

SUPREME COURT OF NIGERIA
FRIDAY 9TH DECEMBER, 2016. SC. 168/2016
CORAM:- O. RHODES-VIVOUR, M. D. MUHAMMAD,
C. B. OGUNBIYI, C. C. NWEZE, A. SANUSI, JJSC

1. RT. HON. ABDULLAHI BELLO
2. ALL PROGRESSIVE CONGRESS (APC)..... APPELLANTS
AND
1. HON. YUSUF AHMED TIJANI DAMISA
2. PEOPLES DEMOCRATIC PARTY (PDP)..... RESPONDENTS
3. INDEPENDENT NATIONAL ELECTORAL
COMMISSION (INEC)

JURISDICTION - Fundamental nature of - When issue of jurisdiction is raised - It must first be looked into - As any proceeding conducted without jurisdiction - Is a nullity (H1)

COURTS - Competence of - To assume jurisdiction in a matter - Court must be properly constituted - With subject matter of action within its powers - And action must be initiated by due process of law (H2)

APPEALS - Filing - Competence - Failure to comply with statutory requirement - Under which appeal may be properly brought before Court - Will deprive appellate Court of jurisdiction over the appeal (H3)

ELECTION PETITIONS - Appeals - Time limit - By 1999 Constitution s. 285(7) - Appeals against decision of Tribunal or CA - Must be heard and determined within 60 days from judgment date (H4)

ELECTION PETITIONS - Appeals - Late filing - Effect - The appeal having been brought outside the 60 days period provided in 1999 Constitution s. 285(7) - Is incompetent (H5)

COURTS - Jurisdiction - Conferment of - Where statute confers jurisdiction on Court - It serves as mandate to Court to adjudicate on matters in issue - Otherwise Court becomes incapacitated (H6)

ELECTION PETITIONS - National and State Assembly elections - Final Court - By 1999 Constitution s. 246(3) - Decision of Court of Appeal in respect of appeals from such election Tribunals - Is final (H7)

ELECTION PETITIONS - Gubernatorial elections - Final Court - Where appeal arises from decision of Tribunal to Court of Appeal on preelection matters - Supreme Court has jurisdiction to entertain the appeal (H8)

FACTS

In an election petition filed before the Kogi State National and State Assemblies Election Petition Tribunal, petitioners/1st and 2nd respondents are challenging the declaration and return of respondent/1st appellant as the winner of the House of Representatives election as member representing Okene/Ogori-Magogo Federal Constituency of Kogi State. 1st respondent was sponsored by 2nd respondent (Peoples Democratic Party) to contest the aforesaid election, while 1st appellant was sponsored by 2nd appellant (All Progressive Congress) to contest the same election. At the conclusion of hearing in the petition, the Tribunal dismissed the petition and ruled in favour of appellants. Aggrieved, 1st and 2nd respondents appealed to the Court of Appeal Abuja Division.

The Court heard and determined the appeal in favour of 1st and 2nd respondents within the sixty days period stipulated by s. 285(7) of the Constitution of the Federal Republic of Nigeria 1999 (as amended). After the expiration of the said sixty days, appellants brought an application on Notice seeking inter alia, for an order enlarging time within which to apply to set aside the judgment made by the Court and an order to set aside the judgment. In reaction, 1st and 2nd respondents filed preliminary objection to the hearing of the application on the ground that the sixty days period to hear and determine the appeal by the Court has already elapsed. After taking arguments of the parties, the Court upheld the preliminary objection and declined jurisdiction to entertain the application on Notice and ultimately dismissed the application. Aggrieved further, appellants ap-

pealed to the Supreme Court. 1st and 2nd respondents have again brought preliminary objection challenging the jurisdiction of the Supreme Court to entertain the appeal.

ISSUES FOR DETERMINATION

- (1) Whether the instant appeal is abuse of court process, and
- (2) Whether this court has jurisdiction to entertain and determine the appeal.

HELD (Unanimously striking out the appeal per **SANUSI JSC**)

JURISDICTION - Fundamental nature of

1. Issue of jurisdiction is threshold issue which obviously is of paramount importance and therefore when raised, it must be looked into first or at least at the earliest opportunity, more especially because any proceedings conducted without jurisdiction, no matter how well it is conducted, is a nullity.
(p. 4080 B)

COURTS - Competence of

2. Before a court can be said to be competent to have jurisdiction in respect of any matter be it an appeal or case of first instance, it must be satisfied of the existence of the underlisted conditions, namely:-

- (a) **It must be properly constituted with regard to the number and qualification of the members;**
- (b) **The subject matter of the action must be within its jurisdiction.**
- (c) **The action or appeal is initiated by due process of law, and Any condition precedent to the exercise of its jurisdiction must have been fulfilled or met.** (p. 4080 D)

APPEALS - Filing - Competence

3. It must be stressed right from the outset, that appeals are generally creatures of statutes or Constitution. Failure to comply with any statutory or constitutional requirement prescribed

by the relevant laws under which such appeals may be competent and properly brought before the court will deprive such appellate court of jurisdiction to adjudicate on the appeal.
(p. 4080 F)

B *ELECTION PETITIONS - Appeals - Time limit*

4. As I posited supra, the judgment of the trial tribunal was delivered on 8th August 2015 while the application was filed on 26/1/2016. That is to say it was filed outside the stipulated period of 60 days or outside the time frame, pursuant to Section 285(7) of the 1999 Constitution (as amended). To my mind, the wordings of Section 285(7) of the 1999 Constitution is very clear, plain and unambiguous and therefore do not require any contrary interpretation, for it clearly means what it says, to the effect that appeal against the decision of an election tribunal or Court of Appeal as the case may be in any election matter must be heard and determined within 60 days from the date of delivery of the decision by the tribunal or Court of Appeal. The provision is a constitutional one and the words employed in drafting it had mandatory effect or flavour or command and it allows no room for circumventing it or for discretion, with regard to the time extension.

