

SUPREME COURT OF NIGERIA
FRIDAY 12TH FEBRUARY, 2016. SC. 9/2016
CORAM:- M. MOHAMMED, CJN, I. T. MUHAMMAD,
N. S. NGWUTA, K. B. AKA'AH, K. M. O. KEKERE-EKUN,
J. I. OKORO, A. SANUSI, JJSC

1. ADEGBOYEGA NASIR ISIAKA APPELLANTS
2. PEOPLES DEMOCRATIC PARTY
AND
1. SENATOR IBIKUNLE AMOSUN
2. ALL PROGRESSIVES CONGRESS RESPONDENTS
3. THE INDEPENDENT NATIONAL
ELECTORAL COMMISSION

APPEALS - Filing - Additional grounds - Such grounds must not be filed within 21 days prescribed for filing notice of appeal - As it is within discretion of court - To grant leave to argue the grounds (H1)

COURTS - Findings - Failure to appeal - Finding of court that is not appealed against - Is deemed to have been accepted by the parties (H2)

EVIDENCE - Interest - Admissibility - Exhibit P4275 is inadmissible by virtue of E.A. s. 67 - As same was prepared by PW9 who is not an expert but one with interest - Hence no weight can be attached to it (H3)

ELECTION PETITIONS - Non compliance - Evidence of PW1 to 7 on non compliance - Could only have affected 12 out of 1672 polling units - Which is not sufficient to nullify the election (H4)

FACTS

This election petition was filed at the Ogun State Governorship Election Petition Tribunal, challenging the election of defendant/ 1st respondent as the Executive Governor of the Ogun State. Petitioners/appellants seek inter alia for an order that the Governorship election of 11th April 2015 conducted by 3rd respondent was marred by corrupt practices and an order that 1st respondent was not duly

elected as he did not secure the majority of the lawful votes cast at the election. The matter in contention is that 3rd respondent conducted gubernatorial election for Ogun State on the 11th April 2015. 1st appellant, 1st respondent and some other persons were candidates for various political parties that contested for the election. At the end of the exercise, 3rd respondent declared 1st respondent as the winner for having secured the majority of the lawful votes cast at the election.

Dissatisfied with this declaration, appellants filed the petition. At the hearing of the petition, the parties presented their respective cases before the Tribunal. At the end of the hearing, the Tribunal disagreed with the contention of appellants that the election was marred by irregularities. The petition was therefore dismissed and the election of 1st respondent upheld. Aggrieved, appellants appealed to the Court of Appeal Ibadan Division. Appellants brought an application praying for leave to compile and transmit a supplementary record of appeal containing four additional grounds of appeal. They also sought for leave to argue the additional grounds of appeal before the Court. The application was opposed because it was filed at a time when the statutory 21 days to appeal had lapsed. The substantive appeal was taken together with the application to file and argue the additional grounds of appeal. In its judgment, the Court refused the application to file and argue the additional grounds before proceeding to dismiss the appeal. Dissatisfied, appellants appealed to the Supreme Court.

ISSUES FOR DETERMINATION

1. Whether the lower Court was right to refuse the Appellants to file application dated 20th November, 2015 to allow the additional grounds of appeal after the expiration of 21 days as provided by the Electoral Practice Direction 2011?

2. Whether the lower Court was right in law when it upheld the findings of the Tribunal that the evidence of PW 9 has no probative value?

3. Whether the lower court was on firm ground when it upheld the tribunal's finding that the Appellant failed to prove that the 1st Respondent's election was invalid due to substantial noncompliance with the law?

HELD

(Unanimously dismissing the appeal per

AKA'AH'S JSC)*APPEALS - Filing - Additional grounds*

1. It is not in doubt that by filing their Notice of Appeal on 10th November, 2015 against the judgment of the Tribunal delivered on 23rd October, 2015, the Notice of Appeal was filed within the 21 days limit prescribed in the Practice Directive issued by the Hon. President of the Court of Appeal. What is in contention is whether the additional grounds must be filed within the 21 days stipulated for the filing of the Notice. I have read through the decisions in C.P.C. v INEC (2011) 18 NWLR - 19-1279) 493; and in none of those cases did this Court make a definite pronouncement that the additional grounds must be filed within the 21 days prescribed for filing the Notice of appeal. I think the lower court was wrong to hold that allowing the Appellants to file the additional grounds of appeal after the statutory time limit for appealing against the judgment of the Election Tribunal amounts to granting an extension of time to file Notice and grounds of appeal. It is within the discretion of the court to grant leave to argue the additional grounds once there is a subsisting valid notice of appeal.

The lower court had the discretion to refuse the appellant leave to argue the additional grounds since the only reason advanced by learned counsel for wanting to argue the additional grounds was the holistic view it took of the file. The refusal by the lower court to allow the appellants argue the additional grounds did not lead to denial of justice since the appeal was considered on its merit. (p. 1127 G)

COURTS - Findings - Failure to appeal

2. It is also a position of the law that a finding of Court that is not appealed against is deemed to have been accepted by the parties. Out of the 12 findings of fact of the Tribunal which were upheld by the Court below, the Appellants only appealed against three.

The following findings of fact by the Tribunal and the Court

below have not been appealed against:

(a) Exhibit P4275 is not the sole effort of PW 9 because he only participated in the inspection of four out of ten times and although he signed Exhibit P4275 there was no indication of the capacity in which he did so and no specifics as to which team member did what and no other team member testified (See p. 2938 Vol. 4 of the records).

