

SUPREME COURT OF NIGERIA
11TH DECEMBER, 2015. SC. 86/2015
CORAM:- I. T. MUHAMMAD, M. S. MUNTAKA-
COOMASSIE, O. RHODES-VIVOUR,
C. B. OGUNBIYI, C. C. NWEZE, JJSC

1. HON. VICTOR ASSAMS
2. MRS. BEATRICE NKWO APPELLANTS
3. GODSON ONYEMAOBI
(for themselves and on behalf of all
the delegates who voted for the 2nd
defendant at the Imo State Gubernatorial
Primary Election held on 8/12/14
AND
1. SENATOR IFEANYI
GODWIN ARARUME
2. PEOPLES DEMOCRATIC PARTY
3. HON. CHUKWUEMEKA IKENNA
IHEDIOHA RESPONDENTS
4. INDEPENDENT NATIONAL
ELECTORAL COMMISSION

CONSTITUTIONAL LAW - Constitution - Interpretation - Where words used are clear and free from ambiguity - They should be given their natural meaning - Without any embellishment (H1)

APPEALS - Right of - Or with leave - Distinction - 1999 Constitution s. 243(1)(a) - A party can exercise right of appeal - While person having an interest can only exercise his right of appeal with leave (H2)

APPEALS - Leave - Application - Time frame - No period of time is prescribed within which interested party may apply for leave - But when leave is obtained - Appeal must be within time prescribed by CA Act s. 25 (H3)

APPEALS - Interested party - Leave - Failure to obtain - Appellants being interested parties ought to seek leave to appeal - And having

failed to do so - CA rightly struck out the appeal as incompetent (H4)

FAIR HEARING - Breach - Allegation of - A party must be heard before case against him is determined - And once he can satisfy court that his right to fair hearing was infringed - He is entitled to remedy (H5)

COURTS - Applications - Joint hearing - The procedure adopted by trial judge in hearing all applications jointly - Amounts to procedural expediency - Clearly within His Lordship's powers (H6)

FACTS

By an originating summons brought before the Federal High Court Holden at Abuja, plaintiff/1st respondent against 1st – 3rd defendants/2nd, 3rd and 4th respondents is asking for the determination of the following questions inter alia, whether from the totality of valid votes cast at the Special State Congress of 2nd respondent (Peoples Democratic Party) for nomination of its Governorship candidate for the 2015 gubernatorial election in Imo State, 1st respondent scored the highest votes cast and is entitled to be declared the winner of the primary election. If the Court answers the questions in affirmative, 1st respondent seeks inter alia, for a declaration that he secured the highest number of valid votes cast at the said 2nd respondent's primary election and should be nominated as its Governorship candidate for the 2015 general election.

Thereafter, appellants brought an application seeking to be joined in the matter. The Court ordered that the application for joinder would be heard with the substantive suit. Dissatisfied with the stance of the trial Judge's directive, appellants proceeded to the Court of Appeal on Appeal. Affidavits and further affidavit were filed in support of the application while counter-affidavits were filed in response. The Court of Appeal heard submission from counsel and ruled that since appellants are not parties to the suit but persons interested, they can only appeal if they had obtained leave to appeal. In its judgment, the appellate Court struck out the appeal for being incompetent since leave was not obtained before the appeal was filed by the appellants. Aggrieved, appellants appealed to the Supreme Court.

ISSUE FOR DETERMINATION

“Whether the Court of Appeal was right in holding that the Appellants’ appeal was incompetent for their failure to seek leave to appeal as interested parties.”

HELD (Unanimously dismissing the appeal per RHODES-VIVOUR JSC)

Constitution - Interpretation

1. Before I reproduce these sections of the Constitution, the well laid down position for the interpretation of the Constitution is that once the words used are clear and free from ambiguity they should be given their natural meaning without any embellishments. Provisions of the Constitution must always be interpreted to achieve the obvious ends for which the Constitution was promulgated. (p. 3640 D)

APPEALS - Right - With leave - Distinction

2. The simple interpretation of section 243 (1) (a) of the Constitution is that the section makes a distinction between “a party”, and “any person having an interest in the matter. A party can exercise right of appeal while any person having an interest in the matter can only exercise his right of appeal with the leave of the Federal High Court or the High Court or the Court of Appeal. (p. 3641 B)

APPEALS - Leave - Application - Time frame

3. No period of time is prescribed within which an interested party may bring an application for leave to appeal as a person with interest in the matter but when a party obtains leave to appeal as an interested party he must appeal within the time prescribed by section 25 of the Court of Appeal Act, 1976.

