refused* to follow its earlier decision in Senator Smart Adeyemi & Anor. v Hon. Dino Melaye & Ors. (Unreported appeal No. CA/A/

EPT 1350/2015) AND THE Supreme Court's decision in Sa'eed v Yakowa (2013) 7 NWLR Pt. 1352 P. 124; on the question of whether pre-hearing having commenced and parties having participated, the petition could still be deemed abandoned? Also whether the Court of Appeal was right to hold there was no pre-hearing session at the Trial Tribunal. B

For the appellant it was submitted that *decision* of the Court Appeal in Senator Smart Adeyemi & Anor. v Hon. Dino Melaye & Ors. (supra) and that of the Supreme Court in Sa'eed v Yakowa (supra) were relevant and applicable and ought to have been followed by the Court of Appeal in *deciding* that the petition was not abandoned in spite of the non-compliance with paragraph 18(1) of the 1st Schedule to the Electoral Act for filing the application for issuance of *rehearing* Notice outside the time prescribed. C

Responding learned counsel for the 1st respondent contends D that the present case was distinguishable to the facts of Sa'eed v Yakowa (supra) rather it is the case of Omisore & Anor. v Aregbesola & Anor. (Unreported) delivered by this court on the 27th day of May 2015 in Appeal No: SC/204/2015 that is on all fours end applicable. That there existed only a Pre-hearing Notice which was not valid in law and that the lower court properly affirmed the decision of the Tribunal which dismissed the petition as having been abandoned for failure to apply for the issuance of a prehearing Notice within the time delineated by Paragraph 18(1) of the First Schedule to the Electoral Act 2010 (as amended). E F

For the 2nd respondent it was submitted that where the law authorizes or mandates the doing of anything in a prescribed manner; that prescribed manner and no other can be employed to effect what the law has so permitted. It is immaterial that no sanction is provided for failure to comply with the: statute. That it is a condition precedent to the tribunal being competent to assume jurisdiction for prehearing session. He cited Okereke v Yar'adua (2008) 12 NWLR (Pt. 1100) SC. 95 at 127. G

The 3rd respondent's counsel submitted along the same path H as the other respondents.

For the appellants it was submitted that on the 12th of June 2015, the petitioner had by a written letter dated 10th June 2015 applied for issuance of pre-hearing pursuant to paragraph 18(1) of

the First Schedule and the Tribunal had in response issued pre-hearing information sheet as in form T009 to all the parties and all parties responded by filing answers to the pre-hearing questions. That the record shows that the prehearing had commenced and this is buttressed by the fact that it was in the course of the prehearing session
 B that the Tribunal raised the issue of whether or not the 1st respondents' motion of 19th June should be taken along with the petition and the Tribunal invited written arguments from all the parties on this question. That in these circumstances the Court of Appeal could not
 C be right to hold that prehearing had never commenced and so the petition had not been abandoned by the petitioners merely because a Reply was filed on Monday s" June, instead of Sunday 7th June. He referred to *Sa'eed v Yakowa* (supra).

For the 1st respondent it was contended that what is at play is
 D that the prehearing application was applied outside of the time prescribed and to that extent there was no valid application which was tantamount to an abandoned petition.

Learned counsel for the 2nd respondent said the lower court correctly held that recourse to Interpretation Act to compute time
 E only applies if the provision of the Electoral Act, 2011 (as amended) are not specific as to oust a recourse to the general provisions of the Interpretation Act. That in the case in hand what is called to play is a strict Interpretation of the provisions limiting time in election petition strictly as the courts below did. He cited *David Umaru v Aliyu* (No. 1)
 F (2010) 3 NWLR (Pt. 1180) 135 at 174; *Ndayako v Dantoro* (2004) 13 NWLR (Pt. 889) 187 at 219 etc.

It was submitted for the 3rd respondent that the petition had been abandoned by the appellants on the basis on their failure to file
 G their reply on Sunday 7th June 2015 which was belatedly filed on 8th June 2015. The reliance was placed on *Okechukwu v. INEC* (2014) 17 NWLR (Pt. 1100) 95; *Omisore & Anor. v. Aregbesola & Anor.*

At the root of the question herein raised is whether or not the petition was abandoned on account of the petitioner's failing to apply
 H for the pre-hearing session notice within the seven days stipulated in the Electoral Act specifically paragraph 18(1), (3), (4), (5). While the appellants took the stand of a non- fatal situation, the respondents disagreed holding, firmly that it was a defect that was incurable and equivalent to the petition being abandoned. The trial Tribunal

took the position of the respondents holding thus:

“In sum total therefore I when the petitioners failed to apply for prehearing session notice on 9th June 2015 within the seven days to do so - calculating from 3rd June 2015 expired, (that day inclusive) only did so on 12th June, 2015 they were out of time and their petition became an abandoned petition qua the provisions of paragraph 18(3) and (4) of the schedule and liable to be dismissed as stipulated by the latter sub paragraph especially. B

I came to that humble conclusion that the petitioners by their failure aforementioned abandoned their petition herein. The 1st respondent only nailed the coffin by this motion in compliance with paragraph 18(3) supra” C

On appeal to the Court of Appeal, that court per Dongban-Mensem JCA at pages 1118 to 1119 of volume 2 of the record of appeal as follows: D

“I also agree with the learned senior counsel for the three sets of respondents that the Tribunal appropriately distinguished the facts of the case of Sa’eed v Yakowa supra, heavily relied on by the appellants in this case, from the facts of the case in the instant appeal. For example, at pages 898 to 899 of the record the tribunal tellingly and painstakingly noted as follows: E

“Besides also and now on a legal terra, the decision in Sa’eed v Yakowa supra does not avail the petitioners at all. In that case, the petitioner actually filed a pre-hearing information “sheet” instead of application presumably within time too. The respondents then took part in the ensuring (sic) prehearing session and the trial up to judgment, and never complained of any miscarriage of justice. In those peculiar circumstances and with those facts, the Supreme Court of Nigeria came to the conclusion that though the “sheet” filed was not strict sensu “the application” that ought to be filed, but that amounted to a step taken by the petitioner for the issuance of prehearing notice to the parties and so the default here was as to form and not substance. It is trite that any provision limiting time for taking of any steps in litigation is in essence a limitation law, compliance therewith within time which means the time for doing the thing is no longer there and so the thing cannot or can no longer validly done in the eyes of the law again. That is a matter of conflict with a direct provision of the law and so goes to the substance and root of the step concerned and so F G H

is not a mere technicality via irregularity or at all. Accordingly the Supreme Court of Nigeria held that such substantial breach amounts to a petitioner’s failure to prosecute the petition - with the consequence that it would be dismissed. See again the Supreme Court of Nigeria in Omisore v Aregbesola supra at pages 54 and 55 of the judgments as there- in above quoted.”