(b) PW 9 admitted under cross-examination that Exhibit P4275 was riddled with inconsistencies (See pages 2938 - 2941 Vol. 4 of the record).

(c) Some of the Exhibits P 1 - P4271 could not have been properly identified by PW 9 when they were all the time sealed envelopes and were never opened by his team (see page 2942 of the record).

(d) The petitioner who claimed to have the highest number of votes did not plead and give evidence of what the highest number of votes he is claiming is his. (page 2944 - 2947).

From these findings, the appeal was bound to fail.

(p. 1130 B)

EVIDENCE - Admissibility

3. The appellants have argued that PW 9 is not a person interested as described under section 83(3) of the Evidence Act 2011 so as to make a case for wrongful rejection of evidence by the Tribunal.

The evidence of PW 9 extracted under cross-examination is clear, unambiguous and lends nothing to the imagination. He gave clear and direct evidence of his interest in the success of the petition. He stated his strong support for his Party (PDP) who is the 2nd Appellant since he is a card carrying member and his desire to see the Petitioners (now appellants) win at the lower tribunal.

Having testified that he had held political appointments when his party was in power in Ogun State and could very well have been appointed to a post if his party won the election, PW 9's interest in the success of the appellants at the lower court is very clear. The Court below was therefore right when it upheld the Tribunal's finding that PW 9 had his purpose to serve

when it held as follows:-

“Surely PW 9 had an incentive as a person who had much to benefit being a member of the 2nd Appellant’s party to misrepresent facts or conceal them. This is the paramount consideration in estimating the admissibility of his evidence”.

Using this evidence elicited from PW 9 as a hanger to ascertain the weight to attach to Exhibit P 4275 the Court below held that the evidence of PW9 and Exhibit P 4275 were worthless. B

Apart from Exhibit P 4275 being inadmissible by virtue of section 67 of the Evidence Act as same was prepared by PW 9 who is not an expert, no weight could be attached to it because it was riddled with inconsistencies. Both the Tribunal and the Court below made concurrent findings of fact which were not perverse. The appeal was bound to fail. It is on account of these reasons that I dismissed the appeal on 27th January, 2016 and affirmed the declaration and return of Senator Ibikunle Amosun as the duly elected Governor of Ogun State in the Gubernatorial Election held on 11th April, 2015. (pp. 1130 G/1132 C/1133 C) D E

ELECTION PETITIONS - Non compliance

4. One startling aspect of this case is that none of the people such as party agents or polling officers who participated in the conduct of the election in all the places where the election were contested, testified in respect of all the documents used by PW 9 and his colleagues in arriving at their report. Only PW1-PW 7 gave evidence in respect of what they observed during the election and they were the only eye witnesses whose testimony was limited to 12 polling units out of the 1672 polling units spread across nine Local Government Areas of the State. Giving the nature of evidence adduced by PW 9 there is no way where it can be said that the case of the appellants was made out in respect of the 9 Local Government Areas in contention since nobody who was a direct participant in the election gave evidence linking the mass of documents used by PW 9 in preparing his report. The court below was therefore right when it held relying on OKE v. MIMIKO F G H

(NO. 2) (2014) 1 NWLR (Pt. 1388) 225 at 400 - 401 that all the documents put forward in Exhibit P 4275 are nothing but a bundle of primary and secondary hearsay. Even if PW 1 - PW 7 succeeded in establishing that the Gubernatorial election conducted by the 3rd and 4th respondent in Ogun State on the 11th April, 2015 was characterized by non-compliance with the provisions of the Electoral Act, the evidence affected only 12 polling units out of 1672 polling units that were being contested. That is not sufficient to nullify the election and return of the 1st respondent as the duly elected Governor of Ogun State. (p. 1132 D)

REPRESENTATION

A. M. Kotoye with him; Ayodeji Enisemijin for the appellant
 Prince L. O. Fagbemi, SAN with him; John Olusola Baiyeshea, SAN;
 Seun Ajayi; A. O. Popoola; A. F. Yusuf; O. Ibitoye; Otemghanabun Ebose; J. O. Anderson Achike (Mrs.); M. A. Adelogun; Thomas Ojo; Kehinde Oqunlarr.r; S. O. Owonikoko Lamina (Mrs.); O. T. Olujide-Poko; C. U. Mogbalu (Miss.) and K. K. Bello (Miss.) for the 1st respondent. George Oyeniyi for the 2nd respondent
 Seni Adio with him; M. A. Omisore and Akinwunmi Ogunranti for the 3rd respondent

CASES REFERRED TO

Jalico Ltd. v. Owoniboy Tech. Serv. Ltd. (1995) 4 NWLR (pt. 391) 534
 C.P.C. v. INEC (2011) 18 NWLR (pt. 19-1279) 493
 P.P.A. v. INEC (2012) 13 NWLR (pt. 1317) 215
 Ngige v. INEC (2015) 1 NWLR (pt. 1440) 281
 Omidiran v. Etteh (2011) 2 NWLR (pt. 1232) 471
 Djo v. Anibire (2004) 10 NWLR (pt. 882) 577
 Tabik Invest. Ltd. v. G. T. Bank Plc. (2011) LPELR - 3131 (SC)
 Inunze v. FRN (2014) LPELR - 2224 (SC)
 Onochie v. Odogwu (2006) 6 NWLR (pt. 975) 65
 Amokedo v. IGP (1999) 5 SCNJ 71

STATUTES REFERRED TO

Election Tribunal Practice Directions 2011, s. 6

Electoral Act 2010 (as amended), s. 139(1)

Evidence Act, s. 67

Constitution of the Federal Republic of Nigeria 1999 (as amended), s. 285(1)(7)

LEAD JUDGMENT BY AKA'AHs JSC

B

On 27th January, 2016, this appeal was heard and I dismissed it as devoid of merits and reserved my reasons for doing so to today. I now proceed to give my reasons for dismissing the appeal.