Where the interested party fails to appeal within the stated time he could regularise his appeal by an application for extension of time to appeal. (p. 3641 D)

APPEALS - Interested party - Leave - Failure to obtain

4. Applying the provisions of section 243 (1) (a) to the findings of the Court of Appeal on the Appellants incompetent appeal, I must say that:

The Appellants were never parties to the Originating Summons. They could only appeal as interested parties since they have an interest in the appeal. By the provisions of section 243 (1) (a), they ought to seek leave, i.e. permission to appeal. The Appellants did not obtain the requisite leave and so the Court of Appeal was correct to strike out the appeal as it was incompetent. (p. 3641 F)

FAIR HEARING - Breach - Allegation of

5. Audi Alteram Partem means please hear the other side. Natural Justice demands that a party must be heard before the case against him is determined. Despite overwhelming evidence of eating the forbidden fruit, the Lord Almighty still gave Adam a hearing before condemning him. See Genesis 3: 9 - 19. Once a party can satisfy the court that his right to fair hearing was infringed, he is entitled to a remedy. (p. 3642 C)

COURTS - Applications - Joint hearing

6. All that the learned trial judge did was to make it clear to counsel how the applications would be heard. All judges are masters of their courts. They have jurisdiction to adopt procedure that serves the ends of justice. Directing that all applications would be heard with the substantive application amounts to procedural expediency and there is nothing wrong with that procedure, if it will not amount to a denial of fair hearing or justice.

No counsel was shut out, and the court did not take a decision without hearing the party to be joined. The judge merely set the procedure by which the parties would be heard. The Appellants' were not denied fair hearing as the Record of Appeal is clear that the principles of justice and fair hearing were indeed upheld to the hilt by the learned trial judge.

Finally, the procedure adopted by the learned trial judge amounts to procedural expediency, clearly within His lord-

ship's powers. (p. 3642 E)

NOTABLE POINT OF INTEREST

RHODES-VIVOUR JSC

1. Right of appeal

Section 241 (1) of the Constitution states that:

“241(1) An appeal shall lie from decisions of the Federal High Court or a High Court to the Court of Appeal as of right in the following cases.

(a) final decisions in any civil or criminal proceedings before the Federal High Court or a High Court sitting at first instance;

(b) where the ground of appeal involves questions of law alone, decision in any civil or criminal proceedings;

(c) decisions in any civil or criminal proceedings on questions to the interpretation or application of this Constitution;...”

There can be no doubt that section 241 states clearly when appeals shall lie from decisions of the Federal High Court or a High Court to the Court of Appeal as of right. Section 241 is not applicable to the facts in this case. (p. 3640 E)

REPRESENTATION

K. Onuoha for the Appellants

S. A. Eigege for the 1st Respondent with him: A. A. Adegboyega

R. Isa for the 2nd Respondent

Chief E. I. Igboko for the 3rd Respondent with him: F. Molokwu and

C. O. Chukwumerije

CASES REFERRED TO

Chukwu v. INEC (2014) 10 NWLR (pt. 1415) 385

Contract Resources (Nig.) Ltd v. UBA PLC (2011) 16 NWLR (pt. 114) 592

Rabiu v. State (1981) 2 NCLR 293

Iroegbu v. Okwordu (1990) 8 NWLR (pt. 159) 643

Atanda v. Olarewaju (1988) 4 NWLR (pt. 89) 394

Akeredolu v. Akinremi (1986) 2 NWLR (pt. 25) 710

Unongo v. Aku (1983) 2 SCNLR 332

Kashadadi v. Noma (2007) 13 NWLR (pt. 1052) 510

- L.S.D.P.C. v. Dakur (1992) 11-12 SCNJ 217
 Ojukwu v. Govt. of Lagos State (1985) 2 NWLR (pt. 10) 806
 Funduk Eng. v. MacArthur (1990) 4 NWLR (pt. 143) 266
 Societe Generale Bank v. Afereko (1999) 7 SCNJ 171
 Ezeagu v. Ufuanya (1996) 7 NWLR (pt. 456) 226
 B Yusuf v. Adeyemi (2009) 15 NWLR (pt. 1165) 616
 Opekun v. Sadiq (2003) 5 NWLR (pt. 814) 475

STATUTES & RULES REFERRED TO

- C Constitution of the Federal Republic of Nigeria 1999, ss. 241, 243
 Court of Appeal Act 1976, s. 25

LEAD JUDGMENT BY RHODES-VIVOUR JSC

At the court of first instance, the Federal High Court, Abuja,
 D the 1st Respondent was the Plaintiff. He sued the 2nd, 3rd and 4th
 Respondents, as 1st, 2nd and 3rd Defendants by an Originating Sum-
 mons filed on the 15th day of December, 2014. He asked the court to
 determine the following questions:

E “1. *WHETHER from the total number of valid votes cast at*
the special State Congress of the 1st Defendant held at the Grasshop-
pers Stadium, Owerri, Imo State on 8th December, 2014 for the nomi-
nation of its Governorship candidate for the 2015 Imo State Gover-
norship Election as announced by its Electoral Committee, the Plain-
 F *tiff scored the highest number of valid votes cast and is entitled to be*
declared winner and have his name forwarded to the 3rd Defendant
as Governorship candidate of the 1st Defendant for Imo State having
regard to the provisions of section 87 (4) (b) (ii) of the Electoral Act
 G *2010 (as amended) and paragraph 19 (n) of the Electoral Guide-*
lines, 2014, of the Peoples Democratic Party.