That is to say, the court below upheld the stance of the trial tribunal. A recourse to the exact words of paragraph 18(1), (3), (4) and (5) of the First Schedule to the Electoral Act, 2010 (as amended) would in my humble view be helpful and so I would re-state them verbatim below, viz:

Paragraph 18 (1) *“Within 7 days after filing and service of the petitioners reply on the respondent or 7 days after the filing and service of the respondents reply. As the case may be, the petitioner shall apply for the issuance of prehearing notice as in Form TFOOB.*

Paragraph 18 (3) *The respondent may bring the application in accordance with sub-paragraph (1) where petitioner fails to do so” or by motion which shall be served on the petitioner and returnable in 3 clear days” apply for an order to dismiss the petition”.*

Paragraph 18 (4) *where the petitioner and the respondent fail to being an application under this paragraph the tribunal or court shall dismiss the petition as abandoned petition and no application for extension of time to take that step shall be filed or entertained.*

Paragraph 18 (5) *Dismissal of a petition pursuant to this subparagraph is final and the tribunal or court shall be functus officio.*

The appellants had taken the view that if the courts below had applied the decision of Senator Smart Adeyemi; & Anor. v Hon. Dino Melaye & Ors .. (Unreported Appeal No. CA/A/EPT 1350/2015) as they ought to within the concept of “stare decisis”, those courts would have come to a different decision which would have resolved the matter favourably for the appellants. There is not a doubt that

the concept or doctrine of precedents or “stare decisis” is sacrosanct. So as to clear the routes for definiteness and certainty in the administration of justice within applicable laws. However there is a rider for the application of a judicial precedent and that being that the facts in the future or present case have to bear similarities to those of the earlier case upon which the given decision was made. Another way of saying the same thing is that the principle of precedents is not applied in vacuo or offhand and must be done in context. This position was better stated by Oputa JSC in *Adegoke Motors Ltd v Adesanya* (1989) 3 NWLR (Pt. 109) 250.

“Our law is the law of the practitioner rather than the law of the philosopher. Decisions have drawn their inspiration and their strength from the very facts which framed the issues for decision. Once made, these decisions control future judgments of the courts in like or similar cases. The facts of two cases must either be the same or at least similar before the decision in the earlier case can be used in a later case, and even there, merely as a guide. What the earlier decision establishes is only a principle, not a rule. Rules operate in an all or nothing dimension. Principles do not. They merely incline decisions one way or the other. They form a principium or a starting point. Where one ultimately lands from that starting point will largely depend on the peculiar facts and circumstances of the case in hand.”

I shall refer to a few other judgments of this court on the same point for emphasis.

In the case of *Abu v Odugbo* (2007) 7 SCNJ 262 at 299, this court per Ejiwunmi JSC, restated the law thus:

*“It is one of the settled principles of this court that in the absence of conflicting decisions on the same point this court would follow and apply its previous decision where the facts and the issues of law settled in the previous decisions are on all fours with the facts and issues calling for determination in a subsequent case and/or matter. However, where the previous decision defers both as to the facts and the issues of law raised thereon in the case subsequent calling for determination, the previous decision will not be followed. It follows therefore that as the facts and issues raised in the previous case of *Eguamwense v Amaghizemwen* (supra) are different from and distinguishable from those facts and issues found and established in this appeal, the decision of this court in the case of *Eguamwense v**

Amaghizemwen (supra) cannot therefore be followed to determine this appeal”.

Similarly in the case of *Obiweubi v CBN* (2011) 2 - 3 se Pt. 1 Page 46, this Honourable Court per Rhodes-Vivour, JSC at page 78 lines 10 - 20 made the following judicial statement:

B *“The Supreme Court is the final court of appeal in Nigeria. Its decisions are binding on every court in this country. By the doctrine of stare decisis all courts are bound to follow the decisions of this court. The reason is simple that as the facts and issues raised in the*
C *previous case of Eguamwense v Amaghizemwen (supra) are different from and distinguishable from those facts and issues found and established in this appeal, the decision of this court in the case of Eguamwense v Amaghizemwen (supra) cannot therefore be followed to determine this appeal”.*

D Similarly in the case of *Obiweubi v CBN* (2011) 2 - 3 SC Pt. 1 Page 46, this Honourable Court per Rhodes-Vivour, JSC at page 78 lines 10 - 20 made the following judicial statement:

E *“The Supreme Court is the final court of appeal in Nigeria. Its decisions are binding on every court in this country. By the doctrine of stare decisis all courts are bound to follow the decisions of this court. The reason is simple. Following previous decisions of this court ensures certainty and order in the judicial system. It ensures stability and removes surprises. Counsel is assured that justice would be done,*
F *and it reduces stress and makes the task of dispensing justice easier and less onerous. Before following precedent, facts must be examined. This is so because judgments can only be understood in the light of the facts on which they were decided. After all facts have no views”*(Underlining ours for emphasis.)

G It was in taking the condition laid down that both the trial Tribunal and the Court of Appeal were comfortable with departing from the decisions in *Sa’eed v Yakowa* (supra) where no application as known under paragraph 18 of the 1st Schedule of the Electoral act was made. Also the facts of *Smart Adeyemi v Dino Melaye* were
H distinguishable to the facts being handled by the courts below and so the principles on which the decisions in those cases were based would not avail the appellants in the current discourse. Rather the Court of Appeal utilized the decision of the court in *Omisore v. Ogbeni Rauf Aregbesola & Anor* (Unreported Appeal No. SC. 204/2015 deliv-

ered on the 27th day of May 2015.