On 11th April, 2015 the 3rd Respondent conducted election for the office of the Governor of Ogun State. Among the contestants were the 1st Appellant who was sponsored by the 2nd Appellant whilst the 1st Respondent was sponsored by the 2nd Respondent. The result of the election was declared on 12th April, 2015 by the 3rd Respondent and the 1st Respondent was credited as having scored 306,988 votes whilst the 1st Petitioner/Appellant was credited with 201,440 votes. The 1st Respondent was therefore returned as the duly elected Governor of Ogun State. Dissatisfied with this declaration, the appellants filed a joint petition on 30th April, 2015 before the Ogun State Governorship Election Petition Tribunal questioning the conduct of the election and the results declared and prayed the Tribunal to grant the following reliefs in paragraph 20 of the Petition:

“20. WHEREOF your humble Petitioners pray this Honourable Tribunal for the following reliefs:

1. An order that the Governorship election of 11th April, 2015 conducted by the 3rd (INEC) and 4th (REC Ogun State) Respondents, was marred by malpractices, fraud, corrupt practices and outright rigging.

2. AN order that the 1st Respondent herein (Senator Ibikunle Amosun) was not duly elected and did not score the lawful majority votes cast at the April 11th, 2015 gubernatorial election in Ogun State and ought not to have been returned by the 3rd and 4th Respondents.

3. AN ORDER that the total number of lawful votes cast at the 11th April, 2015 Governorship election in Ogun State were for the Petitioners and the 1st Petitioner ought to have been returned by the 3rd and 4th respondents.

4. AN ORDER that the votes allegedly scored or credited to 1st

and 2nd respondents in Ifo, Abeokuta South, Abeokuta North, Odeda, Ewekoro, Obafemi Owode, Ado Odo/Ota, Sagamu and Remo North Local Government Areas of Ogun State are invalid on ground of malpractices, corrupt practices, fraud ballot snatching, ballot stuffing and outright rigging.

B *5. AN ORDER that the Governorship election of 11th April, 2015 in Ogun State suffers non-compliance with the Electoral Act, 2010 (as amended).*

C *6. AN ORDER declaring the 1st Petitioner as the winner of 11th April, 2015 Governorship election in Ogun State having scored the highest number of lawful valid votes of the total votes cast at the said election.*

D *7. AN ORDER compelling the 3rd and 4th Respondents herein to present to the 1st Petitioner certificate of return as the validly and lawfully elected Governor of Ogun State in April 11, 2015 Governorship election.*

The grounds upon which the petition was based are contained in paragraph 9 of the petition as follows:

E *"9(a) The election was marred by electoral malpractices such as rigging, snatching of ballot boxes, thuggery, violence, declaration of false results, falsification and forgery of result sheets, importation of voters from a foreign location, stuffing of ballot boxes with ballot papers, misuse of card readers and permanent voters cards (pvc).*

F *(b) The conduct of the election was characterised by manifested act of bias, nepotism and favouritism to the benefit of 1st and 2nd Respondents on the part of the 3rd to 128th Respondents who were supposed to be neutral and fair to all the contestants.*

G *(c) The Gubernatorial election conducted by the 3rd and 4th respondents in Ogun State on the 11th April, 2015 was characterised by non compliance with the provision of Electoral Act.*

(d) Votes were cast at an unauthorised, illegal and secret polling unit and voting points.

H *(e) That the 1st Respondent (Senator Ibikunle Amosun) was not duly elected by majority of lawful votes cast at the 11th April, 2015 Gubernatorial Election in Ogun State.*

(f) The elections conducted in Abeokuta South, Abeokuta North, Odeda, Ewekoro, Ifo, Obafemi Owode, Ado Odo/Ota, Sagamu and Remo North Local Government Areas of Ogun State

were invalid by reason of corrupt practices by the 1st Respondent.

(g) Unlawful and illicit use of incident forms in lieu of card readers contrary to the 3rd Respondent Guidelines on the conduct of the April, 11th, Gubernatorial Election in Ogun State.

(h) Voting without accreditation, non use of card readers and the incidence forms which is against the 3^d Respondent Guidelines. B

(i) That the 1st Respondent was not validly returned as the person duly elected in the Gubernatorial Election of Ogun State held on the 11th April, 2015."

All the respondents filed their replies to the petition and joined C issues with the Petitioners/Appellants on the allegations made. The hearing commenced on the 10th day of August, 2015. The Petitioners called a total of 9 (nine) witnesses. PW 1- 7 gave evidence in respect of 12 polling units out of 1672 polling units which made up the 9 Local Government Areas where the irregularities and acts of D non-compliance with the provision of the Electoral Act were alleged to have taken place. PW 8 who is a staff of the 3rd Respondent was subpoenaed to tender certified true copies of the voters register, incident forms, result sheets, forms EC8A, EC8B, EC8C as well as the original ballot papers used in the conduct of the election in the 9 E Local Government Areas under contention while PW 9 who was the Star witness tendered Exhibit P 4275 which is the report of an inspection exercise carried out by a team of inspectors led by him on the electoral documents which had been tendered by PW 8. It is F pertinent to note that PW 9 admitted under cross-examination that he did not play any role on the date of the election. The evidence of PW 9 was to cover 1672 polling units in respect of an election which he admitted he played no role. It was for this reason that the Tribunal found at pages 2640 - 2641 of the record that: G

"Although the Petitioners alleged that several irregularities and acts of non-compliance with the provisions of the Electoral Act 2010 as amended took place in all the polling units in the nine Local Government Areas in dispute, they led oral evidence only in respect of 12 polling units". H

The 1st Respondent called four witnesses namely RW1 - RW4 and also tendered Exhibits R1 and R2. The 2nd Respondent did not adduce oral evidence but tendered Exhibits R3 and R4. The 3rd Respondent neither testified nor tendered any exhibits. The parties

thereafter upon conclusion of the hearing of the petition exchanged written addresses. On 23rd October, 2015 the Tribunal delivered its judgment dismissing the petition.