H 2. *WHETHER from the total number of valid votes cast at the*
special State Congress of the 1st Defendant held at the Grasshoppers
Stadium, Owerri, Imo State on 8th December, 2014 for the nomi-
nation of its Governorship candidate for the 2015 Imo State Gover-
norship Election as announced by its Electoral Committee, the 2nd
Defendant scored the number of votes attributed to him by the Elec-
toral Committee of the 1st Defendant.

3. *WHETHER having regard to the provisions of section 87*
(4) (b) (ii) of the Electoral Act 2010 (as amended) and paragraph 19

(n) of the Electoral Guidelines, 2014 of the Peoples Democratic Party, the 2nd Defendant was validly declared winner of the 1st Defendant's Governorship Primaries conducted at the special State Congress of the 1st Defendant held at the Grasshopper Stadium, Owerri Imo State on 8th December 2014 for the nomination of its Governorship candidate for the 2015 Imo State Governorship Election when the 2nd B Defendant did not score the highest number of valid votes cast.

4. WHETHER having regards to the provisions of section 87 (4) (b) (ii) of the Electoral Act 2010 (as amended) and paragraph 19 (n) of the Electoral Guidelines, 2014 of the Peoples Democratic Party, C the 1st Defendant can validly submit the name of the 2nd Defendant as its Governorship candidate for the 2015 Governorship Election for Imo State when the 2nd Defendant did not score the highest number of valid votes cast at the special State Congress of the 1st Defendant held at the Grasshopper Stadium, Owerri, Imo State on 8th December, 2014 for the nomination of its Governorship candidate for the 2015 Imo State Governorship Election. D

The 1st respondent claimed the following, if the questions above are resolved in his favour.

"1. A DECLARATION that the Plaintiff scored the highest E number of valid votes cast at the 1st Defendant's Governorship Primaries conducted at the special State Congress of the 1st Defendant held at the Grasshoppers Stadium, Owerri Imo State on 8th December, 2014 for the nomination of its Governorship candidate for the F 2015 Imo State Governorship Election.

2. A DECLARATION that the Plaintiff is the winner of the 1st Defendant's Governorship Primaries conducted at the special State Congress of the 1st Defendant held at the Grasshoppers Stadium, Owerri, Imo State on 8th December 2014 for the nomination of its G Governorship candidate for the 2015 Imo State Governorship Election.

3. A DECLARATION that having won the 1st Defendant's Primaries conducted at the special State Congress of the 1st Defendant held at the Grasshoppers Stadium, Owerri, Imo State on 8th December 2014 for the nomination of its Governorship candidate, the plaintiff is entitled to have his name forwarded to the 3^d Defendant as Governorship candidate of the 1st Defendant for Imo State. H

4. A DECLARATION that the Plaintiff is the Governorship can-

didate of the 1st Defendant for the 2015 Imo State Governorship Election.

5. *AN ORDER of this Honourable Court restraining the 1st Defendant from forwarding or submitting the name of the 2nd Defendant as its Governorship candidate for the 2015 Governorship election for Imo State.*

6. *AN ORDER of this Honourable Court restraining the 2nd Defendant from parading himself as the Governorship candidate of the 1st Defendant for the 2015 Governorship election for Imo State.*

7. *AN ORDER of this Honourable Court restraining the 3^d Defendant from recognizing, accepting, treating the 2nd Defendant and/or publishing the name of the 2nd Defendant as the Governorship candidate of the 1st Defendant for the 2015 Governorship election for Imo State.*

8. *AN ORDER of mandatory injunction compelling the 1st Defendant to forward or submit the name of the Plaintiff to the 3^d Defendant as the Governorship candidate of the 1st Defendant for the 2015 Governorship election for Imo State.*

9. *AN ORDER of mandatory injunction compelling the 2nd Defendant to recognize, accept, treat and deal with the Plaintiff and/or publish the name of the Plaintiff as the Governorship candidate of the 1st Defendant for the 2015 Governorship election for Imo State.”*