I shall quote Nweze JSC for a clearer view and that is thus:

“I endorse the unanswerable submission that the Tribunal, having found that the said pre-hearing notice application was not filed within the time stipulated after close of pleading pursuant to paragraph 18(1) supra as being abandoned, Enwezor v. INEC (2009) 8 NWLR Part 1143, 223 at 237, Okereke v Yar’adua (2008) 12 NWLR (Pt. 1100, 95; Dada v Dosunmu (2006) 18 NWLR Pt. 1010) 134 at 166; Mohammed v Martins Electronics (2009) LPELR 3708.”

It is no doubt that the draftsman of the said Act aware of the obvious time constraints on the Tribunal dealing with election matters in complying with the time frame therein, deliberately wove some new case management techniques into the Act with a view to empowering them (trial tribunal) to control and manage the proceedings expeditiously. Paragraph 18(1) is one of such mechanisms. It is thus a deliberate device which erected time frame by calendaring the permissible period for consummating or accomplishing certain steps within the time management regime created in the Act itself. *Okechukwu v INEC (Supra)*

The consequence is that if a petitioner fails to consummate the issuance of pre-hearing notice (FORM TF 007) within 7 (seven) days, he cannot fall back on paragraph 53(1), a provision which because paragraph 18(4) supra prohibits the extension of time, is inapplicable and so does not avail such a tardy petitioner, contrary to the brilliant submissions of the appellants counsel, *Abubakar v Nasamu (No.2) supra* and *Sa’eed v Yakowa supra*, decisions of this court clearly distinguishable. The reason is simple.

The effect of paragraph 18(4) supra on Paragraph 53(1) supra was not before this court in those two cases. They are therefore not’ authorities on the resolution of the issues in this appeal, namely whether the said paragraph 53(1) can save a petition in view of the exclusionary clause therein. In my view, it does not. There is thus no conflict between the position in those two cases. Each case is decided based on its peculiar facts and surrounding circumstances”.

Onnoghen JSC in an earlier case of *Okereke v Yar’adua (2008) 12 NWLR (Pt. 1100) se 95 at 127* stated the position in the interpretation of paragraph 3(1) - (5) of Election Petitions Practice Direction, 2007 which provisions were adopted verbatim into the Electoral Act,

2010 Paragraph 18 of the First Schedule. He stated thus:

“It is clear from paragraph 3(1) and (3) supra that the tribunal or court does not, suo motu conduct or cause a prehearing session to be held. Such a session can only be held upon an application by either the petitioner or the respondent to the petition... However, paragraph 3 (4) supra gives power to the lower court, where the petitioner and respondent fail to bring an application for pre - hearing session as in the instant case, to dismiss the petition as abandoned petition and that no application for extension of time to take that step i.e. apply for pre-hearing session shall be filed or be entertained. That is the law, though it may sound very harsh. It should however, be borne in mind that the provisions apply to election petitions in which time is of the essence.”

From the foregoing there needs be said no more than that what is called for in the interpretation of the Electoral Act, 2010 (as amended) with particular reference to paragraph 18 and the relevant subsections is a strict application thereof as the provisions have stipulated mandatory compliance and left no room for discretion. Therefore in this case in hand when the appellants chose a day after the expiration of the seven days prescribed they were out of time and without a remedy and the implication is that the petition had been abandoned notwithstanding that any step had been taken thereafter by any or all the parties. The reason is that the infraction had denuded the Tribunal of its jurisdiction and there is nothing more to be said. See *Olusola Oke v. Mimiko (NO.1) (2014) 1 NWLR (Pt. 1388) 225 per Ogunbiyi JSC*. This issue is resolved against Appellants.

ISSUE 3

Whether the Court of Appeal was right to have, on one hand failed to consider the Appellants’ Alternative argument under Issue 1, and on other hand, (in the alternative to *issue 2* above) failed to find that the Tribunal was incompetent to hear the 1st Respondent’s Motion.

It was submitted for the appellants that the Court of Appeal having held that prehearing had not commenced was wrong to have ignored and/or failed to pronounce on the appellants’ alternative argument under Issue 1 which is that if there being no prehearing was not a new issue. That the implication is that the Tribunal lacked

the competence to hear or determine the 1st respondent's motion of 19th June 2015. That the appellants' alternative argument being a substantial point of procedure required no evidence, was not a fresh issue and could be raised without leave as it touched on the jurisdiction of the Lower Tribunal to hear the 1st respondent's motion of 19th June 2015 which was the motion upon which the appellants' petition was dismissed. He referred to *Nigeria Engineering Works Limited v Denap Limited* (2002) FWLR (Pt. 89) 1062. B

It was further contended for the appellants' that the Court of Appeal failing to pronounce on that issue properly placed before it denied the appellants of fair hearing which occasioned a miscarriage of justice. He relied on *Oged Ovunwo an Anor v Iheanyichukwu Woko & Ors.* (2011) LPELR 2841 (SC). C

Learned counsel for the 3rd respondent in response said the Court of Appeal was right to have confined itself only to the issues properly raised before it and which arose from the grounds of appeal and so this alternative arrangement being pushed up by the appellants was outside the scope of that court's duty. He cited *Agbakoba v. INEC* (2008) 18 NWLR (Pt. 1119) 489, *Obasanjo v. Yusuf* (2004) 9 NWLR (Pt. 877) 144 etc. D E

In effect, the appellants are herein contending that the Court of Appeal ought to have dealt with their alternative issue which is to determine whether the prehearing had commenced and if so then the 1st respondent's motion of 19th June was in breach of paragraph 47(1) of the 1st Schedule as it was moved without leave and without showing extreme circumstances. F