Not satisfied with the judgment, the appellants filed their Notice of Appeal on 10th November, 2015 containing 8 grounds of appeal. On 20th November, 2015 the appellants filed an application praying for leave to compile and transmit a supplementary record of appeal containing four additional grounds of appeal. They also sought for leave to argue the additional grounds of appeal before the Court of Appeal (See pages 2701 - 2712 of Vol. 4 of the Record). The application was opposed because it was filed at a time when the statutory 21 days to appeal had lapsed. The substantive appeal was taken together with the application to file and argue the additional grounds of appeal. On 17th December, 2015 the Court of Appeal delivered its judgment refusing the application to file and argue the additional grounds before proceeding to dismiss the appeal.

The appellants were not satisfied with the judgment of the Court of Appeal and decided to appeal by filing their Notice of Appeal on 29th December, 2015 containing 9 grounds. Four issues were formulated for determination as follows:

1. Was the Court below right in its Ruling refusing the Appellants' Motion on Notice filed on 20th November, 2015 for leave to raise, file and argue additional grounds of appeal further to their Notice of Appeal filed on 10th November, 2015 when it held: that the said application was one praying for an extension of time to file Notice and grounds of appeal which was not permitted by the Electoral Act and the Practice Directions 2011? (Grounds 1, 2 and 3 of the Notice of Appeal)

2. Was the Court below right when it refused the Appellants' application filed on 20th November, 2015, for leave to raise, file and argue additional grounds further to their originating Notice of Appeal filed on 10th November, 2015 when it held that it was incompetent that it constitute a breach of the provision of Order 6 Rule 4 of the Court of Appeal Rules 2009 requiring prayer for leave to amend under such circumstance? Ground 4 of the Notice of Appeal)

3. On the facts of this case, was the Court below right to hold that the evidence of Appellants' witness, one Benjamin Ibikunle (PW 9) and the Report of Inspection tendered by him - (Exhibit 4275)

were not receivable being evidence by a person interested in the proceeding and that the said Report was evidence of opinion by none expert? (Ground 5, 6, 7 and 8 of the Notice of Appeal)

4. Was the Court below right to hold that Exhibits P 1 -P4271 had no probative value but were dumped on the Tribunal as Appellants said witness - one Benjamin Ibikunle (PW 9) was not present B at the Polling units and was also not the maker of the said Exhibits P 1 - P4271? (Ground 9 of the Notice of Appeal)

The 1st Respondent formulated three Issues for determination of the appeal. The issues are:-

1. Having regard to the extant laws and Practice Directions C relating to election matters, was the Court of Appeal in error in refusing to grant the application of the Appellants to file and argue additional grounds of appeal after the statutory time limit for filing grounds of appeal had lapsed. Ground 1, 2, 3 and 4

2. Whether having regard to the concurrent judgments of the D courts below and unchallenged findings of fact, Appellants have presented cogent materials for this Court to set aside the decision of the Court of Appeal on PW 9 and Exhibit P4275 in order to consider whether the Petitioners/Appellants proved their case as required by E law. Grounds 5, 6, 7 and 8

3. Whether Exhibits P1 - P4271 can be accorded any proba- F tive value in the face of the reality of the fact that the makers were not called to testify and PW 9 who admitted not playing any role at the election was not the maker of the documents and not present at the polling units. Ground 9

The 2nd Respondent raised two Issues for determination and they are:-

1. Whether considering the facts and circumstances of the case G the lower Court was right in its Ruling refusing the Appellants' Motion on Notice filed on 20th November, 2015 praying inter-alia for leave to raise, file and argue additional grounds of appeal. (Issue distilled from Ground 1, 2, 3 and 4 of the Notice of Appeal)

2. Whether the lower court was correct to hold that the testi- H mony of PW 9 (Benjamin Ibikunle) including the Report of Inspection tendered and admitted as Exhibit P4275 were not receivable having regard to the entire circumstances of the petition as proved. (Issue distilled from Grounds 5, 6, 7 and 8 of the Notice of Appeal)

The 3rd Respondent submitted three issues for determination as follows:

1. Whether the lower Court was right to refuse the Appellants to file application dated 20th November, 2015 to allow the additional grounds of appeal after the expiration of 21 days as provided by the Electoral Practice Direction 2011?

2. Whether the lower Court was right in law when it upheld the findings of the Tribunal that the evidence of PW 9 has no probative value?

3. Whether the lower court was on firm ground when it upheld the tribunal's finding that the Appellant failed to prove that the 1st Respondent's election was invalid due to substantial noncompliance with the law?