This court in multiplicity of its decided authorities had interpreted the above provisions, emphasizing that the 60 days time limit to entertain and determine appeals on election matters from election tribunal to Court of Appeal is sacrosanct and cannot be increased by any guise. (p.4081 H)

G *ELECTION PETITIONS - Appeals - Late filing - Effect*

5. In view of the few remarks above, I am of the firm view that the lower court was right to have declined jurisdiction to hear and determine the application which is time bound and was obviously brought before it, outside the time frame of 60 days which runs not and violent to the provisions of Section 285(7) of the 1999 Constitution as amended. The appeal against the decision of the lower court on that aspect, or challenging the lower court's resolve to decline jurisdiction must fails as it is

incompetent and therefore liable to be struck out. The Preliminary Objection by the 1st and 2nd Respondents on that aspect therefore succeeds and it is accordingly sustained. Similarly, the sole issue raised by the third respondent on that point also succeeds and is resolved in favour of the third respondent. (p. 4082 E) B

Jurisdiction - Conferment of

6. There is no gainsaying that courts are donated or conferred with jurisdiction to adjudicate on matters by either the constitution or statute with regard to some subject matters or suits including appeals. C

It must be emphasized also that where a statute or constitution confers jurisdiction on a court, such serves as a mandate given to it to adjudicate on the matter(s) in question and once a court is not so conferred with such jurisdiction, it then becomes incapacitated and cannot therefore adjudicate or determine the matter. The 1999 Constitution, as amended, had, for instance, vide its Section 246 conferred variety of jurisdictions on Court of Appeal to hear and determine appeals in such variety of subject matters such as decisions of Code of Conduct Tribunal and Election petition tribunals. (p. 4083 A) D
E

ELECTION PETITIONS - NA & State HA elections F

7. A dispassionate and calm perusal of the above provisions of the Constitution; clearly shows that decision of the Court of Appeal in respect of appeals arising from the National and States Houses of Assembly Election Petition tribunals shall be final. It is not in doubt that the application filed before the lower court is an of shoot of the court's decision on National Assembly election petition and by extension this appeal had its origin from that and is also against the decision of the lower court on subject matter of election petition decision or decisions. The present appeal is in one guise challenging the decision of the court below declining jurisdiction when it was approached and prayed upon to set aside its judg- G
H

ment. With this explanation, Can this court be clothed with jurisdiction to entertain and determine same appeal? I do not think so. My reasons for saying so are not far-fetched. Looking closely at the wording of Section 246(3) of the 1999 Constitution as amended and as reproduced supra, it is clear from the wording of that provision, that the decision of the Court of Appeal is final. The decision therefore has no business climbing or driving to this court for adjudication because this court is certainly bereft of jurisdiction to entertain, hear and determine any such appeal from the lower court. This court had also in numerous of its decided authority decided that it lacked jurisdiction to entertain and determine this and similar appeals. (p. 4083 E)

ELECTION PETITIONS - Gubernatorial elections - Final Court
8. I must however state here, that the jurisdiction of this court to entertain and determine appeals from the Court of Appeal is only restricted to the situation where the appeal as presented to the Court of Appeal is against the judgment or decision of election petition tribunal on governorship election petitions only. This court also has jurisdiction if the matter relates to pre-election matters. In this latter case, appeal can travel up to this or apex court. The Supreme Court can hear and determine appeal from the Court of Appeal on any other matter such as pre-election matters by virtue of the provisions of Section 233 of the 1999 Constitution as amended. (p. 4084 D)

REPRESENTATION

J.S. Okutepa, SAN for Appellant with him J.J. Usman Esq., Mrs. Hokaha H. Bassey, Mrs. Elizabeth O. Ifedayo, Ojonimi S. Apeh Esq., Miss. Joy E. Adah, Maduabuchi O. Idam Esq., Gbadeola Egbeola Esq., J.Y. Melah Esq., Micheal O. Ogobuchi Esq., Miss. Gift O. Ejesieme, Miss. Adedolapo E. Agunbiade, Miss. Caroline O. Ozuzu and Miss. Osariemen V. Ojo-Igbinoba.
 Olumide Oiayemi for 1st and 2nd Respondent with him Olumide Olaiya, S.J. Ehimoni, K.M. Emefiele, Sorocho Nnaji, Rita Aidelebe and Nneka

Ngbalaghor.

Alhassan A. Umar for 3rd Respondent with him Ahmed Goni Ismail.