Learned counsel for the 3rd respondent had responded to this on two prongs, the first being that there was no need for the court to have particularly embarked on that determination having effectively considered the main issue on which it answered the question raised which is the life of the petition when a pre-hearing application is not validly made, which answer comes to the petition being taken as abandoned, the issue of whether a purported prehearing had commenced or not of no moment. G H

Indeed the Court of Appeal is enjoined to consider all issues raised before it, which principle is the anchor on which the decision of the Supreme Court in *Oged Ovunwa & Anor. V Woko & Anor.* (2011) LPELR - 2841 rested. That is the general rule but it is taken

along the position that where that has not taken place, a miscarriage of justice has not occurred thereby. In this instance what the appellants are talking about is 'an issue in the alternative and one which can be said to have been tackled fully by the court below in its determination of the main issue before it. That being so no harm or miscarriage of justice occurred and it cannot be said that an issues before the court was ignored. In this regard the cases of Agbakoba v INEC (2008) 18 NWLR (Pt. 1119) 489 and Ukeje v Ukeje (2014) 11 NWLR (Pt. 1418) 384 at 399 have settled the matter as this court reiterated that the Supreme Court and the Court of Appeal have the power to adopt the issues as formulated by either of the parties or by the parties and also can identify issues by itself, the important thing being the fact that the real complaints in the appeal are brought out, considered and determined. Once that is done without a miscarriage of justice having been occasioned or the appellants' right to fair hearing not infringed then the appellate court can be said to have carried out its duty of considering and resolving the complaints between the parties. That having been what occurred in the case at hand the cry of the appellants that their alternative issue was not specifically called up and handled separately becomes an empty purposeless cry.

This issue is resolved against the Appellants

ISSUE 4

Whether the Court of Appeal was right to have held that the 1st respondent was not guilty of tardiness or unreasonable delay.

Learned counsel for the appellants submitted that the court below was wrong to have come to the conclusion that the 1st respondent did not show any tardiness or unreasonable delay in bringing the motion of 19th June, 2015 in view of paragraph 53 (2) of the First Schedule of the Electoral Act. That in this instance when the motion was brought within 11 days after the alleged infraction on the prehearing was unreasonable delay and by that waived his right to complain.

The respondents were of the same mind in answer on the matter of whether or not the 1st respondent was guilty of any waiver on account of tardiness in filing motion to have the Petition dismissed in that they are of the view that the Court of Appeal was right in deciding there was no tardiness on the part of the 1st respondent.

The matter of tardiness on the part of the 1st respondent is one

that has been settled by the answer of the earlier three issues, that is with what has been identified in those issues which culminated in a lack of jurisdiction for the tribunal petition having been held abandoned account of paragraph 18(1) - (5) of the 1st Schedule of the Electoral Act (as amended) and so the Tribunal had no business going into the tardiness or otherwise of the 1st respondent's motion having come late. B

CROSS - APPEAL

1st Respondent, Senator Abubakar Atiku Bagudu cross-appealed as cross appellant. This cross-appeal is against part of the judgment of the Court of Appeal delivered on the 17th day of September, 2015 which dismissed the 1st Respondents/Cross-Appellant's Preliminary Objection which challenged the competence of the appellant's appeal to the lower court. Aggrieved by the dismissal of the said Preliminary Objection, the 1st respondent/cross-appellant to this court on 29th September 2015 which is in the supplementary record of appeal. D

The Cross-Appellant's Brief of Argument was filed on 7/10/15 as was settled by Rickey Tarfa SAN and he raised three issues for determination which are as follows: E

1. Whether the Court of Appeal had abdicated its judicial duty in that, it failed to determine the objection raised by the 1st respondent/cross appellant, on the effect of the appellants' failure to elect the particular Notice of Appeal upon which the Appellants' Brief of Argument filed on the 27th of August 2015 before the Court of Appeal was based, thereby breaching the 1st respondent/cross-appellant's right to fair hearing guaranteed under the Constitution of the Federal Republic of Nigeria 1999 (as amended)? (Ground 1) F

2. Whether having regard to the mandatory provisions of the Election Tribunal and Court Practice, Direction 2011, more particularly Paragraph 10 and 11 (a) thereof, coupled with the failure by the appellants to indicate the particular Notice of Appeal upon which the Appellants' Brief of Argument filed on the 27th of August 2015 was based, the Court of Appeal properly' assumed jurisdiction to hear and determine the Appellants' Appeal to the Court of Appeal? (Ground 2) H

3. Whether the Court of Appeal rightly held that Appellants' Brief of Argument filed on 27th of August 2015 before the lower

Court was signed by an identifiable legal practitioner? (Ground 3)

Learned counsel for the appellants/cross respondent adopted their Brief of Argument settled by Ayuba A. s. Abang Esq and filed on 12/10/15 in which were identified four issues for determination which are, viz;

B 1. Whether the Court of Appeal had abdicated its judicial duty in that, it failed to determine the objection raised by the 1st respondent/cross appellant, on the effect of the appellants' failure to elect the particular Notice of Appeal upon which the Appellants' Brief of Argument filed on the 27th of August 2015 before the Court of Appeal was based, thereby breaching the 1st respondent/cross-appellant's right to fair hearing guaranteed under the Constitution of the Federal Republic of Nigeria 1999 (as amended)? (Ground 1)

D 2. Whether having regard to the mandatory provisions of the Election Tribunal and Court Practice Direction 2011, more particularly Paragraph 10 and 11 (a) thereof, coupled with the failure by the appellants to indicate the particular Notice of Appeal upon which the Appellants' Brief of Argument filed on the 27th of August 2015 was based, the Court of Appeal properly assumed jurisdiction to hear and determine the Appellants' Appeal to the Court of Appeal? (Ground 2)

F 3. Whether the Court of Appeal rightly held that the Appellants' Brief of Argument filed on the 27th of August 2015 before the lower Court was signed by an identifiable legal practitioner? (Ground 3)

G 4. Whether the Court of Appeal was right to hold that the failure of a legal document to have affixed to it a Stamp/Seal as mandated by Rule 10 of the Rules of Professional Conduct did not carry with it the consequence of rendering such document incompetent.