The Appellants’ filed an application to be joined as co-defendants’ to the action. The Court ordered that the application for joinder would be heard with the substantive suit. Dissatisfied with the trial judge’s directive, the Appellants filed a Notice of Appeal on the 4th day of February 2015. On the 13th day of February 2015 the 1st Respondent filed a motion on Notice seeking the following orders:

“1. *AN ORDER of this Honourable Court for accelerated hearing and determination of this appeal.*

2. *AN ORDER of this Honourable Court invoking its powers under section 15 of the Court of Appeal Act Cap C 36, LPN2004, to hear and determine the entire suit in FHC/ABJ/CS/1012/2014 pending at the Federal High Court, Abuja Judicial Division, Coram A. R. Mohammed, J as if the proceedings had been instituted in this Honourable Court as of first instance.*

3. *AN ORDER of this Honourable Court directing a departure from the requirement of Order 18 of the Rules of this Honourable*

Court and setting down this Appeal for hearing orally, without filing briefs of argument.

4. And for such order or further orders as this Honourable Court may deem fit to make in the circumstances of the case.”

Affidavits, further affidavit were filed in support of the application while counter-affidavits were filed in response. The Court of Appeal heard submission from counsel and ruled that since the Appellants’ are not parties to the suit but persons interested, they can only appeal if they obtained leave to appeal. Concluding, the Court of Appeal struck out the appeal for being incompetent since leave was not obtained before the appeal was filed by the Appellants. This appeal is against that Ruling. Briefs of argument were filed and exchanged. The Appellants’ brief was filed on the 13th day of March 2015. Reply briefs to the 1st, 2nd and 3rd Respondents briefs were all filed on the 30th day of March, 2015. The 1st Respondent brief was filed on the 20th day of March, 2015, while the 2nd and 3rd Respondents’ briefs were filed on the 25th of March, 2015.

Learned counsel for the Appellants, Mr. K. Onuoha formulated a sole issue for determination. It reads:

“Whether the Court of Appeal was right in interpreting section 243 (1) (a) of the Constitution so as to deny the Appellants the right to exercise their right of appeal under section 241 of the Constitution, notwithstanding that their names are on the record of proceedings and they actively participated in the proceedings leading to the Appeal No: CA/A/21/2015.”

Learned counsel for the 1st Respondent, Mr. S.A. Eigege identified a sole issue for determination. It reads:

“Whether, in the entire circumstances of this case, the learned court below was right in striking out the Appellants’ appeal for being incompetent?”

Learned counsel for the 2nd Respondent, Mr. R. Isa also identified a sole issue for determination to wit:

“Whether the Appellants’ ought to have obtained the leave of the Federal High Court or Court of Appeal before appealing to the Court of Appeal.”

Learned counsel for the 3rd Respondent Chief E. I. Igbiko also identified a sole issue for determination. It reads:

“Whether the Court of Appeal was right in holding that the

Appellants' appeal was incompetent for their failure to seek leave to appeal as interested parties.”

In the formulation of issues by either the counsel or the court the underlining consideration is for the real complaint in the appeal to be identified. In this appeal the real issue or grievance of the Appellants' (interested parties) is how and when can interested parties appeal? The issues as presented by counsel are similar and ask the same question but it is only the issue formulated by the 3rd Respondent that identified the Appellants as interested parties and how such a party can appeal. I find the issue as spelt out cogent and devoid of prolixity. It captures the real complaint of the Appellants and it shall be considered in resolving this appeal.

At the hearing of the appeal on the 13th day of October, 2015 learned counsel for the Appellants' adopted his briefs and urged the court to allow the appeal.

Learned counsel for the 1st, 2nd and 3rd Respondents adopted their respective briefs and urged the court to dismiss the appeal.

The sole issue for consideration reads:

Whether the Court of Appeal was right in holding that the Appellants' appeal was incompetent for their failure to seek leave to appeal as interested parties.

The parties in the trial court were the 1st Respondent as plaintiff. The 2nd, 3rd and 4th Respondents were the 1st, 2nd and 3rd Defendants. The Appellants filed an application to be joined as co-defendants. Their reason being that they were delegates who voted for the 2nd Defendant at the Imo State PDP Gubernatorial Primary Election held on the 8th of December, 2014, and so they should be parties in the suit.

The learned trial judge decided that the application for joinder would be heard with the substantive suit. It was this decision that gave rise to the Appellants appeal. Before I address the sole issue it is important the status of the Appellants; is made clear. An interested party is a person who is not a party in a suit or to the decision on appeal. Any person who has interest in a case but is not a party is an interested party. See *Green v. Green* (1987) 2 NSCC p.1115 Re: *Madaki* (1996) 7 NWLR (pt. 459) p.153, *Chukwu v. INEC* (2014) 10 NWLR (pt. 1415) p. 385.