CASES REFERRED TO

Okorochoa v. PDP (2014)7 NWLR (pt. 1406) 213	
Dingiyadi v. INEC (No.2) (2010) 18 NWLR (pt. 1224) 154	B
Anakor v. Nigeria Police Force (2014) 15 NWLR (pt. 1429) 155	
A-G Lagos State v. A-G Federation (2014) 9 NWLR (pt. 1412) 217	
Ugbo v. Suswan (2014) 14 (pt. 1427) 264	
Jegede v. Akande (2014) 16 NWLR (pt. 1432) 43	C
Salik v. Idris (2014) 15 NWLR (pt. 1429) 36	
Madukolo v. Nkemdilim (1962) 2 SCNL 341	
Uche v. Onwe (2011) 4 NWLR (pt.12) 386	
Eluabe v. Omokhare (2004) 11-12 SC 60	
Mark v. Eke (2004) All FWLR (pt. 200) 1455	D
Opara v. Amadi (2013) 6-7 SC (pt. 2) 49	
Madumere v. Okwara (2013) 6-7 SC (pt. 2) 95	
Okadigbo v. Emeka (2012) LPELR -7839 (SC) 17	
Emordi v. Igbeke (2011) 4 SC (pt 11) 107 145	E

STATUTE & RULES REFERRED TO

Constitution of the Federal Republic of Nigeria 1999 (as amended), ss. 6(6)(a), 246(3), 285(7)

Court of Appeal Rules, O. 7 Rules (1)(2)(12) and O. 19 r. 4 F

LEAD JUDGMENT BY SANUSI JSC

This appeal is against the Ruling of the Court of Appeal, Abuja Division (the lower court), delivered on 11th February, 2016 in which by the said ruling, the lower court declined jurisdiction to entertain G and determine a Motion on Notice filed before it, urging it to set aside its own judgment which it delivered earlier in appeal no.CA/A/EPT/648/2015 which according to the learned appellant's senior counsel, was delivered without jurisdiction. The facts of the case which gave rise to this appeal are simply put as follows. The first and 2nd H respondents filed an election petition No. EPT/KG/NASS/HR/06/2015 before the Kogi State National and State Assemblies Election Petition Tribunal (hereafter referred to as "the tribunal") in which they

challenged the declaration and return of the 1st Appellant as winner of the House of Representatives election as member representing Okene/Ogori-Magogo Federal Constituency of Kogi State. The first respondent was sponsored by his party the POP (the 2nd Respondent), to contest the said election. The first appellant on the other hand, contested the same election on the platform of his party the All Progressive Congress (APC) i.e. the 2nd appellant herein. The tribunal on 13th October 2015, delivered its judgment in favour of the two appellants. The respondents thereupon, became disenchanted with the judgment of the tribunal naturally, hence they jointly appealed to the lower court. The lower court heard the appeal and delivered its judgment on 8th of December 2015 within the 60 days stipulated by Section 285(7) of the Constitution of the Federal Republic of Nigeria 1999 as amended) in favour of the 1st and 2nd respondent.

Then after the expiration of the sixty days within which the lower court was allowed to entertain and determine any matter relating to appeal filed before it which it had already delivered judgment and thereby disposing same of, the two appellants herein, filed a Motion on Notice before the lower court on 26th day of January 2016 seeking the under listed reliefs:-

(a) *“AN ORDER enlarging time within which the appellants can apply to set aside the judgment and the consequential order made by this court on the 8th day of December 2015 in APPEAL NO.CA/A/EPT/648/2015 BETWEEN HON. YUSUF AHMED TIJANI DAMISA AND ANOR VS RT. HON. ABDULLAHI BELLO AND ORS same having been made without jurisdiction.*

(b) *AN ORDER of this court setting aside the judgment and the consequential orders made by this Court on the 8th of December 2015 in HON. YUSUF AHMED TIJANI DAMISA AND ANOR VS RT. HON. ABDULLAHI BELLO AND ORS same having been made without jurisdiction.*

Having been served with the motion on notice filed by the appellants, the 1st and 2nd Respondents jointly filed a Preliminary Objection challenging the jurisdiction of the lower court to entertain, hear and determine the motion filed by the appellants on the grounds, inter alia, that the said motion was filed by the appellants outside the

(60) sixty days stipulated by the Constitution within which the lower court must dispose of any matter on appeal before it, from the decision of election tribunals. After taking arguments of learned counsel for the parties in the appeal, the lower court upheld the preliminary objection of the 1st and 2nd respondents and declined jurisdiction to entertain the motion and ultimately dismissed the said motion. B

Still further dissatisfied with the ruling of the lower court, the appellants further appealed to this court. The first and second respondents still filed a notice of preliminary objection before this court also challenging this court's jurisdiction to entertain, hear and determine the present appeal. To that effect, the 1st and 2nd Respondents argued their Preliminary Objection in their joint brief of argument. C