I shall take the issues as couched by the Cross-appellant and taking the Issues 1 and 2 together.

ISSUES 1 & 2

H 1. Whether the Court of Appeal had abdicated its judicial duty in that, it failed to determine the objection raised by the 1st respondent/cross appellant, on the effect of the appellants' failure to elect the particular Notice of Appeal upon which the Appellants' Brief of Argument filed on the 27th of August 2015 before the Court of Appeal was based, thereby breaching the 1st respondent/cross-appellant's

right to fair hearing guaranteed under the Constitution of the Federal Republic of Nigeria 1999 (as amended).

2. Whether having regard to the mandatory provisions of the Election Tribunal and Court Practice Direction 2011, more particularly Paragraph 10 and 11 (a) thereof, coupled with the failure by the appellants to indicate the particular Notice of Appeal upon which the Appellants' Brief of Argument filed on the 27th of August 2015 was based, the Court of Appeal properly assumed jurisdiction to hear and determine the Appellants' Appeal to the Court of Appeal? (Ground 2)

It was contended for the 1st respondent / cross- appellant that the failure of the Court of Appeal to determine the issue raised by the Cross-appellant was an abdication of its duty and amounted to a breach of the 1st respondent/cross-appellants right to fair hearing. He cited *Ovunwo v Woko* (2011) 17 NWLR (Pt. 1277) 546; *F. B. N. Plc v T. S. A Ind. Ltd* (2010) 15 NWLR (Pt. 1216) 247 at 290.

That the appellants/cross-respondents did not indicate at the court below which of the two Notices of Appeal they relied upon and the lower court made no pronouncement on the issue which is a breach of the provisions of paragraph 10 and 11(a) of the Election Tribunal and Court Practice Directions 2011. The Court of Appeal thereby lost its jurisdiction to entertain the appeal.

The Cross-Respondent stated that this cross-appeal IS diversionary as the cross-appellant had the opportunity to raise any objection in his Brief of Argument but failed to do so and so cannot now complain of this failure to raise the objection at the Court of Appeal. That none of the respondents in filing their Briefs of Arguments was confused or misled as to which Notice of Appeal the appellants relied on since the objection in the cross-appellant's Brief showed he was responding to the appellants' Notice of appeal of 20th August 2015, the Notice, the appellant relied on. He cited *Military Administrator Benue State v Ulegede* (2001) NWLR (Pt. 741) 194; *Tukur v Government of Gongola State* (1988) 1 NWLR (Pt. 68) 42.

I have no difficulty In agreeing with the cross-respondent that this cross-appeal is distracting and without basis as the cross-appellant was not deceived or confused as to which of the two notices of appeal they were responding to and so to come at this stage to talk of two Notices of the cross-respondents as appellants go to no issue. I

am at one with Ayoola JSC in *Military Administrator Benue State v Ulegede* (2001) NWLR (Pt. 741) 194 and *Turkur v Government of Gongola State* (1988) 1 NWLR (Pt. 68) 88 in that the right of appeal is not lost by the filing of more than one notice of appeal, what is important is that the appellant confined himself to one and so long as
B the respondent is not confused as to what to respond to.

The Court of Appeal in considering the Preliminary Objection on the more than one Notice of Appeal stated thus:

“Resolution of the Preliminary Objection

C The Appellant’s Notice of Preliminary Objection of 13th August 2015 has already satisfied the requirement of paragraph 6 of the Election Tribunal and Court Practice Direction 2011. The filing of another notice of appeal on the 20th of August 2015 in this court and still within time does not render the appellants notice of appeal in-
D competent. In this situation, the appellants” are left with a choice to which of the notices of appeal they intend to rely on for this appeal.

Furthermore, the learned senior counsel was right to have said that the case of *SLB Consortium v NNPC supra* referred to by the 1st respondent on the 2nd leg of his preliminary objection is inapplicable
E to the facts and circumstances of this appeal. And that, *SLB Consortium Ltd v NNPC supra* was a case in which a process was signed in the name of a law firm. In the instant case, the Appellants’ Notice of Appeal of 20th August 2015 was clearly and boldly signed by Chief
F Joe Kyari Gadzama for himself and on behalf of other counsel. There is no suggestion that any of the ten listed names, including the lead counsel is not a legal practitioner called to the Nigerian Bar.”

The court below was right in its consideration of that Preliminary Objection and this cross-appeal lacks merit and is hereby dis-
G missed.

CROSS-APPEAL OF RESPONDENT /CROSS- APPELLANT

The cross-appeal has to do with part of the judgment of the court below as to what should be the fate of a Notice of Appeal without the Stamp/Seal of the legal practitioner affixed to it.

H The 2nd respondent/cross-appellant filed a Brief of Argument on the 7/10/15 and identified a sole issue for determination which is thus:

Whether the Court of Appeal was right to hold that failure of a legal document to have affixed to it a stamp/seal as mandated by

Rule 10(1) of the Rules of Professional Conduct did not carry with it the consequence of rendering such legal document incompetent - (Grounds 1 and 2).

Learned counsel for the appellants'/cross respondents in their Brief of Argument filed on 12/10/15 answered in their Issue 4 therein as follows:

Whether the Court of Appeal was right to hold that the failure of a legal document to have affixed to it a stamp/seal as mandated by Rule 10 of the Rules of Professional Conduct did not carry with it the consequence of rendering such document incompetent.

Canvassing their standpoint learned counsel for the 2nd respondent/cross- appellant held the view that process of court must carry valid name, signature and seal of counsel and that the notice of appeal argued at the court below was not stamped or affixed with the seal of the legal practitioner and so the process was incompetence. He cited *Okafor v Nweke* (2007) 10 NWLR (Pt. 1043) 521; *FBN Plc v Maiwada & Ors.* (2013) 5 NWLR (Pt. 1348) 444.

That the situation robbed the court jurisdiction to determine the appeal on the merit. He cited *Ahmed v Ahmed* (2013 15 NWLR (Pt. 1377) 274 at 324 - 325; Legal Practitioners Act, Cap L11, LFN 2004 (LPA); Sections 1, 2, 8 and 23 (5).