The issue in this suit is who won the Imo State Gubernatorial

Primaries held on the 8th day of December 2014? The 1st Respondent or the 3rd Respondent? The Appellants' claim to be delegates who voted for the 3rd Respondent at the said primaries. Their interest is involved and so the Appellants' are interested parties.

Now to the issue for determination

Learned counsel for the Appellants submitted that a party to an interlocutory civil proceedings can exercise a right of appeal even if he is not a party to the substantive suit. Reliance was placed on section 243(1) (a) of the Constitution. He urged this court to allow the appeal, and direct the Court of Appeal to hear and determine the Appellants' appeal on its merit.

Learned counsel for the 1st Respondent observed that the Appellants' being persons interested were obliged to seek the leave of either the trial court or the Court of Appeal before filing their appeal. Reliance was placed on *Gin v ACB INT'L Bank PLC* (2008) 3 NWLR (pt.1073) p.179.

Concluding, he submitted that the Court of Appeal was right in striking out the Appellants' appeal for being incompetent.

Learned counsel for the 2nd Respondent observed that a party interested can only exercise the right of appeal with leave of the trial court or of the Court of Appeal. He contended that the Court of Appeal was right to strike out the appeal for being incompetent because leave to appeal was never granted. Reliance was placed on *Contract Resources (Nig.) Ltd v UBA PLC* (2011) 16 NWLR (pt.114) p. 592.

Learned counsel for the 3rd Respondent made similar submissions with learned counsel for the 1st and 2nd Respondents, contending that since the Appellants failed to seek either the leave of the trial court or Court of Appeal to appeal as parties interested the Court of Appeal correctly held that the appeal is incompetent and struck it out.

The Court of Appeal in a considered judgment delivered on the 27th day of February, 2015 was correct when it said that:

"...the Appellants are not parties to the Originating Summons before the trial court. They only applied to be joined as parties to the action and have not been joined... the Appellants herein were neither the Plaintiff nor the defendant in the suit filed in the lower court. They are merely interested parties seeking to be joined as parties to

the suit.”

After explaining the status of the Appellants’ the Court of Appeal proceeded to say that:

“...*A person interested in a suit who is not a party to the original suit either as a Plaintiff or Defendant cannot launch an appeal in the nature of a party but must obtain the required leave of the court.*”

The Court of Appeal was right when it concluded as follows:

“*The Appellants’ did not obtain the leave as required by law. Their appeal is incompetent. I hold that there is no appeal before us.*”

I have read the briefs in detail, particularly the Appellants’ brief where he wants this court to give a broad and liberal construction to section 243 (1) (a) of the Constitution.

This appeal is easily resolved by examining the contents of sections 241 and 243 (1) (a) of the Constitution. ***Before I reproduce these sections of the Constitution, the well laid down position for the interpretation of the Constitution is that once the words used are clear and free from ambiguity they should be given their natural meaning without any embellishments. Provisions of the Constitution must always be interpreted to achieve the obvious ends for which the Constitution was promulgated.*** See *Rabiu v. State* (1981) 2 NCLR p. 293.

Section 241 (1) of the Constitution states that:

“*241(1) An appeal shall lie from decisions of the Federal High Court or a High Court to the Court of Appeal as of right in the following cases.*

(a) *final decisions in any civil or criminal proceedings before the Federal High Court or a High Court sitting at first instance;*

(b) *where the ground of appeal involves questions of law alone, decision in any civil or criminal proceedings;*

(c) *decisions in any civil or criminal proceedings on questions to the interpretation or application of this Constitution;...*”

There can be no doubt that section 241 states clearly when appeals shall lie from decisions of the Federal High Court or a High Court to the Court of Appeal as of right. Section 241 is not applicable to the facts in this case.

Section 243 (1) (a) of the Constitution states that:

“243 (1) Any right of appeal to the Court of Appeal from the decisions of the Federal High Court or High Court conferred by this Constitution shall be –

(a) exercisable in the case of civil proceeding at the instance of a party thereto or with the leave of the Federal High Court or High Court or the Court of Appeal at the instance of any person having an interest in the matter, ...”

The simple interpretation of section 243 (1) (a) of the Constitution is that the section makes a distinction between “a party”, and “any person having an interest in the matter. A party can exercise right of appeal while any person having an interest in the matter can only exercise his right of appeal with the leave of the Federal High Court or the High Court or the Court of Appeal.

No period of time is prescribed within which an interested party may bring an application for leave to appeal as a person with interest in the matter but when a party obtains leave to appeal as an interested party he must appeal within the time prescribed by section 25 of the Court of Appeal Act, 1976.