The first and 2nd Respondent submitted that the present appeal is grossly incompetent as this court lacks jurisdiction to entertain same and that the appeal is abuse of court process because besides that appeal which was lodged by the appellants, the latter also had simultaneously filed some cases having the same parties on the which said cases are still on going involving same parties with those in the instant appeal and seeking the same reliefs. Learned counsel for the 1st and 2nd respondents argued that the implication is that any decision made in any of these courts in favour of the appellants, will amount to the nullification of the election and return of the 1st respondent as member of the House of Representative of his State. E
Relying on the case of *Okorocha vs PDP* (2014) 7 NWLR (pt.1406) 213 at 290, he argued that this is a clear case of abuse of court process. See *Dingiyadi vs INEC* (No.2) (2010)18 NWLR (pt.1224)154 at 195. F

In another submission, the learned counsel for the two respondents argued that the court below from which this appeal arose, G is the final court to hear appeal on National and State Assemblies election petitions and therefore appeal to this court is incompetent, as this court is bereft of jurisdiction to entertain and hear it. To buttress his argument on this point, the learned counsel referred to the provisions of Section 246(3) of the 1999 Constitution (as amended). H
He argued that the jurisdiction of a court must be traced or conferred by the constitution or statute. See *Anakor vs Nigeria Police Force* (2014)15 NWLR (pt. 1429) 155 at 169/170 Paras H-A; AG Lagos

State vs AG of the Federation (2014)9 NWLR (pt.1412)217 at 1254; Ugbo v Suswan (2014)14 (pt.1427) 264 at 312 Para B-C. The learned counsel further emphasized that the wordings of the provisions of Section 246(3) of the 1999 Constitution (as amended), there is no right of appeal against the decision of the Court of Appeal in respect of matters arising from the National and State Assemblies election petition. See Jegede vs Akande (2014) 16 NWLR (pt. 1432) 43 at 72 Para H. Learned counsel further referred to Section 318 of the same 1999 Constitution which provides definition of “decision” to mean ‘in relation to a court, any determination of that court and it includes judgment, decree, order, conviction, sentence or recommendation’. On the finality of the decision of Court of Appeal in National and State Assemblies election petition vide Section 246(3) of the Constitution, the learned counsel also referred to the case of Salik vs Idris (2014) 15 NWLR (pt. 1429) 36 at 60. In urging this court to uphold his preliminary objection, the learned counsel submits that the provisions of Section 246(3) of the 1999 Constitution is clear and unambiguous and leaves no room for any interpretation rather than that the Court of Appeal has final jurisdiction in National and State Assemblies election petition.

The learned counsel to the third respondent filed brief of argument on behalf of the 3rd respondent on 16th March, 2016. In the said brief of argument, the learned counsel adopted the sole issue for determination formulated by the appellant which reads as below;-

“Whether the court below was correct to hold as it did, that it has no jurisdiction to set aside its orders made in the judgment delivered on 18 December, 2015 in appeal No. CA/A/EPT/648/2015, which orders were made without jurisdiction.”

It appears to me that the argument advanced by the learned counsel for the 3rd respondent on the above mentioned issue for determination more or less revolves on the point raised in the preliminary objection filed and argued in the 1st and 2nd respondents’ joint brief of argument even though with further expatiation. I will hereunder highlight some of the focal points on the submission of the learned counsel for the 3rd respondent on the lone issue for determination which, as I said above, also relate to the pre-

liminary objection argued in the 1st and 2nd Respondents' brief of argument. Learned counsel for the 3rd respondent submitted that the competence of court to exercise jurisdiction in an action/suit before it depends on certain conditions laid down in the case of *Madukolo & Ors vs Nkemdilim* (1962) 2 SCNLR 341 and one of such conditions is that the subject matter of the case is within the jurisdiction of the court and that there is no feature or impediment preventing the court from exercising jurisdiction. He argued that the subject matter of the present appeal is election dispute arising from the conduct of the National Assembly election in the affected constituency in Kogi State which according to the learned counsel, is not within the jurisdiction of this court. He added that the lower court in that situation is the apex court with regard to resolution and determination of election petition appeal relating to the National Assembly election. He contended that it is the 1999 Constitution (as amended) that clothed the lower court with power and jurisdiction to adjudicate on that election appeal, hence the court or parties can not by agreement endow jurisdiction to this court.

Learned counsel for the 3rd respondent contended that by the provisions of Section 246(3) of the 1999 Constitution (as amended), the Court of Appeal is the final court in respect of appeal arising from the National Assembly or State Assembly election petition. He further stated that the present appeal arose from the National Assembly election in Okene/Ogori/Magogo Federal Constituency. The gravamen of this appeal relates to the lower court's refusal to assume jurisdiction to review or set aside the judgment it delivered, pursuant to the appeal against the decision of the National Assembly Election Petition Tribunal. He said it is the ruling of the court below declining jurisdiction to entertain the motion filed by the appellants when the lower court arrived at the conclusion, inter alia, that by Section 285(7) of the 1999 Constitution as amended, an appeal from the decision of an Election tribunal or Court of Appeal in an election matters, shall be heard and determined within 60 days from the date of the delivery of judgment of the tribunal or Court of Appeal.