That the effective date of stamp and seal requirements on legal documents by courts was 1st June, 2015 as directed by the Chief Justice of Nigeria's circular effective date for counsel to comply was 1st April, 2015 as directed by the Nigeria Bar Association (NBA) and the Notices of Appeal filed on 13th and 20th August 2015 were therefore caught by Rule 10(2) of Rep and so a lack of the stamp and seal rendered the Notices of Appeal incompetent.

For the cross-respondent was submitted that the right of appeal being constitutional cannot be frittered away or curtailed by the technicality of the lack of stamp and seal of legal practitioner. He relied on

NIPOL Ltd v Bioku Invest. & Pro. Co. Ltd (1992) 3 NWLR (Pt. 232) Page 727 at 753.

The divergent points of view of the parties are for the 2nd respondent/cross-appellant is that the stamp and seal regime introduced by the Rules of Professional Conduct of Legal Practitioners 2007 for compliance by legal practitioners having come into force on 1st April

2015 must be applied fully with the Circular of the Chief Justice of Nigeria issued on May 2015 and effective from 1st June, 2015 reinforcing the validity of the Rule. That contrary to the decision of the Court of Appeal there is express and mandatory consequential sanction under Rule (3) where counsel fails or neglects to affix same on a legal document or court process.

The position of the cross-respondent being different is that the constitutional right of appeal guaranteed by Section 241 of the constitution of the Federal Republic of Nigeria 1999 (as amended) gives an unassailable right to every aggrieved person to approach the court in matters of appeals and that what the cross-appellant is seeking in to hinge on technicality and elevate an ordinary administrative directive to one with a force of law with mandatory consequences.

The particular Rule on which this dispute is anchored is re-stated hereunder and thus:

Rule 10(1), (2) & (3) of the Rules of Professional Conduct 2007 provides that:

“10(1) A lawyer acting in his capacity as a legal practitioner, legal officer or adviser of any Government department of Ministry or any corporation, shall not sign or file a legal document unless there is affixed on any such document a seal and stamp approved by the Nigerian bar Association.

10(2) for the purpose of this rule, “legal documents” shall include pleadings, affidavits, depositions, applications, instrument, agreements deeds, letter memoranda, reports legal opinions or any similar documents.

10(3) if, without complying with the requirements of this rule, a lawyer signs or files any legal documents as defined in sub-rule (2) of this rule, and in any of the capacities mentioned in sub rule (1), the document so signed or filed shall be deemed not to have been properly signed or filed.

The Court of Appeal had held thus:

“I agree that neither the Rules of Professional Conduct nor the circular issued by the Hon. Chief Justice of Nigeria on the issue of stamps and seals by legal practitioners dictates the consequence of failure of a legal practitioner to apply his stamp and seal”

A Notice of Appeal is the originating process at an appellate court and the Notice of Appeal is clearly within the ambit of legal

documents described in Rule 10(2) as “any similar documents’ which must be signed, stamped and sealed. Therefore a Notice of Appeal not found with these components is an incompetent Notice of Appeal depriving the court of the jurisdiction to determine the appeal on the merit. This within what was provided under the Legal Practitioners Act, Laws of the Federation 2004 (as amended) and the Rules of Professional conduct, rule 10(3). In this regard the case of *FBN Plc v Maiwada & Ors* (2013) 5 NWLR (Pt. 1348) 444 per Fabiyi JSC at 488 is helpful. He stated as follows, Legal Practitioners should reform their minds to live by it for due accountability and responsibility on their part and for the due protection of the profession”.

As to infringing the right of a litigant to appeal where the error or lapse of his counsel to stamp and affix his seal on a legal document it must be stated that the rights of a litigant who sought a legal practitioner is not open ended or rights outside the Laws of Practice and procedure or rules of court. This in line with what this court stated per Rhodes-Vivour JSC in *Ngere v Okuruket* XIV” (2014) 11 NWLR (Pt. 1417) 147 at 176 - 177 in this way:

“The well laid down position of the law is that when counsel is briefed to handle a case and he accepts the brief, he has authority to decide within his own knowledge of the law, how to conduct the case, and the client is bound’ by how the counsel conducts the case. The remedy open to the client if he is not satisfied with counsel is to withdraw the brief or sue for professional negligence if that appears to be the case”.

It is in keeping with these policy statements of this court that there is the need, an urgent one at that to protect the entire public from fakes parading themselves as legal practitioners and also the safe guarding of the profession itself which has been regulated and it is not for an individual lawyer or litigant to decide which regulation is an offhand directive that would be complied with or not. See *Labaiyi v. Aretiola* (1992) 8 NWLR (pt. 258) 139; *Oloruntoba-Oju v Adbul Raheem & Ors.* (2009) LPELR 2596.

Therefore any non-compliance with the Rule 10(2) of RCP, with the circular of the Chief Justice of Nigeria as a reiteration is visited with the sanction that the process is without competence. It cannot be executed by talking of the inalienable right of a litigant to appeal as that right has to be exercised within the necessary pre-

scribed Rules of legal practice.

From the forgoing and the fuller reasons of my Lord, Ngwuta JSC in the lead judgment this cross-appeal has merit and is allowed.

I abide by the consequential orders made.

B

ARIWOOLA JSC

This court gave judgment in this appeal on the 27th October, 2015. In the said judgment, we dismissed the main appeal and the 1st respondent's cross appeal but allowed the 2nd respondent's cross appeal. We had reserved to give our reasons for arriving at that Conclusion today 13th November, 2015.

I had read in draft the lead reasoning of my learned brother Ngwuta JSC and I am in total agreement with same. I only desire to chip in a few words of my own on the 2nd respondent's cross appeal.

In the cross appeal, the 2nd respondent raised the following sole issue for determination:

"Whether the Court of Appeal Was right to hold that failure of a legal document to have affixed to it a stamp/seal as mandated by Rule 10(1) of the Rules of Professional Conduct did not carry with it the Consequence of rendering such legal document incompetent."