The Appellants filed a Reply Brief In answer, to the arguments contained in the briefs of the three respondents. They observed that the 1st and 3rd respondents' issues are similar in nature and content but went ahead to contend that the 3rd respondent's brief be discounted for being incompetent as they are not tied to any ground of appeal. This is strange and novel submission. If the issues in the 3rd respondent's brief are similar in nature and content to the ones in 1st respondent's brief and the 1st respondent's brief is competent, it is not the tying of the issues to the grounds that would render the issues competent but rather the fact that the issues relate to what is decided in the case that gave rise to the ground complained of in the Notice of Appeal. See: *JALICO LTD. v. OWONIBOYS TECH. SERVICE LTD.* (1995) 4 NWLR (pt. 391) 534. Afortiori since the 1st respondent's issues are competent because they relate to the grounds of appeal filed, those of 3rd respondent which are similar in nature and content must be taken as being competent. I prefer the issues formulated in 3rd Respondent's brief because they are clear and succinct and they have addressed the main issues in the appeal.

Learned Counsel for the Appellants argued issues 1 and 2 together. Learned Counsel referred to the ruling of the lower court and submitted that a competent and valid notice of appeal was filed on 10th November, 2015, consequently the court ought to have exercised its discretion in favour of the appellant by granting the application filed on 30th November, 2015 in which the appellants sought to raise and argue additional grounds of appeal.

Section 285(7) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) provides as follows:-

“An appeal from the decision of an election tribunal or Court of Appeal in an election matter shall be heard and disposed of within 60 days from the date of delivery of judgment of the tribunal or Court of Appeal.” B

Section 6 of the Election Tribunal Practice Directions, 2011 which the Hon. President made pursuant to sections 243 and 285 of the Constitution of the Federal Republic of Nigeria, 1999 and section 145 of the Electoral Act 2010 stipulates that:-

“The Appellant shall file in the Registry of the Tribunal his notice and grounds of appeal within 21 days from the date of the decision appealed against”. C

Paragraph 55 of the 1st Schedule to the Electoral Act 2010 as amended also states:-

“Subject to the provisions of this Act, an appeal to the Court of Appeal or to the Supreme Court shall be determined in accordance with the Practice and procedure relating to civil appeals in the Court of Appeal or of the Supreme Court, as the case may be, regard being had to the need for urgency on election matters”. (underlining mine for emphasis). D E

Learned Counsel for the 1st Respondent submitted that under the present legal order in election matters, filing of additional grounds of appeal outside the number of days permitted by statute to file an appeal is clearly an aberration notwithstanding how competent the initial notice and grounds of appeal are. He argued that a simple arithmetical calculation of the interval between when the decision of the Tribunal was handed down and the 20th of November, 2015 when the Appellants purportedly filed their additional grounds of appeal shows unequivocally that those grounds were filed outside the 21 days period permitted by law hence the Court cannot countenance them. F G

It is not in doubt that by filing their Notice of Appeal on 10th November, 2015 against the judgment of the Tribunal delivered on 23rd October, 2015, the Notice of Appeal was filed within the 21 days limit prescribed in the Practice Directive issued by the Hon. President of the Court of Appeal. What is in contention is whether the additional grounds must be filed H

- within the 21 days stipulated for the filing of the Notice. I have read through the decisions in C.P.C. v INEC (2011) 18 NWLR - 19-1279) 493; P.P.A. v. INEC (2012) 13 NWLR (Pt. 1317) 215 and NGIGE v. INEC (2015) 1 NWLR (Pt. 1440) 281 and in none of those cases did this Court make a definite pronouncement that the additional grounds must be filed within the 21 days prescribed for filing the Notice of appeal. I think the lower court was wrong to hold that allowing the Appellants to file the additional grounds of appeal after the statutory time limit for appealing against the judgment of the Election Tribunal amounts to granting an extension of time to file Notice and grounds of appeal. It is within the discretion of the court to grant leave to argue the additional grounds once there is a subsisting valid notice of appeal.***
- The lower court had the discretion to refuse the appellant leave to argue the additional grounds since the only reason advanced by learned counsel for wanting to argue the additional grounds was the holistic view it took of the file. The refusal by the lower court to allow the appellants argue the additional grounds did not lead to denial of justice since the appeal was considered on its merit.***

Issues 3 and 4 were also argued together. These issues relate to the crux of the petition and the appeal. Learned Counsel for the appellants referred to the Statement on Oath of PW 9 and Exhibit P.4275 (the report of the Inspection). He said PW 9 gave evidence of the said inspection and was cross examined by the Respondents. He argued that the evidence elicited from PW 9 under cross-examination did not show any personal interest or something he would personally gain by testifying on behalf of the appellants. He said the content of Exhibit P 4275 is the totality of the facts of what PW 9 and other members of the team saw or observed during the inspection permitted by the Tribunal. He therefore did not have any interest to serve despite being a member of the PDP and was not a person interested in the outcome of the petition. He contended that since Exhibit P 4275 was made pursuant to an Order of the Tribunal permitting inspection of electoral materials kept by 3rd Respondent at its Abeokuta Office it contained facts relevant to the facts in issue between the parties and was therefore admissible. He argued that the