On further adumbration on the issue of jurisdiction brought to the fore by the instant appeal, the learned third respondent's coun-

sel argued that election matters are sui generis and can not be amended and are not flexible. The time provided for the hearing and determination of such appeals is strict and inelastic and is incapable of being extended or expanded by any stretch of imagination or under any circumstance. See ANPP vs GONI (2012)1 NWLR (pt. 1298) 147 at B 182; BRIG GEN. BUBA MARWA & Ors vs ADMIRAL MURTALA NYAKO & Ors (2012)8 NWLR (pt. 1298) 199; ACN vs INEC (2013) 12 NWLR (pt.1370) 161 at 184; SHETTIMA vs GOIMI (2011); PDF vs CPC (2011) 17 NWLR SC 332 (pt.1298)485 at 508. Learned C counsel for the third respondent contended that the election tribunal delivered its judgment on 12/10/2015 and between then and the date when the application was filed on 26/1/2016 was more than sixty (60) days, hence even for that reason alone, this court lacks jurisdiction to entertain the instant appeal. He again argued D that Section 6(6)(a) of the 1999 Constitution as amended does not help the applicant since inherent powers of courts can only be exercised within the time limited by the Constitution for the exercise of this court's jurisdiction. It is the contention of the learned counsel for the 3rd respondent that the Court of Appeal lacks jurisdiction to revisit E or interpret its judgment after the expiration of the sixty (60) days time being granted to it by Section 285(7) of the 1999 Constitution (as amended).

On the finality of the decision of the Court of Appeal on F National and State assemblies election tribunal judgment, the learned counsel submitted that this court lacks jurisdiction to entertain appeal from the Court of Appeal in that situation or circumstance. He referred to the case of REV. ONUAGULUCHI vs NDU (supra) and the provisions of Section 246(1) (b) (i) and (3) of the 1999 Constitution G (as amended). He also referred to the cases of SALIK VS IDRIS (2014) 15 NWLR (pt.1429) 36 at 54 Para C-G, 58; DANGANA vs USMAN (2012) LPELR 7827.

He finally urged this court to resolve the sole issue for determination in his favour.

H Upon being served with the respondents' briefs of argument, the learned senior counsel for the Appellant filed Appellants' Reply Brief to the 1st and 2nd Respondents on 29/4/2016. Therein, he extensively replied to the preliminary objection raised in the 1st and 2nd

Respondents' joint brief of argument. As I posited above, the Preliminary Objection challenged this court's jurisdiction to entertain and hear this appeal, for instance, because the lower court's jurisdiction to entertain the appellant's/motion on notice was affected by effluxion of time same having been filed and outside the 60 days prescribed by Section 285 (7) of the 1999 Constitution (as amended) B and also because the lower court, by virtue of the provision of Section 246 (3) of the same Constitution, is the final court to hear or determine any matter relating to appeals against the decision of National and State Assembly Election petition tribunal.

It is the submission of the learned senior counsel for the appellants that contrary to the stance taken by the learned respondents' counsel, his appeal to this court does not amount to abuse of court process because his appeal did not fall within the purview of Section 246(3) of the 1999 Constitution (as amended). He argued that his appeal is against the refusal of lower court to assume jurisdiction vested on it in Section 6(6) of the 1999 Constitution (as amended) and under order 7 Rules (1) (2) and (12) and Order 19 Rule 4 of Court of Appeal Rules. He insisted that his appeal is not against the judgment of the lower court in respect of appeals arising from the National and State Assembly Election Petition, as wrongly construed by the respondents. C D E

Learned senior counsel for the appellant submitted that by his Motion on Notice, he is not appealing against the decision of the Court of Appeal in respect of National Assembly petition but rather, he is appealing against the decision of the lower court for refusing to set aside its judgment and orders it made without jurisdiction. In that regard, the learned silk contended that this court has jurisdiction to hear and determine such appeal from the lower court by virtue of the provisions of Section 233 of the 1999 Constitution as amended, when read with Section 6(6) (a) of the same Constitution. F G

In buttressing the point that this court has jurisdiction to entertain and determine this instant appeal, the learned silk cited and relied on the case of Uche vs Onwe (2011) 4 NWLR (pt.12) 386 at 27 even after conceding that that case relates to substitution of a candidate in an election which is a pre-election matter which does not fall within the preview of Section 246 of the 1999 Constitution as H

amended which also is heard by regular courts whose decision are challengeable up to the Supreme Court and is also covered by the provisions of Section 233 of the 1999 Constitution as amended.

It seems to me that this appeal and indeed the preliminary objection are basically centered on two issues or points, namely:-

- B (1) Whether the instant appeal is abuse of court process, and
(2) Whether this court has jurisdiction to entertain and determine the appeal.

Issue of jurisdiction is threshold issue which obviously is of paramount importance and therefore when raised, it must be looked into first or at least at the earliest opportunity, more especially because any proceedings conducted without jurisdiction, no matter how well it is conducted, is a nullity. See Eluabe vs Omokhare (2004) 11-12

D SC 60. ***Before a court can be said to be competent to have jurisdiction in respect of any matter be it an appeal or case of first instance, it must be satisfied of the existence of the underlisted conditions, namely:-***

(a) ***It must be properly constituted with regard to the number and qualification of the members;***

(b) ***The subject matter of the action must be within its jurisdiction.***

(c) ***The action or appeal is initiated by due process of law, and Any condition precedent to the exercise of its jurisdiction must have been fulfilled or met.*** See MADUKOLU v NKEMDILUM(1982)1 All NLR 687; DANGANA & ANOR Vs USMAN & 40RS(2012)2 SC (pt.111) 103; NURTW & ANOR v RTEAN & ORS(2012)1 SC (pt.11) 119. ***It must be stressed right from the outset, that appeals are generally creatures of statutes or Constitution. Failure to comply with any statutory or constitutional requirement prescribed by the relevant laws under which such appeals may be competent and properly brought before the court will deprive such appellate court of jurisdiction to adjudicate on the appeal.*** See AG LAGOS STATE VS AG. OF FEDERATION (2014) 9 NWLR (pt.1412) 217 at 254; TIZA v BEGHA (2006) 6 SC (pt.11) 1.