Where the interested party fails to appeal within the stated time he could regularise his appeal by an application for extension of time to appeal. See Iroegbu v. Okwordu (1990) 8 NWLR (pt. 159) p. 643, Atanda v. Olarewaju (1988) 4 NWLR (pt. 89) p. 394.

Applying the provisions of section 243 (1) (a) to the findings of the Court of Appeal on the Appellants incompetent appeal, I must say that:

The Appellants were never parties to the Originating Summons. They could only appeal as interested parties since they have an interest in the appeal. By the provisions of section 243 (1) (a), they ought to seek leave, i.e. permission to appeal. The Appellants did not obtain the requisite leave and so the Court of Appeal was correct to strike out the appeal as it was incompetent.

Before I conclude this judgment I must comment on the way and manner the learned trial judge handled the case and whether the Appellants who were not parties to the suit were denied fair hear-

ing.

Apart from the application for joinder filed by the appellants, an application on jurisdiction and a Preliminary Objection were also pending in the trial court. The learned trial judge ruled that all the pending applications would be taken along with the substantive suit.

B It is that decision that the Appellants were dissatisfied with and filed an incompetent appeal. The questions which arise are:

a. Were the Appellants denied fair hearing?

b. Was the learned trial judge correct in the procedure he followed?

C I shall take (a) and (b) together.

Audi Alteram Partem means please hear the other side.

Natural Justice demands that a party must be heard before the case against him is determined. Despite overwhelming evidence of eating the forbidden fruit, the Lord Almighty still gave Adam a hearing before condemning him. See Genesis 3: 9 - 19. Once a party can satisfy the court that his right to fair hearing was infringed, he is entitled to a remedy. See Akeredolu v. Akinremi (1986) 2 NWLR (pt. 25) p. 710, Unongo v. Aku (1983) 2 SCNLR p. 332.

All that the learned trial judge did was to make it clear to counsel how the applications would be heard. All judges are masters of their courts. They have jurisdiction to adopt procedure that serves the ends of justice. Directing that all applications would be heard with the substantive application amounts to procedural expediency and there is nothing wrong with that procedure, if it will not amount to a denial of fair hearing or justice.

No counsel was shut out, and the court did not take a decision without hearing the party to be joined. The judge merely set the procedure by which the parties would be heard. The Appellants' were not denied fair hearing as the Record of Appeal is clear that the principles of justice and fair hearing were indeed upheld to the hilt by the learned trial judge.

Finally, the procedure adopted by the learned trial judge amounts to procedural expediency, clearly within His lordship's powers.

In the light of all that I have been saying this appeal is dis-

missed with costs of N200,000 against the Appellants.

MUHAMMAD JSC

I had the privilege of reading in draft, the judgment just delivered by my learned brother, Rhodes-Vivour, JSC. I am in tandem with him that the appeal lacks merit and it should be dismissed. I too dismiss the appeal. I abide by the consequential orders made in the leading judgment.

MUNTAKA-COOMASSIE JSC

This action was commenced by way of originating summons instead of writ of summons. Application by the 1st Respondent for him to be joined as defendant was agreed to be heard together with other motions. Appellants objected to the position taken by the Federal High Court but the objection was overruled by the court.

The appellants then disagreed and appealed to the court of Appeal herein-called the lower court. The appeal by the appellants was struck out on the grounds that the appeal is incompetent because the appellant failed to seek and obtain the required leave to appeal as interested parties. The lower court on page 942 - 945 has this to say:-

The appellants herein were neither plaintiff nor the defendant in the suit filed in the lower court. They are merely interested parties, seeking to be joined as parties to the suit. The requirement of the law makes it mandatory for a person who is merely an interested party to seek the leave of the High Court or the Court of Appeal to file an appeal in the action.

Section 243 (a) of the Constitution of Federal Republic of Nigeria 1999 provides-

“243. Any right of appeal to the Court of Appeal from the decisions of the Federal High Court or a High Court conferred by this Constitution shall be-

(a) Exercisable in the case of civil proceedings at the instance of a party thereto, or with the leave of the Federal High Court or the High Court or the Court of Appeal at the instance of any other person having an interest in the Matter...”

As rightly captured by Mr. Onuoha, there is no doubt that an appeal which touches on the allegation of likelihood of breach of chapter IV of the Constitution, as in this appeal lies as of right to the Court of Appeal.

“241(1) An appeal shall lie from decisions of the Federal High Court or High Court to the Court of Appeal as of right in the following cases.

(d) Decisions in any civil or criminal proceedings on question as to whether any of the provisions of chapter IV of this Constitution has been, is being or is likely to be, contravened in relation to any person”.