appellants' evidence through PW 9 in respect of voters register non-compliance and remarks/comments contained in Exhibit P 4275 was not opinion but notes/the accounts of what appellants team of inspectors led by PW 9 saw in the documents inspected. He submitted by placing reliance on OMIDIRAN v. ETTEH (2011) 2 NWLR (Pt. 1232) 471 that where the Tribunal ordered inspection of electoral materials it stands to reason that any report prepared pursuant to the inspection should be admissible otherwise the order of the court would have been rendered useless. He argued that throughout the course of the cross-examination of PW 9 by Counsel to the 1st, 2nd and 3rd respondents no question was put to PW 9 on his evidence of non-accreditation at the Polling units of the nine (9) Local Government Areas in dispute and Hassan Olajide who testified as RW 1 for 1st Respondent admitted under cross examination that his name was not ticked in the box marked GHA relevant to the Governorship Election. He said that the Court below agreed with the Tribunal's finding that Exhibit P 4275 was riddled with inconsistencies and discrepancies as there were errors/omission in recording the votes contained in the relevant polling units and in recording the number of such electoral wards. He then submitted that these errors contained in Exhibit P 4275 not related to the complaints of non-accreditation and wrong/unlawful use of Incident Forms do not support the conclusion reached by the court below leading to the rejection of Exhibit P 4275. He argued that no contrary evidence was presented to impugn Exhibit P 4275 and submitted that the rejection of Exhibit P 4275 is not borne out by the evidence on record and should be reviewed.

The respondents have drawn attention to the fact that this instant appeal is against the concurrent judgments of the two courts below which dismissed the petition and the appeal thereon as lacking in merit.

Furthermore, crucial findings were made by the Tribunal and affirmed by the Court below which have not been challenged by the appellants. It was therefore submitted and I entirely agree that where there are concurrent findings of two lower courts, this Court will hardly interfere in such findings unless same is perverse.

The appellants in the circumstance of this case have a Herculean hurdle to cross. In *Djo v. ANIBIRE* (2004) 10 NWLR (Pt. 882) 577,

UWAIFO JSC stated the position of the law at p. 585 thus:-

"It is, of course, also settled that the onus lies on an appellant to show that there are special circumstances to warrant interference by this court with concurrent findings of fact, of the two courts below. The burden must be clearly discharged otherwise the Supreme Court
 B *will not re-open those facts for re-evaluation"*.

It is also a position of the law that a finding of Court that is not appealed against is deemed to have been accepted by the parties. See: C.P.C. v. INEC (2011) 18 NWLR (Pt. 1279) 493.
 C ***Out of the 12 findings of fact of the Tribunal which were upheld by the Court below, the Appellants only appealed against three.***

The following findings of fact by the Tribunal and the Court below have not been appealed against:

D (a) ***Exhibit P4275 is not the sole effort of PW 9 because he only participated in the inspection of four out of ten times and although he signed Exhibit P4275 there was no indication of the capacity in which he did so and no specifics as to which team member did what and no other team member testified***
 E ***(See p. 2938 Vol. 4 of the records).***

(b) ***PW 9 admitted under cross-examination that Exhibit P4275 was riddled with inconsistencies (See pages 2938 - 2941 Vol. 4 of the record).***

F (c) ***Some of the Exhibits P 1 - P4271 could not have been properly identified by PW 9 when they were all the time sealed envelopes and were never opened by his team (see page 2942 of the record).***

G (d) ***The petitioner who claimed to have the highest number of votes did not plead and give evidence of what the highest number of votes he is claiming is his. (page 2944 - 2947).***

From these findings, the appeal was bound to fail.

The appellants have argued that PW 9 is not a person interested as described under section 83(3) of the Evidence
 H ***Act 2011 so as to make a case for wrongful rejection of evidence by the Tribunal.***

The evidence of PW 9 extracted under cross-examination is clear, unambiguous and lends nothing to the imagination. He gave clear and direct evidence of his interest in the

success of the petition. He stated his strong support for his Party (PDP) who is the 2nd Appellant since he is a card carrying member and his desire to see the Petitioners (now appellants) win at the lower tribunal. This is what he said under cross-examination at page 2220 of the records:-

"I am from Imeko. I did not play any role on the day of the election. PDP won the election in my Polling Unit. I should not have lost it because I am staunch supporter of PDP. I campaigned and mobilised the people in support of PDP. I did my best for my party at all levels of the election. I believe it would be sad for my party to lose the election. No sacrifice will be too much to make for my party either before or after the election".

If this is not the evidence of a person interested, I do not know what such evidence can be termed.

Having testified that he had held political appointments when his party was in power in Ogun State and could very well have been appointed to a post if his party won the election, PW 9's interest in the success of the appellants at the lower court is very clear. The Court below was therefore right when it upheld the Tribunal's finding that PW 9 had his purpose to serve when it held as follows:-

"Surely PW 9 had an incentive as a person who had much to benefit being a member of the 2nd Appellant's party to misrepresent facts or conceal them. This is the paramount consideration in estimating the admissibility of his evidence".

The Court below had to consider the evidence of PW 9 before assessing the weight it should place on Exhibit P 4275. Here is what he is recorded to have said at pages 2938 - 2940 of the record:-

"I agree that my report contains inconsistencies but they are not substantial enough. All these errors were the aspect of the work done by my colleagues in Exhibit P4270, it is clear that 16 political parties took part in the election in question. It is true that my report dealt with only two political parties. Although I stated in Exhibit P4275 at page 82 that the results for Atan Ward are missing, Exhibit P 2078 to P 2097 are. for Atan Ward, which I identified. It is true that the result sheets, Exhibit P 2016 - P2077 and P 2224 - P22 for Wards 3, 4, 5 and 14 in Ado Odo-Ota Local Government Area are not covered by my Report, Exhibit P4275. In Exhibit P4275 at page 32 -

33, it is true that I failed to supply any information about accredited voters from card reader in the 13 polling units. It is true that the accredited voters from card reader in the 13 polling units are in Exhibit P4275 items 210 - 225. At pages 32 and 33, it is clear that Exhibit P4275 covers 13 polling units in Ward 16 of Abeokuta North
B Local Government Area. There are 15 wards in Abeokuta South Local Government Area. Pages 34 - 65 of Exhibit P4275 covers only 14 wards. Exhibit P4275 page 172 shows that we covered 10 polling units, but Exhibits P 1161 to P 1779 show that there are 19 polling units in Isheri Ward in Afo Local Government Area. Exhibit P 2589 is
C OOLG School Orimerunmuse polling unit. It is not contained in Exhibit P4275”.