There is no dispute that the instant appeal arose or origi-

nated from the judgment of the National and State Assembly Election petition tribunal. The Election tribunal dismissed the appellants/petitioners petition for being incompetent. The 1st and 2nd respondents petition being dismissed, appealed to the court below which on 8/12/2015 set aside the decision of the trial tribunal and ordered the 3rd respondent INEC, to conduct fresh election in the affected Federal constituency. It is clear from the record of appeal that the trial tribunal delivered its judgment on 12 August 2015. Being aggrieved with that judgment the respondents filed their application on 26/1/2016. The lower court after computing the number of days from 12/8/2015 to 26/1/2016 decided rightly too, that the period exceeded sixty days and for that reason it declined jurisdiction to entertain the application, bearing in mind, the mandatory provisions of Section 285(5) to (7) of the 1999 Constitution as amended. In the instant appeal, it is not contested that appellants' appeal to the lower court against the decision/judgment of the tribunal was a National assembly Election Petition matter which was disposed of by the tribunal on 8th August 2015. There is no doubt, that the lower court by virtue of the provisions of Section 246 (1) (b) (3) of the 1999 Constitution, as amended, had jurisdiction to ordinarily hear an appeal by the appellants against the judgment of the trial tribunal as of right as filed before it in appeal No.CA/A/EPT/645/2015 in the motion it was approached by the appellants to make an order setting aside its own judgment wherein it declined jurisdiction to set aside its order for want of jurisdiction.

However, it is evidenced on the record of appeal, that the application for the setting aside of its earlier order was filed before it outside 60 days which is contrary to the provisions of Section 285(7) of the 1999 Constitution as amended.

Section 285(7) of the 1999 Constitution (amended) reads as below:-

“An appeal from a decision of 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”.

As I posited supra, the judgment of the trial tribunal was delivered on 8th August 2015 while the application was

filed on 26/1/2016. That is to say it was filed outside the stipulated period of 60 days or outside the time frame, pursuant to Section 285(7) of the 1999 Constitution (as amended). To my mind, the wordings of Section 285(7) of the 1999 Constitution is very clear, plain and unambiguous and therefore do not require any contrary interpretation, for it clearly means what it says, to the effect that appeal against the decision of an election tribunal or Court of Appeal as the case may be in any election matter must be heard and determined within 60 days from the date of delivery of the decision by the tribunal or Court of Appeal. The provision is a constitutional one and the words employed in drafting it had mandatory effect or flavour or command and it allows no room for circumventing it or for discretion, with regard to the time extension. See AMADI & ANOR vs INEC & ORS (2012) SC (pt.1) 1.

This court in multiplicity of its decided authorities had interpreted the above provisions, emphasizing that the 60 days time limit to entertain and determine appeals on election matters from election tribunal to Court of Appeal is sacrosanct and cannot be increased by any guise. See the case of UGBA V SUSWAN (2014)14 NWLR (pt.1427)264 at 310 Para C-E; POP v CPC (2011)17 NWLR (pt.1277)485 at 508 Para B-C; ACN & ANOR vs INEC (2013) 13 NWLR (pt.1370) 161 at 184 Para B-H.

In view of the few remarks above, I am of the firm view that the lower court was right to have declined jurisdiction to hear and determine the application which is time bound and was obviously brought before it, outside the time frame of 60 days which runs not and violent to the provisions of Section 285(7) of the 1999 Constitution as amended. The appeal against the decision of the lower court on that aspect, or challenging the lower court's resolve to decline jurisdiction must fail as it is incompetent and therefore liable to be struck out. The Preliminary Objection by the 1st and 2nd Respondents on that aspect therefore succeeds and it is accordingly sustained. Similarly, the sole issue raised by the third respondent on that point also succeeds and is resolved in favour of the third respondent.

This brings me to the second leg of the preliminary objection filed by the 1st and 2nd Respondents in their joint brief of Argument also the second leg of the third respondent's sole issue for determination. **There is no gainsaying that courts are donated or conferred with jurisdiction to adjudicate on matters by either the constitution or statute with regard to some subject matters or suits including appeals.** See AG of LAGOS STATE vs AG FEDERATION (supra). B

It must be emphasized also that where a statute or constitution confers jurisdiction on a court, such serves as a mandate given to it to adjudicate on the matter(s) in question and once a court is not so conferred with such jurisdiction, it then becomes incapacitated and cannot therefore adjudicate or determine the matter. The 1999 Constitution, as amended, had, for instance, vide its Section 246 conferred variety of jurisdictions on Court of Appeal to hear and determine appeals in such variety of subject matters such as decisions of Code of Conduct Tribunal and Election petition tribunals. D C

Section 246(3) of the 1999 Constitution as amended reads as below:- E

“The decisions of the Court of Appeal in respect of appeals from the National and State houses of Assembly Election Petitions shall be final”.