*It is manifest from the provision, upon careful reading of Section 241 (1) (d) that the right of appeal is exercisable by “parties” to the action. Sections 241 and 243 of the Constitution deal with two different matters. While Section 241 generally deals with appeals as of right, S. 243 specifies who can exercise the said right of appeal. Where an interested party wishes to appeal against the decision of the High Court or Federal High Court, that party is obliged to obtain the leave of the Federal High Court or High Court as the case may be or the Court of Appeal prior to the hearing of the appeal. A “person interested in a suit, who is not a party to the original suit either as a plaintiff or defendant cannot launch an appeal in the nature of a party but must obtain the required leave of the court.” See *Contract Resources Nig. Ltd V. UBA LTD (2011) NWLR (PT. 1274) 592 at 606 - 607; Kashadadi V. Noma (2007) 13 NWLR (pt. 1052) 510 at 523. The appellants did not obtain the leave as required by law. Their appeal is incompetent. I hold that there is no appeal before us.**

The purported appeal filed by the appellants/respondents is hereby struck out. I had analyzed earlier that the 1st respondent’s motion is anchored on the appellant’s appeal. The motion dated 12/2/15 and filed on 13/2/15 by the respondent/applicant is therefore also incompetent. It is struck out.

In the avoidance of doubt, the conclusion I have reached is that the appeal is incompetent and is accordingly struck out. The motion filed on 13/2/15 is also struck out.”

It is therefore against the above decision of the lower court rendered on the 27th day of February 2015 that the appellants herein have appealed to this court.

In other-words being dissatisfied the appellants filed a notice of appeal containing two grounds of appeal, they are hereby reproduced hereunder without their respective particulars: -

Ground one

The Court of Appeal erred in law when it interpreted Section 243 (1) (a) of the Constitution of the Federal Republic of Nigeria, 1999 so as to deprive the appellants (who had participated in the interlocutory proceedings of the Federal High Court in suit No. FHC/ABJ/CS/1012/2014 the right to appeal as of right against the decision of the Federal High Court which would occasion violation of the appellants fundamental right to fair hearing guaranteed by Section 36 (1) of the Constitution of the Federal Republic of Nigeria, 1999. B
C

Ground two

The Court of Appeal erred in law when it held that appellants ought to have been joined as parties to substantive suit at the Federal High Court before they could exercise their right to appeal as of right to Court of Appeal under Section 241 (d) of the Constitution of the Federal Republic of Nigeria, 1999. D

The appellants' brief was settled by Kalu Onuoha Esq. It was filed on 13/3/15. The appellants formulated one single issue for the determination of this appeal thus:- E

1. Whether the Court of Appeal was right in interpreting Section 243 (1) (a) of the Constitution of the Federal Republic of Nigeria, 1999 as amended so as to deny the right to exercise their right of appeal under Section 241 of the Constitution notwithstanding that their names are on the record of proceedings and they actively participated in the proceedings leading to the appeal No. CA/A/21/2015. (Distilled from grounds 1 and 2 of the grounds of appeal) F

At the hearing of this appeal on 13/10/15 learned counsel for the parties adopted and relied on their respective brief of argument. G

Learned counsel for the appellant urged this court to resolve the appeal in their favour by allowing the appeal. While learned counsel for the respondents urged this honourable court to dismiss the appeal. H

ON LONE ISSUE

On the lone issue formulated by the appellants, leaned counsel for the appellants referred to the interpretation of Section 243 (1) (a) of the Constitution of the Federal Republic of Nigeria, 1999 as

amended and contended whether the lower court was right to deny the appellants the right to exercise their right of appeal under. S. 241 of the said Constitution as amended Section 243 (1) (a) says:-

“243. (1) *Any right of appeal to the Court of Appeal from the decisions of the Federal High Court or a High Court conferred by this Constitution shall be-*

(a) *Exercisable in the case of civil proceedings at the instance of a party thereto, or with the leave of the Federal High Court or the High Court or the Court of Appeal at the instance of any other person having an interest in the matter; and in the case of criminal proceedings at the instance of an accused person or, subject to the provisions of this constitution and any powers conferred upon the Attorney-General of the Federation or the Attorney-General of a State to take over and continue or to discontinue such proceedings, at the instance of such other authorities or persons as maybe prescribed;*

(b) *Exercised in accordance with any Act of the National Assembly and rules of court for the time being in force regulating the powers, practice and procedure of the Court of appeal”.*

It is also important to consider Sections 241 and 243 (1) (a) of the Constitution supra. Especially is this court by giving Constitutional words their natural meaning once the said words are clear and free from ambiguity. In any case the constitutional provisions must be interpreted to achieve the desired ends for which the constitution was promulgated for.