There is no doubt that the sole issue raised is predicated on the provisions of the Legal Practitioners Rules of Professional Conduct of 2007, in particular, rule 10 sub-rules 1, 2 and 3 provides thus:

"1. A lawyer acting in his capacity as a Legal Practitioner; Legal officer or adviser of any governmental department or Ministry or any Corporation, shall not sign or file a legal document unless there is affixed on any such document a seal and stamp approved by the Nigerian Bar Association.

2. For the purpose of this rule "legal documents" shall include pleadings, affidavits, depositions, applications, instruments, agreements, deeds, letters, memoranda, reports, legal opinions or any similar documents.

3. If, without complying with the requirements of this rule a lawyer signs or files any legal documents as defined in sub-rule 2 of this rule, and in any of the capacities mentioned in sub-rule (2), the document so signed or filed shall be deemed not to have been properly signed or filed."

Generally it is common knowledge that the Rules of Professional Conduct in the Legal Profession were made pursuant to the Legal Practitioners Act. There is no doubt that many other professions such as, Medical and Dental Practitioners, also have their rules guiding their members professional conducts. It should be noted that the acts being guided by the rules under consideration are that of lawyers and the documents to be affected are only documents being presented to be prepared and being filed by lawyers. In other words, even for a lawyer to be directly affected by the rules in question, he must be “acting in his capacity as a legal practitioner, legal officer or adviser of any governmental department or Ministry or any Corporation.” In the same vein, for any document prepared by a lawyer acting in any of the above capacities, to be required to conform with the rules stated above, such document must be a “legal documents or any other similar documents.”

It was contended that the document in question in this appeal was filed at the court by a lawyer without the required seal and stamp of the legal practitioner who prepared same. It is, however, note worthy that the filing of the said document or process took place after the provisions of the Rules above had come into operation in April, 2015. The document in question was the Notice of Appeal, which is an originating process usually filed by lawyers in court. I also disagree with the court below that the Rule does not provide any sanction or consequence for failure to affix seal on or stamp any such document which requires lawyer’s seal and stamp.

It is clear from sub-rule 3 of rule 10 quoted above that such “*document shall be deemed not to have been properly signed or filed.*”

The Rules of Professional Conduct are rules of reason. They should therefore be interpreted with reference to the purposes of legal representation and of the law itself. Some of the Rules are imperatives, cast in terms “shall” or “shall not”. The Rules define proper conduct for purposes of professional discipline.

It should be noted that the above rules presupposes that before any lawyer acting in the specified capacity appends his signature on any legal document or presents any such document or process of court for filing, there must be his seal and stamp on such document.

I am of the opinion that ordinarily, any responsible member of

the noble profession of lawyers will not sign or present any legal document which does not have his seal and stamp on it. This is to show authentication and responsibility. Therefore where a document is filed without the seal and stamp of the lawyer who prepared same, such document will be deemed not to have been properly signed and
 B filed, and shall remain voidable until the necessary steps are taken to regularize same. Otherwise, if not regularized, the court may not countenance an improperly filed document. The rules are no doubt made by the professionals to protect and guard jealously the enviable legal
 C profession that we all belong.

In the instant case, there was no seal and stamp of the lawyer on the document objected to and there was no step taken to regularize the position. The lower court was therefore in error to have held that there was no consequence of failure to comply with the rules.
 D There was no doubt, that the Notice of Appeal was not properly filed, to say the least. That is the reason why the cross appeal of the 2nd respondent succeeded and was allowed by us.

For the above reason and the detailed reasoning of my learned brother, Ngwuta, JSC, I also allow the cross appeal of the 2nd respondent and abide by the order that parties are to bear their respective costs.
 E

MUHAMMAD JSC

F On 27th day of October 2015 my learned brother Onnoghen JSC, dismissed the main appeal and 1st Respondent's cross appeal having found both to be lacking in merit. He however allowed 2nd respondent's appeal that was otherwise and stated that reasons for
 G the judgment in respect of all the three appeals will be given today, the 13th day of November 2015, to which date the matter was adjourned.

His lordship, Ngwuta JSC had obliged me in draft the reasons for the judgment. On perusal I entirely agree with his lordship and
 H imbibe the reasons as mine for dismissing the main appeal and the 1st respondent's cross appeal. I do so in allowing the 2nd respondent's cross appeal as well.

I abide by all the consequential orders made following the reasons given by his lordship including those on costs.

OGUNBIYI JSC

My learned brother Ngwuta, JSC has obliged me the benefit of reading in draft his lead reasons for the judgment of the Court delivered on Tuesday, the 27th day of October, 2015. I am in total agreement with the reasons and conclusion arrived thereat and wish further to chip in a few words of mine. B

This is an appeal against the Judgment of the Court of Appeal, Sokoto Division delivered on the 17th of September, 2015, which dismissed the appellants' appeal against the Ruling of the Kebbi State Governorship Election Petition Tribunal delivered on the 11th of August, 2015 wherein the appellants' petition before the tribunal was dismissed as having been abandoned. C

It is paramount to restate that the appeal at hand is against a concurrent decision of the two lower courts. The law is trite and well settled in plethora of decided authorities that the court will not ordinarily interfere with such findings as it is not a matter of course. In otherwords, there must be special circumstance shown such as a violation of some principle of law or procedure or where such findings are shown to be perverse or patently erroneous and a miscarriage of justice will result if they are allowed to stand. See the case of *Nsirim V. Nsirim* 2001 FWLR Pt.96 P433 at 445 per Iguh, JSC. See also *R-Benkay Nigeria Ltd V. Cadbury Nigeria Plc* 2012 All FWLR (Pt.631) Page 1450 at 1467. D E

There is no where in the appeal where the appellants are denying the fact that they filed the application for issuance of pre-hearing notice outside the time prescribed by Paragraph 18(1) of the First Schedule. The appeal therefore deals with the failure by the appellants to apply for the issuance of the prehearing Notice within time. F G The contents of Paragraph 18(1) relates specifically to the time limit within which to apply for prehearing notice as in form TF 008. The appellants' application by Paragraph 18(1) of the 1st schedule and the consequences made on the 12th of June 2015, was outside the time prescribed which are prescribed in sub-paragraphs (3) and (4) H which will culminate into finality by sub-paragraph (5) as follows:

"Dismissal of a petition pursuant to sub paragraphs (3) and (4) of this paragraph is final, and this tribunal or court shall be: *functus officio*."