A dispassionate and calm perusal of the above provisions of the Constitution, clearly shows that decision of the Court of Appeal in respect of appeals arising from the National and States Houses of Assembly Election Petition tribunals shall be final. It is not in doubt that the application filed before the lower court is an of shoot of the court's decision on National Assembly election petition and by extension this appeal had its origin from that and is also against the decision of the lower court on subject matter of election petition decision or decisions. The present appeal is in one guise challenging the decision of the court below declining jurisdiction when it was approached and prayed upon to set aside its judgment. With this explanation, Can this court be clothed with jurisdiction to entertain and determine same appeal? I do not F G H

think so. My reasons for saying so are not far-fetched. Looking closely at the wording of Section 246(3) of the 1999 Constitution as amended and as reproduced supra, it is clear from the wording of that provision, that the decision of the Court of Appeal is final. The decision therefore has no business climbing or driving to this court for adjudication because this court is certainly bereft of jurisdiction to entertain, hear and determine any such appeal from the lower court. This court had also in numerous of its decided authority decided that it lacked jurisdiction to entertain and determine this and similar appeals.

In SALIK V IDRIS (supra) this court stated thus:-

“The issue of finality of the decision of the Court of Appeal on election petitions involving election in National and State Houses of Assembly has been settled by this court in a number of cases including Emordi v Igbeke (2011) 4 SC (pt.II) 107 at 145; (2011) 9 NWLR (pt.1251) 324; Omuaguluchi vs Ndu (2001) 7 NWLR (pt. 712) 309 etc etc”.

See also OKADIGBO vs EMEKA & OR (2012) LPELR 7839 P.17 para B-). **I must however state here, that the jurisdiction of this court to entertain and determine appeals from the Court of Appeal is only restricted to the situation where the appeal as presented to the Court of Appeal is against the judgment or decision of election petition tribunal on governorship election petitions only. This court also has jurisdiction if the matter relates to pre-election matters. In this latter case, appeal can travel up to this or apex court.**

MARK v EKE (2004) ALL FWLR (pt.200) 1455 at 1475/1476. **The Supreme Court can hear and determine appeal from the Court of Appeal on any other matter such as pre-election matters by virtue of the provisions of Section 233 of the 1999 Constitution as amended.**

Almost all the cases cited and relied on by the learned silk for the Appellants in his Reply Brief trying to convince us to assume jurisdiction on his appeal which he argued relates to pre-election matters and do not come under the purview of the provisions of Section 246(3) of the 1999 Constitution as amended and are therefore inapplicable. I do not agree with that submission as emanates from the decision of Election petition tribunal on National Assembly matters.

Thus the resultant effect of all that I have stated above is that, the second leg of the preliminary objection of the 1st and 2nd Respondent also has substance. It therefore succeeds and is hereby sustained. Having sustained the preliminary objection, I also resolve the second leg of 3rd Respondent brief in his favour. I do not therefore see the necessity of determining whether the appeal amounts to abuse of court process or not as to do so will merely serve academic purpose only and this court has no luxury of time to embark on that. B

In summation, the preliminary objection succeeds and sustained. I adjudge the appeal as incompetent and it is accordingly struck out. I make no order on costs. C

RHODES-VIVOUR JSC

I have had the advantage of reading a draft copy of the leading judgment delivered by my learned brother, Sanusi, JSC, and I am in complete agreement with his lordship that the court has no jurisdiction to hear appeals from the Court of Appeal on elections into the National Assembly in view of the provisions of section 246 (3) of the Constitution.

Section 246 (3) of the Constitution states that: E

“(3). The decisions of the Court of Appeal in respect of appeals arising from the National and State Houses of Assembly election petitions shall be final.”

Judgments of the Court of Appeal on appeals arising from National Assembly election Petitions are final by virtue of Section 246 (3) of the Constitution. See *Madumere & 2 ors v O. Okwara* (2013) 6 - 7 SC (Pt.2) p.95 *Salik v Idris* (2014) 5 SC (Pt.2) p.45 *Opara & anor v Amadi* (2013) 6-7SC (Pt.2) p.49 F

The Facts G

The 1st appellant, a member of the 2nd appellant, (APC) and the 1st respondent, a member of the 2nd respondent, (PDF) contested the General elections for the Okene/Ogori-Magogo seat in the House of Representatives. INEC, the 3rd respondent declared the 1st appellant the winner of the elections. Dissatisfied with the results declared by INEC, the 1st respondent filed a Petition contesting the election results. The Petition was heard by the Kogi State National and State Assemblies Election Petition Tribunal. On 13/10/15 that Tribunal af- H

B
C
 affirmed the result declared by INEC. The Petitioner/1st Respondent filed an appeal. The Court of Appeal in a judgment delivered on 8/12/15 set aside the judgment of the Tribunal and entered judgment in favour of the 1st respondent. On 26/1/16 the appellants' filed a Motion on Notice seeking to set aside the judgment of the Court of Appeal. On being served with the Motion the 1st and 2nd respondents filed a Preliminary Objection challenging the jurisdiction of the Court of Appeal to entertain the Motion filed by the appellants. The Court of Appeal upheld the Preliminary Objection of the 1st and 2nd respondents and declined jurisdiction. Still dissatisfied the appellants' appealed to this court.