**Using this evidence elicited from PW 9 as a hanger to ascertain the weight to attach to Exhibit P 4275 the Court below held that the evidence of PW9 and Exhibit P 4275 were
D worthless.**

**One startling aspect of this case is that none of the people such as party agents or polling officers who participated in the conduct of the election in all the places where the elec-
E tion were contested, testified in respect of all the documents used by PW 9 and his colleagues in arriving at their report. Only PW1-PW 7 gave evidence in respect of what they observed during the election and they were the only eye witnesses whose testimony was limited to 12 polling units out of the
F 1672 polling units spread across nine Local Government Areas of the State. Giving the nature of evidence adduced by PW 9 there is no way where it can be said that the case of the appellants was made out in respect of the 9 Local Govern-
G ment Areas in contention since nobody who was a direct participant in the election gave evidence linking the mass of documents used by PW 9 in preparing his report. The court below was therefore right when it held relying on OKE v. MIMIKO (NO. 2) (2014) 1 NWLR (Pt. 1388) 225 at 400 - 401 that all
H the documents put forward in Exhibit P 4275 are nothing but a bundle of primary and secondary hearsay. Even if PW 1 - PW 7 succeeded in establishing that the Gubernatorial election conducted by the 3rd and 4th respondent in Ogun State on the 11th April, 2015 was characterized by non-compliance with**

the provisions of the Electoral Act, the evidence affected only 12 polling units out of 1672 polling units that were being contested. That is not sufficient to nullify the election and return of the 1st respondent as the duly elected Governor of Ogun State. Section 139(1) of the Electoral Act, 2010 as amended provides that:-

An Election shall not be liable “to be invalidated by reason of non-compliance with the provisions of this Act if it appears to the Election Tribunal or Court that the election was conducted substantially in accordance with the principles of this Act and that the non-compliance did not affect substantially the result of the election”.

Apart from Exhibit P 4275 being inadmissible by virtue of section 67 of the Evidence Act as same was prepared by PW 9 who is not an expert, no weight could be attached to it because it was riddled with inconsistencies. Both the Tribunal and the Court below made concurrent findings of fact which were not perverse. The appeal was bound to fail. It is on account of these reasons that I dismissed the appeal on 27th January, 2016 and affirmed the declaration and return of Senator Ibikunle Amosun as the duly elected Governor of Ogun State in the Gubernatorial Election held on 11th April, 2015. The appeal therefore lacks merit and it is accordingly dismissed. Parties are to bear their respective costs.

MOHAMMED CJN

This appeal was heard on Wednesday 27th January, 2016. At the end of the hearing that day, I delivered my own concurring Judgment agreeing with the lead Judgment of my learned brother Aka'ahs, JSC dismissing the appeal and affirming the Judgment of the Court of Appeal now on appeal which affirmed the Judgment of the Governorship Election Tribunal dismissing the petition of the Appellants for failure to prove their case. Having promised to give my own reasons for dismissing the appeal today, I now proceed to do so.

I have had the privilege before today of reading the reasons for Judgment dismissing the appeal ably prepared by my learned brother, Aka'ahs, JSC. I entirely agree with the reasons given by him for dismissing the appeal and affirming the Judgments of the Election

Petition Tribunal and the Court of Appeal. I hereby adopt these reasons as my own for dismissing the appeal because I am satisfied with the reasons in the lead reasons for the Judgment which I concurred. I have nothing useful to add to what had already been put in place.

B

MUHAMMAD JSC

When this appeal was heard and subsequently dismissed on the 27th January, 2016, I undertook to deliver, today, my reasons for agreeing with my learned brother, Aka'ahs, JSC in dismissing the appeal. My learned brother has permitted me to read before today, his reasons for dismissing the appeal. I am contented with his reasons which I adopt as mine. I do not need to add anything. The appeal remains dismissed. I abide by all consequential orders made therein.

D

NGWUTA JSC

This appeal was heard on January 27th, 2016 and judgment was delivered on the same day. I delivered my concurring judgment and indicated that I would give reasons for also dismissing the appeal for want of merit. Herein are my reasons.

Having had the privilege of reading the reasons for dismissing the appeal prepared by my learned brother, Aka'ahs, JSC, I entirely agree with same. I adopt the said reasons for dismissing the appeal and affirming the judgments of the Election Petition Tribunal and the Court of Appeal.

G

KEKERE-EKUN JSC

This appeal was heard on Wednesday 27th January 2016. After the adoption of briefs by learned counsel for the respective parties and oral submissions thereon, I delivered my concurring judgment and dismissed the appeal. I undertook to give my reasons to-day.

I have had the benefit of reading in draft the well considered and comprehensive lead reasons advanced by my learned brother, Aka'ahs, JSC for dismissing the appeal. I agree entirely with the reasons given for dismissing the appeal. I have nothing further to add. I

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

OKORO JSC

I delivered judgment in this appeal on Wednesday, the 27th day of January, 2016, the same day it was heard. In the said judgment, I dismissed this appeal for lacking in merit and adjourned it till today, 12th February, 2016 for reasons to be given. This was in tandem with the learned judgment of my learned brother, Aka'ahs, JSC which had dismissed this appeal and promised to give reasons today. In fulfillment of that promise I made, I shall proceed to give reasons for the position I took in this appeal.