It is the appellants' contention that the consequential effect of the failure can be salvaged by paragraph 53(1) of the first schedule and also the decision of this court in Sa'eed V. Yakowa (2013) 7 NWLR (Pt. 1352) Page 124. The said case under reference is remarkably distinguishable with the appeal before us and in issue. In otherwords, while pre-hearing conference had commenced in Sa'eed V. Yakowa, the same cannot be said with this appeal. The wrong step taken in that case was also within the time prescribed by paragraph 18(1) of the 1st schedule and which is not the case at hand. The court, held in that case therefore that, in view of the nature of non-compliance coupled with the stage at which the complaint was made by the Respondents, paragraph 53 of the 1st schedule was applied to save the petition.

The general rule is, where a condition precedent is mandatory for doing an act, the failure to fulfil that pre-condition will obviously render of non effect the doing of any act subsequent without first fulfilling the pre-condition. The mandatory nature of the foregoing requirement is made *even more* compelling in election matters which are (sui generis) of a special nature and where the laws regulating same are so stringent and refusing any room for shifting position.

The finality sealed on a petition by sub-paragraph 18(5) of the 1st Schedule is to render the tribunal functus officio of the subject matter. This court has pronounced loudly and in clear terms that time is of essence in election matters and that position cannot be compromised. This is unlike the normal and regular proceedings of Court. The appeal in the circumstance was therefore rightly dismissed on the 27th October, 2015.

The Cross Appeal by 1st Respondent. The crux of the cross appeal is challenging the failure by the appellant to choose one out of the two notices of appeal filed and which counsel argues had breached the 1st Respondent/cross Appellant's right to fair hearing as guaranteed under the Constitution.

It is intriguing and I must say that the complaint lodged by the 1st respondent/cross appellant is in my view, without proper calculation and foundation. This I say because the outcome of the entire appeal was decided in his favour, he did not also deem it fit to raise a preliminary objection in his brief of argument and serve same on the appellant in accordance with the Rules of this Court. Furthermore,

the said Respondent/Cross appellant, did not deem it important to state in his brief specifically the nature of the injustice caused him by reason of the appellants' failure in identifying the notice of Appeal relied upon; It is not stated also that the respondent/cross appellant was in anyway misled or confused about which notice of Appeal the appellants relied on. B

The reason for the cross appeal by the 1st Respondent/cross appellant in my view was rightly held to be without any substance, and dismissed.

Cross Appeal by the 2nd Respondent

The lone issue raised was:-

Whether the Court of Appeal was right to hold that the failure of a legal document to have affixed to it a stamp/seal as mandated by rule 10 of the Rules of Professional Conduct did not carry with it the consequence of rendering such document incompetent. D

Rule 10(1)(2) and (3) of the Rules of Professional Conduct, 2007 takes effect from 1st April, 2015 and same is reproduced here-under as follows:-

Rule 10:

"(1) A Lawyer acting in his capacity as a Legal Practitioner, Legal Officer or Adviser of any Governmental department of Ministry or any Corporation, shall not sign or file a legal document unless there is affixed on any such document a seal and stamp approved by the Nigerian Bar Association. E

(2) For the purpose of this rule 'legal documents' shall include pleadings, affidavits, depositions, applications, instruments, agreements, deeds, letters, memoranda, reports, legal opinions or any similar documents. F

(3) If, without complying with the requirements of this rule, a lawyer signs or files any legal document as defined in sub-rule (2) of this rule, and in any of the capacities mentioned in sub-rule (1), the document so signed or filed shall be deemed not to have been properly signed or filed." G

The document in question did not exhibit a stamp/seal as mandated by Rule 10(1) of the Rules of Professional conduct. The use of the word shall makes the stamp/seal mandatory and needful for the authentication of the document. The use, in otherwords, is not desirable only. Furthermore, I seek to add that by the use of the phrase H

“or any similar documents” in sub-rule (2), it makes inclusive and without exception, a” forms of such related documents needing registration. As stipulated by sub-rule (3), the breach of non compliance with the rule will not render the document as void or of no authority but rather voidable and needing authentication.

B Put differently, the document in question is only capable of being affirmed and given a legal status if properly executed. The authentication of a voidable document IS predicated upon or subject to being validated.

C With reference to Braithwaite V. Skye Bank Plc (2013) 5 NWLR (Pt. 1346) 1 at 19, the processes in that case were not signed by a legal practitioner. It was contended on behalf of the appellant that the complaint was not raised timorously and that same should be treated as a mere irregularity as provided by the rules of the trial
D court. Fabiyi, JSC at page 19 of the report had this to say:-

“The rules of a court must be subject to the applicable Law
Legal Practitioners Act: sections 2(1) and 24, which mandate that
processes filed in court must be signed by a Legal Practitioner enrolled in this court. Rules of court must bow before the Legal Practitioners Act duly passed by the National Assembly: see Okafor V. Nweke
E (2007) 10 NWLR (Pt. 1043) 521 at 534.”

It is to be noted that what was in issue in that case which was also applicable in Okafor V. Nweke’s case was the dictate of a substantive law and not a mere compliance with court rues.
F

While the processes in those cases supra were declared as incompetent, same cannot be said in the- matter at hand. It only has to do with proper authentication upon fulfilment of a condition precedent. The refusal of the document by the registry is a sanction in
G itself and pending proper signature and affixing of stamp/seal as required by rule 10(1). The breach of the rule in my opinion should not be viewed as a substantive infraction but a mere irregularity which can be remedied.

In the result, while I dismiss the main appeal as well as the 1st
H Respondent’s cross appeal, I hereby allow the cross appeal by the 2nd Respondent. Parties are to bear their own costs accordingly.