D
 The decision of the Court of Appeal delivered on 8/12/15 is a decision in respect of appeal arising; from the National Assembly Election Petition Tribunal on the Okene/Ogori-Magogo Federal Constituency seat in the House of Representatives. Such a decision falls within the warm embrace of section 246 (3) of the Constitution and it is a final decision of the Court of Appeal. There can be no appeal to the Supreme Court from that decision.

E
F
 The judgment of the Court of Appeal delivered on 8/12/15, setting aside the judgment of the Tribunal and ordering the 3rd respondent to conduct a fresh election is a final judgment by virtue of section 246 (3) of the Constitution. All applications filed after the Court of Appeal's final decision on 8/12/15 emanate from National Assembly Elections and must end in the Court of Appeal.

G
 The decisions of the Court of Appeal refusing to assume jurisdiction to set aside its final judgment is also final and this court has no jurisdiction to entertain an appeal from that decision. The Preliminary Objection succeeds. Finally, once the Court of Appeal delivers its judgment on National Assembly Elections, such a judgment is final and this court has no jurisdiction to hear any appeal from that judgment no matter how cleverly framed. Appeal struck out.

MUHAMMAD JSC

H
 The competence of the appeal has been made an issue in 1st and 2nd respondent' preliminary objection.

I entirely agree with learned counsel for the 1st and 2nd respondents that by virtue of Section 246(3) of the 1999 Constitution

the decision of the lower court in respect of an appeal that has arisen from the judgment of the National and State Assemblies Election Petition Tribunal is final. Accordingly, it must be conceded, this Court lacks the jurisdiction to hear the incompetent appeal.

Not surprisingly, nothing of substance to the contrary has been urged on this Court by learned counsel to the Appellants. B

Section 246(3) of the 1999 Constitution as amended provides:-

It is for the foregoing but more so the more detailed reasons contained in the lead judgment that I adjudge the appeal incompetent and strike it out. I abide by the consequential orders made in the lead judgment too. C

OGUNBIYI JSC

I read in draft the lead judgment just delivered by my learned D brother Sanusi, JSC. I agree that the appeal is incompetent for want of jurisdiction.

Section 246 (3) of the Constitution is very obvious and clear on the nature of the appeal in this matter wherein the decision of the Court of Appeal in appeals arising from National and State House of E Assembly election petitions shall be final.

The Constitution of the Federal Republic of Nigeria has spoken on finality. It would be naive for any court no matter how highly placed to breach that provision by re-opening the case for whatever F reason. The Collins Learner's Dictionary Concise Edition has defined final as "*the last one.*" "*If a decision or someone's authority is final, it cannot be challenged or questioned.*" One wonders and it beats one's G imagination that appeals of this nature now before us should still find their way to this court despite the clear provision of section 246(3) of the Constitution. It is elementary to restate the established principle that where a court lacks jurisdiction the proceeding no matter how well conducted is a nullity.

Plethora of decisions on the foregoing are without number. See the locus classicus case of *Madukolu & ors v. Nkemdilim* (1962) H 2SCNLR 341. The absence of jurisdiction is not a mere irregularity but very fundamental and rendering of no effect or nonexistent. It should never be revisited.

See also Onuagulochi v. Ndu (2001) 7 NWLR (Pt.712) P.309
Salik v. Idris (2014) 15 NWLR and (Pt. 1429) 64 - 65.

On the preliminary objection, same I hold succeed. The Court of Appeal had given its final decision, and this court being a creation of statutes under the Constitution, it cannot assume jurisdiction otherwise except as that donated by the said Constitution.

The Preliminary Objection succeeds. The matter in this appeal is outside the jurisdiction of this court and same is hereby struck out in terms of the lead judgment for incompetence.

C —————
NWEZE JSC

I had the advantage of reading the draft of the leading judgment which my Lord, Sanusi, JSC, just delivered now. I agree with His Lordship that, being meritorious, the first and second respondents' preliminary objection on the issue of jurisdiction ought to be sustained.

As demonstrated in the leading judgment Section 246 (3) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) confers finality on the judgments of the Court of Appeal in respect of appeals from the National and State Houses of Assembly Election Tribunals. Case Law has dealt with this question and so, it should not delay us further, Opara and Anor v Amadi (2013) 6-7 SC (pt 2) 49; Madumere v Okwara (2013) 6-7 SC (pt 2) 95; Okadigbo v Emeka and Anor (2012) LPELR -7839 (SC) 17; Emordi v Igbeke (2011) 4 SC (pt 11) 107, 145; Salik v Idris (2014) 15 NWLR (pt 1429) 36; Dangana v Usman (2012) LPELR -7827 (SC).

It is for these, and the more detailed, reasons in the leading judgment that I, too, shall enter an order sustaining the preliminary objection of the first and second respondents in this appeal. Accordingly, I hold that, being wholly incompetent, this appeal ought to, and is hereby, struck out. Appeal struck out.