My learned brother, Aka'ahs, JSC availed me a copy of the reasons for dismissing the appeal which I read before now. I agree with those reasons and venture to make a few comments in support.

On the 20th November, 2015, the appellants herein filed a motion on notice praying the Court of Appeal for the following reliefs:

“1 An ORDER granting leave to the appellants/applicants to raise, file and argue Additional Grounds of Appeal in the manner as contained in the Additional Grounds of Appeal herewith attached as Exhibit ‘A’.

2. AN ORDER granting leave to the Appellants/Applicants to compile, transmit and file supplementary record of appeal to consist of the Additional Grounds of Appeal dated the 16th day of November, 2015.

3. AN ORDER deeming the Appellants/Applicants’ Additional Grounds of Appeal as well as the supplementary record of appeal filed and served as having been properly filed and served.”

The 1st and 2nd respondent filed counter affidavit opposing the above application. After the hearing of the application, the court below made the following conclusions:-

“I have to agree that by the affidavit of the appellants the only reason given in paragraph 5 is just that appellants’ counsel took a “holistic review” of the file and decided to amend the notice of appeal by filing additional grounds on 18/11/15, after the 21 days provided in paragraph 6 of the Election Tribunal and Court Practice Direction 2011. These Practice Directions were made pursuant to the

Electoral Act 2010, the 1999 Constitution particularly Section 287(7) thereof I have to agree with learned respondents' counsel that allowing the appellants to file the additional grounds of appeal after the statutory time limit for appealing against the judgment of the Election Tribunal is to allow an extension of time to file notice and
 B *grounds of appeal against the judgment of the Election Tribunal... The previous luxury enjoyed by counsel to wake up and argue their appeal in fits and starts at large has been removed by the sheer urgency inherent in prosecuting the appeal. In the circumstance,*
 C *the motion has to be refused and it is hereby refused."*

In agreeing with the above decision of the Court of Appeal, I wish to state that election proceedings are sui generis and time is of the essence. Section 285 (1) (7) of the Constitution of the Federal
 D Republic of Nigeria, 1999 (as amended) states that:

"An appeal from a decision of an election tribunal or Court of Appeal in an election matter shall be heard and disposed of within 60 days from the date of the delivery of judgment of the tribunal or Court of Appeal."

E Sequel to the above constitutional provision, Section 6 of the Election Tribunal and Court Practice Direction, 2011 made provision to give effect to a speedy trial and conclusion of election related proceedings. It states:

F *"The appellant shall file in the Registry of the Tribunal his notice and grounds of appeal within 21 days from the date of the decision appealed against."* (underlining mine for emphasis)

G Clearly, the above provision which is unambiguous, by its ordinary meaning is that an appellant shall file his "notice and grounds" of appeal within 21 days from the date of the decision appealed against. Note that the provision is mandatory in view of the use of the word "shall" in it. In legal parlance, the word "shall" connotes mandatory discharge of a duty or obligation, and when used in respect of a provision of the law, that requirement must be met. See TABIK
 H INVESTMENT LTD & ANOR. V. GUARANTY TRUST BANK PLC (2011) LPELR - 3131 (SC), NONYE INUNZE V. THE FEDERAL REPUBLIC OF NIGERIA (2014) LPELR – 2224 (SC), ONOCHIE V. ODOGWU (2006) 6 NWLR (pt. 975) 65, AMOKEDO V. IGP & 2 ORS (1999) 5 SCNJ 71 AT 81.

The other aspect is that both the notice of appeal and the grounds of appeal shall be filed within the 21 days allowed by the Practice Direction. Thus the amendment sought by the appellants at the court below outside the 21 days prescribed was unavailable to the appellants. See CPC V. INEC (2011) 18 NWLR (pt. 1279) 493 at 532, NGIGE V. INEC (2015) 1 NWLR (pt. 1440) 281 at 319, PPA V. INEC (2011) 13 NWLR (pt. 1317) 215 AT 239. B

One other issue I wish to comment on, albeit briefly, is that PW9 was certainly a person interested in the outcome of the proceedings and Exhibit P4275 made by him was tainted and biased. Although PW9 was one of the makers of Exhibit P4275, he was only able to attend the process of making the Exhibit for four days only out of the ten days spent to compile the exhibit. Moreso, he was only in one polling unit and could not have given evidence of more than one polling unit. C D

Based on the above and the more comprehensive reasons in the lead reasons for judgment I agree that this appeal is devoid of any scintilla of merit. It is dismissed by me. I abide by all the consequential order made in the lead reasons for judgment, that relating to costs inclusive. E

SANUSI JSC

This court heard this appeal on Wednesday the 27th of January 2016 and immediately delivered its judgment dismissing the appellant's appeal for being devoid of merit. I delivered my judgment and also dismissed the appeal for want of merit. On that day, I promised to deliver my reasons for judgment dismissing the appeal on Friday 12th January, 2016. F G

I had the privilege of reading before now the lead reasons for judgment ably delivered by my learned brother Kumai Bayang Aka'ahs JSC dismissing the appeal for want of merit. I am in entire agreement with those reasons for judgment. I adopt them as mine and have nothing to add in view of their comprehensive nature. H

The appeal is therefore hereby dismissed by me for being devoid of merit. I abide by the consequential orders made in the lead reasons for judgment and also on the order on costs.