In *Rabiu V. State (1981) (1)* of the constitution established clearly when appeals shall lie from decisions of the Federal High Court or a High Court to the Court of Appeal as of right those provisions are inapplicable to the facts of the case at hand.

That was the decision of the Supreme Court. My learned brother in a nutshell held that the appeal before us deserved to be dismissed. I have considered his lordship’s reasons in dismissing this appeal. My lord Rhodes-Vivour JSC has correctly, in my view, arrived calmly in dismissing this appeal. I discovered that I cannot improve on it. I too therefore dismiss this appeal with N200,000 costs, against the appellants. I abide by the consequential orders made by my learned lord Rhodes-Vivour JSC.

OGUNBIYI JSC

I read in draft, the judgment just delivered by my learned brother Rhodes-Vivour, JSC and I agree that the appeal lacks merit and should be dismissed. Just for the purpose of emphasis, I wish to say a word or two.

The subject matter of the lone issue raised is hinged on the interpretation of sections 241 and 243(1)(a) of the Constitution. While the former enumerates situations where appeal can lie as of right to the Court of Appeal, the latter also restates the category of persons entitled to exercise the said right. The provision of section 243(1)(a) is hereby reproduced as follows:-

“243(1) Any right of appeal to the Court of Appeal from the decisions of the Federal High Court or High Court conferred by this constitution shall be -

(a) exercisable in the case of civil proceedings at the instance of a party thereto, or with the leave of the Federal High Court or High Court or the Court of Appeal at the instance of any person having an interest in the matter...”

The two categories of persons in the preceding provision who are predisposed of exercising the right of appeal are, the parties to the proceedings themselves whose interests are directly involved; and also those who, although not parties, have vested interest in the matter and are otherwise known as “Person Interested.” In other words, while parties can appeal as of right, persons interested can do so only with the leave of either the Federal High Court or High Court or the Court of Appeal as the case may be.

It is not in dispute that appellants were not parties to the original suit. If they were, the application would not have arisen in the first place. The contention held by appellants, if allowed to sustain, will overreach the constitutional provision as the grand norm. The Court of Appeal could not in the circumstance be faulted therefore, when it did not consider appellants as parties but interested persons who must first seek and obtain the required leave of the court.

My learned brother Rhodes-Vivour, JSC has adequately resolved the issue raised and I concur with his lead judgment that the appeal lacks merit and is dismissed. I also abide by the order made as to costs.

NWEZE JSC

My Lord, Rhodes-Vivour JSC, obliged me with the draft of the leading judgment just delivered now. I am, entirely, in agreement with His Lordship that this appeal is wholly, unmeritorious.

In the leading judgment, my Lord, applying section 243 (1) (a) of the Constitution of the Federal Republic of Nigeria (as amended) (1999 Constitution, for short), observed that the appellants were never parties to the Originating Summons. They could only appeal as interested parties since they have an interest in the appeal. I agree with this compelling conclusion. As I held in *Charles Odedo v PDP and Ors* (SC. 29/2015 delivered on June 5, 2015):

When the Draftsperson of the 1999 Constitution (as amended) speaks of ‘person having interest’ in the second clause of Section 243 (1) (a) (*supra*), he uses the phrase synonymously with the phrase a ‘person aggrieved’; that is, a person who has suffered a legal grievance, a person against whom a decision has been pronounced which has, wrongfully, deprived him or her of something or, wrongfully, refused him or her of something or wrongfully affected his or her title to something.

Such an aggrieved person includes a person who has a genuine grievance because an order has been made which, prejudicially, affects his interests, *L.S.D.P.C. v. Dakur* (1992) 11 - 12 SCNJ 217, 224; *Ojukwu v. Government of Lagos State* (1985) 2 NWLR (pt 10) 806; “K” Line Inc. v. K. R. INT’L (1993) 3 NWLR (pt 292) 159; *Funduk Eng v. MacArthur* (1990) 4 NWLR (pt 143) 266; *Society-General Bank v. Afereko* (1999) 7 SCNJ 171, 187; *Ezeagu v Ufuanya* (1996) 7 NWLR (pt 456) 226, 231; *Funduk v Madaki* (1996) 7 KLR (pt 43) 1319; *Yusuf v. Adeyemi* (2009) 15 NWLR (pt 1165) 616; *Opekun v. Sadiq* [2003] 5 NWLR (pt. 814) 475.

Unfortunately, the appellants herein, although persons having interest in the subject matter of this appeal, did not seek the requisite leave of court before their appeal; hence the lower court was right to have struck out their appeal as being incompetent.

It is for these, and the more detailed reasons in the leading judgment that I, too, shall dismiss this appeal. Appeal dismissed. I abide by the consequential orders in the said leading judgment.